

**NOTICE OF MEETING  
REGULAR AGENDA**

1. **CALL TO ORDER/ROLL CALL**
2. **APPROVAL OF THE AGENDA**
3. **PUBLIC COMMENTS REGARDING ITEMS ON THE AGENDA**
4. **RECONSIDERATION**
5. **APPROVAL OF MINUTES** of February 9, 2010 p. 1
6. **VISITORS**
7. **STAFF AND COUNCIL REPORT**
8. **PUBLIC HEARING**
9. **PENDING BUSINESS**
  - A. Lease Policies p. 9
  - B. Comprehensive Economic Development Strategy (CEDS) (Bring you copy of the doc.) p. 83
  - C. Draft Homer Spit Comprehensive Plan (separate document)
  - D. Sitka Economic Development Association – a model for Homer? p.85
10. **NEW BUSINESS**
  - A. Lease Committee appointment p. 87
  - B. Store size cap in Town Center p. 89
  - C. Media apprenticeship program p. 91
  - D. Tax free zone for local agriculture p. 93
11. **INFORMATIONAL MATERIALS** (for discussion only)
  - A. Notes from Mike Haines, Chamber of Commerce EDC p. 95
  - B. “Putting Our Jobs Back in Place” – Project for Public Spaces article p. 99
  - C. Items of possible interest from recent City Council meeting packets p. 107
12. **COMMENTS OF THE AUDIENCE**
13. **COMMENTS OF THE CITY STAFF**
14. **COMMENTS OF THE COUNCIL MEMBER**
15. **COMMENTS OF THE CHAIR**
16. **COMMENTS OF THE COMMISSION MEMBERS**
17. **ADJOURNMENT/NEXT MEETING DAY AND TIME**

Next regular meeting is scheduled for June 8, 2010 at 6 p.m. in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.



Session 10-02, a Regular Meeting of the Economic Development Advisory Commission was called to order at 6:00 p.m. by Chair Erickson on February 9, 2010 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONER ERICKSON, HOPPE, NEECE, RAVIN

COUNCILMEMBER: WYTHE

ABSENT: COMMISSIONER DAY, FAULKNER

STAFF: SPECIAL PROJECTS COORDINATOR HOLEN  
DEPUTY CITY CLERK JACOBSEN  
VISTA REPRESENTATIVE BEVIS

#### APPROVAL OF THE AGENDA

The agenda was approved by consensus of the Commission.

#### PUBLIC COMMENTS REGARDING ITEMS ON THE AGENDA

There were no public comments.

#### RECONSIDERATION

There were no items for reconsideration.

#### APPROVAL OF MINUTES

A. Meeting Minutes of January 12, 2010

RAVIN/NEECE MOVED TO APPROVE THE MINUTES AS WRITTEN.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

#### VISITORS

A. Dr. Allen Gee, Homer High School Principal

Dr. Gee said that he attended one of three sessions with a career, technical, and advisory committee made up of Marathon Oil, BP, the School District, and other entities regarding the industry within the Kenai Peninsula. The intent is to look at economic trends within the peninsula with potential job growth, and ideas within our school district in terms of types of class offerings that can be provided to guide interested students in those career pathways. They shared information regarding decline in the industry, that some of the positions no longer exist, and how to maintain what is there is an idea that was presented. The school looked at it in terms of class offerings. At the school, they are facing the realization of their

ECONOMIC DEVELOPMENT ADVISORY COMMISSION  
REGULAR MEETING  
FEBRUARY 9, 2010

budget and potential reductions. Dr. Gee explained that they are projected to have 392 students next year. Last year it was budgeted at 402, which isn't a big decline, but current numbers are 376. Current projections suggest cutting 1.5 teachers resulting in 8 sections of course offerings that have to be reduced. Currently the school is at a minimum of academic offerings. His question to the Board of Education, Site Council, and others is out of those 8 sections, what is eliminated. Dr. Gee explained another component, the Connections program, which is a great opportunity for kids who don't want to use what is available at Homer High. Currently there are 108 kids in Homer enrolled in Connections. It is a significant number in terms of student enrollment. Currently the high school offers welding, construction, and auto mechanics. He said he has met with the Chamber Director to look at what options are available. They discussed purchasing a fishing vessel. Dr. Gee explained that it could open the door to classes in the marine biology field, navigational skills, and the components that could be encompassed with that. There is staffing available and people with areas of expertise in those fields. Dr. Gee said that he met with Carol Swartz at KBC in an effort to consider course offerings to the kids. The vocational side of public education has diminished greatly over the past 20 years. He recognizes the importance of it as it's what got him through high school. Those opportunities need to exist. He is aware of the bureaucracy involved, but at the same time we need to do these things for our kids. He shared his experience of visiting the vocational school in Mat-Su and while he can't provide as many opportunities as they do, he can provide a snapshot so kids who don't want to go to college can have a better idea of what is out there. He has also researched other districts with declining enrollment to see how they have been impacted and how they have dealt with it. He recognizes that a lot of smaller schools aren't able to keep their AP classes, but he doesn't want to lose that upper end for the kids who need it, but at the same time he knows if he doesn't have the automotive and welding type classes he will lose those kids as well.

There was discussion with the Commission about dual enrollment with college and while it is a good idea, there is the issue of funding formulas for both. The college is in a position to ask the legislature for more money, but he can't and losing those students takes the funding that goes with it. They also talked about the concept of having a boat and programs that could go with it starting with necessary maintenance to make it sea worthy, getting Coast Guard certification, and so forth. Dr. Gee noted that Representative Seaton is looking at increasing funding \$125 per student and that funding can help put that 1.5 staffing position back. It needs to be continued to ensure the forward funding so the budget exists and they can plan ahead. He is trying to commit to a Briggs and Stratton small engine class through grant funding, and kids will be able to build them. Funding from the oil companies isn't available like it used to be.

B. Garry White from Sitka Economic Development Association

Mr. White gave an overview of how the association was developed in Sitka. A pulp mill that was one of the bigger employers closed in 1993 and the economy took a nose dive. The Chamber of Commerce developed the separate non profit called the Sitka Economic Development Association, SEDA, which has been pretty successful. SEDA is funded by the city with about \$70,000 to work on economic development throughout the community. The city took the property over from the mill in 1999 and established the Sawmill Cove Industrial Park Board of Directors. They are the managers of the park. The City chose to contract that out to SEDA and they get a yearly contract fee to manage that entity for the city. He works for two boards, the Board of Directors for SEDA, whose main focus is overall economic development for the community, and also for a 5 member board that is appointed by City and Borough

ECONOMIC DEVELOPMENT ADVISORY COMMISSION  
REGULAR MEETING  
FEBRUARY 9, 2010

Assembly that manages the Sawmill Cove park. SEDA does not assist with business plans and that type of development, there are other entities that provide that help. SEDA is more about doing marketing for the City to attract businesses and working on special projects. One example the Sheldon Jackson College that closed and left the campus is sitting empty. SEDA has been actively working with their board of trustees and the city and borough to get a new entity to come in. They are project oriented as well, working on infrastructure for the city and advocating for the city to get grant funding for hydro project, road construction and so forth. They are there to help businesses come in more by setting the stage for a good business environment. Regarding the industrial park, Mr. White negotiates on behalf of the city, discusses lease prices, and gets a recommendation from the Sawmill Cove Board, then takes it to the assembly for the overall lease approval or property sales. Mr. White shared that the industrial park has 10 or 11 tenants now. The main goal of the city taking over the park was to provide jobs, not necessarily to make income from the lease property. There are about 45 year round jobs. There is a fish processing plant that brings it up to about 300 employees seasonally. They attempt to get a 9% return on their investment on the leases and the rate can be adjusted up or down based on job creation. There are politics that get involved in determining rates but that comes with most communities. The city and borough owns their own electric utility and charge like any other utility would. Mr. White said he is the contact for anything that goes on out in the park. The city and borough also has a unique situation in that the State of Alaska has granted them allocations of water that they can sell in bulk form, and there is a lot of interest in that. He manages that as well by weeding out speculators and attempting to establish contracts with those that are a real deal. He has a limited budget, it include him and a part time assistant. There are a lot of politics involved with differing opinions on how to handle the industrial park, which is part of the reason why they don't have many tenants, but they are doing the best they can with it. He listed some of the businesses that are active there now. Mr. White suggested if Homer is considering something like this, Eric McDowell of the McDowell Group helps facilitate the process.

C. Homer Grange Representative

John Cowan, representative of the Homer Grange, brought the Commission a resolution that supports the creation of an agricultural free enterprise zone. He read the resolution and provided a copy for the record. He said the resolution is broad and that they are looking at tax free year round for the industries listed on the proposed resolution. Mr. Cowan said he is a budding entrepreneur trying to start his own agricultural business in the near future. He encouraged the Commission to forward it to City Council for consideration.

Commissioner Ravin commented that this recommendation ties in to the Buy Local program and also the Kenai Peninsula Borough Free Trade zone that was brought up in the economic development brainstorming session. He hopes the Commission can support it.

Commissioner Hoppe requested clarification about what fish they are referring to in the resolution, as there is fish that comes across the dock, farmed fish, and so forth.

Councilmember Wythe noted that the City of Homer does not have authority over anything other than the City's own tax.

There was consensus about adding the resolution to the next agenda for discussion.

STAFF AND COUNCIL REPORT

ECONOMIC DEVELOPMENT ADVISORY COMMISSION  
REGULAR MEETING  
FEBRUARY 9, 2010

City Planner Abboud said it has been good to hear the discussion so far tonight. He hopes to attend their meetings more regularly and intends to be a conduit for planning concerns. He is unsure what their specific concerns are regarding what zoning issues may have caused someone not to expand or move into a site. He explained that some of the recent amendments have loosened things up, like shared parking for example. Zoning can be used as a tool to try to encourage clustering uses where businesses can do their things and have other parts of town where people want residential. City Planner Abboud said zoning is kind of complicated and it is difficult to sum it up in five minutes, but he will certainly carry items of concern to the Planning Commission. There was discussion regarding the 16 different zones on the draft Comprehensive Plan map and concern that all the districts could be an impediment to development. City Planner Abboud said that the map was a creation of the community and a lot of the reason for the different colors was that they were trying to incorporate allowances for what is going on in the zones. Currently we have GC1 districts with houses and businesses and they were trying to make allowances for what is there and what else could be going on. He asked for clarification of the Commission's concern about uses not being allowed. City Planner Abboud explained that City Code outlines what is allowed in zoning districts. It can be arduous because code breaks down degrees of buildings allowable in districts. He is looking at possible ways to generalize it to some degree, but right now staff has to work with the code that is in place. We have a Planning Commission that has to make decisions and make recommendations based on code. The current Planning Commission is different than it has been in the past and the planning office is no longer perceived as the office of "no". It may be surprising, but they have been criticized for trying to make things happen. They are trying to be user friendly and give some predictability about what each neighborhood is about and what the future may bring. Right now it is driven by many factors for example the rural residential district could have a contractor come in with roads, and water/sewer, then it isn't rural any more. Commissioner Ravin listed some of the past and current uses that are in the proximity to the City Hall building and noted how they were established in a time when there was an absence of zoning. A planned overlay would destroy the availability of people to have mixed neighborhoods where they have access too all these services. He asked what portions of the zoning ordinance allow that to occur now. City Planner Abboud explained that mixed use is encouraged for this area. The new map has a lot of colors because they are trying to include more and offer some more flexibility. City Planner Abboud encouraged the Commissioners to express their concerns so they can get to the Planning Commission. We need to make things better for everybody.

Special Projects Coordinator Holen commented regarding the latest population estimate for Homer for 2009 showed 160 more people, a 3% increase over 2008, the highest it's ever been at 5551. She noted that it is an estimate, not actual counts and based almost exclusively permanent fund divided applications. They do not include summer residents, even though City services have to take into account summer populations. They also do not include what the census people call day time residents, or people who commute into town to work but live outside City limits, and City services have to take those people into account as well. She reported to that VISTA Representative Bevis has been in touch with folks at the University of Washington and USDA who are very interested in the Kenai Peninsula being a center of manufacturing for wood plastic composite products. The timber situation on the Peninsula could be ideal. She forwarded the information to the City Manager and Assembly Member Bill Smith.

ECONOMIC DEVELOPMENT ADVISORY COMMISSION  
REGULAR MEETING  
FEBRUARY 9, 2010

Councilmember Wythe reported that Council adopted the resolution for membership with the Alaska Film Group, and also a resolution recommending Homer as a location for a Maritime Academy. She added that when the Lease Policy comes to Council the EDC's documentation supporting their recommendations should be included in the packet. She said that it could go back to the Lease Committee for review as well.

**PUBLIC HEARING**

There were no items for public hearing.

**PENDING BUSINESS**

A. CEDS development and other activities- Carol Bevis

RAVIN/NEECE MOVED TO BRING TO THE FLOOR FOR DISCUSSION.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

VISTA Representative Bevis reported that the first draft of the CEDS is completed. There are nine chapters that all correspond to different economic development strategies and include a lot of research and data. At the end there is an implementation chapter, which is the part the Commission is tasked with. There was discussion of the process for the Commission reviewing the draft plan at some worksessions then bringing their draft plan to the regular meeting for public hearing, and lastly a final draft to the City Council.

RAVIN/NEECE MOVED TO FORWARD TO A WORKSESSION IN ABOUT TWO WEEKS.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

The Commission agreed to meet at 6 p.m. on February 23 to discuss chapters 1 through 3.

B. Promoting Homer and Local Businesses via Internet and Other Means - Tina Day

Commissioner Day was absent to give a report. Chair Erickson said she explored the City website and found most of the listed links, but it was difficult to locate them. She thinks these will be resolved with the development of the new website.

C. Draft Homer Spit Comprehensive Plan

The Commission had no action or recommendation regarding the Spit Comprehensive Plan at this time. It was recommended that they email or call in suggestions to the Planning Office which will be shared with the Consultant.

## NEW BUSINESS

### A. Lease Committee Appointment

Chair Erickson said she is currently fills the EDC Representative's seat on the Lease Committee. Because of the negotiations that her business is in with the Lease Committee she needs to step down due to conflict of interest concerns.

The Commission discussed who might be able to serve on the Committee.

RAVIN/HOPPE MOVED TO NOMINATE COMMISSIONER DAY.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

There was discussion that Commissioner Day should have an opportunity to speak to the nomination at the next Commission meeting.

### B. Apprenticeship Program - Micheal Neece

Commissioner Neece gave a brief overview of the information provided in the packet. He said he is interested in the EDC's thoughts on the program. He received an email from the Alaska Film Office, which is new, and there are 14 productions qualified under the tax incentive guidelines, four productions have been issued tax credits, and there are eight more TV programs that have been prequalified. The problem he sees is that we don't have the workforce. These projects take 60 to 100 people so we need to get on the program with workforce development and use the means we have to turn out some really talented people. In Homer we have a lot of artists and technically inclined people with master's degrees. He would like to talk to Dr. Gee about this. It could really be a boon to the City and would create a huge economic engine. He said he has a concept of a curriculum and Anchorage is going to start a workforce development program up there. Ours would be more along the lines of animation, motion capture and real specialized trades, but it capitalizes off our resources that we have in Homer. We need to work together with Anchorage and UAF on this. Support from the City in the form of a letter to Representative Seaton, the Chair of the Workforce and Education Committee.

