



# AGENDA ITEM REPORT

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**Resolution 23-032, A Resolution of the City Council of Homer, Alaska Approving a Lease with Alaska Scrap and Salvage for a term of Eight Years with Two One-Year Options for Renewal and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents.  
City Manager.**

**Item Type:** Resolution  
**Prepared For:** Mayor & City Council  
**Meeting Date:** 10 Apr 2023  
**Staff Contact:** Rachel Tussey, CMC, Deputy City Clerk II  
**Through:** Rob Dumouchel, City Manager

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**Summary Statement:**

Alaska Scrap and Recycling has submitted a lease application and written request for a new short-term lease exempted from competitive bidding for a one-acre portion of Lot 12, Concrete Pad, Homer Spit Subdivision No. 5, for the purpose of continuing a scrap metal recycling operation.

The City Manager and Lease Staff have found Alaska Scrap and Recycling's proposal to be compatible with applicable land use regulations and either meets or exceeds the criteria outlined in City Code.

Staff recommends a new eight year-term lease with two, one-year options to renew, be awarded to Alaska Scrap and Recycling LLC for a one-acre portion of Lot 12, Concrete Pad, Homer Spit Subdivision No. 5, with a base rent of \$43,585.56 per year.

The Port and Harbor Advisory Commission passed a motion with discussion at their March 22, 2023 regular meeting supporting Alaska Scrap and Recycling's operation and proposed land use.

**Staff Recommendation:**

Adopt Resolution 23-032.

**Attachments:**

Resolution 23-032

City of Homer Lease Application Proposal Review & Staff Recommendations

Alaska Scrap & Recycling City Lease Application

DRAFT Base Lease Agreement

1 **CITY OF HOMER**  
2 **HOMER, ALASKA**

3 City Manager

4 **RESOLUTION 23-032**

5  
6 A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA  
7 APPROVING A LEASE WITH ALASKA SCRAP AND SALVAGE FOR A  
8 TERM OF EIGHT YEARS WITH TWO ONE-YEAR OPTIONS FOR  
9 RENEWAL AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE  
10 AND EXECUTE THE APPROPRIATE DOCUMENTS.

11  
12 WHEREAS, Alaska Scrap and Recycling, LLC currently has a five-year lease that will be  
13 expiring January 31, 2024 with no options remaining for a one-acre portion of Lot 12, Concrete  
14 Pad, Homer Spit Subdivision No. 5; and

15  
16 WHEREAS, Alaska Scrap and Recycling submitted a lease application and written  
17 request for a new short-term lease exempted from competitive bidding for the purpose of  
18 continuing a scrap metal recycling operation in accordance with HCC 18.08.130(b) which states  
19 a lessee must submit their request to the City Manager at least 12 months but no more than 18  
20 months prior to the expiration of the existing lease; and

21  
22 WHEREAS, HCC 18.08.130 further states Council, upon written recommendation by the  
23 City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such  
24 exemption serves the City's best interests and must do so by resolution within six months prior  
25 to the date of lease termination; and

26  
27 WHEREAS, The City Manager and Lease Staff have found Alaska Scrap and Recycling's  
28 proposal to be compatible with applicable land use regulations and either meets or exceeds  
29 the criteria outlined in City Code, and recommend a lease be awarded exempted from the  
30 competitive bidding process; and

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32 WHEREAS, The City proposed a longer term of eight years with two, one-year options to  
33 renew for a total of 10 years beginning February 1, 2024 and expiring January 31, 2034 to allow  
34 a longer lease commitment, therefore spending less staff and lessee's time on multiple short  
35 lease renewals, without the risk of delaying any future port expansion as the City will continue  
36 to seek the highest and best use of all City-owned property; and

37  
38 WHEREAS, The Port and Harbor Advisory Commission (PHC) has advisory capacity to  
39 the City Manager and Council to make recommendations on land use and future development  
40 within the port and harbor areas; and

41  
42 WHEREAS, The PHC passed a motion with discussion at their March 22, 2023 regular  
43 meeting supporting Alaska Scrap and Recycling's operation and proposed land use with a  
44 recommendation that Council award a new lease.

45 NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves a  
46 new, eight year-term lease with two, one-year options to renew, to Alaska Scrap and Recycling  
47 LLC for a one-acre portion of Lot 12, Concrete Pad, Homer Spit Subdivision No. 5, with a base  
48 rent of \$43,585.56 per year, and authorizes the City Manager to negotiate and execute the  
49 appropriate documents.

