



MEMORANDUM

Resolution 24-068, A Resolution of the City Council of Homer, Alaska Approving a Lease Assignment from Y&C, LLC to Berth II, Inc. for a New 20 Year Lease for Parcel #18103432, Lot 32 as shown on Plat No. 89-34 at the Annual Rate of \$23,653.44 and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager.

Item Type: Action Memorandum
Prepared For: Mayor Castner and Homer City Council
Date: May 30, 2024
From: Roslyn Kriegh, Port Property Associate
Through: Melissa Jacobsen, Interim City Manager

Requested Action:

Review lease assignment application submitted by Berth II Inc. in regards to Lot #18103432, currently leased by Y & C LLC.

Background:

Berth II Inc. has submitted a request for Assignment of the Lease currently held by Y & C LLC. of lot #18103432, located at 4400 Homer Spit Road as a part of the purchase of the building. Y & C LLC.'s current lease ends on January 31st, 2039 with two five (5) year extension periods available. Berth II Inc. is requesting a standard 20-year lease with two five (5) year extensions, thus ending in 2044. All other conditions of the current lease would remain the same. Berth II Inc., representing the Southwest Alaska Pilots Association, has stated they intend to continue subleasing the existing business space on the 1st floor, in addition to establishing sleeping quarters and administrative office space for their pilots and crew (2nd floor). Per Homer City Code 18.08.110, the current lease is in compliance and the leasing history has demonstrated that contractual obligations have been satisfactorily met, please see attached Letter of Good Standing.

The Port and Harbor Commission made a motion of support for assigning this lease to Berth II Inc, please see attached meeting minutes.

Recommendation:

Recommend the City Council pass Resolution 24-XXX, assigning the lease from the current tenant, Y & C LLC, to Berth II Inc.

Attached:

Lease Assignment Application submitted by Berth II Inc.
Draft Lease with Berth II Inc.
Letter of Good Standing regarding Y & C LLC.
Port and Harbor Commission May 22nd, 2024 meeting minutes



City of Homer

www.cityofhomer-ak.gov

Port and Harbor

4311 Freight Dock Road
Homer, AK 99603

port@cityofhomer-ak.gov

(p) 907-235-3160

(f) 907-235-3152

**CITY OF HOMER
LEASE APPLICATION CHECKLIST**

May 17, 2024

Applicant Name:

Synopsis: Berth II Inc. has submitted a completed Lease Application for lot #18103432, located at 4400 Homer Spit Rd. This property includes a two-story 7,392 square foot building on a 24,639 square feet lot. Berth II Inc.'s proposal is to continue subleasing the existing business space on the 1st floor, in addition to establishing sleeping quarters and administrative office space for their pilots and crew (2nd floor).

Action:

- ☒ Lease approval.
- ☐ Lease approval with conditions. Explain. Contingent on securing
- ☐ Lease denial. Explain.
- ☐ Lease application incomplete.

Melissa Jacobsen

Melissa Jacobsen, Interim City Manager

Date

A. A responsive lease application / proposal shall include:

1. A completed application form provided by the City:

| | | | |
|---|----|-----|------------|
| YES <input checked="" type="checkbox"/> | NO | N/A | INCOMPLETE |
|---|----|-----|------------|

NOTES:

2. Any applicable fees:

| | | | |
|---|----|-----|------------|
| YES <input checked="" type="checkbox"/> | NO | N/A | INCOMPLETE |
|---|----|-----|------------|

NOTES:



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3. A clear and precise narrative description of the proposed use of the property:

| | | | |
|-------|----|-----|------------|
| YES ✓ | NO | N/A | INCOMPLETE |
|-------|----|-----|------------|

NOTES:

4. A specific time schedule and benchmarks for development:

| | | | |
|-----|----|-------|------------|
| YES | NO | N/A ✓ | INCOMPLETE |
|-----|----|-------|------------|

NOTES:

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:

| | | | |
|-----|----|-------|------------|
| YES | NO | N/A ✓ | INCOMPLETE |
|-----|----|-------|------------|

NOTES:

6. Any other information that is directly pertinent to the proposal scoring criteria contained herein:

| | | | |
|-------|----|-----|------------|
| YES ✓ | NO | N/A | INCOMPLETE |
|-------|----|-----|------------|

NOTES:

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,



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partnership and corporation statement, certificate of good standing issued by an entity's state of domicile, and references:

☒ Applicant information

☐ Plot Plan

☐ Development Plan

☒ Insurance

☐ Proposed Subleases

☐ Environmental Information

☒ Agency approvals and permits

☒ Financial Information (Financial Statement **REQUIRED**, Surety, bankruptcy, pending litigation are situational.)

☐ Partnership information and a copy of the partnership agreement OR

☒ Corporation, LLC, or Non-profit information and a copy of the Articles of Incorporation and Bylaws

☒ Certificate of good standing issued by the entity's state if domicile

☒ Appropriate References

| | | | |
|---|----|-----|------------|
| YES <input checked="" type="checkbox"/> | NO | N/A | INCOMPLETE |
|---|----|-----|------------|

NOTES:

8. Any other information required by the solicitation or request for proposals:

| | | | |
|---|----|-----|------------|
| YES <input checked="" type="checkbox"/> | NO | N/A | INCOMPLETE |
|---|----|-----|------------|

NOTES:



City Lease Application For City-Owned Real Property

Homer Port & Harbor
4311 Freight Dock Road
Homer, AK 99603
Phone: (907)235-3160
Fax: (907)235-3152
port@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: | 4400 HOMER SPIT ROAD | | |
| Square Footage: | <input checked="" type="checkbox"/> Full Lot <input type="checkbox"/> Portion of Lot | KPB Parcel No.: | 18103432 |
| Legal Description of Property: | T7S R 13W SEC 7 SEWARD MERIDIAN HM 0890034 LOT 32 Homer Spit Amended | | |

Applicant Information

| | |
|-------------------------------------|---------------------------|
| Business Name: | Berth II, Inc. |
| Representative's Full Name & Title: | John Stewart President |
| Mailing Address: | PO Box 3147 |
| City, State, ZIP Code: | Homer, AK 99603 |
| Phone Number(s): | 907-235-8783 |
| Email: | office@swpilots.net |

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 type="checkbox"/> Yes – As of what date: | |
| <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 checked="" type="checkbox"/> | Corporation – Attached documentation must provide the full names of Officers and Principal Stockholders (10%+), their addresses, and share percentages. |
| Date of Organization: 08/18/1993 Type of Corporation: S Corp | |
| Is Corporation authorized to do business in Alaska? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – As of what date: 08/18/1993 | |
| Corporation is held: <input checked="" 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: SEE ATTACHED | <input checked="" 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 checked="" 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 checked="" 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 your 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. |
| 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. |
| 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. |

| Lease Proposal | |
|---|--|
| Type of Business/ Proposed Use of the Property: | ADMINISTRATIVE OFFICES, MAIN BASE OF OPERATIONS + CONTINUATION OF GENERAL STORE / SPACE BELOW. |

| | |
|---|---|
| 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): <u>20 YEAR</u> No. of Options to Renew: <u>2</u> |
| Property Plan: <u>SEE ATTACHED</u> | <input checked="" 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: <u>SEE ATTACHED/N/A.</u> | 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 checked="" type="checkbox"/> No In your written narrative, explain why. |
| City Planning & Other Agency Approvals: <u>N/A</u> | 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 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 <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. <input type="checkbox"/> Attach any relevant documentation that verifies completion or pending status. |

| | |
|--|--|
| <p>Insurance Requirements:</p> <p>SEE ATTACHED</p> | <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> |
| <p>Benefits & Impacts on Community:</p> | <p><input checked="" 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? |
| <p>Applicant References:</p> | <p><input checked="" 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 |
| <p>Additional Information:</p> | <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

| |
|---|
| <p><input checked="" type="checkbox"/> Written Narrative</p> |
| <p><input type="checkbox"/> Business Entity and Licensing Information</p> <ul style="list-style-type: none"> • State of Alaska Business License • Current State of Alaska Biennial Report • If Partnership: Statement of Partnership/Partnership Agreement • If Corporation: Articles of Incorporation & Bylaws • Any additional documentation concerning the formation or operation of the entity |
| <p><input type="checkbox"/> Financial Information</p> |
| <p><input type="checkbox"/> Property Plan – Detailed Schematic of Property - NO CHANGES TO CURRENT PLAN</p> |
| <p><input type="checkbox"/> Development Plan documents/plans, if any NA</p> |
| <p><input type="checkbox"/> Proof of Insurability; verification that insurance can be provided at signing of lease</p> |

