



MEMORANDUM

Resolution 23-064 A Resolution of the City Council of Homer, Alaska Approving a Five Year Sublease at the Homer Airport Terminal with Kenai Aviation Operations LLC, and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager.

Item Type: Backup Memorandum
Prepared For: Mayor & City Council
Meeting Date: June 26, 2023
Staff Contact: Julie Engebretsen, Economic Development Manager
Through: Rob Dumouchel, City Manager

Summary Statement:

Kenai Aviation Operations LLC has submitted a lease application and written request for a new short-term lease at the Homer Airport Terminal for the purpose of continuing scheduled and charter passenger air carrier operations.

The Homer Airport Terminal building is owned by the City of Homer, while the land is leased to the City by the State of Alaska. The lease with the State has a five year term, beyond which the City cannot sublease space long term within the terminal. There is a provision for a month to month continuation of both the City lease with the State and for subleases within the terminal building; all City tenants are currently operating under this provision until new leases are executed. The City lease with the State was recently executed, allowing the City to renew subleases with tenants for the remainder of the new five year term.

The City Manager and Lease Staff has reviewed the request and found the proposal to be compatible with applicable regulations and meets the criteria outlined in City Code.

Staff is recommending to Council that a forty-six month lease be awarded to Kenai Aviation Operations LLC at the Homer Airport Terminal, with a base rent of \$34,392.36 per year.

Staff Recommendation:

Adopt Resolution 23-064.

Attachments:

Kenai Aviation Operations LLC City Lease Application
DRAFT Airport Lease Agreement



101 N Willow St., Kenai, AK 99611
(907) 283-4124
www.kenaiaviation.com

03/13/2023

TO: Office of the City Clerk, City of Homer Alaska

Written Narrative:

Our requested lease term is 3 years with 2 options to renew. The utilization of the lease is to facilitate the safe and timely operation of Kenai Aviation's scheduled service and charter service departing from Homer Airport. Kenai Aviation does not have any business plans or models to sublease. Kenai Aviation does not have any plans to improve or develop the property as the Homer Airport facilitates a safe work environment, counter space, and gate access. Kenai Aviation is not aware of any agency approval required to operate this space.

Kenai Aviation has operated in Alaska since the 1960's as primarily an on-demand charter service. The Caldwell Family purchased Kenai Aviation in 2018 with the intention of providing top shelf service throughout the Kenai Peninsula and the State of Alaska. Since the purchase, Kenai Aviation greatly expanded service and started scheduled service airline programs as defined under FAR Part 135 with the intention of fulfilling that goal. Kenai Aviation performs scheduled flights back and forth from Anchorage to Homer, Monday through Friday. Starting May 1st, 2023, scheduled flights will operate back and forth from Anchorage to Homer, 7 days a week. Kenai Aviation has also expanded on-demand charter services to include remote Alaskan communities, such as: Unalaska, Unalakleet, McGrath, and Seldovia. Our goal is to provide the Kenai Peninsula with safe and reliable airline transportation.

Applicant References:

1. First National Bank of Alaska,
11408 Kenai Spur Hwy, Kenai, AK 99611
Tim Redder, 907-283-6800
2. Peninsula Aero Tech,
135 Granite Pt Ct, Kenai, AK 99611
Scott, 907-283-1441
3. Crowley Fuels,
401 N Willow St, Kenai AK 99611
907-283-4542
4. Arctic Barnabas Ministries
135 N Willow St, Kenai, AK 99611
Patty, 907-283-3377



City Lease Application For City-Owned Real Property

Office of the City Manager

491 East Pioneer Avenue

Homer, Alaska 99603

Phone: (907) 235-3121

Fax: (907) 235-3148

citymanager@cityofhomer-ak.gov

Lease Application Purpose

- Request for New Lease; New Lessee – Applicant is not currently a City lessee
- Request for New Lease; Existing Lessee – Applicant is a current lessee with no remaining options to renew
- Request for Assignment of Lease – Applicant is requesting to have an existing lease transferred to a new owner/business

Property Information

Physical Address:	Space in the Homer Airport Terminal Building, 3720 FAA Road, Homer, AK 99603	
Square Footage:	<input type="checkbox"/> Full Lot <input type="checkbox"/> Portion of Lot	KPB Parcel No.:
Legal Description of Property:	Lot 5A, Block 800 Homer Airport Tracts	

Applicant Information

Business Name:	Kema Aviation Operations, LLC	
Representative's Full Name & Title:	Jacob Caldwell, President	
Mailing Address:	101 N Willow St	
City, State, ZIP Code:	Kema, AK 99611	
Phone Number(s):	907-398-9447	
Email:	jacob@kemaaviation.com	

