



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue

Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

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Memorandum

Agenda Changes/Supplemental Packet

TO: MAYOR CASTNER AND HOMER CITY COUNCIL
FROM: MELISSA JACOBSEN, MMC, CITY CLERK
DATE: SEPTEMBER 14, 2020
SUBJECT: SPECIAL MEETING AGENDA CHANGES AND SUPPLEMENTAL PACKET

New Business

Memorandum 20-133 from City Clerk Re: Request for Executive Session Pursuant to AS 44.62.310(C)(1) Matters, the Immediate Knowledge of which would Clearly have an Adverse Effect upon the Finances of the Government Unit and Attorney/Client Privilege. (Airport Lease Termination)

Confirmation from lessee's to forego an executive session and documentation regarding lease termination.

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From: [Rachel Friedlander](#)
To: [Robert Dumouchel](#); [Melissa Jacobsen](#)
Subject: No exec session FW: Letter from CM Dumouchel regarding Flying Whale request
Date: Monday, September 14, 2020 8:13:01 AM

Morning Rob and Melissa,

Please see below email – Flying Whale is okay with no executive session.

From: Flying Whale <flyingwhalecoffee@gmail.com>
Sent: Saturday, September 12, 2020 8:54 PM
To: Rachel Friedlander <rfriedlander@ci.homer.ak.us>
Subject: Letter from CM Dumouchel regarding Flying Whale request

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Rachel,

Sorry have been out of service. It is okay to discuss it in public. We would like to be present or however that is happening these days. I will be out of service till Monday afternoon. You might be able to reach Amanda at work if needed at 299-4063.

Thank you,
Heather

On Fri, Sep 11, 2020, 2:38 PM Rachel Friedlander <rfriedlander@ci.homer.ak.us> wrote:

Hi Heather and Amanda,

Please see attached for a letter from City Manager Rob Dumouchel concerning your early termination request and waiver of rent/commission payments. I did not get a response from you regarding the below emails nor a call back from the message I left earlier this week. There is still time if you wish to cancel the executive session so that this matter can be discussed in public on the 14th.

Best,
Rachel
907-435-3102

From: Rachel Friedlander
Sent: Tuesday, September 8, 2020 9:29 AM
To: 'Flying Whale' <flyingwhalecoffee@gmail.com>
Subject: RE: Termination of lease

Good morning,

Just following up on the below email – feel free to call and discuss if that’s easier. I will call you this afternoon if you haven’t had a chance to respond before then.

Best,
Rachel
907-435-3102

From: Rachel Friedlander
Sent: Thursday, September 3, 2020 2:28 PM
To: 'Flying Whale' <flyingwhalecoffee@gmail.com>
Cc: Robert Dumouchel <RDumouchel@ci.homer.ak.us>
Subject: RE: Termination of lease

Hi Heather and Amanda,

The City Manager will bring forward your request before Council at their meeting scheduled for September 14th. Per Homer City Code, the City is required to have this discussion in executive session. You will get noticed that the executive session is happening and will have the option to waive confidentiality in order to have the discussion held in an open, public meeting so you can attend. There is also an opportunity for public comment before council goes into executive session if you wanted to comment for 3 minutes beforehand. Would you be okay with the Flying Whale’s lease termination being discussed in public?

Best,
Rachel

From: Rachel Friedlander
Sent: Friday, August 28, 2020 11:52 AM
To: 'Flying Whale' <flyingwhalecoffee@gmail.com>
Cc: Robert Dumouchel <RDumouchel@ci.homer.ak.us>
Subject: RE: Termination of lease

Hi again Heather and Amanda,

Just letting you know we have not forgotten about Flying Whale and I’m hopeful we will have a response regarding your request by next week.

Best,
Rachel

From: Rachel Friedlander
Sent: Thursday, August 20, 2020 11:32 AM
To: 'Flying Whale' <flyingwhalecoffee@gmail.com>

Cc: Robert Dumouchel <RDumouchel@ci.homer.ak.us>

Subject: RE: Termination of lease

Hi Heather and Amanda,

I wanted to let you know Flying Whale's request for termination is under review by the new City Manager Rob Dumouchel (CC'ed) and the City Attorney. Thank you for getting both rent payment and commission fees current up to March 2020 yesterday. I will be out of the office until the beginning of next week and will share any feedback upon return unless Rob has updated news for you before then.

Best,
Rachel

On Thu, Aug 13, 2020, 10:45 AM Rachel Friedlander <rfriedlander@ci.homer.ak.us> wrote:

Thank you Heather and Amanda. I am sorry to hear about the hardships faced by you both. We will review your request under the terms of the lease and follow up with you shortly (I'm hoping by the middle to end of next week).

In the meantime, can you arrange payment for rent and commissions through March with the Finance Department by Monday, August 17th? As of this today, Flying Whale is up to date for rent through January 2020 and concessions through December 2019. Payment can be made over the phone by calling (907) 435-3112.

Best,
Rachel

From: Flying Whale <flyingwhalecoffee@gmail.com>

Sent: Thursday, August 13, 2020 12:39 AM

To: Department City Manager <City_Manager@ci.homer.ak.us>

Subject: Termination of lease

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To whom it may concern,

We are seeking early termination of the lease for Flying Whale Coffee, LLC. We have faced several hardships this year both financially and socially. Our store has been physically closed since the middle of March with the start of Covid-19 as the airport was a hub for potentially infected patrons to fly into. To protect my customers, my family and myself, we closed March 17th. At the state level on March 18th the state health mandate 3.1 closed all dine in food and beverage kiosks. Under The City of Homer Emergency Declaration "All City facilities were closed to the public until further notice". On March 27th mandate 11 "social distancing", ordered non-essential workers to stay at home and "hunker down". During this time Ravn air filed bankruptcy closing down the airport terminal altogether to the remaining public.

Prior to the start of Covid, we were already facing financial hardships due to the decrease in Ravn flights that they had when we took over. There were 6 flights a day in 2017 and by the end of 2019 there were only 2-4 flights a day. Our customers constantly complained about the lack/cancellation of flights, rude attitudes and in 2019 they started charging baggage fees. With these compiled together, they stated they would no longer be flying from Homer. And the customers intending to purchase from my store would leave upset. Thus, leading to less traffic/sales for my store. Starting the hardship.

No matter how much we would advertise on facebook, google, yelp, ect. We had several complaints from customers about them not being able to locate our store. As there are no signs or billboards allowed at the street stating who is located inside the airport. Another frequent complaint was we were out of the way by being down airport road and thus forgotten about. Our customer base traffic thus was centered around Ravn flight times. And as stated above, with the decrease in scheduled flights and frequent cancellation of already booked flights. This was financially hitting us even harder.

We could not afford to have employees due to the already discussed financial constraints. So when Covid hit, I was unable to apply for many of the relief programs/ paycheck protection programs. For the state CARES act, we do not qualify because Amanda and I have our main jobs that disqualify our business (Flying Whale Coffee) from receiving this funding. In this unprecedented time as healthcare workers, we were overwhelmed with the constant changing of mandates/ regulations that affected South Peninsula Hospital, us as employees and our own personal lives. Amanda works in environmental services and I am a Registered Nurse on the front-lines helping our community. With the closure of the schools, Amanda and I had to navigate homeschooling through the borough during the day then going to work at the hospital throughout the night. The overwhelming constant changes those first few months put the business affairs in limbo both for us and the city. As we never received any updates concerning further business/ operations at airport.

Moving forward with receiving the SBERG, we are able to get caught up paying full rent/commission for January thru March. Totaling \$2,907.80. From April on, we are requesting the city to waive the remainder of the lease payments and ask for early termination of the lease. As the terminal was deemed inoperable due to the city's emergency declaration and mandates of closure until further notice.

Lastly, the remodeling of the space with taking down the center wall between concession 104 and 105. Under provision 10. Alterations in the lease, it states the city can elect us to remove any alterations (re:replacing the wall). We are aware and accountable for this should the city request we have it replaced.

Thank you for reviewing and your considerations in this matter,
Heather Temple and Amanda Moran

Flying Whale Coffee, LLC
274 Lee Dr.
Homer, AK 99603
(702) 785-4559



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Office of the City Manager

491 East Pioneer Avenue
Homer, Alaska 99603

citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

Memorandum

TO: Mayor Castner and Homer City Council
FROM: Rob Dumouchel, City Manager
DATE: September 11, 2020
SUBJECT: Flying Whale Sublease Termination and Waiver of Rent Request

On August 13th, my office received a request from Flying Whale Coffee owners Heather Temple and Amanda Moran for an early termination of their sublease and a waiver of rents and commissions owed April 2020 onward (see enclosure); currently the business is in default for failure to pay rent and commissions. The State of Alaska as lessor has been informed of this sublease termination request and has no objections. Notice had been sent to Flying Whale on May 1st regarding their ability to defer lease payments due to potential impacts from COVID-19 and no response was received.

Flying Whale's sublease ran from April 6, 2018 – March 30, 2023. Annual rents owed totaled \$8,640 plus a commission fee of at minimum \$200 a month and tax. The last payment the City received from Flying Whale was for March 2020 and SBERG funds were used. From April 1 – September 30, 2020, Flying Whale would have owed the City \$5,755.50.