☐ 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:  Date: 15 May 2024

Printed Name & Title: JORDAN GOULD SECRETARY/TREASURER

Office Use Only

| | | |
|--|--|------------------------|
| Received By & Date: <u>5/16/2024</u> | Fee Processed: \$ <u>500.00</u> | Date: <u>5/16/2024</u> |
| Date Application Accepted as Complete/Submitted for Review: <u>5/17/2023</u> | Application Timeout Date: (1 year from receipt) <u>5/16/2025</u> | |
| Submitted for Dept. Review: <input type="checkbox"/> Planning <input checked="" type="checkbox"/> Port & Harbor <input type="checkbox"/> Economic Development <input type="checkbox"/> Finance <input type="checkbox"/> Public Works | | |
| Submitted for City Manager Review: <u>5/17/2023</u> <input checked="" type="checkbox"/> Approved on: <u>5/20/2024</u> <input type="checkbox"/> Denied on: | | |
| For Existing Leases Exempt from Competitive Bidding: | Current Lease Expires with No Options to renew: <u>N/A</u> | |
| | 6 mos. Prior to date of lease termination (Council Approval Deadline): <u>N/A</u> | |
| | Request received within 12 to 18 mo. timeframe from expiration of lease date: <input type="checkbox"/> Yes <input type="checkbox"/> No | |



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/15/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| PRODUCER Chinook Insurance Group, LLC 10002 Aurora Avenue N, Suite 36 PMB 315 Seattle, WA 98133 | CONTACT NAME: Chris Trainer PHONE (A/C, No, Ext): (206) 660-3500 E-MAIL ADDRESS: chris@chinookins.com FAX (A/C, No): | | | | | | | | | | | | | | |
|---|--|-------------------------------|--------|---|--|------------|--|------------|--|------------|--|------------|--|------------|--|
| INSURED Berth II, Inc PO Box 3147 Homer, AK 99603 | <table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Endurance American Insurance Group</td><td></td></tr><tr><td>INSURER B:</td><td></td></tr><tr><td>INSURER C:</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A: Endurance American Insurance Group | | INSURER B: | | INSURER C: | | INSURER D: | | INSURER E: | | INSURER F: | |
| INSURER(S) AFFORDING COVERAGE | NAIC # | | | | | | | | | | | | | | |
| INSURER A: Endurance American Insurance Group | | | | | | | | | | | | | | | |
| INSURER B: | | | | | | | | | | | | | | | |
| INSURER C: | | | | | | | | | | | | | | | |
| INSURER D: | | | | | | | | | | | | | | | |
| INSURER E: | | | | | | | | | | | | | | | |
| INSURER F: | | | | | | | | | | | | | | | |

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------|----------|----------------|-------------------------|-------------------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | OPK10015116303 | 01/01/2024 | 01/01/2025 | EACH OCCURRENCE \$ 1,000,000 |
| | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 |
| | | | | | | | MED EXP (Any one person) \$ 5,000 |
| | | | | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | | | | | | | GENERAL AGGREGATE \$ 2,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | | | | | | PRODUCTS - COMP/OP AGG \$ 1,000,000 |
| | | | | | | | |
| | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ |
| | <input type="checkbox"/> ANY AUTO | | | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) \$ |
| | <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | | |
| | UMBRELLA LIAB <input type="checkbox"/> OCCUR | | | | | | EACH OCCURRENCE \$ |
| | EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE | | | | | | AGGREGATE \$ |
| | DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/> | | | | | | |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N <input type="checkbox"/> N / A | | | | | | E.L. EACH ACCIDENT \$ |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Insurance for City of Homer

CERTIFICATE HOLDER**CANCELLATION**

City of Homer

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Christopher Trainer

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Lease Application Narrative: Berth II

4400 Homer Spit Road, Homer, Alaska

Property Plan and Proposed Utilization

Berth II (a wholly owned subsidiary of Southwest Alaska Pilots Association, SWAPA) would like to propose the leasing of 4400 Homer Spit Road as our main administrative headquarters with rental space below. The property spans an approximate total of 7392 square feet, strategically situated on Homer Spit with easy access to essential maritime and logistical operations. Berth II operates properties in Seward, Valdez, Anchorage, and the current main office located in Homer at 1230 Ocean Drive Homer, AK.

The existing building on the premises will be utilized primarily for our administrative offices and as accommodations for pilots prior to assignments occupying the upper levels of the structure. The lower level is designated for year-round rental space, which we aim to offer to local businesses, fostering community growth and economic development.

The initial work planned to be completed will consist of any repairs to health and safety items as outlined in the due diligence buyers inspection.



May 17, 2024

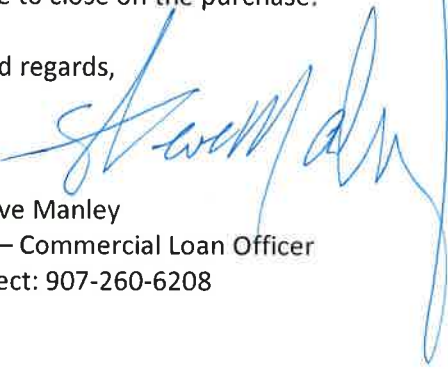
City of Homer
Port & Harbor
4311 Freight Dock Rd.
Homer, AK 99603

RE: Berth II, Inc. documentation of financial backing

To whom it may concern,

Berth II, Inc. and related companies have an established commercial banking relationship with Northrim Bank. We are in process of providing capital for Berth II, Inc. to close on the purchase of property at 4400 Homer Spit Rd. Based on our working relationship with Berth II and related companies, and knowledge of their financial resources, we can provide a high level of assurance that Berth II, Inc. will be able to close on the purchase.

Kind regards,


Steve Manley
VP – Commercial Loan Officer
Direct: 907-260-6208

44384 Sterling Hwy.
Suite 101
Soldotna, Alaska 99669
Phone: (907) 260-6208 • (800) 478-2265
northrim.com



Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business, and Professional Licensing

PO Box 110806, Juneau, AK 99811-0806

This is to certify that

BERTH II, INC.

PO BOX 3147, HOMER, AK 99603

owned by

BERTH II, INC.

is licensed by the department to conduct business for the period

October 16, 2023 to December 31, 2025
for the following line(s) of business:

53 - Real Estate, Rental and Leasing



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.
It is not transferable or assignable.

Julie Sande
Commissioner

Department of Commerce, Community, and Economic Development
DIVISION OF CORPORATIONS, BUSINESS &
PROFESSIONAL LICENSING

[State of Alaska](#) / [Commerce](#) / [Corporations, Business, and Professional Licensing](#) / [Search & Database Download](#) /
[Business License](#) / License #173338

LICENSE DETAILS

License #: 173338

[Print Business License](#)

Business Name: BERTH II, INC.

Status: Active

Issue Date: 08/26/1993

Expiration Date: 12/31/2025

Mailing Address: PO BOX 3147
HOMER, AK 99603

Physical Address: 1230 OCEAN DRIVE
HOMER, AK 99603

Owners

BERTH II, INC.

Activities

| Line of Business | NAICS | Professional License # |
|--------------------------------------|---|------------------------|
| 53 - Real Estate, Rental and Leasing | 531110 - LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS | |

Endorsements

No Endorsements Found

License Lapse(s)

If this business license lapsed within the last four years the lapsed periods will appear below. Lapsed periods are the unlicensed period between an expiration date and renewal date.

No Lapses on record for the last 4 years.

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[CONTACT US](#)



THE STATE
of **ALASKA**

Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806
(907) 465-2550 • Email: corporations@alaska.gov
Website: corporations.alaska.gov

AK Entity #: 52170D
Date Filed: 12/02/2022
State of Alaska, DCCED

FOR DIVISION USE ONLY

Domestic Business Corporation

2023 Biennial Report
For the period ending December 31, 2022

Web-12/2/2022 9:54:30 AM

Due Date: This report along with its fees are due by January 2, 2023

Fees: If postmarked before February 2, 2023, the fee is \$100.00.

If postmarked on or after February 2, 2023 then this report is delinquent and the fee is \$137.50.

Entity Name: BERTH II, INC.

Entity Number: 52170D

Home Country: UNITED STATES

Home State/Prov.: ALASKA

Physical Address: 1230 OCEAN DR, HOMER, AK 99603

Mailing Address: PO BOX 3147, HOMER, AK 99603

Registered Agent information cannot be changed on this form. Per Alaska Statutes, to update or change the Registered Agent information this entity must submit the Statement of Change form for this entity type along with its filing fee.

Name: Matthew Michalski

Physical Address: [REDACTED]
ANCHORAGE, AK 99502

Mailing Address: [REDACTED]
ANCHORAGE, AK 99502

Officials: The following is a complete list of officials who will be on record as a result of this filing.

