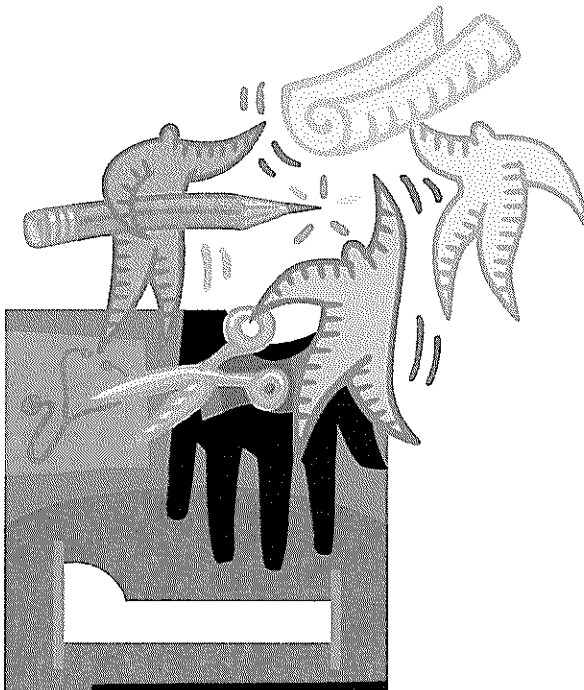
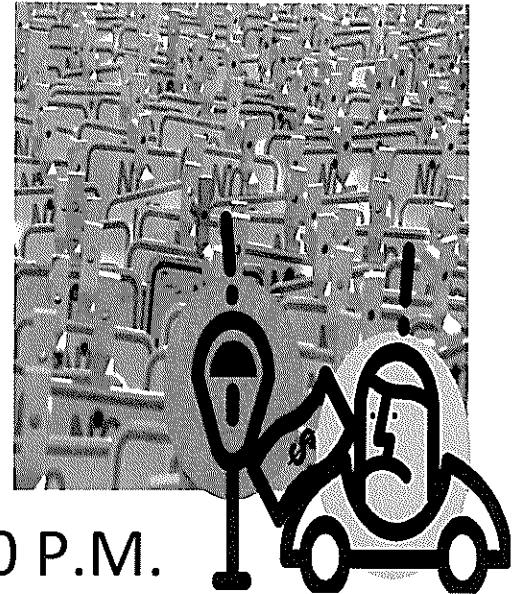




City Council
May 9, 2011
Monday

Special Meeting 4:00 P.M.
Worksession 4:30 P.M.
Committee of the Whole 5:00 P.M.
Regular Meeting 6:00 P.M.



Cowles Council Chambers
City Hall
491 E. Pioneer Avenue
Homer, Alaska



May 2011

Monday 9th	CITY COUNCIL Worksession 4:00 p.m., Committee of the Whole 5:00 p.m., and Regular Meeting 6:00 p.m.
Tuesday 10th	ECONOMIC DEVELOPMENT ADVISORY COMMISSION Regular Meeting 6:00 p.m.
Wednesday 11th	KACHEMAK DRIVE PATH COMMITTEE 5:30 p.m.
Thursday 12th	PUBLIC ARTS COMMITTEE Regular Meeting 5:00 p.m.
Monday 16th	CITY HALL RENOVATION AND EXPANSION TASK FORCE 5:00 p.m.
Tuesday 17th	LEASE COMMITTEE & ECONOMIC DEVELOPMENT ADVISORY COMMISSION JOINT MEETING 2:30 p.m. TRANSPORTATION ADVISORY COMMITTEE 5:30 p.m.
Wednesday 18th	PLANNING COMMISSION Worksession 5:30 p.m. and Regular Meeting 7:00 p.m.
Thursday 19th	PARKS AND RECREATION ADVISORY COMMISSION Regular Meeting 5:30 p.m.
Tuesday 24th	CITY COUNCIL Worksession 4:00 p.m., Committee of the Whole 5:00 p.m., and Regular Meeting 6:00 p.m.

Regular Meeting Schedule

City Council 2nd and 4th Monday 6:00 p.m.

Library Advisory Board 1st Tuesday 5:00 p.m.

Economic Development Advisory Commission 2nd Tuesday 6:00 p.m.

**Parks and Recreation Advisory Commission 3rd Thursday of the months of January,
March, May, June, July, August, September and November 5:30 p.m.**

Planning Commission 1st and 3rd Wednesday 7:00 p.m.

Port and Harbor Advisory Commission 4th Wednesday 5:00 p.m.

Transportation Advisory Committee Quarterly 3rd Tuesday 5:30 p.m.

Public Arts Committee Quarterly 3rd Thursday 5:00 p.m.

Lease Committee Quarterly 2nd Thursday 3:00 p.m.

Permanent Fund Committee Quarterly 2nd Thursday 5:15 p.m.

MAYOR AND CITY COUNCILMEMBERS AND TERMS

JAMES C. HORNADAY, MAYOR – 12

KEVIN HOGAN, COUNCILMEMBER – 12

BARBARA HOWARD, COUNCILMEMBER – 11

DAVID LEWIS, COUNCILMEMBER – 11

FRANCIE ROBERTS, COUNCILMEMBER – 12

MARY E. (BETH) WYTHER, COUNCILMEMBER – 13
BRYAN ZAK, COUNCILMEMBER – 13
City Manager, Walt Wrede
City Attorney, Thomas Klinkner

<http://www.cityofhomer-ak.gov/cityclerk> home page access, Clerk's email address is:
clerk@ci.homer.ak.us Clerk's office phone number: direct line 235-3130, other
number 435-3106.

HOMER CITY COUNCIL/SPECIAL MEETING
491 E PIONEER AVENUE
HOMER, ALASKA

MAY 9, 2011
MONDAY, AT 4:00 P.M.
COWLES COUNCIL CHAMBERS

**MEETING NOTICE
SPECIAL MEETING AGENDA**

1. CALL TO ORDER, 4:00 P.M.

Councilmembers Zak and Wythe have requested excusal.

2. AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

3. PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

4. NEW BUSINESS

- A. **Memorandum 11-065**, From City Clerk Re: Request for Executive Session Pursuant to AS §44.62.310(C)(1&5), Matters, Which the Immediate Knowledge of which Would Clearly have an Adverse Effect upon the Finances of the Government Unit and Attorney Client Privilege. (Airport Apprehension Incident and Boatyard Fire, Briefing by Attorney Frank Koziol)

Page 5

5. COMMENTS OF THE AUDIENCE

6. COMMENTS OF THE CITY ATTORNEY

7. COMMENTS OF THE CITY CLERK

8. COMMENTS OF THE CITY MANAGER

9. COMMENTS OF THE MAYOR

10. COMMENTS OF THE CITY COUNCIL

- 11. ADJOURNMENT NO LATER THAN 4:20 p.m.** Next Committee of the Whole is scheduled for Tuesday, May 24, 2011 at 5:00 p.m. Next Regular Meeting is Tuesday, May 24, 2011 at 6 p.m. A Worksession is scheduled for Tuesday, May 24, 2011 at 4:00 p.m. All meetings are scheduled to be held in the City Hall Cowles Council Chambers.

Office of the City Clerk


Jo Johnson, CMC, City Clerk
Melissa Jacobsen, CMC, Deputy City Clerk II
Renee Krause, Deputy City Clerk I



491 E. Pioneer Avenue
Homer, Alaska 99603
(907) 235-3130
(907) 235-8121
ext: 2224, 2226, or 2227
Fax: (907) 235-3143
Email: clerk@ci.homer.ak.us

MEMORANDUM 11-065

TO: MAYOR HORNADAY AND HOMER CITY COUNCIL

FROM: JO JOHNSON, CMC, CITY CLERK 

DATE: MAY 3, 2011

SUBJECT: REQUEST FOR EXECUTIVE SESSION PURSUANT TO AS §44.62.310(C)(1 & 5), MATTERS, THE IMMEDIATE KNOWLEDGE OF WHICH WOULD CLEARLY HAVE AN ADVERSE EFFECT UPON THE FINANCES OF THE GOVERNMENT UNIT AND ATTORNEY/CLIENT PRIVILEGE. (AIRPORT APPREHENSION INCIDENT AND BOATYARD FIRE)

Pursuant to Council's Operating Manual – "Any Councilmember, the Mayor or City Manager may place consideration of an executive session on the agenda..."

City Manager Wrede requested an Executive Session regarding "Airport Apprehension Incident and Boatyard Fire" for the Special Meeting of May 9, 2011. This has been publicly and internally noticed since that time.

Attorney Frank Koziol will be telephonic.

RECOMMENDATION:

Approve the request for Executive Session and conduct immediately in the Conference Room.

HOMER CITY COUNCIL/WORKSESSION
491 E. PIONEER AVENUE
HOMER, ALASKA

MAY 9, 2011
MONDAY, AT 4:30 P.M.
COWLES COUNCIL CHAMBERS

**MEETING NOTICE
WORKSESSION AGENDA**

1. CALL TO ORDER, 4:30 P.M.

Councilmember Wythe has requested excusal.
Councilmember Zak has requested excusal.

2. AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

3. Ground Lease Document

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4. COMMENTS OF THE AUDIENCE

5. ADJOURNMENT NO LATER THAN 5:50 P.M. NEXT REGULAR MEETING IS SCHEDULED FOR TUESDAY, MAY 24, 2011 AT 6:00 P.M. THE NEXT COMMITTEE OF THE WHOLE IS SCHEDULED FOR TUESDAY, MAY 24, 2011 AT 5:00 P.M. A WORKSESSION IS SCHEDULED FOR TUESDAY, MAY 24, 2011. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

ORIGINAL
AND

October __, 2002

GROUND LEASE AND SECURITY AGREEMENT

THIS GROUND LEASE AND SECURITY AGREEMENT ("Lease") is made as of this _____ day of _____, 2002, between the CITY OF HOMER, 491 East Pioneer Avenue, Homer, Alaska 99603, a municipal corporation organized under the laws of the State of Alaska, hereinafter referred to as "Landlord" and _____ a _____ (type of entity) organized under the laws of the state of _____, whose address is _____ ("Tenant").

Attached as **Exhibit A** is a schedule naming each owner of Tenant and describing the percentage of ownership of each. Also attached to Exhibit A are a certificate of good standing issued by the state under whose laws Tenant is organized, and, if Tenant is a foreign entity, a certificate of authority issued by the State of Alaska. Attached as **Exhibit B** is a true and correct copy of a resolution of Tenant authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

Landlord and Tenant agree as follows:

1. PROPERTY

1.01. Property

Subject to the terms, covenants, conditions, rights and obligations set forth in this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property:

[must insert legal description], Homer Recording District, State of Alaska, as depicted on **Exhibit H**.

Also known as Kenai Peninsula Borough Tax Parcel No. _____.

The described parcel contains approximately _____ square feet, more or less, and is referred to herein as the "Property."

1.02. Quiet Enjoyment, Restrictions, Easements, Etc.

Landlord covenants and agrees that Tenant, upon paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Lease on Tenant's part to be kept or performed, will lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation, subject, however, to the rights and reservations expressed in the U.S. or State patent to the Property, the existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property.

1.03. Property Accepted "As Is"

Tenant acknowledges that it has inspected the Property and accepts the same "as is" and without reliance on any representations or warranties of Landlord, its agents, servants, or employees as to the physical condition of the Property, including, but not limited to, subsurface and soil conditions, the presence of any hazardous waste as defined in paragraph 16.03, or as to the habitability or fitness of the Property for any particular purpose.

1.04. No Subsurface Rights

This Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Property as stated in this Lease. Landlord makes no warranty or representation as to whether the Property is open or closed to mineral claims or leases under state or federal law.

2. TERM

2.01. Lease Term

The term of this Lease is _____ years, commencing on the first day of _____, _____ and ending on the last day of _____, _____ (the "Term").

2.02. Hold-Over

If Tenant holds over after the expiration of the term of this Lease and Landlord accepts payment of rent, Tenant's occupancy will be deemed a tenancy from month to month, terminable upon 30 days written notice given by either party at any time, subject to all the terms, covenants and conditions of this Lease, and will not operate as a renewal or extension of this Lease. Landlord is not required to accept Tenant's tender of rent or to agree to any extended tenancy.

2.03. Surrender of Possession

Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant must promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in paragraph 6.01. Tenant agrees to execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all right, title and interest of Tenant in and to the Property and all such buildings and improvements thereon under paragraph 6.01.

OPTIONAL RENEWAL PROVISION:

2.04. Renewal Options

Tenant will have the right to renew this Lease for _____ additional, consecutive _____ year periods ("Renewal Terms"), provided:

- (a) that Tenant must exercise its option to renew not more than one year and not less than 120 days prior to the last day of the Term or current Renewal Term, as the case may be;

(b) that Tenant is not at that time materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease;

(c) that Tenant must exercise its option to renew only by sending written notice thereof in accordance with the provisions of paragraph 17.17 of this Lease;

(d) that Tenant may exercise only one renewal option per Term or Renewal Term, as the case may be, i.e., Tenant will not be entitled to exercise more than one renewal option during each period of time described in subparagraph (a); and

(e) that at the time of exercise of the option the Tenant is still using the Property as required or permitted under this Lease.

3. RENT, TAXES, ASSESSMENTS AND UTILITIES

3.01. Rent

(a) **Initial Base Rent.** Tenant agrees to pay to Landlord an initial annual rent of \$ _____ (the "Base Rent"), payable monthly in advance in equal installments of \$ _____, plus tax. The first monthly payment is due on the first day of _____, and subsequent monthly payments are due on the first day of each calendar month thereafter. Rent must be paid at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended.

(b) **Periodic Appraised Adjustment of Rent.** The Base Rent will be adjusted on January 1, _____ and on January 1 every five years thereafter (each such January 1 is a "Five Year Rent Adjustment Date") to equal the then current fair market rental value of the Property, determined by appraisal as set forth in paragraph 3.01(d) not more than six months before the Five Year Rent Adjustment Date. In no event, however, will the adjusted Base Rent be less than the Base Rent, adjusted annually, during the year immediately prior to such Five Year Rent Adjustment Date. After such Five Year Rent Adjustment Date, the adjusted rent will thereafter be referred to as the Base Rent.

(c) **Annual Rent Adjustment.** In addition to the five year rent adjustments provided in paragraph 3.01(b), the Base Rent will also be adjusted annually (the "Annual Rent Adjustment") on the first day of January _____, and on the first day of January every year thereafter, excluding each of the years of the five year rent adjustment, (each such day being an "Annual Rent Adjustment Date") throughout the Term and all Renewal Terms as follows:

(i) The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI-U), Anchorage, Alaska, for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). For the first five years of the Term, the Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". Thereafter, the Index published for the second half of the calendar year immediately preceding the year of the most recent Five Year Rent Adjustment Date is the "Beginning Index." The Index published for the second half of the calendar year nearest,

but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be adjusted to equal the Base Rent determined according to paragraph 3.01(a) or 3.01(b), as the case may be, increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date.

(ii) If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(d) **Appraisal of Property.** For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.

ALTERNATE 3.01 — TO BE USED ONLY WHEN THE COMBINED TERM AND RENEWAL TERMS WILL NOT EXCEED FIVE YEARS TOTAL

3.01. Rent

(a) **Initial Base Rent.** Tenant agrees to pay to Landlord an initial annual rent of \$ _____ (the "Base Rent"), payable monthly in advance in equal installments of \$ _____, plus tax. The first monthly payment is due on the first day of _____, and subsequent monthly payments are due on the first day of each calendar month thereafter. Rent must be paid at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended.

(b) **Periodic Appraised Adjustment of Rent.** The requirement of a rent adjustment every five years based on an appraisal of the fair market rental value of the Property is waived because the maximum Term and Renewal Terms combined does not exceed five years.

(c) **Annual Rent Adjustment.** The Base Rent will be adjusted annually (the "Annual Rent Adjustment") on the first day of January _____, and on the first day of January every year thereafter (each such day being an "Annual Rent Adjustment Date") throughout the Term and all Renewal Terms as follows:

(i) The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI-U), Anchorage, Alaska, for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". The Index published for the second half of the calendar year nearest, but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be recalculated to equal the Base Rent determined according to paragraph 3.01(a), increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date.

(ii) If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(d) **Appraisal of Property.** For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.

3.02. Tenant to Pay Taxes

Tenant agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located a applicable real property taxes levied or assessed upon or against the Property and all buildings and improvements thereon during the term of this Lease. Tenant further agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all applicable personal property taxes on personal property situated on the Property and placed thereon by Tenant, its agents, servants, or employees. Tenant further agrees to pay prior to delinquency any other taxes for which it may be liable. Tenant must, within thirty (30) days after any such tax, assessment or other charge, whether or not constituting a lien on the Property, becomes due and payable, produce and exhibit to Landlord satisfactory evidence of payment thereof.

Tenant acknowledges that it is subject to and will pay applicable municipal taxes, including property tax on Tenant's leasehold interest in the Property.

3.03. Tenant to Pay Assessments

Tenant during the term of this Lease agrees to pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or

all of the costs of any public work or improvement assessed according to benefit found by the levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, Tenant may elect to pay the same in installments, and in such case Tenant will be liable only for such installments as may become due during the term of this Lease. Landlord warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by Landlord, except as follows: none.

3.04. Proration of Taxes and Assessments

If Tenant's obligation to pay taxes or assessments commences or ends during a tax year by reason of commencement or termination of this Lease, such taxes or assessments will be prorated between Landlord and Tenant.

3.05. Contest

Tenant has the right to contest any taxes or assessments that Tenant is obligated to pay under paragraphs 3.02 or 3.03 of this Lease. Such proceedings must, if instituted, be conducted promptly at Tenant's own expense and free from all expense to Landlord. Before instituting any such proceedings, Tenant must pay under protest any such taxes or assessments, or must furnish to Landlord a surety bond written by a company acceptable to Landlord or other security acceptable to Landlord, sufficient to cover the amount of such taxes or assessments, with interest for the period that such proceedings may reasonably be expected to take, and costs, securing the payment of such taxes or assessments, interest and costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, Tenant must pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part thereof, might be forfeited. The proceedings referred to in this paragraph 3.05 may include appropriate appeals from any order or judgments therein, but all such proceedings must be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and must be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge, Tenant must pay the amount that is finally levied or assessed against the Property or adjudicated to be due and payable, and if there is any refund payable by the governmental authority with respect thereto, Tenant will be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.04 of this Lease. Landlord, at Landlord's option, may, but is not obligated to, at Landlord's own expense contest any such taxes or assessments that are not contested by Tenant as set forth above, and, unless Tenant promptly joins with Landlord therein, Landlord will be entitled to receive and retain any refund payable by any governmental authority with respect thereof.

3.06. Tenant to Pay Utility Charges

Tenant must pay or cause to be paid all charges for gas, oil, electricity, water, sewer, heat, snow removal, refuse removal and any and all other utilities or services used upon the Property throughout the term of this Lease, including any connection fees.

3.07. Tenant to Pay for City Services Related to the Property or to Tenant's Operations

(a) Tenant must pay for all services provided by the City of Homer that are related to the Property or to Tenant's operations, including but not limited to Port and Harbor serv-

ices, whether incurred by Tenant, or any business entity owned in whole or in part by Tenant or by one or more partners of Tenant.

(b) Tenant must pay for wharfage, crane use, ice, and other Port and Harbor services at the rates published in the Port and Harbor of Homer Terminal Tariff, which is subject to change from time to time. In the event the City of Homer changes the method of establishing or publishing any or all such rates, then Tenant must pay for such services at the rates so established by such changed method. Tenant further agrees to provide the City of Homer with the necessary information to determine wharfage, crane use, ice and other Port and Harbor service charges, to keep written records of such information for not less than six years after such charges are due, and, upon request, to make such records available to the City of Homer for audit.

3.08. Additional Rent and Landlord's Right to Cure Tenant's Default

All costs and expenses that Tenant assumes or agrees to pay pursuant to this Lease will, at Landlord's election, be treated as additional rent, and in the event of nonpayment, Landlord will have all rights and remedies provided in this Lease in the case of nonpayment of rent or of a breach of condition, at Landlord's election. If Tenant defaults in making any payment required to be made by Tenant or defaults in performance of any term, covenant or condition of this Lease on the part of Tenant to be kept, performed or observed that involves the expenditure of money by Tenant, Landlord at Landlord's option may, but is not obligated to, make such payment, or, on behalf of Tenant, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended by Landlord, with interest thereon at the legal rate of interest from the date of such expenditure until repaid, will be, and will be deemed to be, additional rent and must be repaid by Tenant to Landlord, on demand, provided, however, that no such payment or expenditure by Landlord will be deemed a waiver of Tenant's default, nor will it affect any remedy of Landlord by reason of such default.

3.09 Security Deposit

Upon execution of this Lease, Tenant must deposit with Landlord 10% of the Base Rent (i.e., the sum of \$ _____) as security for the performance of Tenant's obligations under this Lease. Landlord will invest the security deposit in an interest bearing account in Landlord's name, subject to Tenant's approval, which will not be unreasonably withheld. If Tenant is in default with respect to any covenant or condition of this Lease, including but not limited to the payment of rent, Landlord may apply all or any portion of the security deposit, including interest earned thereon, to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of Tenant's default. Tenant must upon demand deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term of this Lease. If Tenant has fully complied with all of the covenants or conditions of the Lease, the Landlord will remit to the Tenant the security deposit, including any interest on deposit, within thirty days after the expiration or termination of this Lease. On each Annual Rent Adjustment Date and each Five Year Rent Adjustment Date, the principal amount of the security deposit will be adjusted to equal ten percent of the annual rent, after making the required adjustment under paragraph 3.01. Within 30 days of notification of the adjustment of the annual rent, Tenant must deposit with Landlord the amount of the increase in the security deposit.

4. GRANT OF SECURITY INTEREST

To secure Tenant's obligation for payment of rent and all other sums agreed to be paid by Tenant under this Lease, Tenant hereby grants to Landlord a lien and security interest in the following collateral: (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies afforded a secured party under the UCC. Tenant must execute, as debtor, such financing statement or statements as Landlord may now or hereafter reasonably request further evidencing said security interest.

5. USE AND CARE OF THE PROPERTY

5.01. Use

Tenant warrants that it has not entered into this Lease for purposes of speculation or for reserve for future uses, but rather to immediately and fully use and develop the Property. Except as otherwise provided herein, Tenant must use the Property for the following purposes:

Tenant must use the Property for no other purposes without the Landlord's written consent, which consent will not be unreasonably withheld. Tenant's use must comply with the zoning code. Tenant must not use the Property for any unlawful purpose and must comply with all applicable statutes, laws and ordinances during the entire term of the lease and any extension or renewal thereof. If Tenant ceases to use the Property for the approved purposes, Landlord may, as one of its remedies, terminate this Lease upon thirty days written notice.

5.02. Care of the Property

Tenant at its own cost and expense must keep the Property and all buildings and improvements that at any time may be situated thereon in good condition and repair during the term of this Lease, ordinary wear and tear excepted. The Property must always be kept by Tenant neat, clean and free of litter.

5.03. Restoration or Removal of Damaged Buildings and Improvements

Except as provided in paragraph 6.02, in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant must at Tenant's expense restore the same to good and tenantable condition or must remove the same as soon as is reasonably possible, but in no event may the

period of restoration exceed eighteen (18) months nor may the period of removal exceed forty-five (45) days.

5.04. Property Returned to Previous Condition

At the termination of this Lease, Tenant must remove all debris and return the Property clean and in as good order and condition as when the Tenant took possession, failing which Landlord may restore the Property to such condition and Tenant must pay the cost thereof on demand. This paragraph does not require the removal of buildings, improvements, or fixtures upon termination of the Lease, which are governed by other provisions of this Lease.

OPTIONAL PROVISION TO BE USED IF TENANT POSSESSES OR OCCUPIES THE PROPERTY PRIOR TO TERM OF THIS LEASE:

Tenant acknowledges that it took possession and has continuously occupied the Property prior to the Term of this Lease, commencing on _____. The obligations created by this paragraph and other provisions of this Lease referring to the time of Tenant's possession or occupancy of the Property relate back to that date.

5.05. Access Rights of Landlord

Landlord, its agents, servants, or employees, have the right to enter into and upon the Property and all buildings or improvements situated thereon upon reasonable notice to Tenant and during normal business hours (defined as 9 a.m. to 5 p.m. Monday through Friday, except for holidays as defined in paragraphs 17.06 of this Lease) for the purpose of inspecting the Property and all buildings and improvements situated thereon for compliance with the terms of this Lease.

5.06. Nuisances Prohibited

Tenant must immediately remove from the Property any abandoned or junk vehicles, buildings, improvements, equipment, machinery or fixtures. Tenant must not permit any nuisance or public nuisance to exist or to be created or maintained on the Property. Tenant agrees that any nuisance or public nuisance, under the common law, statute, or as defined by the Homer City Code, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Homer, may, after fifteen (15) days written notice to Tenant, or after four (4) hours notice in writing, by telephone, facsimile, or in person to Tenant if Landlord makes a written finding that such nuisance or public nuisance constitutes a threat of imminent harm to public health, safety or welfare, be removed or abated by Landlord without Tenant's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefor. All the costs of such removal must be paid by Tenant to Landlord as additional rent under the terms of this Lease. This paragraph may not be construed as any limitation on any other legal rights or remedies available to the City of Homer to abate any nuisance or to prosecute any violation of the Homer City Code.

5.07. Compliance with Laws

Tenant must comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting Tenant's activities on the Property or any buildings or other improvements that may be situated thereon.

5.08. Radio Interference

At Landlord's request, the Tenant must discontinue the use of any machine or device that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

5.09. Signs

Tenant may erect signs upon the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

5.10 Garbage Disposal

Tenant is responsible for removing all garbage generated by Tenant's business to a Kenai Peninsula Borough solid waste facility or transfer station. Tenant must not use the Landlord's Homer Spit garbage disposal facilities.

***OPTIONAL PARAGRAPHS 5.11 AND 5.12 APPLICABLE TO FISH PROCESSORS
WITH ACCESS TO OUTFALL LINE AND FOR USE OF FISH DOCK***

5.11 Outfall Line Connection Agreement

Tenant must connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant must enter into Fish Processor Outfall Line Connection Agreement with Landlord. Tenant must maintain such an agreement in force for so long as the City of Homer continues to maintain the outfall line. Tenant must at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement.

5.12 Fish Dock Use Permit

Before using the City of Homer Fish Dock, Tenant must obtain from the Landlord a Fish Dock Use Permit. Tenant must continue to have a current Fish Dock Use Permit in force for so long as Tenant intends to use the Fish Dock.

6. IMPROVEMENTS

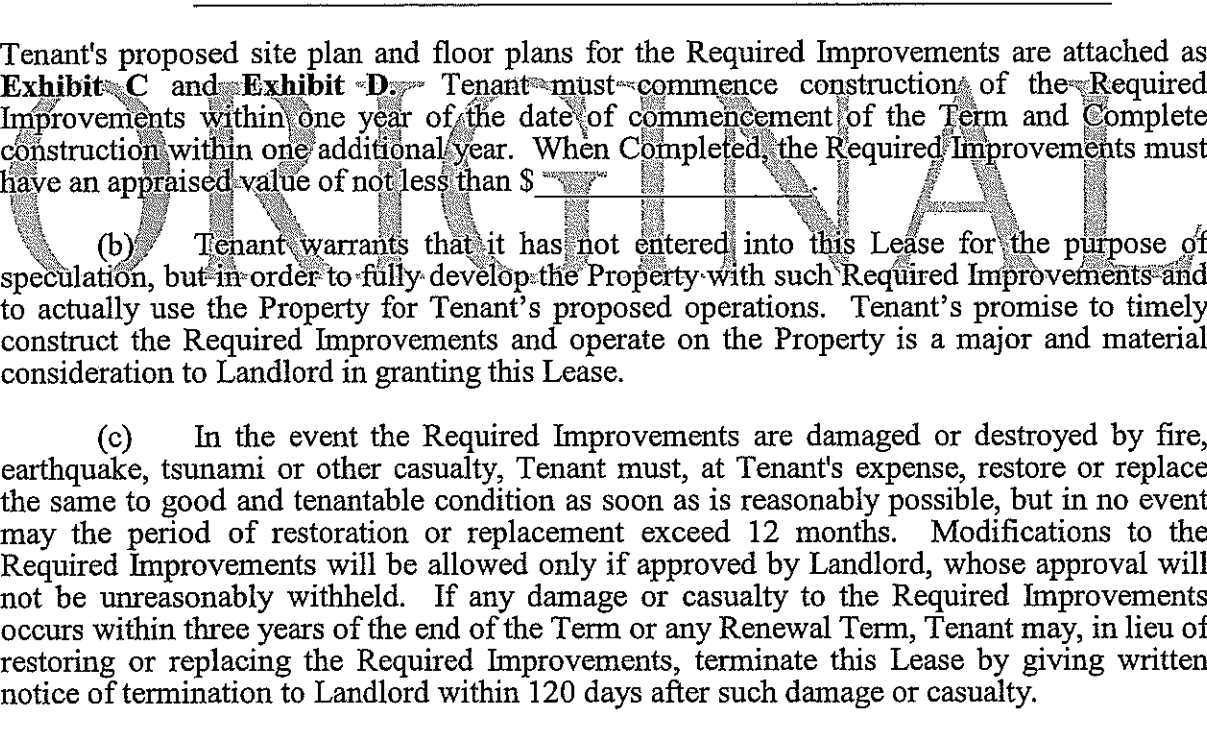
6.01. Ownership of Buildings and Improvements

(a) Any and all buildings, fixtures, and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Renewal Terms and may be removed or replaced by Tenant, subject, however, to the obligations concerning the Required Improvements set forth in paragraph 6.02.

(b) Upon the expiration or termination of the Lease, all buildings, improvements, and fixtures must remain upon the Property and must be surrendered with the Property to Landlord, unless Landlord elects to require the removal of any or all of such property. If Landlord requires that buildings, improvements, and fixtures, or any part of them, be removed, Tenant must remove the same at its expense and repair or pay Landlord the cost of repairing any damage resulting from such removal. Approximately 60 days prior to the Tenant's scheduled vacation of the Property, Landlord and Tenant will meet and Landlord will advise Tenant what items must be removed and what items must remain.

6.02. Required Improvements

(a) Tenant must, at Tenant's sole expense, construct certain Required improvements on the Property. Tenant must at all times during the Term and any Renewal Term keep and maintain the Required Improvements, or their equivalent of equal or greater value, as the minimum development on the Property. The Required Improvements are:

Tenant's proposed site plan and floor plans for the Required Improvements are attached as ~~Exhibit C and Exhibit D.~~ Tenant must commence construction of the Required Improvements within one year of the date of commencement of the Term and Complete construction within one additional year. When Completed, the Required Improvements must have an appraised value of not less than \$ _____.


(b) Tenant warrants that it has not entered into this Lease for the purpose of speculation, but in order to fully develop the Property with such Required Improvements and to actually use the Property for Tenant's proposed operations. Tenant's promise to timely construct the Required Improvements and operate on the Property is a major and material consideration to Landlord in granting this Lease.

(c) In the event the Required Improvements are damaged or destroyed by fire, earthquake, tsunami or other casualty, Tenant must, at Tenant's expense, restore or replace the same to good and tenantable condition as soon as is reasonably possible, but in no event may the period of restoration or replacement exceed 12 months. Modifications to the Required Improvements will be allowed only if approved by Landlord, whose approval will not be unreasonably withheld. If any damage or casualty to the Required Improvements occurs within three years of the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

6.03. Construction Prerequisites

(a) No construction on the Property, including but not limited to the Required Improvements, may be commenced unless the following events have occurred:

(i) Not less than 30 days prior to the intended start of construction, Tenant must submit to Landlord for its approval preliminary plans and specifications and an application for a City of Homer zoning permit. The preliminary plans and specifications

must show the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plan, and any other information required for the zoning permit or other required permits. Tenant must also provide an engineer's or architect's estimate that, when constructed according to the preliminary plans and specifications, the Required Improvements will satisfy the minimum value requirement of paragraph 6.02. Landlord will not unreasonably disapprove preliminary plans and specifications. Approval or disapproval must be communicated in the manner provided for notices, and disapproval must be accompanied by specification of the grounds for disapproval.

(ii) Tenant must prepare final working plans and specifications substantially conforming to preliminary plans previously approved by Landlord, submit them to the appropriate governmental agencies for approval, and deliver to Landlord one complete set as approved by the governmental agencies. Changes from the preliminary plans will be considered to be within the scope of the preliminary plans if they are not substantial or if they are made to comply with suggestions, requests, or requirements of a governmental agency or official in connection with the application for permit or approval.

(iii) Not less than five days prior to the commencement of any construction, Tenant must give written notice of intent to commence construction and furnish to Landlord proof that all applicable federal, state, and local permits have been obtained or applications therefor have been submitted to the appropriate governmental agency.

(iv) Not less than five days prior to the commencement of any construction, Tenant must furnish to Landlord current certificates of insurance in the amounts and for the purposes specified in paragraphs 11.01 through 11.04 of this Lease.

(v) Not less than five days prior to the commencement of any construction, Tenant must deliver to Landlord satisfactory proof that workers' compensation insurance has been procured to cover all persons employed in connection with the construction. Upon notice to Tenant of any deficiency in workers' compensation coverage, such deficiency must be cured immediately, and no work will be performed on the project until Tenant has provided Landlord satisfactory proof that proper workers' compensation insurance is in place.

(b) On Completion of the improvements, Tenant must give Landlord notice of all changes in plans or specifications made during the course of the work. Landlord acknowledges that it is common practice in the construction industry to make numerous changes during the course of construction on substantial projects. Changes that do not substantially alter plans and specifications previously approved by Landlord do not constitute a breach of Tenant's obligations, but Tenant must nevertheless give Landlord notice of such changes.

(c) At any time and from time to time, Tenant may, but is not obligated to, construct or otherwise make new improvements on any part or all of the Property and to demolish, remove, replace, alter, relocate, reconstruct, or add to existing improvements in whole or in part; provided that Tenant is not then in default under any condition or provision of this Lease and provided further the Required Improvements, or their equivalent of equal or greater value, are always maintained on the Property. All salvage will belong to Tenant. Once any work is begun, Tenant must with reasonable diligence prosecute to completion all construction of improvements, additions, alterations, or other work.

6.04. As-Built Survey

Within thirty (30) days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant must provide Landlord with three (3) copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines, and pre-existing improvements.

6.05 Definitions

As used in this Article 6 of this Lease, the following terms and phrases will have the meanings given here, unless the context requires otherwise:

"Complete" and "Completion" mean that construction is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including, but not limited to, the receipt of any applicable certificate of occupancy and other applicable permits, licenses, certificates, or inspection reports necessary to the improvement's legally authorized use. The existence of a contractor's punch list of items to be performed to finish the project will not prevent the construction from being Complete if the improvement otherwise meets the requirements of this definition.

"Excusable Delay" means delay due to strikes, act of God, inability to obtain labor or materials, governmental requirements, such as laws and requirements of any governmental authority having jurisdiction over the improvements or over any permits or licenses needed for Tenant's proposed operations, removal of Hazardous Materials discovered at any time after the Commencement Date, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

6.06 Extensions of Time for Completion of Required Improvements

An extension of the time to Complete the Required Improvements will be granted for the period of time of any Excusable Delay (as defined in paragraph 6.05); provided Tenant has commenced construction in a timely manner and is proceeding diligently to complete construction.

7. RESERVED

8. RESTRICTIONS ON TRANSFER

8.01. Assignment or Sublease Without Consent Generally Prohibited

Tenant must not voluntarily assign, encumber or sublease its interest in this Lease or in the Property without first obtaining Landlord's consent. Any assignment, encumbrance or sublease without Landlord's consent will be voidable and, at Landlord's election, will constitute a default. Any request for Landlord's consent must be made to Landlord in writing

at least thirty (30) days prior to the proposed effective date of the assignment, encumbrance or sublease. No consent to any assignment, encumbrance or sublease will constitute a further waiver of the provisions of this paragraph. Any assignment effected pursuant to this paragraph 8.01 must require the assignee to assume the Tenant's obligations hereunder. An assignment will not release the Tenant from liability hereunder unless specifically so provided in writing and approved by Landlord. Tenant must promptly deliver to Landlord a copy of any instrument or must promptly notify Landlord of any unwritten agreement, that assigns, encumbers or subleases the Property. Landlord's consent to assign, encumber or sublease the Property will not be withheld unreasonably.

8.02. Change of Ownership

If Tenant is a partnership or limited liability company a withdrawal or change, voluntary, involuntary or by operation of law, of any partner(s) or member(s) owning twenty-five percent (25%) or more of the entity, or the dissolution of the entity, will be deemed a voluntary assignment under paragraph 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of twenty-five percent (25%) of the value of the assets of Tenant, will be deemed a voluntary assignment under paragraph 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors. As to a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such a Tenant corporation will not be deemed to be a voluntary assignment.

8.03. Costs of Landlord's Consent to be Borne by Tenant

Tenant must pay Landlord's reasonable costs, including attorney's fees, and the expenses of due diligence inquiries, incurred by Landlord in connection with any request by Tenant for Landlord to consent to any assignment or subletting by Tenant.

[ALTERNATIVE 1 — Optional Additional Rent Provisions for Sublease.]

8.04. Additional Rent For Sublease.

If Landlord gives its written consent, Tenant may sublet all or a portion of the Property. If any rent accrues to Tenant as the result of such sublease that exceeds the pro rata share of rent then being paid by Tenant for the portion of the Property being sublet, then 25% of such excess rent must be paid by Tenant to Landlord as additional rent.

[ALTERNATIVE 2 — Optional Additional Rent Provisions for Sublease or Assignment. Note subparagraph (d)'s reference to the optional Article 14. Alternative 1 is favored as more workable than Alternative 2.]

8.04. Additional Rent For Certain Transfers

(a) Except as provided in subparagraph 8.04(d), if Tenant subleases, assigns, or otherwise transfers to another for valuable consideration all or substantially all of its interest

in this Lease or the Property or the buildings located on the Property, for any length of time, then Tenant shall pay to Landlord additional rent. The additional rent will equal 25% of the consideration payable for such sublease, assignment, or transfer of the Lease or Property, or both.