Business Entity & Financial Information

<input type="checkbox"/>	Sole or Individual Proprietorship – Attached documentation must provide owner's full name, address, and verify they are the sole owner.
	Is entity authorized to do business in Alaska? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – As of what date: 1/18/2018
<input type="checkbox"/>	Partnership – Attached documentation must provide Partners' full names, addresses, and share percentages.
	Date of Organization: _____ Type of Partnership: _____
	Is Partnership authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes – As of what date: _____

<input type="checkbox"/>	Corporation – Attached documentation must provide the full names of Officers and Principal Stockholders (10%+), their addresses, and share percentages.
	Date of Organization: _____ Type of Corporation: _____
	Is Corporation authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes – As of what date: _____
	Corporation is held: <input type="checkbox"/> Privately <input type="checkbox"/> Publicly – How and where is stock traded: _____
<input type="checkbox"/>	Other – Please explain: _____

Proof of Financial Capability to Meet Obligations:	<input type="checkbox"/> Documentation of Payment History: Documents such as a credit report and score from one of the three credit bureaus (i.e. Experian, Equifax, TransUnion) or records of prior lease history.
	<input type="checkbox"/> Documentation of Applicant’s Financial Backing: Records showing applicant has secured the funding necessary to implement their development/improvement plan and/or purchase the business (if applicable).
	<input type="checkbox"/> Documentation of Business’ Vitality: Minimum of two years (past year and current year) of financial statements; this includes a Balance Sheet and Profit/Loss Statement (Revenue/Expense Statement).

Surety Information:	Has any surety or bonding company ever been required to perform upon your default or the default of any of the principals in you organization holding more than a 10% interest? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach a statement naming the surety or bonding company, date and amount of bond, and the circumstances surrounding the default or performance.
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Bankruptcy information:	Have you or any of the principals of your organization holding more than a 10% interest ever been declared bankrupt or are presently a debtor in a bankruptcy action? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach a statement indicating state, date, Court having jurisdiction, case number and to amount of assets and debt.
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Pending Litigation:	Are you or any of the principals of your organization holding more than a 10% interest presently a party to any pending litigation? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach detailed information as to each claim, cause of action, lien, judgment including dates and case numbers.
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Lease Proposal	
Type of Business/ Proposed Use of the Property:	Scheduled Passenger Air Transportation Unscheduled Passenger Air Transportation

Requested Lease Term:	<input type="checkbox"/> Short Term Lease (One Year or Less) – Duration (in months): <input checked="" type="checkbox"/> Long Term Lease (More Than One Year) <ul style="list-style-type: none"> ● Standardized Lease is a 20-year term with two 5-year Options to Renew; City Manager may deviate from standardized lease term when reasonable and necessary, and approved by Council (18.08.030). ● No more than two Options to Renew; each option cannot exceed 25% of initial lease term (18.08.110). Duration (in years): 4 No. of Options to Renew: 2
Property Plan:	<input type="checkbox"/> Describe your Property Plan in your written narrative. Details should include but not be limited to: <ul style="list-style-type: none"> ● Proposed utilization of the lot/space, including parking ● If there are existing buildings on the property and what their proposed uses are ● Any intentions to rent out or sublease space on the property ● How the use is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan <input type="checkbox"/> Provide a detailed schematic (to scale) that shows the following: <ul style="list-style-type: none"> ● Size of lot – dimensions and total square footage ● Placement/size of existing buildings, storage units, and other miscellaneous structures ● Parking spaces – numbered on the drawing with a total number indicated ● Note: an as-built survey from a licensed surveyor may be required
Development Plan:	Do you have a development and/or improvement plan for the property, including plans for repairs or maintenance to any existing buildings? <input type="checkbox"/> Yes In your written narrative, provide as much information as possible on how you intend to develop/improve the property. Include a time schedule from project initiation to completion, major project milestones, cost estimate and financing plan, and any additional designs not already provided in the Property Plan’s detailed schematic. <input type="checkbox"/> No In your written narrative, explain why.
City Planning & Other Agency Approvals:	Does your business/proposed use and/or development plan require agency approval? The granting of any lease is contingent upon lessee obtaining approval, necessary permits, and/or inspection statements from all appropriate City, State and/or Federal agencies. This includes but is not limited to: <ul style="list-style-type: none"> ● Applicable permits/approval from City Planning for zoning compliance, such as Conditional Use Permits, Zoning Permits ● Fire Marshall Plan Review and Permitting

