

**CITY OF HOMER
HOMER, ALASKA**

City Manager/
Port Director

RESOLUTION 25-027

A RESOLUTION OF THE CITY COUNCIL OF HOMER ALASKA,
APPROVING A LEASE ASSIGNMENT FROM BERTH II INC. TO HAPPY
FACE LLC FOR THE PROPERTY ENTITLED T 7S R 13W SEC 1
SEWARD MERIDIAN HM 0890034 HOMER SPIT AMENDED LOT 32,
HOMER RECORDING DISTRICT, STATE OF ALASKA AND
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE
THE APPROPRIATE DOCUMENTS.

WHEREAS, Resolution 24-068 approved a lease assignment from Y & C, LLC to Berth II
Inc.; and

WHEREAS, Berth II, in order to separate components of their real estate holdings into
discrete entities, sold the buildings on the property to Happy Face, LLC, which is largely
comprised of the same members as Berth II, Inc.; and

WHEREAS, Section 6.02 of the Lease requires that any buildings, fixtures, and
improvement will remain the property of the Lessee; and

WHEREAS, At the direction of City staff, Happy Face, LLC, applied for an assignment for
the duration of the term of the Lease from Berth II, Inc.; and

WHEREAS, The City finds the Tenants to otherwise be in compliance with the Lease and
considers their planned use of the facility to be appropriate for the property's Marine
Commercial zoning.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska hereby
approves the lease assignment from Berth II, Inc. to Happy Face, LLC of the Ground Lease and
Security Agreement for the property entitled T 7S R 13W SEC 1 Seward Meridian HM 0890034
Homer Spit Amended Lot 32, Homer Recording District, State of Alaska and authorizes the City
Manager to negotiate and execute the appropriate documents.

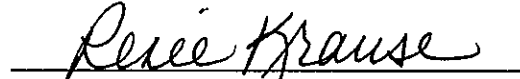
PASSED AND ADOPTED by the Homer City Council this 14th day of April, 2025.

CITY OF HOMER



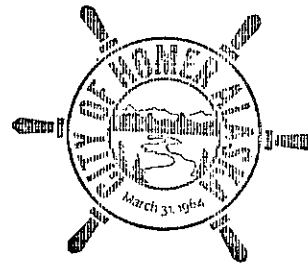
RACHEL LORD, MAYOR

ATTEST:



RENEE KRAUSE, MMC, CITY CLERK

Fiscal Note: Resolution 24-068.





MEMORANDUM

Resolution 25-027 A Resolution of the City Council of Homer Alaska, Approving the Assignment of a Ground Lease and Security Agreement between the City and Berth II, Inc., for the Property with a Legal Description of T7S R13W Section 1 Seward Meridian HM0890034 Homer Spit Amended Lot 32, in the Homer Recording District, State of Alaska, also known as Kenai Peninsula Borough Parcel No. 18103432 and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager/Port Director.

Item Type: Backup Memorandum
Prepared For: Mayor Lord and City Council
Date: April 4, 2025
From: Mark Bowman, Port Property Associate
Through: Melissa Jacobsen, City Manager

Berth II, Inc. (Berth II), has a lease with the city for the property located at 4400 Homer Spit Road, also identified as Homer Spit Amended Lot 32.

Berth II notified the Port and Harbor that they had sold the building on said property, at which time Berth II was informed that in order to be in compliance, the building owner and lessee was required to be the same entity. Berth II with largely the same owners and members of Happy Face, LLC, requested assignment of the Lease between Berth II and the City to Happy Face, LLC. An application with the required documentation was submitted.

The application and required documentation was reviewed by Port and Harbor Staff.

The proper procedure is to execute an Assignment of Lease document, which together with the original lease document will constitute the full agreement between the City and the new tenant.

Port and Harbor staff will provide assurance that proper procedures will be followed to terminate the lease between Berth II, Inc. and the City to assure the validity and assignment of the Happy Face, LLC., lease.