(b) If the consideration paid for the sublease, assignment, or transfer of the Lease or Property is not separately stated, or if Landlord in good faith concludes that the separately stated consideration is unreasonably low, then the consideration will be deemed to be an amount as calculated in this subparagraph. In such case the consideration for the sublease, assignment, or transfer of the Lease or Property, or both, will be deemed to be a proportion of the total consideration that equals the proportion that the fair market value of the Property (as if owned in fee simple)(including utility improvements, regardless of who installed them) bears to the fair market value of the Property plus the Tenant's buildings and Tenant's other real property improvements on the Property. The fair market values will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market values will be conclusive between the parties. The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease.

(c) Payment of the additional rent is due at the time the Landlord gives written consent to the sublease, assignment, or transfer, and such consent is required prior to any such sublease, assignment, or transfer. If the consideration for the sublease, assignment, or transfer is payable in installments, then the stream of installment payments will be discounted to present value at 6.0% for purposes of computing the additional rent due.

(d) The requirement of subparagraph 8.04(a) to pay additional rent does not apply to (i) a sublease of a commercial, storage, or office rental unit made in the normal course of Tenant's leasing business, provided such sublease is for substantially less than all of the Property or building(s), and is for an authorized purpose described in paragraph 5.01, or (ii) an assignment or other conveyance of Tenant's interest in the Lease or the Property solely for collateral purposes, provided such assignment or other conveyance qualifies as a Permitted Mortgage under Article 14 of this Lease.

9. PROHIBITION OF LIENS

Tenant must not suffer or permit any liens, including without limitation, mechanic's or materialmen's liens, to be recorded against the Property. If any such liens are recorded against the Property, Tenant must cause the same to be removed, or, in the alternative, if Tenant in good faith desires to contest the same, Tenant will be privileged to do so, but in such case Tenant hereby agrees to indemnify and save Landlord harmless from all liability for damages occasioned thereby and must, in the event of a judgment or foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this Lease may be construed to be a waiver of the provisions of AS 09.38.015(c), as may be amended from time to time.

10. INDEMNITY

10.01. Indemnity Generally

Tenant agrees to protect, indemnify and hold Landlord harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on the Property during the Term or during Tenant's possession of the Property, or arising out of or relating to the Tenant's use of the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorneys fees, incidental to the defense of and by Landlord therefrom, excepting only liability arising from the sole negligence of Landlord. If any action or proceeding is brought against Landlord by reason of any such occurrences, Landlord will promptly notify Tenant in writing of such action or proceeding.

10.02. Indemnity For Emergency Service Costs

Without limiting the generality of paragraph 10.01, in the event of a major fire or other emergency, Tenant must reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant or the Property, or elsewhere if the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this paragraph, a major fire or other emergency is one that requires more than five hours of effort by the Homer Department of Public Safety or its successors.

11. INSURANCE

11.01. Liability Insurance

(a) Tenant must procure and at all times maintain, at its expense, public liability insurance covering Tenant's operations and the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence to protect against liability for bodily injury, death or property damage that might arise from the construction, occupancy or use of the Property and the operations conducted on, from, or related to it. Such insurance must include coverage for comprehensive general liability; bodily injury and property damage liability; premises and operations liability, including underground, products and completed operations; broad form property damage liability; blanket contractual liability; personal injury liability; and comprehensive automobile liability including without limitation bodily injury and property damage and all owned, hired, and non-owned automobiles. Such insurance policy or policies must be additionally endorsed to provide sudden and accidental pollution coverage for claims or losses arising out of activities or events taking place on the Property or arising out of Tenant's operations, wherever conducted in the City of Homer.

(b) Tenant must procure and at all times maintain, at its expense, environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and gradual pollution coverage. Such coverage must also include clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. Tenant must maintain limits of liability of ONE MILLION DOLLARS (\$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must extend to loss arising as a result of: (i) liability of others assumed by Tenant under contract or agreement; (ii) clean-up operations; (iii) activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which

Tenant performs actions; and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

[ALTERNATIVE 11.01(b) — Optional provision waiving environmental insurance based on the authorized uses of paragraph 5.01.]

(b) Based on the authorized uses of the Property stated in paragraph 5.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from the Landlord, for purposes other than those stated in paragraph 5.01, then if Landlord so elects, and within ten days after Landlord gives notice of such election, Tenant must procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and gradual pollution coverage. Such coverage must also include clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. Tenant must maintain limits of liability in the amount stated by Landlord in its notice to Tenant, but in no event less than ONE MILLION DOLLARS (\$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must extend to loss arising as a result of: (i) liability of others assumed by Tenant under contract or agreement; (ii) clean-up operations; (iii) activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which Tenant performs actions; and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

11.02. Worker's Compensation and Employer's Liability Insurance

Tenant must procure and at all times during the term of this Lease maintain, at its expense, Worker's Compensation Insurance as required by statute and Employer's Liability Insurance.

11.03. Named Insured, Notice to Landlord, and Waiver of Subrogation

All insurance policies required to be maintained by Tenant under paragraph 11.01 must name Landlord, and its officers, employees and agents, as additional insured, but they must not contain any exclusion from coverage for Tenant's liability for damages or loss incurred by Landlord because of Landlord's status as an additional insured. All policies issued under paragraph 11.01 must contain a waiver of any subrogation rights any insurer might have against Landlord. All policies issued under paragraphs 11.01 or 11.02 must contain an agreement by the insurers to provide at least thirty (30) days prior written notice to Landlord of cancellation, expiration or substantial changes in policy conditions and coverage. Tenant must furnish insurance certificates and copies of all such insurance policies to Landlord promptly after the issuance thereof.

11.04. Fire and Extended Coverage Insurance; Builder's Risk Insurance

(a) Except as provided in subparagraphs 11.04(b) and (c), Tenant may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover buildings, equipment, inventory, fixtures, personal property and improvements made to the Property by Tenant subsequent to Tenant's taking possession of the Property under this Lease.

(b) Tenant must procure and at all times maintain, in its own name and at its expense, physical property damage insurance covering the Required Improvements described in paragraph 6.02 in an amount not less than 90% of the replacement cost of the Required Improvements. Such insurance must afford coverage for damages resulting from, at a minimum (i) fire, (ii) perils covered by extended coverage insurance, and (iii) explosion of steam and pressure boilers and similar apparatus located on the Property.

(c) During construction of the Required Improvements and during any subsequent restorations, alterations, or changes in the Required Improvements at a cost in excess of \$250,000 per job, Tenant must procure and maintain builder's all risk insurance in an amount reasonably satisfactory to Landlord.

11.05 Required Endorsements and Authorization

In addition to, and without limiting the requirements of paragraphs 11.01 through 11.04, Tenant must at all times maintain and give to the Landlord, for Landlord's benefit, current insurance endorsements substantially in the form of **Exhibit E** and **Exhibit F**. Tenant must also grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord an authorization substantially in the form of **Exhibit G**. Tenant must, from time to time, execute and deliver to Landlord such additional authorizations (**Exhibit G**) that Landlord may request.

12. CONDEMNATION

12.01. Condemnation

In the event the Property, or any part thereof or interest therein, is taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article 12.

12.02. Total Taking

If all of the Property is taken or so transferred, this Lease and all the right title and interest thereunder of Tenant will cease on the date title to the Property vests in the condemning authority.

12.03. Partial Taking - Termination of Lease

In the event the taking or transfer of part of the Property leaves the remainder of the Property in such location, or in such form, shape or reduced size, or so inaccessible as to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, then this Lease and all of the right, title and interest thereunder of Tenant will cease on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession.

12.04. Partial Taking - Continuation of Lease

In the event the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively

and practicably usable in the opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease will terminate and end as to the portion of the Property so taken or transferred as of the date title to such portion vests in the condemning authority and the condemning authority enters into possession, but will continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease will abate for the portion of the Property taken in the proportion that such portion bears to all of the Property.

12.05. Compensation

If any compensation is payable as a result of eminent domain proceedings or a transfer in lieu thereof, Landlord and Tenant may each make a claim against the condemning or taking authority for the amount of any just compensation due to each of them, respectively. Tenant must make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that in the event of a single award to Landlord that includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.

13. DEFAULT

13.01. Default

Each of the following events will be deemed an event of default by the Tenant under this Lease and a breach of the terms, covenants and conditions of this Lease:

(a) A default in the payment of the rent and additional sums due under this Lease, or any part thereof, for a period of ten (10) days from the due date for the payment of such rent or additional sums.

(b) A default in the performance of any other term, covenant or condition on the part of the Tenant to be kept, performed or observed for a period of fifteen (15) days after Landlord gives to Tenant a written notice specifying the particular default or defaults; provided, however, that any default on the part of Tenant in the performance of work or acts required to be done, or conditions to be modified, will be deemed to be cured if steps are taken promptly (and in no event later than thirty (30) days after such notice has been given) by Tenant to rectify the same and are prosecuted to completion with diligence and continuity.

(c) The use of the Property or buildings and improvements thereon for purposes other than those enumerated herein, to which Landlord has not given its written consent.

(d) The abandonment of the Property by Tenant. If the Property is deserted or Tenant does not use the Property for the purposes stated in paragraph 5.01 for 12 months or more, it will be deemed abandoned, even if Tenant continues to pay rent.

(e) Tenant making an assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver, or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt,

dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the filing of any such petition or application, or the commencing of any such proceeding against it, in which an order for relief is entered or that remains undismissed for a period of 30 days or more; or Tenant by any act or omission indicating its consent to, approval of, or acquiescence in any such petition, application, or proceeding or order for relief or the appointment of a custodian, receiver, or any trustee for it or any substantial part of any of its properties, or the suffering of any such custodianship, receivership, or trusteeship to continue undischarged for a period of 30 days or more.

(f) Tenant being generally unable to pay its debts as such debts become due.

(g) Tenant having concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay, or defraud its creditors or any of them, or making or suffering a transfer of any of its property that may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint that is not vacated within 30 days from the date thereof.

13.02. Landlord's Remedies

In the event of any default by Tenant as recited in paragraph 13.01 of this Lease, Landlord will have all of the below-enumerated rights and remedies, all in addition to any rights and remedies that Landlord may be given by statute, common law or otherwise. All rights of Landlord are cumulative, and none will exclude any other right or remedy. Landlord's rights and remedies include the following:

(a) Landlord may declare the term of this lease ended by written notice to Tenant. Upon such termination of this Lease, Tenant must surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove Tenant and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) Landlord may by written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. Upon such termination of Tenant's right to possession, Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are enumerated in paragraph 13.02 (a).

(c) Landlord may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term or Renewal Term, as applicable, for any sum that Landlord may deem reasonable, except as provided in (e) of this paragraph.

(d) Landlord may collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover, whether this Lease be terminated or not, from Tenant, damages provided for below consisting of items (i), and (ii), or, at Landlord's election in lieu of (ii), item (iii):

(i) actual attorney's fees and other expenses incurred by Landlord by reason of the breach or default by Tenant; and

(ii) an amount equal to the amount of all rent and additional sums reserved under this Lease, less the net rent, if any, collected by Landlord on reletting the Property, that shall be due and payable by Tenant to Landlord on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days Tenant must pay to Landlord the amount of deficiency then existing. Such net rent collected on reletting by Landlord will be computed by deducting from the gross rent collected all expenses incurred by Landlord in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of renovating or remodeling the Property or the buildings or improvements thereon, provided, however, Landlord must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of Tenant under this Lease or else Landlord will not have access to the remedy set out in this subparagraph 13.02(e)(ii); or

(iii) an amount to be due immediately on breach, equal to the difference between the rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable will be discounted to the date of such breach at the rate of eight percent (8%) per year.

(f) Reentry or reletting of the Property, or any part thereof, will not be deemed a termination of this Lease, unless expressly declared to be so by Landlord.

(g) If this Lease is deemed terminated, Tenant's liabilities will survive and Tenant will be liable for damages as provided in this paragraph 13.02.

13.03. Assignment of Rents to Landlord

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under the Lease, all rent from any subletting of all or a part of the Property as permitted by this Lease, and Landlord, as assignee and attorney-in-fact for Tenant or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligation under this Lease, except that, until the occurrence of an act of default by Tenant, Tenant will have the right to collect such rent.

14. RESERVED

OPTIONAL ARTICLE 14

(to be used when the lease needs to be "mortgageable")

14. LEASEHOLD MORTGAGES

14.01. Definitions

As used in this article 14, the following capitalized terms will have the meanings set forth below:

"Indebtedness" means the amount that is outstanding at any given time under a Permitted Mortgage.

"Landlord's Estate" means all of Landlord's right, title and interest in its fee estate in the Property, its reversionary interest in improvements under this Lease, and all other rental and benefits due Landlord hereunder.

"Mortgagee" means the holder or beneficiary of any Permitted Mortgage.

"Permitted Mortgage" means collectively any deed(s) of trust, mortgage(s), and other collateral security instruments serving as security for a construction loan or permanent loans, or both, (otherwise permitted to be incurred hereunder) that encumber Tenant's Estate, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) of any Permitted Mortgage; provided, however in no event may any such Permitted Mortgage encumber Landlord's Estate.

"Tenant's Estate" means all of Tenant's right, title and interest in its leasehold estate in the Property, its fee estate in the improvements, and its interest under this Lease.

14.02. Encumbrance of Tenant's Estate

Tenant will have the right at any time and from time to time to encumber all or any portion of Tenant's Estate pursuant to one or more Permitted Mortgages, provided Tenant must:

(a) promptly following its receipt of any notice of default or other notice of the acceleration of the maturity of a Permitted Mortgage from a Mortgagee, deliver a true and correct copy thereof to Landlord; and

(b) refrain from encumbering or purporting to encumber, by means of a Permitted Mortgage or otherwise, Landlord's Estate.

14.03. Conditions For Mortgagee Protections

Provided that any Mortgagee first provides Landlord with a conformed copy of a Permitted Mortgage that contains the name and address of such Mortgagee, and provided such Permitted Mortgage was executed in compliance with the terms hereof, Landlord hereby covenants and agrees to faithfully perform and comply with the provisions of paragraph 14.04 below with respect to such Permitted Mortgage.

14.04. Mortgagee Protections

Subject to compliance with the provisions of paragraphs 14.01 through 14.03 above, Landlord agrees as follows:

(a) **No Termination.** No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of article 14 of this Lease will be binding upon a Mortgagee without its prior written consent.

(b) Notices. If Landlord gives any notice, demand, election or other communication that may adversely affect the security for a Permitted Mortgage, including without limitation a notice of an event of default hereunder (hereinafter collectively "Notices"), to Tenant, Landlord must give a copy of each such Notice to the Mortgagee at the address previously designated by it. Such copies of Notices will be sent by Landlord and deemed received as described in article 17 of this Lease. No Notice given by Landlord to Tenant will be binding upon or affect said Mortgagee unless a copy of said Notice is given to it pursuant to this article. In the case of an assignment of such Permitted Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent. Landlord will not be bound to recognize any assignment of such Permitted Mortgage unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee will be deemed to be the Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Landlord to give Notices or copies thereof to said Mortgagee will be binding upon Landlord unless and until all of said holders designate in writing one of their number to receive all such Notices and copies thereof and have given to Landlord an original executed counterpart of such designation. Notice given to the one so designated is effective as notice to all them.

(c) Performance of Covenants. The Mortgagee may perform any term, covenant or condition and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord will accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Mortgagee will not thereby be subrogated to the rights of Landlord.

(d) Delegation to Mortgagee. Tenant may delegate irrevocably to the Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be binding upon Landlord unless and until either Tenant or the Mortgagee gives Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon Landlord of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this article, together with written notice specifying the provisions therein that delegate such authority to said Mortgagee, will be sufficient to give Landlord notice of such delegation.

(e) Default by Tenant. In the event of an event of default by Tenant in the payment of any monetary obligation hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such event of default to any Mortgagee and such Mortgagee fails to cure such event of default within ten (10) business days following the expiration of any grace or cure periods granted Tenant herein. In the event of an event of default by Tenant in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such event of default to any Mortgagee and such Mortgagee fails to cure such event of default within thirty (30) business days following the expiration of any grace or cure periods granted Tenant herein; provided, however, if such event or default cannot practicably be cured by the Mortgagee without taking possession of the Property, or if such event of default is not susceptible to being cured by the Mortgagee, then Landlord will not terminate this Lease if and as long as:

(i) In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, the Mortgagee has delivered to Landlord, prior to the date on which Landlord is entitled to give notice of lease termination, a written instrument wherein the Mortgagee unconditionally agrees that it will cure such an event of default, and that if this Lease thereafter is terminated prior to the curing of such default, said Mortgagee must pay to Landlord the cost of curing such an event of default;

(ii) In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, said Mortgagee must proceed diligently to obtain possession of the Property as Mortgagee (including possession by receiver), and, upon obtaining such possession, must proceed diligently to cure such event of default in accordance with the guarantee delivered pursuant to subsection (i) above; and

(iii) In the case of an event of default that is not susceptible to being cured by the Mortgagee, the Mortgagee must institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it acquires Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).

The Mortgagee will not be required to obtain possession or to continue in possession as Mortgagee of the property pursuant to subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant to subsection (iii) above, if and when such event of default is cured. Nothing herein will preclude Landlord from exercising any of its rights or remedies with respect to any other event of default by Tenant during any period of such forbearance, but in such event the Mortgagee will have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, acquires title to Tenant's Estate and cures all events of default that are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior events of default that are not susceptible to being cured by the Mortgagee or by said purchaser will no longer be deemed events of default hereunder.

(f) New Lease. If any Mortgagee acquires Tenant's Estate as a result of a judicial or non-judicial foreclosure under any Permitted Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee will thereafter have the right to assign or transfer Tenant's Estate to an assignee upon obtaining Landlord's consent with respect thereto, which consent will not be unreasonably withheld or delayed, and subject to all of the other provisions of article 8 above. Upon such acquisition of Tenant's Estate as described in the preceding sentence by the Mortgagee, or the assignee of Mortgagee, Landlord will execute and deliver a new ground lease of the Property to such Mortgagee or such assignee of Mortgagee given not later than one hundred twenty (120) days after such party's acquisition of the Tenant's Estate. Said new ground lease will be identical in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining term hereof), and the elimination of any requirements that have been fulfilled by Tenant prior thereto, and said new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of such new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Property.

(g) **Further Amendments.** Landlord and Tenant hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Lease and allowing such Mortgagee reasonable means to protect or preserve the lien of the Permitted Mortgage on the occurrence of an event of default hereunder. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment must not in any way affect the term or rental under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(h) **Financial.** Landlord hereby agrees to cooperate reasonably with Tenant or any third party, or both, at Tenant's sole expense, in connection with Tenant's efforts to obtain financing for, or in connection with, the Property.

15. REMOVAL OF TRADE FIXTURES, EQUIPMENT, AND MACHINERY UPON EXPIRATION OR TERMINATION OF LEASE

15.01. Removal Upon Expiration

Trade fixtures, machinery, equipment, and other items of personal property owned by Tenant will be considered Tenant's property at all times during this Lease and must be removed by Tenant at its own expense from the Property upon the expiration of the Term or Renewal Term of this Lease, unless Landlord gives written consent to allow such property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. In the event Tenant, without Landlord's written consent, fails to remove such property on or before the expiration of this Lease, the Landlord may, at its election, immediately (i) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (ii) to the extent Landlord does not elect to declare it abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

15.02. Removal After Early Termination

In the event this Lease terminates for any reason before the scheduled expiration of the Term or Renewal Term, as applicable, Tenant must within one month after such early termination date remove Tenant's trade fixtures, machinery, equipment and other items of personal property, unless Landlord gives written consent to allow such personal property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. On or before the end of such one month period, Tenant may extend the time for removal of such personal property for an additional one month upon written notice to Landlord accompanied by payment of compensation for the entire two month period following the early termination date at a rate equal to 125% of the monthly rental rate in effect on the early termination date (i.e., monthly rental rate x 125% x 2 months). Acceptance of such compensation will not extend the term of the Lease nor create

a month-to-month tenancy. In the event Tenant fails to remove such property within one month after the early termination of this Lease, or within two months if Tenant elects to extend by giving timely notice and paying compensation, the Landlord may, at its election, immediately (a) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (b) to the extent Landlord does not elect to declare abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

16. HAZARDOUS MATERIALS

16.01. Use of Hazardous Materials on the Property

(a) Tenant must not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by Tenant or its authorized representatives, customers, invitees or sublessees, except for such Hazardous Material as is necessary or useful to Tenant's lawful use of the Property.

(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, must be handled, used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material. Such Hazardous Material must be handled only by properly-trained personnel.

(c) Tenant must not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the Landlord, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (i) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (ii) the condition, use or enjoyment of the Property or any other real or personal property.

(d) If any discharge, leak, spill, emission, or pollution of any type occurs upon or from the Property during the Lease term or any holdover, Tenant will immediately notify Landlord and all appropriate federal, state, and local authorities, and will act immediately to contain the spill, repair any damage, absorb and clean up the spill area and restore the Property to comply with the applicable portions of any federal, state, or local law or regulation then in effect.

(e) Tenant hereby agrees that it will be fully liable for all costs and expenses related to the handling, use, storage, and disposal of Hazardous Material brought or kept on the Property by the Tenant, its authorized representatives, customers, invitees and sublessees, and the Tenant must give immediate notice to the Landlord of any violation or potential violation of the provisions of subparagraphs 16.01 (a), (b), (c) and (d).

16.02. Indemnification of Landlord

Any other provisions of the Lease to the contrary notwithstanding, Tenant must defend, indemnify and hold harmless Landlord and its authorized representatives, from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind of nature, known or unknown, contingent or

otherwise, arising out of or in any way related to: (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the Property, soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; and/or (d) any violation of any laws applicable thereto. However, this paragraph will apply only if the acts or omissions giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses: (i) occur in whole or in part during the Term of this Lease or during any time of Tenant's possession or occupancy of the Property prior to or after the term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors. The provisions of this paragraph will be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and will survive the termination of this Lease.

16.03. Hazardous Material Defined

"Hazardous Material" is any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Alaska, or the United States government. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" also includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.

17. GENERAL PROVISIONS

17.01. Estoppel Certificates

Either party must at any time and from time to time upon not less than thirty (30) days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments), that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance. The cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees, must be paid by the requesting party.

17.02. Conditions and Covenants

All the provisions of this Lease will be deemed as running with the land, and will be construed to be "conditions" as well as "covenants," as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

17.03. No Waiver of Breach

No failure by either Landlord or Tenant to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, will constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach will affect or alter this Lease, but each and every term, covenant and condition of this Lease will continue in full force and effect with respect to any other then existing or subsequent breach.

17.04. Attorney's Fees

(a) If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant must pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party must reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

17.05. Time of Essence

Time is of the essence of the Lease and of each provision.

17.06. Computation of Time

The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

17.07. Successors in Interest

Each and all of the terms, covenants and conditions in this Lease will inure to the benefit of and will be binding upon the successors in interest of Landlord and Tenant.

17.08. Entire Agreement

This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement of promise made by any party that is not contained in the Lease will be binding or valid.

17.09. Governing Law and Venue

This Lease will be governed by, construed and enforced in accordance with the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, must be brought in the Third Judicial District of the State of Alaska.

17.10. Partial Invalidity

If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired or invalidated, unless such provisions are considered by Tenant to be integral to Tenant's use of the Property for the purposes stated herein in which case Tenant will have the authority to terminate this Lease upon thirty (30) days written notice to Landlord.

17.11. Relationship of Parties

Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

17.12. Interpretation

The language in all parts of this Lease must in all cases be simply construed according to its fair meaning and not for or against Landlord or Tenant as both Landlord and Tenant have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.

17.13. Number and Gender

In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.

17.14. Mandatory and Permissive

"Shall," "must," "will," and "agrees" are mandatory; "may" is permissive.

17.15. Captions

Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

17.16. Amendment

This Lease is not subject to amendment except in writing executed by all parties hereto.

17.17. Delivery of Notices - Method and Time

All notices, demands or requests from one party to another must be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, or (ii) facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the

addresses stated in paragraph 17.18 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

17.18. Notices

All notices, demands and requests from Tenant to Landlord must be given to Landlord at the following address:

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148

All notices, demands or requests from Landlord to Tenant must be given to Tenant at the following address:

Facsimile: _____

17.19. Change of Address or Agent

Each party may, from time to time, to designate a different address or different agent for service of process by notice given in conformity with paragraph 17.17.

17.20. Multi-Party Tenant

If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.

[OPTIONAL SPECIAL PROVISIONS] -- 18.01 prior lease amended and superceded

18. SPECIAL PROVISIONS

18.01. Prior Lease

Landlord and Tenant are parties to a Lease Agreement affecting the Property dated November 1995 and recorded in the records of the Homer Recording District at Book 247, commencing at Pages 893 (the "Former Lease"). This Lease amends and supercedes the Former Lease effective as of November 1, 2002, and on and after that date the Former Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Former Lease prior to that date.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates hereinbelow set forth.

Landlord:

CITY OF HOMER

Date: _____

By _____
Ronald Wm. Drathman,
City Manager

Tenant:

Date: _____

By _____

(name)
(title)

Date: _____

By _____

(name)
(title)

ORIGINAL

ACKNOWLEDGMENTS

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____, 2002, by Ronald Wm. Drathman, City Manager of the City of Homer, on behalf of the City of Homer.

Mary Calhoun, AAE/CMC,
Homer City Clerk
My Term Expires: with office.

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____,
2002, by _____, as _____ (title) of
_____, (name of entity), a state of _____
(state) _____ (type of entity) on behalf of _____
(name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____,
2002, by _____, as _____ (title) of
_____, (name of entity), a state of _____
(state) _____ (type of entity) on behalf of _____
(name of entity).

ORIGINAL

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP

Tenant, _____, is a _____ organized under the laws of the state of _____. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization. If Tenant is a foreign entity authorized to conduct business in Alaska, its certificate of authority is also attached

The _____ (specify whether shareholders, partners, members, etc.) and their percentage of ownership are as follows:

Name _____ %

Address: _____

Name _____ %

Address: _____

Name _____ %

Address: _____

Name _____ %

Address: _____

TOTAL 100 %

EXHIBIT B

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE
AND AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON
BEHALF OF TENANT**

ORIGINAL

EXHIBIT C
SITE PLANS

ORIGINAL

EXHIBIT D
FLOOR PLANS

ORIGINAL

EXHIBIT E

GENERAL LIABILITY INSURANCE ENDORSEMENT

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

Attn.: City Manager

A. POLICY INFORMATION

1. Insurance company _____; Policy no. _____
2. Policy term (from) _____ to _____
Endorsement effective date: _____
3. Named insured _____
4. Address of named insured _____
5. Policy is: claims made occurrence
6. If claims made: Retroactive date: Is tail coverage afforded?
7. Limit of liability any one occurrence: \$ Aggregate: \$
8. Deductible or self-insured retention (nil unless otherwise specified):
\$

B. POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. **INSURED.** The City, its elected or appointed officials, employees and volunteers are included as insured with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the named insured; (b) products and completed operations of the named insured; or (c) premises owned, leased or used by named insured.

2. **CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its elected or appointed officials, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its elected or appointed officials, employees or volunteers shall be excess of this insurance and shall not contribute with it.

3. SCOPE OF COVERAGE. The policy: (a) if primary, affords coverage at least as broad as forms currently in use as approved by the State of Alaska Division of Insurance; and (b) if excess, affords coverage which is at least as broad as the primary insurance forms reference in the preceding subpart (a).

4. SEVERABILITY OF INTEREST. The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.

5. PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its elected or appointed officials, employees or volunteers.

6. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE:

I, _____ (print/type name), _____ (title)
warrant that I have authority to bind the below-named insurance company and, by my
signature hereon, do so bind this company.

Signature: _____
(original signature required on endorsement furnished to the City)

Company _____

Address _____

Phone _____

Fax _____

EXHIBIT F

WORKERS' COMPENSATION/EMPLOYERS LIABILITY ENDORSEMENT

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

A. POLICY INFORMATION

1. Insurance company: _____ ("Company");
Policy No. _____
2. Effective date of this endorsement: _____
3. Named insured: _____
4. Employer's liability limit (Coverage B): _____

B. POLICY AMENDMENTS

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. **CANCELLATION NOTICE.** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Such notice shall be sent to the address given in the heading of this endorsement.

2. **WAIVER OF SUBROGATION.** The Company agrees to waive all rights of the subrogation against the City, its elected or appointed officials, agents and employees for losses paid under the terms of this policy which arise from work performed by the named insured for the City.

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE

I, _____ (print/type name), _____ (title)
warrant that I have authority to bind the below-named insurance company and, by my signature hereon, do so bind this company.

Signature: _____
(original signature required on endorsement furnished to the City)

Company _____
Address _____

Phone _____ Fax _____

EXHIBIT G

PERMISSION TO OBTAIN INSURANCE POLICIES

The City of Homer is hereby granted permission to request and obtain copies of _____ ("Tenant") insurance policies from Tenant's broker and/or insurer, _____. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

Date: _____

TENANT NAME

By: _____

_____ (printed name)
_____ (title)

By: _____

_____ (printed name)
_____ (title)

EXHIBIT H
LEGAL DESCRIPTION EXHIBIT

ORIGINAL

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA
AND
NEW

_____, 201_

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT ("Lease") dated as of _____, 201____, between the CITY OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and _____ a _____ [state of organization] _____ [type of entity] ("Tenant"), whose address is _____.

OPTIONAL PARAGRAPH, APPLICABLE WHEN TENANT IS NOT A NATURAL PERSON

Attached as **Exhibit A** is a schedule naming each owner of Tenant and describing the percentage of ownership of each. Also attached to **Exhibit A** are a certificate of good standing issued by the state under whose laws Tenant is organized, and, if Tenant is a foreign entity, a certificate of authority issued by the State of Alaska. Attached as **Exhibit B** is a true and correct copy of a resolution of Tenant authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

RECITALS

WHEREAS, Landlord owns certain properties having a strategic location near the waterfront and marine-related public infrastructure; and

WHEREAS, it is the policy of Landlord to retain ownership of these properties, and to make them available for leasing, in order to encourage growth in targeted economic sectors, to insure that Landlord receives the maximum benefit from a large investment in public infrastructure, and to provide land for businesses that require close proximity to the waterfront or infrastructure to operate efficiently and profitably; and

WHEREAS, Landlord has accepted Tenant's proposal to lease and develop the property leased herein, because Tenant's proposed use of the property should further Landlord's goals for the development of Landlord's properties, and Tenant's proposal to lease and develop the property is a material inducement to Landlord leasing the property to Tenant; and

WHEREAS, Tenant has made its own determination that its proposed development of the property will be economically feasible, and that the term for which it is leasing the property will be sufficient to amortize Tenant's investment in developing the leased property under Tenant's proposal.

NOW, THEREFORE, in consideration of the matters recited above, and the mutual covenants herein, the parties agree as follows:

ARTICLE 1. DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

(a) "Annual Rent Adjustment" and "Annual Rent Adjustment Date" are defined in Section 4.01(b).

- (b) "Base Rent" is defined in Section 4.01.
- (c) "Complete" and "Completion" mean, with regard to an improvement, that construction of the improvement is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including without limitation the issuance of any applicable certificate of occupancy and other applicable permits, licenses, certificates or inspection reports necessary to the improvement's legally authorized use.
- (d) "Council" means the City Council of the City of Homer, Alaska.
- (e) "Default Rate" means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which Tenant may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).
- (f) "Environmental Laws" means all local, state, and federal laws, ordinances, regulations, and orders related to environmental protection; or the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal, or transport of any Hazardous Substance.
- (g) "Excusable Delay" means delay due to strikes, acts of God, inability to obtain labor or materials, orders of any governmental authority having jurisdiction, removal of Hazardous Materials discovered at any time after the commencement of the Term, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.
- (h) "Extended Term" is defined in Section 3.02.
- (i) "Five Year Rent Adjustment Date" is defined in Section 4.02(a).
- (j) "Hazardous Substance" means any substance or material defined or designated as hazardous or toxic waste; hazardous or toxic material; hazardous, toxic, or radioactive substance; or other similar term by any federal, state, or local statute, regulation, or ordinance or common law presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time.
- (k) "Landlord" means the City of Homer, Alaska.
- (l) "Lease Policy" means the City of Homer Property Management Policy and Procedures, as adopted and amended from time to time by Council resolution.
- (m) "Leasehold Mortgage" is defined in Section 13.01.
- (n) "Property" is defined in Section 2.01.
- (o) "Qualified Mortgagee" is defined in Section 13.03.
- (p) "Required Improvements" is defined in Section 6.02.
- (q) "Tenant" means _____.
- (r) "Term" is defined in Section 3.01.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

- Exhibit "A" Schedule of Organization, Owners, Percentage of Ownership
- Exhibit "B" Conformed Copy of Resolution Authorizing Lease and Authorizing Signers to Sign Lease Agreement on Behalf of Tenant
- Exhibit "C" Legal Description of Property
- Exhibit "D" Tenant's Lease Proposal
- Exhibit "E" Site Plan
- Exhibit "F" Required Improvements Floor Plan
- Exhibit "G" Certificates of Insurance
- Exhibit "H" Permission to Obtain Insurance Policies

ARTICLE 2. THE PROPERTY

2.01 Lease of Property. Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property ("Property"):

[must insert legal description], Homer Recording District, State of Alaska, as depicted on Exhibit C, containing _____ square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. _____;

subject, however, to reservations, restrictions, easements and encumbrances of record, and to encroachments that may be revealed by an inspection of the Property.

2.02 Quiet Enjoyment. Landlord covenants that Tenant, upon paying the rent and other charges and performing its other obligations under this Lease, shall have quiet enjoyment of the Property during the Term without hindrance or interference by Landlord or by any person claiming an interest in the Property through Landlord.

2.03 Property Accepted "As Is." Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions, including the presence of any Hazardous Substance.

OPTIONAL PARAGRAPH 2.03. APPLICABLE IF TENANT OBTAINS ENVIRONMENTAL ASSESSMENT.

2.03 Property Accepted "As Is;" Exception for Hazardous Substances.

(a) Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Except as provided in subsection (b), Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions.

(b) Tenant shall obtain, at its own expense, a phase I environmental assessment of the Property as of the earlier of (i) the commencement of the Term, and (ii) Tenant's initial occupancy of the Property. If Landlord reasonably determines that the phase I environmental assessment is acceptable, Landlord will warrant that the condition of the Property as of the applicable date with regard to the presence of any Hazardous Substance is consistent with the results of the phase I environmental assessment.

2.04 No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease.

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is _____ years, commencing on _____, 201____, and ending on _____, 20____ ("Term").

3.02 Options to Extend Lease Term.

(a) Tenant has the option to extend the Term for _____ additional, consecutive _____ year periods (each an "Extended Term"), provided that:

(1) Tenant gives Landlord written notice of its exercise of the option not more than one year and not less than 120 days before the last day of the Term or current Extended Term, as the case may be;

(2) At the time Tenant exercises the option, and at all times thereafter until the Extended Term commences, Tenant is not materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease; and

(3) Tenant may exercise no more than one option to extend the Term during the Term or any Extended Term.

(b) Tenant's failure to exercise an option to extend the Term in strict compliance with all the requirements in Section 3.02(a) renders that option and all options as to subsequent Extended Terms null and void.

3.03 Lease Renewal.

(a) Tenant represents and warrants that it has determined that the duration of the Term, plus any available Extended Terms, will be sufficient for Tenant to amortize any investment that it makes in connection with this Lease, including without limitation any investment in leasehold improvements. Tenant acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term or the final Extended Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as provided in Section 3.02.

(b) Not less than 12 months before the expiration of the Term or the final Extended Term, Tenant may apply to Landlord for a renewal of this Lease in the manner that a person then would apply for a new lease of the Property. In response to a timely application, the Council will determine whether to renew this Lease, and the term of any renewal, in its sole discretion. The Council is under no obligation to renew this Lease, or to renew this Lease for the term that Tenant requests. If the Council does not grant a timely application to renew this Lease, Tenant shall prepare to surrender possession of the Property as required by Section 3.04, and dispose of improvements on the Property as required by Section 6.08.

3.04 Surrender of Possession. Upon the expiration or earlier termination of the Term or the final Extended Term, Tenant shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted, and shall remove from the Property all personal property that was not present on the Property at the commencement of the Term. If Tenant fails to surrender the Property in the required condition, Landlord may restore the Property to such condition and Tenant shall pay the cost thereof, plus interest at the Default Rate, on demand. Section 6.08 governs the disposition of improvements on the Property at the expiration or earlier termination of the Term or final Extended Term.

3.05 Holding Over. Tenant's continuing in possession of the Property after the expiration or earlier termination of the Term or final Extended Term will not renew or extend this Lease. In the absence of any agreement renewing or extending this Lease, Tenant's continued possession of the Property after the end of the Term will be a tenancy from month to month, terminable upon 30 days written notice by either party at any time, at a monthly rental equal to 150% of the monthly Base Rent in effect at the end of the Term, subject to all other terms of this Lease. For good cause, Landlord may waive all or part of the increase in Base Rent during the holdover period.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of \$_____ ("Base Rent"). Base Rent is payable monthly in advance in installments of \$_____, plus tax, on _____, 201_, and on the ___ day of each month thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

4.02 Rent Adjustments.

(a) **Five-Year Appraised Rent Adjustments.** Commencing January 1, _____, and in every fifth year thereafter, Landlord will obtain an appraisal by a qualified real estate appraiser of the fair rental value of the Property as if privately owned in fee simple, excluding the value of improvements (other than utilities) made by tenants. The appraisal may be performed as part of an appraisal of other properties of Landlord that are comparable in location and value. The Base Rent will be adjusted effective _____ 1 of the year of each appraisal (each such date is a "Five Year Rent Adjustment Date") to an amount equal to the greater of (i) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (ii) the adjusted Base Rent in effect immediately before the Five Year Rent Adjustment Date. The rent adjusted on a Five Year Rent Adjustment Date thereafter shall be the Base Rent.

(b) **Annual Rent Adjustments.** In addition to the rent adjustments under Section 4.02(a), the Base Rent also shall be adjusted annually (the "Annual Rent Adjustment") effective _____ 1, and on each _____ 1 thereafter, excluding each Five Year Rent Adjustment Date (each such date being an "Annual Rent Adjustment Date"), by the increase or decrease, if any, for the previous year in the cost of living as stated in the Consumer Price Index, All Urban Consumers, Anchorage, Alaska Area, All Items 2000-present=100 ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics most recently before the Annual Rent Adjustment Date. If the CPI-U is revised or ceases to be published, Landlord instead shall use such revised or other index, with whatever adjustment in its application is necessary, to most nearly approximate in Landlord's judgment the CPI-U for the relevant period.