	<ul style="list-style-type: none"> ● Waste Disposal System Plan Approval – Includes fish waste if applicable ● Other applicable permits/inspection statements from agencies such as U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and Alaska Department of Environmental Conservation Division of Environmental Health <p><input type="checkbox"/> Explain in your written narrative what necessary approvals, permits, and/or inspections are applicable to your business/proposed use and the current status of your application with those agencies.</p> <p><input type="checkbox"/> Attach any relevant documentation that verifies completion or pending status.</p>
Insurance Requirements:	<p>The granting of any lease is contingent upon lessee obtaining and keeping in full force insurance as outlined in HCC 18.08.170. Certificates of insurance showing the required insurance is in effect and identifying the City as an additional insured must be provided to the City at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.</p> <p><input checked="" type="checkbox"/> Provide proof of insurability for public liability insurance in the amount of not less than \$1,000,000 coverage per occurrence for bodily injury, including death, and property damage, and the City of Homer as co-insured. Additional insurance limits or types may be required due to the nature of the business, lease, or exposure.</p>
Benefits & Impacts on Community:	<p><input type="checkbox"/> In your written narrative answer the following questions:</p> <ul style="list-style-type: none"> ● What experience do you have in the proposed business or venture? ● How long have you resided or conducted business in the City, Kenai Peninsula Borough, and/or the State of Alaska? ● What are some of the economic, social, and financial benefits and/or impacts your business/proposed use brings to the community?
Applicant References:	<p><input type="checkbox"/> In your written narrative, list four persons or firms with whom the Applicant or its owners have conducted business transactions with during the past three years. Two references named shall have knowledge of your financial management history, of which at least one must be your principal financial institution. Two of the references must have knowledge of your business expertise.</p> <p>Each reference must include the following:</p> <ul style="list-style-type: none"> ● Full Name ● Name of the organization/business and their title at this entity ● Address ● Phone number and email address ● Nature of association with Applicant
Additional Information:	<p><input type="checkbox"/> Include in your written narrative, or attach relevant documentation, that you deem pertinent to your application/lease proposal. Criteria for evaluating and approving proposals and competing lease applications can be found under HCC 18.08.060.</p>

Required Attachments/Documentation

- Written Narrative

<input type="checkbox"/> Business Entity and Licensing Information <ul style="list-style-type: none"> <input checked="" type="checkbox"/> State of Alaska Business License <input checked="" type="checkbox"/> Current State of Alaska Biennial Report <input checked="" type="checkbox"/> If Partnership: Statement of Partnership/Partnership Agreement <input checked="" type="checkbox"/> If Corporation: Articles of Incorporation & Bylaws <input checked="" type="checkbox"/> Any additional documentation concerning the formation or operation of the entity
<input type="checkbox"/> Financial Information
<input type="checkbox"/> Property Plan – Detailed Schematic of Property
<input type="checkbox"/> Development Plan documents/plans, if any
<input type="checkbox"/> Proof of Insurability; verification that insurance can be provided at signing of lease
<input type="checkbox"/> City Planning & Other Agency Approval Information, if any

Application Signatures

By signing, I agree that the above information is true and correct to the best of my knowledge. I certify that I am authorized to sign as the applicant on behalf of the entity I represent.

Signature: *Jacob Caldwell* Date: 6/19/2023

Printed Name & Title: Jacob Caldwell, President

Office Use Only

Received By & Date:	Fee Processed: \$	Date:
Date Application Accepted as Complete/Submitted for Review:	Application Timeout Date: (1 year from receipt)	
Submitted for Dept. Review: <input type="checkbox"/> Planning <input type="checkbox"/> Port & Harbor <input type="checkbox"/> Economic Development <input type="checkbox"/> Finance <input type="checkbox"/> Public Works		
Submitted for City Manager Review: <input type="checkbox"/> Approved on: <input type="checkbox"/> Denied on:		
For Existing Leases Exempt from Competitive Bidding:	Current Lease Expires with No Options to renew: _____	
	6 mos. Prior to date of lease termination (Council Approval Deadline): _____	
	Request received within 12 to 18 mo. timeframe from expiration of lease date: <input type="checkbox"/> Yes <input type="checkbox"/> No	

HOMER AIRPORT TERMINAL
AIR CARRIER/TICKET COUNTER SUBLEASE

THIS SUBLEASE IS MADE this 1st day of July, 2023, between the City of Homer, an Alaska Municipal Corporation (“Sublessor”), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and Kenai Aviation Operations LLC, an Alaskan Limited Liability Corporation (“Sublessee”), whose address is 101 N. Willow St, Kenai AK 99611.

The City is Lessee in a lease agreement (“Prime Lease”) affecting the property dated both October 6, 1992 and March 3, 1993, the agreement of which has been recorded in the Homer Recording District under Document No. 1993-001154-0, also known as Lease Agreement No. ADA-06600, between the State of Alaska, Department of Transportation and Public Facilities (“Lessor”), and the City of Homer (“Lessee”), as amended by Supplement No.1, dated February 28, 2002, and as amended by Supplement No.2, dated March 30, 2023 and may be further amended from time to time with the Lessor to which all the terms, covenants, and conditions of this Sublease are subject to. Sublessee will fully comply with all covenants, provisions, conditions, and terms of that Prime Lease.