- **Provide all officials and required information. Use only the titles provided.**
- **Mandatory Officers (3) and Directors (1), who must be individuals:** this entity must have a President, Secretary, and Treasurer. The President and Secretary cannot be the same person unless the President is 100% Shareholder. This entity must have at least one (1) Director. Provide all the individuals who are directors.
- **Shareholders:** the entity must provide all Shareholders who own 5% or more of the Issued Shares. Shareholders may be an individual or another entity.
- **Alien Affiliates:** the entity must provide all Alien Affiliates (non-U.S.), which may be an individual or another entity.

| Full Legal Name | Complete Mailing Address | % Owned | Alien Affiliate | Assistant Secretary | Assistant Treasurer | Director | President | Secretary | Shareholder | Treasurer | Vice President |
|--------------------------------|------------------------------------|---------|--------------------|------------------------|------------------------|----------|-----------|-----------|-------------|-----------|-------------------|
| James Cunningham | [REDACTED], HOMER, AK 99603 | 6.66 | | | | X | | | X | | X |
| Peter Garay | [REDACTED], HOMER, AK 99603 | 6.67 | | | | | | | X | | |
| Ian Maury | [REDACTED], ANCHORAGE, AK 99501 | 6.66 | | | | | | | X | | |
| Matthew Michalski | [REDACTED], ANCHORAGE, AK 99502 | 6.66 | | | | X | | | X | | |
| CHRISTOPHER MITCHELL | [REDACTED], HOMER, AK 99603 | 6.66 | | | | X | | | X | | |
| MICHAEL O'HARA | [REDACTED], ANCHORAGE, AK 99507 | 6.67 | | | | | | | X | | |
| Jeffrey Pierce | [REDACTED], EAGLE RIVER, AK 99577 | 6.67 | | | | | | | X | | |
| R. O. Baker II Revocable Trust | [REDACTED], ANCHOR POINT, AK 99566 | 6.67 | | | | | | | X | | |
| Donal Ryan | [REDACTED], HOMER, AK 99603 | 6.67 | | | | X | | X | X | X | |
| C VINCENT TILLION | [REDACTED] HOMER, AK 99603 | 6.67 | | | | | | | X | | |
| Bryan Vermette | [REDACTED] SOLDOTNA, AK 99669 | 6.67 | | | | | | | X | | |
| CAROLYN VERMETTE | [REDACTED], KASILOF, AK 99610 | 6.66 | | | | | | | X | | |
| Andrew Wakefield | [REDACTED], ANCHORAGE, AK 99515 | | | | | X | X | | | | |
| WAKEFIELD REVOCABLE TRUST | [REDACTED], ANCHORAGE, AK 99515 | 6.67 | | | | | | | X | | |
| Ronald Ward, II | [REDACTED], ANCHORAGE, AK 99517 | 6.67 | | | | | | | X | | |
| Joshua Weston | [REDACTED], HOMER, AK 99603 | 6.67 | | | | X | | | X | | |

If necessary, attach a list of additional officers on a separate 8.5 X 11 sheet of paper.

Purpose: PROPERTY RENTALS

NAICS Code: 531110 - LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS

New NAICS Code (optional):

Issued Shares: The entity must provide the number of Issued Shares

- Do not leave Issued Shares blank.
- If there are Shareholders then you must provide a number of Issued Shares. Do not exceed the number of Authorized Shares.
- If there are no Issued Shares (and no Shareholders) then provide "0" or "zero" or "none".
- To change Class, Series, Authorized Shares, or Par Value submit an amendment.

| Class | Series | Authorized Shares | Par Value | Number of Issued Shares |
|--------|--------|-------------------|-----------|-------------------------|
| Common | | 50000 | 0.00000 | 15 |

Mandatory. Do not leave blank.

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

Name: Annie Wiard

State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations

**CERTIFICATE
OF
INCORPORATION**
Business Corporation

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, hereby certifies that duplicate originals of the Articles of Incorporation of

BERTH II, INC.

have been received in this office and are found to conform to law.

ACCORDINGLY, the undersigned, as such Commissioner of Commerce and Economic Development, and by virtue of the authority vested in him by law, hereby issues the Certificate of Incorporation and attaches hereto a duplicate original of the Articles of Incorporation.



IN TESTIMONY WHEREOF, I execute this certificate and affix the Great Seal of the State of Alaska on August 18, 1993.

Paul Fuhs

COMMISSIONER OF COMMERCE
AND ECONOMIC DEVELOPMENT

ARTICLES OF INCORPORATION

OF

BERTH II, INCORPORATED

Record
State of Alaska

AUG 10 1993

Department of Commerce
& Economic Development

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being over eighteen years of age, has formed a business corporation under and pursuant to the laws of the State of Alaska and does hereby certify:

ARTICLE I

The name of this corporation is Berth II, Inc.

ARTICLE II

The object and purposes for which this corporation is formed are as follows:

(a) This corporation shall have all the powers to do and transact any and all actions and have all of the powers mentioned and set forth directly or by inference in the Alaska Statutes, Title 10, Chapter 6, including AS 10.06.010.

(b) Without in any manner intending to limit the powers specified in the Alaska Statutes, this corporation, at its inception and as its main corporate purpose, shall engage in the business of Property development, rental, and any other legal activity within Alaska and elsewhere.

ARTICLE III

The authorized capital of this corporation shall be 50,000 shares of nonassessable common stock fully voting, fully participating.

There is no cumulative voting of shares.

ARTICLE IV

To the extent available, both retained earnings and paid-in capital may be used for the purchase and redemption of common stock issued by this corporation.

No holder of any stock of this corporation shall be entitled, as a matter of right, to purchase, subscribe for or otherwise acquire any new or additional shares of stock of the corporation of

any class, or any options or warrants to purchase, subscribe for or otherwise acquire any such new or additional share, or any shares, bonds, notes, debentures or other securities convertible into or carrying options or warrants to purchase, subscribe for or otherwise acquire any such new or additional shares.

Pursuant to AS 10.06.210(1)(c) regarding special qualifications of persons who may be shareholders, ownership of stock in this corporation is restricted and limited as follows:

(a) During any time that the corporation shall have elected to be taxed as a small business corporation under Subchapter S of the Internal Revenue Code, as amended, no person who is not qualified to be a shareholder as described in section 1361(c)(2)(A)(i) of the Internal Revenue Code (or treated as so described by reason of IRC section 1361(d) may acquire shares in the corporation unless all other shareholders first agree, in writing, to such acquisition. Such provisions of the Internal Revenue code, as amended, are hereby incorporated by reference.

(b) During any time that the corporation shall be bound by provision in its Bylaws or by an agreement with its shareholders restricting transfer of shares, no person may acquire shares in the corporation except in accordance with the terms of such Bylaws or agreement, a copy of which shall be available for inspection at the office of the corporation. The provisions of such Bylaws or agreement, as amended, are hereby incorporated by reference.

ARTICLE V

To the full extent permitted by law and subject only to those limitations expressly stated in AS 10.06.210(1)(M), no director of this corporation shall have any personal liability to the corporation or its shareholders for monetary damages for the breach of fiduciary duty as a director. This provision shall apply in addition to, and not in substitution for, indemnification provisions contained in this corporation's Bylaws or provided by contract.

ARTICLE VI

There are no alien affiliates.

ARTICLE VII

The address of the corporation's initial registered office is:

The name of the corporation's initial registered agent is:

Mark Hawker
P.O. Box 65
Homer, AK 99603

ARTICLE VIII

The management of the affairs and concerns of this corporation is hereby vested in its Board of Directors. The number of directors shall be fixed from time to time by the Bylaws. The name and address of the initial Board of Directors is:

Mark Hawker

[REDACTED]
Homer, AK 99603

Steven Hunnicutt

[REDACTED]
Anchorage, AK 99511

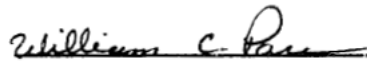
Mike Stone

[REDACTED]
Anchorage, AK 99501

ARTICLE IX

The name and address of the incorporator is: William C. Pace, [REDACTED],
Anchorage, AK 99518.

IN WITNESS WHEREOF, the undersigned, being the original incorporator hereinabove named, has signed these Articles of Incorporation, in duplicate, this 5th day of August, 1993.



William C. Pace

VERIFICATION

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, William C. Pace, say on oath or affirm that I have read the foregoing Articles of Incorporation and believe all statements made therein are true.

William C. Pace
William C. Pace

SUBSCRIBED AND SWORN TO or affirmed before me at Anchorage, Alaska, this 5th day of August, 1993.

James L. [Signature]
NOTARY PUBLIC in and for Alaska
My Commission Expires: 10-17-95

RESTATED BYLAWS

OF

BERTH II, INC.

Note: Throughout this document, all gender-specific terms are to be considered to refer to both the feminine and the masculine form.

ARTICLE I

Shareholders

Section 1. Annual Meeting. The annual meeting of the shareholders for the election of Directors and the transaction of such other business as may properly come before it shall be held at the principal office of the corporation in Homer, Alaska, or at such other place within or without the state of Alaska as shall be set forth in the notice of meeting. The meeting shall be held during the fourth quarter of each and every year. The Secretary (or Secretary/Treasurer) shall give, personally, by email or by mail, not less than seven (7) days nor more than sixty (60) days before the date of the meeting, written notice of the meeting, stating the place, date and hour of the meeting. The notice shall be addressed to the shareholder at his mailing or email address as it appears on the record of the shareholders of the corporation, unless he has filed with the Secretary (or Secretary/Treasurer) of the corporation a written request that notices intended for him be mailed to a different address, in which case it shall be mailed to the address designated in the request. Any and all notice of meetings may be waived by a shareholder by submitting a signed waiver, either before or after the meeting, or by attendance at the meeting.