4.03 Taxes, Assessments and Other Governmental Charges. Tenant shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to the Property, improvements on the Property and personal property that is situated on the Property; provided that Tenant may contest in good faith any such tax, assessment or other governmental charge without subjecting the Property to lien or forfeiture. If an assessment on the Property that is not payable in installments becomes due during the Term or an Extended Term, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term or Extended Term by 10. If this Lease subsequently is extended or renewed, the part of the assessment that Tenant shall pay shall be determined by adding the extended or renewal term to the number of years remaining in the Term when the assessment became due. If the Term commences or expires during a tax year, the taxes or assessments payable for that year will be prorated between Landlord and Tenant. Tenant shall exhibit to Landlord, on demand, receipts evidencing payment of all such taxes, assessments and other governmental charges.

4.04 Utility Charges. Tenant shall pay all charges for utility and other services provided to or used on the Property, including without limitation gas, heating oil, electric, water, sewer, heat, snow removal and refuse removal. Tenant shall be solely responsible for the cost of utility connections.

4.05 Tenant to Pay for City Services. Tenant shall pay for all services provided by the City of Homer that are related to the use or operation of the Property, improvements thereon and Tenant's activities thereon. Without limiting the generality of the preceding sentence, Tenant shall pay for wharfage, crane use, ice, and other Port and Harbor services at

the rates established by the City of Homer from time to time. Tenant shall provide the City of Homer with the information necessary to determine wharfage, crane use, ice and other Port and Harbor service charges, keep written records of such information for not less than two years after such charges are due, and, upon request, make such records available to the City of Homer for inspection and audit.

4.06 Additional Rent and Landlord's Right to Cure Tenant's Default. All costs or expenses that Tenant is required to pay under this Lease at Landlord's election will be treated as additional rent, and Landlord may exercise all rights and remedies provided in this Lease in the event of nonpayment. If Tenant defaults in making any payment required of Tenant or defaults in performing any term, covenant or condition of this Lease that involves the expenditure of money by Tenant, Landlord may, but is not obligated to, make such payment or expenditure on behalf of Tenant, and any and all sums so expended by Landlord, with interest thereon at the Default Rate from the date of expenditure until repaid, will be additional rent and shall be repaid by Tenant to Landlord on demand, provided, however, that such payment or expenditure by Landlord will not waive Tenant's default, or affect any of Landlord's remedies for such default.

4.07 Security Deposit. Upon execution of this Lease, Tenant shall deposit with Landlord an amount equal to 10% of the annual Base Rent as security for Tenant's performance of its obligations under this Lease. Landlord will hold the security deposit, and may commingle it with other funds of Landlord. If Tenant defaults in performing any obligation under this Lease, including without limitation the payment of rent, Landlord may apply all or any portion of the security deposit to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of the default. Upon demand, Tenant shall deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term. If Tenant has fully complied with all of its obligations under this Lease through the first five years of the Term, Landlord will remit to Tenant any balance of the security deposit, without interest, within 30 days after the expiration of the first five years of the Term.

OPTIONAL PARAGRAPH 4.08, APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE

4.08 Outfall Line Connection Agreement. Tenant shall connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant shall enter into a Fish Processor Outfall Line Connection Agreement with Landlord, and thereafter at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement. Tenant shall comply with the terms of the Fish Processor Outfall Line Connection Agreement until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date the City of Homer ceases to maintain the outfall line.

ARTICLE 5. SECURITY INTEREST

To secure the performance of Tenant's obligations under this Lease, including without limitation the obligations to pay rent and other sums to be paid by Tenant, Tenant grants to Landlord a security interest in the following collateral ("Collateral"): (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements

thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies of a secured party under the UCC regarding the Collateral. Tenant shall execute such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the security interest granted by Tenant.

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

6.01 Use of Property. Tenant's undertaking to use and improve the Property as described in Tenant's proposal to Landlord is a material inducement to Landlord leasing the Property to Tenant. Tenant shall improve and use the Property in the manner described in Tenant's proposal. Tenant's proposed use of the Property is described in **Exhibit D**. Tenant shall not use or improve the Property for any purpose other than as described in Tenant's proposal without Landlord's written consent, which consent Landlord may withhold in its sole discretion.

6.02 Required Improvements. Tenant shall, at Tenant's sole expense, construct, and at all times during the Term and any Renewal Term keep and maintain as the minimum development on the Property the following improvements ("Required Improvements"):

The Required Improvements also are depicted in the site plan and floor plans in **Exhibit E** and **Exhibit F**, respectively. Tenant shall commence construction of the Required Improvements within one year after the date of commencement of the Term, prosecute the construction of the Required Improvements with diligence, and Complete construction within one additional year.

6.03 Construction Prerequisites. Tenant may not commence any construction on the Property, including without limitation construction of the Required Improvements, without first satisfying the following conditions:

(a) Not less than 30 days before commencing construction, Tenant shall submit to Landlord preliminary plans and specifications, and an application for a City of Homer zoning permit, for the construction, showing the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plans, and any other information required for the zoning permit or other required permits. The preliminary plans and specifications are subject to Landlord's approval, which will not be unreasonably withheld. Landlord shall communicate approval or disapproval in the manner provided for notices, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction,

notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than five days before commencing construction, Tenant shall deliver to Landlord one complete set of final working plans and specifications as approved by the governmental agencies whose approval is required for Tenant to commence construction. The final working plans and specifications shall conform substantially to the preliminary plans and specifications previously approved by Landlord, subject to changes made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five days before commencing construction, Tenant shall give Landlord written notice of its intent to commence construction, and furnish to Landlord the following:

(1) Proof that all applicable federal, state and local permits required for the construction have been obtained.

(2) For construction, alteration or restoration of Required Improvements, a current certificate of insurance with the coverages specified in Section 9.04(c).

6.04 Extensions of Time for Completion of Required Improvements. Landlord shall grant an extension of the time to Complete the Required Improvements for a period of time equal to the duration of an Excusable Delay, upon Tenant's written request describing the nature of the Excusable Delay, provided Tenant has commenced construction in a timely manner and is proceeding diligently to Complete construction.

6.05 Additional and Replacement Improvements.

(a) Construction of improvements that are not consistent with terms of this Lease is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council.

(b) Subject to Section 6.05(a), upon satisfying the conditions in section 6.03, Tenant at any time may, but is not obligated to, construct new improvements on the Property and demolish, remove, replace, alter, relocate, reconstruct or add to existing improvements; provided that Tenant is not then in default under this Lease and provided further that Tenant continuously maintains on the Property the Required Improvements, or their equivalent of equal or greater value. Once any work is begun, Tenant shall with reasonable diligence prosecute to Completion all construction of improvements, additions, alterations, or other work. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

6.06 As-Built Survey. Within 30 days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant shall provide Landlord with three copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines and pre-existing improvements. Tenant shall

accompany the as-built survey with a description of all changes from the approved plans or specifications made during the course of the work.

6.07 Ownership of Improvements. Any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Extended Terms and may be removed or replaced by Tenant, subject, however, to (i) Tenant's obligations concerning the Required Improvements in Section 6.02; and (ii) the designation of improvements in **Exhibit D** for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term as provided in Section 6.08(a).

6.08 Disposition of Improvements at End of Term.

(a) At the expiration of the Term or Extended Term Tenant shall leave in place on the Property all improvements designated in **Exhibit D** for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term. Tenant shall leave such improvements intact with all components, including without limitation doors, windows, and plumbing, electrical and mechanical fixtures and systems, in good condition and ready for use or occupancy. Tenant shall execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all of Tenant's interest in such improvements. Except for improvements that Tenant is required to leave on the Property, Tenant shall remove any improvements constructed by Tenant or other occupants of the Property under this Lease before the expiration of the Term or Extended Term.

(b) Tenant shall notify Landlord before commencing the removal of an improvement as required under Section 6.08(a), and coordinate the removal work with Landlord. Once Tenant commences the removal work, Tenant shall prosecute the removal with reasonable diligence to Completion and shall repair all damages to the Property caused by such removal no later than the expiration of the Term or Extended Term. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(c) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under Section 6.08(a), Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

(d) If Landlord terminates this Lease because of a default by Tenant, all improvements on the Property become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects to remove any improvements, Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

ARTICLE 7. CARE AND USE OF THE PROPERTY

7.01 Maintenance of the Property. Tenant at its own cost and expense shall keep the Property and all buildings and improvements that at any time may be situated thereon in a clean, safe and orderly condition, and in good repair at all times during the Term.

7.02 Repair of Improvements.

(a) Except as provided in Section 7.02(b), in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant shall at Tenant's expense restore the same to good and tenable condition or shall remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed 18 months nor may the period of removal exceed 45 days.

(b) Unless Tenant is excused from the obligation under this paragraph, if the Required Improvements or any part thereof are damaged or destroyed by fire, earthquake, tsunami, or other casualty, rendering the Required Improvements totally or partially inaccessible or unusable, Tenant shall at Tenant's expense restore the Required Improvements to substantially the same condition as they were in immediately before such damage. Tenant shall not be required to restore the Required Improvements under the following circumstances:

(1) If the cost of repairing or restoring the Required Improvements, net of any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the Required Improvements, Tenant may terminate this Lease by giving notice to Landlord of Tenant's election to terminate within 15 days after determining the restoration cost and replacement cost, and this Lease shall terminate as of the date of such notice.

(2) If the repair or restoration of the Required Improvements would be contrary to law, either party may terminate this Lease immediately by giving notice to the other party.

(3) If any damage or casualty to the Required Improvements occurs within three years before the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

Nothing in this paragraph relieves Tenant of the obligation to surrender the Property upon the expiration or earlier termination of the Term in the condition required by Section 3.03.

(c) Under no circumstance shall Landlord be under any obligation to use or advance any of its own funds to restore any Required Improvements.

7.03 Nuisances Prohibited. Tenant at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures; and litter, rubbish or trash. Tenant shall not use the Property in any manner that will constitute waste or a nuisance. Landlord, at Tenant's expense and without any liability to Tenant, may remove or abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after 15 days written notice to Tenant, or after four hours notice to Tenant in writing, by telephone, facsimile or in person if Landlord makes a written finding that such removal or abatement is required to prevent imminent harm to public health, safety or welfare. Tenant shall pay Landlord all the costs of such removal, plus interest at the Default Rate, as additional rent under this Lease. This section does not

limit or waive any other remedy available to the City of Homer to abate any nuisance or for the violation of the Homer City Code.

7.04 Compliance with Laws. Tenant's improvement and use of the Property shall comply with all governmental statutes, ordinances, rules and regulations, including without limitation the City of Homer Zoning Code and all applicable building codes, now or hereafter in effect.

7.05 Liens. Except as provided in Article 13, Tenant may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, Tenant shall cause the same to be removed; provided that Tenant may in good faith and at Tenant's own expense contest the validity of any such lien without subjecting the Property to foreclosure, and in the case of a mechanic's or materialman's lien, if Tenant has furnished the bond required in A.S. 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the Property from the effect of such a lien claim). Tenant shall indemnify and save Landlord harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by Landlord in negotiating, settling, defending, or otherwise protecting against such lien and shall, in the event of a judgment of foreclosure of the lien, cause the same to be discharged and removed prior to any attempt at execution of such judgment.

7.06 Radio Interference. Upon Landlord's request, Tenant shall discontinue the use on the Property of any source of electromagnetic radiation that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

7.07 Signs. Tenant may erect signs on the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

7.08 Garbage Disposal. Tenant shall keep any garbage, trash, rubbish or other refuse in industry standard containers until removed, and cause all garbage, trash, rubbish or other refuse on the Property to be collected and transported to a Kenai Peninsula Borough solid waste facility or transfer station at least once a week. Tenant may not place garbage, trash, rubbish or other refuse from the Property in Landlord's Homer Spit garbage disposal facilities.

7.09 Access Rights of Landlord. Landlord's agents and employees shall have the right, but not the obligation, to enter the Property at all reasonable times to inspect the use and condition of the Property; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Property.

OPTIONAL PARAGRAPH 7. __ APPLICABLE FOR USE OF FISH DOCK

7. __ Fish Dock Use Permit. Before using the City of Homer Fish Dock, Tenant shall obtain a City of Homer Fish Dock Use Permit. Tenant shall continue to have a current Fish Dock Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use the Fish Dock.

OPTIONAL PARAGRAPH 7. APPLICABLE FOR USE OF OTHER DOCKS

7. Terminal Use Permit. Before using City of Homer Docks other than the Fish Dock, Tenant shall obtain a City of Homer Terminal Use Permit. Tenant shall continue to have a current Terminal Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use City of Homer Docks other than the Fish Dock.

ARTICLE 8. RESTRICTIONS ON TRANSFER

8.01. Consent Required for Assignment or Sublease. Tenant shall not assign or sublease its interest in this Lease or in the Property without first obtaining the written consent of the Council, which will not be withheld unreasonably. Any assignment or sublease without the consent of the Council will be voidable and, at Landlord's election, will constitute a default. Tenant shall request consent of the Council in writing at least 30 days prior to the effective date of the proposed assignment or sublease, accompanied by a copy of the proposed assignment or sublease. Tenant shall be assessed additional rent, as approved by the Council, upon approval of a sublease of the Property, but not upon a sublease of a building or other structure on the Property. No consent to any assignment or sublease waives Tenant's obligation to obtain Landlord's consent to any subsequent assignment or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder, and shall not release Tenant from liability hereunder unless Landlord specifically so provides in writing.

8.02. Events that Constitute an Assignment. If Tenant is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of one or more partners or members owning 25% or more of the entity, or the dissolution of the entity, will be deemed an assignment subject to Section 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of 25% of the value of the assets of Tenant, will be deemed an assignment subject to Section 8.01; provided that if Tenant is a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of Tenant will not constitute an assignment subject to Section 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 25% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors.

8.03. Costs of Landlord's Consent to be Borne by Tenant. As a condition to Landlord's consent to any assignment or sublease under section 8.01, Tenant shall pay Landlord's reasonable costs, including without limitation attorney's fees and the expenses of due diligence inquiries, incurred in connection with any request by Tenant for Landlord's consent to the assignment or sublease.

ARTICLE 9. LIABILITY, INDEMNITY AND INSURANCE

9.01. Limitation of Landlord Liability. Landlord, its officers and employees shall not be liable to Tenant for any damage to the Property or the buildings and improvements thereon, or for death or injury of any person or damage to any property, from any cause; however, this provision shall not affect the liability of Landlord, its officers and employees on any claim to the extent the claim arises from their negligence or willful misconduct.

9.02 Indemnity Generally. Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from all claims arising from death or injury of any person or damage to any property occurring in or about the Property; however, this provision shall not apply to any claim to the extent the claim arises from the sole negligence or willful misconduct of Landlord, its officers and employees.

9.03 Indemnity for Emergency Service Costs. Without limiting the generality of Section 9.02, in the event of a major fire or other emergency, Tenant shall reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant, the Property or at any other location where the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this section, a major fire or other emergency is one that requires more than five hours of effort by the City of Homer Fire Department.

9.04 Insurance Requirements.

(a) Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force at the times provided in this section the following policies of insurance with a carrier or carriers reasonably satisfactory to Landlord and authorized to conduct business in the state of Alaska. Specific limits shown shall be the minimum acceptable limits, and if Tenant's policy contains higher limits, Landlord shall be entitled to coverage to the extent of such higher limits.

(b) Tenant shall maintain in force at all times during the Term the following policies of insurance:

(1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance also shall be endorsed to provide contractual liability insuring Tenant's obligations to indemnify under this Lease.

(2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.

(3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.

(4) Environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

(5) Property insurance covering the Required Improvements described in Section 6.02 in an amount not less than full replacement cost of the Required Improvements. The policy shall include boiler and machinery coverage.

(c) During construction of the Required Improvements and during any subsequent alteration or restoration of the Required Improvements at a cost in excess of \$250,000 per job, Tenant shall maintain builder's risk insurance in an amount equal to the completed value of the project.

(d) Tenant shall furnish Landlord with certificates evidencing the required insurance not later than the date as of which this Lease requires the insurance to be in effect. The certificates of insurance shall be attached hereto as **Exhibit G**. The certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire, and limits of liability will not be reduced, without at least 30 days' prior written notice to Landlord. Landlord shall be named as an additional insured under all policies of liability insurance required of Tenant. Landlord's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Lease. Tenant also shall grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord such authorizations substantially in the form of **Exhibit H** as Landlord may request.

[*ALTERNATIVE 9.04(b)(4)* — Optional provision waiving environmental insurance based on the authorized uses of Section 6.01.]

(4) Based on the authorized uses of the Property stated in section 6.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from Landlord, for purposes other than those stated in section 6.01, if Landlord so elects, and within 10 days after Landlord gives notice of such election, Tenant shall procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

ARTICLE 10. ENVIRONMENTAL MATTERS

10.01 Use of Hazardous Substances. Tenant shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except as is necessary or useful to Tenant's authorized uses of the Property stated in Section 6.01, and only in compliance with all applicable Environmental Laws. Any Hazardous Substance permitted on the Property as provided in this section, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all applicable Environmental Laws, and handled only by properly trained personnel.

10.02 Prevention of Releases. Tenant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant or any of its agents,

employees, contractors, tenants, subtenants, invitees or other users or occupants of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

10.03 Compliance with Environmental Laws. Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

10.04 Notice. Tenant shall promptly give Landlord (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government agency regarding Hazardous Substances on the Property or Hazardous Substances which affect or will affect the Property; (ii) written notice of any knowledge or information Tenant obtains regarding Hazardous Substances or losses incurred or expected to be incurred by Tenant or any government agency to study, assess, contain or remove any Hazardous Substances on or near the Property, and (iii) written notice of any knowledge or information Tenant obtains regarding the release or discovery of Hazardous Substances on the Property.

10.05 Remedial Action. If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any Hazardous Substance (i) gives rise to liability (including but not limited to a response action, remedial action or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Tenant shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

10.06 Indemnification. Subject to section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property.

The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within 10 days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

10.07 Survival of Obligations. The obligations of Tenant in this Article, including without limitation the indemnity provided for in Section 10.06, are separate and distinct obligations from Tenant's obligations otherwise provided for herein and shall continue in effect after the expiration of the Term and any Renewal Term.

10.08 Claims against Third Parties. Nothing in this Article shall prejudice or impair the rights or claims of Tenant against any person other than Landlord with respect to the presence of Hazardous Substances as set forth above.

10.09 Extent of Tenant's Obligations. Tenant's obligations under this Article apply only to acts, omissions or conditions that (i) occur in whole or in part during the Term or any Extended Term or during any time of Tenant's possession or occupancy of the Property prior to or after the Term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors.

10.10 Inspection at Expiration of Term. Within 90 days before the expiration of the Term or final Extended Term, Tenant shall at its own expense obtain a Phase I environmental inspection of the Property, and conduct any further inspection, including without limitation test holes, that is indicated by the results of the Phase I inspection. Tenant, at its own expense, shall remediate any contamination of the Property that is revealed by the inspections and that is Tenant's responsibility under this Article.

ARTICLE 11. CONDEMNATION

11.01 Article Determines Parties' Rights and Obligations. If any entity having the power of eminent domain exercises that power to condemn the Property, or any part thereof or interest therein, or acquires the Property, or any part thereof or interest therein by a sale or transfer in lieu of condemnation, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article.

11.02 Total Taking. If all of the Property is taken or so transferred, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority.

11.03. Partial Taking. If the taking or transfer of part of the Property causes the remainder of the Property to be not effectively and practicably usable in the opinion of Tenant for the operation of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority. If the taking or transfer of part of the Property leaves the remainder of the Property effectively

and practicably usable in the opinion of Tenant for the operation of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate as to the portion of the Property so taken or transferred on the date title to the Property vests in the condemning authority, but will continue in full force and effect as to the portion of the Property not so taken or transferred, and the Base Rent will abate in the proportion that the portion of the Property taken bears to all of the Property.

11.04 Compensation. Landlord and Tenant each may make a claim against the condemning or taking authority for the amount of just compensation due to it. Tenant shall make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that if a single award to Landlord includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.

ARTICLE 12. DEFAULT

12.01 Events of Default. Each of the following shall constitute an event of default under this Lease:

(a) The failure of Tenant to pay rent or any other sum of money due under this Lease within 10 days after the due date.

(b) The failure of Tenant to perform or observe any covenant or condition of this Lease, other than a default in the payment of money described in Section 12.01(a), which is not cured within 30 days after notice thereof from Landlord to Tenant, unless the default is of a kind that cannot be cured within such 30-day period, in which case no event of default shall be declared so long as Tenant shall commence the curing of the default within such 30 day period and thereafter shall diligently and continuously prosecute the curing of same.

(c) The use of the Property or buildings and improvements thereon for purposes other than those permitted herein, to which Landlord has not given its written consent.

(d) The commencement of a case under any chapter of the federal Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, unless the petition is filed or case commenced by a party other than Tenant and is withdrawn or dismissed within ninety (90) days after the date of its filing.

(e) The admission in writing by Tenant of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of Tenant, unless such appointment shall be vacated within 10 days after its entry; Tenant making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of Tenant.

12.02 Landlord's Remedies. Upon the occurrence of an event default, Landlord has all of the following remedies, all in addition to any other remedies that Landlord may have at law or in equity:

(a) Terminate this Lease by written notice to Tenant, upon which Tenant shall surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove Tenant and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) By written notice declare Tenant's right to possession of the Property terminated without terminating this Lease, upon which Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are described Section 12.02(a).

(c) Subject to Section 12.01(e), relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term or Extended Term, as applicable, for any sum that Landlord may deem reasonable.

(d) Collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover from Tenant, with or without terminating this Lease, actual attorney's fees and other expenses incurred by Landlord by reason of Tenant's default, and elect to recover damages described under either (1) or (2):

(1) from time to time, an amount equal to the sum of all Base Rent and other sums that have become due and remain unpaid, less the rent, if any, collected by Landlord on reletting the Property reduced by the amount of all expenses incurred by Landlord in connection with reletting the Property; or

(2) immediately upon Tenant's default, an amount equal to the difference between the Base Rent and the fair rental value of the Property for the remainder of the Term or Renewal Term, discounted to the date of such default at a rate per annum equal to the rate at which Landlord could borrow funds for the same period as of the date of such default.

(f) Reentry or reletting of the Property, or any part thereof, shall not terminate this Lease, unless accompanied by Landlord's written notice of termination to Tenant.

12.03 Assignment of Rents. Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Property, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease, except that Tenant has the right to collect such rent until the occurrence of an event of default by Tenant.

ARTICLE 13. LEASEHOLD MORTGAGES

13.01 Mortgage of Leasehold Interest. Tenant shall have the right at any time, and from time to time, to subject the leasehold estate and any or all of Tenant's improvements

situated on the Property to one or more deeds of trust, mortgages, and other collateral security instruments as security for a loan or loans or other obligation of Tenant (each a "Leasehold Mortgage"), subject to the remainder of this Article 13.

13.02 Subordinate to Lease. The Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to all the terms of this Lease, and to all rights and interests of Landlord except as otherwise provided in this Lease.

13.03 Notice to Landlord. Tenant shall give Landlord notice before executing each Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Landlord's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified Mortgagee as that term is used in this Lease. Tenant also shall deliver to Landlord a true and correct copy of any notice from a Qualified Mortgagee of default or acceleration of the maturity of the note secured by a Leasehold Mortgage promptly following Tenant's receipt thereof.

13.04 Modification or Termination. No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of this Article 11 will be binding upon a Qualified Mortgagee without its prior written consent.

13.05 Notice to Qualified Mortgagee.

(a) If Landlord gives any notice hereunder to Tenant, including without limitation a notice of an event of default, Landlord shall give a copy of the notice to each Qualified Mortgagee at the address previously designated by it.

(b) If a Qualified Mortgagee changes its address or assigns the Leasehold Mortgage, the Qualified Mortgagee or assignee may change the address to which copies of notices hereunder shall be sent by written notice to Landlord. Landlord will not be bound to recognize any assignment of a Qualified Mortgage unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, the assignee will be the Qualified Mortgagee hereunder with respect to the assigned Leasehold Mortgage.

(c) If a Leasehold Mortgage is held by more than one person, Landlord shall not be required to give notices to the Qualified Mortgagee of the Leasehold Mortgage unless and until all of the holders of the Leasehold Mortgage give Landlord an original executed counterpart of a written designation of one of their number to receive notices hereunder. Notice given to the one so designated is effective as notice to all them.

13.06 Performance of Tenant Obligations.

(a) A Qualified Mortgagee may perform any obligation of Tenant and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Qualified Mortgagee will not thereby be subrogated to the rights of Landlord.

(b) Tenant may delegate irrevocably to a Qualified Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be

binding upon Landlord unless and until either Tenant or the Qualified Mortgagee gives Landlord a true copy of a written instrument effecting such delegation.

(c) If Tenant defaults in the payment of any monetary obligation hereunder, Landlord shall not terminate this Lease unless and until Landlord provides written notice of such default to each Qualified Mortgagee and no Qualified Mortgagee cures such default within 10 days after the expiration of any grace or cure periods granted Tenant herein. If Tenant defaults in the performance of any non-monetary obligation hereunder, Landlord shall not terminate this Lease unless and until Landlord provides written notice of such default to each Qualified Mortgagee and no Qualified Mortgagee cures such default within 30 days after the expiration of any grace or cure periods granted Tenant herein.

13.07 Possession by Qualified Mortgagee. A Qualified Mortgagee may take possession of the Property and vest in the interest of Tenant in this Lease upon the performance of the following conditions:

(a) The payment to Landlord of any and all sums due to Landlord under this Lease, including without limitation accrued unpaid rent.

(b) The sending of a written notice to Landlord and Tenant of the Qualified Mortgagee's intent to take possession of the Property and assume the Lease.

(c) The curing of all defaults not remediable by the payment of money within an additional 30 days after the date upon which such default was required to be cured by Tenant under the terms of this Lease.

13.08 No Liability of Mortgagee without Possession. A Qualified Mortgagee shall have no liability or obligation under this Lease unless and until it sends to Landlord the written notice described in paragraph 13.07(b). Nothing in this Lease or in the taking of possession of the Property and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Tenant of any duty or liability to Landlord under this Lease.

13.09 New Lease. If a Qualified Mortgagee acquires Tenant's leasehold as a result of a judicial or non-judicial foreclosure under a Leasehold Mortgage, or by means of a deed in lieu of foreclosure, the Qualified Mortgagee thereafter may assign or transfer Tenant's leasehold to an assignee upon obtaining Landlord's written consent thereto, which consent will not be unreasonably withheld or delayed, and subject to all of the other provisions of Article 8. Upon such acquisition by a Qualified Mortgagee or its assignee of Tenant's leasehold, Landlord will execute and deliver a new ground lease of the Property to the Qualified Mortgagee or its assignee not later than 120 days after such party's acquisition of Tenant's leasehold. The new ground lease will be identical in form and content to this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining Term hereof), and the elimination of any requirements that Tenant fulfilled prior thereto, and the new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of the new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant from the Property.

ARTICLE 14. GENERAL PROVISIONS

14.01 Authority. Tenant represents and warrants that it has complete and unconditional authority to enter into this Lease; this Lease has been duly authorized by Tenant's governing body; this Lease is a binding and enforceable agreement of and against Tenant; and the person executing the Lease on Tenant's behalf is duly and properly authorized to do so.

14.02 Estoppel Certificates. Either party shall at any time and from time to time upon not less than 30 days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is in full force and effect and has not been amended (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments); that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the Base Rent and other charges have been paid in advance. The requesting party shall pay the cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees.

14.03 Delivery of Notices - Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, (ii) reputable overnight air courier service, or (iii) electronic mail or facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the address for the recipient in Section 14.04 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

14.04 Addresses for Notices. All notices, demands and requests from Tenant to Landlord shall be given to Landlord at the following address:

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148
Email:

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

Facsimile: _____
Email: _____

Each party may, from time to time, to designate a different address or different agent for service of process by notice given in conformity with Section 14.03.

14.05 Time of Essence. Time is of the essence of each provision this Lease.

14.06 Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

14.07 Interpretation. Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Lease. The language in this Lease shall in all cases be simply construed according to its fair meaning and not for or against either party as the drafter thereof.

14.08 Captions. The captions or headings in this lease are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Lease.

14.09 Independent Contractor Status. Landlord and Tenant are independent contractors under this Lease, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between Landlord and Tenant. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party.

14.10 Parties Interested Herein. Nothing in this Lease, express or implied, is intended or shall be construed to give to any person other than Landlord, Tenant and any Qualified Mortgagee any right, remedy or claim, legal or equitable, under or by reason of this Lease. The covenants, stipulations and agreements contained in this Lease are and shall be for the sole and exclusive benefit of Landlord, Tenant and any Qualified Mortgagee, and their permitted successors and assigns.

14.11 Multi-Party Tenant. If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.

14.12 Broker's Commissions. Each of the parties represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, all liability arising from any such claim including, without limitation, the cost of counsel fees in connection therewith.

14.13 Successors and Assigns. This Lease shall be binding upon the successors and assigns of Landlord and Tenant, and shall inure to the benefit of the permitted successors and assigns of Landlord and Tenant.

14.14 Waiver. No waiver by a party of any right hereunder may be implied from the party's conduct or failure to act, and neither party may waive any right hereunder except by a writing signed by the party's authorized representative. The lapse of time without giving notice or taking other action does not waive any breach of a provision of this Lease. No waiver of a right on one occasion applies to any different facts or circumstances or to any future events, even if involving similar facts and circumstances. No waiver of any right hereunder constitutes a waiver of any other right hereunder.

14.15 Attorney's Fees

(a) If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant shall pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party shall reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

14.16 Severability. If any provision of this Lease shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Lease, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Lease shall remain in full force and effect.

14.17 Entire Agreement, Amendment. This Lease constitutes the entire and integrated agreement between Landlord and Tenant concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of Landlord shall bind Landlord or be enforceable by Tenant unless specifically set forth in this Lease. This Lease may be amended only by written instrument executed and acknowledged by both Landlord and Tenant.

14.18 Governing Law and Venue. This Lease will be governed by, construed and enforced in accordance with, the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, shall be brought in the trial courts of the State of Alaska for the Third Judicial District at Homer.

14.19 Execution in Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original and all of which together shall constitute one and the same document.

[OPTIONAL SPECIAL PROVISIONS] -- 14.20 prior lease amended and superseded

14.20 Prior Lease. Landlord and Tenant are parties to a prior lease affecting the Property dated _____, 19____, a memorandum of which has been recorded in the records of the Homer Recording District under Document No. _____ (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of _____, 201____, and on and after that date the Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Prior Lease prior to that date.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

Landlord:

Tenant:

CITY OF HOMER

By: _____
Walt Wrede, City Manager
(name/title)

By: _____

ACKNOWLEDGMENTS

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____, 201_, by Walt Wrede, City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____, 201_, by _____ (title) of _____ (name of entity), a _____ (state) _____ (type of entity) on behalf of _____ (name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP

Tenant, _____, is a _____ organized under the laws of the state of _____. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization. If Tenant is a foreign entity authorized to conduct business in Alaska, its certificate of authority is also attached

The _____ (specify whether shareholders, partners, members, etc.) and their percentage of ownership are as follows:

Name _____ %

Address: _____

Name _____ %

Address: _____

Name _____ %

Address: _____

Name _____ %

Address: _____

TOTAL 100 %

EXHIBIT B

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE AND
AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON BEHALF
OF TENANT**

NEW

EXHIBIT C
LOCATION OF PROPERTY
(Section 2.01)

NEW

EXHIBIT D
TENANT'S PROPOSED USE OF THE PROPERTY
(Section 6.01)

NEW

EXHIBIT E
SITE PLANS
(Section 6.02)

NEW

EXHIBIT F
FLOOR PLANS
(Section 6.02)

NEW

EXHIBIT G
CERTIFICATES OF INSURANCE
(Section 9.04(d))

NEW

EXHIBIT H
PERMISSION TO OBTAIN INSURANCE POLICIES
(Section 9.04(d))

The City of Homer is hereby granted permission to request and obtain copies of _____ ("Tenant") insurance policies from Tenant's broker and/or insurer, _____. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

Date: _____

TENANT NAME

By:

_____ (printed name)
_____ (title)

By:

_____ (printed name)
_____ (title)

~~Master Homer Ground Lease Form #2002.1~~

~~MASTER FORM — COPY ONLY~~

~~NOT SUITABLE FOR PRESENTATION TO PROSPECTIVE TENANT WITHOUT SUBSTANTIVE REVIEW AND EDITING~~

Notes

~~Includes:~~

- ~~—— optional par. 2.04 for renewal options~~
- ~~—— rent adjustments: both 5 year appraised and annual CPI adjustments~~
- ~~—— optional par. 3.01 for five year leases (CPI rent adjustment only)~~
- ~~—— alternative opt. par. 8.04 for additional rent on sublease or assignments~~
- ~~—— optional Article 14 to allow leasehold mortgages~~
- ~~—— alternative opt. par. 11.02(b) waiving environmental insurance based on uses~~
- ~~—— optional par. 18.01 referring to prior amended and superceded lease~~

Revision History

~~form prepared by Gordon Tans, 9 February 2001~~

~~originally based primarily on AA003674341 (Aurora Northern draft lease)~~

~~revisions 11 April 2001 by G Tans (add optional 8.04 — additional rent for certain transfers)~~

~~revisions 16 May 2001 by G Tans (change 3.01 CPI adjustment from US City Average to Anchorage, and change adjustment date from July 1 to January 1)~~

~~revision 2001.4 — 15 Oct 2001 by G Tans (add an alternative 8.04 — additional rent for subleases)~~

~~revision 2001.5 — 7 Nov 2001 by G Tans (add sentence to 3.01(b) to prevent reduction in Base Rent if upon reappraisal for five year rent adjustment)~~

~~revision 2002.1 — 3 October 2002 by G Tans (adding alternative 11.01(b) to waive environmental insurance based on authorized uses in par. 5.01; and optional 18.01 referring to a prior lease amended and superceded by current lease)~~

2004

~~CONFIDENTIAL COMMENTS AND INSTRUCTIONS~~
~~FROM: GORDON TANS~~
~~TO: WALT WREDE AND CITY OF HOMER~~

1.

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

AND

October ____, 2002

_____, 201

GROUND LEASE AND SECURITY AGREEMENT

~~THIS GROUND LEASE AND SECURITY AGREEMENT ("Lease") is made dated~~
as of this _____ day of _____, 2002, _____, 201____, between the CITY
OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East
Pioneer Avenue, Homer, Alaska -99603, a municipal corporation organized under the laws of
the State of Alaska, hereinafter referred to as "Landlord" and
_____, a _____ (a
[state of organization] _____ [type of entity) organized
under the laws of the state of _____, whose address is

_____] ("Tenant"), whose address is
_____.

OPTIONAL PARAGRAPH, APPLICABLE WHEN TENANT IS NOT A NATURAL PERSON

Attached as **Exhibit A** is a schedule naming each owner of Tenant and describing the percentage of ownership of each. Also attached to **Exhibit A** are a certificate of good standing issued by the state under whose laws Tenant is organized, and, if Tenant is a foreign entity, a certificate of authority issued by the State of Alaska. Attached as **Exhibit B** is a true and correct copy of a resolution of Tenant authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

RECITALS

WHEREAS, Landlord owns certain properties having a strategic location near the waterfront and marine-related public infrastructure; and

WHEREAS, it is the policy of Landlord to retain ownership of these properties, and to make them available for leasing, in order to encourage growth in targeted economic sectors, to insure that Landlord receives the maximum benefit from a large investment in public infrastructure, and to provide land for businesses that require close proximity to the waterfront or infrastructure to operate efficiently and profitably; and

WHEREAS, Landlord has accepted Tenant's proposal to lease and develop the property leased herein, because Tenant's proposed use of the property should further Landlord's goals for the development of Landlord's properties, and Tenant's proposal to lease and develop the property is a material inducement to Landlord leasing the property to Tenant; and

WHEREAS, Tenant has made its own determination that its proposed development of the property will be economically feasible, and that the term for which it is leasing the property will be sufficient to amortize Tenant's investment in developing the leased property under Tenant's proposal.

NOW, THEREFORE, in consideration of the matters recited above, and the mutual covenants herein, the parties agree as follows:

ARTICLE 1.- DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

(a) "Annual Rent Adjustment" and "Annual Rent Adjustment Date" are defined in Section 4.01(b).

(b) "Base Rent" is defined in Section 4.01.

(c) "Complete" and "Completion" mean, with regard to an improvement, that construction of the improvement is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including without limitation the issuance of any applicable certificate of occupancy and other applicable permits, licenses, certificates or inspection reports necessary to the improvement's legally authorized use.

(d) "Council" means the City Council of the City of Homer, Alaska.

(e) "Default Rate" means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which Tenant may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).

(f) "Environmental Laws" means all local, state, and federal laws, ordinances, regulations, and orders related to environmental protection; or the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal, or transport of any Hazardous Substance.

(g) "Excusable Delay" means delay due to strikes, acts of God, inability to obtain labor or materials, orders of any governmental authority having jurisdiction, removal of Hazardous Materials discovered at any time after the commencement of the Term, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

(h) "Extended Term" is defined in Section 3.02.

(i) "Five Year Rent Adjustment Date" is defined in Section 4.02(a).

(j) "Hazardous Substance" means any substance or material defined or designated as hazardous or toxic waste; hazardous or toxic material; hazardous, toxic, or radioactive substance; or other similar term by any federal, state, or local statute, regulation, or ordinance or common law presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time.

(k) "Landlord" means the City of Homer, Alaska.

(l) "Lease Policy" means the City of Homer Property Management Policy and Procedures, as adopted and amended from time to time by Council resolution.

(m) "Leasehold Mortgage" is defined in Section 13.01.

(n) "Property" is defined in Section 2.01.

(o) "Qualified Mortgagee" is defined in Section 13.03.

(p) "Required Improvements" is defined in Section 6.02.

(q) "Tenant" means _____.