The City Manager has reviewed the lease document. The application and required relevant documents are attached with confidential materials provided separately.

Recommendation: Approve Resolution 25-027

Attachments: Lease Application Packet for Happy Face, LLC



City of Homer

www.cityofhomer-ak.gov

Port and Harbor

4311 Freight Dock Road

Homer, AK 99603

port@cityofhomer-ak.gov

(p) 907-235-3160

(f) 907-235-3152

City of Homer Lease Application Proposal Review & Staff Recommendations

Proposal Synopsis

Application is for: Happy Face LLC

Lease Proposal Synopsis and Recommendation: The request for a Lease Assignment is due to the building ownership and current lease being under different legal entities. This lease is an assignment from Berth II, Inc. to Happy Face LLC. After the lease with Berth II, Inc. was signed, the ownership of the building was transferred to a separate entity. The City, however, requires that a tenant be the owner of all structures on their property, requiring a new lease agreement be executed with the entity that owns and manages the building.

Criteria Checklist using City of Homer Code 18.08.060

The lease application provides a clear, precise written narrative that addresses all proposal criteria:



Yes



No



N/A



Insufficient

Notes:

1. 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



Insufficient

Notes:

2. The development plan includes phases and timetables for the proposal:



Yes



No



N/A



Insufficient

Notes: The building is currently being remodeled with planned occupancy date of May 1, 2025.

3. The development plan proposes a capital investment plan:



Yes



No



N/A



Insufficient

Notes: Upper unit will house main administrative headquarters of the Southwest Alaska Pilots Association (SWAPA) and two additional office spaces available to be subleased out. The lower level of the property will consist of 3 separate rental commercial units. Two of the units have prospective tenants who are prepared to apply to the City for sublease approval: Spittoon, LLC and Uncle Thirsty's LLC.

4. The applicant is experienced in the proposed business or venture:



Yes



No



N/A



Insufficient

Notes: As noted in the Lease Application: “As owners of Berth II, Inc., [nearly identical to the members of Happy Face LLC] they have been operating as local landlords since August 1993 and have had a presence in Homer since that time, with an excellent record both with the City and the Kenai Peninsula Borough. In addition to operating rental property in Homer, the owners have property in Seward, Anchorage, and Valdez, AK.” Berth II has a slightly different list of owners than Happy Face LLC has members. The Percentage of ownership of the businesses is also different.

5. The applicant has the financial capability or backing including a credit history, prior lease history, and assets that will be used to support the proposed development:

☒
Yes

☐
No

☐
N/A

☐
Insufficient

Notes: Southwest Alaska Pilots Association (SWAPA), previously operating under the Berth II, Inc has a known history of business ownership and financial resources as an association of marine pilots.

6. The proposal states the number of employees anticipated:

☒
Yes

☐
No

☐
N/A

☐
Insufficient

Notes: Verbally stated: The six Sublessees’ business activities on the property are likely to result in the creation of a number of additional jobs.

7. The proposed lease rate was included in the proposal.

☐
Yes

☐
No

☒
N/A

☐
Insufficient

Notes: The rate that was applied to Berth II, Inc. will be the rate applied to Happy Face, LLC.

8. Information about other financial impacts such as tax revenues, stimulation of related or spin-off economic development, or the value of improvements left behind upon termination of the lease was included in the application.

☒
Yes

☐
No

☐
N/A

☐
Insufficient

Notes: Verbally provided: Marine Commercial retail rentals as well office space rentals will offer opportunity for increased businesses opportunity and the tax revenue that is derived from it.

9. Other long-term social economic development information was included in the proposal.

☒
Yes

☐
No

☐
N/A

☐
Insufficient

Notes: As stated in the Lease Application: “This location is prime for the summer season and these businesses will provide a service for locals and tourists alike, fostering community growth and economic development.”