Section 2. Special Meetings. Special meetings of shareholders may be called at any time by a majority of the Directors or by the President and must be called by the President upon the written request of any three (3) shareholders entitled to vote at such special meetings. Written notice of such meetings, stating the place of the meeting, within or without the state of Alaska, the date and hour of the meeting, the purpose or purposes for which it is called and the name of the person(s) by whom or at whose direction the meeting is called, shall be given not less than seven (7) nor more than sixty (60) days before the date set for the meeting. The notice shall be given to each shareholder of record in the same manner as notice of the annual meeting. No business other than that specified in the notice of meeting shall be transacted at any such special meeting. Notice of a special meeting may be waived by submitting a signed waiver or by attendance at the meeting.

Section 3. Quorum. The presence, in person, by teleconference or by proxy, of a majority of the shareholders (51% or more) shall be necessary to constitute a quorum for the transaction of business at all meetings of shareholders, except as may be otherwise provided in the Alaska Business Corporation Code. If, however, such quorum cannot be present or

represented at any meeting of the shareholders, the shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting to a future date at which a quorum shall be present or represented. At such adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally called.

Section 4. Record Date. The Directors may fix in advance a date, not less than seven (7) nor more than sixty (60) days prior to the date of any meeting of the shareholders or prior to the last day on which the consent or dissent of, or action by, the shareholders may be effectively expressed for any purpose without a meeting, as the record date for the determination of shareholders.

Section 5. Voting. A shareholder entitled to vote at a meeting may vote at such meeting in person or by a proxy, except as otherwise provided by law or by the Articles of Incorporation. Every shareholder shall be entitled to one (1) vote for each share standing in his name on the record of shareholders. Except as otherwise provided herein or in the Articles of Incorporation, all corporate action shall be determined by a majority of the votes cast at a meeting of shareholders by the holders of the shares entitled to vote thereon. Authority to make major decisions affecting the welfare and business of the corporation is reserved by the shareholders.

Section 6. Proxies. Every proxy must be dated and signed by the shareholder or by his attorney-in-fact and may be executed in writing, electronically or telephonically by the shareholder, or by his duly authorized attorney-in-fact. A proxy shall only be valid for the specific meeting referenced or for a specified amount of time, not to exceed eleven (11) months from the date of its execution, unless otherwise provided therein. Every proxy shall be revocable at the pleasure of the shareholder executing it, except where an irrevocable proxy is permitted by statute. Proxies shall be shareholders. Proxy voting shall be limited to those matters submitted to the tentative agenda. The proxy must be received by the President or his designee or the person presiding at the meeting at or before the time of convening the meeting; however, a shareholder present at a meeting who was called out by assignment or by other business prior to a vote, will be entitled to have a proxy with another shareholder. A proxy may state the agent shareholder's vote on one (1) or more issues, and such proxy shall be valid for one (1) meeting only, and the power to vote a proxy may be revoked by the person giving the proxy at any time prior to actual voting.

Section 7. Consents. Whenever, by a provision of statute or of the Articles of Incorporation or of these Bylaws, the vote of shareholders is required or permitted to be taken at a meeting thereof in connection with any corporate action, the meeting and the vote of shareholders may be dispensed with if all the shareholders who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such corporate action being taken. Such written consents shall be identical in content, and shall set out the action taken.

Section 8. Shareholders. Only full members of Southwest Alaska Pilots Association, may purchase the required number of shares to become an equal shareholder in

Berth II, Inc. Share price shall be established in the first quarter of each and every year pursuant to Article V, Sections 2 and 3.

Section 9. Balloting Procedures. Paper or electronic ballot, where required under these Bylaws, will be conducted as follows:

- (a) The ballot will be secret;
- (b) The ballot will be mailed or sent electronically to each shareholder of the Corporation, addressed to the shareholder at his mailing address or email address as it appears in the books of the Corporation; save that if direct hand delivery to the shareholder or delivery to the shareholder's mail distribution receptacle in the main office of the Corporation would be more expeditious than the U.S. mail, such ballots will be so delivered; and
- (c) Paper Ballot: The paper ballot will be returned to the principal office of the Corporation not more than twenty (20) days following the date of its mailing/email dissemination to each shareholder. Ballots not returned within this period of time will be considered invalid and will not be counted. A paper ballot will only be valid if at least two-thirds (2/3) of the shareholders cast ballots.
- (d) Electronic Ballot: The electronic ballot will be specifically conducted via an online voting portal and shall be returned to the relevant voting portal not more than fourteen (14) days following the date of its dissemination to each shareholder. Ballots not returned within this period of time will be considered invalid and will not be counted. An electronic ballot will only be valid if at least two-thirds (2/3) of the shareholders cast ballots.
- (e) It will be at the discretion of the Board of Directors whether they choose to submit a ballot via (c) or (d) above and the shareholders shall be apprised of the decision prior to the distribution of the ballot.

ARTICLE II

Directors

Section 1. Number and Qualifications. The Board of Directors shall consist of six (6) persons, who shall be of full age, unless the total number of shareholders shall be less than six (6), in which case the number of Directors shall equal the number of shareholders. The number of Directors may be changed by an amendment of the Bylaws.

Section 2. Manner of Election. The Directors shall be elected by paper or electronic ballot by a plurality vote, except as otherwise prescribed by statute. The Officers shall be elected at the annual meeting of the shareholders.

Section 3. Term of Office. The term of office of each Director shall be for one (1) year and shall commence from January 1 to December 31 or until the next annual meeting of the shareholders and until his successor has been duly elected and has qualified.

Section 4. Duties and Powers. The Board of Directors shall have control and management of the affairs and business of the corporation. The Directors shall in all cases act as a Board, regularly convened, and, in the transaction of business, the act of a majority present at a meeting, except as otherwise provided by law or the Articles of Incorporation, shall be the act of the Board, provided a quorum is present. The Directors may adopt such rules and regulations for the conduct of their meetings and the management of the corporation as they may deem proper, not inconsistent with law or these Bylaws.

It shall be the duty of the Board of Directors to:

- (a) Approve for payment all non-routine statements and accounts of the Corporation which are in excess of five thousand dollars (\$5,000). The Board of Directors will submit to the shareholders any issue of major importance, policy, or non-routine expenditure or project in excess of forty thousand dollars (\$40,000.00) that, in the exercise of good judgment, may be considered a major policy decision affecting the welfare or business of the corporation. A two-thirds (2/3) affirmative vote of the shareholders shall decide the issue. The shareholders may be polled by a director or an approved agent of the corporation either telephonically, by text, by email or by mail and the results shall be tabulated and retained as part of the official record. However, the Board of Directors does have the authority to approve necessary and emergency repairs on Berth II properties or equipment, without prior approval from the shareholders, when time is of the essence and if deemed that, to not move forward expeditiously, would be detrimental to the welfare and business of the Corporation.
- (b) Retain a certified public accountant to audit books and accounts of the Corporation and advise regarding fiscal matters;
- (c) Obtain legal counsel for advice regarding legal matters;
- (d) Maintain one or more bank accounts in the conduct of the business of the Corporation;
- (e) Tender to the shareholders the annual fiscal statement prepared by the certified public accountant;
- (f) Supervise, through the President or his designee, the maintenance of equipment, supplies, property, and the maintenance of full and complete files of the business activity of the Corporation.

Section 5. Meetings. The Board of Directors shall meet for the election or appointment of officers and for the transaction of any other business at the annual meeting of the

shareholders, and other regular meetings of the Board shall be held at such times as the Board may from time to time determine.

Special meetings of the Board of Directors may be called by the President at any time; he must, upon the written request of two (2) Directors, call a special meeting to be held not more than ten (10) days after the receipt of such a request.

Section 6. Notice of Meetings. No notice need be given of any regular meeting of the Board. Notice of special meetings shall be served upon each Director in writing sent by mail, addressed to him at his last known mailing address, at least seven (7) days prior to the date of such meeting, or served by electronic means, personal messenger, or comparable person-to-person communication given at least twenty-four (24) hours before the meeting. The notice of special meeting shall specify the time and place of the meeting, and the business to be transacted and the purpose of the meeting. At any meeting at which all of the Directors shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

Section 7. Place of Meetings. The Board of Directors may hold its meetings either within or without the state of Alaska, at such place as may be designated in the notice of any such meeting.

Section 8. Quorum. At any meeting of the Board of Directors, the presence of a majority of the Board shall be necessary to constitute a quorum for the transaction of business. However, should a quorum not be present, a lesser number may adjourn the meeting to some future time, not more than five (5) days later.

Section 9. Compensation. No Board member shall be entitled to any compensation for his attendance at, and participation in, board meetings or for any other reason.

Section 10. Vacancies. Any vacancy occurring in the Board of Directors by death, resignation or otherwise shall be filled promptly by a majority vote of the remaining Directors at a special meeting which shall be called for that purpose within five (5) days after the occurrence of the vacancy. The Director thus chosen shall hold office for the unexpired term of his predecessor and until the election and qualification of his successor.

Section 11. Removal of Directors. Any Director may be removed, either with or without cause, at any time, by a vote of the shareholders holding a majority of the shares then issued and outstanding and who were entitled to vote for the election of the Director sought to be removed, at any special meeting called for that purpose or at the annual meeting.