(r) "Term" is defined in Section 3.01.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

Exhibit "A" Schedule of Organization, Owners, Percentage of Ownership

Exhibit "B" Conformed Copy of Resolution Authorizing Lease and Authorizing Signers to Sign Lease Agreement on Behalf of Tenant

Exhibit "C" Legal Description of Property

Exhibit "D" Tenant's Lease Proposal

Exhibit "E" Site Plan

Exhibit "F" Required Improvements Floor Plan

Exhibit "G" Certificates of Insurance

Exhibit "H" Permission to Obtain Insurance Policies

ARTICLE 2. THE PROPERTY

12.01. Lease of Property

Subject to the terms, covenants, and conditions, ~~rights and obligations set forth in~~ of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following ~~described~~ described property: ("Property").

[must insert legal description], Homer Recording District, State of Alaska, as depicted on Exhibit H.

Also C, containing _____ square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. _____;

The described parcel contains approximately _____ square feet, more or less, and is referred to herein as the "Property."

subject, however, to reservations, restrictions, easements and encumbrances of record, and to encroachments that may be revealed by an inspection of the Property.

2.02. Quiet Enjoyment, Restrictions, Easements, Etc.

Landlord covenants and agrees that Tenant, upon paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of and performing its other obligations under this Lease on Tenant's part to be kept or performed, will lawfully and quietly hold, occupy and enjoy, shall have quiet enjoyment of the Property during the term of this Lease Term without hindrance or molestation, subject, however, to the rights and reservations expressed in the U.S. or State patent to the Property, the existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property interference by Landlord or by any person claiming an interest in the Property through Landlord.

12.03. Property Accepted "As Is"

"Tenant acknowledges that it has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the same "as-is" and without reliance on any representations or warranties of Property "AS IS." Landlord, its agents, servants, or and employees as to make no warranties, expressed or implied, concerning the physical condition of the Property, including, but not limited to, subsurface and soil conditions, the presence of any hazardous waste as defined in paragraph 16.03, or as to without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions, including the presence of any Hazardous Substance.

+OPTIONAL PARAGRAPH 2.03. APPLICABLE IF TENANT OBTAINS ENVIRONMENTAL ASSESSMENT.

2.03 Property Accepted "As Is;" Exception for Hazardous Substances.

(a) Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Except as provided in subsection (b), Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions.

(b) Tenant shall obtain, at its own expense, a phase I environmental assessment of the Property as of the earlier of (i) the commencement of the Term, and (ii) Tenant's initial occupancy of the Property. If Landlord reasonably determines that the phase I environmental assessment is acceptable, Landlord will warrant that the condition of the Property as of the applicable date with regard to the presence of any Hazardous Substance is consistent with the results of the phase I environmental assessment.

2.04. No Subsurface Rights

This Lease confers no mineral rights or rights with regard to the subsurface of the landProperty below the level necessary for the useuses of the Property as statedpermitted in this Lease. Landlord makes no warranty or representation as to whether the Property is open or closed to mineral claims or leases under state or federal law.

2. —ARTICLE 3. TERM

23.01- Lease Term

The term of this Lease is _____ years, commencing on ~~the first day of~~ _____, 201____, and ending on ~~the last day of~~ _____, 20____ (the "Term").

23.02- Hold-Over

~~If Tenant holds over after the expiration of the term of this Lease and Landlord accepts payment of rent, Tenant's occupancy will be deemed a tenancy from month to month, terminable upon 30 days written notice given by either party at any time, subject to all the terms, covenants and conditions of this Lease, and will not operate as a renewal or extension of this Lease. Landlord is not required to accept Tenant's tender of rent or to agree to any extended tenancy.~~

2.03- Surrender of Possession

~~Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant must promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in paragraph 6.01. Tenant agrees to execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quietclaiming to Landlord all right, title and interest of Tenant in and to the Property and all such buildings and improvements thereon under paragraph 6.01.~~

OPTIONAL RENEWAL PROVISION:

2.04- Renewal Options to Extend Lease Term.

(a) ~~Tenant will have~~ has the ~~right option to renew this Lease~~ extend the Term for additional, consecutive _____ year periods (~~"Renewal Terms"~~ each an "Extended Term"), provided that:

~~(a) that 1) Tenant must give Landlord written notice of its exercise of the option to renew not more than one year and not less than 120 days prior to before the last day of the Term or current Renewal~~ Extended Term, as the case may be;

~~(b) that Tenant is not at that time~~ (2) At the time Tenant exercises the option, and at all times thereafter until the Extended Term commences, Tenant is not materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease; and

~~(c) that Tenant must exercise its option to renew only by sending written notice thereof in accordance with the provisions of paragraph 17.17 of this Lease;~~

~~(d) that 3) Tenant may exercise only one renewal option per Term or Renewal Term, as the case may be, i.e., Tenant will not be entitled to exercise no more than one renewal option to extend the Term during each period of time described in subparagraph (a); and the Term or any Extended Term.~~

~~(e) that at the time of (b)~~ Tenant's failure to exercise of ~~the an~~ option ~~the to~~ extend the Term in strict compliance with all the requirements in Section 3.02(a) renders that option and all options as to subsequent Extended Terms null and void.

3.03 Lease Renewal.

(a) ~~Tenant is still~~ Tenant represents and warrants that it has determined that the duration of the Term, plus any available Extended Terms, will be sufficient for Tenant to amortize any investment that it makes in connection with this Lease, including without limitation any investment in leasehold improvements. Tenant acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term or the final Extended Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as provided in Section 3.02.

(b) Not less than 12 months before the expiration of the Term or the final Extended Term, Tenant may apply to Landlord for a renewal of this Lease in the manner that a person then would apply for a new lease of the Property. In response to a timely application, the Council will determine whether to renew this Lease, and the term of any renewal, in its sole discretion. The Council is under no obligation to renew this Lease, or to renew this Lease for the term that Tenant requests. If the Council does not grant a timely application to renew this Lease, Tenant shall prepare to surrender possession of the Property as required ~~or permitted under this Lease~~ by Section 3.04, and dispose of improvements on the Property as required by Section 6.08.

~~3.~~ **3.04 Surrender of Possession.** Upon the expiration or earlier termination of the Term or the final Extended Term, Tenant shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted, and shall remove from the Property all personal property that was not present on the Property at the commencement of the Term. If Tenant fails to surrender the Property in the required condition, Landlord may restore the Property to such condition and Tenant shall pay the cost thereof, plus interest at the Default Rate, on demand. Section 6.08 governs the disposition of improvements on the Property at the expiration or earlier termination of the Term or final Extended Term.

3.05 Holding Over. Tenant's continuing in possession of the Property after the expiration or earlier termination of the Term or final Extended Term will not renew or extend this Lease. In the absence of any agreement renewing or extending this Lease, Tenant's continued possession of the Property after the end of the Term will be a tenancy from month to month, terminable upon 30 days written notice by either party at any time, at a monthly rental equal to 150% of the monthly Base Rent in effect at the end of the Term, subject to all other terms of this Lease. For good cause, Landlord may waive all or part of the increase in Base Rent during the holdover period.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

34.01. Rent

~~(a) Initial Base Rent.~~ Tenant ~~agrees to~~ shall pay to Landlord an initial annual rent of \$ _____ ~~(the "Base Rent").~~ Base Rent is payable monthly in advance in

equal installments of \$ _____, plus tax. ~~The first monthly payment is due, on _____, 201 , and on the first day of _____, and subsequent monthly payments are due on the first day of each calendar month each month thereafter. Rent must be paid,~~ at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. ~~Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended~~ All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

(b) — Periodic 4.02 Rent Adjustments.

(a) Five-Year Appraised Adjustment-Rent Adjustments. Commencing January 1, _____, and in every fifth year thereafter, Landlord will obtain an appraisal by a qualified real estate appraiser of ~~the~~ the fair rental value of the Property as if privately owned in fee simple, excluding the value of improvements (other than utilities) made by tenants. The appraisal may be performed as part of an appraisal of other properties of Landlord that are comparable in location and value. The Base Rent will be adjusted on January 1, _____ and on January effective _____ 1 every five years thereafter of the year of each appraisal (each such January 1 date is a "Five Year Rent Adjustment Date") to an amount equal to the then current greater of (i) the area of the Property in square feet, multiplied by the fair market rental value of the Property per square foot determined by the appraisal as set forth, and (ii) the adjusted Base Rent in paragraph 3.01(d) not more than six months effect immediately before the Five Year Rent Adjustment Date. In no event, however, will the The rent adjusted Base on a Five Year Rent Adjustment Date thereafter shall be less than the Base Rent, adjusted annually, during the year immediately prior to such Five Year Rent Adjustment Date. After such Five Year Rent Adjustment Date, the adjusted rent will thereafter be referred to as the Base Rent.

(eb) Annual Rent Adjustment Adjustments. In addition to the five-year rent adjustments provided in paragraph 3.01(b) under Section 4.02(a), the Base Rent will also shall be adjusted annually (the "Annual Rent Adjustment") ~~on the first day of January _____, and on the first day of January every year effective _____ 1, and on each _____ 1 thereafter, excluding each of the years of the five year rent adjustment, Five Year Rent Adjustment Date (each such day date being an "Annual Rent Adjustment Date") throughout"), by the increase or decrease, if any, for the previous year in the Term and all Renewal Terms cost of living as follows:~~

~~(i) — The base for computing the Annual Rent Adjustment is stated in the Consumer Price Index for All Urban Consumers (CPI-U), Anchorage, Alaska, for Area, All Items (1982-1984 = 100) 2000-present=100 ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). For the first five years of the Term, the Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". Thereafter, the Index published for the second half of the calendar year immediately preceding the year of the most recent Five Year Rent Adjustment Date is the "Beginning Index." The Index published for the second half of the calendar year nearest, but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be adjusted to equal the Base Rent determined according to paragraph 3.01(a) or 3.01(b), as the case may be, increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced~~

~~because of a decrease in the Index, Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date most recently before the Annual Rent Adjustment Date. If the CPI-U is revised or ceases to be published, Landlord instead shall use such revised or other index, with whatever adjustment in its application is necessary, to most nearly approximate in Landlord's judgment the CPI-U for the relevant period.~~

~~(ii) If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.~~

~~(d) Appraisal of Property. For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.~~

~~ALTERNATE 3.01 — TO BE USED ONLY WHEN THE COMBINED TERM AND RENEWAL TERMS WILL NOT EXCEED FIVE YEARS TOTAL~~

~~3.01. Rent~~

~~(a) Initial Base Rent. Tenant agrees to pay to Landlord an initial annual rent of \$ _____ (the "Base Rent"), payable monthly in advance in equal installments of \$ _____, plus tax. The first monthly payment is due on the first day of _____, and subsequent monthly payments are due on the first day of each calendar month thereafter. Rent must be paid at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended.~~

~~(b) Periodic Appraised Adjustment of Rent. The requirement of a rent adjustment every five years based on an appraisal of the fair market rental value of the Property is waived because the maximum Term and Renewal Terms combined does not exceed five years.~~

~~(c) Annual Rent Adjustment. The Base Rent will be adjusted annually (the "Annual Rent Adjustment") on the first day of January _____, and on the first day of January every year thereafter (each such day being an "Annual Rent Adjustment Date") throughout the Term and all Renewal Terms as follows:~~

~~(i) The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI U), Anchorage, Alaska, for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". The Index published for the second half of the calendar year nearest, but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be recalculated to equal the Base Rent determined according to paragraph 3.01(a), increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date.~~

~~(ii) If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.~~

~~(d) Appraisal of Property. For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.~~

3.02. Tenant to Pay Taxes

~~Tenant agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located a applicable real property taxes levied or assessed upon or against the Property and all buildings and improvements thereon during the term of this Lease. Tenant further agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all applicable personal property taxes on personal property situated on the Property and placed thereon by Tenant, its agents, servants, or employees. Tenant further agrees to pay prior to delinquency any other taxes for which it may be liable. Tenant must, within thirty (30) days after any such tax, assessment or other charge, whether or not constituting a lien on the Property, becomes due and payable, produce and exhibit to Landlord satisfactory evidence of payment thereof.~~

~~Tenant acknowledges that it is subject to and will pay applicable municipal taxes, including property tax on Tenant's leasehold interest in the Property.~~

3.03. Tenant to Pay Assessments

~~Tenant during the term of this Lease agrees to pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or~~

~~all of the costs of any public work or improvement assessed according to benefit found by the levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, Tenant may elect to pay the same in installments, and in such case Tenant will be liable only for such installments as may become due during the term of this Lease. Landlord warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by Landlord, except as follows: none.~~

~~3.04. Proration of Taxes and Assessments~~

~~If Tenant's obligation to pay taxes or assessments commences or ends during a tax year by reason of commencement or termination of this Lease, such taxes or assessments will be prorated between Landlord and Tenant.~~

~~3.05. Contest~~

~~Tenant has the right to contest any taxes or assessments that Tenant is obligated to pay under paragraphs 3.02 or 3.03 of this Lease. Such proceedings must, if instituted, be conducted promptly at Tenant's own expense and free from all expense to Landlord. Before instituting any such proceedings, Tenant must pay under protest any such taxes or assessments, or must furnish to Landlord a surety bond written by a company acceptable to Landlord or other security acceptable to Landlord, sufficient to cover the amount of such taxes or assessments, with interest for the period that such proceedings may reasonably be expected to take, and costs, securing the payment of such taxes or assessments, interest and costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, Tenant must pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part thereof, might be forfeited. The proceedings referred to in this paragraph 3.05 may include appropriate appeals from any order or judgments therein, but all such proceedings must be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and must be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge, Tenant must pay the amount that is finally levied or assessed against the Property or adjudicated to be due and payable, and if there is any refund payable by the governmental authority with respect thereto, Tenant will be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.04 of this Lease. Landlord, at Landlord's option, may, but is not obligated to, at Landlord's own expense contest any such taxes or assessments that are not contested by Tenant as set forth above, and, unless Tenant promptly joins with Landlord therein, Landlord will be entitled to receive and retain any refund payable by any governmental authority with respect thereof.~~

~~3.06. Tenant to Pay Utility Charges~~

~~**Tenant must pay or cause to be paid all charges for****4.03 Taxes, Assessments and Other Governmental Charges.** Tenant shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to the Property, improvements on the Property and personal property that is situated on the Property; provided that Tenant may contest in good faith any such tax, assessment or other governmental charge without subjecting the Property to lien or forfeiture. If an assessment on the Property that is not payable in installments becomes due during the Term or an Extended Term, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term or Extended Term by 10. If this Lease subsequently is extended or renewed, the part~~

of the assessment that Tenant shall pay shall be determined by adding the extended or renewal term to the number of years remaining in the Term when the assessment became due. If the Term commences or expires during a tax year, the taxes or assessments payable for that year will be prorated between Landlord and Tenant. Tenant shall exhibit to Landlord, on demand, receipts evidencing payment of all such taxes, assessments and other governmental charges.

4.04 Utility Charges. Tenant shall pay all charges for utility and other services provided to or used on the Property, including without limitation gas, heating oil, ~~electricity~~electric, water, sewer, heat, snow removal, and refuse removal ~~and any and all other utilities or services used upon~~. Tenant shall be solely responsible for the ~~Property throughout the term~~cost of this Lease, including any connection fees ~~utility connections~~.

~~3.07~~**4.05** ~~Tenant to Pay for City Services Related to the Property or to~~
~~Tenant's Operations~~

(a) ~~_____~~ Tenant ~~must~~shall pay for all services provided by the City of Homer that are related to the Property or to Tenant's operations, including but not limited to Port and Harbor services, whether incurred by Tenant, or any business entity owned in whole or in part by Tenant or by one or more partners of Tenant.

(b) ~~Tenant must~~use or operation of the Property, improvements thereon and Tenant's activities thereon. Without limiting the generality of the preceding sentence, Tenant shall pay for wharfage, crane use, ice, and other Port and Harbor services at the rates ~~published in~~established by the ~~Port and Harbor~~City of Homer ~~Terminal Tariff, which is subject to change from time to time. In the event~~Tenant shall provide the City of Homer ~~changes the method of establishing or publishing any or all such rates, then Tenant must pay for such services at the rates so established by such changed method. Tenant further agrees to provide the City of Homer with the necessary~~with the information necessary to determine wharfage, crane use, ice and other Port and Harbor service charges, ~~to~~ keep written records of such information for not less than ~~six~~two years after such charges are due, and, upon request, ~~to~~make such records available to the City of Homer for inspection and audit.

~~3.08~~**4.06** ~~Additional Rent and Landlord's Right to Cure Tenant's Default~~

~~_____~~ All costs and/or expenses that Tenant assumes or agrees is required to pay pursuant to ~~under~~ this Lease will, at Landlord's election, will be treated as additional rent, and ~~in the event of nonpayment, Landlord will have~~may exercise all rights and remedies provided in this Lease in the ~~event of nonpayment of rent or of a breach of condition, at Landlord's election.~~ If Tenant defaults in making any payment required ~~to be made by of~~ Tenant or defaults in ~~performance of performing~~ any term, covenant or condition of this Lease ~~on the part of Tenant to be kept, performed or observed that involves the expenditure of money by Tenant, Landlord at Landlord's option may, but is not obligated to, make such payment, or, expenditure on behalf of Tenant, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended by Landlord, with interest thereon at the legal rate of interest~~Default Rate from the date of such expenditure until repaid, will be, ~~and will be deemed to be,~~ additional rent and ~~must~~shall be repaid by Tenant to Landlord, on demand, provided, however, that ~~no~~such payment or expenditure by Landlord will be deemed a waiver of ~~not~~waive Tenant's default, ~~nor will it or~~ affect any remedy of Landlord by reason of ~~of~~Landlord's remedies for such default.

3.094.07 Security Deposit

Upon execution of this Lease, Tenant ~~must~~ shall deposit with Landlord an amount equal to 10% of the annual Base Rent (i.e., the sum of \$ _____) as security for the Tenant's performance of Tenant's obligations under this Lease. Landlord will ~~investhold~~ the security deposit in an interest bearing account in Landlord's name, subject to Tenant's approval, which will not be unreasonably withheld, and may ~~comingle~~ it with other funds of Landlord. If Tenant ~~is~~ defaults in default with respect to performing any covenant or condition of obligation under this Lease, including but not limited to without limitation the payment of rent, Landlord may apply all or any portion of the security deposit, including interest earned thereon, to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of Tenant's the default. Upon demand, Tenant ~~must upon demand~~ shall deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term of this Lease. If Tenant has fully complied with all of its obligations under this Lease through the covenants or conditions first five years of the Lease, the Term, Landlord will remit to the Tenant any balance of the security deposit, including any without interest on deposit, within ~~thirty~~ 30 days after the expiration or termination of this Lease. On each Annual Rent Adjustment Date and each Five Year Rent Adjustment Date, the principal amount of the first five years of the security deposit will be adjusted to equal ten percent of the annual rent, after making the required adjustment under paragraph 3.01. Within 30 days of notification of the adjustment of the annual rent, Tenant must deposit with Landlord the amount of the increase in the security deposit. Term.

OPTIONAL PARAGRAPH 4. — GRANT OF 08, APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE

4.08 Outfall Line Connection Agreement. Tenant shall connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant shall enter into a Fish Processor Outfall Line Connection Agreement with Landlord, and thereafter at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement. Tenant shall comply with the terms of the Fish Processor Outfall Line Connection Agreement until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date the City of Homer ceases to maintain the outfall line.

ARTICLE 5. SECURITY INTEREST

To secure the performance of Tenant's obligation for payment of obligations under this Lease, including without limitation the obligations to pay rent and all other sums agreed to be paid by Tenant under this Lease, Tenant hereby grants to Landlord a lien and security interest in the following collateral: ("Collateral"): (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies afforded of a secured party under the UCC, regarding the Collateral. Tenant ~~must~~ shall execute, as debtor,

such financing ~~statement or statements~~ and other instruments as Landlord may now or hereafter reasonably request ~~further evidencing said to evidence the security interest-~~ granted by Tenant.

5. ARTICLE 6. USE AND CARE/IMPROVEMENT OF THE PROPERTY

~~56.01.~~ Use

~~Tenant warrants that it has not entered into this Lease for purposes of speculation or for reserve for future uses, but rather to immediately and fully use and develop the Property. Except- Tenant's undertaking to use and improve the Property as otherwise provided herein, described in Tenant's proposal to Landlord is a material inducement to Landlord leasing the Property to Tenant. Tenant must shall improve and use the Property for the following purposes:~~

~~Tenant must in the manner described in Tenant's proposal. Tenant's proposed use of the Property is described in Exhibit D. Tenant shall not use or improve the Property for no any purpose other purposes than as described in Tenant's proposal without the Landlord's written consent, which consent will not be unreasonably withheld. Tenant's use must comply with the zoning code. Tenant must not use the Property for any unlawful purpose and must comply with all applicable statutes, laws and ordinances during the entire term of the lease and any extension or renewal thereof. If Tenant ceases to use the Property for the approved purposes, Landlord may, as one of its remedies, terminate this Lease upon thirty days written notice. Landlord may withhold in its sole discretion.~~

5.02. Care of the Property

6.02 Required Improvements. Tenant shall, at Tenant's sole expense, construct, and at all times during the Term and any Renewal Term keep and maintain as the minimum development on the Property the following improvements ("Required Improvements"):

The Required Improvements also are depicted in the site plan and floor plans in Exhibit E and Exhibit F, respectively. Tenant shall commence construction of the Required Improvements within one year after the date of commencement of the Term, prosecute the construction of the Required Improvements with diligence, and Complete construction within one additional year.

6.03 Construction Prerequisites. Tenant may not commence any construction on the Property, including without limitation construction of the Required Improvements, without first satisfying the following conditions:

(a) Not less than 30 days before commencing construction, Tenant shall submit to Landlord preliminary plans and specifications, and an application for a City of Homer zoning permit, for the construction, showing the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plans, and any other information required for the zoning permit or other required permits. The preliminary plans and specifications are subject to Landlord's approval, which will not be unreasonably withheld. Landlord shall communicate approval or disapproval in the manner provided for notices, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction, notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than five days before commencing construction, Tenant shall deliver to Landlord one complete set of final working plans and specifications as approved by the governmental agencies whose approval is required for Tenant to commence construction. The final working plans and specifications shall conform substantially to the preliminary plans and specifications previously approved by Landlord, subject to changes made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five days before commencing construction, Tenant shall give Landlord written notice of its intent to commence construction, and furnish to Landlord the following:

(1) Proof that all applicable federal, state and local permits required for the construction have been obtained.

(2) For construction, alteration or restoration of Required Improvements, a current certificate of insurance with the coverages specified in Section 9.04(c).

6.04 Extensions of Time for Completion of Required Improvements. Landlord shall grant an extension of the time to Complete the Required Improvements for a period of time equal to the duration of an Excusable Delay, upon Tenant's written request describing the nature of the Excusable Delay, provided Tenant has commenced construction in a timely manner and is proceeding diligently to Complete construction.

6.05 Additional and Replacement Improvements.

(a) Construction of improvements that are not consistent with terms of this Lease is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council.

(b) Subject to Section 6.05(a), upon satisfying the conditions in section 6.03, Tenant at any time may, but is not obligated to, construct new improvements on the Property and demolish, remove, replace, alter, relocate, reconstruct or add to existing improvements; provided that Tenant is not then in default under this Lease and provided further that Tenant continuously maintains on the Property the Required Improvements, or their equivalent of equal or greater value. Once any work is begun, Tenant shall with reasonable diligence prosecute to Completion all construction of improvements, additions, alterations, or other work. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

6.06 As-Built Survey. Within 30 days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant shall provide Landlord with three copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines and pre-existing improvements. Tenant shall accompany the as-built survey with a description of all changes from the approved plans or specifications made during the course of the work.

6.07 Ownership of Improvements. Any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Extended Terms and may be removed or replaced by Tenant, subject, however, to (i) Tenant's obligations concerning the Required Improvements in Section 6.02; and (ii) the designation of improvements in Exhibit D for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term as provided in Section 6.08(a).

6.08 Disposition of Improvements at End of Term.

(a) At the expiration of the Term or Extended Term Tenant shall leave in place on the Property all improvements designated in Exhibit D for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term. Tenant shall leave such improvements intact with all components, including without limitation doors, windows, and plumbing, electrical and mechanical fixtures and systems, in good condition and ready for use or occupancy. Tenant shall execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all of Tenant's interest in such improvements. Except for improvements that Tenant is required to leave on the Property, Tenant shall remove any improvements constructed by Tenant or other occupants of the Property under this Lease before the expiration of the Term or Extended Term.

(b) Tenant shall notify Landlord before commencing the removal of an improvement as required under Section 6.08(a), and coordinate the removal work with Landlord. Once Tenant commences the removal work, Tenant shall prosecute the removal with reasonable diligence to Completion and shall repair all damages to the Property caused by such removal no later than the expiration of the Term or Extended Term. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(c) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under Section 6.08(a), Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

(d) If Landlord terminates this Lease because of a default by Tenant, all improvements on the Property become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects to remove any improvements, Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

ARTICLE 7. CARE AND USE OF THE PROPERTY

7.01 Maintenance of the Property. Tenant at its own cost and expense ~~must~~shall keep the Property and all buildings and improvements that at any time may be situated thereon in ~~good condition and repair during the term of this Lease, ordinary wear and tear excepted. The Property must always be kept by Tenant neat, a clean and free of litter, safe and orderly condition, and in good repair at all times during the Term.~~

5.03. ~~Restoration or Removal~~7.02Repair of Damaged Buildings and Improvements.

(a) ~~Except as provided in paragraph 6~~Section 7.02, (b), in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant ~~must~~shall at Tenant's expense restore the same to good and tenantable condition or ~~must~~shall remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed ~~eighteen (18) months~~ nor may the period of removal exceed ~~forty five (45) days~~.

5.04. ~~Property Returned to Previous Condition~~

~~At the termination of this Lease, Tenant must remove all debris and return the Property clean and in as good order and condition as when the Tenant took possession, failing which Landlord may restore the Property to such condition and Tenant must pay the cost thereof on demand. This paragraph does not require the removal of buildings, improvements, or fixtures upon termination of the Lease, which are governed by other provisions of this Lease.~~

OPTIONAL PROVISION TO BE USED IF TENANT POSSESSES OR OCCUPIES THE PROPERTY PRIOR TO TERM OF THIS LEASE:

~~Tenant acknowledges that it took possession and has continuously occupied the Property prior to the Term of this Lease, commencing on _____. The obligations created by this paragraph and other provisions of this Lease referring to the time of Tenant's possession or occupancy of the Property relate back to that date.~~

5.05. ~~Access Rights of Landlord~~

~~Landlord, its agents, servants, or employees, have the right to enter into and upon the Property and all buildings or improvements situated thereon upon reasonable notice to Tenant and during normal business hours (defined as 9 a.m. to 5 p.m. Monday through Friday, except for holidays as defined in paragraphs 17.06 of this Lease) for the purpose of inspecting the Property and all buildings and improvements situated thereon for compliance with the terms of this Lease.~~

5.06. ~~Nuisances Prohibited~~

~~Tenant must immediately remove from the Property any abandoned or junk vehicles, buildings, improvements, (b) Unless Tenant is excused from the obligation under this paragraph, if the Required Improvements or any part thereof are damaged or destroyed by fire, earthquake, tsunami, or other casualty, rendering the Required Improvements totally or partially inaccessible or unusable, Tenant shall at Tenant's expense restore the Required Improvements to substantially the same condition as they were in~~

immediately before such damage. Tenant shall not be required to restore the Required Improvements under the following circumstances:

(1) If the cost of repairing or restoring the Required Improvements, net of any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the Required Improvements, Tenant may terminate this Lease by giving notice to Landlord of Tenant's election to terminate within 15 days after determining the restoration cost and replacement cost, and this Lease shall terminate as of the date of such notice.

(2) If the repair or restoration of the Required Improvements would be contrary to law, either party may terminate this Lease immediately by giving notice to the other party.

(3) If any damage or casualty to the Required Improvements occurs within three years before the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

Nothing in this paragraph relieves Tenant of the obligation to surrender the Property upon the expiration or earlier termination of the Term in the condition required by Section 3.03.

(c) Under no circumstance shall Landlord be under any obligation to use or advance any of its own funds to restore any Required Improvements.

7.03 Nuisances Prohibited. Tenant at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures. ~~Tenant must not permit any nuisance or public nuisance to exist or to be created or maintained on the Property; and litter, rubbish or trash.~~ Tenant agrees that any nuisance or public nuisance, under the common law, statute, or as defined by the Homer City Code, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Homer, may, after fifteen (15) shall not use the Property in any manner that will constitute waste or a nuisance. Landlord, at Tenant's expense and without any liability to Tenant, may remove or abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after 15 days written notice to Tenant, or after four (4) hours notice to Tenant in writing, by telephone, facsimile, or in person to Tenant if Landlord makes a written finding that such ~~nuisance or public nuisance constitutes a threat of removal or abatement is required to prevent imminent harm to public health, safety or welfare, be removed or abated by Landlord without Tenant's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefor.~~ All. Tenant shall pay Landlord all the costs of such removal ~~must be paid by Tenant to Landlord,~~ plus interest at the Default Rate, as additional rent under the terms of this Lease. This paragraph may section does not be construed as any limitation on limit or waive any other legal rights or remedies available to the City of Homer to abate any nuisance or remedy available to prosecute any the City of Homer to abate any nuisance or for the violation of the Homer City Code.

5.07-7.04 Compliance with Laws

~~Tenant must.~~ Tenant's improvement and use of the Property shall comply with all applicable laws, governmental statutes, ordinances, rules and regulations, including without limitation the City of ~~duly constituted public authorities~~ Homer Zoning Code and all applicable building codes, now or hereafter in any manner affecting Tenant's activities on the Property or any buildings or other improvements that may be situated thereon ~~effect~~.

5.08-7.05 Liens. Except as provided in Article 13, Tenant may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, Tenant shall cause the same to be removed; provided that Tenant may in good faith and at Tenant's own expense contest the validity of any such lien without subjecting the Property to foreclosure, and in the case of a mechanic's or materialman's lien, if Tenant has furnished the bond required in A.S. 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the Property from the effect of such a lien claim). Tenant shall indemnify and save Landlord harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by Landlord in negotiating, settling, defending, or otherwise protecting against such lien and shall, in the event of a judgment of foreclosure of the lien, cause the same to be discharged and removed prior to any attempt at execution of such judgment.

7.06 Radio Interference

At, Upon Landlord's request, ~~the Tenant must~~ shall discontinue the use of ~~any machine or device on~~ the Property of any source of electromagnetic radiation that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

5.09-7.07 Signs

~~.~~ Tenant may erect signs ~~upon~~ on the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

5.10-7.08 Garbage Disposal

~~.~~ Tenant is ~~responsible for removing~~ shall keep any garbage, trash, rubbish or other refuse in industry standard containers until removed, and cause all garbage generated by ~~Tenant's business, trash, rubbish or other refuse on~~ the Property to be collected and transported to a Kenai Peninsula Borough solid waste facility or transfer station at least once a week. Tenant ~~must~~ may not use the place garbage, trash, rubbish or other refuse from the Property in Landlord's Homer Spit garbage disposal facilities.

7.09 Access Rights of Landlord. Landlord's agents and employees shall have the right, but not the obligation, to enter the Property at all reasonable times to inspect the use and condition of the Property; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Property.

OPTIONAL PARAGRAPHS 5.11 AND 5.12 PARAGRAPH 7. APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE AND FOR USE OF FISH DOCK

5.11 ~~Outfall Line Connection Agreement~~

~~Tenant must connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant must enter into Fish Processor Outfall Line Connection Agreement with Landlord. Tenant must maintain such an agreement in force for so long as the City of Homer continues to maintain the outfall line. Tenant must at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement.~~

5.127. ~~Fish Dock Use Permit~~

~~Before using the City of Homer Fish Dock, Tenant must~~shall ~~obtain from the Landlord a City of Homer Fish Dock Use Permit. Tenant must~~shall ~~continue to have a current Fish Dock Use Permit in force for so long as Tenant intends~~until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use the Fish Dock.

6. ~~IMPROVEMENTS~~

6.01. ~~Ownership of Buildings and Improvements~~

~~(a) Any and all buildings, fixtures, and improvements of any nature whatsoever constructed or maintained on~~ OPTIONAL PARAGRAPH 7. APPLICABLE FOR USE OF OTHER DOCKS

7. Terminal Use Permit. Before using City of Homer Docks other than the Property by Fish Dock, Tenant will be and remain shall obtain a City of Homer Terminal Use Permit. Tenant shall continue to have a current Terminal Use Permit in force until the property earlier to occur of Tenant at all times during the Term and any Renewal Terms and may be removed or replaced by Tenant, subject, however, to the obligations concerning the Required Improvements set forth in paragraph 6.02.

~~(b) Upon (i) the expiration or earlier termination of the Lease, all buildings, improvements, and fixtures must remain upon the Property and must be surrendered with the Property to Landlord, unless Landlord elects to require the removal of any or all of such property. If Landlord requires that buildings, improvements, and fixtures, or any part of them, be removed, Tenant must remove the same at its expense and repair or pay Landlord the cost of repairing any damage resulting from such removal. Approximately 60 days prior to the Tenant's scheduled vacation of the Property, Landlord and Tenant will meet and Landlord will advise Tenant what items must be removed and what items must remain.~~

6.02. ~~Required Improvements~~

~~(a) Tenant must, at Tenant's sole expense, construct certain Required improvements on the Property. Tenant must at all times during the Term and any Extended Term and any Renewal Term keep and maintain the Required Improvements, or their equivalent of equal or greater value, as the minimum development on the Property. The Required Improvements are:~~

~~_____ (iii) Not less than five days prior to the commencement of any construction, Tenant must give written notice of intent to commence construction and furnish to Landlord proof that all applicable federal, state, and local permits have been obtained or applications therefor have been submitted to the appropriate governmental agency.~~

~~_____ (iv) Not less than five days prior to the commencement of any construction, Tenant must furnish to Landlord current certificates of insurance in the amounts and for the purposes specified in paragraphs 11.01 through 11.04 of this Lease.~~

~~_____ (v) Not less than five days prior to the commencement of any construction, Tenant must deliver to Landlord satisfactory proof that workers' compensation insurance has been procured to cover all persons employed in connection with the construction. Upon notice to Tenant of any deficiency in workers' compensation coverage, such deficiency must be cured immediately, and no work will be performed on the project until Tenant has provided Landlord satisfactory proof that proper workers' compensation insurance is in place.~~

~~(b) On Completion of the improvements, Tenant must give Landlord notice of all changes in plans or specifications made during the course of the work. Landlord acknowledges that it is common practice in the construction industry to make numerous changes during the course of construction on substantial projects. Changes that do not substantially alter plans and specifications previously approved by Landlord do not constitute a breach of Tenant's obligations, but Tenant must nevertheless give Landlord notice of such changes.~~

~~(c) At any time and from time to time, Tenant may, but is not obligated to, construct or otherwise make new improvements on any part or all of the Property and to demolish, remove, replace, alter, relocate, reconstruct, or add to existing improvements in whole or in part, provided that Tenant is not then in default under any condition or provision of this Lease and provided further the Required Improvements, or their equivalent of equal or greater value, are always maintained on the Property. All salvage will belong to Tenant. Once any work is begun, Tenant must with reasonable diligence prosecute to completion all construction of improvements, additions, alterations, or other work.~~

6.04. As Built Survey

~~Within thirty (30) days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant must provide Landlord with three (3) copies of an as built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines, and pre-existing improvements.~~

6.05 Definitions

~~As used in this Article 6 of this Lease, the following terms and phrases will have the meanings given here, unless the context requires otherwise:~~

~~"Complete" and "Completion" mean that construction is finished and the improvement is fully operational and ready for occupancy or use for its intended~~

purpose, including, but not limited to, the receipt of any applicable certificate of occupancy and other applicable permits, licenses, certificates, or inspection reports necessary to the improvement's legally authorized use. The existence of a contractor's punch list of items to be performed to finish the project will not prevent the construction from being Complete if the improvement otherwise meets the requirements of this definition.

"Excusable Delay" means delay due to strikes, act of God, inability to obtain labor or materials, governmental requirements, such as laws and requirements of any governmental authority having jurisdiction over the improvements or over any permits or licenses needed for Tenant's proposed operations, removal of Hazardous Materials discovered at any time after the Commencement Date, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

6.06—Extensions of Time for Completion of Required Improvements

An extension of the time to Complete the Required Improvements will be granted for the period of time of any Excusable Delay (as defined in paragraph 6.05); provided Tenant has commenced construction in a timely manner and is proceeding diligently to complete construction.

7.—RESERVED

ARTICLE 8.—RESTRICTIONS ON TRANSFER

8.01. Consent Required for Assignment or Sublease Without Consent Generally Prohibited

~~Tenant must~~shall not ~~voluntarily~~ assign, ~~encumber~~ or sublease its interest in this Lease or in the Property without first obtaining ~~Landlord's consent~~, the written consent of the Council, which will not be withheld unreasonably. Any assignment, ~~encumbrance~~ or sublease without ~~Landlord's~~ the consent of the Council will be voidable and, at Landlord's election, will constitute a default. ~~Any Tenant shall request for Landlord's consent must be made to Landlord of the Council in writing at least thirty (30) days prior to the proposed effective date of the proposed assignment, encumbrance or sublease, accompanied by a copy of the proposed assignment or sublease. Tenant shall be assessed additional rent, as approved by the Council, upon approval of a sublease of the Property, but not upon a sublease of a building or other structure on the Property. No consent to any assignment, encumbrance or sublease will constitute a further waiver of the provisions of this paragraph. Anywaives Tenant's obligation to obtain Landlord's consent to any subsequent assignment effected pursuant to this paragraph 8.01 must~~ or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder. ~~An assignment will, and shall not release the Tenant from liability hereunder unless Landlord specifically so provided provides in writing and approved by Landlord. Tenant must promptly deliver to Landlord a copy of any instrument or must promptly notify Landlord of any unwritten agreement, that assigns, encumbers or subleases the Property. Landlord's consent to assign, encumber or sublease the Property will not be withheld unreasonably.~~

8.02. ~~Change of Ownership~~

Events that Constitute an Assignment. If Tenant is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of ~~any partner(s) one or member(s) more partners or members~~ owning ~~twenty-five percent (25%)~~ or more of the entity, or the dissolution of the entity, will be deemed a ~~voluntary~~ assignment ~~under paragraph~~ subject to Section 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of ~~twenty-five percent (25%)~~ of the value of the assets of Tenant, will be deemed a ~~voluntary~~ assignment ~~under paragraph~~ subject to Section 8.01. ~~The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors. As to;~~ provided that if Tenant is a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such a Tenant corporation will not be deemed to be a voluntary assignment. Tenant will not constitute an assignment subject to Section 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 25% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors.