I want to propose to Council that the City grant Flying Whale's request and return their full deposit currently on file (minus any potential damage found while inspecting their leased space) due to the extenuating circumstances of COVID-19 and RavnAir's bankruptcy. On March 17th, the State of Alaska issued COVID-19 Health Mandate 3.1 which closed "all bars, breweries, restaurants, food and beverage kiosks or trucks, and other establishments serving food or beverages ...to the public dine-in service." On March 18th, Mayor Castner issued an emergency declaration as a result of COVID-19 which closed all City facilities to the public. On March 27th, the State issued COVID-19 Health Mandate 11, ordering the closure of non-essential businesses like Flying Whale. On April 5th, RavnAir filed for bankruptcy and announced it would stop all operations and lay off all remaining staff.

Given COVID-19, State mandates limiting non-essential business operations, the City's declaration, and RavnAir's bankruptcy, I think Flying Whale's context as a business within the airport terminal is unique enough so as to not create any kind of "termination precedence" for other leased properties within the City's portfolio.

With Council's approval, my next step will be to work with the tenant to ensure their successful departure from the Terminal as quickly as possible. Prior to executing the termination, Building Maintenance will conduct an inspection of the space once it's been vacated and collect issued keys. In 2018, Flying Whale enlarged their leased space and removed a wall, among other modifications (see enclosure). I am not requiring them to return the leased space to its original condition as we do not know what the needs of a

future tenant will be, and potential sublessees can request to modify the space further to fit their needs with City and State approval.

I will then work with staff to issue an RFP for the space occupied by Flying Whale in addition to the other currently available spaces at the Terminal including one ticket counter and office space, two concession booths, and one cargo counter and make up area.

Enclosures:

August 13, 2020 Flying Whale's Request

Flying Whale's Lease

May 1, 2020 Letter regarding option to delay lease payments

March 29, 2018 Letter regarding modification of airport terminal

From: Flying Whale <flyingwhalecoffee@gmail.com>
Sent: Thursday, August 13, 2020 12:39 AM
To: Department City Manager <City_Manager@ci.homer.ak.us>
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Thank you for reviewing and your considerations in this matter,

Heather Temple and Amanda Moran

Flying Whale Coffee, LLC

274 Lee Dr.

Homer, AK 99603

(702) 785-4559

**HOMER AIRPORT TERMINAL
GENERAL CONCESSION SUBLEASE**

THIS SUBLEASE IS MADE on April 6, 2018, between the City of Homer, Sublessor, (hereinafter referred to as "City") a municipal corporation, whose address is 491 East Pioneer Avenue, Homer, Alaska 99603-7624 and Heather Temple and Amanda Moran (hereinafter referred to as "Sublessee") whose address is 274 Lee Drive, Homer, AK 99603. The City is the lessee in that certain Lease Agreement No.ADA-06600, recorded at Book 222, Pages 124-140 of the Books and Records of the Homer Recording District, Third Judicial District, State of Alaska, between the State of Alaska, Department of Transportation and Public Facilities ("DOT/PF" or "State of Alaska"), lessor, and the City of Homer, lessee, as amended by Supplement No. 1, dated, February 28, 2002, and as may be further amended from time to time (collectively, the "Base Lease") to which all the terms, covenants, and conditions of this Sublease are subject. Sublessee will fully comply with all covenants, provisions, conditions, and terms of that Base Lease.

CITY AND SUBLESSEE AGREE AS FOLLOWS:

1. DESCRIPTION. City subleases to Sublessee and Sublessee subleases from City the premises consisting of 360 square feet of space as more fully described and/or depicted on Exhibit "A" attached hereto (hereinafter referred to as the "Premises"), located in the Homer Airport Terminal Building (hereinafter referred to as the "Building") located on Lot 5A, Block 800, HOMER AIRPORT TRACTS according to the official plats on file with the State of Alaska, Department of Transportation and Public Facilities, Division of Aviation (hereinafter referred to as the "Property"), for the term, the rent, and subject to the covenants and conditions hereinafter provided. This Sublease confers no rights either with regard to the subsurface of the land below the floor level of the Premises or with regard to airspace above the ceiling of the Premises.

2. TERM. (a) The term of this Sublease shall commence on the April 6, 2018 and shall end on March 30, 2023, unless sooner terminated as hereinafter provided.

(b) In any event, Sublessee may not occupy the Premises before DOT/PF consents to this Sublease in writing. If City is unable to deliver possession of the Premises by the date specified for the commencement of the term of this Sublease as a result of causes beyond its reasonable control, including without limitation any failure or delay in obtaining the consent of DOT/PF, City shall not be liable for any damage caused by failing to deliver possession, this Sublease shall not be void or voidable, and the term of this Sublease shall not be extended by the delay. The Sublessee shall not be liable for rent until City delivers possession of the Premises to Sublessee, but shall commence paying rent when City delivers possession.

3. RENT. Sublessee shall pay the City as annual rent of \$8,640.00 plus the concession fee described in Exhibit B, plus taxes, payable in monthly installments in advance on the first day of each month, commencing on the date the term of this Sublease commences. Monthly rent for the first month or portion of it shall be paid on, or before, the day the term commences.

Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. Rent not paid when due shall bear interest from the date when due at the rate of interest specified in AS 45.45.010(a) as now enacted or hereinafter amended. Rent shall be paid at the address set forth for City in the introductory paragraph of this Sublease, or as otherwise directed from time to time by notices from City.

4. USE OF PREMISES. Sublessee shall use the Premises to provide coffee, baked goods, and memento gifts. Sublessee shall be open for business not less than four hours per day, six days per week (excluding holidays). Sublessee agrees to comply with all federal, state and local laws, ordinances and regulations. Sublessee agrees to comply with the following rules and regulations and with such reasonable modifications thereof and additions thereto as City may hereafter from time to time make for the Building.

(a) Sublessee shall comply with all covenants, provisions, conditions, and terms of that certain Lease Agreement No. ADA-06600, recorded at Book 222, Pages 124-140 of the Books and Records of the Homer Recording District, Third Judicial District, State of Alaska, between the State of Alaska, Department of Transportation and Public Facilities (“DOT/PF” or “State of Alaska”), lessor, and the City of Homer, lessee, as amended by Supplement No. 1, dated February 28, 2002, and as may be further amended from time to time (collectively, the “Base Lease”) to which all the terms, covenants, and conditions of this Sublease are subject. Sublessee will fully comply with all covenants, provisions, conditions and terms of that Base Lease. Sublessee shall not make or permit to be made any use of the premises or any part thereof which would violate any of the covenants, agreements, terms, provisions and conditions of said Base Lease; nor will Sublessee commit any act, either by commission or omission, which would cause City to be in default of any covenant, provision, term or condition of the Base Lease. Sublessee hereby acknowledges receiving a copy of the Base Lease.

(b) Sublessee will not make any use of the Property or the Building, nor will Sublessee make or permit to be made any use of the Premises or any part thereof which would violate any of the covenants, agreements, terms, provisions and conditions of this Sublease; which is forbidden by any federal, state or local law, ordinance or regulation; which may be dangerous to life, limb, or property; which would, in the reasonable judgment of City, in any way impair the character, reputation or appearance of the Building as an attractive and functional airport terminal building; or which would impair or interfere with or tend to impair or interfere with any of the services performed by City for the Property.

(c) Sublessee shall not exhibit, sell or offer for sale on the Premises or in the Building any article or thing except those articles and things reasonably connected with the stated use of the Premises set forth above by Sublessee without the advance consent of the City.

(d) Sublessee shall not display, inscribe, print, paint, maintain or affix in or about the Building or outside of the Premises any sign, notice, legend, direction, figure or advertisement, unless Sublessee shall first have obtained the consent of the City, and then only such names(s) and matter, and in such color, size, style, place and materials as shall first have been approved by City. City shall not unreasonably withhold prompt approval, but City's insistence on compliance with a uniform signage plan shall not be deemed unreasonable.

(e) No additional locks or similar devices shall be attached to any door or window without City's consent. No keys for any door other than those provided by City shall be made. If more than two keys for one lock are desired, City will provide the same upon payment by Sublessee. All keys must be returned to City at the expiration or termination of this Sublease.

(f) Sublessee shall not overload any floor. City may direct, within reason, the time and manner of delivery, routing and removal, and the location, of safes and other heavy articles.

(g) Unless City gives consent, Sublessee shall not install or operate any steam or internal combustion engine, boiler, machinery, refrigerating or heating device or air conditioning apparatus in or about the premises, or carry on any mechanical business therein, or use the Premises for housing accommodations or lodging or sleeping purposes, or do any cooking therein, or use any illumination other than electric light, or use or authorize to be brought into the Building any inflammable fluid such as gasoline, kerosene, naphtha, and benzene, or any explosives, radioactive materials or other articles deemed extra hazardous to life, limb or property, except in a manner which would not violate any federal, state or local law, ordinance or regulation. Sublessee shall not use the Premises for any illegal or immoral purpose.

(h) The sidewalks, halls, passages, exits, entrances and stairways shall not be obstructed by Sublessee or used for any purpose other than for ingress to and egress from the Premises. No Sublessee and no employees or invitees of any Sublessee shall go upon the roof of the Building.