Section 12. Resignation. Any Director may resign his office at any time, such resignation to be made in writing and to take effect immediately, without acceptance.

ARTICLE III

Officers

Section 1. Officers and Qualifications. The officers of the corporation shall be a President, one (1) or more Vice Presidents, a Secretary, and a Treasurer (or Secretary/Treasurer) as the positions of Secretary and Treasurer may be combined and such other officers as the Board of Directors may determine. Any two (2) or more offices, except the offices of President and Secretary/Treasurer, may be held by the same person.

Section 2. Election. All officers of the corporation shall be elected annually by the Board of Directors, at its annual meeting of shareholders.

Section 3. Term of Office. All officers shall hold office until their successors have been duly elected and have qualified, or until removed as hereinafter provided.

Section 4. Removal of Officers. Any officer may be removed, either with or without cause, by the vote of a majority of the Board of Directors.

Section 5. Duties of Officers. The duties and powers of the officers of the corporation shall be as follows and shall hereafter be set by resolution of the Board of Directors:

President

(a) The President or, hereinafter, his designee shall preside at all meetings of the Board of Directors. He shall also preside at all meetings of the shareholders.

(b) He shall present, at each annual meeting of the shareholders and Directors, a report of the condition of the business of the corporation.

(c) He shall cause to be called regular and special meetings of the shareholders and Directors in accordance with the requirements of the statutes and of these Bylaws.

(d) He shall appoint, discharge and fix the compensation of all employees and agents of the corporation other than the duly elected officers, subject to the approval of the Board of Directors.

(e) He shall sign and execute all contracts in the name of the corporation and all notes, drafts or other orders for the payment of money.

(f) He shall sign all certificates representing shares.

(g) He shall cause all books, reports, statements and certificates to be properly kept and filed as required by law.

(h) He shall enforce these Bylaws and perform all the duties incident to the office and which are required by law, and, generally, shall supervise and control the business and affairs of the corporation.

Vice President

During the absence or incapacity of the President, the Vice President or, hereinafter, his designee, shall perform the duties of the President and, when so acting, shall hold all the powers and be subject to all the responsibilities of the office of President and shall perform such duties and functions as the Board may prescribe.

Secretary

(a) The Secretary or, hereinafter, his designee, shall keep the minutes of the meetings of the Board of Directors and of the shareholders in appropriate books.

(b) He shall attend to the giving of notice of special meetings of the Board of Directors and of all the meetings of the shareholders of the corporation.

(c) He shall be custodian of the records and seal of the corporation and shall affix the seal to the certificates representing shares and other corporate papers when required.

(d) He shall keep at the principal office of the corporation a book or record containing the names, alphabetically arranged, of all persons who are shareholders of the corporation, showing their places of residence, the number and class of shares held by them respectively and the dates when they respectively became the owners of record thereof. He shall keep such book or record and the minutes of the proceedings of the corporation's shareholders open daily, during the usual business hours, for inspection, within the limits prescribed by law, by any person duly authorized to inspect such records. At the request of the person entitled to an inspection thereof, he shall prepare and make available a current list of the officers and Directors of the corporation and their residence addresses.

(e) He shall sign all certificates representing shares and affix the corporate seal thereto.

(f) He shall attend to all correspondence and present to the Board of Directors at its meetings all official communications received.

(g) He shall perform all the duties incident to the office of Secretary of the corporation.

Treasurer

(a) The Treasurer or, hereinafter, his designee, shall have the care and custody of, and be responsible for, all the funds and securities of the corporation, and shall deposit such funds and securities in the name of the corporation in such bank accounts or safe deposit boxes as the Board of Directors may designate.

(b) He shall make, sign and endorse, in the name of the corporation, all checks, drafts, notes and other orders for the payment of money, and pay out and dispose of such under the direction of the President or the Board of Directors.

(c) He shall keep at the principal office of the corporation accurate books of account of all its business and transactions and shall, at all reasonable hours, exhibit books and accounts to any Director upon application at the office of the corporation during business hours.

(d) He shall render a report of the condition of the finances of the corporation at each regular meeting of the Board of Directors and at such other times as shall be required, and shall make a full financial report at the annual meeting of the shareholders.

(e) He shall further perform all duties incident to the office of Treasurer of the corporation.

(f) If required by the Board of Directors, he shall give such bond as they shall determine appropriate for the faithful performance of his duties.

Other Officers

Other officers shall perform such duties and have such powers as may be assigned to them by the Board of Directors.

Section 6. Vacancies. All vacancies in any office shall be filled promptly by the Board of Directors, either at regular meetings or at a meeting specially called for that purpose.

Section 7. Compensation of Officers. Officers shall serve without compensation.

ARTICLE IV

Seal

The Board of Directors shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the corporation and the state of incorporation.

ARTICLE V

Shares

Section 1. Certificates. The shares of the corporation shall be represented by certificates approved by the Board of Directors and signed by the President or a Vice President and by the Secretary or Secretary/Treasurer and sealed with the seal of the corporation or a facsimile. The certificates shall be numbered consecutively and in the order in which they are issued; and, in the margin of each certificate shall be entered the name of the person to whom the shares represented by each such certificate are issued, the number and class or series of such shares and the date of issue. Each certificate shall state that the corporation is organized under the laws of Alaska, the registered holder's name, the number and class of shares represented thereby, the date of issue and the par value of such shares or that they are without par value.

Section 2. Value of One Share of Stock. The value of one share of stock for the purchase of such share by a new shareholder, or sale of such share pursuant to the provisions of this article, or for other purposes which refer to this provision, shall be established on an annual basis and shall be based on the Gross Book Value as referenced in Section 3, below. Annual share valuation will be provided by the corporation's accountant.

Section 3. Transfer of Shares. The shares of the corporation shall be assignable and transferable only on the books and records of the corporation by the registered owner, or by his duly-authorized attorney, upon surrender of the certificate for the shares to the person or persons entitled thereto. Upon retirement of a shareholder, he shall transfer and assign his shares back to the corporation and he shall be paid the value of his shares as follows: the value of the shares shall be established during the first quarter of the year of retirement (gross book value as at December 31st of prior year). Their final share price shall be adjusted for any pro-rata earnings attributable to their shares from January 1 in year of retirement to buy-back date in year of retirement. One third (33.33%) of the final share price shall be paid to the shareholder in the year of retirement with the balance, which shall accrue simple interest at the Prime Rate plus 1% as published by Wells Fargo Bank NA, Anchorage on the date of retirement, paid in two (2) equal installments on the anniversary date of the retirement in the subsequent two years following retirement. A draft copy of the buy-back agreement is attached to these bylaws.

Section 4. Return of Certificates. All certificates for shares changed or returned to the corporation for transfer shall be marked "Canceled" by the Secretary (or Secretary/Treasurer), with the date of cancellation, and the transaction shall be immediately recorded in the certificate book opposite the memorandum of their issue. The returned certificates may be inserted in the corporate book.

Section 5. Installment Payments of Purchase Price. Purchase of a share on an installment basis shall be made pursuant to the following terms. The purchase price shall be the value of the stock as determined pursuant to Section 3, above, and shall be represented by a promissory note executed by the purchasing shareholder. Twenty five percent (25%) of that

value shall be required as a down payment and the remaining balance of the purchase price shall be amortized over three years, with simple interest at the Prime Rate plus 1% per annum (as published by Wells Fargo Bank NA, Anchorage) or more subject to approval by the board of directors. The down payment shall be paid within one month of becoming a full member of Southwest Alaska Pilots Association (SWAPA) and the first payment will on the first of the month after becoming a full member and equal installments payment made each month thereafter. Prepayment of all or any part of the principal may be made at any time without penalty. The share of stock sold shall be held by the corporation as security for full and timely payment of the purchase. As long as no default occurs in payments on the note, the purchaser shall be entitled to vote the share, and upon payment of the full purchase price under the terms of the note, the certificate for such share be delivered to the shareholder. The note repayment period may be extended by up to an additional two years (maximum five-year amortization period) at the discretion of the board of directors and pursuant to mitigating economic factors. Any such extension must be made by majority vote of the directors then in office. A draft copy of the promissory note is attached to these bylaws.

Section 6. Failure to Make Payments: Deductions. If a promissory shareholder fails to make timely payment pursuant to the terms set forth under Section 5 of this Article, the corporation may then deduct overdue payment from such shareholder's account and/or the shareholder's semimonthly member draw from the Southwest Alaska Pilots Association (SWAPA) until such time as the shareholder's payment obligations are current and/or the note balance becomes fully paid. Any such deduction shall be paid directly to the corporation. See Article III of SWAPA Bylaws for terms and conditions of deductions from member draws.

Section 7. Failure to Make Payment: Default. The promissory note shall additionally provide that if a promisor fails to make timely payment, then, in addition to the remedy described in Section 6 above, the board of directors shall have option of declaring the note in default. Written notice of such declaration shall be provided to the promisor. If the default is not cured within sixty calendar days after the notice of default is sent to the promisor, the entire sum of principal and interest remaining on the note shall become immediately due and payable. If a note upon which default has been cured is subsequently declared in default then the sum of principal and interest shall become immediately due and payable without opportunity to cure unless otherwise approved by the board of directors.