8.03. ~~Costs of Landlord's Consent to be Borne by Tenant~~

~~Tenant must pay.~~ As a condition to Landlord's consent to any assignment or sublease under section 8.01, Tenant shall pay Landlord's reasonable costs, including without limitation attorney's fees, and the expenses of due diligence inquiries, incurred by Landlord in connection with any request by Tenant for ~~Landlord to~~ Landlord's consent to ~~any~~ the assignment or ~~subletting by Tenant~~ sublease.

~~[ALTERNATIVE 1 - Optional Additional Rent Provisions for Sublease.]~~

8.04. ~~Additional Rent For Sublease.~~

~~If Landlord gives its written consent,~~ ARTICLE 9. LIABILITY,
INDEMNITY AND INSURANCE

9.01 Limitation of Landlord Liability. Landlord, its officers and employees shall not be liable to Tenant for any damage to the Property or the buildings and improvements thereon, or for death or injury of any person or damage to any property, from any cause; however, this provision shall not affect the liability of Landlord, its officers and employees on any claim to the extent the claim arises from their negligence or willful misconduct.

9.02 Indemnity Generally. Tenant ~~may sublet~~ shall indemnify, defend, and hold harmless Landlord, its officers and employees from all or a portion of the Property. If any rent accrues to Tenant as the result of such sublease that exceeds the pro rata share of rent then being paid by Tenant for the portion claims arising from death or injury of any person or damage to any property occurring in or about the Property being sublet, then 25% of such excess rent must be paid by Tenant to Landlord as additional rent.

~~[ALTERNATIVE 2 — Optional Additional Rent Provisions for Sublease or Assignment. Note subparagraph (d)'s reference to the optional Article 14. Alternative 1 is favored as more workable than Alternative 2.]~~

~~8.04. Additional Rent For Certain Transfers~~

~~(a) Except as provided in subparagraph 8.04(d), if Tenant subleases, assigns, or otherwise transfers to another for valuable consideration all or substantially all of its interest in this Lease or the Property or the buildings located on the Property, for any length of time, then Tenant shall pay to Landlord additional rent. The additional rent will equal 25% of the consideration payable for such sublease, assignment, or transfer of the Lease or Property, or both.~~

~~(b) If the consideration paid for the sublease, assignment, or transfer of the Lease or Property is not separately stated, or if Landlord in good faith concludes that the separately stated consideration is unreasonably low, then the consideration will be deemed to be an amount as calculated in; however, this subparagraph. In such case the consideration for the sublease, assignment, or transfer of the Lease or Property, or both, will be deemed to be a proportion of the total consideration that equals the proportion that the fair market value of the Property (as if owned in fee simple)(including utility improvements, regardless of who installed them) bears to the fair market value of the Property plus the Tenant's buildings and Tenant's other real property improvements on the Property. The fair market values will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market values will be conclusive between the parties. The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease.~~

~~(c) Payment of the additional rent is due at the time the Landlord gives written consent to the sublease, assignment, or transfer, and such consent is required prior to any such sublease, assignment, or transfer. If the consideration for the sublease, assignment, or transfer is payable in installments, then the stream of installment payments will be discounted to present value at 6.0% for purposes of computing the additional rent due.~~

~~(d) The requirement of subparagraph 8.04(a) to pay additional rent does provision shall not apply to (i) a sublease of a commercial, storage, or office rental unit made in the normal course of Tenant's leasing business; provided such sublease is for substantially less than all of the Property or building(s), and is for an authorized purpose described in paragraph 5.01, or (ii) an assignment or other conveyance of Tenant's interest in the Lease or the Property solely for collateral purposes, provided such assignment or other conveyance qualifies as a Permitted Mortgage under Article 14 of this Lease.~~

~~9. PROHIBITION OF LIENS~~

~~Tenant must not suffer or permit any liens, including without limitation, mechanic's or materialmen's liens, to be recorded against the Property. If any such liens are recorded against the Property, Tenant must cause the same to be removed, or, in the alternative, if Tenant in good faith desires to contest the same, Tenant will be privileged to do so, but in such case Tenant hereby agrees to indemnify and save Landlord harmless from all liability for~~

~~damages occasioned thereby and must, in the event of a judgment or foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this Lease may be construed to be a waiver of the provisions of AS 09.38.015(c), as may be amended from time to time.~~

10. — INDEMNITY

10.01. Indemnity Generally

~~Tenant agrees to protect, indemnify and hold Landlord harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on the Property during the Term or during Tenant's possession of the Property, or arising out of or relating to the Tenant's use of the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorneys fees, incidental to the defense of and by Landlord therefrom, excepting only liability arising any claim to the extent the claim arises from the sole negligence of Landlord. If any action or proceeding is brought against Landlord by reason of any such occurrences, Landlord will promptly notify Tenant in writing of such action or proceeding or willful misconduct of Landlord, its officers and employees.~~

10.02.9.03 Indemnity Forfor Emergency Service Costs

~~Without limiting the generality of paragraph 10.01 Section 9.02, in the event of a major fire or other emergency, Tenant ~~must~~shall reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant ~~or~~ the Property, or ~~elsewhere~~ if at any other location where the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this paragraphsection, a major fire or other emergency is one that requires more than five hours of effort by the City of Homer Fire Department of Public Safety or its successors.~~

11. — INSURANCE

11.01. Liability 9.04 Insurance Requirements.

~~(a) Tenant must procure and at all times maintain, at its expense, public liability insurance covering Tenant's operations and the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence to protect against liability for bodily injury, death or property damage that might arise from the construction, occupancy or use of the Property and the operations conducted on, from, or related to it. Such insurance must include coverage for comprehensive general liability; bodily injury and property damage liability; premises and operations liability, including underground, products and completed operations; broad form property damage liability; blanket contractual liability; personal injury liability; and comprehensive automobile liability including without limitation bodily injury and property damage and all owned, hired, and non-owned automobiles. Such insurance policy or policies must be additionally endorsed to provide sudden and accidental pollution coverage for claims or losses arising out of activities or events taking place on the Property or arising out of Tenant's operations, wherever conducted in the City of Homer.~~

~~(b) Tenant must procure and at all times maintain, at its expense, environmental~~
(a) Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force at the times provided in this section the following policies of insurance with a carrier or carriers reasonably satisfactory to Landlord

and authorized to conduct business in the state of Alaska. Specific limits shown shall be the minimum acceptable limits, and if Tenant's policy contains higher limits, Landlord shall be entitled to coverage to the extent of such higher limits.

(b) Tenant shall maintain in force at all times during the Term the following policies of insurance:

(1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance also shall be endorsed to provide contractual liability insuring Tenant's obligations to indemnify under this Lease.

(2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.

(3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.

(4) Environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and, gradual pollution coverage. Such coverage must also include, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. Tenant must maintain, with coverage limits of liability of ONE MILLION DOLLARS (\$not less than \$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must Coverage shall extend to loss arising as a result of: (i) liability of others assumed by Tenant under contract or agreement; (ii) clean up operations; (iii) activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which Tenant performs actions; and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

(5) Property insurance covering the Required Improvements described in Section 6.02 in an amount not less than full replacement cost of the Required Improvements. The policy shall include boiler and machinery coverage.

(c) During construction of the Required Improvements and during any subsequent alteration or restoration of the Required Improvements at a cost in excess of \$250,000 per job, Tenant shall maintain builder's risk insurance in an amount equal to the completed value of the project.

(d) Tenant shall furnish Landlord with certificates evidencing the required insurance not later than the date as of which this Lease requires the insurance to be in effect. The certificates of insurance shall be attached hereto as Exhibit G. The certificates and the insurance policies required by this Section shall contain a provision that coverages afforded

under the policies will not be cancelled or allowed to expire, and limits of liability will not be reduced, without at least 30 days' prior written notice to Landlord. Landlord shall be named as an additional insured under all policies of liability insurance required of Tenant. Landlord's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Lease. Tenant also shall grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord such authorizations substantially in the form of Exhibit H as Landlord may request.

[~~ALTERNATIVE 11.019.04(b)(4)~~ — Optional provision waiving environmental insurance based on the authorized uses of ~~paragraph 5~~Section 6.01.]

~~_____ (b)(4) Based on the authorized uses of the Property stated in paragraph 5~~Section 6.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from the Landlord, for purposes other than those stated in ~~paragraph 5~~Section 6.01, then if Landlord so elects, and within ~~ten~~10 days after Landlord gives notice of such election, Tenant ~~must~~shall procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and, gradual pollution coverage. ~~Such coverage must also include, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. Tenant must maintain, with coverage limits of liability in the amount stated by Landlord in its notice to Tenant, but in no event not less than ONE MILLION DOLLARS (\$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must~~ Coverage shall extend to loss arising as a result of: (i) ~~liability of others assumed by Tenant under contract or agreement;~~ (ii) ~~clean up operations;~~ (iii) ~~activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which Tenant performs actions;~~ and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

~~11.02. Worker's Compensation and Employer's Liability Insurance~~

~~Tenant must procure and at all times during the term of this Lease maintain, at its expense, Worker's Compensation Insurance as required by statute and Employer's Liability Insurance.~~

~~11.03. Named Insured, Notice to Landlord, and Waiver of Subrogation~~

~~All insurance policies required to be maintained by Tenant under paragraph 11.01 must name Landlord, and its officers, employees and agents, as additional insured, but they must not contain any exclusion from coverage for Tenant's liability for damages or loss incurred by Landlord because of Landlord's status as an additional insured. All policies issued under paragraph 11.01 must contain a waiver of any subrogation rights any insurer might have against Landlord. All policies issued under paragraphs 11.01 or 11.02 must contain an agreement by the insurers to provide at least thirty (30) days prior written notice to Landlord of cancellation, expiration or substantial changes in policy conditions and coverage.~~

~~Tenant must furnish insurance certificates and copies of all such insurance policies to Landlord promptly after the issuance thereof.~~

11.04. Fire and Extended Coverage Insurance; Builder's Risk Insurance

~~(a) Except as provided in subparagraphs 11.04(b) and (c), Tenant may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover buildings, equipment, inventory, fixtures, personal property and improvements made to the Property by Tenant subsequent to Tenant's taking possession of the Property under this Lease.~~

~~(b) Tenant must procure and at all times maintain, in its own name and at its expense, physical property damage insurance covering the Required Improvements described in paragraph 6.02 in an amount not less than 90% of the replacement cost of the Required Improvements. Such insurance must afford coverage for damages resulting from, at a minimum (i) fire, (ii) perils covered by extended coverage insurance, and (iii) explosion of steam and pressure boilers and similar apparatus located on the Property.~~

~~(c) During construction of the Required Improvements and during any subsequent restorations, alterations, or changes in the Required Improvements at a cost in excess of \$250,000 per job, Tenant must procure and maintain builder's all risk insurance in an amount reasonably satisfactory to Landlord.~~

11.05 Required Endorsements and Authorization

~~In addition to, and without limiting the requirements of paragraphs 11.01 through 11.04, Tenant must at all times maintain and give to the Landlord, for Landlord's benefit, current insurance endorsements substantially in the form of Exhibit E and Exhibit F. Tenant must also grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord an authorization substantially in the form of Exhibit G. Tenant must, from time to time, execute and deliver to Landlord such additional authorizations (Exhibit G) that Landlord may request.~~

12. ARTICLE 10. ENVIRONMENTAL MATTERS

10.01 Use of Hazardous Substances. Tenant shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except as is necessary or useful to Tenant's authorized uses of the Property stated in Section 6.01, and only in compliance with all applicable Environmental Laws. Any Hazardous Substance permitted on the Property as provided in this section, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all applicable Environmental Laws, and handled only by properly trained personnel.

10.02 Prevention of Releases. Tenant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant or any of its agents, employees, contractors, tenants, subtenants, invitees or other users or occupants of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

10.03 Compliance with Environmental Laws. Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including

without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

10.04 Notice. Tenant shall promptly give Landlord (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government agency regarding Hazardous Substances on the Property or Hazardous Substances which affect or will affect the Property; (ii) written notice of any knowledge or information Tenant obtains regarding Hazardous Substances or losses incurred or expected to be incurred by Tenant or any government agency to study, assess, contain or remove any Hazardous Substances on or near the Property, and (iii) written notice of any knowledge or information Tenant obtains regarding the release or discovery of Hazardous Substances on the Property.

10.05 Remedial Action. If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any Hazardous Substance (i) gives rise to liability (including but not limited to a response action, remedial action or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Tenant shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

10.06 Indemnification. Subject to section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property. The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within 10 days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that

no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

10.07 Survival of Obligations. The obligations of Tenant in this Article, including without limitation the indemnity provided for in Section 10.06, are separate and distinct obligations from Tenant's obligations otherwise provided for herein and shall continue in effect after the expiration of the Term and any Renewal Term.

10.08 Claims against Third Parties. Nothing in this Article shall prejudice or impair the rights or claims of Tenant against any person other than Landlord with respect to the presence of Hazardous Substances as set forth above.

10.09 Extent of Tenant's Obligations. Tenant's obligations under this Article apply only to acts, omissions or conditions that (i) occur in whole or in part during the Term or any Extended Term or during any time of Tenant's possession or occupancy of the Property prior to or after the Term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors.

10.10 Inspection at Expiration of Term. Within 90 days before the expiration of the Term or final Extended Term, Tenant shall at its own expense obtain a Phase I environmental inspection of the Property, and conduct any further inspection, including without limitation test holes, that is indicated by the results of the Phase I inspection. Tenant, at its own expense, shall remediate any contamination of the Property that is revealed by the inspections and that is Tenant's responsibility under this Article.

ARTICLE 11. CONDEMNATION

12.01. Condemnation

~~In the event~~**11.01 Article Determines Parties' Rights and Obligations.** If any entity having the power of eminent domain exercises that power to condemn the Property, or any part thereof or interest therein, ~~is taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred~~ or acquires the Property, or any part thereof or interest therein by a sale or transfer in lieu of condemnation ~~to any authority entitled to exercise the power of eminent domain~~, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article ~~12~~.

~~12.11.02.~~ Total Taking

~~If all of the Property is taken or so transferred, this Lease and all the right title and of Tenant's interest thereunder of Tenant will cease~~ terminate on the date title to the Property vests in the condemning authority.

~~12.11.03.~~ Partial Taking—Termination of Lease

~~In the event.~~ If the taking or transfer of part of the Property ~~leaves~~ causes the remainder of the Property in such location, or in such form, shape or reduced size, or so

~~inaccessible as to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, then this Lease and all of the right, title and Tenant's interest thereunder of Tenant will cease/terminate on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession.~~

12.04. ~~Partial Taking~~ Continuation of Lease

~~In the event, If the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively and practicably usable in the opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate and end as to the portion of the Property so taken or transferred as of on the date title to such portion the Property vests in the condemning authority, and the condemning authority enters into possession, but will continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease, and the Base Rent will abate for in the proportion that the portion of the Property taken in the proportion that such portion bears to all of the Property.~~

12.05.11.04 Compensation

~~If any compensation is payable as a result of eminent domain proceedings or a transfer in lieu thereof, Landlord and Tenant may each may make a claim against the condemning or taking authority for the amount of any just compensation due to each of them, respectively. it. Tenant must/shall make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that in the event of if a single award to Landlord that includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.~~

13. — ARTICLE 12. DEFAULT

13.12.01. — Events of Default

~~Each of the following events will be deemed/shall constitute an event of default by the Tenant under this Lease and:~~

~~(a breach of the terms, covenants and conditions) The failure of this Lease:~~

~~(a) A default in the payment of the rent and additional sums Tenant to pay rent or any other sum of money due under this Lease, or any part thereof, for a period of ten (within 10) days from/after the due date for the payment of such rent or additional sums.~~

~~(b) A default in the performance of any other term, covenant or condition on the part of the Tenant to be kept, performed or observed for a period of fifteen (15) days after Landlord gives to Tenant a written notice specifying the particular default or defaults; provided, however, that any default on the part of Tenant in the performance of work or acts required to be done, or conditions to be modified, will be deemed to be cured if steps are taken promptly (and in no event later than thirty (30) days after such notice has been given)~~

by Tenant to rectify the same and are prosecuted to completion with diligence and continuity

The failure of Tenant to perform or observe any covenant or condition of this Lease, other than a default in the payment of money described in Section 12.01(a), which is not cured within 30 days after notice thereof from Landlord to Tenant, unless the default is of a kind that cannot be cured within such 30-day period, in which case no event of default shall be declared so long as Tenant shall commence the curing of the default within such 30 day period and thereafter shall diligently and continuously prosecute the curing of same.

(c) ~~—~~ The use of the Property or buildings and improvements thereon for purposes other than those ~~enumerated~~permitted herein, to which Landlord has not given its written consent.

(d) ~~The abandonment of the Property by Tenant. If the Property is deserted or Tenant does not use the Property for the purposes stated in paragraph 5.01 for 12 months or more, it will be deemed abandoned, even if Tenant continues to pay rent. The commencement of a case under any chapter of the federal Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, unless the petition is filed or case commenced by a party other than Tenant and is withdrawn or dismissed within ninety (90) days after the date of its filing.~~

~~(e) Tenant making an assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver, or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the filing of any such petition or application, or the commencing of any such proceeding against it, in which an order for relief is entered or that remains undismissed for a period of 30 days or more; or Tenant by any act or omission indicating its consent to, approval of, or acquiescence in any such petition, application, or proceeding or order for relief or the appointment of a custodian, receiver, or any trustee for it or any substantial part of any of its properties, or the suffering of any such custodianship, receivership, or trusteeship to continue undischarged for a period of 30 days or more.~~

(f) ~~Tenant being generally unable to pay its debts as such debts become due.~~

~~(g) Tenant having concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay, or defraud its creditors or any of them, or making or suffering a transfer of any of its property that may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint that is not vacated within 30 days from the date thereof.~~

13(e) The admission in writing by Tenant of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of Tenant, unless such appointment shall be vacated within 10 days after its entry; Tenant making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of Tenant.

12.02. Landlord's Remedies

~~In.~~ Upon the occurrence of an event of any default by Tenant as recited in paragraph 13.01 of this Lease, Landlord ~~will have~~ has all of the ~~below enumerated rights and following remedies~~, all in addition to any ~~rights and other~~ remedies that Landlord may be given by statute, common law or otherwise. ~~All rights of Landlord are cumulative, and none will exclude any other right or remedy. Landlord's rights and remedies include the following have at law or in equity:~~

(a) ~~Landlord may declare the term of Terminate this lease ended Lease by written notice to Tenant. Upon such termination of this Lease, upon which Tenant must~~ shall surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove Tenant and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) ~~Landlord may by~~ By written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. ~~Upon such termination of Tenant's right to possession, upon which~~ Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are ~~enumerated in paragraph 13.02 described~~ Section 12.02(a).

(c) ~~Landlord may~~ Subject to Section 12.01(e), relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term or ~~Renewal~~ Extended Term, as applicable, for any sum that Landlord may deem reasonable, ~~except as provided in (e) of this paragraph.~~

(d) ~~Landlord may collect~~ Collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover, ~~whether this Lease be terminated or not, from Tenant, damages provided for below consisting of items (i), and (ii), or, at Landlord's election in lieu of (ii), item (iii):~~

~~(i) with or without terminating this Lease, actual attorney's fees and other expenses incurred by Landlord by reason of the breach of Tenant's default by Tenant; and, and elect to recover damages described under either (1) or (2):~~

~~(ii)-1) from time to time, an amount equal to the amount sum of all rent Base Rent and additional other sums reserved under this Lease that have become due and remain unpaid, less the net rent, if any, collected by Landlord on reletting the Property, that shall be due and payable by Tenant to Landlord on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days Tenant must pay to Landlord the amount of deficiency then existing. Such net rent collected on reletting by Landlord will be computed by deducting from the gross rent collected all Property reduced by the amount of all expenses incurred by Landlord in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of~~

~~renovating or remodeling-reletting the Property or the buildings or improvements thereon, provided, however, Landlord must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of Tenant under this Lease or else Landlord will not have access to the remedy set out in this subparagraph 13.02(e)(ii); or~~

~~(iii) an amount to be due(2) immediately on breach, upon Tenant's default, an amount equal to the difference between the rentBase Rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable will be remainder of the Term or Renewal Term, discounted to the date of such breach at default at a rate per annum equal to the rate of eight percent (8%) per yearat which Landlord could borrow funds for the same period as of the date of such default.~~

~~(f) Reentry or reletting of the Property, or any part thereof, willshall not be deemed a termination of-terminate this Lease, unless expressly declared to be seaccompanied by LandlordLandlord's written notice of termination to Tenant.~~

~~(g) If this Lease is deemed terminated, Tenant's liabilities will survive and Tenant will be liable for damages as provided in this paragraph 13.02.~~

1312.03. Assignment of Rents to Landlord

~~Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under thethis Lease, all rent from any subletting of all or a part of the Property-as permitted by this Lease-, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligationobligations under this Lease, except that, Tenant has the right to collect such rent until the occurrence of an actevent of default by Tenant, Tenant will have the right to collect such rent.~~

14. — RESERVED

OPTIONAL ARTICLE 14

(to be used when the lease needs to be "mortgageable")

14. — 13. LEASEHOLD MORTGAGES

1413.01. — Definitions

As used in this article 14, the following capitalized terms will Mortgage of Leasehold Interest. Tenant shall have the meanings set forth below:

"Indebtedness" means the amount that is outstanding at any given time under a Permitted Mortgage.

"Landlord's Estate" means right at any time, and from time to time, to subject the leasehold estate and any or all of Landlord's right, title and interest in its fee estate in the

~~Property, its reversionary interest in Tenant's improvements under this Lease, and all other rental and benefits due Landlord hereunder.~~

~~"Mortgagee" means the holder or beneficiary of any Permitted Mortgage.~~

~~"Permitted Mortgage" means collectively any deed(s) situated on the Property to one or more deeds of trust, mortgage(s), mortgages, and other collateral security instruments serving as security for a construction loan or permanent loans, or both, (otherwise permitted to be incurred hereunder) that encumber Tenant's Estate, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) of any Permitted Mortgage; provided, however in no event may any such Permitted Mortgage encumber Landlord's Estate as security for a loan or loans or other obligation of Tenant (each a "Leasehold Mortgage"), subject to the remainder of this Article 13.~~

~~"Tenant's Estate" means all of Tenant's right, title and interest in its leasehold estate in the Property, its fee estate in the improvements, and its interest under this Lease.~~

~~14.02. Encumbrance of Tenant's Estate~~

~~Tenant will have the right at any time and from time to time to encumber all or any portion of Tenant's Estate pursuant to one or more Permitted Mortgages, provided Tenant must:~~

~~—— (a) — promptly following its receipt of any notice of default or other notice of the acceleration of the maturity of a Permitted Mortgage from a Mortgagee, deliver a true and correct copy thereof to Landlord; and~~

~~—— (b) — refrain from encumbering or purporting to encumber, by means of a Permitted Mortgage or otherwise, Landlord's Estate.~~

~~14.03. Conditions For Mortgagee Protections~~

~~Provided that any Mortgagee first provides Landlord with a conformed copy of a Permitted Mortgage that contains the name and address of such Mortgagee, and provided such Permitted Mortgage was executed in compliance with the terms hereof, Landlord hereby covenants and agrees to faithfully perform and comply with the provisions of paragraph 14.04 below with respect to such Permitted Mortgage.~~

~~14.04. Mortgagee Protections~~

~~Subject to compliance with the provisions of paragraphs 14.01 through 14.03 above, Landlord agrees as follows:~~

~~(a) No 13.02 Subordinate to Lease. The Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to all the terms of this Lease, and to all rights and interests of Landlord except as otherwise provided in this Lease.~~

~~13.03 Notice to Landlord. Tenant shall give Landlord notice before executing each Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Landlord's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the~~

mortgagee shall become a Qualified Mortgagee as that term is used in this Lease. Tenant also shall deliver to Landlord a true and correct copy of any notice from a Qualified Mortgagee of default or acceleration of the maturity of the note secured by a Leasehold Mortgage promptly following Tenant's receipt thereof.

13.04 Modification or Termination. No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of ~~article 14 of this Lease~~Article 11 will be binding upon a Qualified Mortgagee without its prior written consent.

(b) — Notices. 13.05 Notice to Qualified Mortgagee.

~~(a) If Landlord gives any notice, demand, election or other communication that may adversely affect the security for a Permitted Mortgage, hereunder to Tenant, including without limitation a notice of an event of default hereunder (hereinafter collectively "Notices"), to Tenant, Landlord must~~shall give a copy of the notice to each such Notice to the Qualified Mortgagee at the address previously designated by it. Such copies of Notices will be sent by Landlord and deemed received as described in article 17 of this Lease. No Notice given by Landlord to Tenant will be binding upon or affect said Mortgagee unless a copy of said Notice is given to it pursuant to this article. In the case of an assignment of such Permitted Mortgage or change in address of such

~~(b) If a Qualified Mortgagee, said assignee or changes its address or assigns the Leasehold Mortgage, the Qualified Mortgagee, by written notice to Landlord, or assignee may change the address to which such copies of Notices are to notices hereunder shall be sent by written notice to Landlord. Landlord will not be bound to recognize any assignment of such Permitted a Qualified Mortgage unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such the assignee will be deemed to be the Qualified Mortgagee hereunder with respect to the Permitted Mortgage being assigned. Leasehold Mortgage.~~

~~(c) If such Permitted a Leasehold Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Landlord Landlord shall not be required to give Notices or copies thereof notices to said the Qualified Mortgagee will be binding upon Landlord of the Leasehold Mortgage unless and until all of said the holders designate in writing one of their number to receive all such Notices and copies thereof and have given to of the Leasehold Mortgage give Landlord an original executed counterpart of such a written designation of one of their number to receive notices hereunder. Notice given to the one so designated is effective as notice to all them.~~

(e) 13.06 Performance of Covenants. The Tenant Obligations.

~~(a) A Qualified Mortgagee may perform any term, covenant or condition obligation of Tenant and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord will~~shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Qualified Mortgagee will not thereby be subrogated to the rights of Landlord.

~~(d) — Delegation to Mortgagee. b)~~ Tenant may delegate irrevocably to thea Qualified Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be binding upon Landlord unless and until either

Tenant or the Qualified Mortgagee gives Landlord a true copy of a written instrument effecting such delegation. ~~Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon Landlord of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this article, together with written notice specifying the provisions therein that delegate such authority to said Mortgagee, will be sufficient to give Landlord notice of such delegation.~~

~~(e) — Default by c) If Tenant. In the event of an event of default by Tenant defaults in the payment of any monetary obligation hereunder, Landlord agreeesshall not to terminate this Lease unless and until Landlord provides written notice of such event of default to anyeach Qualified Mortgagee and suchno Qualified Mortgagee fails to curecures such event of default within ten (10) business days followingafter the expiration of any grace or cure periods granted Tenant herein. In the event of an event of default byIf Tenant defaults in the performance or observance of any non-monetary term, covenant, or condition to be performed by it obligation hereunder, Landlord agreeesshall not to terminate this Lease unless and until Landlord provides written notice of such event of default to anyeach Qualified Mortgagee and suchno Qualified Mortgagee fails to curecures such event of default within thirty (30) business days followingafter the expiration of any grace or cure periods granted Tenant herein; provided, however, if such event or default cannot practicably be cured.~~

13.07 Possession by theQualified Mortgagee without taking. A Qualified Mortgagee may take possession of the Property, or if such event of default is not susceptible to being cured by the Mortgagee, then Landlord will not terminate this Lease if and as long as vest in the interest of Tenant in this Lease upon the performance of the following conditions:

~~———— (i) — In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, the Mortgagee has delivered to Landlord, prior to the date on which Landlord is entitled to give notice of lease termination, a written instrument wherein the Mortgagee unconditionally agrees that it will cure such an event of default, and that if this Lease thereafter is terminated prior to the curing of such default, said Mortgagee must pay to Landlord the cost of curing such an event of default;~~

~~———— (ii) — In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, said Mortgagee must proceed diligently to obtain possession of the Property as Mortgagee (including possession by receiver), and, upon obtaining such possession, must proceed diligently to cure such event of default in accordance with the guarantee delivered pursuant to subsection (i) above; and~~

~~———— (iii) — In the case of an event of default that is not susceptible to being cured by the Mortgagee, the Mortgagee must institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it acquires Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).~~

~~The Mortgagee will not be required to obtain possession or to continue in possession as Mortgagee of the property pursuant to subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant to subsection (iii) above, if and when such event of default is cured. Nothing herein will preclude Landlord from exercising any of its rights or remedies with respect to any other event of default by Tenant during any period of such forbearance;~~

~~but in such event the Mortgagee will have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, acquires title to Tenant's Estate and cures all events of default that are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior events of default that are not susceptible to being cured by the Mortgagee or by said purchaser will no longer be deemed events of default hereunder.~~

~~(f)(a) The payment to Landlord of any and all sums due to Landlord under this Lease, including without limitation accrued unpaid rent.~~

~~(b) The sending of a written notice to Landlord and Tenant of the Qualified Mortgagee's intent to take possession of the Property and assume the Lease.~~

~~(c) The curing of all defaults not remediable by the payment of money within an additional 30 days after the date upon which such default was required to be cured by Tenant under the terms of this Lease.~~

13.08 No Liability of Mortgagee without Possession. A Qualified Mortgagee shall have no liability or obligation under this Lease unless and until it sends to Landlord the written notice described in paragraph 13.07(b). Nothing in this Lease or in the taking of possession of the Property and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Tenant of any duty or liability to Landlord under this Lease.

13.09 New Lease. If any Qualified Mortgagee acquires Tenant's Estate ~~leasehold~~ as a result of a judicial or non-judicial foreclosure under any Permitted ~~Leasehold~~ Mortgage, or by means of a deed in lieu of foreclosure, ~~or through settlement of or arising out of any pending or contemplated foreclosure action, such~~ the Qualified Mortgagee will thereafter have the right to ~~may~~ assign or transfer Tenant's Estate ~~leasehold~~ to an assignee upon obtaining Landlord's written consent with respect thereto, which consent will not be unreasonably withheld or delayed, and subject to all of the other provisions of ~~article~~ Article 8 ~~above~~. Upon such acquisition of Tenant's Estate as described in the preceding sentence by ~~the~~ a Qualified Mortgagee, or ~~the~~ its assignee of Mortgagee Tenant's leasehold, Landlord will execute and deliver a new ground lease of the Property to ~~such~~ the Qualified Mortgagee or ~~such~~ its assignee of Mortgagee ~~given not later than one hundred twenty (120) days after such party's acquisition of the Tenant's Estate. Said~~ leasehold. The new ground lease will be identical in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining ~~term~~ Term hereof), and the elimination of any requirements that have been ~~Tenant~~ fulfilled by Tenant prior thereto, and ~~said~~ the new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of ~~such~~ the new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant ~~named herein~~ from the Property.

~~(g) Further Amendments. Landlord and Tenant hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Lease and allowing such Mortgagee reasonable means to protect or preserve the lien of the Permitted Mortgage on the occurrence of an event of default hereunder. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment must not in any way~~

~~affect the term or rental under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.~~

~~(h) — Financial. Landlord hereby agrees to cooperate reasonably with Tenant or any third party, or both, at Tenant's sole expense, in connection with Tenant's efforts to obtain financing for, or in connection with, the Property.~~

~~15. REMOVAL OF TRADE FIXTURES, EQUIPMENT, AND MACHINERY UPON EXPIRATION OR TERMINATION OF LEASE~~

~~15.01. Removal Upon Expiration~~

~~Trade fixtures, machinery, equipment, and other items of personal property owned by Tenant will be considered Tenant's property at all times during this Lease and must be removed by Tenant at its own expense from the Property upon the expiration of the Term or Renewal Term of this Lease, unless Landlord gives written consent to allow such property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. In the event Tenant, without Landlord's written consent, fails to remove such property on or before the expiration of this Lease, the Landlord may, at its election, immediately (i) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (ii) to the extent Landlord does not elect to declare it abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.~~

~~15.02. Removal After Early Termination~~

~~In the event this Lease terminates for any reason before the scheduled expiration of the Term or Renewal Term, as applicable, Tenant must within one month after such early termination date remove Tenant's trade fixtures, machinery, equipment and other items of personal property, unless Landlord gives written consent to allow such personal property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. On or before the end of such one month period, Tenant may extend the time for removal of such personal property for an additional one month upon written notice to Landlord accompanied by payment of compensation for the entire two month period following the early termination date at a rate equal to 125% of the monthly rental rate in effect on the early termination date (i.e., monthly rental rate x 125% x 2 months). Acceptance of such compensation will not extend the term of the Lease nor create a month to month tenancy. In the event Tenant fails to remove such property within one month after the early termination of this Lease, or within two months if Tenant elects to extend by giving timely notice and paying compensation, the Landlord may, at its election, immediately (a) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (b) to the extent Landlord does not elect to declare abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and~~

~~without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.~~

~~16. HAZARDOUS MATERIALS~~

~~16.01. Use of Hazardous Materials on the Property~~

~~(a) Tenant must not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by Tenant or its authorized representatives, customers, invitees or sublessees, except for such Hazardous Material as is necessary or useful to Tenant's lawful use of the Property.~~

~~(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, must be handled, used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material. Such Hazardous Material must be handled only by properly trained personnel.~~

~~(c) Tenant must not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the Landlord, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (i) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (ii) the condition, use or enjoyment of the Property or any other real or personal property.~~

~~(d) If any discharge, leak, spill, emission, or pollution of any type occurs upon or from the Property during the Lease term or any holdover, Tenant will immediately notify Landlord and all appropriate federal, state, and local authorities, and will act immediately to contain the spill, repair any damage, absorb and clean up the spill area and restore the Property to comply with the applicable portions of any federal, state, or local law or regulation then in effect.~~

~~(e) Tenant hereby agrees that it will be fully liable for all costs and expenses related to the handling, use, storage, and disposal of Hazardous Material brought or kept on the Property by the Tenant, its authorized representatives, customers, invitees and sublessees, and the Tenant must give immediate notice to the Landlord of any violation or potential violation of the provisions of subparagraphs 16.01 (a), (b), (c) and (d).~~

~~16.02. Indemnification of Landlord~~

~~Any other provisions of the Lease to the contrary notwithstanding, Tenant must defend, indemnify and hold harmless Landlord and its authorized representatives, from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind of nature, known or unknown, contingent or otherwise, arising out of or in any way related to: (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the Property, soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; and/or (d) any violation of any laws applicable thereto. However, this paragraph will apply only if the acts or omissions~~

giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses: (i) occur in whole or in part during the Term of this Lease or during any time of Tenant's possession or occupancy of the Property prior to or after the term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors. The provisions of this paragraph will be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and will survive the termination of this Lease.

16.03. Hazardous Material Defined

"Hazardous Material" is any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Alaska, or the United States government. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" also includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.

17. — GENERAL PROVISIONS

17.01. ARTICLE 14. GENERAL PROVISIONS

14.01 Authority. Tenant represents and warrants that it has complete and unconditional authority to enter into this Lease; this Lease has been duly authorized by Tenant's governing body; this Lease is a binding and enforceable agreement of and against Tenant; and the person executing the Lease on Tenant's behalf is duly and properly authorized to do so.

14.02 Estoppel Certificates

Either party ~~must~~ shall at any time and from time to time upon not less than ~~thirty~~ (30) days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is ~~unamended and~~ in full force and effect and has not been amended (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments); that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the ~~rent~~ Base Rent and other charges have been paid in advance. The requesting party shall pay the cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees, must be paid by the requesting party.

14.03 Delivery of Notices - Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, (ii) reputable overnight air courier service, or (iii) electronic mail or facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the address for the recipient in Section 14.04 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

14.04 Addresses for Notices. All notices, demands and requests from Tenant to Landlord shall be given to Landlord at the following address:

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148
Email:

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

Facsimile: _____
Email: _____

Each party may, from time to time, to designate a different address or different agent for service of process by notice given in conformity with Section 14.03.

14.05 Time of Essence. Time is of the essence of each provision this Lease.

14.06 Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

14.07 Interpretation. Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Lease. The language in this Lease shall in all cases be simply construed according to its fair meaning and not for or against either party as the drafter thereof.

14.08 Captions. The captions or headings in this lease are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Lease.

14.09 Independent Contractor Status. Landlord and Tenant are independent contractors under this Lease, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between Landlord and Tenant. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party.

14.10 Parties Interested Herein. Nothing in this Lease, express or implied, is intended or shall be construed to give to any person other than Landlord, Tenant and any Qualified Mortgagee any right, remedy or claim, legal or equitable, under or by reason of this Lease. The covenants, stipulations and agreements contained in this Lease are and shall be for the sole and exclusive benefit of Landlord, Tenant and any Qualified Mortgagee, and their permitted successors and assigns.

14.11 Multi-Party Tenant. If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.~~17.02.~~
~~Conditions and Covenants~~

All the provisions of this Lease will be deemed as running with the land, and will be construed to be "conditions" as well as "covenants," as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

17.03. No Waiver of Breach

No failure by either Landlord or Tenant to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, will constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach will affect or alter this Lease, but each and every term, covenant and condition of this Lease will continue in full force and effect with respect to any other then existing or subsequent breach.

17.04.

14.12 Broker's Commissions. Each of the parties represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, all liability arising from any such claim including, without limitation, the cost of counsel fees in connection therewith.

14.13 Successors and Assigns. This Lease shall be binding upon the successors and assigns of Landlord and Tenant, and shall inure to the benefit of the permitted successors and assigns of Landlord and Tenant.

14.14 Waiver. No waiver by a party of any right hereunder may be implied from the party's conduct or failure to act, and neither party may waive any right hereunder except by a writing signed by the party's authorized representative. The lapse of time without giving notice or taking other action does not waive any breach of a provision of this Lease. No waiver of a right on one occasion applies to any different facts or circumstances or to any future events, even if involving similar facts and circumstances. No waiver of any right hereunder constitutes a waiver of any other right hereunder.