(i) Sublessee shall not use, keep or permit to be kept any foul, explosive or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner unreasonably offensive or objectionable to the City or other occupants of the Building by reason of noise, odors, and/or vibrations, or unreasonably interfere in any way with other tenants or those having business therein; nor shall any animals or birds be brought in or kept in or about the Premises or the Building, unless for purposes of air transport, and then only in containers designed for transport of such animals or birds. Sublessee shall be responsible for enforcing the requirement that all animals and birds shall be kept in containers while in the Premises or the Building. Sublessee shall make all repairs and conduct all cleaning necessary as a result of the presence of birds or animals in the Premises or the Building in connection with air transport.

(j) Sublessee shall see that the doors and windows, if openable, of the Premises, are closed and securely locked before leaving the Building and must observe with strict care and caution that all water faucets or water apparatus are entirely shut off before Sublessee or Sublessee's employees leave the Building, and that all electricity shall likewise be carefully shut off so as to prevent waste or damage.

(k) In the event of any default or carelessness in performing the duties imposed by this paragraph, Sublessee shall make good all resulting injuries or losses sustained by other sublessees or occupants of the Building and City. In addition to all other liabilities for breach of any covenant of this paragraph, the Sublessee shall pay to the City an amount equal to any increase in insurance premiums payable by the City or any other tenant in the building, caused by such breach, but City shall have the burden of proving by a preponderance of the evidence that such increase is directly attributable to such breach.

5. SECURITY DEPOSIT. The Sublessee has deposited with City at the time of execution of this Sublease the sum of \$500.00 as a security deposit for the performance by Sublessee of the provisions of this Sublease. If Sublessee is in default, City can use the security deposit, or any portion of it, to cure the default or to compensate City for all damage sustained by City resulting from Sublessee's default. Sublessee shall immediately upon demand pay to City a sum equal to the portion of the security deposit expended or applied by City as provided in this paragraph so as to maintain the security deposit in the sum initially deposited with City. Sublessee's failure to do so within five (5) days after demand by City shall be a default under this Sublease. If Sublessee is not in default at the expiration or termination of this Sublease, City shall return the security deposit to Sublessee. City's obligation with respect to the security deposit are those of a debtor and not those of a trustee or fiduciary. City may maintain the security deposit separate and apart from City's general

funds or co-mingle the security deposit with City's general funds. City shall not be required to pay Sublessee interest on the security deposit. If City is required by law to maintain the security deposit in an interest bearing account, City shall be entitled to receive and retain the maximum amount permitted under applicable law as a bookkeeping and administrative charge.

6. UTILITIES AND SERVICES. City shall furnish to the Premises, at City's expense, except as otherwise provided in this Sublease, reasonable quantities of electricity and heat as required for Sublessee's use. City shall furnish water, sewer and garbage removal service to the Building, at City's expense; however, Sublessee shall be responsible for cleaning the Premises and taking its garbage to dumpsters provided for the Building. If City is required to construct new or additional utility installations including, without limitation, wiring, plumbing, conduits and mains, resulting from Sublessee's changed or increased utility requirements, Sublessee shall, on demand, pay to City the total cost of these items. City shall not be liable for failure to furnish utilities to the Premises when the failure results from causes beyond City's reasonable control, but in case of such failure City will take all reasonable steps to restore the interrupted utilities. Any such interruption of utilities shall never be deemed an eviction or disturbance of Sublessee's use and possession of the Premises, or any part thereof, or give Sublessee any right to abatement of rent, or otherwise relieve Sublessee from performance of any of Sublessee's obligations under this Sublease, except that Sublessee's obligation to pay rent shall be abated to the extent that any such interruption of the utilities exceeds fifteen (15) days. Sublessee shall pay for all telephone charges, including installation.

7. CONDITION OF PREMISES. Sublessee's taking possession of the Premises shall be conclusive evidence as against Sublessee that the Premises were in good order and satisfactory condition when Sublessee took possession, except as to latent defects. No promise of City to alter, remodel, repair or improve the Premises or the Building and no representation as to the condition of the Premises or the Building has been made by City to Sublessee, other than as may be contained in this Sublease or in a separate written agreement. At the termination of this Sublease, the Sublessee shall return the Premises clean and in as good order and condition as when the Sublessee took possession, ordinary wear and tear excepted, failing which the City may restore the Premises to such condition and the Sublessee shall pay the cost thereof on demand.

8. MAINTENANCE AND REPAIRS. City, at City's expense, shall maintain, in good condition, the structural parts of the Building which shall include only the foundation, bearing and exterior walls (excluding glass and doors to the Premises), subflooring, the unexposed electrical, plumbing and sewage systems, and the heating and ventilation system servicing the Premises. Sublessee, at Sublessee's expense, shall maintain, in good condition, the Premises, including, without limitation, all glass, doors to the Premises, electrical and plumbing fixtures, interior walls, signs and Sublessee's personal property.

9. PARKING AND SNOW REMOVAL. City shall designate a parking area for employees of the tenants of the Building, and Sublessee's employees shall park in the employee parking lot. No overnight parking of employee vehicles is allowed. City shall provide snow removal in the parking area.

10. ALTERATIONS. (a) Sublessee shall not make any alterations to the Premises without City's prior written consent, which shall not be unreasonably withheld. Requests for approval of alterations shall be made in writing and shall include three (3) copies of the plans and specifications. The City will approve or disapprove the proposed alterations within thirty (30) days. Approval of the alterations shall not constitute a building permit, nor shall a building permit constitute approval

of the alterations. Any alterations (except Sublessee's trade fixtures) shall remain on and be surrendered with the Premises on expiration or termination of this Sublease, except that City can elect at any time to require Sublessee to remove any alterations that Sublessee has made to the Premises. If City so elects, Sublessee, at Sublessee's expense, shall restore the Premises to the condition designated by City in its election, before the last day of the term, or within thirty (30) days after notice of election is given, whichever is later. If Sublessee proceeds to make any approved alterations to the Premises as provided in this paragraph, Sublessee shall notify City no less than five (5) days prior to the commencement of the work.

(b) Sublessee shall make no improvements or construction without the prior approval of DOT/PF. Sublessee shall provide City with copies of such written approval(s) prior to commencement of any improvements or construction.

11. MECHANICS' LIENS. Sublessee shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted by this Sublease. Sublessee shall keep the Premises, the Building, and the Property free and clear of mechanics' liens resulting from construction done by or for Sublessee. Sublessee shall have the right to test the correctness or the validity of any such lien only if, immediately on demand by City, Sublessee procures and records a lien release bond issued by a corporation authorized to issue surety bonds in the State of Alaska in an amount equal to one and one-half times the amount of the claim of lien. The bond shall meet the requirements of AS 34.35.072 and shall provide for the payment of any sum that the claimant may recover on the claim, plus interest, costs and attorney's fees.

12. INDEMNITY. (a) Sublessee shall protect, indemnify and hold City and DOT/PF harmless from all damages, including costs and attorneys' fees, arising out of any injury to or death of any person or damage to or destruction of property occurring to, in, on or about the Premises, Building or Property, but only to the proportionate extent such damages, costs and fees may be caused by or contributed to by fault or other legal responsibility on the part of Sublessee, its employees, authorized representative, customers, invitees, or sublessees. Notwithstanding the preceding sentence, Sublessee shall protect, indemnify and hold City and DOT/PF harmless from all damages, including costs and attorney's fees, arising out of any injury to or death of any person or damage to or destruction of property arising out of and in the course of Sublessee's flight time, as defined in 14 CFR Section 1.1. Notwithstanding the first sentence of this paragraph, Sublessee shall not be liable to City or its insurers for, and Sublessee's obligation to protect, indemnify and hold City harmless shall not include any loss or damages, including costs and attorney's fees, covered and paid by City's fire insurance described in paragraph 16.

(b) Furthermore, Sublessee shall protect, defend, and indemnify and hold the State harmless to the same level and extent that the Sublessee would provide to the State if the Sublessee were a direct lessee of the State under the Base Lease.

13. COMPREHENSIVE GENERAL LIABILITY AND WORKERS' COMPENSATION.

(a) Sublessee, at Sublessee's expense, shall maintain comprehensive general liability insurance with a single combined liability limit of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) insuring against all liability of Sublessee, its employees, and authorized representatives, arising out of or in connection with Sublessee's use or occupancy of the Premises.

(b) All comprehensive general liability insurance policies shall insure performance by Sublessee of the indemnity provisions of paragraph 12; shall name City and DOT/PF as additional insureds; shall include a waiver of subrogation by the insurer against City and DOT/PF; and shall not

contain any exclusion from coverage for Sublessee's liability for damages or loss incurred by City or DOT/PF because of their status as additional insureds.

(c) Sublessee, at Sublessee's expense, shall maintain workers' compensation insurance with policy limits not less than that required by statute.

(d) In addition to the foregoing, Sublessee must obtain and maintain such insurance covering the operations and activities of Sublessee to the same level and extent that Sublessee would be required to maintain if the Sublessee were the direct lessee of DOT/PF under the Base Lease. Sublessee must provide to DOT/PF, with a copy to City, such binders or certificates of insurance as may be required by DOT/PF to prove compliance with this subparagraph.