Section 8. Terms of Default. If a default is not timely cured, then the corporation may foreclose on the shareholder's share of stock, and such share shall revert to the corporation. Upon foreclosure, the corporation shall refund to the shareholder the smaller of 1) the value of the share as of the date of default or 2) the amount of principal paid by the promisor under the note. The amount to be refunded shall be reduced by the collection costs, including but not limited to attorney's fees, incurred by the corporation in connection with the default. Unless otherwise determined by the board of directors, the time and terms of such refund shall be made in accordance with Section 5 above. Notwithstanding the foregoing or any other provision under these bylaws, in the event of default the corporation shall have all available remedies provided by law.

ARTICLE VI

Dividends

The Board of Directors, at any regular or special meeting, may declare dividends payable out of the surplus of the corporation whenever, in the exercise of its discretion, it may deem such declaration advisable. Such dividends may be paid in cash, property or shares of the corporation.

ARTICLE VII

Bills, Notes, Etc.

All bills payable, notes, checks, drafts, warrants or other negotiable instruments of the corporation shall be made in the name of the corporation and shall be signed by such officer or officers as the Board of Directors shall from time to time by resolution direct.

No officer or agent of the corporation, either singly or jointly with others, shall have the power to make any bill payable, note, check, draft, warrant or other negotiable instrument, or endorse the same in the name of the corporation, or contract or cause to be contracted any debt or liability in the name and on behalf of the corporation, except as herein expressly prescribed and provided.

ARTICLE VIII

Offices

The principal office of the corporation shall be located at 1230 Ocean Drive, Suite 3, Homer, Alaska 99603; its mailing address is P.O. Box 3147, Homer, Alaska 99603. The Board of Directors may change the location of the principal office of the corporation and may, from time to time, designate other offices within or without the state of Alaska, as the business of the corporation may require.

ARTICLE IX

Amendments

These Bylaws may be altered, amended, repealed or new Bylaws adopted by a two-thirds (2/3) majority of the shareholders by paper or electronic ballot.

ARTICLE X

Waiver of Notice

Whenever, under the provisions of these Bylaws or of any statute, any shareholder or Director is entitled to notice of any regular or special meeting, or of any action to be taken by the corporation, such meeting may be held or such action may be taken without the giving of such notice, provided every shareholder or Director entitled to such notice in writing waives the requirements of these Bylaws with respect thereto.

ARTICLE XI

Fiscal Year

The fiscal year of the corporation shall begin on the 1st day of January and end on the 31st day of December in each year.

These Bylaws were first duly adopted by the corporation on the 1st day of January 1996; these bylaws are restated by the corporation in 2004 and duly amended in accordance with the dated catalogue of revisions attached to these Bylaws.

Secretary

Attest: _____
President

AMENDMENTS SINCE 12/01/2018

- I. 12/14/18 Per Board of Directors; amend Article V, Shares, Section 3, final share price including pro-rata earnings attributable in year of retirement.
- II. 09/29/20 Per Board of Directors; amend Article II, Directors, Section 1, Number and Qualifications, increasing the three (3) member board to six (6).
- III. 07/06/21 Multiple sections revised allowing for general cleanup of language and terminology in the Berth II Bylaws to endeavor to ensure consistency and clarity throughout document. Balloting Procedures added. Allowing for positions of Secretary and Treasurer to be combined (Secretary/Treasurer). Allowing for extension of note repayment for shareholders buying in to Corporation if mitigating circumstances warrant such extension. Clarification of terms for buy-in and buy-out terms. Additional duties for Board of Directors including expenditure limit. Bylaw amendments or repeal to be authorized by a 2/3 majority of shareholders.

**BERTH II, INC.
PO BOX 3147
HOMER, AK 99603
907-235-8783**

May 16, 2024

RE: Requested Credit References for City of Homer Land Lease Application; 4400 Homer Spit Road

Homer Electric Association
3977 Lake Street
Homer, AK 99603
907-235-8551

City of Homer
491 E. Pioneer Avenue
Homer, AK 99603
907-235-8121

Enstar Natural Gas
36225 Kenai Spur Highway
Soldotna, AK 99669
907-262-9334

Collins Excavation and Services, Inc.
55090 Finch Avenue
Homer, AK 99603
907-299-2625

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

AND

BERTH II INC.

Dated _____, 2024

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT (“Lease”) dated as of _____, 2024, between the CITY OF HOMER, an Alaska municipal corporation (“Landlord”), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and BERTH II INC. an Alaska corporation (“Tenant”), whose address is 4400 Homer Spit Road, Homer, Alaska, 99603.

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

RECITALS

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

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

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

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

ARTICLE 1. DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

(a) “Additional Rent” includes all amounts defined or referred to in this lease as additional rent, as well as all charges in the nature of rent such as taxes, utilities and insurance, regardless of whether such amounts are due directly to or collectible by Landlord or to a third party under the terms of this Lease or under applicable law and including any of the preceding amounts that Landlord pays to a third party on behalf of Tenant, before or after any event of default.

(b) “Annual Rent Adjustment” and “Annual Rent Adjustment Date” are defined in Section 4.01(b).

(c) “Base Rent” is defined in Section 4.01.

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

(e) “Council” means the City Council of the City of Homer, Alaska.

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

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

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

(i) “Extended Term” is defined in Section 3.05 if this Lease provides for extension at the option of the Tenant.

(j) “Five Year Rent Adjustment” and “Five Year Rent Adjustment Date” are defined in Section 4.01(a).

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

(l) “Initial Term” is defined in Section 3.01.

(m) “Lease Ordinance” means such ordinances or other portions and provisions of the Homer City Code as may be enacted from time to time to dictate Landlord’s policies and requirements in leasing real property, currently enacted as Chapter 18.08 of the Homer City Code, as such may be amended, reenacted, supplemented or recodified from time to time, and as used herein the term shall refer to the Lease Ordinance as currently in effect at the time its terms would have operative effect on this Lease.

(n) “Leasehold Mortgage” is defined in Section 13.01.

(o) “Property” is defined in Section 2.01.

(p) “Rent” means Base Rent plus any Additional Rent.

(q) “Qualified Mortgagee” is defined in Section 13.03.

(r) “Required Improvements” is defined in Section 6.02.

(s) "Term" means the Initial Term plus any Extended Term.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto and all documents, policies and endorsements delivered hereunder, including without limitation all copies of required insurance policies and/or endorsements, shall be deemed to be a part hereof:

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

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

Exhibit "C" Legal Description of Property

Exhibit "D" Tenant's Lease Proposal

Exhibit "E" Site Plan

Exhibit "F" Required Improvements Floor Plan

Exhibit "G" Permission to Obtain Insurance Policies

ARTICLE 2. THE PROPERTY

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

Lot 32, of the Amended Plat of the Homer Spit, according to Plat No. 89-34. Homer Recording District, State of Alaska, as depicted on **Exhibit C**, containing 24,639 square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 181-034-32;

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

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

2.03 Property Accepted "As Is." Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." None of landlord, its agents, or its employees make any warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions, including the presence of any Hazardous Substance.

2.04 No Subsurface or Mineral Rights. This Lease does not confer mineral rights, any rights to extract natural resources, or any rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease, all of which rights are, as between Landlord and Tenant, reserved to Landlord.

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is 20 years, commencing on _____
_____, 2024, and ending on _____, 2044 (the “Term”).

3.02 Lease Renewal.

(a) Tenant represents and warrants that it has determined that the duration of the Term, including any available Extended Terms, will be sufficient for Tenant to amortize any investment that it makes in connection with this Lease, including without limitation any investment in leasehold improvements, including any Required Improvements as Tenant may be required to develop. Tenant acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as may be provided in Section 3.05.

(b) Notwithstanding the preceding subsection (a), not less than 12 months and not more than 18 months before the expiration of the Term, Tenant may apply to Landlord to enter into a new lease for the Property that is exempted from competitive bidding under and pursuant to the Lease Ordinance.

3.03 Surrender of Possession. Upon the expiration or earlier termination of the Term, unless Tenant and Landlord have entered into a new lease for the Property commencing upon the termination of the Term, Tenant shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted. If Tenant fails to surrender the Property in the required condition, Landlord may restore the Property to such condition and Tenant shall pay the cost thereof, plus interest at the Default Rate, on demand. Section 6.08 governs the disposition of improvements on the Property at the expiration or earlier termination of the Term.