50  
51 PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

52  
53 CITY OF HOMER

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57 \_\_\_\_\_  
KEN CASTNER, MAYOR

58 ATTEST:

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61 \_\_\_\_\_  
62 MELISSA JACOBSEN, MMC, CITY CLERK

63  
64 Fiscal note: \$43,585.56 annually; subject to annual CPI increases and 5-year appraisals



# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

## City of Homer Lease Application Proposal Review & Staff Recommendations

### Proposal Synopsis

**Application is for:** Alaska Scrap and Recycling LLC

**Lease Proposal  
Synopsis:**

Alaska Scrap and Recycling currently has a 5-year lease that will be expiring January 31, 2024 with no options remaining. They have submitted a lease application and written request for a new lease exempted from competitive bidding for the purpose of continuing a scrap metal recycling operation. The request was received within the appropriate timeframe of 12-18 mos. before the expiration of their existing lease.

Per HCC 18.08.130 Lease renewal, Council, upon written recommendation by the City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such exemption serves the City's best interests. Factors considered under this section are outlined in HCC. If Council approves the new lease without a competitive process, it must do so by resolution within 6 months prior to the date of lease termination (July 31, 2023).

**Lease Staff has reviewed the proposal per the criteria outlined in HCC and recommends a lease be awarded exempted from the competitive bidding process.** The proposed terms of the lease are as follows:

- Use of 1 acre portion of Lot 12, Concrete Pad, for the staging and storage of scrap metal as part of the business' recycling operations.

This use would be described in detail in Appendix D of the lease with the Applicant's written narrative attached for reference.

- Base rent will continue from the current rent of \$3,632.13/month plus tax since the proposed lease space and use has not changed; this will be subject to change depending on the 2024 CPI increase as the new lease would begin in 2024.

Base rent is subject to annual Consumer Price Index increases and appraisals.

Next appraisal for Lot 12 is scheduled for 2024.

- Term will be for 8 years with two 1-year options to renew, for a total of 10 years beginning February 1, 2024 and expiring January 31, 2034.

Applicant proposed a 5-year lease with two 1.25-year options to renew but they are open to any lease for 5-10 years that the City proposes so long as the lease language allows 90-day termination by either party with notice. The City proposed a longer term to allow a longer lease commitment, therefore less time spent on multiple short lease renewals, without risk of delaying any future port expansion.

- Continuation of existing standard terms per the City's base lease.

## Criteria Checklist

**Complete Lease Application form and a clear, precise written narrative that addresses all proposal criteria:**  Yes  No  N/A  Incomplete

Notes: Staff worked with Applicant to ensure lease application and written narrative are complete.

Application fee is paid.

**Property Plan is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan:**  Yes  No  N/A  Incomplete

Notes: Planning Staff, Port and Harbor Staff, and Economic Development Manager have found the land use is compatible.

Port and Harbor Advisory Commission did not object to the proposed land use.

**Development Plan details out any proposed improvements with a specific time schedule, benchmarks for development, and cost estimates/financing plan:**  Yes  No  N/A  Incomplete

Notes: Applicant does not have any proposed improvement plans; in their written narrative they explain the existing infrastructure (fenced-in Concrete Pad on Lot 12) allows for the safe operation of their business, therefore there is no need to develop the property or change it in any way from its current condition.

As part of their current lease with the City, Applicant was required to improve the leased space by installing temporary security fencing with the ability to safely secure and lock access to the leased space. Applicant successfully completed these improvements and will continue to maintain them under a new lease.

**Financial capability or backing of the applicant (including credit history, prior lease history, assets, capital investments) has been verified to support the lease proposal:**  Yes  No  N/A  Incomplete

Notes: Applicant submitted a Profit and Loss income statement for FY2021 and FY2022 to fulfill the documentation requirement for business' vitality, and a Statement of Financial History from the Port and Harbor Office to fulfill the documentation requirement for payment history. Documentation has provided sufficient evidence they are capable of making timely monthly payments.

Applicant has not been found in default or sent to collections, has not filed for bankruptcy, and does not have any pending litigations against them.

**Proposal found to be sufficient in other evaluation criteria per HCC 18.08.060 (includes experience of applicant in the proposed business or venture, economic, financial, and social impacts):**  Yes  No  N/A  Incomplete

Notes: Applicant's proposal has found to be sufficient. Details are in the written narrative; other comments from Planning and Harbor Staff are below.

**Applicant has verified they are insurable and licensable in the City, Kenai Peninsula Borough, and/or the State of Alaska for their proposed use:**  Yes  No  N/A  Incomplete

Notes: Documentation confirms they are an LLC in good standing with the State.

Insurance is current with the City and meets the requirements of HCC and the lease.

Applicant has explained in their written narrative that no other approvals, permits, and/or inspections are applicable to their use.

**Any other information that is directly pertinent to the proposal:**  Yes  No  N/A  Incomplete

Notes: Applicant does not intend to sublease.