### C. Code Inconsistencies Re: Store Size Restrictions in Town Center District

City Planner Abboud had noted earlier in the meeting that there is a typographical error in code regarding square footage. Chair Erickson noted the Planning Commission minutes excerpt in which the Commission recommends that the City Council delete all reference to square foot size limits for large retail/wholesale in all zones. Allow the free market to determine any size restrictions, utilize the community design manual, development activity plan, storm water plan, and the requirements for traffic impact analysis guide the development in homer. She was glad to see that recommendation.

ECONOMIC DEVELOPMENT ADVISORY COMMISSION  
REGULAR MEETING  
FEBRUARY 9, 2010

D. Lessons Learned - Themes from "Small Towns/Big Ideas" as they relate to Homer

There was brief discussion about the excerpt in the packet from the UNC study in relation to the theme of the CEDS, which is the importance of finding the common ground.

E. Homer's many points of view: How Do We Work Together for the Common Good?

There was no discussion about this topic.

**INFORMATIONAL MATERIALS**

- A. Representative Paul Seaton's Newsletter
- B. Bradner's Alaska Economic Reports
- C. Articles from Local and Regional Newspapers and Alaska Business Monthly
- D. Items of Possible Interest from Recent City Council Meeting Packets

There was brief discussion regarding Representative Seaton's comments about net metering.

**COMMENTS OF THE AUDIENCE**

Michael Kennedy attempted to address Commissioner Hoppe's concerns. He said the Grange is looking for a resolution of support to carry on to the Borough that the City supports this tax free zone on the peninsula. Regarding planning and zoning, Mr. Kennedy noted that before annexation the area developed beyond City limits where the Gear Shed and the East Road Village are located. They started there because they were free to have whatever they wanted. A survey that was taken showed that no one wanted annexation and they were happy to proceed without planning and zoning.

**COMMENTS OF CITY STAFF**

Special Projects Coordinator Holen thanked Ms. Bevis for the drafts CEDS as it saved a lot of time and a lot of money.

**COMMENTS OF THE COUNCIL MEMBER**

Councilmember Wythe had no comment.

**COMMENTS OF THE CHAIR**

Chair Erickson said she would like to have discussion on the next agenda regarding Mr. White's information. She thanked everyone for a good meeting.

**COMMENTS OF THE COMMISSION MEMBERS**

Commissioner Neece asked to keep the apprentice program on the agenda. He thanked Ms. Bevis for her work on the CEDS.

Commissioner Hoppe said it was a good meeting and thanked Ms. Bevis. He commented that Homer is a controversial town and it is hard to compare it to Sitka, and that he would like to help the Grange with their resolution.

ECONOMIC DEVELOPMENT ADVISORY COMMISSION  
REGULAR MEETING  
FEBRUARY 9, 2010

Commissioner Ravin thanked the Grange for their information and hopes they can move forward on a resolution. He said he was happy to have Dr. Gee here and it will be good to work with him on the vocational education. He thanked Ms. Bevis for her work.

**ADJOURN**

There being no more business to come before the Commission the meeting was adjourned at 7:54 p.m. The next regular meeting is scheduled for March 9, 2010 at 6:00 p.m. in the City Hall Cowles Council Chambers.

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MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: \_\_\_\_\_

**CITY OF HOMER**  
**PROPERTY MANAGEMENT**  
**POLICY AND PROCEDURES**

Table of Contents

CHAPTER 1:  
Lease Policies / Goals, Purpose, and Responsibility.....3

CHAPTER 2:  
Lease Committee.....4

CHAPTER 3:  
Properties Available for Lease.....5

CHAPTER 4:  
RFP Process / Competitive Bidding.....7

CHAPTER 5:  
Lease Application Process.....8

CHAPTER 6:  
Application / Proposal Evaluation Process.....9

CHAPTER 7:  
Lease Rental Rates.....10

CHAPTER 8:  
Reconsideration.....11

CHAPTER 9:  
Lease Implementation.....12

CHAPTER 10  
Improvements.....14

CHAPTER 11:  
Length of Leases / Options.....15

CHAPTER 12:  
Lease Rate Adjustments.....17

CHAPTER 13

| *Draft prepared for 5/11/10 EDC meeting based on previous draft from 10/13/09 meeting where deletions are indicated with strikethrough type and additions are indicated with bold type. Comments from 4/19/10 worksession with PHC are noted in margin.*

Sub-Leasing.....18

CHAPTER 14:  
Assignments.....20

CHAPTER 15:  
Insurance.....21

CHAPTER 16:  
Hazardous Materials.....23

CHAPTER 17:  
Performance Standards.....24

CHAPTER 18:  
Conclusion of Lease.....25

CHAPTER 19:  
Surplus Equipment Disposal.....

APPENDICES:

Homer City Code / Chapter 18.08 – City Property Leases. last amendment, Ordinance 04-22

Resolution 04-25(A), adopted April 26, 2004.

Resolution 07-25(A), adopted June 25, 2007.

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CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

Comment [AMH1]: Comments on this draft reflect discussion at the joint worksession of the EDC and P&H Commission on 4/19/10.

CHAPTER 1: LEASE POLICIES / GOALS, PURPOSE, AND RESPONSIBILITY

1.1 GOALS AND PURPOSE

- A. The property lease management policies contained herein are authorized by HCC 18.08 and are intended to provide guidance, clarity, and standardization for all leasing activities on City owned property.
- B. It is the policy of the City of Homer to lease property when it is in the overall best interest of the City to do so. The City will seek to maximize the value of its assets and lease property for the highest and best use.
- C. It is the policy of the City to implement its leasing program in a fair and nondiscriminatory manner. Opportunities for long term leases on City owned properties will be made available to the public through the RFP process described herein.
- ~~D. It is the policy of the City to lease property for a specific purpose or use. Leasing for the purpose of speculation and/or subleasing land will be discouraged.~~

1.2 RESPONSIBILITY

- A. The Lease Committee described herein shall be responsible for reviewing this policy manual and making recommendations to the City Council as needed, ~~advising the City Manager or designee as to terms, stipulations, and negotiating approach with respect to leases, evaluating lease applications, and making recommendation to the City Council regarding proposed leases.~~
- ~~B. The City Manager or designee is responsible for all lease negotiation activities and for implementing and administering the lease policies and procedures.~~  
**The Lease committee may delegate the responsibility for negotiating and administrating leases.**
- C. The City Council has responsibility for approving and adopting the lease policies and for final approval of all leases over six months in duration.

Comment [AMH2]: Change to: "The Lease Committee has the responsibility for negotiating and administrating leases."

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*Page 3 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

CHAPTER 2: LEASE COMMITTEE

2.1 POLICY

- A. It is the policy of the City of Homer to establish and maintain a Lease Committee.

2.2 PROCEDURES

- A. ~~The City Manager shall establish a Lease Committee that will consist of the Finance Director, the City Planner, the Port and Harbor Director, The Mayor shall appoint, with confirmation by the Council, a Lease Committee that will consist of one member of the Economic Development Commission, one member of The Port and Harbor Commission, a City Council member, and two at large members of the public.~~ **an additional commission as determined appropriate by the City Manager, and one member of the public.** The Manager shall consult with the Chair of the Commissions to determine who from the Commission and who from the public might best serve the Committee and not be subject to conflicts of interest. The Lease Committee may consult with department heads such as the Fire Chief, Police Chief and the Public Works Director and the City Manager **city administrative staff** or outside professionals as needed and appropriate.
- B. The Lease Committee is responsible for:
- Reviewing the Lease Policies and Procedures as needed and making recommendations to the City Council
  - Advising the City Manager or designee as to the terms, purposes, stipulations and negotiation approach to proposed leases
  - Reviewing all proposed leases and making recommendations to the City Council
- C. In all cases, the Lease Committee shall make recommendations that are consistent with this policy and procedures manual or make specific findings as to why a deviation is warranted and justified.

**Comment [AMH3]:** Add: "and one member of the City staff chosen by the Lease Committee" to this list.

*Draft prepared for 5/11/10 EDC meeting based on previous draft from 10/13/09 meeting where deletions are indicated with strikethrough type and additions are indicated with bold type. Comments from 4/19/10 worksession with PHC are noted in margin.*

Page 4 of 26

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 3: PROPERTIES AVAILABLE FOR LEASE

3.1 POLICY

- A. It is the policy of the City of Homer to provide property for lease through a fair, nondiscriminatory, and standardized process that the public can readily understand and support.
- B. It is the policy of the City that public land shall be leased in a way that maximizes the value of City assets, promotes activities and uses that are in the overall best interest of the City, and are consistent with the Comprehensive Plan.

3.2 PROCEDURES

- A. The Lease Committee shall maintain a list of all City properties that have been authorized for lease by the City Council. This list shall be made readily available to the public. The Lease Committee may also develop a list of additional properties, for City Council review, that it recommends should be made available for lease.
- B. The City Council shall identify which City properties are available for lease through its annual land allocation workshop process which includes the Lease Committee, the Planning Commission, the Port and Harbor Commission, and the Parks and Recreation Commission.
- C. All properties identified as available for lease by the City Council shall be subject to the lease policies and procedures contained herein.
- D. All uses and activities on lands made available for lease are subject to the City Comprehensive Plan, zoning ordinances, flood ordinance, subdivision ordinance, and other applicable local, state, and federal laws and regulations.
- ~~E. The City Council may restrict specific City properties to certain uses or classes of use. Such properties will be available for leasing only such uses. The City Council has in the past restricted the use of lots immediately adjacent to the Fish Dock to activities directly related to commercial fishing. Similarly, it has restricted uses on lots adjacent to the Deep Water Dock to marine industrial uses with an emphasis on shipping and cargo handling. The purpose for these restrictions is to encourage growth in targeted economic sectors, to insure that the City receives the maximum benefits from the large investment the public has made in those docks, and to provide land for businesses that require close proximity to the docks in order to operate efficiently and profitably.~~

**Comment [AMH4]:** PHC members indicated they were OK with striking this paragraph.

*Draft prepared for 5/11/10 EDC meeting based on previous draft from 10/13/09 meeting where deletions are indicated with strikethrough type and additions are indicated with bold type. Comments from 4/19/10 worksession with PHC are noted in margin.*

*Page 5 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 4: REQUEST FOR PROPOSALS (RFP)

4.1 POLICY

- A. It is the policy of the City of Homer that a request for proposals, or a competitive bidding process be used for the leasing of City owned property. Exceptions to this policy may be made by the City Council as per section 10.2.E of these policies and/or under special or exceptional circumstances. The Council shall review recommendations of the Lease Committee and, if an exception is granted, adopt a resolution finding that it is in the public interest and approving the exception.

4.2 PROCEDURES

- A. Properties that are available for lease will be advertised by the Lease Committee through the normal City of Homer public notice process a minimum of one time per year. The Lease Committee shall provide such notice within 60 days of the completion of the annual land allocation process and adoption by the Council of the Land Allocation Plan. The committee may advertise more frequently as needed and appropriate.
- B. Requests for Proposals shall be solicited by the Lease Committee during a time frame identified in the advertisements and proposal submittal documents.
- C. The criteria used to score and rank proposals shall include, but not necessarily be limited to, the criteria listed in the evaluation chapter herein.
- D. The Lease Committee shall review, evaluate, score, and rank all responsive proposals and make recommendations to the Manager. If none of the responsive proposals is satisfactory, the Lease Committee may recommend against all of the proposals. The manager shall notify the City Council of the Committee's recommendations.
- E. The Lease Committee must obtain approval from the City Council before requesting proposals to lease property that is not on the approved list of properties available for lease.
- F. The City Council may by resolution in particular cases approve other bidding or proposal procedures or exceptions to these procedures.

*Draft prepared for 5/11/10 EDC meeting based on previous draft from 10/13/09 meeting where deletions are indicated with strikethrough type and additions are indicated with bold type. Comments from 4/19/10 worksession with PHC are noted in margin.*

*Page 6 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 5: LEASE APPLICATION PROCESS

5.1: POLICY

- A. It is the policy of the City of Homer to provide for a streamlined, standardized, and easily understood lease application process. A full and complete application packet shall be provided to all applicants. Applicants must be qualified under Section 18.08.50 of the Homer City Code.
- B. The City administration will provide for pre-application meetings with all potential applicants to provide relevant information on things like land use regulations, lease policies, the permitting process, and other relevant topics.

5.2 PROCEDURES

- A. A responsive lease application / proposal shall include:
  - 1. A completed application form provided by the City
  - 2. Any applicable fees
  - 3. A clear and precise narrative description of the proposed use of the property
  - 4. A specific time schedule and benchmarks for development
  - 5. A proposed site plan drawn to scale that shows at a minimum property lines, easements, existing structures and other improvements, utilities, and the proposed development including all structures and their elevations, parking facilities, utilities, and other proposed improvements.
  - 6. Any other information that is directly pertinent to the proposal scoring criteria contained herein
  - 7. All other required attachments requested on the application form including, but not limited to, the following documentation: applicant information, plot plan, development plan, insurance, proposed subleases, environmental information, ~~agency approvals and permits, fees;~~ financial information, partnership and corporation statement, certificate of good standing issued by an entity's state of domicile, and references.
  - 8. Any other information required by the solicitation or request for proposals.

**Comment [AMH5]:** No consensus reached on whether this should be struck. One PHC member said, "City needs certainty" that permits are in place before approving lease. The topic "needs more discussion."

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*Page 7 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 6: APPLICATION / PROPOSAL EVALUATION PROCESS

6.1 POLICY

- A. It is the policy of the City of Homer to provide for a fair, standardized and objective proposal evaluation process.

6.2 PROCEDURES

- A. All lease proposals shall be evaluated and scored by the Lease Committee.
- B. The Criteria for evaluating proposals shall include but is not limited to the following:
  - 1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Comprehensive Plan.
  - 2. The development plan including all proposed phases and timetables.
  - 3. The proposed capital investment.
  - 4. Experience of the applicant in the proposed business or venture.
  - 5. Financial capability or backing of the applicant including credit history, prior lease history, assets that will be used to support the proposed development.
  - 6. The number of employees anticipated.
  - 7. The proposed rental rate.
  - 8. Other financial impacts such as tax revenues, stimulation of related or spin-off economic development, or the value of improvements left behind upon termination of the lease.
  - 9. Other long term social and economic development.
- C. Lease Rental Rates
  - 1. The determination of lease rental rates is addressed in Chapter 7.
- D. After evaluating and scoring the proposals, the Lease Committee shall make a recommendation on a successful bidder to the City Council. The recommendation shall be contained in the form of a memorandum from the City Manager to the City Council that appears on the consent calendar of a regular meeting agenda. If a recommendation to approve a proposal is adopted, the Manager or his designee shall finalize a lease document for presentation to Council for approval. If the Council approves the lease, it will not be executed until the period for reconsideration under section 8.3 passes.
- E. Final approval of long term leases (more than six months) rests with the City Council. The Council shall either:
  - 1. Approve the proposed lease
  - 2. reject the proposed lease; or

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*Page 8 of 26*

3. remand the unapproved lease to the Manager with comments

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*Page 9 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 7: Lease Rental Rates

7.1 POLICY

It is the policy of the City of Homer to provide for a lease rental rate structure that stimulates business activity, promotes the best use of City land, and maximizes the value of City owned real property.

7.2 PROCEDURES

**A. Lease Rental Rates Generally**

1. All property shall be leased at no less than "fair market rent". Fair market rent is defined as the rental income that a public and private property would most likely command in the open market, indicated by the current rents paid for comparable space as of the date of the appraisal.
2. Payment of a higher than market rent resulting from an applicant's proposal is generally in the public interest and will help to establish fair market rent using current market forces.
3. The City Council may establish a minimum rent or "asking price." It may set the minimum rent at an amount equal to or higher than the estimated "fair market rent" if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.
4. The Council may approve a lease of City land for less than fair market rent, minimum rent, or uniform rental rate only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.