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

3.05. Options to Extend Lease Term.

(a) At its option and in its sole discretion, Tenant may seek to extend the Term for two (2) additional, consecutive five (5) periods (each an “Extended Term”), provided that:

- (1) Tenant gives Landlord written notice of its exercise of the option not more than one year and not less than 120 days before day the Term would otherwise expire; and
- (2) the City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

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

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of \$_____ (as such may later be adjusted per the terms of this Lease, the “Base Rent”). Base Rent is payable monthly in advance in installments of \$_____, plus sales and all other taxes Landlord is authorized or obligated to collect on such transactions, on _____, 20____, and on the _____ day of each month thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

4.02 Rent Adjustments.

(a) **Five-Year Appraised Rent Adjustments.** Starting on January 1, 2029, and in every fifth year thereafter, Landlord will obtain an appraisal by a qualified real estate appraiser of the fair rental value of the Property as if privately owned in fee simple, excluding the value of alterations, additions or improvements (other than utilities) made by Tenant (or by Tenant’s predecessors under the Lease, if Tenant is party to this Lease by assignment). Following receipt of each such appraisal, the Base Rent will be adjusted (the “Five Year Rent Adjustment”), effective on the anniversary of the commencement of the term (each such date is a “Five Year Rent Adjustment Date”), to an amount equal to the greater of (1) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (2) the Base Rent in effect immediately before the Five Year Rent Adjustment Date. The Base Rent as adjusted on a Five Year Rent Adjustment Date thereafter shall be the Base Rent.

(b) **Annual Rent Adjustments.** In addition to the rent adjustments under Section 4.02(a), the Base Rent also shall be adjusted annually (the “Annual Rent Adjustment”), effective on the anniversary of the commencement of the term in every year without a Five Year Rate Adjustment (each such date is an “Annual Rent Adjustment Date”), by the increase, if any, for the previous year in the cost of living as stated in the Consumer Price Index, All Urban Consumers, Anchorage, Alaska Area, All Items 2000 – present = 100 (“CPI-U”), as published by the United States Department of Labor, Bureau of Labor Statistics most recently before the Annual Rent Adjustment Date. If the CPI-U is revised or ceases to be published, Landlord instead shall use such revised or other index, with whatever adjustment in its application is necessary, to most nearly approximate in Landlord’s judgment the CPI-U for the relevant period.

4.03 Taxes, Assessments and Other Governmental Charges. Tenant shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to the Property, improvements on the Property and personal property that is situated on the Property; provided that Tenant may contest in good faith any such tax, assessment or other governmental charge without subjecting the Property to lien or forfeiture. If an assessment on the Property that is not payable in installments becomes due during the Term, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term by 10. If the Term of this Lease is subsequently extended renewed (i.e. if Tenant and Landlord later enter into a new lease without putting the Property out for competitive bidding as referenced in Section 2.02), then the part of the assessment that Tenant shall be liable for shall be determined by adding the extended or renewal term to the number of years remaining in the Term when the assessment became due. If the Term commences or expires during a tax year, the taxes or assessments payable for that year will be prorated between Landlord and Tenant. Tenant shall exhibit to Landlord, on demand, receipts evidencing payment of all such taxes, assessments and other governmental charges. Any taxes, installments of assessments on the Property that are due to or collectible by Landlord, or for which Landlord becomes liable that are attributable to any portion of the Term, shall be Additional Rent.

4.04 Utility Charges. Tenant shall pay all charges for utility and other services provided to or used on the Property, including without limitation gas, heating oil, electric, water, sewer, heat, snow removal, telephone, internet service and refuse removal. Tenant shall be solely responsible for the cost of utility connections. Any of the preceding due to or collectible by Landlord shall be Additional Rent.

4.05 Tenant to Pay for City Services. Tenant shall pay for all services provided by the City of Homer that are related to the use or operation of the Property, improvements thereon and Tenant's activities thereon, at the rates established by the City of Homer from time to time for such services, including without limitation wharfage, crane use, ice, and other Port and Harbor services. Tenant shall provide the City of Homer with the information necessary to determine the amount of service charges owed, keep written records of such information for not less than two years after such charges are due, and, upon request, make such records available to the City of Homer for inspection and audit.

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

4.07 Security Deposit. Upon execution of this Lease, and in addition to any other security or credit support provided by or for the benefit of Tenant in entering into this Lease, Tenant shall deposit with Landlord an amount equal to 10% of the annual Base Rent as security for Tenant's performance of its obligations under this Lease. Landlord may commingle the security deposit with other funds of Landlord, and its obligations with respect to such security deposit shall only be as a debtor and not as a trustee or fiduciary. If Tenant defaults in performing any obligation under this Lease, including without limitation the payment of rent, Landlord may apply all or any portion of the security deposit to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of the default. Upon demand, Tenant shall deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term.

ARTICLE 5. SECURITY INTEREST

To secure the performance of Tenant's obligations under this Lease, including without limitation the obligations to pay rent and other sums to be paid by Tenant, Tenant grants to Landlord a lien and security interest in the following collateral: ("Collateral"): (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; (4) all rents from Tenant's subletting of all or a part of the Property; and (5) all improvements on the Property, including any Required Improvements. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease shall constitute a mortgage by Tenant as mortgagor of all right, title and interest of Tenant in and to any and all improvements on the Property, including any Required Improvements, in favor of Landlord as mortgagee, and the recorded memorandum of this Lease shall reference Landlord as mortgagee of such improvements. In addition, Tenant shall execute,

such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the liens, mortgages and security interests granted by Tenant hereunder, including any deed of trust pertaining to additions, alterations and improvements on the Property. This Lease also constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies of a secured party under the UCC regarding the Collateral.

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

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

6.02 Required Improvements. Tenant shall, at Tenant's sole expense, construct, and at all times during the Term keep and maintain as the minimum development on the Property the Required Improvements as described on Exhibit D and as depicted more specifically in the site plan and floor plans in **Exhibit E** and **Exhibit F**, respectively. If the Required Improvements are not in place at the commencement of the Term, Tenant shall commence construction of the Required Improvements within one year after the date of commencement of the Term, prosecute the construction of the Required Improvements with diligence, and Complete construction of the Required Improvements within one additional year.

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

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

(b) Not less than fifteen (15) days before commencing construction, Tenant shall deliver to Landlord one complete set of final working plans and specifications as approved by the governmental agencies whose approval is required for Tenant to commence construction. The final working plans and specifications shall conform substantially to the preliminary plans and specifications previously approved by Landlord, subject to changes made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five (5) days before commencing construction, Tenant shall give Landlord written notice of its intent to commence construction, and furnish to Landlord the following:

- (1) Proof that all applicable federal, state and local permits required for the construction have been obtained.
- (2) For construction, alteration or restoration of Required Improvements, a current certificate of insurance with the coverages specified in Section 9.04(c).

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

6.05 Additional and Replacement Improvements.

(a) Construction of alterations, additions improvements that are not consistent with terms of this Lease or the proposed uses for the Property set forth on Exhibit D is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council via resolution.

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

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

6.07 Ownership of Improvements. Other than the Required Improvements, any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and may be removed or replaced by Tenant during the Term, subject to the provisions Section 6.08.

6.08 Disposition of Improvements at End of Term.

(a) Unless excepted by operation of the following subsection (b), any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property become the property of Landlord upon expiration or earlier termination of the Term.

(b) One year before the expiration of the Term, the Landlord and Tenant shall determine if the buildings, fixtures and improvements constructed or maintained on the Property, including the Required Improvements, are structurally sound and in good condition. If such buildings, fixtures and improvements constructed or maintained on the Property are structurally sound and in good condition, Tenant shall leave such improvements intact with all components, including without limitation doors, windows, and plumbing, electrical and mechanical fixtures and

systems, in good condition and ready for use or occupancy, upon expiration of the Term, and Tenant shall execute, acknowledge, and deliver to Landlord a proper instrument in writing releasing and quitclaiming to Landlord all of Tenant's interest in such buildings, fixtures and improvements. Tenant shall be obligated to and shall remove, prior to the expiration of the Term, any buildings, fixtures and improvements constructed or maintained on the Property that are not structurally sound and in good condition, and Landlord shall not have or obtain any ownership interest in such buildings, fixtures and improvements by reason of this Lease.

(c) If Landlord terminates this Lease because of a default by Tenant prior to the expiration of the Term, any buildings, fixtures and improvements constructed or maintained on the Property shall, at Landlord's option, become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects not to obtain ownership of such buildings, fixtures and improvements under the preceding sentence or elects to remove any of such buildings, fixtures or improvements for any reason, Tenant shall be obligated to and shall remove such buildings, fixtures or improvements.

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

(e) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under and per the terms of the preceding subsections (b), (c) and/or (d), Tenant shall pay Landlord the costs that Landlord incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

ARTICLE 7. CARE AND USE OF THE PROPERTY

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

7.02 Repair of Improvements.

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

(b) Unless Tenant is excused from the obligation under this paragraph, if the Required Improvements or any part thereof are damaged or destroyed by fire, earthquake, tsunami, or other casualty, rendering the Required Improvements totally or partially inaccessible or unusable, Tenant shall at Tenant's expense restore the Required Improvements to substantially the same condition as they were in immediately before such damage, provided that:

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

- (2) if the repair or restoration of the Required Improvements would be contrary to law, either party may terminate this Lease immediately by giving notice to the other party; or
- (3) if such damage or casualty to the Required Improvements occurs within three years before the end of the Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

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

7.03 Nuisances Prohibited. Tenant at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures; and litter, rubbish or trash. Tenant shall not use the Property in any manner that will constitute waste or a nuisance. Landlord, at Tenant's expense and without any liability to Tenant, may remove or abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after 15 days written notice to Tenant, or after (4) four hour notice to Tenant in writing, by telephone, facsimile or in person if Landlord makes a written finding that such removal or abatement is required to prevent imminent harm to public health, safety or welfare. Tenant shall pay Landlord all the costs of such removal, plus interest at the Default Rate, as Additional Rent under this Lease. This section does not limit or waive any other remedy available to the City of Homer to abate any nuisance or for the violation of the Homer City Code.