**FOR ASSIGNMENTS ONLY – Current lessee is in full compliance with the lease terms and is eligible for lease reassignment:**  Yes  No  N/A  Incomplete

Notes: n/a

**All applicable documentation has been provided:**  Yes  No  N/A  Incomplete

- Lease Application and Written Narrative
- Property Plan
- Development Plan
- Financial Information
- Business Entity and Licensing Information
- Verification that Insurance can be provided at Signing of Lease
- City Planning & Other Agency Approval Information

### Comments/Recommendations from Planning & Zoning

Rick Abboud, City Planner: I have no objections to continuing the operation, based on zoning or other planning documents. I have not found any compliance issues on the site.

Julie Engebretsen, Economic Development Manager: I would encourage a lease term as long as ten years so we are not spending so much time and effort on lease renewals.

### Comments/Recommendations from Port & Harbor Staff *(if applicable)* N/A

Bryan Hawkins, Port Director: I looked through the application and proposal and have no additions or changes. Port and Harbor recommends entering into a new 5 year lease with options as proposed by Alaska Scrap for the same sq. ft. area of the secure laydown facility (Chip Pad).

### Recommendation from Port & Harbor Advisory Commission *(if applicable)* N/A

Rachel Tussey, Deputy City Clerk: Recommendations by the City Manager to Council do not require prior review by the PHC under HCC 18.08.130 Lease Renewal. However, I recognize the Commission's advisory capacity to the City Manager and Council to make recommendations on land use and future development within the port and harbor

areas. Therefore I requested the PHC's consideration focus on the following key things: The applicant's proposed use of the land, their development plan (if there is one), and if these items are consistent with the Commission's goals for the planning and use of harbor facilities. The PHC has been advised that operation, maintenance, and compliance regarding City facilities are the direct responsibility of City Staff (e.g. Planning/Zoning, Port and Harbor, Public Works) under the direction of the City Manager, so any operational recommendations concerning the lease should be directed to the City Manager for consideration in a separate motion.

Port & Harbor Advisory Commission: The commission passed a motion with discussion at their March 22, 2023 regular meeting supporting Alaska Scrap & Recycling's operation and proposed land use.

Commissioner Shavelson: Requested the City consider Alaska Scrap being required to have a multi-sector general permit under DEC under their business name. Per Port Director Hawkins, the Port and Harbor has a drainage/storm water system built into Lot 12's concrete pad that meets current DEC requirements and the City is not required to have that permit. The question posed: are Alaska Scrap's operations covered by that same rule while operating on City land or should they be required to have their own permit to comply with federal requirements?

Commissioners Shavelson & Matthews: Voiced objection to not being able to see draft leases of lease proposals they as a body are expected to make recommendations on. They read HCC and have differing interpretations from City Staff and the City Attorney on the roles and responsibilities the commission has when considering a lease application; they believe it's beyond just land use recommendations.

#### Comments from City Manager's Office

No additional comments; reviewed proposal 3/2/2023 and approved to proceed through PHC and Council.

#### Recommended Action to City Council

By resolution, award Alaska Scrap and Recycling LLC a new 8-year lease with two 1-year options for renewal, and authorizing the City Manager to negotiate and execute the appropriate documents.

**Application Verified By:** Rachel Tussey, CMC, Deputy City Clerk II

Date: 2/10/2023

**City Manager Approval:** Rob Dumouchel, City Manager

Date: 3/2/2023



# City Lease Application

## For City-Owned Real Property & Airport Terminal Space

**Office of the City Clerk**  
 491 East Pioneer Avenue  
 Homer, Alaska 99603  
 Phone: (907) 235-3130  
 Fax: (907) 235-3143

**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**

This Lease is for:	<input checked="" type="checkbox"/> City-Owned Real Property	<input type="checkbox"/> Space in the Homer Airport Terminal Building
Physical Address:	a portion of lot 12, Homer Spit Subdivision No. 5 (old chip pad)	
Square Footage:	<del>42,046</del> 1 acre	<input type="checkbox"/> Full Lot <input checked="" type="checkbox"/> Portion of Lot    KPB Parcel No.: 18103220
Legal Description of Property: (If within the Airport Terminal Building list Space Description Info & square footage instead)	a portion of lot 12, Homer Spit Subdivision No. 5	

**Applicant Information**

Business Name:	Alaska Scrap and Recycling LLC
Representative's Full Name & Title:	Jeff Riley, General Manager Paul Keen, Facility Manager
Mailing Address:	44196 K-Beach Road
City, State, ZIP Code:	Soldotna, AK 99669
Phone Number(s):	Jeff's (907)230-0019, Paul's (907)398-6954
Email:	jeffr@pwinvestment.com / pkeen@alaskascrap.com