**B. Rental Rate Determination: Factors that may be considered when determining the specific lease rate for individual leases include:**

1. The bid amount contained in the sealed bid proposal
2. The fair market rent as determined by an appraisal
3. The highest and best use of the land
4. The City's economic development objectives. This may include any incentives the Council may adopt by ordinance to stimulate growth in particular sectors of the economy.
5. The location of the property
6. Alternative valuation methodologies as negotiated by both parties.
7. Parameters set out by the City Council under 7.2 A

**A. Lease rates shall follow one of the following formulas:**

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*Page 10 of 26*

**Comment [AMH6]:** Agreement that this language should be struck in favor of new approach based on KPB tax-assessed value, as described in proposed substitute language.

1. **Percentage of valuation. Annual Lease rent shall equal 8% of the Borough's Assessed valuation of the Raw Land. (and/or any City owned improvements)**
2. **Base rent plus percentage of Gross: If it is in the City's interest to do so, the City and Lessee may negotiate a base rent that is less than the percentage of valuation method, provided that the City receives a percentage of gross sales receipts.**

**Comment [AMH7]:** There was discussion about whether KPB assessors reduce the value of the property as the end of a lease period draws closer. This needs to be clarified. Otherwise, this method of determining lease rates "has a lot of merit."

**Comment [AMH8]:** This proposed change was not discussed, or at least I didn't note that it was!

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*Page 11 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

**CHAPTER 8: RECONSIDERATION**

**Comment [AMH9]:** PHC members were OK with proposed changes in this chapter.

8.1 POLICY

It is the policy of the City of Homer to provide for a reconsideration process so that a fully responsive bidder may seek remedies to actions by the City Council or Lease Committee that he or she may believe are in error, unfair, or otherwise unsatisfactory. ~~The reconsideration provisions apply only to final approval of a lease by the City Council.~~

8.2 RESPONSIBILITY

- A. The City Council is responsible for hearing reconsiderations and for making the final determination on them.
- B. The City Manager is responsible for providing all required staff support necessary to assist the Council in hearing and deciding reconsiderations.

8.3 PROCEDURE

- A. A fully responsive bidder who believes that ~~the City Council~~ final action on the terms of a proposed lease is unsatisfactory may request a reconsideration.
- B. Reconsideration Process:
  - 1. A written request for reconsideration must be filed by a fully responsive bidder with the City Clerk within 15 days of the ~~City Council~~ action which is to be reconsidered. Any decision for which reconsideration is not requested within that period shall become final.
  - 2. The City Clerk shall schedule the matter for reconsideration before the City Council at an appropriate regular meeting.
  - 3. The person requesting reconsideration and all parties involved in the Council action to be reconsidered, shall be notified by the Clerk of the reconsideration request and the date upon which the Council will reconsider. Such notice shall be given not less than 15 days prior the scheduled reconsideration.
  - 4. An electronic tape recording shall be kept of the entire reconsideration proceeding and typewritten minutes shall be prepared. The electronic tape recording shall be preserved according to the City's records retention policy at the time.
  - 5. The decision of the City Council on reconsideration shall be final. There shall be no appeal; **however this shall not limit legal remedy.**

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Page 12 of 26

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 9: LEASE IMPLEMENTATION

9.1 POLICY

It is the policy of the City of Homer that all leases shall be negotiated and administered in a fair, standardized, and professional manner that is consistent with the Homer City Code and these policies and procedures.

9.2 PROCEDURES

- A. The Lease Committee and the City Manager shall develop a standardized ground lease document that contains standard provisions applicable to all ground leases. Similarly, the Lease Committee and the City Manager may develop one or more standardized building leases (as many as necessary to apply to each City building available for leasing) containing standard provisions applicable to all leases of space in a city building. The standard lease documents shall be reviewed by the City attorney and approved by the City Council. Standard lease documents provide the baseline requirements and conditions of all city leases. They are the starting point in negotiations and are subsequently structured and modified to meet the specifics of the development proposal with respect to things like term, lease rate, allowed uses, required insurance, and so on.
- B. The terms and conditions of each lease shall be reviewed by the Lease Committee prior to execution. The committee shall make recommendations on terms and conditions to the Manager and the City Council.
- C. The City Manager or designee is responsible for lease negotiations, including any negotiated changes in the standard lease terms. The Manager shall take into consideration the following when negotiating the terms of a lease:
  1. the nature of the proposed use
  2. the type and cost of the improvements to be placed on the property
  3. the period of time required to amortize the improvements
  4. the overall benefit to the City
  5. consistency with the Comprehensive Plan and all other relevant land use codes and regulations
  6. the public need and benefit
  7. the date of commencement and completion of improvements
  8. the value and usefulness of buildings, structures, and other permanent improvements that will remain on the City's land after termination of the lease.

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*Page 13 of 26*

9. other factors deemed relevant by the Lease Committee or the City Manager.
- D. The determination of lease rental rates is addressed in Chapter 7.
  - E. All leases and attachments, or in the direction of the City Manager a memorandum of lease, shall be recorded in the proper recording office by the Clerk's office. The Lessee is responsible for the recording fees.
  - F. All leases must require the lessee to comply with applicable zoning, parking, sign, flood, and other pertinent local ordinances and state and federal statutes and regulations.
  - G. If a lease is awarded, an as-built survey including elevations performed by an RPLS(Registered Professional Land Surveyor) shall be provided to the City within 6 months of completion of permitted or required development or requirements under the lease. Each additional structure or significant improvement shall require an additional or updated as-built except that the Manager may waive the RPLS requirement. The lessee will be required to subdivide and replat city owned parcels if the lease so requires. All surveys are to be provided by the lessee at his/her expense.
  - H. At the time each as-built is submitted, a statement of value including leaseholds and all improvements shall be provided. The Statement of Value shall be either a letter of opinion or appraisal completed by an Alaska Certified General Appraiser.
  - I. All development requirements and performance standards contained in the lease shall be strictly enforced and if not complied with or negotiated for modification as per 10.2.B, shall be cause for the lease to be terminated.

Comment [AMH10]: Suggestion was made to add "...or a Borough assessor."

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Page 14 of 26

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 10: IMPROVEMENTS

10.1 POLICY

It is the policy of the City of Homer that all improvements installed, maintained, occupied, and used on leased City property shall be strictly monitored and shall be consistent with the terms and conditions of the lease and all other applicable codes and regulations.

10.2 IMPLEMENTATION

- A. Construction of improvements on leased properties shall take place only after review and approval of the construction plans by the Lease Committee and all applicable permits and legal requirements are secured.
- B. Construction of improvements that are not consistent with the lease agreement are prohibited unless they are approved by an amendment to the lease approved by the City Council. The amendment is subject to the same review process as initial leases.
- C. ~~All improvements constructed upon leased property become the property of the City upon termination of the lease unless otherwise provided in the lease, or agreed to by the parties in writing, the lessee shall on or before the lease termination date remove all improvements. The lessee is authorized or required to remove and restore the property to the same condition it was in at the time the lease was executed by the lessee.~~
- D. ~~The lessee shall, during the course of the lease term, be subject to and responsible for payment of assessments related to local improvement districts; payment of its share of the cost of capital improvement projects completed by the City that benefit the property pursuant to the provisions of HCC 18.08.180, and the cost of connection to utilities pursuant to the provisions of HCC 18.08.190. **These obligations shall be in proportion to the leasehold interest.**~~
- E. Lessee shall be responsible for all municipal property taxes on the leasehold interest in the real property and improvements and sales taxes on the rent payments.

Comment [AMH11]: I did not note any comments made in regard to this proposed change.

Comment [AMH12]: Agreement expressed to strike this whole paragraph, since the Borough assessment will reflect the value of any LID improvements and rent will go up accordingly.

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*Page 15 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 11: LENGTH OF LEASES / OPTIONS

11.1 POLICY

It is the policy of the City of Homer that the duration of all leases including all options shall be consistent with the provisions of Chapter 18.08 of the Homer City Code and the provisions of these policies and procedures.

11.2 PROCEDURES

- A. ~~The initial term of leases shall be related to a large degree upon the magnitude of the lessee's financial investment and the value and usefulness of improvements that lessee will make and leave on the property upon the termination of the lease. It shall also be related, to a lesser degree, upon lessee's financing and the reasonable amortization requirements of the lessee and financing agency. Generally speaking, the larger the investment, and the greater the value and usefulness of permanent improvements that will remain on the property after termination of the lease, the longer the lease period.~~
- B. Leases that extend beyond 30 years (including all options) will be treated as exceptional and shall be evaluated on a case by case basis.
- C. ~~Leases shall contain no more than two options for renewal and each option shall be for no more than 25% of the length of the initial base term. The exercise of any option shall be dependent upon lessee not being in breach of any provisions of the lease at that time.~~
- D. If the lease or the lessee's approved development plan provides for utilization of the lot for several months a year and the lessee installs improvements or infrastructure, occupies the lot (by persons or things), or does anything else that precludes or devalues utilization of the lot for the remainder of the year by the City or another party, the lessee shall pay either a premium rent for the months the parcel is actually in use or fair market rental for the entire lease year.
- E. It is the policy of the City that equal opportunities should be provided to compete for leasing available public property. A lessee whose initial lease and all options have expired shall have no automatic right of further renewal or extension. In general, it is the policy of the City that the Lease Committee shall offer such properties to the public through the RFP/competitive bidding process described herein.
- F. Lease Renewals: The City Council, after reviewing a recommendation from the Lease Committee, may elect to not require a competitive bidding process for a property whose lease has expired (including all options) if it finds that it is in the best interest of the City to enter into a new lease agreement with the current lessee. If the current lessee is interested in entering into a new lease agreement,

**Comment [AMH13]:** I did not note any discussion on these proposed changes.

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*Page 16 of 26*

he/she must indicate so in writing to the City Manager at least 12 months prior to the expiration of the lease and submit a formal lease application/proposal for evaluation by the Lease Committee. ~~The City will review the application but is under no obligation to enter into a new lease.~~ If the Council chooses to approve such a new lease without a competitive process, it must approve such new lease by resolution within six months that includes a finding that it is in the public interest to do so, after consideration of relevant facts including, but not limited to, the following:

**Comment [AMH14]:** I did not note any discussion on this proposed change.

1. The lessee's past capital investment and binding commitment to future capital investment
2. The lessee's financial condition and prior lease history
3. The number of persons employed and the prospects for future employment
4. Tax revenues and other financial benefits to the City of Homer anticipated in the future if the lease is renewed.
5. Consistency of the past use and intended future use with all applicable land use codes and regulations, the Comprehensive Plan, and Overall Economic Development Plan
6. Other opportunities for use of the property that may provide greater benefits to the City of Homer.
7. Other social, policy, and economic considerations as determined by the Council

**G. Short Term Leases**

1. A short term lease of 6 months or less may be approved by the City Manager after review and recommendations by the Lease Committee.
2. Short term leases are not required to go through the competitive bidding/PFP process described herein
3. Short term leases shall not include renewable options and no consecutive short term leases for the same property to the same lessee may be issued without the approval of the City Council.
4. Applicants for short term leases must go through the formal application process described herein.
5. The City Manager will advise the Council through memorandum or the Manager's report of all short term leases.

**H. At expiration or termination of a lease the City may negotiate to reimburse lessee for improvements at fair market value, then RFP the lot as a whole business package.**

**I. New leases will be subject to a probationary period of up to five years. Failure to demonstrate commercial activity on the property will constitute grounds for termination of the lease.**

**Comment [AMH15]:** Agreement was expressed for this concept, though it was noted that it may be difficult to determine "fair market value."

**Comment [AMH16]:** I did not note any discussion on this proposed change.

**11.3 After 50 percent of the term of lease, and if the City finds the business viable, productive, and has met or exceeded performance standards under Chapter 11.2, 1-7; the lessee may be given the option to purchase the land at fair market value.**

**Comment [AMH17]:** There was considerable discussion on this proposed addition, regarding the pros and cons of turning publicly-owned property on the Spit over to private ownership. In the end, there was agreement to strike "purchase the land at fair market value" and replace it with "renegotiate a full-term lease."

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*Page 17 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 12: LEASE RATE ADJUSTMENTS

12.1 POLICY

It is the policy of the City of Homer to adjust lease rental rates from time to time in order to compensate for inflation, increases in the cost of living, and changing real estate market conditions.

12.2 PROCEDURES

- A. All leased properties shall be appraised every fifth year. The appraisal shall be conducted by an Alaska Certified General Real estate Appraiser. Appraisals shall be subject to the following:
1. The lease rate shall be adjusted upward based upon increased property appraisal values. This periodic adjustment compensates for changing market conditions in the area by determining the fair rental value. In the event that an appraisal reveals that fair market rent has declined, the lessee may petition the City for an amendment to the lease and reduction in the lease rate. The City is under no obligation to do so. Any reduction in lease rates must be approved by the City Council and the motion to do so must include a statement regarding why the action is in the public interest.
  2. The cost of the appraisal shall be borne by the lessee. The parties shall select the appraiser by mutual agreement and arrange for the appraisal.
  3. All properties shall be appraised within 6 months prior to the anniversary date of the adjustment year. The newly adjusted lease rate will take effect on the anniversary date.
- B. In addition, all rental rates shall be adjusted annually based upon changes in the Anchorage Consumer Price Index (CPI). No CPI adjustments shall be made in the initial year of the lease or in any year in which an appraisal adjustment occurs.

Comment [AMH18]: Agreement was expressed that this chapter is not needed if lease rates are based on Borough assessed value.

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Page 18 of 26

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 13: SUB-LEASES

13.1 POLICY SUB LEASES are subject to the following:

It is the policy of the City of Homer that City land should be leased for a specific use or purpose approved by the City. City land shall not be leased for the purpose of speculation. Individual business structures unrelated to the primary permitted use that are owned by the lessee or subtenants of the lessee shall be discouraged.

13.2 PROCEDURES

- ~~A. If a potential lessee intends to sub lease City owned property, this intention shall be clearly stated and described in the original lease application and proposal.~~
- ~~B. In order for a sub lease to be approved, the right to sub lease, and the terms and conditions thereon, must be specifically included and stated in the underlying base lease.~~
- ~~C. All sub leases must be in writing and executed by the parties. All sub leases must approved by the City Council after a recommendation is provided by the City Manager and the Lease Committee. Approval must be granted prior to occupancy of the leased premises by the sub tenant.~~
- ~~D. All amendments to sub leases must be in writing and approved by the City Council prior to becoming effective.~~
- A. Sub-leasing shall not be used as a method to accomplish the transfer of interest in the entire leasehold.
- B. All sub-leases must comply with applicable zoning, parking, sign, flood, and other applicable local ordinances and state and federal statutes.
- C. All sub-leases are subject to the base lease and all sub-tenants must comply with the relevant provisions of the base lease as identified by the Lease Committee. Sub leases of City land are subject to additional rent pursuant to HCC 18.08.120.

~~H. Sub leasing within a building may be approved provided that the terms and conditions of such are clearly set out and described in the original base lease.~~

~~I. Partnerships: The City may consider and approve a lease and development plan that consists of two or more independent businesses that finance, construct, and occupy the same building or improvements. The businesses, business relationship, and proposed uses must be approved by the City in advance. Partnerships such as this are not considered to be a sub lease.~~

~~J. Developers/Investors: The City may consider proposals from developers who wish to construct buildings and/or other improvements for the purpose of sub leasing, if all tenants of the building or land are engaged in activities that are permitted by applicable zoning codes and restricted uses as approved by the~~

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Page 19 of 26

**Comment [AMH19]:** This chapter generated considerable discussion about how much restriction, if any, should be placed on subleasing. In the end, agreement was reached that the EDC draft is OK.