CITY AND SUBLESSEE AGREE AS FOLLOWS:

1. DESCRIPTION. City subleases to Sublessee and Sublessee subleases from City the premises consisting of 733 square feet of space as more fully described and/or depicted on Exhibit A (“Leased Premises”) in the Homer Airport Terminal Building (“Building”) located on Lot 5A, Block 800, HOMER AIRPORT TRACTS according to the official plats on file with DOT/PF, Division of Aviation for the term, the rent, and subject to the covenants and conditions hereinafter provided. The Sublessee will also have access to the Common Use Areas for Sublesses more fully described and/or depicted on Exhibit A (“Common Use Areas”). This Sublease confers no rights either with regard to the subsurface of the land below the floor level of the Leased Premises or with regard to airspace above the ceiling of the Leased Premises.

2. TERM. (a) The term of this Sublease shall commence on July 1, 2023, and shall end on March 30, 2028, unless sooner terminated as hereinafter provided.

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

until the City delivers possession of the Premises to Sublessee but shall commence paying rent when City delivers possession.

3. RENT Sublessee shall pay to City as annual rent, without deduction, setoff, prior notice or demand, the sum of \$34,392.36 plus taxes ("Rent"). Rent shall be payable in monthly installments of \$2,866.03 plus tax ("Monthly rent Payment") in advance on the first day of each month, commencing on the date the term of this Sublease commences. Monthly rent for the first month or portion of it shall be paid on the day the term commences.

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

4. USE OF PREMISES Sublessee shall use the Leased Premises for office space and ticket counter space for passenger or cargo transportation by air and related functions of aircraft operations and ticket sale and for no other use without City's written consent. Sublessee agrees to comply with all federal, state and local laws, ordinances and regulations as well as the terms of the Prime Lease. Sublessee agrees to comply with the following rules and regulations and with such reasonable modifications thereof and additions thereto as City may hereafter from time to time make for the Building.

(a) Sublessee shall comply with all covenants, provisions, conditions, and terms of the Prime Lease.

(b) Sublessee shall not make or permit to be made any use of the premises or any part thereof which would violate any of the covenants, agreements, terms, provisions and conditions of said Prime Lease; nor will Sublessee commit any act, either by commission or omission, which would cause City to be in default of any covenant, provision, term or condition of the Prime Lease. Sublessee hereby acknowledges receiving a copy of the Prime Lease as provided in Exhibit C.

(c) Sublessee will not make any use of the Property or the Building, nor will sublessee make or permit to be made any use of the Premises or any part thereof which would violate any of the covenants, agreements, terms, provisions and conditions of this Sublease; which is forbidden by any federal, state or local law, ordinance or regulation; which may be dangerous to life, limb, or property; which would, in the reasonable judgement of City, in any way impair the character, reputation or appearance of the Building as an attractive and functional airport terminal building; or which would impair or interfere with or tend to impair or interfere with any of the services performed by City for the Property. Sublessee shall immediately cease and desist any conduct the City, in its sole discretion, determines is in violation of this subsection upon receiving written notification by the City of such violation.

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

(e) Sublessee shall not display, inscribe, print, paint, maintain or affix in or about the building or outside of the Premises any sign, notice, legend, direction, figure or advertisement, unless Sublessee shall first

have obtained the consent of the City, any then only such names(s) and matter, and in such color, size, style, place and materials as shall first have been approved by City. City shall not unreasonably withhold prompt approval, but City's insistence on compliance with a uniform signage plan shall not be deemed unreasonable.

(f) No additional locks or similar devices shall be attached to any door or window without City's consent. No keys for any door other than those provided by city shall be made. All keys including cargo area garage door openers must be returned to City at the expiration or termination of this Sublease. If more than two keys for one lock are desired, City will provide the same upon payment by Sublessee. Sublessee will be responsible for replacing lost or damaged garage door opener and/or keys.

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

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

(i) The sidewalks, halls, passages, exits, and entrances ("Common use Areas") shall not be obstructed by Sublessee or used for any purpose other than for ingress to and egress from the premises. No Sublessee and no employees or invitees of any Sublessee shall go up on the roof of the Building.

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

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

(l) In the event of any default or carelessness in performing the duties imposed by this paragraph, Sublessee shall make good all resulting injuries or losses sustained by other sublessees or occupants of the Building and City. In additions to all other liabilities for breach of any covenant of this paragraph, the

Sublessee shall pay to the City an amount equal to any increase in insurance premiums payable of the City or any other tenant in the building caused by such breach, but City shall have the burden of proving by a preponderance of the evidence that such increase is directly attributable to such breach.