**Business Entity & Financial Information**

<input type="checkbox"/>	Sole or Individual Proprietorship – Attached documentation must provide owner's full name, address, and verify they are the sole owner.
	Is entity authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes – As of what date:
<input checked="" type="checkbox"/>	Partnership – Attached documentation must provide Partners' full names, addresses, and share percentages.
	Date of Organization: 12/03/2012    Type of Partnership: LLC



Is Partnership authorized to do business in Alaska? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - As of what date: 12/03/2012	
<input type="checkbox"/> Corporation - Attached documentation must provide the full names of Officers and Principal Stockholders (10%+), their addresses, and share percentages.	
Date of Organization:	Type of Corporation:
Is Corporation authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes - As of what date:	
Corporation is held: <input type="checkbox"/> Privately <input type="checkbox"/> Publicly - How and where is stock traded:	
<input type="checkbox"/> Other - Please explain:	
Proof of Financial Capability to Meet Obligations:	<input 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 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 you organization holding more than a 10% interest? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - Attach a statement naming the surety or bonding company, date and amount of bond, and the circumstances surrounding the default or performance.
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.
<b>Lease Proposal</b>	
Type of Business/ Proposed Use of the Property:	existing scrap metal recycling operation

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"> <li>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).</li> <li>No more than two Options to Renew; each option cannot exceed 25% of initial lease term (18.08.110).</li> </ul> Duration (in years):                      5                      No. of Options to Renew:                      2 - 15 month
Property Plan:	<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"> <li>Proposed utilization of the lot/space, including parking</li> <li>If there are existing buildings on the property and what their proposed uses are</li> <li>Any intentions to rent out or sublease space on the property</li> <li>How the use is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan</li> </ul> <input checked="" type="checkbox"/> Provide a detailed schematic (to scale) that shows the following: <ul style="list-style-type: none"> <li>Size of lot - dimensions and total square footage</li> <li>Placement/size of existing buildings, storage units, and other miscellaneous structures</li> <li>Parking spaces - numbered on the drawing with a total number indicated</li> <li>Note: an as-built survey from a licensed surveyor may be required</li> </ul>
Development Plan:	Do you have a development and/or improvement plan for the property, including plans for repairs or maintenance to any existing buildings? <input type="checkbox"/> Yes    In your written narrative, provide as much information as possible on how you intend to develop/improve the property. Include a time schedule from project initiation to completion, major project milestones, cost estimate and financing plan, and any additional designs not already provided in the Property Plan's detailed schematic. <input checked="" type="checkbox"/> No    In your written narrative, explain why.
City Planning & Other Agency Approvals:  NOT APPLICABLE	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"> <li>Applicable permits/approval from City Planning for zoning compliance, such as Conditional Use Permits, Zoning Permits</li> <li>Fire Marshall Plan Review and Permitting</li> <li>Waste Disposal System Plan Approval - Includes fish waste if applicable</li> <li>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</li> </ul> <input checked="" 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.

Insurance Requirements:	<p>The granting of any lease is contingent upon lessee obtaining and keeping in full force insurance as outlined in HCC 18.08.170. Certificates of insurance showing the required insurance is in effect and identifying the City as an additional insured must be provided to the City at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.</p> <p><input checked="" type="checkbox"/> Provide proof of insurability for public liability insurance in the amount of not less than \$1,000,000 coverage per occurrence for bodily injury, including death, and property damage, and the City of Homer as co-insured. Additional insurance limits or types may be required due to the nature of the business, lease, or exposure.</p>
Benefits & Impacts on Community:	<p><input checked="" type="checkbox"/> In your written narrative answer the following questions:</p> <ul style="list-style-type: none"> <li>• What experience do you have in the proposed business or venture?</li> <li>• How long have you resided or conducted business in the City, Kenai Peninsula Borough, and/or the State of Alaska?</li> <li>• What are some of the economic, social, and financial benefits and/or impacts your business/proposed use brings to the community?</li> </ul>
Applicant References:	<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"> <li>• Full Name</li> <li>• Name of the organization/business and their title at this entity</li> <li>• Address</li> <li>• Phone number and email address</li> <li>• Nature of association with Applicant</li> </ul>
Additional Information:	<p><input checked="" type="checkbox"/> Include in your written narrative, or attach relevant documentation, that you deem pertinent to your application/lease proposal. Criteria for evaluating and approving proposals and competing lease applications can be found under HCC 18.08.060.</p>

**Required Attachments/Documentation**

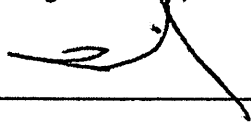
- Written Narrative ATTACH # 1
- Business Entity and Licensing Information
  - State of Alaska Business License ATTACH # 2
  - Current State of Alaska Biennial Report ATTACH # 3
  - If Partnership: Statement of Partnership/Partnership Agreement ATTACH 4
  - If Corporation: Articles of Incorporation & Bylaws
  - Any additional documentation concerning the formation or operation of the entity
- Financial Information ATTACH #5
- Property Plan – Detailed Schematic of Property ATTACH # 6
- Development Plan documents/plans, if any