~~Council in effect at the time. The lessee will be in violation of the lease if he/she sub-leases for uses other than those permitted by the lease.~~

## 13.2 PROCEDURES

- A. If a lessee with an assignable lease wishes to assign, the City must first make a determination that the lessee is current and not in default with respect to lease payments, taxes, and other fees that may be owing, and in compliance with any other relevant terms and conditions of the base lease. If the lessee is in good standing and eligible to assign, the following procedures will apply.
- B. The lessee shall request approval of lease assignment in written form and submit a lease assignment document(s) to the Lease Committee.
- C. The Lease Committee shall review the request and assignment document(s), determine whether the proposed assignee is qualified under HCC 18.08.050, and meet with assignee to ascertain whether the assignment would be beneficial to the interests of the City.
- D. The assignee shall submit a new lease application form complete with all attachments and proposals following the process described herein for lease applications, and submit it along with any applicable fees to the Lease Committee for review.
- E. The Lease Committee shall review the application and proposal using the application evaluation criteria described herein.
- F. The Lease Committee shall make a recommendation on the assignment to the City Council for final action.

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*Page 20 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

CHAPTER 14: ASSIGNMENTS

14.1 POLICY

It is the policy of the City of Homer to incorporate an assignment provision into the lease document if that is requested by the lessee. Consent to an assignment request shall be conditioned upon receipt of all current and applicable payments and properly submitted documentation. The proposed assignee must also be acceptable to the City of Homer and commit to develop and use the property in a manner acceptable to the City.

14.2 DEFINITIONS

- A. Assignable lease: A lease which contains a provision permitting its assignment by lessee.
- B. Assignment: A transfer of interests or rights to property, real or personal, in possession or in action, or of any estate or right therein. The assignment of a lease is distinguishable from a sublease to the extent that in assigning, the lessee transfers his entire interest and estate in the premises, whereas, in a sublease, the sublessee acquires something less than the lessee's entire interest.

14.3 RESPONSIBILITY

- A. The Lease Committee is responsible for reviewing assignment provisions that may be included in lease documents. The Lease Committee is also responsible for reviewing and making recommendations to the City Council on all requests to assign a City lease.
- B. The City Council is the final authority on all requests to assign.
- C. The City Council may approve assignment of a lease to banks or other financial institutions for financing or other reasons if it determines that to be in the best interest of the City.

~~14.4 Before the term of the lease is up and the business is sold, it will come to immediate assurance of renewal to make it part of the sale. The buyer shall file a new lease application to extend the lease to make the business continue as viable. In order to secure financing, if a business is being sold, it will come to immediate assurance of renewal.~~

**Comment [AMH20]:** This paragraph (proposed new language) was not included in the previous draft but should have been, according to the EDC chair. Discussion indicated agreement with the proposed language.

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*Page 21 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES MANUAL

CHAPTER 15: INSURANCE

15.1 POLICY

It is the policy of the City of Homer to require lessees to carry general public liability insurance, environmental insurance if appropriate, workers compensation insurance, and any other insurance coverage determined to be necessary by the City in order to protect City assets and the public interest.

15.2 PROCEDURES

- A. All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than \$1 million coverage per occurrence for bodily injury (including death) and property damage. The City of Homer shall be named as an additional insured.
- B. Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than \$2 million in environmental insurance (Environmental Impact Insurance and/or Environmental Clean-up Policy, or the equivalent subject to review and approval by the City Manager) with the City of Homer as an additional insured. Environmental Insurance for the purposes of City leasing procedures shall meet the standards of the Environmental Insurance Requirement document attached as Appendix A to these policies. The following procedures apply in determining whether a significant risk of environmental contamination is present:
  1. The City will determine on a case by case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.
  2. ~~If the City industry standards~~ determines that a significant risk is present, ~~then the environmental insurance requirement shall apply.~~
  3. Recommendations by the Manager and Lease Committee on environmental insurance are subject to final approval by the Homer City Council through the lease approval process.
  4. The following are examples of uses that generally will not involve a significant risk of environmental contamination. This list is not exhaustive or all inclusive and is provided for illustrative purposes only: restaurants, retail/charter businesses, commercial fishing gear storage (provided the storage does not include fuels, lubricants, hydraulic fluids, and solvents, or machinery containing any of them, campgrounds, entertainment establishments, drinking establishments, and the ordinary use of commonly used household cleaning agents and office products.

**Comment [AMH21]:** Previous draft did not accurately present this revision proposed by the EDC.

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*Page 22 of 26*

5. The following are examples of uses that generally will involve a significant risk of environmental contamination. This list is not exhaustive and is provided for illustrative purposes only: a) Storage or processing of logs, chips & other wood products, b) sale, manufacture, distribution, fueling of equipment, or storage of petroleum products, c) repair shops involving the use of solvents, d) activities in the tidelands or in close proximity to environmentally sensitive areas, e) the use of drums to collect, transport, or store waste oil, solvents, or other hazardous materials, f) the use of hazardous materials in manufacturing or processing, g) storage of hazardous waste in quantities sufficient to trigger reporting obligations under the Resource Conservation and Recovery Act, h) outside use or storage of equipment with a risk of leaking fuels, lubricants, solvents or hydraulic fluid.
- C. Certificates of Insurance showing the required insurance is in effect and identifying the City of Homer as an additional insured shall be provided to the City of Homer initially at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.
- D. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

| *Draft prepared for 5/11/10 EDC meeting based on previous draft from 10/13/09 meeting where deletions are indicated with strikethrough type and additions are indicated with bold type. Comments from 4/19/10 worksession with PHC are noted in margin.*

*Page 23 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES MANUAL

CHAPTER 16: HAZARDOUS MATERIALS

16.1 POLICY

It is the policy of the City of Homer to require that all lessees on City owned property take the precautions necessary to protect city property and the surrounding environment from pollution and contamination. All leases of City property, whether they are subject to the Environmental Insurance Requirement or not, shall include terms which impose the minimum requirements for environmental protection set out below.

16.2 PROCEDURES

- A. The lessee shall not allow hazardous materials to be used or kept on City property, except as specifically permitted or necessary for the lessee's lawful use and approved of the property.
- B. The lessee's use of hazardous materials, if permitted, shall comply with all applicable laws and regulations.
- C. The lessee shall not pollute or contaminate the environment with discharges, leaks, or emissions of hazardous materials.
- D. The lessee shall be required to promptly notify the appropriate authorities and the City of any discharge or spill and to clean up the impacted area at lessee's own expense in compliance with applicable laws.
- E. Lessee shall be fully liable for all damages, costs and expenses related to a violation of the terms of the lease with respect to the use, storage, cleanup, remediation, or disposal of hazardous materials.

*Draft prepared for 5/11/10 EDC meeting based on previous draft from 10/13/09 meeting where deletions are indicated with strikethrough type and additions are indicated with bold type. Comments from 4/19/10 worksession with PHC are noted in margin.*

*Page 24 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

CHAPTER 17: PERFORMANCE STANDARDS

17.1 POLICY

It is the policy of the City of Homer that leased properties and the improvements on them shall be maintained in a way that provides for the health and safety of the community, and is consistent with community values with respect to zoning, aesthetics, architecture, and other values as determined by the City Council.

17.2 PROCEDURES

- A. All properties leased by the City are to be maintained in a proper, safe, clean, and orderly fashion taking into consideration its permitted use, surrounding properties, zoning, and other applicable laws and regulations.
- B. The City of Homer reserves the right to enter leased property and the structures thereon at all reasonable times. This includes regular annual inspections.
- C. All commercial structures shall at all times be in compliance with applicable building, fire, mechanical, electrical and other regulations.
- D. Applicable building code and fire marshal inspections must be performed and certified to the City upon completion of all renovations, remodels, and / or new construction.
- E. Easements or Rights-of-Way on the leased parcel shall not be used in any way that interferes with the rights of the holders or any person(s) lawfully using the easement or right-of-way.
- F. Easements or Rights-of-Way outside of the leased parcel and/or immediately adjacent to it shall not be used for storage, parking, or any other authorized uses.
- G. Failure to comply with the performance standards listed in this section or any other provisions or stipulations contained in the lease are grounds for termination of the lease if the lessee does not rectify the problem after reasonable notice by the City.

| *Draft prepared for 5/11/10 EDC meeting based on previous draft from 10/13/09 meeting where deletions are indicated with strikethrough type and additions are indicated with bold type. Comments from 4/19/10 worksession with PHC are noted in margin.*

*Page 25 of 26*

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

CHAPTER 18: CONCLUSION OF LEASE

18.1 POLICY

It is the policy of the City of Homer to provide for a smooth transition and the restoration of City property at the time a lease expires. ~~Land leased up to 15 years, if viable and meets performance standards as described in Chapter 11.3, may be purchased by lessee at fair market value if the City deems it in the City's best interest to do so.~~

**Comment [AMH22]:** I did not note any discussion on this proposed addition except from the Port & Harbor Director (in opposition). My own comment is that this language should be consistent with 11.3.

18.2 PROCEDURE

- A. Improvements constructed by the Lessee or sub-lessees shall be left in place or removed. ~~unless removal is authorized or required by the provisions of the lease.~~ If the lease authorizes or requires removal of improvements, they may be removed prior to the conclusion of the lease if doing so would not damage the leased property or adjoining properties. Removing improvements shall be coordinated with and approved by the City Manager prior to commencement of activities.
- B. Unless otherwise agreed by the parties, when the lessee is authorized or required to remove improvements, the lessee shall remove all improvements made on the property by lessee prior to termination of the lease.
- C. When authorized or required to remove improvements, if lessee fails to do so prior to the termination date of the lease, lessee shall forfeit the improvements to the City and shall receive no compensation therefore, or, at the City's election, pay to the City the costs incurred by the City in removing and disposing of the improvements.
- D. Unless otherwise provided in the lease, or agreed to in writing by the parties, the lessee shall restore the property to the same condition it was in at the time the lease was executed by the lessee.
- E. ~~An environmental inspection (Phase I, plus further testing, including test holes if the need for such further testing is indicated by the Phase I inspection) shall be completed at the termination of the lease at the lessee's expense. Identified environmental problems shall be rectified by lessee at his/her expense.~~

**Comment [AMH23]:** Agreement was expressed to delete this paragraph.

*Draft prepared for 5/11/10 EDC meeting based on previous draft from 10/13/09 meeting where deletions are indicated with strikethrough type and additions are indicated with bold type. Comments from 4/19/10 worksession with PHC are noted in margin.*

Page 26 of 26

## **Attachment #6**

### **GROUND LEASE AND SECURITY AGREEMENT**

**BETWEEN**

**CITY OF HOMER, ALASKA**

**AND**

---

**[Insert name and date]**

AMH comment for 5/11/10 EDC meeting: This document was not discussed in any detail at the 4/19/10 work session with the Port & Harbor Commission. It was simply noted that it will need to be changed to reflect changes in the Lease Policies, and “fine-tuned by legal counsel.”

**GROUND LEASE AND SECURITY AGREEMENT**

THIS GROUND LEASE AND SECURITY AGREEMENT ("Lease") is made as of this day of \_\_\_\_\_, 2009, between the CITY OF HOMER, 491 East Pioneer Avenue, Homer, Alaska 99603, a municipal corporation organized under the laws of the State of Alaska, hereinafter referred to as "Landlord" and \_\_\_\_\_ a \_\_\_\_\_ (type of entity) organized under the laws of the state of \_\_\_\_\_, whose address is \_\_\_\_\_ ("Tenant").

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

Landlord and Tenant agree as follows:

**1. PROPERTY**

**1.01. Property**

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

[Insert Legal Description here] Homer Recording District, State of Alaska, as depicted on **Exhibit H**.

Also known as Kenai Peninsula Borough Tax Parcel No. \_\_\_\_\_.

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

**1.02. Quiet Enjoyment, Restrictions, Easements, Etc.**

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

**1.03. Property Accepted "As Is"**

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

#### 1.04. No Subsurface Rights

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

### 2. TERM

#### 2.01. Lease Term

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

#### 2.02. Hold-Over

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

#### 2.03. Surrender of Possession

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

### OPTIONAL RENEWAL PROVISION:

#### 2.04. Renewal Options

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

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

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

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

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

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

### 3. RENT, TAXES, ASSESSMENTS AND UTILITIES

#### 3.01. Rent

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

(b) **Periodic Appraised Adjustment of Rent.** The Base Rent will be *determined at a rate of 8% of the Borough's assessed valuation of raw land (or other methods provided by the PMPP)*, adjusted on January 1, \_\_\_\_\_ and on January 1 every five years thereafter (each such January 1 is a "Five Year Rent Adjustment Date") to equal the then current fair market rental value of the Property, determined by appraisal as set forth in paragraph 3.01(d) not more than six months before the Five Year Rent Adjustment Date. In no event, however, will the adjusted Base Rent be less than the Base Rent, adjusted annually, during the year immediately prior to such Five Year Rent Adjustment Date. After such Five Year Rent Adjustment Date, the adjusted rent will thereafter be referred to as the Base Rent.

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

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

~~\_\_\_\_\_ (ii) — If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index~~

or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

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

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

~~3.01. Rent~~

~~(a) Initial Base Rent Tenant agrees to pay to Landlord an initial annual rent of~~

~~\$ \_\_\_\_\_ (the 'Base Rent), payable monthly in advance in equal installments of~~

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

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

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

~~The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI-11), Anchorage, Alaska, for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". The Index published for the second half of the calendar year nearest, but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be recalculated to equal the Base Rent determined according to paragraph 3.01(a), increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date.~~

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

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

### **3.02. Tenant to Pay Taxes**

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

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

### **3.03. Tenant to Pay Assessments**

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

### **3.04. Proration of Taxes and Assessments**

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

### 3.05. Contest

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

### 3.06. Tenant to Pay Utility Charges

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

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

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

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

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

~~All costs and expenses that Tenant assumes or agrees to pay pursuant to this Lease will, at Landlord's election, be treated as additional rent, and in the event of nonpayment, Landlord will have all rights and remedies provided in this Lease in the case of nonpayment of rent or of a breach of condition, at Landlord's election. If Tenant defaults in making any payment required to~~

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

### **3.09 Security Deposit**

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

## **4. GRANT OF SECURITY INTEREST**

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

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

## **5. USE AND CARE OF THE PROPERTY**

### **5.01. Use**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**5.02. Care of the Property**

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

~~**5.03. Restoration or Removal of Damaged Buildings and Improvements**~~

~~Except as provided in paragraph 6.02, in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant must at Tenant's expense restore the same to good and tenantable condition or must remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed eighteen (18) months nor may the period of removal exceed forty-five (45) days.~~

**5.04. Property Returned to Previous Condition**

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

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

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

**5.05. Access Rights of Landlord**

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

## **5.06. Nuisances Prohibited**

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

## **5.07. Compliance with Laws**

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

## **~~5.08. Radio Interference~~**

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

## **5.09. Signs**

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

## **5.10 Garbage Disposal**

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

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

### **~~5.11 Outfall Line Connection Agreement~~**

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

**5.12 Fish Dock Use Permit**

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

**6. IMPROVEMENTS**

**6.01. Ownership of Buildings and Improvements**

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

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

**6.02. Required Improvements**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

(c) In the event the Required Improvements are damaged or destroyed by fire, earthquake, tsunami or other casualty, Tenant must, at Tenant's expense, restore or replace the same to good and tenantable condition as soon as is reasonably possible, but in no event may the period of restoration or replacement exceed 12 months. Modifications to the Required Improvements will be allowed only if approved by Landlord, whose approval will not be

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

### **6.03. Construction Prerequisites**

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

(i) Not less than 30 days prior to the intended start of construction, Tenant must submit to Landlord for its approval preliminary plans and specifications and an application for a City of Homer zoning permit. The preliminary plans and specifications must show the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plan, and any other information required for the zoning permit or other required permits. Tenant must also provide an engineer's or architect's estimate that, when constructed according to the preliminary plans and specifications, the Required Improvements will satisfy the minimum value requirement of paragraph 6.02. Landlord will not unreasonably disapprove preliminary plans and specifications. Approval or disapproval must be communicated in the manner provided for notices, and disapproval must be accompanied by specification of the grounds for disapproval.