14.15 Attorney's Fees

(a) If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant mustshall pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party mustshall

reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

~~17.05. Time of Essence~~

~~Time is of the essence of the Lease and of each provision.~~

~~17.06. Computation of Time~~

~~The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.~~

~~17.07. Successors in Interest~~

~~Each and all of the terms, covenants and conditions in this Lease will inure to the benefit of and will be binding upon the successors in interest of Landlord and Tenant.~~

~~17.08. Entire Agreement~~

~~This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement of promise made by any party that is not contained in the Lease will be binding or valid.~~

17.09.14.16 Severability. If any provision of this Lease shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Lease, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Lease shall remain in full force and effect.

14.17 Entire Agreement, Amendment. This Lease constitutes the entire and integrated agreement between Landlord and Tenant concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of Landlord shall bind Landlord or be enforceable by Tenant unless specifically set forth in this Lease. This Lease may be amended only by written instrument executed and acknowledged by both Landlord and Tenant.

14.18 Governing Law and Venue

This Lease will be governed by, construed and enforced in accordance with, the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, mustshall be brought in the trial courts of the State of Alaska for the Third Judicial District of the State of Alaska at Homer.

~~17.10. Partial Invalidity~~

~~If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired or invalidated, unless such provisions are considered by Tenant to be integral to Tenant's use of the Property for the purposes stated herein in which case Tenant will have the authority to terminate this Lease upon thirty (30) days written notice to Landlord.~~

~~17.11. Relationship of Parties~~

~~Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.~~

~~17.12. Interpretation~~

~~The language in all parts of this Lease must in all cases be simply construed according to its fair meaning and not for or against Landlord or Tenant as both Landlord and Tenant have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.~~

~~17.13. Number and Gender~~

~~In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.~~

~~17.14. Mandatory and Permissive~~

~~"Shall," "must," "will," and "agrees" are mandatory; "may" is permissive.~~

~~17.15. Captions~~

~~Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.~~

~~17.16. Amendment~~

~~19 Execution in Counterparts. This Lease is not subject to amendment except in writing may be executed by all parties hereto.~~

~~17.17. Delivery of Notices—Method and Time~~

~~All notices, demands or requests from in two or more counterparts, each of which shall be an original and all of which together shall constitute one party to another must be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, or (ii) facsimile transmission (accompanied by reasonable evidence of receipt of the transmission~~

~~and with a confirmation copy mailed by first class mail no later than the day after transmission) to the addresses stated in paragraph 17.18 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.~~

17.18. Notices

~~All notices, demands and requests from Tenant to Landlord must be given to Landlord at the following address:~~

~~City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148~~

~~All notices, demands or requests from Landlord to Tenant must be given to Tenant at the following address:~~

~~_____

Facsimile: _____~~

17.19. Change of Address or Agent

~~Each party may, from time to time, to designate a different address or different agent for service of process by notice given in conformity with paragraph 17.17.~~

17.20. Multi Party Tenant

~~and the same document. If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.~~

~~[OPTIONAL SPECIAL PROVISIONS] — 18.01-- 14.20 prior lease amended and superseded~~
superseded

18. — SPECIAL PROVISIONS

18.01-14.20 Prior Lease

~~Landlord and Tenant are parties to a Lease Agreement~~ prior lease affecting the Property dated ~~November 1995 and~~ _____, 19____, a memorandum of which has been recorded in the records of the Homer Recording District at ~~Book 247, commencing at Pages 893~~ under Document No. _____ (the "~~Former~~Prior Lease"). This Lease ~~amends~~ replaces and ~~supersedes~~ supersedes the ~~Former~~Prior Lease effective as of ~~November 1, 2002,~~ _____, 201____, and on and after that date the ~~Former~~Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the ~~Former~~Prior Lease prior to that date.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals executed
this Lease as of the dates hereinbelow date first set forth above.

Landlord: _____ Tenant: _____

CITY OF HOMER

Date: _____ By: _____

_____ Ronald Wm. Drathman,

By: _____ By: _____

Walt Wrede, City Manager

Tenant:

Date: _____ By: _____

_____ (name)
_____ (title)

Date: _____ By: _____

_____ (name)
_____ (title)

ACKNOWLEDGMENTS

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____,
2002, 201_, by ~~Ronald Wm. Drathman~~ Walt Wrede, City Manager of the City of Homer, an
Alaska municipal corporation, on behalf of the City of Homer.

Mary Calhoun, AAE/CMC,
Homer City Clerk

Notary Public in and for Alaska
My ~~Term~~Commission Expires: ~~with office~~

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____,
~~2002, 201~~, by _____, as _____
(title) of _____ (name of entity), a ~~state~~ of _____
_____ (state) _____ (type of entity) on behalf of
_____ (name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

~~STATE OF ALASKA~~ _____)

~~THIRD JUDICIAL DISTRICT~~ _____) ss.

The foregoing instrument was acknowledged before me on _____,
2002, by _____, as _____ (title) of _____
_____ (name of entity), a state of _____
(state) _____ (type of entity) on behalf of _____
(name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

**SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP**

Tenant, _____, is a _____ organized under the laws of the state of _____. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization. If Tenant is a foreign entity authorized to conduct business in Alaska, its certificate of authority is also attached

The _____ (specify whether shareholders, partners, members, etc.) and their percentage of ownership are as follows:

Name _____ %

Address: _____

Name _____ %

Address: _____

Name _____ %

Address: _____

Name _____ %

Address: _____

TOTAL 100 %

EXHIBIT B

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE AND
AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON BEHALF
OF TENANT**

EXHIBIT-C

~~SITE PLANS~~ LOCATION OF PROPERTY

(Section 2.01)

EXHIBIT-D

FLOOR PLAN TENANT'S PROPOSED USE OF THE PROPERTY

(Section 6.01)

EXHIBIT E

GENERAL LIABILITY INSURANCE ENDORSEMENT

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

Attn.: City Manager

A. POLICY INFORMATION

1. Insurance company _____; Policy no. _____
2. Policy term (from) _____ to _____
Endorsement effective date: _____
3. Named insured _____
4. Address of named insured _____
5. Policy is: _____ claims made _____ occurrence
6. If claims made: Retroactive date: _____ Is tail coverage afforded? _____
7. Limit of liability any one occurrence: \$ _____ Aggregate: \$ _____
8. Deductible or self insured retention (nil unless otherwise specified):
\$ _____

B. POLICY AMENDMENTS

_____ This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

_____ 1. ~~INSURED.~~ The City, its elected or appointed officials, employees and volunteers are included as insured with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the named insured; (b) products and completed operations of the named insured; or (c) premises owned, leased or used by named insured.

_____ 2. ~~CONTRIBUTION NOT REQUIRED.~~ As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its elected or appointed officials, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its elected or appointed officials, employees or volunteers shall be excess of this insurance and shall not contribute with it.

~~3. SCOPE OF COVERAGE. The policy: (a) if primary, affords coverage at least as broad as forms currently in use as approved by the State of Alaska Division of Insurance; and (b) if excess, affords coverage which is at least as broad as the primary insurance forms reference in the preceding subpart (a).~~

~~4. SEVERABILITY OF INTEREST. The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.~~

~~5. PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its elected or appointed officials, employees or volunteers.~~

~~6. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.~~

~~C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE:~~

~~I, _____ (print/type name), _____ (title)
warrant that I have authority to bind the below named insurance company and, by my
signature hereon, do so bind this company.~~

~~Signature: _____
_____ (original signature required on endorsement furnished to the City)~~

~~Company _____~~

~~Address _____~~

~~_____~~

~~_____~~

~~Phone _____~~

~~Fax _____~~

SITE PLANS

(Section 6.02)

EXHIBIT F

WORKERS' COMPENSATION/EMPLOYERS LIABILITY ENDORSEMENT

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

A. POLICY INFORMATION

1. Insurance company: _____ ("Company");
Policy No. _____
2. Effective date of this endorsement: _____
3. Named insured: _____
4. Employer's liability limit (Coverage B): _____

B. POLICY AMENDMENTS

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. ~~CANCELLATION NOTICE.~~ The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Such notice shall be sent to the address given in the heading of this endorsement.

2. ~~WAIVER OF SUBROGATION.~~ The Company agrees to waive all rights of the subrogation against the City, its elected or appointed officials, agents and employees for losses paid under the terms of this policy which arise from work performed by the named insured for the City.

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE

I, _____ (print/type name), _____ (title)
warrant that I have authority to bind the below named insurance company and, by my signature hereon, do so bind this company.

Signature: _____
(original signature required on endorsement furnished to the City)

Company _____
Address _____

Phone _____ Fax _____

FLOOR PLANS

(Section 6.02)

EXHIBIT G
CERTIFICATES OF INSURANCE
(Section 9.04(d))

EXHIBIT H

PERMISSION TO OBTAIN INSURANCE POLICIES

(Section 9.04(d))

The City of Homer is hereby granted permission to request and obtain copies of _____ ("Tenant") insurance policies from Tenant's broker and/or insurer, _____. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

Date: _____

TENANT NAME

By:

_____ (printed name)
_____ (-title)

By: _____

_____ (printed name)
_____ (-title)

EXHIBIT H
LEGAL DESCRIPTION EXHIBIT

HOMER CITY COUNCIL/COMMITTEE OF THE WHOLE
491 E. PIONEER AVENUE
HOMER, ALASKA

MAY 9, 2011
MONDAY, AT 5:00 P.M.
COWLES COUNCIL CHAMBERS

**MEETING NOTICE
COMMITTEE OF THE WHOLE AGENDA**

1. CALL TO ORDER, 5:00 P.M.

Councilmembers Zak and Wythe have requested excusal.

2. AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

3. Ground Lease Document (if additional time needed from Worksession) Page 9

4. REGULAR MEETING AGENDA

5. COMMENTS OF THE AUDIENCE

6. ADJOURNMENT NO LATER THAN 5:50 P.M. NEXT REGULAR MEETING IS SCHEDULED FOR TUESDAY, MAY 24, 2011 AT 6:00 P.M. THE NEXT COMMITTEE OF THE WHOLE IS SCHEDULED FOR TUESDAY, MAY 24, 2011 AT 5:00 P.M. A WORKSESSION IS SCHEDULED FOR TUESDAY, MAY 24, 2011 AT 4:00 P.M. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
AGENDA APPROVAL

**MEETING NOTICE
REGULAR MEETING AGENDA**

**Special Meeting 4:00 p.m., Worksession 4:30 p.m. and Committee of the Whole 5:00 p.m.
in Homer City Hall Cowles Council Chambers.**

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Councilmember Wythe has requested telephonic participation.
Councilmember Zak has requested excusal.

Department Heads may be called upon from time to time to participate via teleconference.

2. AGENDA APPROVAL

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

3. PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

4. RECONSIDERATION

5. CONSENT AGENDA

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Councilmember.)

- A. Homer City Council unapproved Special Meeting (BOA) minutes of March 24, 2011 and Regular Meeting minutes of April 25, 2011. City Clerk. Recommend adoption.

Page 155

6. VISITORS

7. ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS

- A. **Mayor's Recognition** – Homer High School Choir Page 183

- B. **Mayor's Proclamation** – National Public Works Week May 15 – 21, 2011 Page 185

- C. **Mayor's Proclamation** – National Hospital Week May 8 – 14, 2011 Page 187

- D. Borough Report

- E. House Resolution No. 8 – Opposing the Designation by the National Oceanic and Atmospheric Administration of 3,016 Square Miles of Upper Cook Inlet and Kachemak Bay as Critical Habitat for Beluga Whales. Page 189

F. Commissions/Board Reports:

1. Library Advisory Board
2. Homer Advisory Planning Commission
3. Economic Development Advisory Commission
4. Parks and Recreation Advisory Commission
5. Port and Harbor Advisory Commission

8. **PUBLIC HEARING(S)**

- A. **Ordinance 11-14**, An Ordinance of the City Council of Homer, Alaska, Accepting and Appropriating a Rasmuson Foundation Grant of \$15,000 for Collection Development for the Homer Public Library and Authorizing the City Manager to Execute the Appropriate Documents. City Manager. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011. Page 195

- B. **Ordinance 11-15**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 10.04.100, Vehicles and Other Wheeled Conveyances; and Homer City Code 10.04.110, Violation--Penalty; Regarding the Regulation of Parking in the Harbor Area. City Manager/Port and Harbor Director. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011. Page 211

- C. **Ordinance 11-16(A)**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the ~~Fund Balance of the General Fund~~ **Water Sewer Depreciation Reserves** to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate. City Manager/Public Works Director. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011. Page 217

9. **ORDINANCE(S)**

- A. **Ordinance 11-17**, An Ordinance of the City Council of Homer, Alaska, Amending the 2008 Homer Comprehensive Plan to Incorporate the Homer Spit Plan and Recommending Approval of the Amendment by the Kenai Peninsula Borough. Planning. Recommended dates: Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011. Page 225

Memorandum 11-068 from City Planner as backup. Page 231

- B. **Ordinance 11-18**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$7,793.75 from the Public Works Fleet Reserve for the Purpose of Sandblasting and Recoating a CAT Loader. City Manager/Public Works Director. Recommended dates: Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011. Page 283

Memorandum 11-064 from Public Works Superintendent as backup. Page 287

- C. **Ordinance 11-19**, An Ordinance of the City Council of Homer, Alaska, Establishing a Preliminary Budget and Authorizing the Expenditure of \$486,948 from Depreciation Reserves for the Renovation and Expansion of City Hall. Roberts/Wythe. Recommended dates: Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011.

Page 289

Memorandum 11-066 from Public Works Director as backup. Page 293

- D. **Ordinance 11-20**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.24.020, Permitted Uses and Structures; and Homer City Code 21.24.030, Conditional Uses and Structures; Regarding the Permission of Single Family and Duplex Dwellings as Conditional Uses in the General Commercial 1 Zoning District. Planning. Recommended dates: Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011. Page 299

Memorandum 11-063 from City Planner as backup. Page 305

10. **CITY MANAGER'S REPORT**

- A. City Manager's Report Page 373

- B. Bid Report Page 413

11. **CITY ATTORNEY REPORT**

12. **COMMITTEE REPORT**

- A. Public Arts Committee
- B. Transportation Advisory Committee
- C. Permanent Fund Committee
- D. Lease Committee
- E. City Hall Renovation and Expansion Task Force

13. **PENDING BUSINESS**

14. **NEW BUSINESS**

15. RESOLUTIONS

- A. **Resolution 11-046**, A Resolution of the City Council of Homer, Alaska, Approving City Participation in the Proposed, Borough Sponsored, Kenai Peninsula Borough Health Insurance Working Group. City Manager. Page 415
- B. **Resolution 11-047**, A Resolution of the City Council of Homer, Alaska, Approving City Participation in a Kenai Peninsula Borough Project to Address the Federal Communications Commission Narrow Band Mandate. City Manager. Page 419
- C. **Resolution 11-048**, A Resolution of the City Council of Homer, Alaska, Approving the 2011 Annual Operating Plan Between the City of Homer and the State Division of Forestry. City Manager. Page 439
- Memorandum 11-067 from Fire Chief as backup. Page 451
- D. **Resolution 11-049**, A Resolution of the City Council of Homer, Alaska, Awarding a Contract to Paul's Services, of Anchor Point, Alaska, in the Amount of \$28,500 for the Carter Drive Access Improvements; and to East Road Services, Inc., of Homer, Alaska, in the Amount of \$52,475 for the Jack Gist Drainage and Field Improvements; and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk/Public Works Director. Page 459
- Memorandum 11-069 from Public Works Director as backup. Page 461
- E. **Resolution 11-050**, A Resolution of the City Council of Homer, Alaska, Awarding the Contract for the Soundview Avenue/Woodard Creek Culvert Replacement Project to the Firm of _____ of _____, _____ in the Amount of \$_____ and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk. Page 463

16. COMMENTS OF THE AUDIENCE

17. COMMENTS OF THE CITY ATTORNEY

18. COMMENTS OF THE CITY CLERK

19. COMMENTS OF THE CITY MANAGER

20. COMMENTS OF THE MAYOR

21. COMMENTS OF THE CITY COUNCIL

22. ADJOURNMENT/NEXT REGULAR MEETING IS SCHEDULED FOR TUESDAY, MAY 24, 2011 AT 6:00 P.M. THE NEXT COMMITTEE OF THE WHOLE IS SCHEDULED FOR TUESDAY, MAY 24, 2011 AT 5:00 P.M. A WORKSESSION IS SCHEDULED FOR TUESDAY, MAY 24, 2011 AT 4:00 P.M. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PUBLIC COMMENTS UPON MATTERS
ALREADY ON THE AGENDA

RECONSIDERATION

CONSENT AGENDA

Session 11-12 a Special Meeting of the Homer City Council was called to order on March 24, 2011 at 5:37 p.m. by Mayor Pro Tempore Beth Wythe at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: HOGAN, HOWARD, LEWIS, ROBERTS,
WYTHER, ZAK

STAFF: CITY CLERK JOHNSON
ATTORNEY LEVESQUE

AGENDA APPROVAL

(Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

Mayor Pro Tempore Wythe called for a motion to approve the agenda as presented.

LEWIS/ROBERTS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

- A. Appeal to the Board of Adjustment – REFUGE CHAPEL – of the Planning Commission Decision of August 18, 2010. (from Hearing of December 8, 2010).

This is an appeal of an enforcement order dated March 10, 2010 by Darren Williams of Refuge Chapel. We have received a written brief from the Refuge Chapel and from Frank Griswold. We have not received a written brief from Rick Abboud, the Homer City Planner. All parties have standing pursuant to Homer City Code 21.93.060.

Mayor Pro Tempore Wythe asked the parties to identify themselves for the record.

Darren Williams, Refuge Chapel
Rick Abboud, City Planner
Frank Griswold

Mayor Pro Tempore Wythe asked City Clerk Johnson if all appropriate written notices were made. City Clerk Johnson answered yes, February 18th the notice of tonight's hearing was sent to the 47 property owners via certified mail. Three of those mailings were returned unclaimed.

PRELIMINARY MATTERS

(1) Conflicts of interest

Frank Griswold stated procedural issues were raised in his brief. The first conflict of bias is Chair Wythe who is related to Regan Romero, former Refuge Room resident who died on November 27, 2009. Mrs. Wythe is also related to Ray Kranich who is Mr. Romero's uncle. They live in separate dwellings on the same property. Kranich participated in the Refuge Chapel proceedings below and ex parte communications between Kranich and Wythe would have been inevitable. Wythe was determined to have a disqualifying bias at the July 23, 2007 BOA hearing based on her husband's status as stepson of Ray Kranich. The September 5, 2007 BOA Decision on Appeal was referenced. Mr. Griswold stated Wythe also has a longstanding bias against him. A previous decision was rendered and rescinded. Since all participated in the rescinded decision it would not constitute a bias on all parts. As a council person Beth Wythe issued public statements regarding Ordinance 11-03 (Homer Tribune, reference to meeting of March 14). Her strong statement about property rights and the Planning Department staff report indicating a councilmember was involved in a definition that would be favorable to the Refuge Chapel. The memorandum referencing hostels from the Planning Department was presented to the Planning Commission for their March 9, 2011 meeting. Mr. Griswold recalls Beth Wythe was involved along with another councilmember in the definition of dormitory. Mrs. Wythe's previous statement regarding hostels, her public statement about the City interfering with property owner rights, and her involvement in tailoring a definition have a strong bias.

Mayor Pro Tempore Wythe passed the gavel to Councilmember Roberts.

Councilmember Roberts asked Attorney Levesque if Mrs. Wythe's relationship to a person that once stayed in the Refuge Room was a conflict of interest.

Attorney Levesque answered the Homer City Code conflict of interest talks about a financial interest. There is also the interest of potential bias. The question raised is whether or not Councilmember Wythe was related by marriage to someone who resided at the Refuge Chapel. It does not make or break a potential bias and would not prohibit her from hearing the appeal.

Councilmember Hogan asked Attorney Levesque if the grounds for disqualification in 2007 was Mrs. Wythe's relationship to Mr. Kranich, is that a controlling precedent?

Attorney Levesque answered over the years Councilmember Wythe has been involved in the appeals of this case. One occurred at the end of 2009. Mr. Griswold challenged Councilmember Hogan, the Mayor, and other councilmembers, but he did not challenge Wythe. It is not a precedent. The matter was brought up in 2007 and presiding officer Mayor Hornaday suggested that she not sit. The BOA did not overturn the decision. Potential biases have to do with what the person feels. She could have a hard time because her husband's stepfather sat on the Planning Commission. Is her decision presumed to be made without looking at the evidence?

Councilmember Roberts asked Mayor Pro Tempore Wythe if she had any conflict of interest or bias issues that would preclude her from being on this appeal.

Mayor Pro Tempore Wythe answered she had no bias. Mr. Romero was her husband's cousin. She had no knowledge of him having a relationship with the Refuge Chapel. It was not a close relationship. Everyone here participated in decisions concerning the Refuge Chapel and if she is biased, everyone is. As to Mr. Griswold's comment on zoning we are not establishing zoning. It is her longstanding opinion. She is not privy to the staff report. Hostels are zoning description unidentified uses and she believes they should be defined where they can use it. It would not influence her hearing arguments and making a reasonable decision. She is not prone to tailoring definitions of the zoning code to benefit anyone. Outside of the four walls of this room, she has had no personal interaction with Frank Griswold and only knows him from being a member of the City Council for the last seven years.

Councilmember Roberts ruled that Mrs. Wythe has no bias. There was no objection from the Council.

Frank Griswold objected to Councilmember Roberts making the decision.

Councilmember Roberts returned the gavel to Mayor Pro Tempore Wythe.

Attorney Levesque stated the rules do provide the presiding officer gets to make the decision and the rest of the board can overrule the decision. The rules were being followed.

Frank Griswold stated in a quasi-judicial hearing the board makes the decision only if you are serving as a Council.

Mayor Pro Tempore Wythe called for a recess at 5:58 p.m. to review the code and determine the procedure. Mayor Pro Tempore Wythe reconvened the meeting at 6:00 p.m.

Mayor Pro Tempore Wythe stated Mr. Griswold is correct as HCC 1.18.048 procedures for declaring and ruling on partiality in a quasi-judicial manner. The determination shall be by a majority vote rule.

Mayor Pro Tempore Wythe passed the gavel back to Councilmember Roberts.

HOGAN/HOWARD - MOVED TO DISQUALITY COUNCILMEMBER WYTHE.

There was no discussion.

VOTE: NO. ROBERTS, ZAK, HOWARD, HOGAN, LEWIS

Motion failed.

Councilmember Roberts returned the gavel to Mayor Pro Tempore Wythe.

Frank Griswold stated Councilmember Howard owns and operates a women's fitness center called Curves located almost directly across the street from Refuge Chapel. Planning Technician Harness was disqualified in CUP 07-03 due to her ownership of property near Refuge Chapel and her husband Rick Foster recused himself or was declared to have a disqualifying bias.

Attorney Levesque advised Frank Griswold is not complaining about potential bias as much as financial interest. In the 2007 decision of the BOA Planning Technician Dottie Harness owned property close to the Refuge Chapel. The previous City Attorney Gordon Tans advised the City that could be a financial conflict of interest. We do not have on record if Mrs. Howard owns the property how that will impact her. Previous matters that came before the BOA no conflict of interest was declared except clientele. If she doesn't own the property will her sitting on the board give her some financial interest to disqualify her? Is there a chance Mrs. Howard will lose \$5,000 in her business as to how she will rule on the matter?

Councilmember Roberts commented the decision with Ms. Harness is that she was writing the advisory decision. She doesn't see Ms. Howard's business issues as one and the same.

Attorney Levesque stated the critical thing is that Ms. Harness' financial conflict was not disclosed. In her staff recommendation for the Planning Commission she had not disclosed she owned adjacent property to the Refuge Chapel. The BOA decision Frank Griswold included on page 6 indicates Ms. Harness' participation created an appearance of impropriety.

Mayor Pro Tempore Wythe asked Councilmember Howard if the Refuge Chapel's proximity to her business resulted in the loss of a financial benefit.

Councilmember Howard answered no, she is not the owner of the property and did not receive notification.

ROBERTS/HOGAN - MOVED THAT MRS. HOWARD HAS A CONFLICT OF INTEREST.

There was no discussion.

VOTE: NO. LEWIS, ROBERTS, WYTHE, ZAK, HOGAN

Motion failed.

Frank Griswold stated in the decision it is not what the person thinks their gain would be, it is the potential.

Mayor Pro Tempore Wythe asked the Board if there have been any ex parte communications regarding this hearing. There were none presented.

Doug Dodd, Refuge Chapel, stepped forward.

Frank Griswold objected to Mr. Dodd's standing, as he did not file a brief or notice of appearance.

Attorney Levesque advised the Refuge Chapel appealed the decision and an entry of appearance was signed by Darren Williams. Mr. Dodd is part of the Refuge Chapel. It is the Refuge Chapel vs. the HAPC decision that was appealed. The code is clear. Someone who appeals a decision

gets to participate in an appeal. There is an entry of appearance. BOA precedence has allowed other members to speak.

Councilmember Wythe asked Mr. Dodd if he was a member of the Board of Directors.

Mr. Dodd answered he was a member of the Board of Directors and participated in other hearings. He has not always had his name on the brief, but has been accepted and allowed to participate. His function as a boardmember is to provide some hands on experience for the operation of the entity that provides low cost housing. His experience with people with addictions and homeless shelters would be valuable.

Frank Griswold interjected.

Mayor Pro Tempore Wythe advised Mr. Griswold she had tried to give him opportunities to speak and he will only be allowed to speak when he has been recognized. Robert's Rules of Order identify that an individual only speaks when they are given the right to speak. Mr. Griswold has the right to object, but does not have the right to object and then begin speaking.

Frank Griswold objected and requested an opportunity to speak.

Frank Griswold objected on the grounds it is inconsistent and contrary to HCC 21.93.500(b) and HCC 21.93.570.

Councilmember Lewis asked if the property is owned by the Refuge Chapel and you are on the Board of Directors does that make you one of the owners of the property.

Attorney Levesque answered it is probable the entity owns the property and as a board member he makes decisions that run the entity. Refuge Chapel is proposing Darren Williams and Mr. Dodd be allowed to speak; the BOA could limit it to one.

Councilmember Hogan commented a lot would hinge on whether the Refuge Chapel is an entity in good standing with the State of Alaska as a non profit corporation.

Mr. Dodd answered it was, but Mr. Williams could speak directly to it.

Mayor Pro Tempore Wythe stated in the absence of a clear code identifying representation of an entity, the appeal is filed by the Refuge Chapel. It is signed by Mr. Williams. She asked for a motion to recognize Mr. Dodd as a member of the board.

LEWIS/ZAK - MOVED THAT WE RECOGNIZE MR. DODD AS AN ENTITY SPEAKING FOR THE REFUGE CHAPEL.

There was no discussion.

VOTE: YES. HOGAN, LEWIS, WYTHE, ZAK, HOWARD
VOTE: NO. ROBERTS

Motion carried.

Frank Griswold asked if HCC 21.93.500(a) would be considered.

Mayor Pro Tempore Wythe asked Mr. Dodd if he participated at the Planning Commission level.

Mr. Dodd answered he did participate at the Planning Commission level and has provided some of the written documents within the record. He attended their meetings, specifically the August 18th meeting.

Mayor Pro Tempore Wythe called for a recess at 6:24 p.m. to research the record to review Mr. Dodd's participation. Mayor Pro Tempore Wythe reconvened the meeting at 6:28 p.m.

Mayor Pro Tempore Wythe found in reviewing the minutes of the Planning Commission Mr. Dodd was a participant, therefore is allowed to participate in this proceeding.

Doug Dodd commented it is hard to determine bias and it would be a shame if people that are just trying to do a good job are prevented from doing it due to some potential bias. He has no issues of bias or conflict of interest from the Board.

Frank Griswold commented at the onset of the meeting parties identified themselves, including the City Planner. Doug Dodd did not file a brief, notice of appearance, is not an appellant, or affiliated with the Refuge Chapel. Per HCC 21.93.500(b) he is not a party to this appeal and has no right to present testimony or oral argument.

Attorney Levesque advised HCC 21.93.500 talks about parties eligible to appeal to the Board of Adjustment. HCC 21.93.060 says who has standing; it clearly states the City Manager, City Planner, or governmental agency have standing. The question is if the City Planner has to file an entry of appearance when a city planning commission decision is appealed. He concluded Frank Griswold is reading the section far too broad. The intent of the entry of appearance is to give the City Clerk notice of who will be participating. The Clerk and City Planner know the City Planner is involved. The section does not state the City Planner needs to file an entry of appearance.

Frank Griswold referenced HCC 21.93.500(b). It is clear any person so qualified who desires to participate in the appeal as a party other than the appellant must file a written and signed notice of appearance, stating they would be qualified under HCC 21.93.060.

Councilmember Hogan asked if the planning commission is a party and if the City Planner is an ex-officio member of the commission.

Attorney Levesque answered the City Planner is representing the Planning Department in upholding the decision of the Planning Commission. He is staff defending the commission's decision. That is his role.

Frank Griswold argued not every decision of a board needs defense. It is not absolutely necessary that Rick Abboud defend the Planning Commission's decision. Why would it not be the chairman of the Planning Commission?

Mayor Pro Tempore Wythe asked Mr. Rick Abboud if he planned to participate and to use the allowed 30 minutes. Mr. Abboud answered he planned to use a short amount of time to review the events and allow the Board of Adjustment a chance to ask questions.

Mayor Pro Tempore Wythe recommended the hearing continue with oral arguments for each party up to 30 minutes.

Frank Griswold asked for a vote.

Mayor Pro Tempore Wythe called for a motion that the hearing continue with oral arguments for each party up to 30 minutes.

ROBERTS/ZAK – SO MOVED.

There was no discussion.

VOTE: YES. HOWARD, HOGAN, LEWIS, ROBERTS, WYTHER, ZAK

Motion carried.

ORAL ARGUMENTS

Mayor Pro Tempore Wythe reminded the parties that this is not the time to offer new evidence to the Board, pursuant to HCC 21.93.510.

Darren Williams, Refuge Chapel, opted to share his time with Doug Dodd. He stated he is appealing the City's enforcement order that he cease operations or get a conditional use permit as a homeless shelter. He does not feel they are or have been a homeless shelter, nor want to be defined as one. The Refuge Room is a small portion of the chapel. They don't want the building to be classified as a homeless shelter as it puts them in a different categorization with fire codes and zoning. It will draw more homeless people to Homer, appearing on the websites. When the Refuge Room started it was a bunk house. Residents have always paid. They don't run it as a homeless shelter. They would like to be identified as a rooming house without needing a conditional use permit to operate. Mr. Williams stated there is misrepresentation on page 3 of Frank Griswold's brief. The reference made to their illegal operation of a men's homeless shelter is just his opinion. He has been invited to the shelter to see how they operate, but has never been to the Refuge Chapel. The brief says the Refuge Chapel moved to Pioneer Avenue and constructed an addition to the existing structure, when they actually decreased the size of the building. Part of that building was already there, they just remodeled it.

Mr. Williams stated the City Planner determined the Refuge Room met the definition of a rooming house. That is what the City Planner is hired to do, define city code. He is a professional. His professional opinion it that is was a rooming house and both of the City's lawyers agreed. The Planning Commission voted against the City Planner. Mr. Williams believes Frank Griswold intends to draw it out until it ends in litigation. He asked Frank Griswold to let him know what they could do outside of ceasing their operation to satisfy him to the point of stopping the harassment to the Refuge Chapel and City. Frank Griswold sends emails harassing

him. He proposed to have a worksession with Frank Griswold, the City, and other parties. Mr. Williams appealed to Frank Griswold to reconsider a plan of action to the City and the Refuge Room. He appealed publicly to Frank Griswold to stop this. They have people willing to hire local lawyers and lawyers on the east coast monitoring the situation. He appealed to interested parties to resolve this without attracting national attention. They don't want to come into opposition with Frank Griswold and the City. These issues touch on their religious rights to operate and help underprivileged people to get on their feet. They have a great track record of being a help to the City and intend to continue. They are not operating a homeless shelter, but rather helping men and women that find themselves in unfortunate circumstances. He again appealed to Frank Griswold to stop his barrage.

Doug Dodd added the Planning Commission decision of August 18, 2010 rested on findings that were not supported by substantial evidence. The Board on January 7, 2011 overturned that decision. A breakdown in the notification procedure resulted in rescinding the Boards' action. The reasoning the Board used is unaffected and remains valid. The Board found the Refuge Room is a small building primarily used for other purposes, ie. religious.

Asked by Council if the evidence from the Board's rescinded decision was allowed, Attorney Levesque answered it was all argument. It has already been submitted. There is a lot of flexibility for oral argument.

Doug Dodd stated the evidence clearly shows:

1. The Refuge Room is not the primary use of the building.
2. Unlike a traditional homeless shelter, all guests at the Refuge Room are screened for criminal offenses.
3. There is a daily \$10 fee per day charged.
4. They are not homeless when they first arrive.

Mr. Dodd stated the Board found the Refuge Room should be a hostel, although some say it is a homeless shelter. Frank Griswold is not familiar with how a homeless shelter operates. Mr. Dodd has over two years experience with a homeless shelter in Yakima, Washington. The Union Gospel Mission there operated a 54-bed shelter. There was no charge for a bed and no screening for criminal or sexual offenses. Guests could not come and go as they pleased. Beds were available first come basis and the dorm was locked during the night except for an alarm equipped emergency exit. If the men left through that door they could not return. In the morning breakfast was served and the men left. They had to repeat the process to stay another night. At the Refuge men obtain their own food, have freedom to come and go throughout the day, alcohol and drugs are not allowed, and theft and violence are not allowed. Over 75% of men at the Refuge Room pay \$300 rent per month, about 30% of their take home pay. The U.S. Census sets 30% as the maximum portion of wages that should be spent on housing. Unlike homeless shelters their clients are low income, not no income.

Councilmember Roberts asked about Exhibit 3, Refuge Room bunkhouse rules, in Mr. Griswold's brief. Hours indicate they are open 8:00 p.m. to 8:00 a.m.

Darren Williams answered the rules have been changed as it is open 24 hours a day. People can come and go as they want. Men have their own bunks and storage area. They rent the beds.

Councilmember Lewis asked Darren Williams why they did not want to apply for a CUP.

Darren Williams answered they didn't want to apply for a CUP to operate a homeless shelter as they didn't want it to be a homeless shelter. When they first applied for the CUP they asked the Planning Department to keep the language of the homeless shelter out of it, but it was added at the last minute. A CUP will put conditions on how they can operate their facility. Anything they do Frank Griswold will appeal anyway.

Councilmember Roberts referenced the statement by Mr. Dodd regarding housing people with low income rather than no income. It is her understanding there are some people with low income that use homeless shelters.

Mr. Dodd answered he wanted to point out they have low income rather than no income people since homeless shelters don't charge.

Councilmember Lewis asked Mr. Dodd if he ever heard of homeless shelters charging or allowing people to stay continuously and not moving out during the day.

Mr. Dodd answered at the Yakima shelter they had a fenced courtyard where people could sit and smoke and use the restroom. They provided a holding pen, but showers and laundry were not available.

Councilmember Zak asked Mr. Dodd if he was aware of churches providing overnight accommodations where people can cook food and spend one or more nights and charge a low fee.

Mr. Dodd answered the Anchorage Assembly passed a resolution last summer saying in cold weather churches had permission to let people in so they didn't freeze. In Homer Father Dean used to let people sleep in the basement of the Catholic Church. He has never heard of churches charging a fee to the homeless for shelter.

Councilmember Zak referenced the Refuge Chapel's application for a CUP, HCC 21.48.030. The Refuge Chapel was doing their best to define what they are and called it a dormitory style.

Mr. Dodd answered he tried to define it best by what they did.

Councilmember Hogan asked about the remodeling and if there was a building permit.

Darren Williams answered they made a mistake with that and there was no building permit. He forgets how that went.

Councilmember Howard asked what the resistance to a CUP with conditions and restrictions would be.

Darren Williams answered they would be willing to comply with conditions. It would be basically putting up fences and planters. The CUP could be reviewed on a regular basis by City

Council or the Planning Commission putting more conditions on them. He would rather not give the City the power to put random conditions on them.

Councilmember Zak asked if there were any other organizations in town that provide a similar service with the ability to spend an evening at the church.

Darren Williams answered the housing initiative provides vouchers for people to stay in hotels. There are many times the Refuge can't house people.

Councilmember Zak stated the Methodist Church has a parsonage, a residence on the lot at the church where people stay.

Mayor Pro Tempore Wythe called for a recess at 7:03 p.m. and reconvened the meeting at 7:08 p.m.

Frank Griswold read the definition of oral argument from Wikipedia. He has heard a lot of evidence that was not in the record. The Board of Adjustment must make their decision based solely on the record per HCC 21.93.510(a). Factual information provided tonight that was not already in the record is stuff that gets presented at the evidentiary hearing before the Planning Commission. Pages 35-36 of the Record on Appeal, in the corrected letter/notice of appeal dated September 22, 2010 and resubmitted on October 1, 2010, Darren Williams states "The Refuge Room provides a guest room. We consider the men who choose to stay with us as guests of the Refuge Room." Later in the same letter he states if the applicants are not homeless they are at least needy. Mr. Williams claims the \$10 per night fee is not nominal. The Planning Commission in Finding 10 of their August 10, 2010 decision, "There is a substantial difference between providing shelter for the homeless or the needy for nominal compensation and providing guest rooms that are used, rented, or hired out to be occupied for sleeping purposes by guests. A guest has quite a different connotation than a homeless or needy person." Finding 14 the commission states "Pastor Williams also states that many applicants are not homeless when they first arrive at the Refuge Room, however, it is important to consider that the definition of shelter for the homeless includes individuals who are not only homeless, but needy." In Finding 21 the commission states "This evidence establishes that the Refuge Room provides services to the needy on a non permanent basis for a nominal fee."