Proof of Insurability; verification that insurance can be provided at signing of lease **ATTACH #7**

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: 01-06-23

Printed Name & Title: JOE RILEY GENERAL MANAGER

**Office Use Only**

Received By & Date: Rachel Tussey 1/23/2023 | Fee Processed: \$ 1,000.00 | Date: 2/1/2023

Date Application Accepted as Complete: 2/10/2023 | Application Timeout Date: (1 year from receipt) 1/23/2024

Submitted for Dept. Review: 2/10/23  Planning  Port & Harbor  Finance  Public Works  Other:

Submitted for City Manager Review:  Approved on:  Denied on:

For Existing Leases Exempt from Competitive Bidding: Current Lease Expires with No Options to renew: \_\_\_\_\_  
6 mos. Prior to date of lease termination (Council Approval Deadline): \_\_\_\_\_  
Request received within 12 to 18 mo. timeframe from expiration of lease date:  Yes  No





# AS&R

## Alaska Scrap & Recycling LLC



**Branch Office:**  
42462 Kalifornsky Beach Rd, Soldotna AK 99669  
Office 907-262-7258

**Main Office:**  
720 E. Whitney Rd, Anchorage AK 99501  
Phone: 907-277-2727  
[www.alaskascrap.com](http://www.alaskascrap.com)

Homer City Council  
491 E Pioneer Ave  
Homer, AK 99603

C/O: Rachel Tussey  
City of Homer

RE: Property Lease Extension

Dear City Council Members,

Enclosed you will find the application to extend the current lease arrangement between the City of Homer and Alaska Scrap & Recycling (AS&R). This lease occupies a portion of Lot 12 of the Homer Spit Subdivision No. 5 as a staging area for processed, recycled ferrous metals to be shipped South. There are no intentions of subleasing the space. We would store equipment used for stacking and loading barges onsite. AS&R has worked with the City of Homer in the past to clean up derelict vessels, old vehicles and equipment. We take a proactive approach to avoid environmental risks as we recycle unwanted metals.

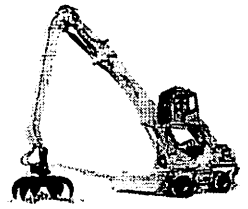
AS&R also operates within the Municipality of Anchorage and is the largest recycler of scrap metals in Alaska. We are locally owned with management and staff having many years of industry experience and a proven track record of safety.

The existing infrastructure at the Port of Homer allows for the safe and efficient process of loading barges with prepared recycled metal that are headed to the Seattle market. It also allows us the ability to accept scrap equipment, vessels, and vehicles from neighboring communities in the bay area. Thus, there is no need to develop the property or change it in any way from its current condition and use which is why no development plan is included in the application. The operation will remain consistent with current use which requires no approvals, permits, and/or inspections that are applicable to our use.

During the first four years of our initial lease period, AS&R has recycled more than 20,000 tons of scrap metal that would otherwise be sitting idle throughout our communities. We see ourselves as a collaborative partner to the Port and City of Homer and an asset to the residents of Homer. This lease extension allows us to continue our efforts.

Our lease proposal requests an additional 5 years with two 1.25 year renewals which meets the limitations within the City of Homer lease application. That said, we are open to 5-10 years with language consistent with our current lease which allows 90-day termination by either party with notice. This allows for a longer lease commitment without risk of delaying any future port expansion.

References attached.



Sincerely,

Paul Keen  
Soldotna Operations Manager  
[pkeen@alaskascrap.com](mailto:pkeen@alaskascrap.com)  
907-398-6954

#### REFERENCES

Kenai Peninsula Borough Solid Waste Department  
Lee Frey  
Solid Waste Director  
[solidwaste@kpb.us](mailto:solidwaste@kpb.us)  
(907)262-9667

AS&R supports the landfill with the removal of metals that can be recycled which frees up additional airspace which in turn saves the borough residents money. This relationship has been in place for 15 years.

Matanuska Susitna Borough Solid Waste Department  
Central Landfill  
Jeff Smith  
Solid Waste Division Manager  
(907)861-7606  
(907)795-2786

AS&R currently supports the MatSu landfill with the removal of metals that can be recycled.

Kenai Peninsula Borough Roads Department  
Jed Painter  
Roads Director  
[roads@kpb.us](mailto:roads@kpb.us)  
(907)262-4427

AS&R has held road maintenance contracts consistently for 15 years.