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

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

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

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

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

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

#### **6.04. As-Built Survey**

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

#### **6.05 Definitions**

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

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

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

#### **6.06 Extensions of Time for Completion of Required Improvements**

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

**7. RESERVED**

**8. RESTRICTIONS ON TRANSFER**

**8.01. Assignment or Sublease Without Consent Generally Prohibited**

Tenant must not voluntarily assign, encumber or sublease its interest in this Lease or in the Property without first obtaining Landlord's consent. Any assignment, encumbrance or sublease without Landlord's consent will be voidable and, at Landlord's election, will constitute a default. Any request for Landlord's consent must be made to Landlord in writing at least thirty (30) days prior to the proposed effective date of the assignment, encumbrance or sublease. No consent to any assignment, encumbrance or sublease will constitute a further waiver of the provisions of this paragraph. Any assignment effected pursuant to this paragraph 8.01 must require the assignee to assume the Tenant's obligations hereunder. An assignment will not release the Tenant from liability hereunder unless specifically so provided in writing and approved by Landlord. Tenant must promptly deliver to Landlord a copy of any instrument or must promptly notify Landlord of any unwritten agreement, that assigns, encumbers or subleases the Property. Landlord's consent to assign, encumber or sublease the Property will not be withheld unreasonably. This section does not apply to a "Permitted Mortgage" as that term is defined in Section 14.01.

**8.02. Change of Ownership**

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

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

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

~~**ALTERNATIVE 1—OPTIONAL ADDITIONAL RENT PROVISIONS FOR SUBLEASE:**~~

~~**8.04.—Additional Rent For Sublease.**~~

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

~~ALTERNATIVE 2 — OPTIONAL ADDITIONAL RENT PROVISIONS FOR SUBLEASE OR ASSIGNMENT. NOTE SUBPARAGRAPH (D)'S REFERENCE TO THE OPTIONAL ARTICLE 14. ALTERNATIVE 1 IS FAVORED AS MORE WORKABLE ; THAN ALTERNATIVE 2.~~

~~8.04. Additional Rent For Certain Transfers~~

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

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

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

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

**9. PROHIBITION OF LIENS**

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

may be amended from time to time. This section does not apply to a "Permitted Mortgage" as that term is defined in Section 14.01.

## **10. INDEMNITY**

### **10.01. Indemnity Generally**

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

### **10.02. Indemnity For Emergency Service Costs**

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

## **11. INSURANCE**

### **11.01. Liability Insurance**

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

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

services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

**~~ALTERNATIVE 11.01(B) — OPTIONAL PROVISION WAIVING ENVIRONMENTAL INSURANCE BASED ON THE AUTHORIZED USES OF PARAGRAPH 5.01:~~**

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

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

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

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

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

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

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

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

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

#### **11.05 Required Endorsements and Authorization**

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

### **12. CONDEMNATION**

#### **12.01. Condemnation**

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

#### **12.02. Total Taking**

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

#### **12.03. Partial Taking - Termination of Lease**

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

#### **12.04. Partial Taking - Continuation of Lease**

In the event the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively and practicably usable in the opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease will terminate and end as to the portion of the Property so taken or transferred as of the date title to such portion vests in the condemning authority and the

condemning authority enters into possession, but will continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease will abate for the portion of the Property taken in the proportion that such portion bears to all of the Property.

### **12.05. Compensation**

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

## **13. DEFAULT**

### **13.01. Default**

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

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

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

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

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

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

or any substantial part of any of its properties, or the suffering of any such custodianship, receivership, or trusteeship to continue undischarged for a period of 30 days or more.

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

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

### **13.02. Landlord's Remedies**

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

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

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

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

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

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

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

(ii) an amount equal to the amount of all rent and additional sums reserved under this Lease, less the net rent, if any, collected by Landlord on reletting the Property, that shall be due and payable by Tenant to Landlord on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days Tenant must pay to Landlord the amount of deficiency then

existing. Such net rent collected on reletting by Landlord will be computed by deducting from the gross rent collected all expenses incurred by Landlord in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of renovating or remodeling the Property or the buildings or improvements thereon, provided, however, Landlord must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of Tenant under this Lease or else Landlord will not have access to the remedy set out in this subparagraph 13.02(e)(ii); or

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

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

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

### 13.03. Assignment of Rents to Landlord

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

## 14. RESERVED

~~OPTIONAL ARTICLE 14 TO BE USED WHEN THE LEASE NEEDS TO BE "MORTGAGEABLE":~~

### ~~14. LEASEHOLD MORTGAGES~~

#### ~~14.01. Definitions~~

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

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

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

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

~~"Permitted Mortgage" means collectively any deed(s) of trust, mortgage(s), and other collateral security instruments serving as security for a construction loan or permanent loans, or both, to finance the cost of the Required Improvements described in Section 6.02, that encumber~~

~~Tenant's Estate, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) of any Permitted Mortgage; provided, however in no event may any such Permitted Mortgage encumber Landlord's Estate.~~

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

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

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

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

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

#### ~~14.03. Conditions For Mortgagee Protections~~

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

#### ~~14.04. Mortgage Protections~~

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

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

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

counterpart of such designation. Notice given to the one so designated is effective as notice to all them.

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

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

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

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

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

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

~~The Mortgagee will not be required to obtain possession or to continue in possession as Mortgagee of the property pursuant to subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant to subsection (iii) above, if and when such event of default is~~

~~cured. Nothing herein will preclude Landlord from exercising any of its rights or remedies with respect to any other event of default by Tenant during any period of such forbearance, but in such event the Mortgagee will have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, acquires title to Tenant's Estate and cures all events of default that are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior events of default that are not susceptible to being cured by the Mortgagee or by said purchaser will no longer be deemed events of default hereunder.~~

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

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

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

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

### **15.01. Removal Upon Expiration**

Trade fixtures, machinery, equipment, and other items of personal property owned by Tenant will be considered Tenant's property at all times during this Lease and must be removed by Tenant at its own expense from the Property upon the expiration of the Term or Renewal Term of this Lease, unless Landlord gives written consent to allow such property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. In the event Tenant, without Landlord's written consent, fails to

~~remove such property on or before the expiration of this Lease, the Landlord may, at its election, immediately (i) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (ii) to the extent Landlord does not elect to declare it abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.~~

## **15.02. Removal After Early Termination**

In the event this Lease terminates for any reason before the scheduled expiration of the Term or Renewal Term, as applicable, Tenant must within one month after such early termination date remove Tenant's trade fixtures, machinery, equipment and other items of personal property, unless Landlord gives written consent to allow such personal property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. On or before the end of such one month period, Tenant may extend the time for removal of such personal property for an additional one month upon written notice to Landlord accompanied by payment of compensation for the entire two month period following the early termination date at a rate equal to 125% of the monthly rental rate in effect on the early termination date (i.e., monthly rental rate x 125% x 2 months). Acceptance of such compensation will not extend the term of the Lease nor create a month-to-month tenancy. In the event Tenant fails to remove such property within one month after the early termination of this Lease, or within two months if Tenant elects to extend by giving timely notice and paying compensation, the Landlord may, at its election, immediately (a) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (b) to the extent Landlord does not elect to declare abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

## **16. HAZARDOUS MATERIALS**

### **16.01. Use of Hazardous Materials on the Property**

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

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

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

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

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

#### **16.02. Indemnification of Landlord**

*Indemnification of landlord is a negotiable item on a per lot basis.* Any other provisions of the Lease to the contrary notwithstanding, Tenant must defend, indemnify and hold harmless Landlord and its authorized representatives, from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind of nature, known or unknown, contingent or otherwise, arising out of or in any way related to: (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the Property, soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; and/or (d) any violation of any laws applicable thereto. However, this paragraph will apply only if the acts or omissions giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses: (i) occur in whole or in part during the Term of this Lease or during any time of Tenant's possession or occupancy of the Property prior to or after the term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors. The provisions of this paragraph will be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and will survive the termination of this Lease.

#### **16.03. Indemnification of Tenant**

*Landlord indemnifies tenant and holds tenant harmless from undisclosed defects/hazards/contaminations of said lot.*

#### **16.03. 16.04 Hazardous Material Defined**

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

## **17. GENERAL PROVISIONS**

### **17.01. Estoppel Certificates**

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

### **17.02. Conditions and Covenants**

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

### **17.03. No Waiver of Breach**

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

### **17.04. Attorney's Fees**

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

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

### **17.05. Time of Essence**

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

### **17.06. Computation of Time**

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

#### **17.07. Successors in Interest**

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

#### **17.08. Entire Agreement**

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

#### **17.09. Governing Law and Venue**

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

#### **17.10. Partial Invalidity**

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

#### **17.11. Relationship of Parties**

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

#### **17.12. Interpretation**

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

#### **17.13. Number and Gender**

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

#### **17.14. Mandatory and Permissive**

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

**17.15. Captions**

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

**17.16. Amendment**

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

**17.17. Delivery of Notices - Method and Time**

All notices, demands or requests from one party to another must be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, or (ii) facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the addresses stated in paragraph 17.18 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

**17.18. Notices**

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

**17.19. Change of Address or Agent**

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

**17.20. Multi-Party Tenant**

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

**~~OPTIONAL SPECIAL PROVISIONS — 18.01 — PRIOR LEASE AMENDED AND SUPERSEDED:~~**

18.01. ~~Prior Lease~~

~~Landlord and Tenant are parties to a Lease Agreement affecting the Property dated \_\_\_\_\_ and recorded in the records of the Homer Recording District at [insert Book and Page numbers] \_\_\_\_\_ (the "Former Lease"). This Lease amends and supersedes the Former Lease effective as of [insert date] \_\_\_\_\_ and on and after that date the Former Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Former Lease prior to that date.~~

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

**Landlord:**

**CITY OF HOMER**

Date: \_\_\_\_\_

By \_\_\_\_\_

City Manager

**Tenant:**

\_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(title)

Date: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(title)

**ACKNOWLEDGMENTS**

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2009,  
by \_\_\_\_\_, City Manager of the City of Homer, on behalf of the City of Homer.

\_\_\_\_\_  
Jo Johnson, CMC,  
Homer City Clerk  
My Term Expires: with office .

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2009,  
by \_\_\_\_\_, as \_\_\_\_\_ (title) of  
\_\_\_\_\_ (name of entity), a state of \_\_\_\_\_ (state)  
\_\_\_\_\_ (type of entity) on behalf of \_\_\_\_\_ (name of  
entity).

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2009,  
by \_\_\_\_\_, as \_\_\_\_\_ (title) of  
\_\_\_\_\_ (name of entity), a state of \_\_\_\_\_ (state)  
\_\_\_\_\_ (type of entity) on behalf of \_\_\_\_\_ (name of  
entity).

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

**HOMER RECORDING DISTRICT**

**MEMORANDUM OF LEASE**

**CITY OF HOMER** ("City"), whose mailing address is 491 East Pioneer Avenue, Homer, Alaska 99603, and \_\_\_\_\_(Tenant")., , whose mailing address is \_\_\_\_\_, entered a lease dated \_\_\_\_\_, 2009.

1. **Leased Premises.** Under the terms of the lease, City leases to Tenant \_\_\_\_\_, Homer Recording District, State of Alaska

2. **Term of Lease.** The term of the Lease commences on \_\_\_\_ 2009 and terminates on \_\_\_\_\_, 2009.

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

ATTEST:

**CITY:**

**CITY OF HOMER**

\_\_\_\_\_  
Jo Johnson, CMC, City Clerk

\_\_\_\_\_  
Walt Wrede, City Manager

**LESSEE:**  
\_\_\_\_\_.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**STATE OF ALASKA** )  
 ) ss.  
**THIRD JUDICIAL DISTRICT** )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Walt Wrede, 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.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires:

**STATE OF ALASKA** )  
 ) ss.  
**THIRD JUDICIAL DISTRICT** )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_, 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 of \_\_\_\_\_, for the uses and purposes therein set forth.

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

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires:

After recording return to:  
Jo Johnson, CMC, City Clerk  
City of Homer

491 East Pioneer Avenue  
Homer, Alaska 99603

**EXHIBIT A**

**SCHEDULE OF ORGANIZATION, OWNERS,  
PERCENTAGE OF OWNERSHIP**

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

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

Name \_\_\_\_\_ %

Address: \_\_\_\_\_

Name \_\_\_\_\_ %

Address: \_\_\_\_\_

Name \_\_\_\_\_ %

Address: \_\_\_\_\_

Name \_\_\_\_\_ %

Address: \_\_\_\_\_

TOTAL 100 %

**EXHIBIT B**

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

**EXHIBIT C**  
**SITE PLANS**

**EXHIBIT D**  
**FLOOR PLANS**

**EXHIBIT E**

**GENERAL LIABILITY INSURANCE ENDORSEMENT**

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

Attn.: City Manager

**A. POLICY INFORMATION**

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

**B. POLICY AMENDMENTS**

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

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

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

\_\_\_\_\_ Ground Lease

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

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

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

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

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE:

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

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

Company \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_

**EXHIBIT F**

**WORKERS' COMPENSATION/EMPLOYERS LIABILITY ENDORSEMENT**

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

A. POLICY INFORMATION

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

B. POLICY AMENDMENTS

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

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

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

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE

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

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

Company \_\_\_\_\_  
Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

**EXHIBIT G**

**PERMISSION TO OBTAIN INSURANCE POLICIES**

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

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

Date: \_\_\_\_\_

**TENANT NAME**

By: \_\_\_\_\_  
\_\_\_\_\_ (printed name)  
\_\_\_\_\_ (title)

By: \_\_\_\_\_  
\_\_\_\_\_ (printed name)  
\_\_\_\_\_ (title)

**EXHIBIT H**  
**LEGAL DESCRIPTION EXHIBIT**



Discussion included clarification on the location of this motion System 5, Ramp 7 – the big boat float.

Commissioner Wedin stated he has received comments and observations from harbor users that it is easier for them to plug in at Seward to perform work; it is preferred to stay in Homer but there needs to be more options for plugging in and that the daily rate was a bit high and as such is a deterrent to some users; it was noted that on the north end of this float there is only one special pedestal available. Some requests have been made for 480 but common 3 Phase service has been requested. Discussion ensued on the number of pedestals; the cost of a pedestal, the options available for an upgraded pedestal. Additional points made were the "stacking" required to hook up to a pedestal. This was tactic was easier for owners with two boats. It was much more difficult if you only had one vessel and the float was crowded.

The discussion continued regarding the access to potable water and the use of heat trace water lines. Comments noted were: Installation is expensive and could cause problems with availability on other ramps (why that ramp and not mine.) Petro Marine does allow boat owners to fill up their tanks but discourages window washing, etc. The City charges Petro for water and it was suggested to offer Petro a deep discount in order for users to have access to this water for other uses.