14. USE OF HAZARDOUS SUBSTANCES.

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

(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, shall 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 shall be handled only by properly trained personnel.

(c) Sublessee shall not discharge, leak or emit, or permit its authorized representatives, customers, invitees or sublessees to discharge, leak or emit, any material into the atmosphere, ground, sewer system or any body of water, if such material does or may, unlawfully pollute or contaminate the same, or may unlawfully 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. The preceding sentence only applies to Sublessee's use of and operations on the Property.

(d) If any such discharge, leak, spill, emission, or pollution (referred to in subparagraph 14(c) above) occurs upon or from the Property during the Sublease term or any holdover, Sublessee will immediately notify City 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) Sublessee hereby agrees that it shall 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 Sublessee, its authorized representatives, customers, invitees and sublessees, and the Sublessee shall give immediate notice to the City of any violation or suspected violation of the provisions of subparagraphs 14(a), (b), (c) and (d).

15. INDEMNITY FOR USE OF HAZARDOUS MATERIAL.

(a) Sublessee shall protect, indemnify and hold City and DOT/PF and their officers, officials, and other employees harmless from and against any claims, demands, penalties, fines, judgments, settlements, liabilities, losses, damages, costs and expenses (including, without limitation, attorney,

consultant and expert fees, court costs and other litigation expenses) (individually and collectively, "Environmental Damages") arising out of or related to (i) the presence, disposal or release of any Hazardous Material (as defined in subparagraph (c) below) on or impacting the Property; and (ii) any bodily injury (including death) or property damage (real or personal) caused by such presence, disposal or release; but only to the proportionate extent such Environmental Damages shall have been caused by or contributed to by fault or other legal responsibility on the part of Sublessee or its employees, agents, customers, invitees or contractors.

(b) City shall protect, indemnify and hold Sublessee and its directors, officers, and other employees harmless from and against any Environmental Damages arising out of or related to (i) the presence, disposal or release of any Hazardous Material on or impacting the Property; and (ii) any bodily injury (including death) or property damage (real or personal) caused by such presence, disposal or release; but only to the proportionate extent such Environmental Damages shall have been caused by or contributed to by fault or other legal responsibility on the part of City or its employees, agents, customers, invitees or contractors.

(c) For the purposes of paragraphs 14 and 15, "Hazardous Material" is defined as any substance that is toxic, ignitable, reactive, or corrosive 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.

16. CITY'S FIRE INSURANCE. City shall, at City's expense, maintain on the Building a policy of fire and extended coverage insurance, with vandalism and malicious mischief endorsements, up to the full replacement value. The policy shall provide that any proceeds shall be made payable solely to City. The "full replacement value" of the Building to be insured under this paragraph shall be determined by the insurance company issuing the policy at the time the policy is initially obtained or subsequently renewed.

Sublessee shall not use the Premises for any purpose, nor do any acts in the Premises, which will increase the existing rate of insurance on the Building or cause the cancellation of any insurance policy covering the Building, or any part thereof, nor shall Sublessee sell, or permit to be kept, used or sold, on the Premises, any article, material or substance which may be prohibited by standard form fire and extended coverage insurance policies. Sublessee shall, at Sublessee's expense, comply with any and all requirements pertaining to the Premises of any insurance organization or company, necessary for the maintenance of fire and extended coverage insurance covering the Building. Sublessee agrees to pay to City as additional rent any increase in premiums on policies which may be carried by City covering damage to the Building by fire and the perils normally included in extended coverage, but only to the extent City proves by a preponderance of the evidence that such increase is directly attributable to Sublessee's breach of the first two sentences of this subparagraph. In event of nonpayment of such additional rent, City shall have all the rights and remedies provided in this Sublease in case of nonpayment of rent.

17. OTHER INSURANCE MATTERS. All insurance required to be carried by Sublessee under this Sublease and the Base Lease shall be issued by insurance companies authorized to do business in the State of Alaska with a financial rating of at least "A" as rated in the most recent edition of Best's Insurance Reports, or an equivalent rating; shall be issued as a primary policy; and shall contain an endorsement requiring twenty (20) days prior written notice from the insurance company to both parties and before cancellation or change in the coverage, scope or amount of any policy. Sublessee shall furnish insurance certificates to City and DOT/PF at the commencement of the term of this Sublease, and on renewals. Sublessee shall promptly furnish copies of each policy to City and DOT/PF upon request.

18. TAXES AND ASSESSMENTS. City shall pay all general and special assessments. Sublessee shall pay all real estate taxes levied on Sublessee's interest in the Premises, Building or Property.

19. DESTRUCTION. If, during the term of this Sublease, the Premises or the Building are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, City shall restore the Premises or the Building to substantially the same condition as they were in immediately before destruction, if the restoration can be made under the then existing laws and can be substantially completed within one hundred twenty (120) working days after the date of destruction. Such destruction shall not terminate this Sublease. If the restoration cannot be made in the time stated in this paragraph, either party shall have the right to terminate this Sublease by notice to the other party given at any time within thirty (30) days after the date of such destruction, or within thirty (30) days after it is determined that such restoration cannot be completed within the time stated, whichever is longer, except that if such destruction resulted from Sublessee's fault or negligence, Sublessee shall have no right to terminate this Sublease. If the then existing laws do not permit the restoration, either party shall have the right to terminate this Sublease by notice to the other party given at any time within thirty (30) days after the date of such destruction.

If a portion of the Building other than the Premises shall be totally or partially destroyed from any cause such that in the reasonable opinion of the City the Building should be restored in such a way as to alter the Premises materially, City may terminate this Sublease by notice to Sublessee at anytime within thirty (30) days after the date of such destruction. In the event of giving effective notice pursuant to this paragraph, the term of this Sublease shall expire on the date thirty (30) days after the giving of such notice as fully and completely as if such date were set forth for the expiration of the term of this Sublease. If this Sublease is not so terminated, City shall restore the Premises and the Building within a reasonable time and this Sublease shall continue in full force and effect.

If City is required or elects to restore the Premises as provided in this paragraph, City shall not be required to restore alterations made by Sublessee, Sublessee's improvements, Sublessee's trade fixtures, and Sublessee's personal property, including without limitation, any panels, decoration, office fixtures, railing, ceiling, floor covering, partitions and the like, such excluded items being the sole responsibility of Sublessee to restore.

In case of destruction there shall be an abatement or reduction of rent, between the date of destruction and the date of completion of the restoration or the date of termination of this Sublease based on the extent to which the destruction interferes with Sublessee's use of the Premises, except that if such destruction resulted from Sublessee's fault or negligence, Sublessee shall not be entitled to such abatement or reduction of rent.

If there is destruction to the Building that exceeds thirty-three and one-third percent (33 1/3%) of the then replacement value of the Building from any risk, City can elect to terminate this Sublease whether or not the Premises are destroyed. If, in the case of such destruction, Sublessee reasonably determines that such destruction unreasonably interferes with its use and occupancy of the Premises, Sublessee can elect to terminate this Sublease by written notice to City.

20. CONDEMNATION. If, during the term of this Sublease, there is a taking by condemnation (including condemnation by City) of all or any part of the Premises or Building, the rights and obligations of the parties shall be as follows:

If there is a taking of all or any part of the Premises, the term of this Sublease shall forthwith cease and terminate as of the date of vesting of title in the condemner, and the City is entitled to receive the entire award from the condemning authority except that portion, if any, of the award which may be attributable to the loss of the value of the Sublessee's business and Sublessee's leasehold interest, which is given the Sublessee by virtue of this Sublease.

21. DEFAULT. Each of the following shall be deemed a default by the Sublessee and a breach of the Sublease:

(a) A default in the payment of the rent and additional rents due hereunder for a period of ten (10) days from the due date for such payment.

(b) A default in the performance of any other term, covenant or condition on the part of the Sublessee to be kept, performed, or observed for a period of fifteen (15) days after service by City on Sublessee of a notice specifying the particular default or defaults, provided, however, that no default on the part of the Sublessee in the performance of work or acts required by it to be done, or conditions to be modified, shall be deemed to exist if steps shall have in good faith been commenced promptly by the Sublessee to rectify the same and shall be prosecuted to completion with diligence and continuity.

(c) The entry of a decree or order for relief by a court having jurisdiction in respect of the Sublessee in an involuntary case under the federal bankruptcy laws, as now or hereinafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of or for the Sublessee or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs.

(d) The commencement by the Sublessee of a voluntary case under the federal bankruptcy laws, as now constituted or thereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the appointment of or taking possession of a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of or for the Sublessee or for any substantial part of its property, or the making by Sublessee of any assignment for the benefit of creditors, or the failure of the Sublessee generally to pay its debts as such debts become due, or the taking of corporate action by the Sublessee in furtherance of any of the foregoing.

(e) The taking possession of the property of Sublessee by any governmental office or agency pursuant to statutory authority for the dissolution or liquidation of the Sublessee.

(f) The vacation or abandonment of the Premises by Sublessee.

(g) The assignment or subletting of the Premises by Sublessee without the prior written consent of City and the State of Alaska.

22. CITY'S REMEDIES IN EVENT OF DEFAULT. In the event of any default by Sublessee under this Sublease, City shall have the following rights and remedies, which shall be cumulative and all in addition to any rights and remedies that City may be given by statute, common law or otherwise:

(a) Distrain for rent due.