5. SECURITY DEPOSIT. The Sublessee has deposited with City at the time of execution of this Sublease the sum of \$2,564.35 as a security deposit for the performance by Sublessee of the provisions of this Sublease. If Sublessee is in default, City can use the security deposit, or any portion of it, to cure the default or to compensate City for all damage sustained by City resulting from Sublessee's default. Sublessee shall immediately upon demand pay to City a sum equal to the portion of the security deposit expended or applied by city as provided in this paragraph so as to maintain the security deposit in the sum initially deposited with the City. Sublessee's failure to do so within five (5) days after demand by City shall be a default under this Sublease. If Sublessee is not in default at the expiration or termination of this Sublease, city shall return the security deposit to Sublessee. City's obligation with respect to the security deposit are those of debtor and not those of trustee or fiduciary. City may maintain the security deposit separate and apart from City's general funds or co-mingle the security deposit with City's general funds. City shall not be required to pay Sublessee interest on the security deposit. If City is required by law to maintain the security deposit in an interest bearing account, City shall be entitled to receive and retain the maximum amount permitted under applicable law as a bookkeeping and administrative charge.

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

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

excepted, failing which the City may restore the Premises to such condition and the Sublessee shall pay the cost thereof on demand.

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

9. PARKING AND SNOW REMOVAL. This sublease includes four parking spaces in the employee parking area. The City shall designate a parking area for employees of the tenants of the Building. No overnight parking of employee vehicles is allowed. City shall provide snow removal in the parking area. If city, in City's sole discretion, is able to provide additional designated parking for employee or business vehicles, Sublessee shall pay additional rent of \$15 per month for each additional space. Additional rent is due at the same time the rent is due under paragraph 3 of the Sublease.

10. ALTERATIONS. (a) Sublessee shall not make any alterations to the Premises without City's prior written consent, which shall not be unreasonably withheld. Requests for approval of alterations shall be made in writing and shall not be unreasonably withheld. Requests for approval of alterations shall be made in writing and shall include three (3) copies of the plans and specifications. The city will approve or disapprove the proposed alterations within thirty (30) days. Approval of the alterations shall not constitute a building permit, nor shall a building permit constitute approval of the alterations. Any alterations (except Sublessee's trade fixtures) shall remain on and be surrendered with the premises on expiration or termination of this Sublease, except that City can elect at any time to require Sublessee to remove any alterations that Sublessee has made to the Premises. If City so elects, Sublessee, at Sublessee's expense, shall restore the Premises to the condition designated by City in its election, before the last day of the term, or within thirty (30) days after notice of election is given, whichever is later. If Sublessee proceeds to make any approved alterations to the Premises as provided in this paragraph, Sublessee shall notify city no less than five (5) days prior to the commencement of the work.

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

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

12. INDEMNITY. (a) Sublessee shall protect, indemnify and hold City and DOT/PF harmless from all damages, including costs and attorneys' fees, arising out of any injury to or death of any person or

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

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

13. AVIATION LIABILITY, PUBLIC LIABILITY, PROPERTY DAMAGE, WORKERS' COMPENSATION, AND OTHER NSURANCE.

(a) Sublessee, at Sublessee's expense, shall maintain airline/aircraft/airport public liability insurance with policy limits not less than that required by statute.

(b) Sublessee, at Sublessee's expense, shall maintain comprehensive general liability insurance with a single combined liability limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) per person, THREE MILLION DOLLARS (\$ 3,000,000.00) per occurrence for personal injury or death and property damage arising from one occurrence in the amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) insuring against all liability of sublessee, its employees, and authorized representatives, arising out of or in connection with sublessee's use or occupancy of the premises.

(c) All aviation and comprehensive general liability insurance policies shall insure performance by Sublessee of the indemnity provisions of paragraph 12; shall name City and DOT/PF as additional insureds; shall include a waiver of subrogation by the insurer against City and DOT/PF; and shall not contain any exclusion from coverage for Sublessee's liability for damages or loss incurred by City or DOT/PF because of their status as additional insureds

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

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

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

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

(c) Sublessee shall not discharge, leak or emit, or permit its authorized representatives, customers, invitees or sublessees to discharge, leak or emit, any material into the atmosphere, ground, sewer system or any body of water, if such material does or may, unlawfully pollute or contaminate the same, or may unlawfully adversely affect (i) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (ii) the condition, use or enjoyment of the Property or any other real or personal property. The preceding sentence only applies to Sublessee's use of and operations on the Property.

(d) If any such discharge, leak, spill, emission, or pollution (referred to in subparagraph 14(c) above) occurs upon or from the Property during the Sublease term or any holdover, Sublessee will immediately notify City and all appropriate federal, state, and local authorities, and will act immediately to contain the spill, repair any damage, absorb and clean up the spill area and restore the Property to comply with the applicable portions of any federal, state, or local law or regulation then in effect.

(e) Sublessee hereby agrees that it shall be fully liable for all costs and expenses related to the handling, use, storage and disposal of hazardous material brought or kept on the property by the sublessee, its authorized representatives, customers, invitees and sublessees, and the Sublessee shall give immediate notice to the City of any violation or suspected violation of the provisions of subparagraphs 14(a), (b), (c) and (d).