Mr. Griswold stated the Refuge Room's position has changed dramatically over the last five years even though the activities have not. The January 18, 2006 Planning Commission minutes, specifically Eric Scott, Charlie Gains, and Darren Williams remarks, Exhibit 5, were quoted. The January 25, 2006 Homer News quotes of John Williams and Beth McKibben, Exhibit 7, were referenced. A letter to Darren Williams dated November 9, 2006 Code Enforcement Officer Dottie Harness stated "Refuge Room is a homeless shelter and requires a CUP to operate in the central business district." (Exhibit 14) At the June 24, 2010 Planning Commission meeting John Williams stated "there are people that need help and don't have a lot of money", record 32. At the same hearing Jim Pastro made question on a CUP, record 32. A letter to Mr. Abboud, September 22, 2010, Darren Williams stated "Refuge Chapel desires that the BOA recognize the Refuge Room as rooming house as defined in HCC21.03.040 and is permitted to operate in the central business district without a CUP. Previous records, Exhibits 2-4 statements were read. Additional statements of the Refuge Room's mission statements were read regarding criminal

behavior, no firearms, knives, or weapons, check in by 9 p.m., and attendance at evening devotions. The Refuge Room's mission is to provide shelter and provide temporary and emergency housing at low cost. Not all guests have the same needs, some are between jobs or food and shelter.

Mr. Griswold added the Refuge Room clearly provides shelter at a nominal cost to the homeless and needy. It constitutes a shelter for the homeless and it is not a rooming house or any other use, except possibly a flop house. If that use is considered it would require remand to the Planning Commission and the BOA does not have the authority to make a use determination. The Refuge Chapel does not want conditions applied. They come to the Planning Commission and promise a litany of policies and procedures are in place to protect the neighbors in a primarily residential neighborhood. The Planning Commission would then make them conditions of the permit. Refuge Chapel doesn't want to be required to do them, as they have no intention of following those conditions.

Over the years the following people have said the Refuge Chapel is operating as a homeless shelter:

In 2005 Darren Williams applied for a conditional use permit (06-01) for a homeless shelter.
City Planner Beth Mckibben
Dotti Harness
The current Planning Commission
Current City Planner Abboud

The Planning Commission decision on appeal should be confirmed.

Councilmember Lewis asked Mr. Griswold to define flophouse.

Frank Griswold answered flophouse is not defined in Homer City Code. The definition is in Wikipedia. A homeless shelter that is not regulated and provides cheap housing is a flophouse. Generally a flophouse is bare bones housing with very few services. Most communities would rather not see flophouses in their city.

Councilmember Lewis asked Mr. Griswold if he knew of any homeless shelters that charge.

Mr. Griswold answered it is irrelevant; he is no authority. The question is that the Refuge Chapel charges a nominal fee. He doesn't know of any rooming house, B&B or motel where he could stay for \$10 per night. A hundred dollars is the going rate in Homer. It is what the Planning Commission thinks. To overturn the Planning Commission the BOA will have to make a finding that their reasoning was faulty. The Planning Commission decision was written by Attorney Michael Gatti who has a lot of experience in the field of planning and zoning. It is a very well written and well substantiated decision. The BOA can only challenge it on findings of law. One of the findings of law is whether a decision was supported by financial evidence. You would have to find their reasoning completely erroneous.

Councilmember Zak asked Mr. Griswold for his opinion on HCC 21.48.030 which authorizes other uses similar to and more objectionable than permitted use for the district.

Frank Griswold answered he is not a lawyer and does not give opinions on code. That code is obsolete and no longer in city code.

Councilmember Zak asked if there was no room at the inn and Joseph and Mary stayed at the stable, would they be considered guests or homeless people.

Frank Griswold stated he was not going to answer the riddles.

City Planner Rick Abboud stated we are here because of an enforcement letter he sent. He made a determination with legal assistance the Refuge Chapel was a rooming house. The subject came to appeal, it was a hazy vote, people didn't know what it meant, and it sat with non decision. After that it was found that vote did turn over his decision. There was no document made and findings made that refuted anything he said. Mr. Griswold has put all the information with history since 2004. It is not part of the record; it is new evidence. It is about the enforcement order. Past records have nothing to do with this action. There are letters that were accepted as part of the record. These are things the BOA has to make a decision on. In Mr. Abboud's education he was never allowed to use Wikipedia as a reference. It can be hacked and anybody can put it on. It is a place to go look for other evidence from an open internet source. We had the enforcement letter and it was determined they weren't a rooming house. Mr. Abboud chose not to challenge it. There is a decision from the Planning Commission and we can't add or take anything away.

Councilmember Roberts asked Attorney Levesque if the City Planner was correct that we disregard Mr. Griswold's packet.

Attorney Joe Levesque advised anything cited by Frank Griswold that is not in the record on appeal is not officially in the record on appeal. It can be accepted as part of oral argument. It is not part of the record and was not before the Planning Commission when they made their decision.

Frank Griswold asked to speak, stating he had a right to rebut.

Mayor Pro Tempore Wythe stated Mr. Williams had the right to reserve time for rebuttal and Mr. Griswold had the right to use up to 30 minutes. Mayor Pro Tempore Wythe asked the pleasure of the BOA regarding Mr. Griswold's ability to rebut Mr. Abboud's comments as they are not established in the procedure.

ROBERTS/LEWIS - MOVED TO ALLOW MR. GRISWOLD TO REBUT THE COMMENTS OF MR. ABBOD.

Councilmember Lewis asked if there was a limit of 3 to 5 minutes on the rebuttal.

Attorney Joe Levesque advised the rules provide that the appellant gets to reserve time and the appellees do not. Mr. Griswold is making a request that he be allowed to rebut. If the Board were to allow that they would be relaxing the rules. If the BOA does allow rebuttal it is limited solely

to what Mr. Abboud said and cannot bring up any additional issues. A time could be imposed if the BOA chose.

Councilmember Hogan stated if the BOA was to make exceptions it should have been done at the front end, not in the middle.

VOTE: YES. LEWIS, ROBERTS

VOTE: NO. ZAK, HOWARD, HOGAN, WYTHE

Motion failed.

REBUTTAL

Darren Williams stated Frank Griswold says they don't intend to uphold the City's conditions. He objects, that is ridiculous. When conditions were put on them with the original CUP they followed them even though the CUP was denied. Frank Griswold refers to us as he knows how we operate, but he has no knowledge. There have been no legal problems in their neighborhood due to the Refuge Room. They have a good relationship with the neighbors. The only vacillating they have done is to try to get along with the City and their neighbors. They have been in it for six years. There have been times they have operated in different ways to facilitate their service to the City. They would apply for a homeless shelter if it would satisfy Frank Griswold and he would stop harassing them. They would do whatever it takes to operate as a service to the City. If the City makes them get a CUP to be a homeless shelter Frank would appeal that just as he has already done. There has to be a time when the City makes a stand and says they are not going to budge on this no matter what Frank says.

Darren Williams challenged Frank Griswold if there was anything they could do to operate in the city so he would stop harassing them and the City. He would like a response at some point from Frank himself. Darren Williams stated they would like to operate without being harassed. For six years they have been harassed. It gets old and takes a lot of time and resources. They are just trying to provide a service for the people of Homer and he thinks they do a good job at it. Darren Williams does not know why Frank Griswold wants them to become a homeless shelter even though they have said to the City Council many times "tell us what to do as a rooming house because we don't want to be a homeless shelter." There is no response. They are trying to provide a service to the City of Homer. Nobody is making any money, but it does help pay for the cost of the facility. They believe they are making a huge impact in the City and the lives of the men they serve. It is unfortunate that Frank would use the tragic death of one of their residents for his agenda. It is low class.

Mayor Pro Tempore Wythe told Mr. Williams in regard to his request to Mr. Griswold to respond that will need to happen independently from this time.

Mayor Pro Tempore Wythe stated deliberations of the Board will now commence and continue from time to time as necessary until completed. She called for a motion from the Board to go into executive session for the purpose of deliberating and deciding this appeal.

ZAK/HOGAN – SO MOVED.

There was no discussion.

VOTE: YES. WYTHE, ZAK, HOWARD, HOGAN, LEWIS, ROBERTS

Motion carried.

Council adjourned to Executive Session at 7:30 p.m.

Council reconvened at 8:25 p.m.

Councilmember Roberts stated they met with the attorney and provided him with direction. More information will be forthcoming in the future.

Mayor Pro Tempore Wythe called for a motion to adjourn.

LEWIS/ZAK – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

ADJOURNMENT

There being no further business to come before the Council, Mayor Pro Tempore Wythe adjourned the meeting at 8:27 p.m. The next Regular Meeting is scheduled for Monday, April 11, 2011 at 6:00 p.m. The next Committee of the Whole is scheduled for Monday, April 11, 2011 at 5:00 p.m. A Worksession is scheduled for Monday, April 11, 2011 at 4:00 p.m. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____

Session 11-15 a Regular Meeting of the Homer City Council was called to order on April 25, 2011 at 6:01 p.m. by Mayor James C. Hornaday at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: HOGAN, HOWARD, LEWIS, ROBERTS,
WYTHE, ZAK

STAFF: CITY CLERK JOHNSON
CITY MANAGER WREDE
FINANCE DIRECTOR MAURAS
PORT AND HARBOR DIRECTOR HAWKINS
PUBLIC WORKS DIRECTOR MEYER

Council met for a Worksession from 4:00 p.m. to 4:59 to discuss Water/Sewer Rates. Council met as a Committee of the Whole from 5:05 p.m. to 5:56 p.m. to hear a report on the Permanent Fund earnings from Clarence Hughes and Rod Castelda of U.S. Bank and for discussion on Regular Meeting Agenda items.

Department Heads may be called upon from time to time to participate via teleconference.

AGENDA APPROVAL

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

The agenda was approved by consensus of the Council with the following changes:

ANNOUNCEMENTS/PRESENTATIONS: Letter from Homer Chamber of Commerce;
PUBLIC HEARINGS: Kachemak Drive Phase Two Water and Sewer Improvement/Assessment District, written comments.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

Brad Faulkner, city resident, commented on the parity study and its lack of comparison to the private sector. He voiced support for Resolution 11-041, with the exception of charges for subleases and the insurance requirement. He suggested the City charge a percentage for subleases to make it fair.

Jan Needham, city resident, voiced opposition to Resolution 11-044, citing \$31,000 for a Ford Escape Hybrid 2011 as an unnecessary expenditure.

RECONSIDERATION

CONSENT AGENDA

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Councilmember.)

- A. Homer City Council unapproved Regular Meeting minutes of April 11, 2011. City Clerk. Recommend adoption.
- B. **Memorandum 11-056**, from Deputy City Clerk, Re: New Liquor License for Two Sisters Bakery.
- C. **Memorandum 11-057**, from Mayor, Re: Appointments of Monica Cogger, Tamara Fletcher, and Kenneth Schroeder to the Library Advisory Board and Reappointment of Steve Smith to the Transportation Advisory Committee.

Mayor Hornaday called for a motion for the adoption of the recommendations of the consent agenda as read.

LEWIS/ZAK - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS

A. **Clarence Hughes and Rod Castelda, U.S. Bank**

Rod Castelda and Clarence Hughes, U.S. Bank, provided an overview of the Permanent Fund investment account they have managed for ten months. There are two portfolios, fixed income (bonds/bond funds) and growth (equity/stock/commodity). Fixed income is predominantly in individual bonds, 50% in U.S. corporate bonds and 50% in U.S. government agencies and treasuries. The average credit quality is AA-, average coupon is 2.41%, average maturity is 4.1%. The annual income is \$13,352; over the last 10 months the account is off 1.22% in principle due to fluctuations in the fixed income environment. U.S. Bank bought individual bonds as they would mature at par value, shielding the portfolio principle from loss.

The growth portfolio is predominantly invested in common stock funds with \$28,000 in cash, \$102,000 in commodity funds and the remaining \$900,000 is in equity mutual funds. Growth portfolio investments include:

- 66% invested in U.S. domestic companies with the remainder invested in Europe, Asia, and Latin America.
- 25% invested in large cap stocks, with the remainder in mid cap, small cap, and international companies.

Over the past 10 months the Permanent Fund has generated a 22.84% rate of return. Throughout 2011 and 2012 inflation may kick up. There is some volatility with the U.S. Federal Reserves and consumer expenditures. As a precaution for the growth portfolio, U.S. Bank has diversified holdings in mutual funds. They expect the fixed income will stay relatively short to minimize interest hikes and principle erosion. As bonds mature they will look to invest in the most advantageous part of the yield curb.

ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS

A. Mayor's Proclamation - Municipal Clerks Week – May 1 – 7, 2011

Mayor Hornaday read the proclamation.

B. Mayor's Proclamation – Peace Officers Memorial Day May 15 and National Police Week May 15 – 21, 2011

Mayor Hornaday read the proclamation.

C. Thank you letters from Cook Inletkeeper and Center for Alaskan Coastal Studies

D. Letter from Homer Chamber of Commerce, re: *Ultimate Fishing Town USA*

Mayor Hornaday read the letter from the Chamber of Commerce.

E. Borough Report

Bill Smith, Kenai Peninsula Borough Assemblyman, reported the Assembly's last meeting was in Seward. The assistant to the city manager is intent on making Seward the *Ultimate Fishing Town USA*. If Homer wants to prevail they need to keep voting. The Assembly will be presented the budget at next week's meeting. There are sentiments of the Assembly to both fund and not fund the Kenai Peninsula Tourism Marketing Council (KPTMC). For the last two years the Borough has allocated \$300,000 to the KPTMC. They are now floating a proposal for a 1% sales tax on visitor industry related business. The tax change would cost the Borough \$85,000 to implement and would be confusing for businesses to follow. It may not pass muster with the State of Alaska. The KPTMC wants to see dedicated funding. The counter idea is to approach voters with a .10% sales tax dedicated to business support throughout the borough. It would include the Economic Development District, KPTMC, and other enterprises.

As to the gas line, Assemblyman Smith received a call from Representative Seaton on the energy numbers he put together. He is trying to get a forecast on all public facilities from what they are paying now for fuel oil as to what they would pay with natural gas. So far the savings are over \$1M for public facilities in Homer. Now is the time to write to Governor Parnell and Lieutenant Governor Treadwell to support the gas line to Homer. It is a good investment for the State with less than a 10-year payback.

There is an effort in the borough from various folks to help Japan through the Borough's Sister City Akita. Funds will be used to help the east coast residents of Japan. Contributions may be sent to Bridges, P.O. Box 1612, Soldotna, AK 99669, payable to Akita Sister City Earthquake. For more information call Bill Smith at 235-8932.

Councilmember Zak asked about funding for the borough landfill and what Council can do to help. Assemblyman Smith answered Representative Chenault has reassured the Borough he is looking out for the building of the solid waste handling facility in Soldotna.

F. Commissions/Board Reports:

1. Library Advisory Board
2. Homer Advisory Planning Commission

Sharon Minsch, Planning Commission Chair, reminded Council and the large listening audience of the vacancy on the Planning Commission. The commission did not have opportunity to provide written input on Resolution 11-042. She asked that stronger language to do no harm to Homer be included in the resolution.

3. Economic Development Advisory Commission
4. Parks and Recreation Advisory Commission
5. Port and Harbor Advisory Commission

Bob Hartley, Port and Harbor Advisory Commissioner, reported the passage of Resolutions 11-036(A) and 11-040 is of vital importance to allow the Harbormaster to implement the permits and signage. It will allow for advertising and installation of signage that should take place before Memorial Day weekend. Resolution 11-041 standardizes ground leases. Each lease will be different, but the document allows for a starting point. It too is time sensitive as there are leases waiting to be issued.

Mayor Hornaday read the letter from the Chamber of Commerce on the search for the *Ultimate Fishing Town USA*. The Mayor encouraged everyone to vote for Homer by visiting the website at: www.homer.alaska.org or from Facebook page at www.facebook.com/VisitHomer.

PUBLIC HEARING(S)

A. Kachemak Drive Phase Two Water and Sewer Improvement/Assessment District

Mayor Hornaday opened the public hearing.

Jan Needham, city resident, reflected on the history of the City paying the larger portion and property owners paying the smaller amount. Kachemak Drive is a major arterial between the Spit and developments on East End Road and water/sewer improvements should be funded by the

State. She asked that her lot within the district that sits back from the street be excluded from the improvement district.

Lars Spurkland objects to the water and sewer improvement due to costs. With the flat assessment per lot, smaller lots are subsidizing larger lots and commercial lots are assessed the same. He has two low lots and will not receive financial benefit.

Jean Mack supports the LID, citing it is important that the City extend water and sewer wherever it can.

Jan Spurkland opposes the LID for economic reasons. He owns multiple lots with minimum development potential and the costs outweigh the potential. One lot is bordered on two sides by easements and the water/sewer would add another easement, making one lot unbuildable. If he had to pay for only one hookup he would be supportive.

Beverly Kaiser expressed support for the LID citing the benefit of the 1.5% interest rate over a 20 year period. She hopes bids come in at a reasonable rate so both sides can make profit.

Mayor Hornaday closed the public hearing.

- B. **Ordinance 11-13(A)**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$15,000 from the Port and Harbor Reserve Account for the Purpose of Implementing the Long Term Parking Permit Plan and for New Signage at the Approach Ramps. City Manager. Introduction April 11, 2011, Public Hearing and Second Reading April 25, 2011.

Mayor Hornaday opened the public hearing. In the absence of public testimony, Mayor Hornaday closed the public hearing.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-13(A) by reading of title only for second and final reading.

HOWARD/LEWIS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Resolution 11-040**, A Resolution of the City Council of Homer, Alaska, Amending the Port of Homer Terminal Tariff No. 600 to Provide for Parking Fees. City Manager/Port and Harbor Director.

Mayor Hornaday opened the public hearing. In the absence of public testimony, Mayor Hornaday closed the public hearing.

ORDINANCE(S)

- A. **Ordinance 11-14**, An Ordinance of the City Council of Homer, Alaska, Accepting and Appropriating a Rasmuson Foundation Grant of \$15,000 for Collection Development for the Homer Public Library and Authorizing the City Manager to Execute the Appropriate Documents. City Manager. Recommended dates: Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-14 for introduction and first reading by reading of title only.

WYTHE/HOWARD - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. **Ordinance 11-15**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 10.04.100, Vehicles and Other Wheeled Conveyances; and Homer City Code 10.04.110, Violation--Penalty; Regarding the Regulation of Parking in the Harbor Area. City Manager/Port and Harbor Director. Recommended dates: Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-15 for introduction and first reading by reading of title only.

HOWARD/WYTHE - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Ordinance 11-16**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the Fund Balance of the General Fund to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate. City Manager/Public Works Director. Recommended dates: Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-16 for introduction and first reading by reading of title only.

HOWARD/WYTHE - SO MOVED.

WYTHE/LEWIS – MOVED TO AMEND THE TITLE AND OTHER LOCATIONS THROUGHOUT TO READ FOR THESE FUNDS TO COME FROM THE WATER AND SEWER RESERVE FUND AS OPPOSED TO THE GENERAL FUND.

There was no discussion.

VOTE: (amendment) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

CITY MANAGER'S REPORT

A. City Manager's Report

UPDATES / FOLLOW-UP

For this meeting, the Manager's Report consists entirely of the Parity Study recently completed by Personnel Director Sheri Hobbs. Please take the time to look it over. My hope is that we can discuss this a little at the Committee of the Whole. At that time we can give you an overview and answer questions. We will be looking for some direction as to how the Council may want to proceed from here. A workshop dedicated to this topic scheduled at a future meeting might be a good idea, to start with.

City Manager Wrede passed out emails from Representative Seaton and maps from the Alaska Redistricting Board for Option 1 – District 35 and Option 2 – District 36. In addition to the two options from the Alaska Redistricting Board, there are private options from the Bush Caucus, City of Valdez, and Bristol Bay Borough. Those maps significantly change House District 35 and Senate District R. There are web links in emails received from Representative Seaton for good information. The big difference for Homer is we are no longer linked with Seward. Instead of Seward we go further up the road towards Clam Gulch and Ninilchik. If Council wants to get involved they are looking for input. There is a public hearing on May 3 11:30 – 1:30 p.m. in Cowles Council Chambers.

Mayor Hornaday commented there may be many lawsuits in Alaska. Administration should ask Senator Stevens and Representative Seaton to give specific recommendations and then follow up on it. Redistricting comes up every 10 years and it is a terrible fight. Southeast Alaska and the bush areas are losing. It may have something to do with the budget in Juneau.

City Manager Wrede informed Council there is no report from the lobbyist, as there is nothing new to report. The lobbyists will be here on May 9th.

Mayor Carey is inviting participation in a borough-wide conference on healthcare. Mayor Hornaday would like to see staff there to represent the City.

City Manager Wrede paid tribute to Sheri Hobbs, Personnel Director, and Helen Hill, Library Director, who are leaving their employment with the City. It has been a joy to work with them. They are both professionals and have done an outstanding job for the City of Homer. The long awaited parity study is in the packet and Council will decide how they wish to proceed.

Mayor Hornaday commented Mr. Faulkner made reference to the comparison of government packages with private employer packages. The Mayor comes from both sides, as a Tier One retired employee and he also ran five businesses. City Manager Wrede clarified the focus was not to compare the city's employees with the private sector. Personnel policies say the parity study compares the City to other cities, since other municipalities are the competitors.

Councilmember Howard added the South Peninsula Hospital is a private facility; none of the operating funds are tax supported. They are a non profit and are unionized. Citizens pay tax money for capital improvements, but do not pay for the operations.

Councilmember Lewis asked for the breakdown of costs per each job description with benefits and salary combined.

Councilmember Hogan asked why it is taking so long to get the streets swept. City Manager Wrede answered Public Works crews have been really busy. They have been working on the streets with a front end loader. Until recently the weather has been mixed, making for plowing, sanding, and thawing culverts.

Mayor Hornaday referenced Mayor Carey's letter regarding the FCC narrow band mandate. City Manager Wrede will present a resolution in support at the next meeting.

B. Bid Report

CITY ATTORNEY REPORT

COMMITTEE REPORT

- A. Public Arts Committee
- B. Transportation Advisory Committee
- C. Permanent Fund Committee
- D. Lease Committee
- E. City Hall Renovation and Expansion Task Force

PENDING BUSINESS

- A. **Resolution 11-036(A)**, A Resolution of the City Council of Homer, Alaska, Amending the Fee Schedule to Provide for Long Term Parking Permit Fees. City Manager.

Memorandum 11-059 from Port and Harbor Director as backup.

Motion on the floor from April 11: MOTION FOR THE ADOPTION OF RESOLUTION 11-036(A) BY READING OF TITLE ONLY.

Councilmember Wythe expressed opposition to charging people that pay for a slip additional money to park a car.

Bob Hartley, Port and Harbor Advisory Commissioner, reported a person with a slip who will not be parked for more than 7 days will not have to pay for parking. If parked for longer than 7 days the permit is a way to avoid impoundment and fees.

Councilmember Hogan asked if there was discussion on a discount for marine trades on Ramps 1-4. Mr. Hartley answered there was not.

Councilmember Howard commented it is not appropriate to use public land to a store trailer. It is moving in on the storage companies in town that depend on those customers.

WYTHE/ROBERTS - MOVED TO SUBSTITUTE THE CURRENT RESOLUTION 11-036(A) ON PAGE 213 WITH THE AMENDED RESOLUTION 11-036(A) ON PAGE 217.

There was no discussion.

VOTE: (amendment) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) YES. ROBERTS, WYTHE, ZAK, HOWARD, HOGAN, LEWIS

Motion carried.

NEW BUSINESS

RESOLUTIONS

- A. **Resolution 11-040**, A Resolution of the City Council of Homer, Alaska, Amending the Port of Homer Terminal Tariff No. 600 to Provide for Parking Fees. City Manager/Port and Harbor Director.

Memorandum 11-062 from City Clerk as backup.

Mayor Hornaday called for a motion for the adoption of Resolution 11-040 by reading of title only.

HOWARD/LEWIS – SO MOVED.

WYTHE/LEWIS MOVED FOR THE AMENDMENT OF RESOLUTION 11-040 TO FOLLOW THE AMENDMENTS MADE IN RESOLUTION 11-036(A) AS PRESENTED ON PAGE 217.

There was no discussion.

VOTE: (amendment) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. **Resolution 11-041**, A Resolution of the City Council of Homer, Alaska, Approving and Adopting a New, Amended Standard Ground Lease Document, and Authorizing the Amendment of the City of Homer Property Management Policy and Procedures Manual to Conform to the Amended Standard Ground Lease Document. City Manager/Lease Committee.

Memorandum 11-060 from Lease Committee Staff as backup.

Memorandum 11-058 from City Manager to Lease Committee as backup.

Mayor Hornaday called for a motion for the adoption of Resolution 11-041 by reading of title only.

WYTHE/ROBERTS – SO MOVED.

HOGAN - MOVED TO REFER THIS TO THE ECONOMIC DEVELOPMENT COMMITTEE FOR THEIR COMMENTS.

Motion died for lack of a second.

Councilmember Lewis requested a set rate for subleasing in Section 8.01 as suggested by Brad Faulkner instead of the rate being set at the whim of the Council. Additionally, he asked if automotive insurance requirements could be amended.

City Manager Wrede agreed the percentage for subleases was a good suggestion and should be included in city code. As to insurance requirements, Attorney Klinkner and Terry Felde, Administrative Assistant, worked with the insurance broker for the language. It was written with

the intent to cover any vehicles a lessee might have, including employees. If there were an accident it could come back on the City.

Councilmember Howard asked if insurance requirements would be satisfied with the City named as additional insured.

City Manager Wrede answered the insurance requirements have been a point of contention with a lot of lessees. The old boilerplate lease had insurance policies required that are no longer available today. A general insurance requirement could be listed on the ground lease and provisions added during lease negotiations.

Councilmember Howard asked that the resolution be delayed to work out both the sublease percentage and the required insurance as to the standard of business. Councilmember Wythe asked that auto liability coverage be delineated to show the appropriate need.

Mayor Hornaday suggested the attorney and insurance carrier both be involved. City Manager Wrede answered the City Attorney and insurance company worked out that question.

WYTHE/LEWIS - MOVED TO POSTPONE APPROVAL OF RESOLUTION 11-041 TO THE SECOND MEETING IN MAY AND SCHEDULE A WORKSESSION REGARDING THE INSURANCE AND PERCENTAGE SECTION FOR THE FIRST MEETING IN MAY.

Brief discussion ensued on the need for a worksession.

VOTE: (POSTPONEMENT) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Resolution 11-042**, A Resolution of the City Council of Homer, Alaska, Expressing Opposition to Kenai Peninsula Borough Ordinance 2011-07 Which Reduces the Number of Borough Planning Commission Members from Thirteen to Eleven and Combines the Designated Homer and Seldovia Seats into One. City Manager.

Mayor Hornaday called for a motion for the adoption of Resolution 11-042 by reading of title only.

LEWIS/ROBERTS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- D. **Resolution 11-043**, A Resolution of the City Council of Homer, Alaska, Authorizing the City Manager to Prepare and Issue a Set of Requests for Proposals for Five Year Term Contracts for Engineering Services. City Manager/Public Works Director. Page 315

Mayor Hornaday called for a motion for the adoption of Resolution 11-043 by reading of title only.

WYTHE/HOWARD - SO MOVED.

City Manager Wrede noted the contract is expiring for the first time. Term contracts provide for an engineer to be readily available when needed without spending time requesting proposals and making individual decisions.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- E. **Resolution 11-044**, A Resolution of the City Council of Homer, Alaska, Awarding the Contract for a 2011 Ford Escape Hybrid in the Amount of \$30,722.00 to Kendall Ford of Wasilla, Alaska, and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk.

Memorandum 11-061 from Port and Harbor Director as backup.

Mayor Hornaday called for a motion for the adoption of Resolution 11-044 by reading of title only.

WYTHE/HOWARD - SO MOVED.

The current vehicle operated by the Port and Harbor Director is 16 years old with 140,000 miles. The new hybrid has a gasoline engine to back up the battery power. Hybrid vehicles are in compliance with the Climate Action Plan.

VOTE: YES. LEWIS, ROBERTS, WYTHE, ZAK, HOWARD

VOTE: NO. HOGAN

Motion carried.

- F. **Resolution 11-045**, A Resolution of the City Council of Homer, Alaska, Awarding the Contract for the Deep Water Dock Security Gate and Camera Systems Project to _____ of _____, _____ in the Amount of \$ _____ and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk.

Mayor Hornaday called for a motion for the adoption of Resolution 11-045 by reading of title only.

WYTHE/ROBERTS - SO MOVED.

Staff recommended the resolution be voted down as there will be a different bid format.

VOTE: NO. HOGAN, LEWIS, ROBERTS, WYTHE, ZAK, HOWARD

Motion failed.

COMMENTS OF THE AUDIENCE

Carey Meyer, Public Works Director, commented on the street sweeping, stating 10 days ago we had snow and the sand is frozen in the curbs at night making sweeping difficult. Many of the roads not yet swept are State maintained.

Brad Faulkner, city resident, commented the impasse in Juneau on the budget will greatly affect Homer due to the Governor's relationship with the oil companies. Projects have been tied into one bundle to prevent a veto. He recommended support for Senator Stevens and Representative Seaton in their endeavors with the gas line.

Jan Needham, city resident, commented on the .75% portfolio fee paid to U.S. Bank based on market value instead of cash in hand. She is quite concerned the City is spending tremendous amounts of money at a time when it is difficult for citizens.

Sunrise Sjoberg returned to Homer to find the City's monster brush cutting machine was at her house. She spent several hours cleaning up what was left behind in the ditches. The base of the ditch is getting higher, causing water to run under the road. She would like some attention placed on maintenance and to not see the beautiful alders chewed up by the big machine.

COMMENTS OF THE CITY ATTORNEY

City Attorney Klinkner was not present.

COMMENTS OF THE CITY CLERK

City Clerk Johnson had no comment.

COMMENTS OF THE CITY MANAGER

City Manager Wrede had no comment.

COMMENTS OF THE MAYOR

Mayor Hornaday commented he heard the Sandhill Cranes this morning. Spring his here!

COMMENTS OF THE CITY COUNCIL

Councilmember Wythe thanked the U.S. Bank folks for coming. She is happy the fund is creating revenue. She appreciates the city clerks and peace officers. The clerks put up with a lot of rhetoric so Council does not have to. She thanked Helen Hill and Sheri Hobbs for their years of service and wished them well. As to the parity study and lack of public participation, Walt stated it was not in the personnel policies that we are looking for non city entities to participate. The City does invite other members of the community to participate in the parity study, although there are not many good fits and not many organizations are interested in sharing information. The City cannot compel people to participate in those surveys.

Councilmember Lewis thanked Sheri and Helen for their years of service.

Mayor Hornaday thanked Sheri and Helen.

Councilmember Zak thanked Assemblyman Smith for the report and coming up with the new numbers of \$1M savings a year with the \$10M request for the gas line. It is good to know Representative Seaton and Senator Stevens have packaging going on to save the veto. On the Borough transfer site, the House Finance Committee is the contact. Being an optimist, Councilmember Zak hopes to see the gas line and transfer site funded as they are both critical to the future. People can get involved and send a letter to Representative Seaton, Senator Stevens, and Governor Parnell.

Councilmembers Hogan and Howard had no comment.

ADJOURNMENT

There being no further business to come before the Council, Mayor Hornaday adjourned the meeting at 7:37 p.m. The next Regular Meeting is scheduled for Monday, May 9, 2011 at 6:00 p.m. The next Committee of the Whole is scheduled for Monday, May 9, 2011 at 5:00 p.m. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____

VISITORS

ANNOUNCEMENTS
PRESENTATIONS
BOROUGH REPORT
COMMISSION REPORTS

MAYOR'S RECOGNITION TO HOMER
HIGH SCHOOL CHOIR TO BE PRESENTED
AT MEETING.

**CITY OF HOMER
HOMER, ALASKA**

MAYOR'S PROCLAMATION

**NATIONAL PUBLIC WORKS WEEK
May 15 - 21, 2011**

WHEREAS, Public works infrastructure, facilities, and services are of vital importance to the health, safety, and well-being of the people of the United States; and

WHEREAS, Those facilities and services could not be provided without the dedicated efforts of public works staff, who represent State and local governments throughout the United States; and

WHEREAS, Those individuals design, build, operate, and maintain the transportation systems, water infrastructure, sewage and refuse disposal systems, public buildings, and other structures and facilities that are vital to the citizens and communities of the United States; and

WHEREAS, It is in the interest of the public for citizens and civic leaders to understand the role that public infrastructure plays in –

- (1) protecting the environment;
- (2) improving public health and safety;
- (3) contributing to economic vitality; and
- (4) enhancing the quality of life of every community of the United States.

WHEREAS, Every day public works professionals make important contributions to improve –

- (1) The public infrastructure of the United States; and
- (2) the communities that those professionals serve.

NOW, THEREFORE, I, James C. Hornaday, Mayor of the City of Homer, do hereby proclaim the week of May 15 - 21, 2011 as:

NATIONAL PUBLIC WORKS WEEK

and encourage all residents to recognize the substantial contributions that public works professionals make to the City and the Nation.

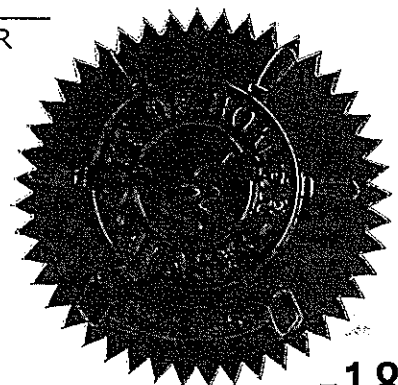
IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Homer, Alaska to be affixed this 9th day of May, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK



**CITY OF HOMER
HOMER, ALASKA**

MAYOR'S PROCLAMATION

**"NATIONAL HOSPITAL WEEK"
MAY 8 - 14, 2011**

WHEREAS, South Peninsula Hospital is celebrating its 55th year of service to the community; and is the only provider open 24 hours a day, seven days a week, providing emergency care for the entire southern peninsula; and

WHEREAS, South Peninsula Hospital has grown over the years to provide services needed in the community, including Emergency, Acute Care, Surgery, Long Term Care, Physical Therapy, Laboratory Services, Home Health, Specialty Clinic, Sleep Center and Education Programs; and

WHEREAS, South Peninsula Hospital is a major employer, offers over 300 jobs, provides competitive benefits and a professional career track for our local hire; and

WHEREAS, South Peninsula Hospital has significant economic impact through a payroll of over \$12,000,000 per year, through their purchases for supplies and services for operations, and by attracting new money to the community through patients, physicians and relocation; and

WHEREAS, The South Peninsula Hospital employees represent a group of care providers dedicated to continuing education and dedicated to the community; and

WHEREAS, South Peninsula Hospital continually ranks highest in every survey category when compared to the average scores of both statewide hospitals and national hospitals; and

WHEREAS, South Peninsula Hospital's success is due to a unique partnership between the City of Homer, the Kenai Peninsula Borough and South Peninsula Hospital, Inc.; and

WHEREAS, South Peninsula Hospital has been pro-active to increase services, growing the active medical staff to 22 physicians, surgeons and specialists and advocating for continued facility expansion which will enhance and improve services and attract providers; and

WHEREAS, South Peninsula Hospital serves as the keystone in the medical services industry in the community, attracting and supporting a medical community quite broad in scope of services for a small community; and

NOW, THEREFORE, I, JAMES C. HORNADAY, Mayor of the City of Homer, do hereby proclaim the week of May 8-14, 2011, as:

NATIONAL HOSPITAL WEEK

in the City of Homer, Alaska, and urge the citizens of the City of Homer to express their appreciation for the people, facilities and technologies that make the miracle of health care possible in our community.

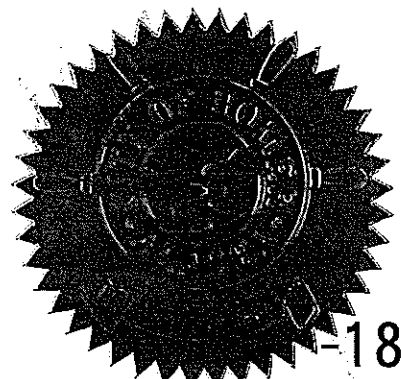
IN WITNESS WHEREOF, I have hereunto set my hand and cause to be affixed the official seal of the City of Homer to be affixed this 9th day of May, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK





Official Business

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 202
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

April 26, 2011

The Honorable James C. Hornaday
Mayor of the City of Homer
Homer City Hall
491 E. Pioneer Avenue
Homer, AK 99603

Dear Mayor Hornaday:

As directed, I am enclosing a copy of the following resolution:

HOUSE RESOLUTION NO. 8

Opposing the designation by the National Oceanic and Atmospheric Administration of 3,016 square miles of upper Cook Inlet and Kachemak Bay as critical habitat for beluga whales.

House Resolve No. 8

The resolution was passed by the Alaska House of Representatives on April 13, 2011, and transmitted to the Governor for permanent filing on April 25, 2011.

Sincerely,

A handwritten signature in cursive script that reads "Suzi Lowell".

Suzi Lowell
Chief Clerk

Enclosure as noted

STATE OF ALASKA HOUSE OF REPRESENTATIVES

2011

Source
HR 8

House
Resolve No.
8



Opposing the designation by the National Oceanic and Atmospheric Administration of 3,016 square miles of upper Cook Inlet and Kachemak Bay as critical habitat for beluga whales.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES:

WHEREAS the National Oceanic and Atmospheric Administration designated 3,016 square miles of upper Cook Inlet and Kachemak Bay as critical habitat for beluga whales; and

WHEREAS the designation failed to adequately consider the economic effects a critical habitat designation would have on shipping, oil and gas exploration and production, mining, and all other forms of economic activity in the inlet; and

WHEREAS the National Marine Fisheries Service has stated that the additional regulatory oversight will cost only an additional \$600,000 over the next decade; and

WHEREAS the cost estimate does not factor in the extra costs that existing and future operations may have to pay to meet unnecessary new regulatory burdens; and

WHEREAS scientists in the National Marine Fisheries Service have concluded that the primary reason for the population decline was the unsustainable subsistence harvest in the

1990s; and

WHEREAS a cooperative harvest management plan was put into place in 2000; and

WHEREAS scientists predicted signs of recovery of the beluga whale population would take five to seven years after a cooperative harvest management plan was instituted; and

WHEREAS, in 2005, the population of beluga whales was 278, and in 2010, the population was 340, which is a four percent increase a year; and

WHEREAS there is little evidence that human activity has harmed the beluga whale's environment, migration, or ecology; and

WHEREAS there is little evidence that commercial or sport fishing is harming the beluga whale population; and

WHEREAS the commercial and sport fishing industries could be gravely threatened by a critical habitat designation because the beluga whale's primary food source is fish; and

WHEREAS lost development opportunities because of critical habitat designations could ultimately lead to lost revenue to the State of Alaska and to local governments; and

WHEREAS all three members of Alaska's Congressional delegation and Governor Sean Parnell are opposed to the critical habitat designation; and

WHEREAS designation of broad areas of municipal, commercial, and industrial interest, without any known or identifiable link between activities in those areas and the conservation status of the Cook Inlet beluga whale, is contrary to the public interest; and

WHEREAS the conservation benefits, which are entirely uncertain and speculative, are outweighed by the costs and impediments posed by critical habitat in this instance in most, if not all, of the proposed designation area;

BE IT RESOLVED that the House of Representatives opposes the designation by the National Oceanic and Atmospheric Administration of 3,016 square miles of upper Cook Inlet and Kachemak Bay as critical habitat for beluga whales.