(b) Reenter the Premises and take possession thereof and remove all signs, other evidence of tenancy, and all personal property of Sublessee from the Premises.

(c) Declare the term of this Sublease ended.

(d) Relet the Premises in whole or in part for any period equal to or greater or less than the remainder of the term of this Sublease.

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

(f) If Sublessee shall at any time fail to make any payment or perform any other act on its part to be made or performed under this Sublease, City may, but shall not be obligated to, and without waiving or releasing Sublessee from any obligation under this Sublease, make such payment or perform such other act as may be reasonable in the circumstances, and in connection therewith to pay expenses and employ counsel.

All sums so paid by City and all expenses in connection therewith, together with interest thereon at the rate of twelve percent (12%) per year or the current maximum legal rate of interest, whichever is less, from the date of payment to the date of repayment, shall be deemed additional rent hereunder and payable at the time of any installment of rent thereafter becoming due and City shall have the same rights and remedies for the nonpayment thereof, or of any other additional rent, as in the case of default in the payment of rent.

(g) Restrain by injunction any violation or attempted violation, or compel by injunction the performance of any of the covenants, agreements or conditions or terms of this Sublease.

(h) Recover, whether this Sublease be terminated or not, from Sublessee, damages provided for below constituting of items (i) and (ii), or, at City's election in lieu of (ii), item (iii):

(i) reasonable attorney's fees and other expenses incurred by City by reason of the breach or default by Sublessee;

(ii) an amount equal to the amount of all rent and additional rents reserved under this Sublease, less the net rent, if any, collected by City on reletting the Premises, which shall be due and payable by Sublessee to City on the days on which the rent and additional rents reserved in this Sublease would have become due and payable; that is to say, upon each of such days Sublessee shall pay to City the amount of deficiency then existing. Such net rent collected on reletting by City shall be computed by deducting from the gross rent collected all expenses incurred by City in connection with the reletting of the Premises, or any part thereof, including broker's commission and the cost of renovating or remodeling the Premises;

(iii) an amount to be due immediately on breach, equal to the amount, if any, by which the remaining rent due under this Sublease exceeds the fair and reasonable rental value of the Premises 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 Premises for the period for which such installment was payable shall be discounted to the date of such breach at the rate of eight percent (8%) per year. If the Premises, or any part thereof, be relet by City for the unexpired term of this Sublease, or any part thereof, before presentation of proof of damages, the amount of rent reserved upon such reletting, in the absence of evidence to the contrary, shall be deemed to be the fair and reasonable rental value for the Premises, or any part thereof, so relet during the term of such reletting.

(i) Reentry or reletting of the Premises, or any part thereof, pursuant to this paragraph 22 shall not be deemed a termination of this Sublease, unless expressly declared to be so by City. If this Sublease shall be deemed terminated, Sublessee's liabilities shall survive and Sublessee shall be liable for damages as provided above.

The enumeration of the default rights of City above are not intended to imply that they are mutually exclusive, nor that they are in lieu of any or all statutory, common law or other rights.

23. BANKRUPTCY OR INSOLVENCY.

(a) In the event that Sublessee shall file a petition, or an order for relief is entered against Sublessee, under Chapter 7 of the Bankruptcy Code, and the Trustee of Sublessee shall elect to assume this Sublease for the purpose of assigning the same, such election and/or assignment may only be made if all of the terms and conditions of subsections (c), (d) and (e) hereof are satisfied. If such Trustee shall fail to elect to assume this Sublease for the purpose of assigning the same within sixty (60) days after the order of relief, this Sublease shall be deemed to have been rejected. City shall be thereupon immediately entitled to exercise any remedies available to it under paragraph 25 of this Sublease, and this Sublease shall be canceled, but City's right to be compensated for damages in such bankruptcy proceedings shall survive.

(b) In the event that Sublessee files a petition for reorganization under Chapters 11 or 13 of the Bankruptcy Code or a proceeding filed by or against Sublessee under any other chapter of the Bankruptcy Code is converted to a Chapter 11 or 13 proceeding, and the Trustee of Sublessee or Sublessee as debtor-in-possession fails to assume this Sublease within sixty (60) days from the date of filing of the Petition or such conversion, the Trustee or debtor-in-possession shall be deemed to have rejected this Sublease. City shall be thereupon immediately entitled to exercise any remedies available to it under paragraph 22 of this Sublease, and this Sublease shall be canceled, but City's right to be compensated for damages in such bankruptcy proceedings shall survive. If the Trustee of Sublessee shall elect to assume this Sublease, such election may only be made if all of the terms and conditions of subsections (c) and (d) hereof are satisfied. If the Trustee of Sublessee shall elect to assign this Sublease after assuming it, such assignment may only be made if all of the terms and conditions of subsections (e) hereof are satisfied.

(c) No election to assume this Sublease shall be effective unless in writing and addressed to City and unless, in City's reasonable business judgment, all of the following conditions, which City and Sublessee acknowledge to be commercially reasonable, have been satisfied:

(i) The Trustee or the debtor-in-possession has cured or has provided City adequate assurance (as defined hereunder) that:

(A) within ten (10) days from the date of such assumption the Trustee or debtor-in-possession will cure all monetary defaults under this Sublease; and

(B) within thirty (30) days from the date of such assumption the Trustee or debtor-in-possession will cure all non-monetary defaults under this Sublease, or if the non-monetary default requires more than thirty (30) days to cure, the Trustee or debtor-in-possession will within thirty (30) days commence and proceed with diligence and continuity to cure the non-monetary defaults under this Sublease.

(ii) The Trustee or the debtor-in-possession has compensated, or has provided to City adequate assurance (as defined hereunder) that within ten (10) days from the date of assumption City will be compensated for any pecuniary loss incurred by City arising from the default of Sublessee, the Trustee, or the debtor-in-possession as recited in City's written statement of pecuniary loss sent to the Trustee or debtor-in-possession.

(iii) The Trustee or the debtor-in-possession has provided City with adequate assurance of the future performance of each of Sublessee's obligations under this Sublease; provided, however, that the obligations imposed upon the Trustee or debtor-in-possession shall continue with respect to Sublessee after the completion of bankruptcy proceedings.

(iv) City has determined that the assumption of the Sublease will not breach any provision in any other Lease by which City is bound relating to the Property.

(d) For purposes of subparagraph (c), adequate assurance shall mean:

(i) City shall reasonably determine that the Trustee or the debtor-in-possession has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure City that the Trustee or debtor-in-possession will have sufficient funds to fulfill the obligations of Sublessee under this Sublease; and

(ii) an order shall have been entered segregating sufficient cash payable to City and/or there shall have been granted a valid and perfected first lien and security interest in property of Sublessee, Trustee or debtor-in-possession, acceptable as to value and kind to City, to secure City the obligation of the Trustee or debtor-in-possession to cure the monetary and/or non-monetary defaults under this Sublease within the time period set forth above.

(e) (i) If the Trustee or debtor-in-possession has assumed the Sublease pursuant to the terms and provisions of subparagraphs (a) or (b), for the purpose of assigning (or elects to assign) Sublessee's interest under this Sublease, to any other person, such interest may be so assigned only if City shall acknowledge in writing that the intended assignee has provided adequate assurance as defined in this subparagraph (e) of future performance of all of the terms, covenants and conditions of this Sublease to be performed by Sublessee.

(ii) For purposes of this subparagraph (e), adequate assurance of future performance shall mean that City shall have reasonably ascertained that each of the following conditions has been satisfied:

(A) the assignee has submitted a current financial statement audited by a certified public accountant which shows a net worth and working capital in amounts determined to be sufficient by City to assure the future performance by such assignee of Sublessee's obligations under this Sublease;

(B) if requested by City, the assignee shall have obtained guarantees in form and substance satisfactory to City from one or more persons whom City determines to be creditworthy;

(C) the assignee has submitted in writing evidence, satisfactory to City, of substantial business experience in business operations of the same kind and comparable size to the business contemplated under this Sublease; and

(D) City has obtained all consents or waivers from any third party necessary to permit such assignment under any lease or agreement by which City is bound.

(f) Neither Sublessee's interest in this Sublease, nor any lesser interest of Sublessee herein, shall pass to any Trustee, receiver, assignee for the benefit of creditors, or any other person or entity, or otherwise by operation of law under the laws of any state having jurisdiction of the person or property of Sublessee ("state law") unless City shall consent to such transfer in writing. No acceptance by City of rent or other payments from any such Trustee, receiver, assignee, person or other entity shall be deemed to have waived, nor shall it waive, the need to obtain City's consent or City's right to terminate this Sublease for any transfer of Sublessee's interest under this Sublease without such consent.

(g) In the event Sublessee shall be adjudicated insolvent pursuant to the provisions of any present or future insolvency law under state law, or if a receiver or Trustee of the property of Sublessee shall be appointed under state law by reason of Sublessee's insolvency or inability to pay its debts as they become due or otherwise, or if any assignment shall be made of Sublessee's property for the benefit of creditors under state law; then and in such event City may, at its option, terminate this Sublease and all rights of Sublessee hereunder without further obligation to Sublessee, by giving Sublessee written notice of the election to so terminate.