10. Residency or licensure of the applicant has been established in the city, Kenai peninsula borough, and/or the state of Alaska, as identified in the city’s request for proposal and permitted under state and federal law:

☒
Yes

☐
No

☐
N/A

☐
Insufficient

Notes: The members of the Happy Face LLC, largely the same as the owners of Berth II, Inc. have been operating under Berth II, Inc. as local landlords since 1993 and have an excellent record with both the City of Homer and Kenai Peninsula Borough.

18.08.060 (b) Determination of the rent amount shall take into consideration the following factors:

(Record comments below as appropriate.)

- 1. Appraisal or tax assessed valuation;**
- 2. The highest and best use of the land;**
- 3. Development (existing and planned);**
- 4. Economic development objectives;**
- 5. The location of the property;**
- 6. Alternative valuation methodologies as negotiated by both parties. [Ord. 18-16(S)(A) 1,2018].**

The rent amounts will be unchanged from the rate applied to Berth II, Inc. based on square footage of the property at the current appraised rate with Consumer Price Index increases.

FOR CURRENT ASSIGNMENTS ONLY – Current lessee is in full compliance with the lease terms and is eligible for lease reassignment: The purpose of this Lease Application for an Assignment is to gain compliance with the City’s lease terms. The City was notified, after the fact, that the building on the Leased Property was placed under a separate LLC in order to reduce exposure financial risk. Berth II, Inc / Happy Face, LLC has been prompt in completing the application to correct this violation.

☐ **Yes**
☒ **No**
☐ **N/A**
☐ **Insufficient**

FOR CURRENT TENANTS ONLY – the lessee is in good standing: See above.

☐ **Yes**
☒ **No**
☐ **N/A**
☐ **Insufficient**

All applicable documentation has been provided:

Lease Application and Written Narrative

☒ **Yes**
☐ **No**
☐ **N/A**
☐ **Insufficient**

- ☒ Property Plan
- ☒ Development Plan
- ☒ Financial Information
- ☒ Business Entity and Licensing Information
- ☒ Verification that Insurance can be provided at Signing of Lease (Auto Liability is Pending and may be requested depending on the results of communication between a local insurance provider and AMLJIA to determine need.
- ☒ City Planning & Other Agency Approval Information – Happy Face, LLC has been working with Ed Gross, Associate Planner. Report is attached. An additional request for approval from City Planning will be submitted for a windbreak for outside seating for the Spittoon LLC, a BBQ restaurant.

Comments/Recommendations from Public Works	
Public Works has no additional comments.	
Comments/Recommendations from Planning & Zoning	
Planning and Zoning review plans provided a permit for a deck. See attached plans and documents.	
Additional Comments/Recommendations from Port & Harbor Staff (if applicable)	
	<input type="checkbox"/> N/A

Comments from City Manager's Office	
	<input type="checkbox"/> N/A

Recommendation from Port & Harbor Advisory Commission (if applicable)	
	<input type="checkbox"/> N/A

Recommended Action to City Council	
	<input type="checkbox"/> N/A

Application Verified By:

City Manager Approval: _____ **Date:** _____

Attachments:

- Port Staff Review Checklist
- Lease Application
- Lease Application Narrative
- Berth II Lease Document
- Resolution 24-068 Assigning Lease to Berth II, Inc.
- List of SWAPA members, ownership percentage and mailing addresses
- Happy Face LLC Business License
- Certificate of Organization from State of Alaska Department of Commerce
- Articles of Organization
- Domestic Limited Liability Company Initial Biennial Report
- Kenai Peninsula Borough Certificate of Authority to Collect Borough Sales Tax
- Certificate of Insurance for Commercial General Liability
- State of Alaska State Fire Marshal Plan Review and letter
- As-built from 05/23/2024 with additional drawings reflecting current plans
 - Diagram of existing building with parking areas identified
 - Borough Plat Spit Map enlarged
 - Landscape plans
- City Planning Deck Zoning Permit
- Applicant References: (Confidential)
- Northrim Bank January and February, 2025 statements (Confidential)