There was no further discussion.

VOTE. YES. HOTTMAN, VELSKO, ZIMMERMAN, ULMER, WEDIN, CARROLL  
(Commissioner Hartley was not present at the time to vote on this motion.)

Motion carried.

B. Memorandum from Port and Harbor Director Re: Kachemak Wooden Boat Society  
Lease Proposal

VELSKO/HOTTMAN – MOVED TO FORWARD THIS PROPOSAL TO THE LEASE COMMITTEE FOR REVIEW AND RECOMMENDATION TO COUNCIL AND INCLUDE THE PORT & HARBOR ADVISORY COMMISSION RECOMMENDATION.

Discussion points included that this would be a separate lease from the Pier One Lease but within the proximity of the Pier One building. This proposal would mean the loss of potential revenue from a few campsites. There will be no designated parking, existing parking would be used. A cursory review of the potential revenue from the camping sites by Commissioner Zimmerman was believed to be minimal. The proposal submitted is for a total of \$1.00 per year for 30 years. Commissioner Zimmerman was in favor of the proposal. Commissioner Wedin commented that it was a favorable since it appeared that the Wooden Boat Society was going to build a substantial building.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

C. Shelly Erickson, Economic Development Advisory Commission, Chair Re: Economic  
Development Advisory Commission (EDC) Proposed Lease Policy Changes

Chair Ulmer stated that the EDC has worked on the Lease Policy document for an extended period of time and that the Port & Harbor Commission met with the EDC during a joint worksession on April 19, 2010. Chair Erickson was to explain and answer questions on the recommended changes to this document.

Brad Faulkner, EDC Commissioner stated Mrs. Erickson was unable to attend the meeting due to a time conflict with a prior appointment. He was present to answer any questions the Commission may have regarding the proposed changes. He further commented that he did not have time to prepare anything as this was a last minute request to attend this meeting. He would answer any questions from the Commissioners to the best of his knowledge.

He noted the changes represent an in-depth chapter by chapter review that the EDC worked on for approximately 18 months. He commented that the recommended changes came about for number reasons, mainly due to the differences in every single lease.

Points noted regarding the recommended changes to the Lease Policy document were:

1. Make-up of the Lease Committee to include one council member and additional members of the public. Current membership is perceived to be stacked in favor of the City with staff representing half of the members.
2. Changes to the current document change the whole structure.
3. Changes encourage more privatization of the Spit which is a public resource.
4. Removing restrictions to lease terms, open ended terms do not allow the public opportunities.

Commissioner Velsko commented that most of the recommended changes in his opinion were common sense changes. He was in favor of recommendation of the proposed changes.

Chair Ulmer stated she reviewed the recommended changes in a business sense. She viewed these changes as more attractive to the business community. She believed the proposed changes made a lot of sense. She endorsed recommendation of the proposed changes.

Commissioner Zimmerman commented that the changes turned the document in a common sense document. It makes it easier to understand and deal with. It does not need to read like a lawyer wrote it like the lease agreement does.

Commissioner Wedin commented on the change specifically noted in Chapter 18.1 regarding the selling of city owned land. He could not support recommending these proposed changes with this change included. He agreed with the Harbormaster regarding privatization of the spit. He was very uncomfortable that it (the draft document) still reflected that change.

Chair Ulmer responded that this was struck during the worksession. She further stated that strictly speaking about leases, as a business person, she would not want to invest that type of money on the Spit the way it is set up now. There are no guarantees.

Harbormaster Hawkins understood the viewpoints of the business owner, but to sell off land or offer open ended leases is not responsible land management. It would be easier yes, but then the land would not be available for the public use. Managed for business, lose control of the land.

Commissioner Velsko reminded the Commissioners that the Lease Committee and the Commission did not support selling of land on the Spit. The EDC supports offering sales as a tool to encourage leases on the Spit. The City Council has the ultimate say so on a lease; the Committee and Commission are advisory only.

Discussion continued regarding inclusion of possible purchase of the property in a lease; appraisals not assessments should be preferred valuation method; affirmation that lessees can have a business with longevity; offer the opportunity to make a real investment, viable; current lessees having to remove

structures prior to negotiating a new lease; room for compromise; historical lease requirements; current policy on lease extensions; previously supported sending all out to RFP; remaining issues can be worked out with input from Commission and Lease Committee.

VELSKO/WEDIN – MOVED TO ACCEPT THE PROPOSED CHANGES TO THE LEASE POLICY DOCUMENT AND RECOMMEND FORWARDING TO CITY COUNCIL FOR REVIEW.

Further discussion regarding the tracking or striking of recommended changes from Chapter 18 of the Lease Policy ensued and reluctance to support said changes was offered by Commissioners Wedin and Hartley.

Commissioner Velsko assured the Commissioners that a compromise was reached regarding the issue of selling city owned property.

Commissioner Zimmerman stated that he did not recall the Worksession group addressing Chapter 18 and noted the referenced Chapter 11 changes which addressed those same concerns.

Chair Ulmer commented for consideration by the Commissioners that it will be considerable time before a final document is drafted, if a motion could be made tonight and attendance at the next worksession all concerns can be expressed to City Council. She explained for clarity that it was believed the original document contained redundancy and was a very long awkward document that was hard to understand and was the reasons behind the recommended changes proposed by the EDC.

Mr. Faulkner offered as an example of the redundancy, striking paragraph E in Chapter 3, Properties Available for Lease, because this was micro-managed by the Port and Harbor Staff, as it was effectively addressed in paragraph D of the same chapter.

VOTE. ABSTAIN. CARROLL

YES. WEDIN, ULMER, HARTLEY, ZIMMERMAN, VELSKO, HOTTMAN

Motion carried.

Chair Ulmer requested notification when the next worksession will be on this document.

D. Election of Chair and Vice Chair

Chair Ulmer opened the floor for nominations for chair.

Commissioner Velsko nominated Commissioner Ulmer as Chair. Commissioner Wedin seconded the nomination. There were no further nominations.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Chair Ulmer opened the floor for Vice Chair.

Commissioner Velsko nominated Commissioner Zimmerman. Commissioner Hartley seconded the nomination. There were no further nominations.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.



# HOMER COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGY

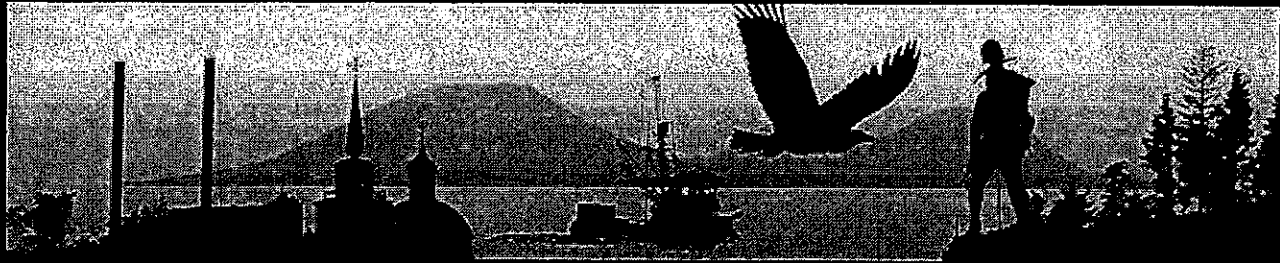
*Draft  
outline*

## Table of Contents

1. Introduction
    - a. What is economic development?
    - b. Homer history and demographics
    - c. Public participation in this planning effort
    - d. Nexus with other plans (1999 OEDP, 2006 TCDP, 2010 Comp Plan and Spit Plan...)
  2. The bigger picture: factors that influence economic development in Homer
    - a. Skilled/educated workforce
    - b. "Quality of life" stuff (e.g., education, recreation, beauty and charm, healthy environment, access to health care, low crime rate)
    - c. Affordable housing
    - d. Local government policies and services (e.g., land use, taxes, infrastructure)
    - e. Regional, state, national and global developments
  3. Economic sectors
    - a. Commercial fishing and aquaculture
    - b. Other marine trades, Port & Harbor enterprises
    - c. Tourism
    - d. Arts and culture
    - e. Health care
    - f. Construction, manufacturing, and technology
    - g. Agriculture
    - h. Retirees and seasonal residents
    - i. Government (all levels)
  4. Downtown revitalization
  5. Conclusion (what next – implementation)
- Appendices.

*These  
sections would  
include recommendations*





sitka economic development association

[HOME](#)[NEWS](#)[About SEDA](#)[About Sitka](#)[Community Profile](#)[Economic Trends](#)[Links](#)[Contact SEDA](#)

## NEWS

### SEDA Newsletter

Current Issue - 4th Quarter 2009 (PDF, 140 kb)

## Current SEDA Projects

### *Bulk Water Sales & Export*

For nearly a decade, SEDA has been promoting the sale of bulk water for export. There is increased interest in Sitka's water resource and at least three companies are currently in negotiations for bulk water contracts. While we may not see bulk water sales take place this year, or even next year, the City has the opportunity to receive revenues from bulk water contracts. This is an entirely new industry and requires development of new structures and equipment, new business partnerships and persistence. Based on current activity and interest, we may see bulk water ships in Sitka within five years, if not sooner.

### *SJ Core Campus Redevelopment*

Representatives from the University of Dubuque visited Sitka again in January to assess the campus. Negotiations are continuing. Negotiations will continue over the next few months.

### *Fish Waste Utilization*

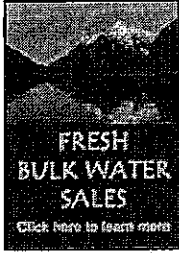
SEDA facilitated a meeting of twenty-five stakeholders to discuss the problems and potential solutions for disposal of waste generated by the seafood processing plants and sport fishing. There are at least three proposals for utilization of the waste. To learn more [CLICK HERE](#) and read notes from the meeting.

### *Biomass Energy Project - Japonski Island*

Although this project is still in the early stages of research and development, construction of a biomass energy system on Japonski Island shows great potential. Such a system could provide both heat and electricity to the major facilities on the island using wood waste, cardboard, paper, and other materials. The U.S. Coast Guard, SEARHC, University of Alaska Southeast, Mt. Edgecumbe High School, and Airport could all be tied into a common system.

### *Boat Haul Out & Marine Industry Service Center*

Preliminary negotiations with a major shipyard are underway for development of a marine industry service center at Sawmill Cove Industrial Park.



***Lot 22 - The Stores Building at Sawmill Cove Industrial Park***

Sale of this property has been finalized and Silver Bay Seafoods can now move forward with plans to expand its operations at Sawmill Cove.

***State of Sitka's Economy - 2009***

***State of Sitka's Economy - 2009 Report (PDF, 380 kb)***

***Power Point slides - (PDF, 380 MB)***

***A presentation by Eric McDowell, April 16, 2009***



Sitka Economic Development Association  
329 Harbor Drive Suite 212  
Sitka, Alaska 99835  
Phone: (907) 747-2660  
Fax: (907) 747-7688  
Email **SEDA**


# Office of the City Clerk

Jo Johnson, CMC, City Clerk  
Melissa Jacobsen, Deputy City Clerk II  
Renee Krause, Deputy City Clerk I  
Rachel Tussey, Clerical Assistant



491 E. Pioneer Avenue  
Homer, Alaska 99603  
(907) 235-3130  
(907) 235-8121  
ext: 2226, 2227, 2224, or 2251  
Fax: (907) 235-3143  
Email: clerk@ci.homer.ak.us

## Memorandum

DATE: March 4, 2010  
TO: Economic Development Advisory Commission  
FROM: Melissa Jacobsen, CMC, Deputy City Clerk   
SUBJECT: Lease Committee Appointment

Commissioner Erickson currently participates on the Lease Committee as the EDC representative and voting member. She has requested continuously that another Commissioner step forward to take her place due to a conflict of interest with the business that her and her husband own.

The Lease Committee holds regular meetings quarterly in January, April, July, and October on the 2<sup>nd</sup> Thursday at 3 p.m. Special meetings are called as needed to review leases.

At the February 9<sup>th</sup> meeting the Commission nominated Commissioner Day. She has since resigned from the Commission.

Recommendation: Select a Commissioner to be the representative on the Lease Committee and forward that recommendation to Mayor and Council for appointment.



*From Homer City Code, Title 21 (Zoning), Town Center District:*

21.20.040 Dimensional requirements. The following dimensional requirements shall apply to all uses in the Town Center District:

a. Lot size.

1. The minimum lot area shall be six thousand square feet.

b. Building Setbacks. Buildings shall be set back from lot boundaries and street rights-of way as follows:

1. All buildings must be set back from the Sterling Highway right-of-way by 20 feet or more, without exception.

2. From all other street rights-of-way, all buildings must be set back not less than 10 and not more than 20 feet, except as allowed by subsection (b)(4).

3. All buildings must be set back five feet from all other lot boundary lines, except the minimum set back shall be two feet from all other boundary lines when approved by the State Fire Marshal.

4. If approved by a conditional use permit, the distance for a required set back from a street right-of-way, except the Sterling Highway right-of-way, may be reduced or increased.

5. Alleys are not subject to the set back requirements of subsections 1 and 2. All buildings must be set back at least five feet from alley rights-of-way, without exception.

6. Any attached or detached accessory building shall maintain the same yards and setbacks as the main building.

c. Building Height.

1. The maximum building height shall be thirty five feet, except as provided in subsection 2.

2. Where a suitable fire suppression system is provided a building may exceed 35 feet in height, if and to the extent approved by a conditional use permit.

d. No lot shall contain more than 8,000 square feet of building area (all buildings combined), nor shall any lot contain building area in excess of 30 percent of the lot area, without an approved conditional use permit.

e. Building Area and Dimensions Retail and Wholesale.

1. The total floor area of retail and wholesale business uses within a single building shall not exceed 75,000 square feet.

2. No conditional use permit, Planned Unit Development, or variance may be granted that would allow a building to exceed the limits of subparagraph (e)(1), and no nonconforming use or structure may be expanded in any manner that would increase its nonconformance with the limits of subparagraph (e)(1).

3. Any building the main use of which is retail business, wholesale business, or a combination of the two shall not exceed 66,000 square feet of footprint area. (Ord. 08-29, 2008; Ord. 08-30(S)(A) §1, part, 2008).



(Regarding local  
apprenticeship program)

## Presentation to EDC

Question asked by many in our communities around the state.

- 1) What can we do to keep our graduating seniors and other young people in our communities and state after graduation, or keep them interested enough to graduate?
- 2) What can we do to stimulate economic growth in our communities across the state?

Possible answers to those questions.

One of the realities of today is the glamor and attractiveness of working at a resource job is waning as most young have been educated by computer, played computer games, communicate by computer and have watched many hours of TV and movies glorifying the big city, Hollywood, Music industry etc. The beauty of the media field is it can be applied, used, made money from any where on this digitally small planet. Even if you attend a film school and find you are not a Spielberg, Cameron or David Lynch. You take away from that experience a skill in computer or fabrication technologies, the arts or construction on and on, that can be applied in Architecture, Engineering, or any other of the media and trades areas. So a simple answer to the above is; create a Film/TV workforce/apprenticeship program in the high schools and rural areas. We have already put into place a state Film Office, and incentive program of 120 million dollars, a College accredited class @ UAF and now several small Film groups. But; this is not nearly enough to attract the attention of Hollywood and the independent media/music groups. We must at rapid pace increase what workforce, services and infrastructure we have in Alaska. At present we might have at any given time only 20 skilled persons of various trades to help on one film. If it is a film the size of; let us say 6 million dollars or more, you need 60 to 100 persons. So! If we have two or three projects of that size or bigger/smaller they will and can not happen. Sooo! What is the point of the incentive program or Film office? The media industry is smart enough to recognize this short coming and will keep shooting "Alaska" shows and looking else where until we can meet their needs and services.