24. SURRENDER OF POSSESSION. If, after termination of this Sublease, Sublessee shall vacate the Premises without removing all of its property, any and all property that remains may be removed from the Premises by City and may be handled, removed or stored by City at the risk, cost and expense of Sublessee, and City shall in no event be responsible for the value, preservation or safekeeping thereof or for any loss or damage to Sublessee occasioned thereby. Sublessee shall pay to City, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in City's possession or under City's control. Any such property of Sublessee not removed from the Premises or retaken from storage by Sublessee within thirty (30) days after the end of the term of this Sublease or of Sublessee's right to possession of the Premises, however terminated, shall be conclusively deemed to have been forever abandoned by Sublessee and either may be retained by City as its property or may be disposed of in such manner as City may see fit.

25. QUIET ENJOYMENT. So long as Sublessee shall observe and perform the covenants and conditions contained in this Sublease, Sublessee shall, at all times during the term of this Sublease, peacefully and quietly have and enjoy possession of the Premises without any disturbance or hindrance by, from or through City, but subject to any rights of the State of Alaska in the Base Lease.

26. ASSIGNMENT AND SUBLETTING. (a) Sublessee shall not assign, hypothecate, or encumber its interest in this Sublease or in the Premises. Sublessee shall not sublease all or any part of the Premises, or allow any other person or entity (except Sublessee's authorized representatives) to occupy or use all or any part of the Premises without first obtaining City's written consent, which will not unreasonably be withheld, and the written consent of DOT/PF. No sub-sublessee may occupy the Premises before DOT/PF grants written consent. Any assignment, encumbrance or hypothecation of the Sublease is void, and any sub-sublease without such consent by the City and DOT/PF is voidable and, at City's election, shall constitute a default. No consent to any sublease shall constitute a further waiver of the provisions of this paragraph.

(b) Any proposed sublease must be submitted to the City for approval in three (3) copies, each bearing the original notarized signature of all parties. Each sublease shall be expressly subject and subordinate to the Sublease and the Base Lease and the rights of the City and DOT/PF respectively, and shall require the sublessee to assume the Sublessee's obligations hereunder and shall not release the Sublessee from liability hereunder. Each sublease shall be expressly terminable by City in its sole discretion at the end of the term of this Sublease. If approved by City, the proposed sublease will be forwarded to DOT/PF for approval. No consent to sublease is effective until given in writing by both the City and DOT/PF.

27. RIGHTS RESERVED TO CITY. City reserves the following rights:

- (a) To name or to change the name of the Building.
- (b) To install and maintain or to allow installation and maintenance of signs on the exterior or interior of the Building, excluding the interior of the Premises.
- (c) To have pass keys to the Premises.
- (d) To have access to the Premises for purposes of inspection upon reasonable prior notice.
- (e) On reasonable prior notice to Sublessee, to exhibit the Premises to prospective tenants during the last six (6) months of the term of this Sublease, and to any prospective purchaser, mortgagee, or assignee of any mortgage on the Building and to others having a legitimate interest at any time during the term of this Sublease.
- (f) At any time in the event of an emergency and otherwise at reasonable times, to take any and all measures, including inspections, repairs, alterations, additions, and improvements to the Premises or to the Building as may be necessary or desirable for the safety, protection or preservation of the Premises or the Building or City's interest, or as may be necessary or desirable in the operation or improvement of the Building, or in order to comply with laws, orders and requirements of governmental or other authority.

28. ESTOPPEL CERTIFICATES. Either party shall at any time and from time to time upon not less than fifteen (15) days prior request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Sublease 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.

29. HOLDING OVER. If Sublessee remains in possession of the Premises after expiration of the term of this Sublease, or after the date in any notice given by City to Sublessee terminating this Sublease, such possession by Sublessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days notice given at any time by either party. The provisions of this paragraph do not exclude City's rights of re-entry or any other right under this Sublease.

30. SUBORDINATION OF SUBLEASE. The rights of Sublessee under this Sublease shall be and are subordinate at all times to the Base Lease and all ground leases and/or underlying leases, if any, now or hereafter in force against the Property and to the lien of any mortgage or mortgages now or hereafter in force against such leases and/or the Premises, and to all advances made or hereafter to be made upon the security thereof, and to all renewals, modifications, consolidations, replacements, and extensions thereof. This paragraph is self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Sublessee shall promptly execute such further instrument as may be reasonably requested by City. Sublessee, at the option of any mortgagee, agrees to attorn to such mortgagee in the event of a foreclosure sale or deed in lieu thereof.

31. NOTICES. All notices, demands and requests from one party to another shall be delivered in person or sent by mail addressed to the other party at the address set forth below, or at such other address as either party may notify the other in writing pursuant to this paragraph.

If to City:

Airport Terminal Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603-7624
Telephone: 907-435-3102
Facsimile: 907-235-3148
E-mail: citymanager@cityofhomer-ak.gov

If to Sublessee:

Heather Temple & Amanda Moran
Flying Whale Coffee
274 Lee Drive
Homer, AK 99603
907-299-4063
flyingwhalecoffee@gmail.com

Telephone, facsimile, and e-mail addresses are provided for informational purposes, and may not be used in lieu of mail or personal delivery for formal notices, demands, and requests.

32. WAIVER. No failure by either City or Sublessee to insist upon the strict performance by the other of any term, covenant or condition of this Sublease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such term, covenant or condition. No waiver of any breach or right, unless in writing, shall affect or alter this Sublease, but each and every term, covenant and condition of this Sublease shall continue in full force and effect with respect to any other then existing or subsequent breach.

The receipt and acceptance by City of delinquent rent shall not constitute a waiver of any other defaults; it shall constitute only a waiver of timely payment of the particular installment of rent involved. No act or conduct of City, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Sublessee before the expiration of the term of this Sublease. Only a notice from City to Sublessee shall constitute acceptance of the surrender of the Premises and accomplish a termination of the term of this Sublease.

33. SALE OR TRANSFER OF PREMISES. If City sells or transfers the Building or the Premises, on consummation of the sale or transfer, City shall be released from any liability thereafter accruing under this Sublease. If any security deposit or prepaid rent has been paid by Sublessee, City can transfer the security deposit or prepaid rent to City's successor and on such transfer City shall be discharged from any further liability in reference to the security deposit or prepaid rent.

34. MISCELLANEOUS PROVISIONS.

- (a) Time is of the essence of each provision of this Sublease.
- (b) This Sublease shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, except as otherwise provided in the Sublease.
- (c) This Sublease shall be governed by and construed and enforced in accordance with the laws of the State of Alaska.
- (d) This Sublease contains all the agreements of the parties and cannot be amended or modified except by a written agreement signed by the parties hereto.
- (e) It is understood and agreed that this Sublease shall not be binding until and unless all parties have signed it.
- (f) If Sublessee is a corporation, Sublessee shall deliver to City and DOT/PF on execution of this Sublease a certified copy of a resolution of its board of directors authorizing the execution of this Sublease and naming the officers that are authorized to execute this Sublease on behalf of the corporation or other proof reasonably satisfactory to City and DOT/PF.
- (g) Any litigation arising out of the performance of the parties under this Sublease, or its interpretation, shall be brought in the Superior Court for the State of Alaska, Third Judicial District at Homer.
- (h) All provisions contained in this Sublease, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- (i) This Sublease may be executed in several counterparts, each of which shall be deemed an original and may be used as such, and such counterparts shall constitute but one and the same instrument.

35. NON-DISCRIMINATION. Sublessee covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age or gender will not be permitted against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal, state or local law. To the extent required by applicable law, regulation, or government contract, Sublessee shall furnish services on a fair, reasonable and not unjustly discriminatory basis, and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, however, that Sublessee may make reasonable and nondiscriminatory discounts, rebates and similar types of price reductions to volume purchasers. The Sublessee recognizes the right of the City to take any action necessary to enforce this covenant, including actions required pursuant to any federal, state or local law.

- (a) This agreement is subject to requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

(b) The concessionaire agrees to include the above statements in any subsequent concession agreement that it enters and cause those businesses to similarly include the statements in further agreements.

36. RADIO INTERFERENCE. At the City's request, Sublessee shall discontinue the use of any machine or device which interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

37. REGULATIONS. Sublessee agrees to abide by all reasonable regulations now or hereafter established by the City or DOT/PF, or both, concerning the use, operation and maintenance of the Premises, Building and the Property.

38. STATE DOT/PF APPROVAL. Pursuant to the terms of the Base Lease this Sublease shall not become effective until approved in writing by the State of Alaska, Department of Transportation and Public Facilities.

39. TERMINAL CHANGES AND IMPROVEMENTS.

(a) The Sublessee understands and agrees that the requirements of the Building as an airport terminal in such matters as passenger volume, freight volume, flight frequencies, aircraft size, operating procedures, efficient baggage handling and passenger movements, aircraft and vehicle parking requirements, etc., may from time to time change, sometimes substantially, and consequently the City does hereby reserve the right and option to rebuild, remodel, relocate or otherwise effect such changes in the Premises and the Building. Sublessee agrees that upon thirty (30) days advance written notice given by City to relocate to new premises within the Building as may be reasonably assigned by City as deemed necessary or advisable; subject, however, to the conditions that the new premises shall be situated on the same floor in the Building and on the same concourse or hallway as the Premises, and further that the area of the new premises shall not be less than ninety percent (90%) of the area of the Premises unless Sublessee shall consent to a greater reduction.