City Lease Application For City-Owned Real Property

Homer Port & Harbor
4311 Freight Dock Road
Homer, AK 99603
Phone: (907)235-3160
Fax: (907)235-3152
port@cityofhomer-ak.gov

Lease Application Instructions

- The information provided on the following form shall be used by City Staff, City Council, and the Port and Harbor Advisory Commission (for City land on the Homer Spit) during the review process of your lease proposal. It is considered public information and will be included in the public meeting packets.
- Any financial information/documents included with your application is considered confidential and will be used by City Staff only; it will not be part of the public review process.
- Please complete all sections of the form, or put "N/A" if non-applicable.
- All applicable fees must be included with your application in order to process the application. Payments can be made either by check payable to "City of Homer" or by credit card. Current fees established by the City Fee Schedule are:

Lease Application Fee – For New Long-Term Leases	\$1,000.00
Lease Amendment/Transfer Fee – For Assignment of an Existing Lease to a New Lessee	\$500.00

- Submit your completed application, required documents, and application fee to:

Homer Port & Harbor
4311 Freight Dock Road
Homer, AK 99603
Email: rkriegh@cityofhomer-ak.gov
Direct Phone: (907)235-3161

- Your application will go through an initial review to ensure completeness and Lease Staff will be in touch to coordinate any follow-up meetings, requests for missing information, and to schedule your lease application/proposal for the applicable public meetings.
- Lease applications and proposal are evaluated based on the criteria outlined in HCC 18.08.060.

Lease Application Questions?

Contact:
Roslyn Kriegh, Port Property Associate
Email: rkriegh@cityofhomer-ak.gov
Direct Phone: (907)235-3161



City Lease Application For City-Owned Real Property

Homer Port & Harbor
4311 Freight Dock Road
Homer, AK 99603
Phone: (907)235-3160
Fax: (907)235-3152
port@cityofhomer-ak.gov

Lease Application Purpose

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

Property Information

Physical Address:	4400 HOMER SPIT ROAD, HOMER, AK 99603		
Square Footage:	24,639	<input checked="" type="checkbox"/> Full Lot	<input type="checkbox"/> Portion of Lot
Legal Description of Property:	KPB Parcel No.: 18103432 T 7S R 13W SEC 1 SEWARD MERIDIAN HM 0890034 HOMER SPIT AMENDED LOT 32		

Applicant Information

Business Name:	HAPPY FACE LLC
Representative's Full Name & Title:	JOHN STEWART PRESIDENT
Mailing Address:	P.O. BOX 3147
City, State, ZIP Code:	HOMER, AK 99603
Phone Number(s):	907-235-8783
Email:	office@swpilots.net

Business Entity & Financial Information

<input checked="" type="checkbox"/> N/A	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: 10/04/2024	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: 10/04/2024	

<input checked="" type="checkbox"/> N/A	Corporation – Attached documentation must provide the full names of Officers and Principal Stockholders (10%+), their addresses, and share percentages.
	<div style="display: flex; justify-content: space-between;"> <div>Date of Organization:</div> <div>Type of Corporation:</div> </div>
	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 checked="" type="checkbox"/> N/A	Other – Please explain:
Proof of Financial Capability to Meet Obligations:	<input checked="" type="checkbox"/> N/A Documentation of Payment History: Documents such as a credit report and score from one of the three credit bureaus (i.e. Experian, Equifax, TransUnion) or records of prior lease history.
	<input checked="" type="checkbox"/> Documentation of Applicant's Financial Backing: Records showing applicant has secured the funding necessary to implement their development/improvement plan and/or purchase the business (if applicable).
	<input checked="" type="checkbox"/> N/A 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.