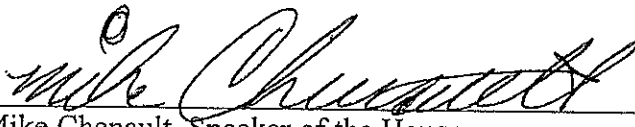
COPIES of this resolution shall be sent to the Honorable Barack Obama, President of the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable John Boehner, Speaker of the U.S. House of Representatives; the Honorable Gary F. Locke, United States Secretary of Commerce; Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere, United States

Department of Commerce; Kaja Brix, Director, Protected Resources Division, Alaska Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration; the Honorable Dan Sullivan, Mayor of the Municipality of Anchorage; the Honorable DeLena Johnson, Mayor of the City of Palmer; the Honorable Verne E. Rupright, Mayor of the City of Wasilla; the Honorable Larry DeVilbiss, Mayor of the Matanuska-Susitna Borough; the Honorable James C. Hornaday, Mayor of the City of Homer; the Honorable Pat Porter, Mayor of the City of Kenai; the Honorable Peter A. Micciche, Mayor of the City of Soldotna; the Honorable David R. Carey, Mayor of the Kenai Peninsula Borough; and the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.


AUTHENTICATION

The following officers of the Legislature certify that the attached enrolled resolution, HR 8, consisting of 3 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

Passed by the House April 13, 2011


Mike Chenault, Speaker of the House

ATTEST:


Suzi Lowell, Chief Clerk of the House

PUBLIC HEARING(S)

**CITY OF HOMER
PUBLIC HEARING NOTICE
CITY COUNCIL MEETING**

Ordinances 11-14, 11-15 and 11-16(A)

A **public hearing** is scheduled for **Monday, May 9, 2011** during a Regular City Council Meeting. The meeting begins at 6:00 p.m. in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

Ordinances 11-14, 11-15 & 11-16(A) internet address:
<http://www.cityofhomer-ak.gov/ordinances>

Ordinance 11-14, An Ordinance of the City Council of Homer, Alaska, Accepting and Appropriating a Rasmuson Foundation Grant of \$15,000 for Collection Development for the Homer Public Library and Authorizing the City Manager to Execute the Appropriate Documents. City Manager. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Ordinance 11-15, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 10.04.100, Vehicles and Other Wheeled Conveyances; and Homer City Code 10.04.110, Violation--Penalty; Regarding the Regulation of Parking in the Harbor Area. City Manager/Port and Harbor Director. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Ordinance 11-16(A), An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the ~~Fund Balance of the General Fund~~ **Water Sewer Depreciation Reserves** to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate. City Manager/Public Works Director. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.



All interested persons are welcomed to attend and give testimony. Written testimony received by the Clerk's Office prior to the meeting will be provided to Council.

** Copies of proposed Ordinances, in entirety, are available for review at Homer City Clerk's Office. Copies of the proposed Ordinances are available for review at City Hall, the Homer Public Library, the City of Homer Kiosks at City Clerk's Office, Captain's Coffee, Harbormaster's Office, and Redden Marine Supply of Homer and the City's homepage - <http://clerk.ci.homer.ak.us>. Contact the Clerk's Office at City Hall if you have any questions. 235-3130, Email: clerk@ci.homer.ak.us or fax 235-3143.

Jo Johnson, CMC, City Clerk

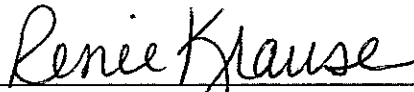


Publish: Homer Tribune: May 4, 2011

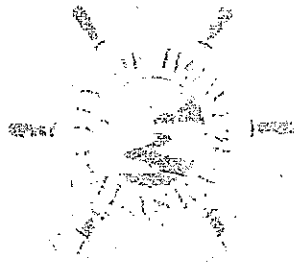
CLERK'S AFFIDAVIT OF POSTING

I, Renee Krause, CMC, Deputy City Clerk I for the City of Homer, Alaska, do hereby certify that a copy of the Public Hearing Notice for Ordinance 11-14, Accepting and Appropriating a Rasmuson Foundation Grant of \$15,000 for Collection Development for the Homer Public Library; Ordinance 11-15, Amending Homer City Code 10-04.100, Vehicles and Other Wheeled Conveyances; Homer City Code 10.04.110, Violation – Penalty; Regarding the Regulation of Parking in the Harbor Area; and Ordinance 11-16(A), Amending FY 2011 Operating Budget by Appropriating \$20,000 from the ~~Fund Balance of the General Fund~~ **Water Sewer Depreciation Reserves** to Purchase a Used Allman Light Tower and a Used DynaPac Diesel Plate at the City of Homer kiosks located at City Clerk's Office, Captain's Coffee Roasting Co., Harbormaster's Office, and Redden Marine Supply of Homer, on April 29, 2011 and that the City Clerk posted same on City of Homer Homepage on April 29, 2011.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of said City of Homer this 27th day of April, 2011.



Renee Krause, CMC, Deputy City Clerk I



ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-14

An Ordinance of the City Council of Homer, Alaska, Accepting and Appropriating a Rasmuson Foundation Grant of \$15,000 for Collection Development for the Homer Public Library and Authorizing the City Manager to Execute the Appropriate Documents.

Sponsor: City Manager

1. City Council Regular Meeting April 25, 2011 Introduction
 - a. Notice of Grant Award and Grant Agreement
2. City Council Regular Meeting May 9, 2011 Public Hearing and Second Reading
 - a. Notice of Grant Award and Grant Agreement

CITY OF HOMER
HOMER, ALASKA

City Manager

ORDINANCE 11-14

AN ORDINANCE OF THE CITY COUNCIL OF HOMER,
ALASKA, ACCEPTING AND APPROPRIATING A
RASMUSON FOUNDATION GRANT OF \$15,000.00 FOR
COLLECTION DEVELOPMENT FOR THE HOMER
PUBLIC LIBRARY AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE APPROPRIATE
DOCUMENTS.

WHEREAS, The Homer Public Library has received a grant from the Rasmuson
Foundation; and

WHEREAS, This grant is to provide funding that will be used to develop, expand and
update books, audio-visual materials, and electronic reference resources of the Homer Public
Library for the benefit of all patrons.

NOW, THEREFORE, BE IT ORDAINED by the City of Homer:

Section 1. That the City of Homer accepts \$15,000.00 from the Rasmuson Foundation for
the purpose of developing the collection for the Homer Public Library as follows:

Revenue:

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
157-730	Rasmuson Foundation	\$15,000.00

Expenditure:

157-730	Collection Development	\$15,000.00
---------	------------------------	-------------

Section 2. That the City Council hereby authorizes the City Manager to execute the
appropriate documents.

Section 3. This ordinance is a budget amendment only, is not of a permanent nature and
is a non code ordinance.

PASSED AND ENACTED by the Homer City Council this _____ day of
_____, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

47 ATTEST:

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50 JO JOHNSON, CMC, CITY CLERK

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52

53 AYES:

54 NOES:

55 ABSTAIN:

56 ABSENT:

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59 Introduction:

60 Public Hearing:

61 Second Reading:

62 Effective Date:

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65 Reviewed and approved as to form:

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68 Walt Wrede, City Manager

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70 Date: _____

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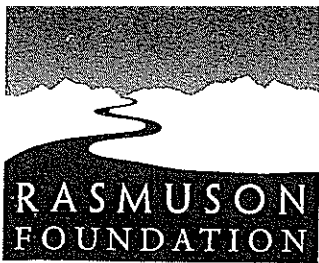
73 Fiscal Note: Fiscal information included in body of Ordinance.

74

75

Thomas Klinkner, City Attorney

Date: _____



April 1, 2011

301 W. Northern Lights Blvd.
Suite 400
Anchorage, AK 99503

907.297.2700 *tel*
907.297.2770 *fax*
877.366.2700 *toll-free in Alaska*
rasmusonfdn@rasmuson.org *email*
www.rasmuson.org

Mr. Walt Wrede
City Manager
City of Homer – Homer Public Library
491 East Pioneer Avenue
Homer, AK 99603

Dear Mr. ^{Walt}Wrede:

I am pleased to inform you that City of Homer - Homer Public Library has been awarded a \$15,000 grant for collection development at Homer Public Library.

Enclosed is a check payable to City of Homer - Homer Public Library in the amount of \$15,000. This disbursement is final payment for this grant. By depositing this check, you are agreeing to the terms and conditions of the enclosed grant agreement.

Please have one official from your organization acknowledge receipt of this grant and agreement with its terms by signing the attached grant agreement and returning it by April 30, 2011. Please reference grant number 6014 on all correspondence regarding this grant.

A final report on your grant is due within 30 days from your grant end date of March 31, 2012. Attached is the form to use for this report, or you can download it from our website at www.rasmuson.org.

Our Directors are interested in keeping in touch with your activities during the course of the year. If you have a special event, receive recognition for your services, or have a significant accomplishment, we would like to hear about it. You may wish to include us on your regular mailing list. Also, if any key people involved in the project change, please notify us in writing.

BOARD of
DIRECTORS

Edward B. Rasmuson
Chairman

Morgan Christen

Jeff Cook

Douglas Eby

Adam Gibbons

Lile R. Gibbons

Anthony Mallott

Roberta Quintavell

Cathryn Rasmuson

Judy Rasmuson

Mary Louise Rasmuson

Natasha von Imhof

PRESIDENT
Diane Kaplan

If you have any questions, please contact your program staff, Jeff Baird, by email at jbaird@rasmuson.org, or by phone at (907) 297-2831, or toll-free in Alaska (877) 366-2700.

Congratulations on your award.

Best regards,

A handwritten signature in black ink, appearing to be "Diane Kaplan", written over the printed name.

Diane Kaplan
President

cc: Ms. Helen Hill, Library Director, Homer Public Library

Encl:
Grant agreement
Check
Small Grant Report form



GRANT AGREEMENT

Grantee: City of Homer - Homer Public Library
Total Award Amount: \$15,000
Project Title: Collection development at Homer Public Library.
Date Awarded: April 1, 2011
Grant Number: 6014
Grant Type: Tier 1
Award Detail and Conditions: \$15,000 outright grant for collection development at Homer Public Library.
Program Staff: Jeff Baird

By signing this document, the grantee agrees to accept any and all conditions of this grant award and to comply with the requirements of Rasmuson Foundation. Please provide a signature from an official who is authorized to sign contracts on behalf of the organization (for example, the Executive Director or Chair of the Board of Directors; the Mayor or City Manager; IRA Council President or Tribal Administrator; or Chancellor, Dean or Director.

By:

Typed or printed Legal Name of Organization

Signature

Date

Typed or printed Name and Title

(Please sign this Agreement, initial each page where indicated, and return it to the Foundation by the date indicated in the award letter. Retain a copy for your records.)

City of Homer - Homer Public Library
RF grant number 6014

_____ Initial

Page 1 of 4

Rev. 7/10

-203-

Rasmuson Foundation Grant Award and Conditions

Grant Number

The Grant Number for this award is 6014. Please refer to this number in all correspondence related to this award.

Grant Payments

By signing this agreement you acknowledge receipt of payment in full for this grant.

Expenditure of Funds

This grant is made based upon a specific proposal that contains a project description. It is expected that the entire amount of this grant will be applied to the described project and not used for any other purposes. If, at the end of the grant period, unspent funds remain, the balance of the grant funds must be returned to the Foundation.

Grant Duration

As agreed during the grant proposal review process, the project has the following begin and end dates:

Project begin date: April 1, 2011
Project end date: March 31, 2012

Reporting Requirements

A final report is due within 30 days after the grant end date. In reporting, the grantee should describe the status of the project, and explain the project impact on the grantee organization. If submitting project images with your final report, you are affirmatively representing that these images are your organization's legal property to distribute and you are granting the Rasmuson Foundation permission to use these images for publicity use only. Images include digital documentation such as photos, videos, audio files, etc. (REQUIRE INITIAL) _____

Extension

Extensions are not encouraged for small grants. Should you be unable to complete your project by the grant end date, you should contact your Program Officer prior to the grant end date.

Budget Reallocation or Project Revision

Requests to substantially revise the scope of an award for activities not originally proposed, or inconsistent with the award's intent, are not permitted.

Unspent Funds

It is the policy of the Foundation that unspent funds are returned with the final report.

Certification of IRS Status

By signing this document, the grantee certifies that it is a tax-exempt agency under Section 501 (c) (3) of the Internal Revenue Code and is classified as not a private foundation under Section 509 (a) (1) or 509 (a) (2) of the Code or, a unit of government, or an officially recognized tribal organization.

City of Homer - Homer Public Library
RF grant number 6014

_____ Initial

If the organization is required to file form 990 or any version thereof, the grantee certifies that these have been filed for the last three tax years (the most recent tax year may be on an unexpired extension).

Any change in IRS tax-exempt status must be promptly reported to the Foundation.

Change in Key Personnel or Contact Information

Please notify your Program Officer if the official who signs this document leaves office or changes, or with any other contact information change. This allows the Foundation to keep you apprised of new opportunities and changes.

Termination of Award

Failure to fulfill the terms of this agreement may result in termination of the grant. If the grant is terminated, the Foundation may ask for return of grant funds. Also, the organization may be ineligible to apply for future funding from the Rasmuson Foundation.

Forms

The Final report mentioned in this document is available on the Foundation's web site at www.rasmuson.org under "resources/forms/reporting and payment request forms."

If you have questions, please call or email:

Program Staff: Jeff Baird

Phone: (907) 297-2831, or toll free in Alaska (877) 366-2700

Email: jbaird@rasmuson.org



SMALL GRANT REPORT (\$25,000 or less)

Organization Name: City of Homer - Homer Public Library

Project Title: Collection development at Homer Public Library.

Grant Number: 6014

Narrative: Please attach a few paragraphs to tell us how your project went. What worked, what were the challenges and how did the grant impact your organization?

By signing this document, the grantee certifies that it has met the conditions of this grant, as stated in the grant agreement. Please provide a signature from one official who is authorized to sign on behalf of the organization.

By: _____
Typed or printed Name and Title

Signature

Date

Phone _____

Email address _____

Please complete and sign this Report by the date indicated in the grant agreement. Retain a copy for your records.

For Rasmuson Use Only

Jeff Baird

Rasmuson Program Staff Name

Signature

Date

5300

DATE	INVOICE NO.	COMMENT	AMOUNT	DISCOUNT	NET AMOUNT
04/01/11	6014	04 2010 Tier 1	15,000.00	.00	15,000.00
				TOTAL	15,000.00
CHECK: 005300 04/01/11 City of Homer -Homer Public					

RASMUSON FOUNDATION

GRANT PAYMENT
301 WEST NORTHERN LIGHTS BLVD., SUITE 400
ANCHORAGE, AK 99503

Wells Fargo Bank, N.A.
Anchorage, Alaska

89-5-1252

005300

5300

*FIFTEEN THOUSAND DOLLARS AND NO CENTS

DATE

CHECK AMOUNT

04/01/11

****15,000.00*

City of Homer -Homer Public
Library
491 E Pioneer Ave
Homer AK 99603

00-0001010

Joe Clarke
AUTHORIZED SIGNATURE

⑈005300⑈ ⑆125200057⑆2052306640⑈

RASMUSON FOUNDATION

5300

DATE	INVOICE NO.	COMMENT	AMOUNT	DISCOUNT	NET AMOUNT
1/01/11	6014	04 2010 Tier 1	15,000.00	.00	15,000.00
				TOTAL	15,000.00
CHECK: 005300 04/01/11 City of Homer -Homer Public					

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Security features. Details on back.



Congratulations On Receiving This Award!

You now have a great opportunity to increase public awareness about your work and how it improves the quality of life for the Alaskans you serve.

How? By using the receipt of this award as an opportunity to work with your local media to tell your story. Consider writing and distributing a press release that describes how this project strengthens your organization and improves your ability to work with and serve your key constituencies in your local areas. This is also a good chance to publicly thank everyone who supported this project.

Why Is Telling Your Story Important? It's a crowded media world out there. Proactively tell your story and advocate for the issues about which your organization cares deeply. Sharing the story behind the good work you do on behalf of Alaskans will inspire many who could either help you or benefit from your services.

Access the "Tell Your Story Communications Toolkit" on the Foundation's web site (www.rasmuson.org) under "Resources" for overviews, examples and templates for topics like:

TELL *your story*

- Communication planning
- Working with the media
- Framing your message
- Developing press releases
- Photo opportunities and media events
- Online communications

Should you develop a press release and receive coverage of your good work, the Foundation would appreciate a copy for its records.

CONTINUE YOUR MOMENTUM - *share your story*



(907)297-2700 or (877)366-2700 (TOLL-FREE WITHIN ALASKA)

www.rasmuson.org

Your check is enclosed!

Congratulations you are one of the first grantees to experience a streamlined Rasmuson Foundation grant award. In the past several months Rasmuson Foundation has been working hard to simplify the small grant application and reporting processes. The elimination of payment requests for most small grants is just one piece of the overall planned changes. We'll keep you posted on other upcoming modifications. If you have questions, please contact your Program Officer.

Rasmuson Foundation



*Please address any
thank you letters to:*

Mr. Edward B. Rasmuson, Chairman
Rasmuson Foundation
301 West Northern Lights Blvd., Suite 400
Anchorage, AK 99503

All other correspondence should be addressed
to Diane Kaplan, President of the Foundation.

Please note: The Foundation knows that you have many important
uses for your operational funds. As such, while we appreciate receiving
unframed or electronic photographs of Foundation-funded projects that
may be included on our website, plaques or other gifts are discouraged.

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-15

An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 10.04.100, Vehicles and Other Wheeled Conveyances; and Homer City Code 10.04.110, Violation--Penalty; Regarding the Regulation of Parking in the Harbor Area.

Sponsor: City Manager/Port and Harbor Director

1. City Council Regular Meeting April 25, 2011 Introduction
2. City Council Regular Meeting May 9, 2011 Public Hearing and Second Reading

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CITY OF HOMER
HOMER, ALASKA

City Manager/
Port and Harbor Director

ORDINANCE 11-15

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
AMENDING HOMER CITY CODE 10.04.100, VEHICLES AND OTHER
WHEELED CONVEYANCES; AND HOMER CITY CODE 10.04.110,
VIOLATION--PENALTY; REGARDING THE REGULATION OF PARKING
IN THE HARBOR AREA.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 10.04.100, Vehicles and other wheeled conveyances, is amended to read as follows:

10.04.100 Vehicles and other wheeled conveyances. a. The harbormaster may designate restricted parking areas in the harbor area. In a restricted parking area, the harbormaster may:

(1) Establish time limits for parking;

(2) Designate areas for paid parking, and establish fees for paid parking there; and

(3) Designate areas for permit parking, and establish the fees and qualifications for obtaining a permit.

~~"Restricted parking" areas will be established at such time and places as may be determined by the harbormaster. "Restricted parking" areas pertain to the parking of any vehicle or trailer, private or commercial. Violations of "restricted parking" areas will be fined according to the City traffic code.~~

b. The harbormaster shall notify the public of time limits in restricted parking areas, fees required to park in restricted parking areas, and permit requirements for parking in restricted parking areas by the placement of official traffic control devices. No person may stop, stand or park a vehicle in violation of such an official traffic control device. Every day in which such a violation continues shall constitute a separate offense.

cb. No person other than an employee of the City or other person acting on City business shall drive a vehicle upon the inside gravel slope of the Small Boat Harbor except in case of emergency. Parking or leaving boats, trailers and/or other vehicles and equipment related thereto by the public shall be limited to specific areas designated for such use.

de. Hauling out boats on skids is prohibited unless approved in advance by the harbormaster.

Section 2. Homer City Code 10.04.110, Violation--Penalty, is amended to read as follows:

10.04.110 Violation--Penalty. a. Except as provided in (b) of this section, any

[Bold and underlined added, Deleted language stricken through.]

violation of the provisions contained in this title or regulations adopted pursuant to this title shall be unlawful and punishable as provided in Section 1.16.010 of this Code.

b. A violation of HCC 10.04.100(b) is amenable to disposition without court appearance upon payment of a fine in the amount of \$25.00. The person cited for the violation may mail or personally deliver to the clerk of court the amount of the fine plus any surcharge required to be imposed by AS 29.25.074, together with a copy of the citation signed by the person indicating the person's waiver of court appearance, entry of plea of no contest, and forfeiture of the fine. The payment of a fine under this subsection shall be treated as a judgment of conviction. The fine paid is complete satisfaction for the offense. If a person cited for a violation of HCC 10.04.100(b) appears in court to contest the citation and is found guilty, the maximum sentence which may be imposed is the scheduled fine amount plus any surcharge required to be imposed by AS 29.25.074.

Section 3. This Ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of _____ 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

YES:

NO:

ABSTAIN:

ABSENT:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

[Bold and underlined added. Deleted language stricken through.]

87 Reviewed and approved as to form:

88

89

90

91 Walt E. Wrede, City Manager

92

93 Date: _____

Thomas F. Klinkner, City Attorney

Date: _____

[Bold and underlined added. Deleted language stricken through.]

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-16

An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the Fund Balance of the General Fund to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate.

Sponsor: City Manager/Public Works Director

1. City Council Regular Meeting April 25, 2011 Introduction
 - a. Photos of equipment
2. City Council Regular Meeting May 9, 2011 Public Hearing and Second Reading
 - a. Photos of equipment

CITY OF HOMER
HOMER, ALASKA

City Manager/
Public Works Director

ORDINANCE 11-16(A)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER,
ALASKA, AMENDING THE FY 2011 OPERATING BUDGET
BY APPROPRIATING \$20,000 FROM THE FUND BALANCE
OF THE GENERAL FUND WATER SEWER
DEPRECIATION RESERVES TO PURCHASE A USED
ALLMAN LIGHT TOWER AND A USED DYNAPAC DIESEL
PLATE.

WHEREAS, A local contracting / construction firm is ceasing operations and is offering
all of its equipment for disposal and sale; and

WHEREAS, The Department of Public Works has reviewed and inspected the list of
available equipment and has identified two items, the Allman Light Tower (\$10,000) and the
Dynapac Diesel Plate (\$9,000), that would be particularly useful; and

WHEREAS, These pieces of equipment are well maintained and purchasing them new
would cost an additional \$12,300; and

WHEREAS, The Public Works Department frequently rents pieces of equipment similar
to these for construction, maintenance, and repair on roads, water and sewer lines, and other
applications, and acquiring this equipment would save money and increase efficiency in the long
term.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1: The Homer City Council hereby amends the FY 2011 Operating Budget by
appropriating \$20,000 from the fund balance of the general fund Water Sewer Depreciation
Reserves for the purpose of acquiring a used Allman Light Tower (\$10,000) and a used Dynapac
Diesel Plate (\$9,000) as follows:

Expenditure:

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
100-100-5901 <u>256-378/379</u>	Allman Light Tower/ Dynapac Diesel Plate	\$20,000

Section 2. This is a budget amendment ordinance, is temporary in nature, and shall not be codified.

ENACTED BY THE HOMER CITY COUNCIL this _____ day of _____, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

YES:

NO:

ABSENT:

ABSTAIN:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

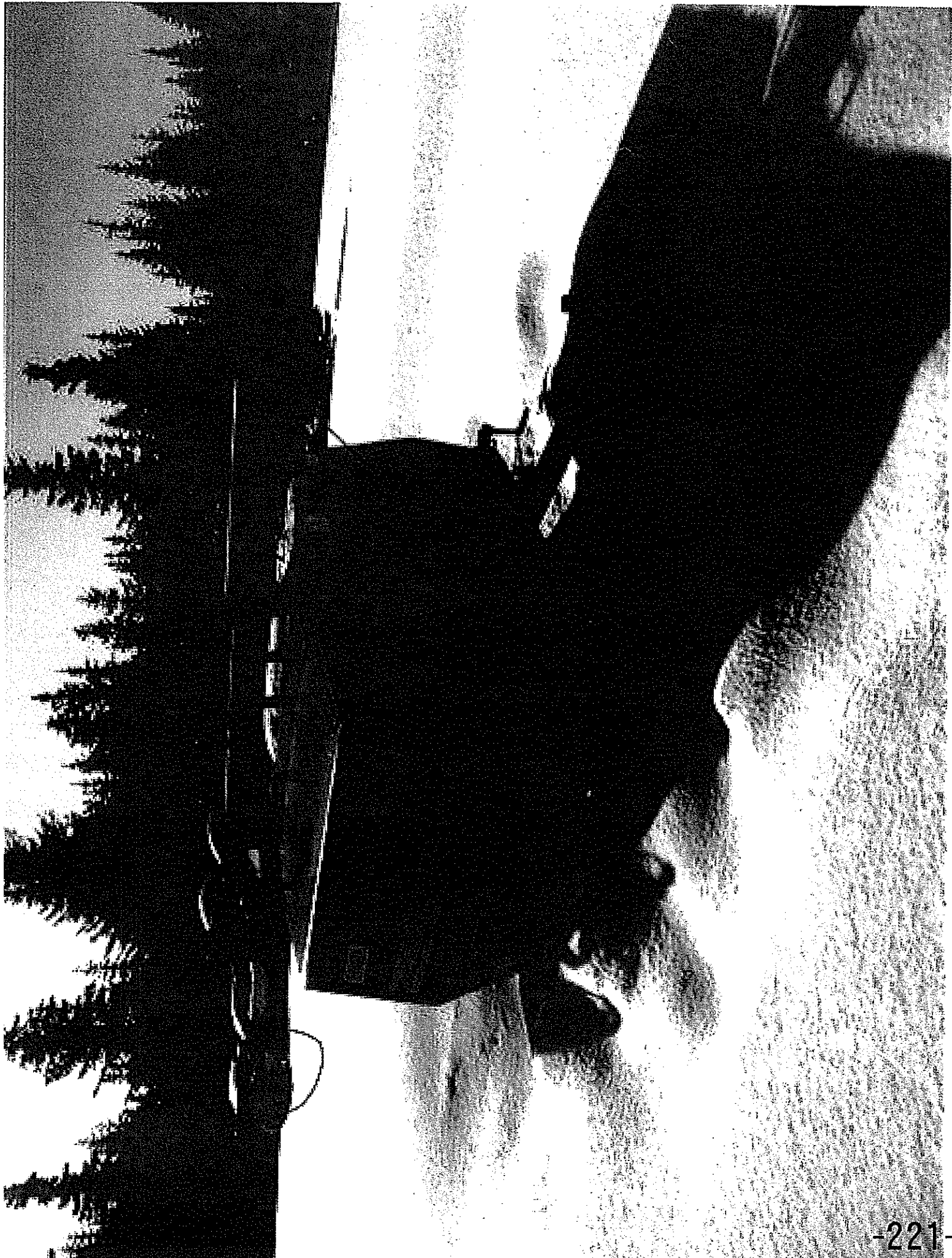
Reviewed and approved as to form:

Walt Wrede, City Manager

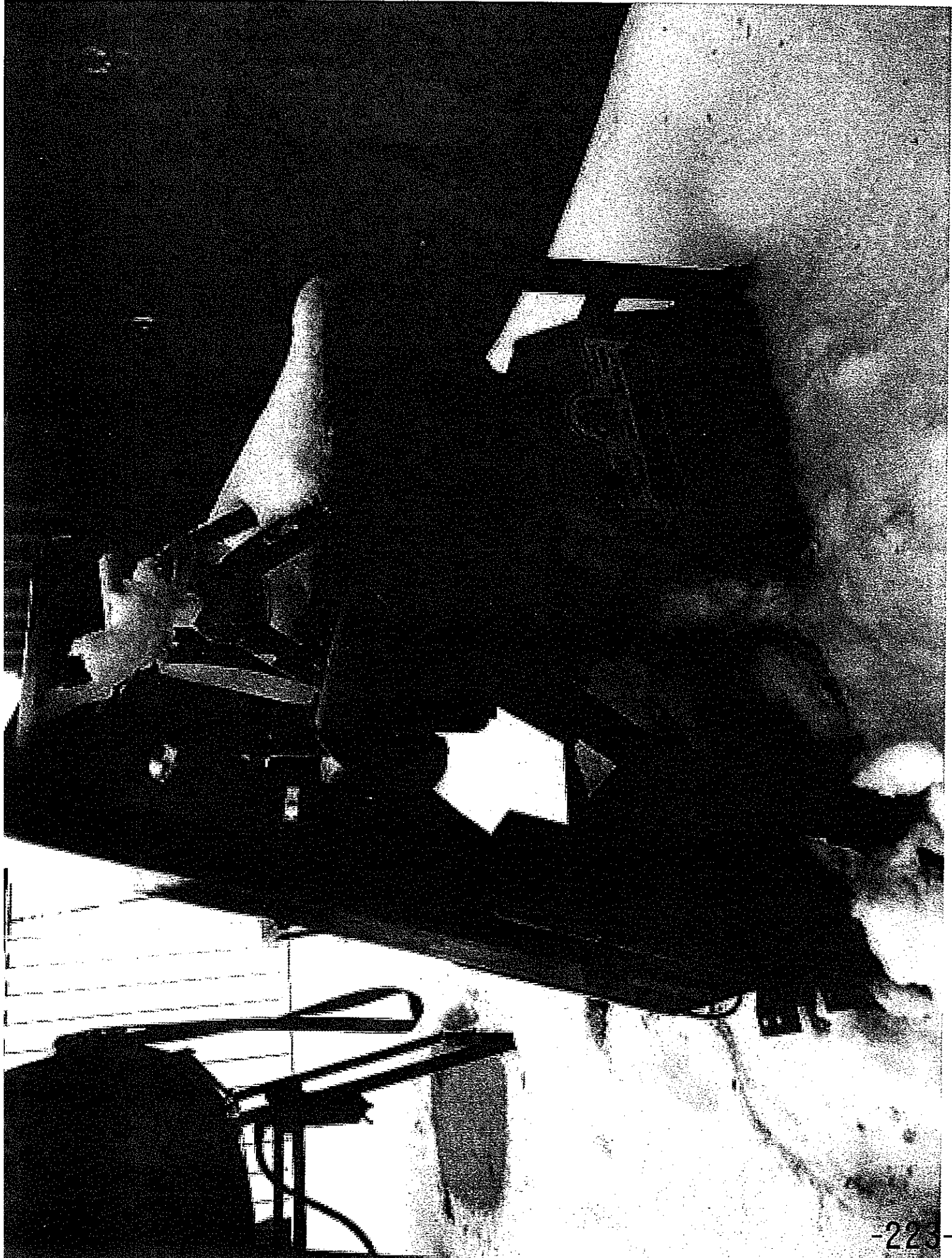
Thomas F. Klinkner, City Attorney

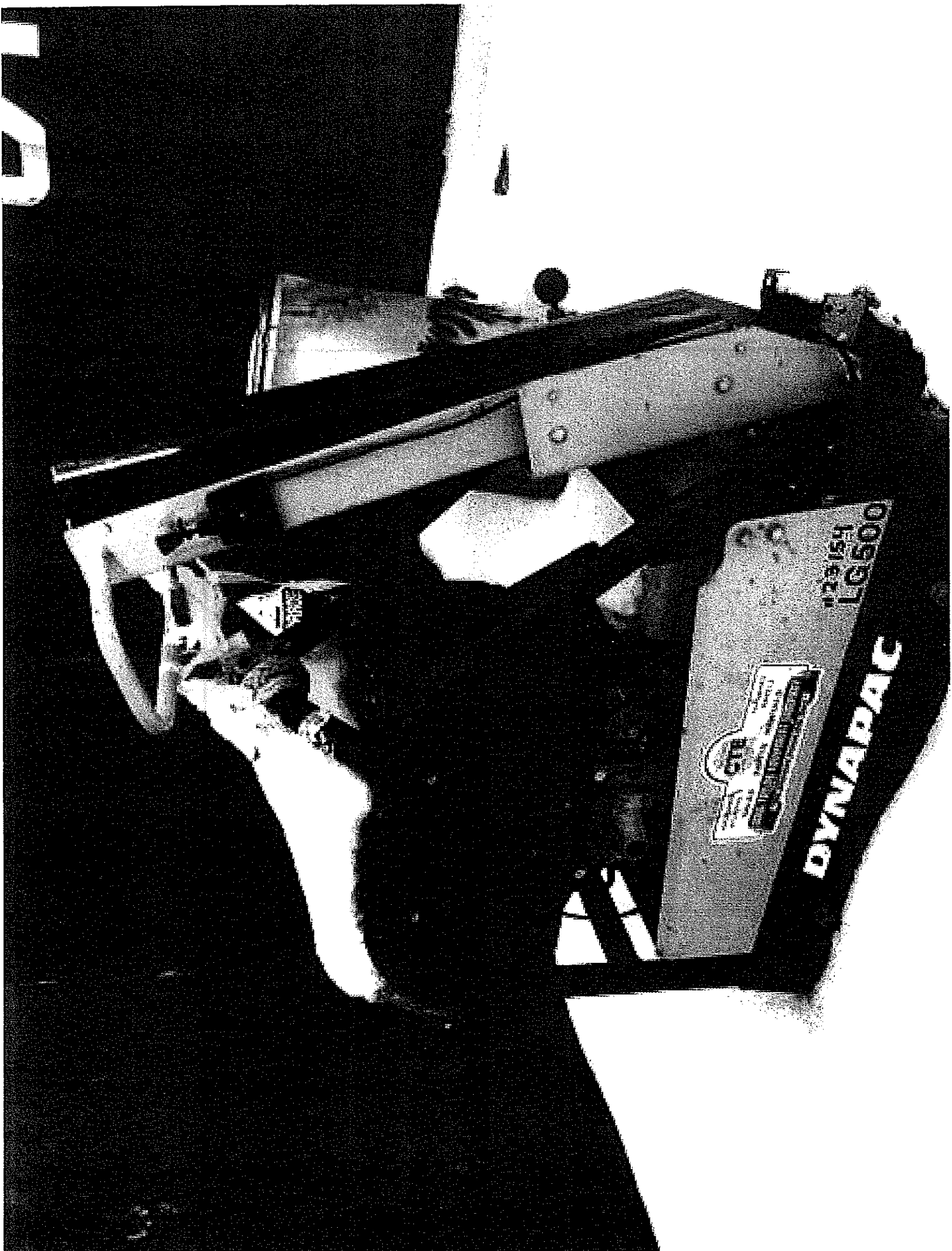
Date: _____

Date: _____









ORDINANCE(S)

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-17

An Ordinance of the City Council of Homer, Alaska, Amending the 2008 Homer Comprehensive Plan to Incorporate the Homer Spit Plan and Recommending Approval of the Amendment by the Kenai Peninsula Borough.

Sponsor: Planning

1. City Council Regular Meeting May 9, 2011 Introduction
 - a. Memorandum 11-068 from City Planner as backup w/attachments:
 1. Draft Ordinance
 2. Homer Spit Comprehensive Plan Final Draft (April 20, 2011)
 3. Staff Reports
 4. Minutes
 5. Written public comments

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**CITY OF HOMER
HOMER, ALASKA**

Planning

ORDINANCE 11-17

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING THE 2008 HOMER COMPREHENSIVE PLAN TO INCORPORATE THE HOMER SPIT PLAN AND RECOMMENDING APPROVAL OF THE AMENDMENT BY THE KENAI PENINSULA BOROUGH.

WHEREAS, The Kenai Peninsula Borough as a second class borough shall provide for planning on an areawide basis in accordance with AS 29.40; and

WHEREAS, As provided in Kenai Peninsula Borough Code 21.01.025, cities in the Borough requesting extensive comprehensive plan amendments may recommend to the Kenai Peninsula Borough Planning Commission a change to the city comprehensive plan; and

WHEREAS, The City of Homer has prepared an extensive amendment to the 2008 Comprehensive Plan in the form of the Homer Spit Plan; and

WHEREAS, A comprehensive plan is a public declaration of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the City; and

WHEREAS, The Homer Spit Plan will guide development on the Homer Spit; and

WHEREAS, The Homer Advisory Planning Commission and other City commissions and bodies have reviewed and/or conducted public hearings regarding the Homer Spit Plan; and

WHEREAS, The Homer City Council, based upon the recommendation of the Homer Advisory Planning Commission, recommends that the Kenai Peninsula Borough Planning Commission and Assembly amend the 2008 Homer Comprehensive Plan to incorporate the Homer Spit Plan.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. The 2008 Homer Comprehensive Plan is hereby amended to incorporate the Homer Spit Plan, which shall supersede the Homer Spit Plan section of the 1999 Homer Comprehensive Plan Update.

Section 2. Subsection (b) of Homer City Code 21.02.010, Comprehensive Plan—Adoption, is amended to read as follows:

b. The following documents, as initially approved and subsequently amended, are adopted by reference as comprising the Homer Comprehensive Plan.

1. Homer Comprehensive Plan (2008)
2. Homer Non-Motorized Transportation and Trail Plan (2004)
3. Homer Area Transportation Plan (2005)
4. Homer Town Center Development Plan (2006)
5. **Homer Spit Plan (2010)**

Section 3. The City hereby recommends that the Kenai Peninsula Borough Planning Commission and Assembly amend the 2008 Homer Comprehensive Plan by incorporating the Homer Spit Plan as an extensive comprehensive plan amendment under Kenai Peninsula Borough Code 21.01.025, and as an element of the Official Borough Comprehensive Plan within the City of Homer planning area of the Borough.

Section 4. Sections 1 and 2 of this ordinance shall take effect upon the Kenai Peninsula Borough Assembly amending the 2008 Homer Comprehensive Plan to incorporate the Homer Spit Plan. The remainder of this ordinance shall take effect upon its adoption by the Homer City Council.

Section 5. Section 2 of this ordinance is of a permanent and general character and shall be included in the city code. The remainder of this ordinance is not of a permanent nature and is a non code ordinance.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of _____ 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

[**Bold and underlined added.** Deleted language stricken through.]