(b) Sublessee shall receive no compensation but shall receive reimbursement of reasonable expenses for any such move required by City. Moreover, if the area of the new premises is less than the area of the Premises, rent shall be reduced by a fraction, the numerator of which is the difference between the area of the Premises and the area of the new premises and the denominator of which is the area of the Premises. During the term of this Sublease (not including any extensions or renewals thereof) the Sublessee shall not be required to pay any increased rent resulting from any such move required by City, even if the new premises are larger than or have a higher rental rate than the Premises.

(c) The Sublessee agrees that temporary inconveniences, such as noise, disturbances, traffic detours, moving, and the like, caused by or associated with the construction, remodeling, rebuilding, or relocation of the Premises or other portions of the Building shall not constitute a breach of quiet enjoyment of the Premises, nor shall they be grounds for an abatement of rental except in cases of interruption of the Sublessee's business or activities of longer than five (5) days in any calendar month in which case the rent shall be abated to the extent of 1/30th of the monthly rental per each day of interruption of the Sublessee's business or activity.

(d) In the event Sublessee is required to move to new premises, City will exert its best efforts to provide new premises comparable to the Premises but in the event Sublessee

reasonably believes the move will have a substantially adverse effect on the activities or business of the Sublessee conducted in the Premises, the Sublessee may terminate this Sublease by giving written notice of termination to the City within thirty (30) days after the City has given the Sublessee the foregoing notice that the Sublessee must move.

40. SPECIAL CONVENANTS. Special Covenants including renewal and rent adjustment provisions, if any, are set forth in Exhibit "B" attached hereto and incorporated by reference in this Sublease.

IN WITNESS WHEREOF, City and Sublessee have signed this Sublease as of the day and year first above written.

ATTEST:

**CITY:
CITY OF HOMER, ALASKA**


Melissa Jacobsen, MMC, City Clerk


Katie Koester, City Manager

SUBLESSEE:

SUBLESSEE:





STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 9th day of April 2018, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Katie Koester, known to me to be the City Manager of the City of Homer, and he acknowledged to me that he was authorized to execute the foregoing document by authority granted him by the City of Homer for the uses and purposes therein set forth.

WITNESS my hand and notary seal the day and year first hereinabove written.

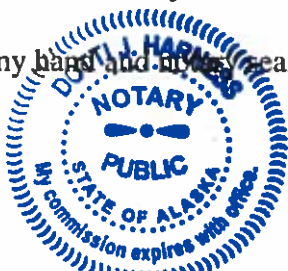


Dotti J. Harness
Notary Public in and for Alaska
My Commission Expires:

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 3rd day of April 2018, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Heather Temple, known to me to be the individual named in and who executed the foregoing document and he acknowledged to me that being duly authorized to do so he executed the foregoing document as the free and voluntary act and deed, for the uses and purposes therein set forth.

WITNESS my hand and notary seal the day and year first hereinabove written.



Dotti J. Harness
Notary Public in and for Alaska
My Commission Expires: with position

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 4th day of April 2018, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared A. Moran, known to me to be the individual named in and who executed the foregoing document and he acknowledged to me that being duly authorized to do so he executed the foregoing document as the free and voluntary act and deed, for the uses and purposes therein set forth.



Dotti J. Harness
Notary Public in and for Alaska
My Commission Expires: with position

EXHIBIT A
HOMER AIRPORT TERMINAL
GENERAL CONCESSION SUBLEASE

The legal description of the Premises is as follows:

Concession areas 103, 104, 105 and 106. Total area consisting of 360 square feet, in the Homer Airport Terminal Building, Homer Airport located in Township 6S, Range 13W, Seward Meridian, Section 21, Homer Recording District, Homer, Alaska, all situated on Lot 5A, Block 800, HOMER AIRPORT TRACTS according to the official plats on file with the State of Alaska, Department of Transportation and Public Facilities, Division of Aviation.

The attached drawing depicts the Premises being subleased.



Flying Whale Coffee
 Lease through March 30, 2023
 \$2 per sf per month plus a 10%
 concession fee.

City of Homer
 Airport Terminal Floor Plan

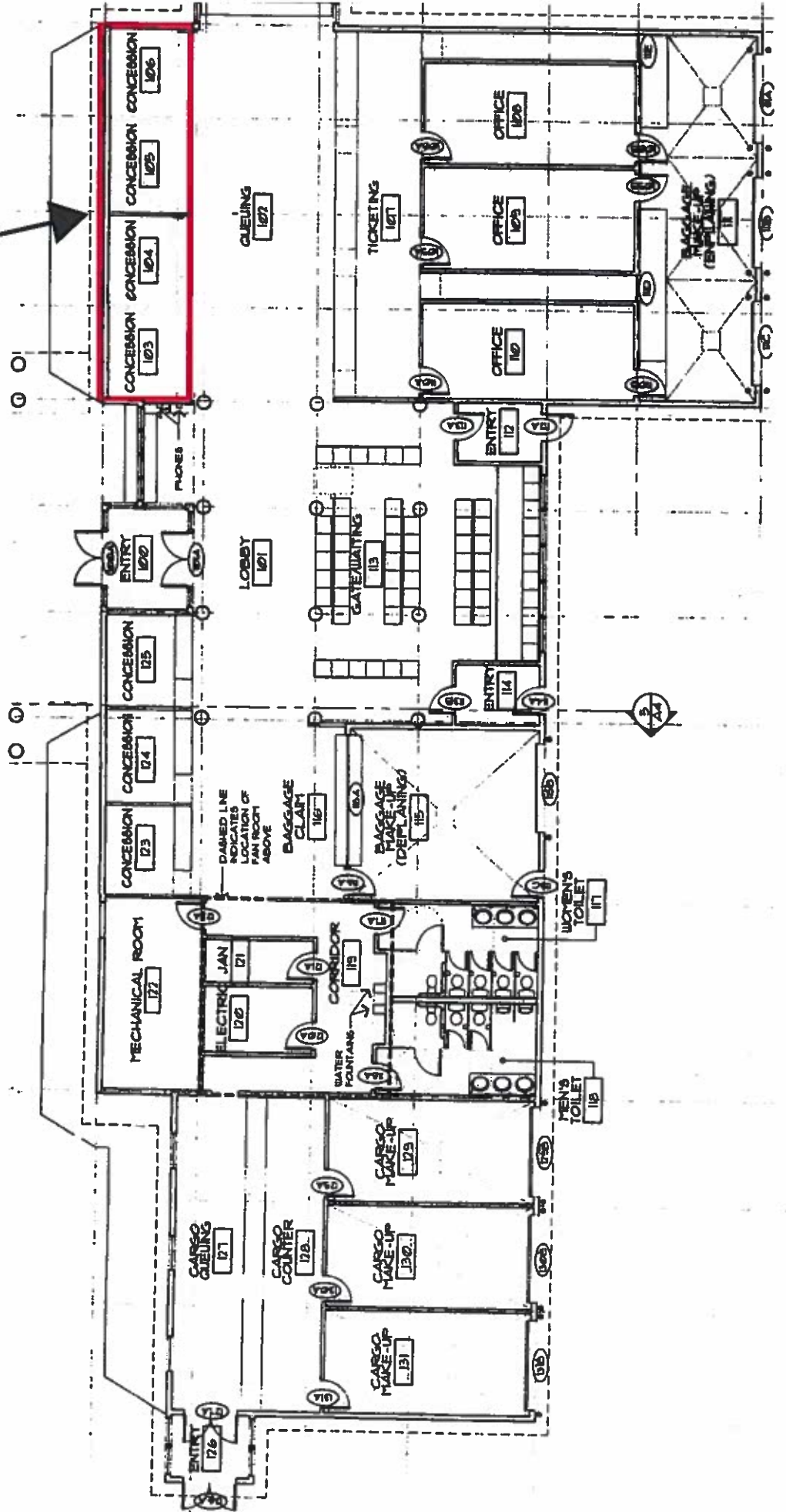


EXHIBIT B
HOMER AIRPORT TERMINAL
GENERAL CONCESSION SUBLEASE
SPECIAL CONVENANTS

Rent adjustment provisions are as follows:

In addition to the rents specified in Paragraph 3 of the Sublease the Sublessee shall pay the City rent equal to ten percent (10%) of Sublessee's Gross Sales ("Percentage Rent") but in no case shall the Percentage Rate be lower than \$200.00 per month.

(a) "Gross Sales" means the actual sales of goods, or merchandise rented or sold and the actual charges for all services performed by the Sublessee, in, at, from or arising out of the use of the Premises, whether for wholesale, retail, cash, credit, trade-ins, barter, or otherwise, without reserve or deduction for inability or failure to collect. Gross Sales shall include, without limitation, all rentals, sales and services, regardless of whether delivery or performance is made from the Premises or from some other place, where the orders therefore originate (a) in, from, or arising out of the use of the Premises, or (b) by mail, telephone, facsimile, E-mail, Internet connection, or otherwise, that Sublessee or any reasonable person in the normal and customary course of its business would credit or attribute to its operations at the Premises. Any sums deposited with and forfeited to Sublessee shall be included in Gross Sales. Each installment or credit sale or rental shall be treated as a sale or rental for the full price in the month during which such sale or rental is made, regardless of whether or when Sublessee receives payment therefore.