First National Bank Alaska  
Mike Frost  
Banker  
(907)260-6000

**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

**ALASKA SCRAP & RECYCLING LLC**

720 E WHITNEY RD, ANCHORAGE, AK 99501

owned by

ALASKA SCRAP & RECYCLING, LLC

is licensed by the department to conduct business for the period

October 26, 2022 to December 31, 2024  
for the following line(s) of business:

42 - Trade



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



State of Alaska  
Department of Commerce, Community and Economic Development  
Corporations, Business and Professional Licensing

## Certificate of Organization

The undersigned, as Commissioner of Commerce, Community and Economic Development of the State of Alaska, hereby certifies that a duly signed and verified filing pursuant to the provisions of Alaska Statutes has been received in this office and has been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce, Community and Economic Development, and by virtue of the authority vested in me by law, hereby issues this certificate to

**Alaska Scrap & Recycling, LLC**



IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective **December 03, 2012**.

A handwritten signature in black ink that reads "Susan K. Bell".

Susan K. Bell  
Commissioner



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

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## ENTITY DETAILS

### Name(s)

Type	Name
Legal Name	Alaska Scrap & Recycling, LLC

**Entity Type:** Limited Liability Company

**Entity #:** 10008882

**Status:** Good Standing

**AK Formed Date:** 12/3/2012

**Duration/Expiration:** Perpetual

**Home State:** ALASKA

**Next Biennial Report Due:** 1/2/2024

**Entity Mailing Address:** P.O. BOX 202845, ANCHORAGE, AK 99520-2845

**Entity Physical Address:** 305 N VALLEY WAY, C-3, PALMER, AK 99645

### Registered Agent

**Agent Name:** Joshua D. Hodes

**Registered Mailing Address:** 701 W 8TH AVE, STE 1200, ANCHORAGE, AK 99501

**Registered Physical Address:** 701 W 8TH AVE, STE 1200, ANCHORAGE, AK 99501

### Officials

Show Former

AK Entity #	Name	Titles	Owned
10046963	ASR Acquisition, Inc.	Member	25.00
	Jonathan Rubini	Member	4.50
134563	RSP, INC	Member	31.75
10046663	Scrap Investor, LLC	Member	5.00
10008725	Southcentral Metal Recycling, LLC	Member, Manager	33.75

## Filed Documents

Date Filed	Type	Filing	Certificate
12/03/2012	Creation Filing	<a href="#">Click to View</a>	<a href="#">Click to View</a>
6/07/2013	Initial Report	<a href="#">Click to View</a>	
6/24/2013	Amendment	<a href="#">Click to View</a>	<a href="#">Click to View</a>
11/07/2013	Agent Change	<a href="#">Click to View</a>	
11/07/2013	Biennial Report	<a href="#">Click to View</a>	
8/03/2015	Change of Officials	<a href="#">Click to View</a>	
8/24/2015	Change of Officials	<a href="#">Click to View</a>	
11/12/2015	Biennial Report	<a href="#">Click to View</a>	
8/01/2016	Agent Change	<a href="#">Click to View</a>	
12/28/2017	Biennial Report	<a href="#">Click to View</a>	
10/17/2019	Biennial Report	<a href="#">Click to View</a>	
12/13/2021	Biennial Report	<a href="#">Click to View</a>	



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

FOR DIVISION USE ONLY

**Domestic Limited Liability Company**

**2022 Biennial Report**

For the period ending December 31, 2021

Web-12/13/2021 12:06:39 PM

**Due Date:** This report along with its fees are due by January 2, 2022

**Fees:** If postmarked before February 2, 2022, the fee is \$100.00.

If postmarked on or after February 2, 2022 then this report is delinquent and the fee is \$137.50.

**Entity Name:** Alaska Scrap & Recycling, LLC

**Entity Number:** 10008882

**Home Country:** UNITED STATES

**Home State/Prov.:** ALASKA

**Physical Address:** 305 N Valley Way, C-3, Palmer, AK 99645

**Mailing Address:** P.O. BOX 202845, ANCHORAGE, AK  
 99520-2845

**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:** Joshua D. Hodes

**Physical Address:** 701 W 8TH AVE, STE 1200,  
 ANCHORAGE, AK 99501

**Mailing Address:** 701 W 8TH AVE, STE 1200,  
 ANCHORAGE, AK 99501

**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 Members:** this entity must have at least one (1) Member. A Member must own a %. In addition, this entity must provide all Members who own 5% or more of the entity. A Member may be an individual or another entity.
- **Manager:** If the entity is manager managed (per its articles or amendment) then there must be at least (1) Manager provided. A Manager may be a Member if the Manager also owns a % of the entity.