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

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

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

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

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

from the Property in Landlord's garbage disposal facilities on the Homer Spit or any other public facility.

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

ARTICLE 8. ASSIGNMENT AND SUBLEASE

8.01 Assignment or Sublease Absent Consent is Void.

(a) Tenant shall not assign or sublease its interest in this Lease or in the Property without compliance with applicable provisions of the Lease Ordinance, including applying for and receiving consent of Council, and any attempted assignment or sublease absent such compliance is and shall be null and void and of no effect and, at Landlord's election, will constitute an event of default hereunder.

(b) If Tenant seeks to assign or sublease its interest in this Lease or in the Property, in addition to compliance with applicable provisions of the Lease Ordinance, Tenant shall request consent of Council to such assignment or sublease in writing at least 30 days prior to the effective date of the proposed assignment or sublease, accompanied by a copy of the proposed assignment or sublease. If Tenant subleases any portion of the Property, Tenant shall be assessed Additional Rent equal to 10% of the current Base Rent for the subleased area.

(c) No consent to any assignment or sublease waives Tenant's obligation to obtain Landlord's consent to any subsequent assignment or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder, and shall not release Tenant from liability hereunder unless Landlord specifically so provides in writing.

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

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

ARTICLE 9. LIABILITY, INDEMNITY AND INSURANCE

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

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

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

9.04 Insurance Requirements.

(a) Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force such policies of insurance with a carrier or carriers reasonably satisfactory to Landlord and authorized to conduct business in the state of Alaska, as Landlord may reasonably determine are required to protect Landlord from liability arising from Tenant's activities under this Lease, including the minimum insurance requirements set forth for tenants under the Lease Ordinance. Landlord's insurance requirements in the Lease Ordinance (or any superseding policy permitted under the Lease Ordinance) specify only the minimum acceptable coverage and limits, and if Tenant's policy contains broader coverage or higher limits, Landlord shall be entitled to such coverage to the extent of such higher limits.

(b) Without limiting the generality of the foregoing, Tenant shall maintain in force at all times during the Term the following minimum policies of insurance:

- (1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance shall also be endorsed to provide contractual liability insuring Tenant's obligations to indemnify under this Lease.
- (2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.
- (3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.
- (4) Based on the authorized uses of the Property stated in Section 6.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from the Landlord, for purposes other than those stated in paragraph

Section 6.01, if Landlord so elects, and within 10 days after Landlord gives notice of such election, Tenant shall procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

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

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

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

ARTICLE 10. ENVIRONMENTAL MATTERS

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

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

10.03 Compliance with Environmental Laws. Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any

sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

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

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

10.06 Indemnification. Subject to Section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property. The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within 10 days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

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

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

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

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

ARTICLE 11. CONDEMNATION

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

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

11.03. Partial Taking. If the taking or transfer of part of the Property causes the remainder of the Property to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority. If the taking or transfer of part of the Property leaves the remainder of the Property effectively and practicably usable in the opinion of Tenant for the operation of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate as to the portion of the Property so taken or transferred on the date title to the Property vests in the condemning authority, but will continue in full force and effect as to the portion of the Property not so taken or transferred, and the Base Rent will abate in the proportion that the portion of the Property taken bears to all of the Property.

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

ARTICLE 12. DEFAULT

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

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

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

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

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

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

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

(a) Landlord may terminate this Lease by written notice to Tenant, upon which termination Tenant shall immediately surrender possession of the Property, vacate the Property, and deliver possession of the Property to Landlord. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates this Lease in accordance with this subsection (a), and to repossess the Property, 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, with or without process of law, 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. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates Tenant's right of possession in accordance with this subsection (b), and to repossess the Property, 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, with or without process of law, 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.

(c) Subject to Section 12.01(e), 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, as applicable, for any sum that Landlord may deem reasonable.

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

- (1) from time to time, an amount equal to the sum of all Base Rent and other sums that have become due and remain unpaid, less the rent, if any, collected by Landlord on reletting the Property reduced by the amount of all expenses incurred by Landlord in connection with reletting the Property; or
- (2) immediately upon Tenant's default, an amount equal to the difference between the Base Rent and the fair rental value of the Property for the remainder of the Term, discounted to the date of such default at a rate per annum equal to the rate at which Landlord could borrow funds for the same period as of the date of such default.

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

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

ARTICLE 13. LEASEHOLD MORTGAGES

13.01. Mortgage of Leasehold Interest. Tenant shall have the right at any time, and from time to time, to subject the leasehold estate and any or all of Tenant's improvements situated on the Property to one or more deeds of trust, mortgages, and other collateral security instruments as security for a loan or loans or other obligation of Tenant (each a "Leasehold Mortgage"), subject to the remainder of this Article 13.

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

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

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

13.05 Notice to Qualified Mortgagee.

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

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

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

13.06 Performance of Tenant Obligations.

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

(b) Tenant may delegate irrevocably to a Qualified Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be binding upon Landlord unless and until either Tenant or the Qualified Mortgagee gives Landlord a true copy of a written instrument effecting such delegation.

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

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

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

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

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

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

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

ARTICLE 14. GENERAL PROVISIONS

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

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

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

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

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

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

John Stewart
BERTH II INC.
4400 Homer Spit Road
Homer, Alaska 99603
Email: _____

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

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

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

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

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

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

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

14.11 Multi-Party Tenant. If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of

all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.

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

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

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

14.15 Attorney's Fees.

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

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

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

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

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

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

14.20 Prior Lease Amended and Superseded. Landlord and Tenant are parties to a prior lease affecting the Property dated January, 21st, 2019, a memorandum of which has been recorded in the records of the Homer Recording District under Document No. 2019-000183-0 (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of _____, 2024, and on and after that date the Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Prior Lease prior to that date.

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

Landlord:

Tenant:

CITY OF HOMER

TENANT NAME

By: _____
Melissa Jacobsen, Interim City Manager

John Stewart, President

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 2024, by Melissa Jacobsen, Interim 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

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: _____

TOTAL 100 %

EXHIBIT B

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

EXHIBIT C
LOCATION OF PROPERTY
(Section 2.01)

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

EXHIBIT E
SITE PLANS
(Section 6.02)

EXHIBIT F

FLOOR PLANS

(Section 6.02)

EXHIBIT G

PERMISSION TO OBTAIN INSURANCE POLICIES

(Section 9.04(d))

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

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

Date: _____

TENANT NAME

By:

_____ (printed name)
_____ (title)

By: _____
_____ (printed name)
_____ (title)



City of Homer

www.cityofhomer-ak.gov

Port and Harbor

4311 Freight Dock Road
Homer, AK 99603

port@cityofhomer-ak.gov

(p) 907-235-3160

(f) 907-235-3152

May 13, 2024

Y & C, LLC
4400 Homer Spit Rd
Homer, AK 99603

Dear Y&C LLC,

As requested, I conducted a review of our records for Y&C LLC's tenancy, and can provide the following statement regarding your history with us:

Y&C LLC has leased the property at 4400 Homer Spit Rd from the City since February 1st of 2019. This business was among those granted a payment plan as a result of the COVID-19 pandemic, and the account has been current since completing that payment plan in September of 2023. We find no reason to withhold the assignment of their lease to another party.

Best,

Amy Woodruff
Administrative Supervisor
City of Homer Port & Harbor
(907) 235-3160
awoodruff@ci.homer.ak.us

10. NEW BUSINESS

- 10.A. Berth II, Inc. Application for Lease Assignment from Y&C LLC for 4400 Homer Spit Rd
Memorandum PHC-24-012 from Port Property Associate as backup

Chair Siekaniec introduced the item by reading of the title. He then requested any Commissioners that had any concerns with the lease assignment to speak up.

Commissioner Zeiset asked Port Director Hawkins if he had any concerns about the lease in looking it over. Mr. Hawkins stated that he had no concerns, citing that the current lease is up to date with payments. He added that this is a lease transfer with the current lease remaining active until 2039 with the extensions in place. The new lease is being requested for a full-term, which would extend the lease until 2044. In terms of the business plan, Mr. Hawkins stated that Berth II plans to take over the building and run it how it's currently being managed.

ZEISET/BRADSHAW MOVED THAT THE COMMISSION SUPPORT THE LEASE ASSIGNMENT FROM THE CURRENT TENANT, Y&C LLC, TO BERTH II, INC., AND FORWARD THE RECOMMENDATION TO CITY COUNCIL.

There was no further discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.