Gross Sales shall not include (a) cash or credit refunds to customers on transactions (not to exceed to actual price of the sale or rental) otherwise included in Gross Sales, (d) sales of trade fixtures, machinery, and equipment, after use thereof in the conduct of Sublessee's business, and (e) amounts collected and paid by Sublessee to any government for any sales or excise tax.

(b) Sublessee shall deliver to City, within ten days after the end of each calendar month, a written report signed by the Sublessee or by an authorized officer or agent of Sublessee showing the Gross Sales made in the preceding calendar month and calculating the Percentage Rent due. City shall have the right, upon reasonable notice to Sublessee, to exam and audit Sublessee's records to determine the accuracy of Sublessee's reports.

(c) All payments of Percentage Rent shall be made monthly within ten (10) days after the end of the month, accompanied by the report described in subparagraph (b). If Sublessee's report of Gross Sales or calculation of Percentage Rent are found to be incorrect, any additional amount determined to be due the City shall be immediately paid to the City by the Sublessee, and any amount of overpayment by the Sublessee shall be credited against the next monthly payment due the City under this Lease.

Lease Renewal. (a) Tenant has the option to extend the Term for One (1) additional, consecutive five (5) year period (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 of current Extended Term, as the case may be; and

(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 not 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) of the Ground Lease and Security Agreement renders that option and all options as to subsequent Extended Terms null and void.

(c) 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 of 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.

(d) Not less than 12 months before the expiration of the Term or 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.

Flying Whale Coffee

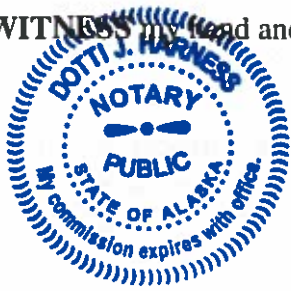
Lease Summary

Lease Terms	4/31/18 - 3/30/2023 Section 2		
Renewal	No renewals because the City's lease with the State expires 3/31/2023.		
Space	Concession space 103, 104, 105 and 106		
Rate	Square feet	360	Section 1
	Annual \$ per SF	\$24.00	\$2 p sf, per mo. x 12 mo.
	Annual lease rate	\$8,640.00	Section 3
	Annual Minimum concession fee	\$2,400.00	10% of gross sales, minimum of \$200/mo. Exhibit B. By the 10th of each mo. The tenant to provide a stmt of gross sales within 10 days of each month. Exht B
	Base Annual Rent	\$11,040.00	0.045 Homer tax + 0.03 KPB tax for a total of 0.075 tax
Billing as of May 1, 2018	Base montly rent	\$920.00	
Security Dep.	\$500 Paid		
Physical Add.	Homer Airport Homer, AK 99603		
Insurance	\$1M Liability, \$300,000 damage to premises, \$5,000 medical		
Parking	Employee parking is the furthest row from the airport entrance.		
Contact Info	Heather Temple and Amanda Moran Flying Whale Coffee 274 Lee Drive Homer, AK 99603 907-299-4063 702-785-4559 travermoran@yahoo.com flyingwhalecoffee@gmail.com		
History	7/1/2017	Heather Temple and Amanda Moran purchased the business from Dan Lush and established a new lease to complete the term	
	5/1/2018	New 5-yr lease through 3/31/2023	

STATE OF ALASKA, THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 9th day of April, 2018 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Katie Koester, known to me to be the City Manager of the City of Homer, and he acknowledged to me that he was authorized to execute the foregoing document by authority granted him by the City of Homer for the uses and purposes therein set forth.

WITNESS my hand and notary seal the day and year first hereinabove written.



Dotti J. Harness
Notary Public in and for Alaska
My Commission Expires: with position

STATE OF ALASKA, THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 3rd day of April, 2018, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Heather Temple known to me to be the individual named in and who executed the foregoing document and he acknowledged to me that being duly authorized to do so he executed the foregoing document as the free and voluntary act for the uses and purposes therein set forth.

WITNESS my hand and notary seal the day and year first hereinabove written.



Dotti J. Harness
Notary Public in and for Alaska
My Commission Expires:

STATE OF ALASKA, THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 4th day of April, 2018, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared A. Moran known to me to be the individual named in and who executed the foregoing document and he acknowledged to me that being duly authorized to do so he executed the foregoing document as the free and voluntary act for the uses and purposes therein set forth.

WITNESS my hand and notary seal the day and year first hereinabove written.



Dotti J. Harness
Notary Public in and for Alaska
My Commission Expires:

HOMER RECORDING DISTRICT

MEMORANDUM OF SUBLEASE

CITY OF HOMER ("City"), whose mailing address is 491 East Pioneer Avenue, Homer, Alaska 99603, and Heather Temple and Amanda Moran, ("Sublessee"), whose mailing address is 274 Lee Drive, Homer, AK 99603, entered a Sublease dated June 1, 2017 ("the Sublease").

1. **Leased Premises.** Under the terms of the Sublease, City leases to Sublessee the premises consisting of 360 square feet of space as more fully described and/or depicted on Exhibit "A" attached hereto, located in the Homer Airport Terminal Building located on Lot 5A, Block 800, HOMER AIRPORT TRACTS, Homer Recording District, State of Alaska, according to the official plats on file with the State of Alaska, Department of Transportation and Public Facilities, Division of Aviation.

2. **Term of Lease.** The term of the Sublease commences on xxx 2018 and terminates on March 30, 2023.

IN WITNESS WHEREOF, the parties to Sublease set their hands and seals the dates set forth below.

ATTEST:



Melissa Jacobsen, MMC, City Clerk



CITY
CITY OF HOMER



Katie Koester, City Manager


SUBLESSEE:

Date: 4-3-18



By Heather Temple

Date: 4-4-18



By Amanda Moran



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

491 East Pioneer Avenue
Homer, Alaska 99603

citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

May 1, 2020

Heather Temple and Amanda Moran
Flying Whale Coffee
274 Lee Drive
Homer, AK 99603

Ms. Temple and Ms. Moran,

The COVID-19 pandemic has resulted in economic strain and hardship on many individuals, families and businesses in Homer. We encourage all tenants to pay rent in full however, as part of the City's commitment to assisting the community with response and recovery, City tenants may now qualify for deferred partial lease payments.

Beginning May 1 until September 30, 2020, tenants can request permission to submit a partial lease payment each month (at minimum 50% of monthly lease rate owed) for up to 5 months beginning on the first day of the following month after the request is approved. On a case by case basis, I may work with individual tenants for a longer term payment plan if they can demonstrate need, are actively engaged in the property, and are working towards a solution. To best assist with the planning process, tenants must provide the City with the details of their situation in their request and bring forward a payment plan that demonstrates their ability to pay their outstanding balance in full by May 1, 2021. Please contact my office for any needed assistance with developing your request.

All penalties and late-fees will be waived **for requested deferrals** during the defined period.

The City encourages individuals and businesses to apply for and take advantage of State and Federal relief programs as they become available. Rent and lease payment assistance may be covered with the funding from these programs and grants.

Please email my office at citymanager@cityofhomer-ak.gov to request permission to enact any of these deferred payment options and/or with any questions.

The City of Homer is committed to assisting the community with response and recovery. Communication is key moving forward. We are stronger working together.

Sincerely,

Marvin Yoder
Interim City Manager



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

491 East Pioneer Avenue
Homer, Alaska 99603

citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

March 29, 2018

Health Temple and Amanda Moran
Flying Whale Coffee
274 Lee Drive
Homer, AK 99603
Dear Heather and Amanda,

The purpose of this letter is to respond to Flying Whale Coffee's request to alter the common wall between Concession Area 104 and 105 at the Homer Airport. Based on your submittal the City hereby permits Flying Whale Coffee to proceed with the alteration as described by Surayka Construction.

The specification of the project are:

- Removal of the common wall that houses the security gate.
- Construct and install one 6" x 6" x 8' post covered with 1" x 8" x 8' red oak-stained to match the existing trim.
- Relocate the security gates to operate from end locations and latch at the center post.
- Remove cut floor tiles and install new tiles and grout to match the existing floor as close as possible.
- Re-set two wall sections to conceal the gates when the gates are open.
- Patch walls as needed.
- Prime and paint to match existing walls.
- Replace acoustic ceiling tiles where the common wall was removed.

The City's Public Works Superintendent, Dan Gardner, met with Surayka Contracting to review the scope of work and will sign off on the project when completed.

Based on the lease, Section 10 Alterations, the City may require Flying Whale to restore the premises, or reconstruct the common wall at the expiration or termination of the lease. If the City requests restoration of the wall, the work must be completed within thirty (30) days of the request, or upon the expiration of the lease. See Section 10 Alternations.

The City is looking forward to Flying Whales expansion in time for the upcoming tourist season.

Sincerely,

Katie Koester, City Manager

Att: Surayka Construction specifications dated March 7, 2018