Full Legal Name	Complete Mailing Address	% Owned	Manager	Member
RSP, INC	42115B K-BEACH RD, SOLDOTNA, AK 99669	31.75		X
Southcentral Metal Recycling, LLC	P.O. BOX 202846, ANCHORAGE, AK 99502	33.75	X	X
ASR Acquisition, Inc.	9360 GLACIER HWY, SUITE 202, JUNEAU, AK 99801	25.00		X
Scrap Investor, LLC	PO BOX 202845, ANCHORAGE, AK 99520	5.00		X
Jonathan Rubini	PO Box 202845, Anchorage, AK 99520	4.5		X

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

**Purpose:** The Company is organized with a general business purpose to conduct any and all lawful affairs for which a limited liability company may be organized pursuant to Alaska Statute 10.50, as amended.

**NAICS Code:** 423930 - RECYCLABLE MATERIAL MERCHANT WHOLESALERS

**New NAICS Code (optional):**

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:** Catherine Neely



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

Port and Harbor

4311 Freight Dock Road

Homer, AK 99603

[port@cityofhomer-ak.gov](mailto:port@cityofhomer-ak.gov)

(p) 907-235-3160

(f) 907-235-3152

February 3, 2023

Kelli Martin

Alaska Scrap & Recycling

720 E Whitney Rd

Anchorage, AK 99501

Dear Ms. Martin,

As requested, I conducted a review of our records for Alaska Scrap, and can provide the following statement regarding your history with us:

*Alaska Scrap & Recycling has leased portions of Lot 12 in several different short- and long-term lease arrangements from the City since 2009. Their current 5-year lease of a 1-acre parcel began in 2019, and our billing records reflect a history of prompt payment of lease fees.*

*This office has experienced consistently responsive communication from Alaska Scrap & Recycling regarding their operations on the facility, to include scheduling load out operations, payment of dock fees, and calculation of wharfage charges. We can heartily recommend them for renewal of this lease based on both their financial history and their professional conduct.*

Best,

Amy Woodruff

Administrative Supervisor

City of Homer Port & Harbor

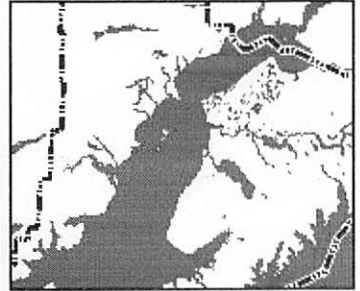
(907) 235-3160

[awoodruff@ci.homer.ak.us](mailto:awoodruff@ci.homer.ak.us)





# Portion of Lot 12



## Legend

- Local Option Zones
- Mileposts
- City Limits
- Township Lines
- Section Lines
- Highways
- Major Roads
- Roads**
  - Town Medium Volume
  - Town Low/Seasonal; Other
  - Proposed
- Parcels
- LOT LINES
- Image**
  - Red: Red
  - Green: Green
  - Blue: Blue

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. It is not to be used for navigation.

## Notes

Alaska Scrap & Recycling Lease  
Detailed Schematic







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/28/2022

**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).**

<b>PRODUCER</b> Marsh & McLennan Agency LLC 1031 W 4th Ave, Suite 400 Anchorage AK 99501	<b>CONTACT NAME:</b> Bonnie Lynn <b>PHONE (A/C No. Ext):</b> 907-276-5617 <b>FAX (A/C No.):</b> 907-276-6292 <b>E-MAIL ADDRESS:</b> Bonnie.Lynn@MarshMMA.com
	<b>INSURER(S) AFFORDING COVERAGE</b>
License# 62353 ALASKASCRAPI	<b>INSURER A:</b> Alaska National Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>
<b>INSURED</b> Alaska Scrap & Recycling, LLC 720 Whitney Road Anchorage AK 99501	<b>NAIC #</b> 38733

**COVERAGES**      **CERTIFICATE NUMBER: 1449355811**      **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	ADDITIONAL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO.JECT <input type="checkbox"/> LOC OTHER:		23APS09895	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		23AAS09895	1/1/2023	1/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		23ALU09895	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N <input type="checkbox"/> N/A	23AWS09895	1/1/2023	1/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Re: Terminal Use Permit. Where required by written contract, Certificate Holder, its elected or appointed officials, employees and volunteers are Additional Insured on the General Liability policy, subject to the terms, conditions and limitations of said policy and the additional insured endorsement. Where required by written contract, Waiver of Subrogation in favor of Certificate Holder applies to referenced policies subject to the terms, conditions and limitations of said policies and the Waiver of Subrogation endorsement. It is further agreed that, where required by written contract, such insurance as is afforded the Certificate Holder shall be primary and non-contributory with any other insurance in force for or which may be purchased by the Certificate Holder. The policies are endorsed to provide notice of cancellation to the certificate holder.