Creating an apprenticeship/ workforce program in Homer works on multiple levels;

- \*First; it gives our young people the impetus, self respect and desire to stay and learn.
- \*Second; it teaches them valuable skills that will enable them to stay in Alaska
- \*Thirdly; provides an economic engine for the community and Alaska spinning off countless small businesses and supporting our existing businesses.
- \*Fourth; creates living wage jobs allowing them and others to contribute and grow the community
- \*Lastly; maybe, they will have a blast working on all the cool and stimulating job possibilities in the Film, Television and Music areas.



A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,  
CREATING AN AGRICULTURAL FREE ENTERPRISE ZONE.

WHEREAS, The original foundation of civilization is agricultural development.

WHEREAS, Food production is necessary to sustain human population and,

WHEREAS, The greater proportion of our food is produced and imported by ship and by road from out of state, and,

WHEREAS, The cost of transport and importation of foodstuffs are increasing rapidly and,

WHEREAS, The local production of farm produce and livestock greatly enhance the sustainability and security of our resident population and,

WHEREAS, An economic incentive may have the effect of increased local employment and food production and,

WHEREAS, A tax levied on local agriculture is regressive in nature, counter to the greater security, sustainability and self sufficiency of the local population in the event of natural disaster, economic disruption, or transportation delay.

NOW, THEREFORE, BE IT RESOLVED that all Fish, Farm, Livestock and Agricultural Produce grown, harvested, processed, butchered and sold within the Kenai Peninsula Borough shall be exempt from any form of taxation.



## Anne Marie Holen

---

**From:** michael haines [mjhaines410@yahoo.com]  
**Sent:** Friday, April 09, 2010 8:10 PM  
**To:** Anne Marie Holen  
**Cc:** Mary park  
**Subject:** Re: Carrot and Stick. Follow on from recent EDC meeting

oooooooooooo! re the 80% 'rule', i meant college students, not high school students. which means most students heading for college from homer will not return :-)

the idea behind my thought No.1 is to develop a quality financing program, so that those entrepreneurs who are willing to get the education, get the financing. those that are not prepared to take the time to get educated, don't get financed. those people financing the businesses develop a comfort level that allows them to invest with confidence (less risk). we implement the 'best practices' of an incubator, without the actual physical walls.... until we get a real incubator.

mike

----- Original Message -----

**From:** Anne Marie Holen <AMHolen@ci.homer.ak.us>  
**To:** michael haines <mjhaines410@yahoo.com>  
**Sent:** Fri, April 9, 2010 8:24:35 AM  
**Subject:** RE: Carrot and Stick. Follow on from recent EDC meeting

Hi Mike,

Interesting analysis and sensible advice - at least it strikes me that way!

Question about your sentence: "Also of interest is that 80% of graduates remain in the community in which they graduate."

Are you talking about college graduates there? I am confused by the 80% figure in contrast to the 10-15% figure mentioned earlier.

/amh

Anne Marie Holen  
907-435-3101

*start reading here* 

-----Original Message-----

**From:** michael haines [mailto:mjhaines410@yahoo.com]  
**Sent:** Thursday, April 08, 2010 9:45 PM  
**To:** Mary Tricamo-Park; Wagner Kyra; McArthur Neil; Neil Wagner; Ken Bergman; Cotogno Don; Don Lane; Diane Borgman; Growchow Brandon; Bryan Zak; Jessica Tenhoff; Paul Dauphinais; Wolfe Gaye; Bevis Carol; Anne Marie Holen  
**Cc:** Mike Dye; Cooper Kelly; Donna Bondioli; Karen Berger; garys@reddenmarine.com; Kiana B&B; Joshua Tobin; Jane Pascall; Holly Van Pelt; Robert Letson; Martin Jenny  
**Subject:** Carrot and Stick. Follow on from recent EDC meeting

as a follow up to our meeting this past wednesday, i have two comments that might be used for discussion at our next meeting....

1. Carrot and Stick

we dicussed in some detail the problems associated with starting a business in homer, and much of the discussion revolved around the needs for investment financing into these potential business opportunities. a major problem i have found is that potential business owners want the financing without doing the necessary homework to start and operate a business venture .... 'just give me the money' attitude.

we definately need a diverse number of financing types, all the way from individual Angel investors to grant funding to debt (bank) financing. and as we establish these sources, we need to key the availability of the financing to certain, pre-defined goals. for example, access to the financing (the 'carrot') should be contingent on the potential business owner getting educated on what it takes to start and operate that business (the 'stick').

there are a number of educational course/types available and we can creat more. for example, KPC has a 15-week intro business course, and the SBDC workshops are readily available. also, we should identify a group of mentors who would be willing to mentor the potential business owner. there are also others that we can discuss at our next meeting.

so, the plan should be to key financing to the business owner achieving these goals .... for example, pass the KPC course and the SBDC business plan course and you get start-up financing. get a mentor and you get follow-on financing, etc, etc, etc. this approach provides some assurances (not 100%) to the financing source that their investment is being looked after.

implementing this has a knock-effect, because it creates demands for education at the KPC level and SBDC... creates more jobs :-)

## 2. High School Graduate Retention

i did some follow up research (some of it anecdotal) on this subject we discussed. it appears that approx 10% (only) of homer high school graduates remain in homer after graduation. the remainder attend university in AK or 'outside', or just use a year or two to 'discover' the world or themselves. interestingly, it is estimated that 10% to 15% of the original graduates eventually return to homer to live and find work one to two years after graduating.

this supports research i have completed elsewhere in the past <sup>college</sup> as part of my economic development consulting work. also of interest is that 80% of graduates remain in the community in which they graduate, at least for a period of 5 years or so following graduation.

if we do the arithmetic, we see that (if there are 100 gradutes per year) we have to find jobs for 10 to 20 each year. but, we always have a net loss of employable people through retirements, relocations for various reasons, etc. so, assuming this to be 10 per year, we still have to create 10 new jobs each year. ten jobs may not sound like a lot, but it is if we don;t have a progarm to address/encourage it.

the health care business ( South Peninsula Hospital, et al) will currently take all the nurses they can get, but not every one wants to be (or has the aptitude) to be a nurse, or work in health care. so, we need to find ways to create these jobs, and in a small community like homer, encouraging entrepreneurship (keyed to 1 above) appears to be a viable alternative.

mike haines  
299-0759

----- Original Message -----

From: Mary Tricamo-Park <matp9@aol.com>

To: Wagner Kyra <ihkdr@uaa.alaska.edu>; McArthur Neil <mca@xyz.net>; Neil Wagner <neil@sustainablehomer.org>; Ken Bergman <kenjisan@alaska.net>; Haines Michael <mjhaines410@yahoo.com>; Cotogno Don <DCotogno@TheGourmet.com>; Don Lane <drl@xyz.net>; Diane Borgman <borgwoman@hotmail.com>; Growchow Brandon <brandongrochow@wellsfargo.com>; Bryan Zak <bryanzak@aol.com>; Jessica Tenhoff <nomadger@gmail.com>; Paul Dauphinais <paul@homer.alaska.org>; Wolfe Gaye <wolfestudios@alaska.net>; Bevis Carol <cdbbevis@yahoo.com>; Holen Anne <AMHolen@ci.homer.ak.us>

Cc: Mike Dye <leceo@alaska.net>; Cooper Kelly <kelly\_cooper@wellsfargo.com>; Donna Bondioli <ashtikan@gmail.com>; Karen Berger <homerbrw@xyz.net>; Garys@redddenmarine.com; Kiana B&B <kiana@xyz.net>; Joshua Tobin <joshua.tobin@homernews.com>; Jane Pascall <jpascall@homertribune.com>; Holly Van Pelt <alaskavetpath@mosquitonet.com>; Robert Letson <rfl@sphosp.com>; Martin Jenny <jenny@homer.alaska.org>

Sent: Mon, March 29, 2010 11:07:56 AM

Subject: Chamber Economic Development Committee Meeting Notice

Dear EDC Members,

We are all back in Homer and ready to regroup. Our next meeting is scheduled for Wednesday 7 April, 9:30 to 11:00 a.m. at the Chamber.

There has been quite a bit of actions worked since our last meeting, so we will start with an update from the following subcommittees:

\* SBDC update- Bryan Zak

\* Chamber update - Paul Dauphinais

\* Education- Ken Bergman

\* Arts - Diane Borgman

\* Sustainable Homer- Kyra

\* 501C3 organization- Brandon Growchow

\* Review of our Business Process Chart - Mary Tricamo-Park and Michael Haines, and a review of the draft job description prepared for the management of this process. The Board of the Chamber has asked that our committee prepare a proposal to present to them on how Economic Development would be "managed/administer" to maximize the benefits for Homer in growing business and job creation.

\* Proposed Meeting with Mayor Jim Hornaday regarding Economic Development for Homer. He attended both City ED Town Hall meetings last October and November and was a great contributor to those meetings.

We have a lot to get through and may have to reschedule a follow-up meeting. If I have missed anyone on the list, please forward this note. Thank you, and I am looking forward to our meeting.

Mary Tricamo-Park, EDC Chair





*Building Community  
Creating Places  
Using Common Sense*

Log In/Register

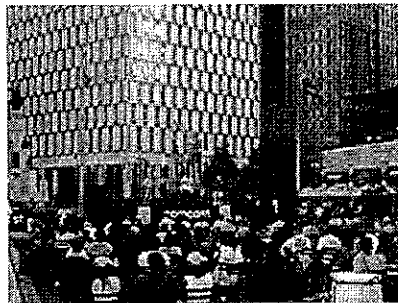
[PPS.org Home](#) » [Placemaking](#) » [Putting Our Jobs Back in Place](#) » [How Placemaking Generates Lasting Prosperity](#)



## Putting Our Jobs Back in Place

### How Placemaking Generates Lasting Prosperity

Concern over jobs has been a constant refrain in politics, business and everyday conversation for decades, becoming even more urgent during the current economic crisis. Yet, for all the intense discussion of the subject, the local job-creation strategies pushed forward by politicians, business leaders and economists narrowly focus on luring new companies, developments or tourist attractions to a community instead of leveraging the substantial assets that exist within most communities. As a result, one city is pitted against all others, desperate to offer anything—free land, reckless tax breaks, low wages, etc.—to beat out potential competitors.



Campus Martius, a reinvigorated park in Detroit, brought many new jobs to the city

Such a strategy might succeed in winning a few jobs over the short term, but that does not translate into genuine prosperity. From our experience working in more than 2,500 communities around the world, PPS came to realize the missing ingredient in most discussions about jobs—especially good, green jobs - is the fact that secure jobs are tied to a place. This is what truly generates prosperity and well-paid employment over the long haul.

"Making great places does not just mean that you are adding tourist attractions to your city," explains Larry Lund, PPS Associate and a Chicago real estate consultant. "It's way more powerful than that: it has to do with creating an environment that will be attractive for businesses," places to host the dense organization and social complexity vital to the success of so many industries that create and sustain great jobs.

After all, cities first emerged because people gathered together at crossroads, creating busy, vibrant places to exchange goods and ideas. Cities grew out of commerce. The same holds true today. Cities need

*This was the idea behind the Town Center Development Plan*

great places that provide the settings for these kinds of interactions. This is what businesses seek. They want places that are attractive to employees, places where connections can happen, where productivity and creativity increase and where the professional networks foster collaboration and innovation.

## **Article Topics**

**Placemaking's Pivotal Role in Prosperity**

**The Magic of Multi-use Destinations**

**The "Real" Market Economics**

**Third Place**

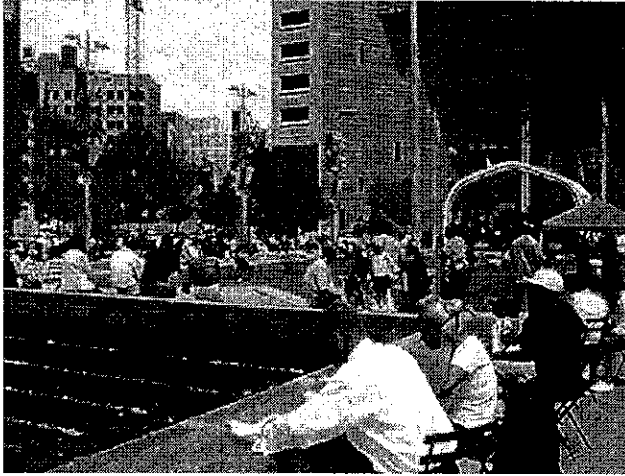
**Transportation Creates Place-Based Jobs**

## **Placemaking's Pivotal Role in Prosperity**

"Placemaking"—the essential process used to create great places and strong communities—is fundamental to creating quality jobs that are well-paying and environmentally-friendly. It works like this: local people are the experts at knowing what works best in the place they live, so bringing them together in settings like market squares, community centers, main streets, and –surprise!- libraries to come up with ways that these places can be improved unleashes tremendous creativity and increases citizens' abilities to remake their own communities.

Placemaking builds the necessary foundation upon which new enterprises rise and prosper. And there is mounting evidence that it can create lasting, sustainable prosperity for communities- even in places not usually associated with good news.

Consider Detroit. At the heart of the city is Campus Martius, which until recently was a small unused green space overwhelmed by the traffic that rushed past it. Yet, Mayor Dennis Archer imagined this pocket-sized park as a world-class public space, akin to Bryant Square Park in New York City, which would draw people and investment back to what had become a void in the center of what many considered a broken down city. At the initiative of a new civic group, Detroit 300, an entity formed to celebrate Detroit's 300th birthday, the community envisioned Campus Martius as a lively town square—and in 2004 that vision became a reality when the park was reopened with gardens, a two retractable states for events, an ice skating rink, café and lots of benches for people to enjoy themselves. The transformation spurred major redevelopment which brought many new jobs and a half-million dollars in new investment in offices, shops, condos and a hotel to the city. Compuware, a leading IT solutions company, built their corporate headquarters housing 4000 employees across the street from the future park. "Compuware would not have come downtown without the park," notes Bob Gregory, a former General Motors executive and head of the Campus Martius Conservancy, which was formed to manage the park. "They didn't want just a building. They wanted a lively district, where their workers would have things to do."



Job magnet: Compuware located 4000 employees in downtown Detroit because of Campus Martius

This is a prime example of how urban districts with a vital sense of place can take advantage of changes in the way business is done. Employees today are increasingly “thinking outside the cubicle,” working collaboratively in ways that find them spilling out from the office to make connections with other creative people. Accessible public spaces provide innovative workers with a setting conducive to exploring new ideas on many fronts.

This trend explains why downtowns and other walkable environments continue to thrive, despite warnings of a decade ago that the internet would render them obsolete. It turns out that people still crave physical proximity to others in the same field, giving places with a critical mass of high tech, financial, legal, media, design, advertising and other industries a distinct advantage.