15. INDEMNITY FOR USE OF HAZARDOUS MATERIAL. (a) Sublessee shall protect, indemnify and hold City and DOT/PF and their officers, officials, and other employees harmless from and against 0 any claims, demands, penalties, fines, judgments, settlements, liabilities, losses, damage, costs and expenses (including, without limitation, attorney, consultant and expert fees, court costs and other litigation expenses).

(b) City shall protect, indemnify and hold Sublessee and its directors, officers, and other employees harmless from and against any Environmental Damages arising out of or related to 9i) the presence, disposal or release of any hazardous material on or impacting the property; and (ii) any bodily injury (including death) or property damage (real or personal) caused by such presence, disposal or release, but only to the proportionate extent such Environmental Damages shall have been caused by or contributed to by fault or other legal responsibility on the part of city or its employees, agents, customers, invitees or contractors.

(c) For the purposes of paragraphs 1 and 15, "Hazardous material" is defined as any substance that is toxic, ignitable, reactive, or corrosive that is regulated by any local government; the State of Alaska, or the United States government. "Hazardous 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, polychlorobiphenyles ("PCB's") and petroleum and petroleum products.

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

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

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

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

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

right to terminate this Sublease by notice to the other party given at any time within thirty (30) days after the date of such destruction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Distrain for rent due.

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

(c) Declare the term of this Sublease ended.

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

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

(f) If Sublessee shall at any time fail to make any payment or perform any other action in part to be made or performed under this Sublease, City may, but shall not be obligated to, and without waiving or releasing Sublessee from any obligation under this Sublease, make such payment or perform such other

act as may be reasonable in the circumstances, and in connection therewith to pay expenses and employ counsel.

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

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

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

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

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

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

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

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

23. BANKRUPTCY OR INSOLVENCY. (A) In the event that Sublessee shall file a petition, or an order for relief is entered against Sublessee, under Chapter 7 of the Bankruptcy Code, and the Trustee of

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

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

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

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

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

B) within thirty (30) days from the date of such assumption the Trustee or debtor-in-possession will cure all not-monetary defaults under this Sublease, or if the non-monetary default requires more than thirty (30) days to cure, the Trustee or debtor-in-possession will within thirty (30) days commence and proceed with diligence and continuity to cure the non-monetary defaults under this Sublease.

2) The Trustee or the debtor-in-possession has compensated, or has provided to City adequate assurance (as defined hereunder) that within ten (10) days from the date of assumption City will be compensated for any pecuniary loss sent to the Trustee or debtor-in-possession.

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

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

(d) For the purposes of subparagraph (c) , adequate assurance shall mean: (i) City shall reasonably determined that the Trustee or the debtor-in-possession has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure City that the Trustee or debtor-in-possession will have sufficient funds to fulfill the obligations of Sublessee under this Sublease; and (ii) An order shall have been entered segregation sufficient cash payable to City and/or there shall have been granted a valid and perfected first lien and security interest in property of Sublessee, Trustee or debtor-in-possession, acceptable as to value and kind to City, to secure City the obligation of the Trustee or debtor-in-possession to cure the monetary and/or non-monetary defaults under this Sublease within the time period set forth above.

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

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

- 1) The assignee has submitted a current financial statement audited by a certified public accountant which shows a net worth and working capital in amounts determined to be sufficient by City to assure the future performance by such assignee of Sublessee's obligations under this Sublease;
- 2) If requested by City, the assignee shall have obtained guarantees in form and substance satisfactory to City from one or more persons whom City determines to be credit worth;
- 3) The assignee has submitted in writing evidence, satisfactory to City, of substantial business experience in business operations of the same kind and comparable size to the business contemplated under this Sublease; and
- 4) City has obtained all consents or waivers from any third party necessary to permit such assignment under any lease or agreement by which City is bound.

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

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

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

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

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

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

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

(a) To name or to change the name of the Building.

(b) To install and maintain or to allow installation and maintenance of signs on the exterior or interior of the Building, excluding the interior of the Premises.

(c) To have pass keys to the Premises.

(d) To have access to the Premises for purposes of inspection upon reasonable prior notice.

(e) On reasonable prior notice to Sublessee, to exhibit the Premises to prospective tenants during the last six (6) months of the term of this Sublease, and to any prospective purchase, mortgagee, or assignee of any mortgage on the Building and to other having a legitimate interest at any time during the term of this Sublease.

(f) At any time in the event of an emergency and otherwise at reasonable times, to take any and all measures, including inspections, repairs, alterations, additions, and improvement to the Premises or to the Building as may be necessary or desirable for the safety, protection or preservation of the Premises or the Building or City's interest, or as may be necessary or desirable in the operation or improvement of the building, or in order to comply with laws, and requirement of governmental or other authority.