<b>CERTIFICATE HOLDER</b>  Homer Port and Harbor 4311 Freight Dock Rd. Homer AK 99603	<b>CANCELLATION</b>  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
---	--

**GROUND LEASE AND SECURITY AGREEMENT**

**BETWEEN**

**CITY OF HOMER, ALASKA**

**AND**

**ALASKA SCRAP & RECYCLING, LLC**

**Dated February 1, 2024**

## GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT (“Lease”) dated as of February 1, 2024 between the CITY OF HOMER, an Alaska municipal corporation (“Landlord”), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and Alaska Scrap and Recycling LLC, an Alaskan Limited Liability Company (“Tenant”), whose address is 44196 Kalifornsky Beach Road, Soldotna, Alaska 99669.

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” 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”):

**A portion of Lot 12, Homer Spit Subdivision No. 5,** Homer Recording District, State of Alaska, as depicted on **Exhibit C**, containing 43,560 square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 18103220;

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 eight (8) years, commencing on February 1, 2024, and ending on January 31, 2032 (the “Term”).

(a) This Lease may be terminated before the date listed as end of Term with 90 days prior given notice by Tenant, or with 90 days prior notice by Landlord if the City (Landlord) determines the Premises or Lot is needed for a public purpose, or by mutual agreement of both parties.

### **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 one (1) year periods (each an "Extended Term"), provided that:

- (1) Tenant gives Landlord written notice of its exercise of the option not more than one year and not less than 120 days before 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 \$43,585.56 (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 \$3,632.13, plus sales and all other taxes Landlord is authorized or obligated to collect on such transactions, on February 1, 2024, and on the 1<sup>st</sup> day of each month thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

### **4.02 Rent Adjustments.**

(a) **Five-Year Appraised Rent Adjustments.** Commencing February 1, 2024, 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 in **Exhibit E**. 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.

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

## **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) 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 F** 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: city\_manager@ci.homer.ak.us

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

Alaska Scrap and Recycling, LLC  
Attn: Jeff Riley, General Manager & Paul Keen, Facility Manager  
44196 K-Beach Road  
Soldotna, Alaska 99669  
Facsimile: (907) 262-7258  
Email: jeffr@pwinvestment.com; pkeen@alaskascrap.com

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.



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

**Landlord:**

**Tenant:**

**CITY OF HOMER**

**ALASKA SCRAP & RECYCLING, LLC**

By: \_\_\_\_\_  
Robert Dumouchel, City Manager

\_\_\_\_\_  
Jeff Riley, General Manager

\_\_\_\_\_  
Paul Keen, Facility Manager

**ACKNOWLEDGMENTS**

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_, by Robert Dumouchel, City Manager for, and on behalf of the City of Homer, an Alaska municipal corporation.

\_\_\_\_\_  
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 Jeff Riley, General Manager for, and on behalf of Alaska Scrap and Recycling, LLC, an Alaskan Limited Liability Company.

\_\_\_\_\_  
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 Paul Keen, Facility Manager for, and on behalf of Alaska Scrap and Recycling, LLC, an Alaskan Limited Liability Company.

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

## **EXHIBIT A**

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

Tenant, Alaska Scrap and Recycling, LLC, is an Alaskan Limited Liability Company organized under the laws of the State of Alaska.

Attached to this exhibit is Tenant's State of Alaska Business License certifying that Tenant is in good standing, the Certificate of Organization, and Domestic Limited Liability records describing its legal organization and verifying the members and their percentage of ownership of Alaska Scrap and Recycling LLC.

**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**

#### **(Section 2.01)**

A portion containing 43,560 square feet, more or less, of T 6S R 13W SEC 36 Seward Meridian HM 0930012 Homer Spit Sub No. 5 Lot 12, also known as Kenai Peninsula Borough Tax Parcel No. 18103220, in Homer Recording District, State of Alaska. Physical Address is 4380 Freight Dock Road. Attached to this exhibit is the Property Plat.

## **EXHIBIT D**

### **TENANT'S PROPOSED USE OF THE PROPERTY**

#### **(Section 6.01)**

Landlord's Authorized Use of the Property: Use of a 1 acre portion of Lot 12, Concrete Pad, for the staging and storage of scrap metal as part of the business' recycling operations.

Required Improvements: Continue the maintenance of the temporary security fencing with the ability to safely secure and lock access to the area when area is unattended; must be installed around the perimeter of the leased square footage.

Attached to this exhibit is Tenant's written narrative and lease application for reference.

**EXHIBIT E**

**SITE PLAN**

**(Section 6.02)**

Attached to this exhibit is Tenant's property plan detailed schematic.

**EXHIBIT F**

**PERMISSION TO OBTAIN INSURANCE POLICIES**

**(Section 9.04(d))**

The City of Homer is hereby granted permission to request and obtain copies of Alaska Scrap and Recycling, LLC (“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: \_\_\_\_\_

**ALASKA SCRAP & RECYCLING, LLC**

By: \_\_\_\_\_  
Jeff Riley, General Manager

By: \_\_\_\_\_  
Paul Keen, Facility Manager