[Back to top](#)

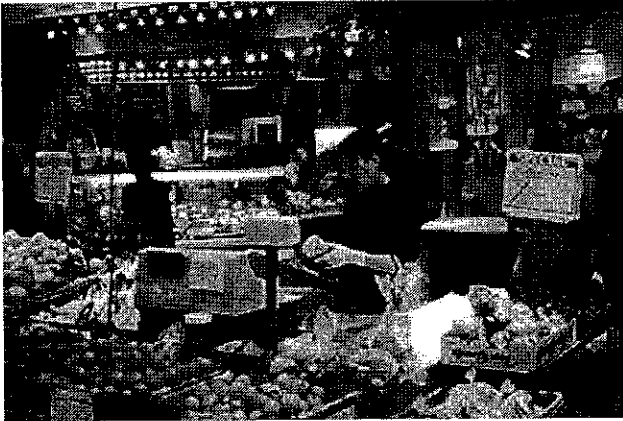
### **The Magic of Multi-use Destinations**

All vital cities showcase at least one multi-use destination – an interesting place where people can go for a variety of activities that involve more than shopping. A multi-use destination that is the heart and soul of a community can both create an identity and generate good jobs and economic growth for that city.

A classic example is Granville Island, a tiny (38 acre) patch of waterfront in Vancouver, Canada, that is home to a public market, Emily Carr College of Art and Design, a children’s museum, community theater, community recreation center, local artists’ studios and galleries, cooking school, hotel, boat repair and construction businesses, a cement plant (with a revolving cement truck painted like a strawberry) and a multitude of other unique and interesting uses that appeal to both locals and tourists. It is the most visited destination in British Columbia but has one of the smallest budgets (just \$25,000 per year) for tourism advertising of any Vancouver destination.

The economic anchor is the Granville Island Market which has 50 full time local vendors that sell from market stalls, including a variety of small eating establishments with many different ethnic foods, and 45 spaces for part time vendors. And there are no chains! About 3,000

people are employed on the Island and it generates over \$215 million in economic activity each year.



Vancouver's Granville Island market hosts nearly 100 vendors, providing important opportunities to incubate small businesses

Balboa Park in San Diego is another great multi-use public destination, home to 15 major museums, renowned performing arts venues, fabulous gardens and the city's world-famous zoo. It is known as "The soul of San Diego," and "an economic, ecological, and spiritual engine that continuously pumps life into the metropolis." The almost mystical qualities that make it a great destination also have real economic value. Ten to 14 million visitors each year use the Park and the average length of stay is 3.5 hours. On average, those who live nearby return about 20.5 times each year. Three thousand five-hundred people are employed in the park; and their work is complemented by the dedication of 7,000 volunteers who contribute to the overall vitality of Balboa Park all through the year. The same qualities of a great destination (a sense of place and belonging) that bring volunteers to donate their time are also attractive to businesses. Businesses (and volunteerism) thrive in the places that people treasure most.



Balboa Park, known as "the soul of San Diego," generates 3500 jobs

People often think of both of these spots as tourist havens, with the usual low-pay, no-future tourist jobs. But a closer look shows that tourists are not the primary force behind the economic success of these places: Granville Island and Balboa Park are multi-use destinations that are heavily used by the local population. After all, at the Granville Island Market the highest-performing vendor is the meat market, which shows

that it is a major attraction for locals. No one is going to take fresh pork chops home on the airplane or fry sausage in their hotel room. In fact, the market is busiest in the off-season when tourists are more scarce in rainy Vancouver.

Studies have shown that even tourists themselves are more interested in an authentic experience than artificial attractions created expressly for them. All over the world travelers are drawn to places—Paris, Tuscany, San Francisco, Kyoto, you name it—with unique qualities that make these destinations interesting and vital. The last thing many tourists seek is to mingle with other tourists. By making more appealing places for residents, you attract tourists better than if you are trying to attract tourists.

[Back to top](#)

### The “Real” Market Economics

The power of “places” to create new economic opportunities and employment is especially evident in the 84 percent rise in the number of farmers markets created in the U.S. during the past nine years. They are now at an all time high of 5,274. The same phenomenon is occurring in countries around the world.



More than fun, public markets incubate new businesses and employment

More than a picturesque, public-spirited, feel-good trend, markets are potent economic incubators. People go to markets not only because they can buy the fresh food they need at a price they can afford but also because markets are sociable, fun places that make for a rewarding experience. Markets are at the center of a new, New York City Council campaign, championed by Council Speaker Christine Quinn, called “FoodWorks,” that seeks to create jobs from the City’s food system. [Read more here.](#)

[Back to top](#)

### Third Place

Sociologist Ray Oldenburg first coined the phrase “Third Place” in his book “The Great Good Place” where he describes home as the “first” place, work as the “second” place, and that place where the community gathers as the “third” place - “homes away from home” - the place where unrelated people relate.

Inspired by Oldenburg’s book, Ron Sher, real estate developer and owner and principal of Sher Partners sought to create a “third place” in Seattle where people in the community could gather and businesses could thrive. He found space in an under-used shopping center surrounded by acres of empty parking lots in the suburb of Lake Forest Park. Third Place Books and Third Place Commons opened its doors in 1998. It consists of an indoor “town square” with public seating, an information desk run by volunteers, a life size chess set on the floor and picnic tables for working or playing games. The square is surrounded by

the Third Place bookstore which sells new and used books, several small independently operated food stalls and a stage where musicians and actors perform, discussions and debates are held, and authors give readings. Over one thousand free public events occur there every year.

Third Place Commons is managed by a community organization, Friends of Third Place Commons, and supported by Third Place Books, the City of Lake Forest Park, and the merchants and management of Lake Forest Park Towne Centre. Sher, who has done a lot of thinking about how development will occur in the future given the state of the economy today, said "we are going to come out on a different trajectory, hopefully a more sustainable one. A bright side of the economic situation is that we will find a way to have a higher quality of life without consumptive goods. And we shouldn't be afraid to be 'off the wall.'"



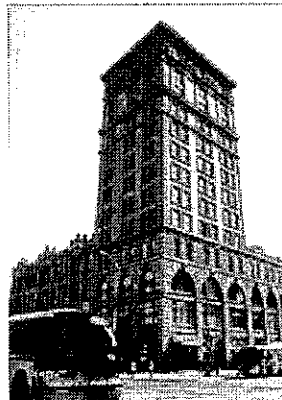
Third Place Commons—an indoor town square  
—enriches a Seattle suburb socially and economically

Centers like Third Place Commons add a benefit to the community that can't (and perhaps shouldn't) be monetized. As a gathering place and a community hub, it creates the conditions for new connections and relationships to arise. The many uses within this great destination draw a diversity of people to the shopping center, increasing the potential for surrounding stores to perform better, which generates good business and jobs.

[Back to top](#)

### Transportation Creates Place-Based Jobs

According to the U.S. Department of Transportation, every \$1 billion investment in the nation's transportation infrastructure supports approximately 28,000 jobs. But not all transportation projects are the same. Expenditures on public transportation yield on average 36,000 jobs, and generate \$4 billion in economic return as well as boosting environmental quality, improving job access for low-income people and strengthening our sense of community.



The billions we spend on transportation of all kinds will make a bigger impact on creating

jobs over the long haul if we pay more attention to the kinds of places where people want to go—places that are walkable and offer a variety of things to see and do. The restored Wright Stop Plaza is now a centerpiece of downtown Dayton, Ohio

A case in point is Dayton, Ohio, where a Placemaking approach to transportation led by the local transit agency resulted in significant community improvements that went beyond simply providing transit service.

Just a few years ago, the center of Dayton looked almost empty. With the addition of a new transit hub, Wright Stop Plaza, a busy town square was created. A waterfront park, ballpark and performing arts center were also part of a revitalization strategy to bring more business, jobs and transit riders to the downtown core.



A transit station in Dayton fosters public activities, which helped revive the downtown business district

The head of the local transit agency Minnie Fells Johnson championed the unorthodox idea that public transportation should do more than move people from place to place; it should create lively gathering spots where people can interact with each other. The agency became what Johnson calls "a connecting machine" -- linking people to local institutions by creating corridors of public destinations along transit routes. This innovative strategy increased ridership as well as the use of these destinations, resulting in more business, jobs, and transit riders. Since Johnson left the agency in 2005, her successor has completed phase II of the downtown hub regional complex. This development remains one of the finest redevelopment projects in a region which is still struggling economically. By using transportation to create this connecting tissue, Dayton is now in a better position to consolidate its assets into good jobs.

[Back to top](#)

### **How PPS is advancing job creation and growth through placemaking**

The continuing global economic crisis has showed us, in so many ways, that the development strategies of the last 50 years no longer work. Business as usual has proved unsustainable. What's needed now are

creative approaches that result in great places and local job development for the long haul. For example, we can transform how we think about all types of public spaces and public institutions: every park, school, square, library, and street has the potential to become a great gathering place. As Ron Sher explains, "without a place, many interactions and transactions will simply not occur. This can translate into a significant loss of economic and social benefit." Work with us to define new economic strategies for the "city of the future", centered around "Placemaking" as its engine of change. We think that the following agendas have the potential to become the backbone of a new economy.

- **Markets and Local Economies** - Around the world, markets are time-honored strong economic incubators and great community gathering places. If we take the concept of a local hub of social activity and commerce and bring it to squares, libraries, schools, and parks, these places could all become catalysts for economic change and sustainability because they help grow communities around local assets and create an atmosphere of self-reliance and support.
- **Multi-use Public Destinations** - The best destinations are those that are "owned" by people in a community. They are authentic because they are revered and sacred to the local population. As such, they have a big impact on creating local jobs.
- **Building Community through Transportation** - Creating a transportation system that supports the use of local places (as in Dayton, Ohio or throughout the Netherlands) can transform a city, region or a country if the transportation system is designed to connect and reinforce local destinations and emphasize walking, biking and transit, not just driving.
- **Toward an Architecture of Place** - Community institutions can be designed to take on new roles as generators of a wide range of local community activities such as job fairs, repair markets, etc.

The urgent task before us now is to transform dull areas into vital hubs where connections grow and innovation thrives, creating the settings for a sustainable future of healthy businesses and robust job growth.

[Back to top](#)

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#### **Welcome**

Project for Public Spaces (PPS) is a nonprofit organization dedicated to creating and sustaining public places that build communities.

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[Who We Are](#)  
[What We Do](#)

#### **Contact Us**

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MANAGERS REPORT  
May 10, 2010

TO: MAYOR HORNADAY / HOMER CITY COUNCIL

FROM: WALT WREDE *W. Wrede*

UPDATES / FOLLOW-UP

1. Maritime Academy: At the last meeting, Council member Hogan asked for an update on efforts to establish a Maritime Academy in Homer. Last week, Bryan Hawkins and I participated in a teleconference with four federal Department of Transportation officials in Washington DC who have jurisdiction over the maritime academies nationwide. This meeting was rescheduled several times and I thought it would be prudent to learn as much as we could about the program before I went and talked to the Governor and his staff about it. We learned a lot. There are no barriers at the federal level to establishing an Academy in Alaska with the exception of funding. There are advantages to establishing a regional academy (perhaps partnering with Washington). All existing academies are regional in scope and include various levels of participation by multiple states. The federal match increases to \$500,000 per year for regional academies. The process starts with the Governor who would contact the Secretary of Transportation. The President could include money for this in his budget and it could also be added by Congress. Ultimately, Congress has to approve it. Our Congressional delegation would need to be in the loop and requesting this. So would our representatives in the legislature. Any money Congress contributes must be matched equally by the State and the City. It is possible that making the old school available after the College moves out could count as a local contribution. The curriculum would need to be approved by the Coast Guard. So, we will proceed with the process of working with the Governor, and if he is interested, the delegation unless Council instructs us otherwise. Bryan will be at the meeting if there are questions.
2. Corps of Engineers Permit / Seawall: At the last meeting, Councilmember Wythe requested an update and course of action report regarding Special Condition # 5 in the Corps of Engineers permit for seawall construction. A copy of the permit, including Special Condition # 5 is attached for your information. We are moving ahead on this and will try to satisfy this condition as quickly as possible. Terry Thompson at KBRR has met with the scientists who conducted the research and determined that the research is complete and that all of the information and data is available and easily assembled for review by the scientific and regulatory committee and the public. Dotti Harness in the Planning Department has been assigned the task of contacting the agency representatives about serving on the committee. She has done so and discussions are underway now about meeting schedules, agendas, and possible ways to include the public. The committee members are being mailed much of the information which includes a dissertation, several peer review articles on the dissertation, and 8 years worth of pictures

taken from the cameras mounted near the seawall. The goal is to have the first meeting ASAP. Both Tom Klinkner and Carey Meyer will be available at the meeting to take questions on this if needed.

3. Lease Policies: Both meetings in May include workshops / Special Meetings to discuss recommendations from the Economic Development Commission regarding the lease policies and the base lease document. Council members have stated that they want to hear comments from both myself and the City Attorney regarding these recommendations. This topic, and how best to proceed, was discussed at the last agenda meeting before the Mayor left town. The meeting included the Mayor, the Mayor Pro Tem, the Clerk, and myself. It was agreed that the best approach might be for the Council to use the first meeting (and maybe the second) providing the EDC an opportunity to present their recommendations and the reasons for them without having to address questions or counter arguments on individual recommendations along the way. That way the EDC could present its recommendations as a whole body of work. Comments from the administration and attorney could come later. I will definitely have comments when the time is right. I could put those comments into writing if Council wishes. After the Council hears from the EDC, I would recommend that it consider referring the matter to the Lease Committee. One of the primary responsibilities of the Lease Committee is to advise the Council on Lease Policies. The Lease Committee did not review the EDC recommendations except for a few chapters in the early going. The Committee decided to wait until the EDC was done with its work and review it in total at that time. The Committee was told that the recommendations would be coming back to them for comments when the EDC was done and that the CM and City Attorney would provide comments at that time.
4. City Website: We are getting very close to having a signed contract with the contractor. AHA will be here on May 26th and 27th to work with representatives from each department and kick-off the work. We are looking for one or two Council members that might be interested in participating. We could use you in two areas. One is a small committee that will work with the contractor on the overall design, look, and feel of the website. We also plan to have a City Council page. We would be looking for input from Council re: what is included on that page, how it looks, and what functions it has. Please let either Jo or Terry know if you are interested.
5. Energy Efficiency RFP: This agenda contains a resolution which adopts policies and procedures to implement the Revolving Energy Fund Program. The staff has prepared a Request for Proposals to conduct energy audits and capital improvements to increase energy efficiency in City Buildings and facilities. This is a major component of the Revolving Energy Fund Program. You will recall that the Council transferred \$315,000 into the REF from various depreciation funds at a recent meeting. In addition, the City will receive \$227,000 grant funds from the Energy Efficiency and Conservation Block Grant program. So, the City has over \$500,000 for this purpose. A resolution accepting and appropriating this grant is also on the agenda. If the Council adopts the REF Policies and procedures, we will put the RFP out on the street the same week.

6. Library Energy / Capital Improvements: At the last meeting, Eileen Faulkner, the Chair of the Library Advisory Board advised the Council that the LAB had reviewed the reports of the two consultants who looked at energy use in that building, and agreed on a set of recommendations. Eileen said that the LAB would be sending a letter to the City Manager. That letter is attached for your information. Assuming that the Council wishes to move forward on this, our plan is to work up a cost estimate and then bring an appropriation ordinance to either the May 24 or June 14 meeting. The money for this work can come from remaining library capital construction funds and/or the Revolving Energy Fund.

#### ATTACHMENTS

1. Corps of Engineers Permit / Seawall
2. May Employee Anniversaries
3. Press Release / Energy Efficiency
4. Correspondence from LAB



2010 PUBLIC SIGN IN SHEET

Economic Development Advisory Commission Regular Meeting May 11, 2010 \*\*

Check one of the following:

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example:			
1. JAMES HORNADAY	491 E. PIONEER AVENUE	<input type="checkbox"/> ✓	<input type="checkbox"/>
2. Kevin Hogen		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Wes Schacht		<input type="checkbox"/>	<input checked="" type="checkbox"/>
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