28. ESTOPPEL CERTIFICATES. Either party shall at any time and from time to time upon not less than fifteen (15) days prior request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Sublease is unamended and in full force and effect (or, if there has been any amendment thereof that the same is in full force and effect as amended and stating the amendment or amendments). That there are no defaults existing (or if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.

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

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

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

If to City:

City Manager's Office
Airport Terminal manager, City Hall
491 East Pioneer Ave.
Homer Alaska 99603-7624
Telephone: 907.235.8121
E-mail: citymanager@ci.homer.ak.us

If to Sublessee:

Kenai Aviation Operations LLC
Jacob Caldwell
101 N. Willow St
Kenai AK 99611
Telephone: 907.283.4124
E-mail: jacob@kenaiaviations.com

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

If in an emergency, a secondary contact person on behalf of each party, and aside for the contacts listed above, will be:

City of Homer
Attn: Building Maintenance Division
491 East Pioneer Ave, Homer AK
Telephone: 907.235.3170
E-mail: publicworks@cityofhomer-ak.gov

Kenai Aviation Operations LLC
101 N. Willow St
Kenai AK 99611
Telephone: 907.283.4124
E-mail: Jacob@kenaiaviation.com

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

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

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

34. MISCELLANEOUS PROVISIONS.

- (a) Time is of the essence of each provision of this Sublease.
- (b) This Sublease shall be binding on and inure to the benefit of the parties here to and their respective successors and assigns, except as otherwise provided in the Sublease.
- (c) This Sublease shall be governed by and construed and enforced in accordance with the laws of the State of Alaska.
- (d) This Sublease contains all the agreements of the parties and cannot be amended or modified except by a written agreement signed by the parties hereto.
- (e) It is understood and agreed that this Sublease shall not be binding until and unless all parties have signed it.

- (f) If Sublessee is a corporation, Sublessee shall deliver to City and DOT/PF on execution of this Sublease a certified copy of a resolution of its board of directors authorizing the execution of this Sublease and naming the officers that are authorized to execute this Sublease on behalf of the corporation or other proof reasonably satisfactory to City and DOT/PF.
- (g) Any litigation arising out of the performance of the parties under this Sublease, or its interpretation, shall be brought in the Superior Court for the State of Alaska, Third Judicial District at Homer.
- (h) All provisions contained in this Sublease, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- (i) This Sublease may be executed in several counterparts, each of which shall be deemed an original and may be used as such, and such counterparts shall constitute but one and the same instrument.

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

- (a) This agreement is subject to requirements of the U/S/ Department of Transportation's regulations, 49 CFR Part 23, Subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award of performance of any concession agreement covered by 49 CFR Part 23, Subpart F.
- (b) The concessionaire agrees to include the above statements in any subsequent concession agreement that it enters and cause those businesses to similarly include the statements in further agreements.

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

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

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

39. TERMINAL CHANGES AND IMPROVEMENTS. (a) The Sublessee understands and agrees that the requirements of the Building as an airport terminal in such matters as passenger volume, freight

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

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

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

(d) In the event Sublessee is required to move to new premises, City will exert its best efforts to provide new premises comparable to the Premises but in the event Sublessee reasonably believes the move will have a substantially adverse effect on the activities or business of the Sublessee conducted in the premises, the Sublessee may terminate this Sublease by giving written notice of termination to the City within thirty (30) days after the City has given the Sublessee the foregoing notice that the Sublessee must move.

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

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

Sublessor:

CITY OF HOMER

By: _____
Rob Dumouchel, City Manager

Sublessee:

KENAI AVIATION OPERATIONS LLC

By: _____
(Name, Title)

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 20__, by _____, City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.

Notary Public in and for Alaska
My Commission Expires:

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 20__, by _____, as _____ (title) of _____ (name of entity) on behalf of _____ (name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

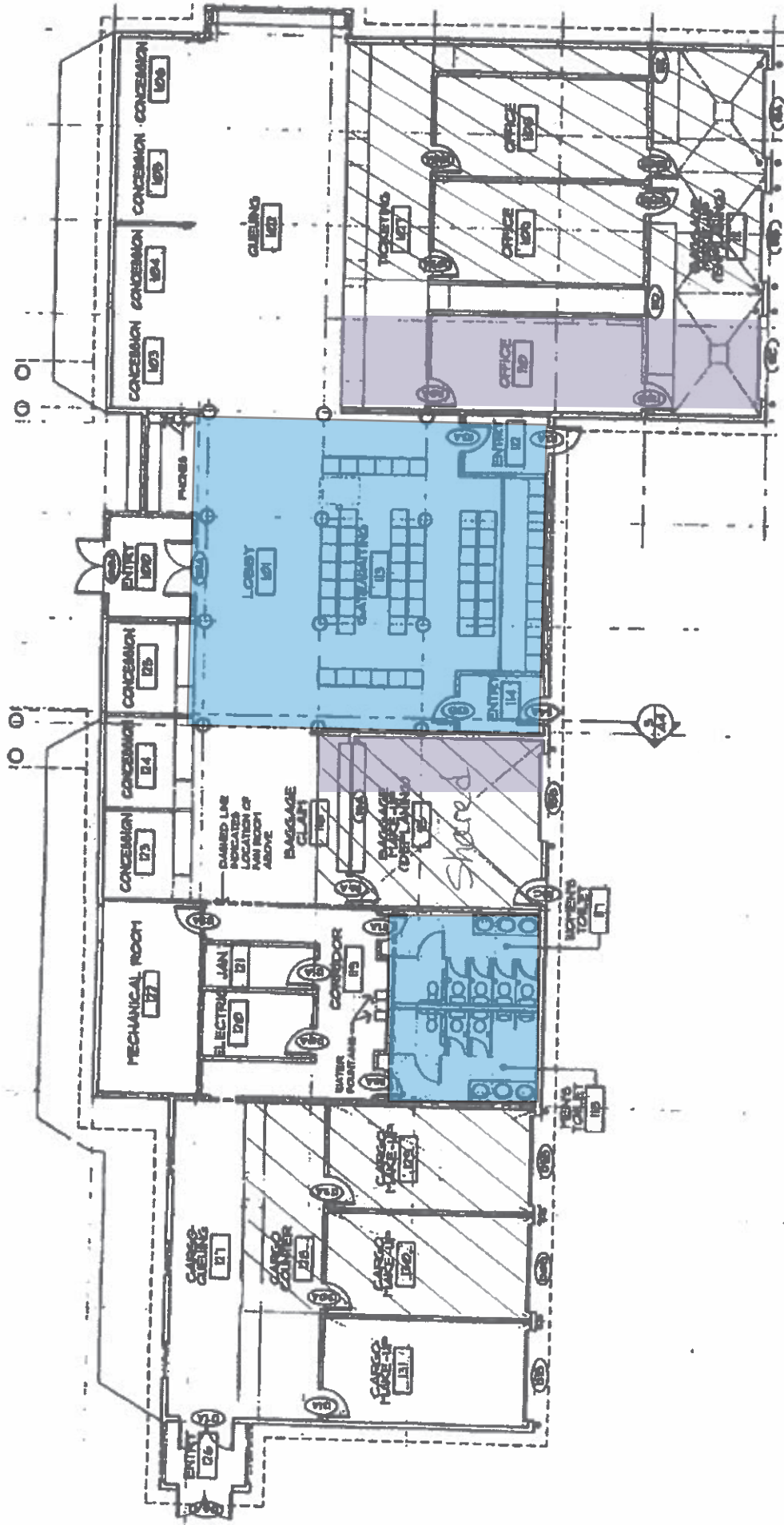
EXHIBIT A

DESCRIPTION OF SUBLEASED PREMISES

The description of the Leased Premises is as follows:

Office and ticket area #110 with baggage make-up area (enplaning) directly behind office area #110. One-third of the baggage make-up area (deplaning) #115. Cargo make-up area #131 directly behind office and ticket area #110. Total area consisting of 733 square feet, in the Homer Airport Terminal Building, Homer Airport located in Township 6S, Range 13W, Seward Meridian, Section 21, Homer recording District, Homer, Alaska, all situated on Lot 5A, Block 800, HOMER AIRPORT TRACTS according to the official plats on file with the State of Alaska, Department of Transportation and Public Facilities, Division of Aviation. The attached drawings depict the Premises being subleased (shaded in purple) along with the common areas of the Building that are used by other sublessees and the City.

**City of Homer
Airport Terminal Floor Plan**



Common Areas (+ all public corridors)

Main counter + 1/3 shared baggage = 733sq ft
 = \$2866.03 per month x 12 = \$34,392.36 per annum

EXHIBIT B

SPECIAL COVENANTS

1. This Sublease does not include any right of renewal
2. In addition to the uses authorized in paragraph 4 of the Sublease, Sublessee is authorized to conduct aircraft fueling operations in conformance with the requirements of the Prime Lease, as amended by Supplement No. 1. By conducting aircraft fueling operations, Sublessee, with respect to Sublessee's aircraft fueling operations, voluntarily assumes all responsibilities and liabilities assigned to the "Lessee" in Supplement No. 1, and further agrees to hold harmless, defend, and indemnify the City and DOT/PF from and against any and all losses, liabilities, damages, claims, costs, expenses and attorney fees, resulting from or arising out of Sublessee's aircraft fueling operations or its breach in performance of the obligations of the "Lessee" under Supplement No. 1, or both. Nothing contained in this paragraph shall be construed as any limitation of any other hold harmless, defense, or indemnity provision of the Lease, and in the case of any conflict between such provisions, the provision granting the greater protection to the City shall control.

EXHIBIT C
PRIME LEASE