Lease Proposal

Type of Business/ Proposed Use of the Property:	ADMINISTRATIVE OFFICES FOR STATE PILOTS, COMMERCIAL RETAIL RENTALS.
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Requested Lease Term:	<div> <input checked="" type="checkbox"/> Short Term Lease (One Year or Less) – Duration (in months): </div> <div> <input checked="" type="checkbox"/> Long Term Lease (More Than One Year) <ul style="list-style-type: none"> Standardized Lease is a 20-year term with two 5-year Options to Renew; City Manager may deviate from standardized lease term when reasonable and necessary, and approved by Council (18.08.030). No more than two Options to Renew; each option cannot exceed 25% of initial lease term (18.08.110). <div> Duration (in years): 20 No. of Options to Renew: 2 </div> </div>
Property Plan:	<div> <input checked="" type="checkbox"/> Describe your Property Plan in your written narrative. Details should include but not be limited to: <ul style="list-style-type: none"> Proposed utilization of the lot/space, including parking If there are existing buildings on the property and what their proposed uses are Any intentions to rent out or sublease space on the property How the use is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan </div> <div> <input type="checkbox"/> Provide a detailed schematic (to scale) that shows the following: * Pending <ul style="list-style-type: none"> Size of lot – dimensions and total square footage Placement/size of existing buildings, storage units, and other miscellaneous structures Parking spaces – numbered on the drawing with a total number indicated Note: an as-built survey from a licensed surveyor may be required </div>
Development Plan:	<p>Do you have a development and/or improvement plan for the property, including plans for repairs or maintenance to any existing buildings?</p> <div> <input checked="" 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. </div> <div> <input type="checkbox"/> No In your written narrative, explain why. </div>
City Planning & Other Agency Approvals:	<p>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:</p> <ul style="list-style-type: none"> Applicable permits/approval from City Planning for zoning compliance, such as Conditional Use Permits, Zoning Permits Fire Marshall Plan Review and Permitting Waste Disposal System Plan Approval – Includes fish waste if applicable Other applicable permits/inspection statements from agencies such as U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and Alaska Department of Environmental Conservation Division of Environmental Health <div> <input type="checkbox"/> Explain in your written narrative what necessary approvals, permits, and/or inspections are applicable to your business/proposed use and the current status of your application with those agencies. </div> <div> <input checked="" type="checkbox"/> Attach any relevant documentation that verifies completion or pending status. </div>

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"> • What experience do you have in the proposed business or venture? • How long have you resided or conducted business in the City, Kenai Peninsula Borough, and/or the State of Alaska? • What are some of the economic, social, and financial benefits and/or impacts your business/proposed use brings to the community?
Applicant References:	<p><input checked="" type="checkbox"/> In your written narrative, list four persons or firms with whom the Applicant or its owners have conducted business transactions with during the past three years. Two references named shall have knowledge of your financial management history, of which at least one must be your principal financial institution. Two of the references must have knowledge of your business expertise.</p> <p>Each reference must include the following:</p> <ul style="list-style-type: none"> • Full Name • Name of the organization/business and their title at this entity • Address • Phone number and email address • Nature of association with Applicant
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

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

☐ 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.

Signed by:  Date: 3/24/25
 Signature: D447808810FG486

Printed Name & Title: John Stewart, President

Office Use Only

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

LEASE APPLICATION NARRATIVE: HAPPY FACE LLC
4400 HOMER SPIT ROAD, HOMER, AK 99603 (4400 HSR)

PROPERTY PLAN AND PROPOSED UTILIZATION

Happy Face LLC (HF) would like to propose assuming the City Lease from Berth II Inc (BII). Please note that HF and BII, whilst two separate entities, have common ownership. BII has transferred the property to HF via a simple title transfer.

The total property at 4400 HSR spans approximately 24,639 sf and is strategically located on the Homer Spit ensuring easy access to essential maritime and logistical operations. The main building spans approximately 7,392 sf.

4400 HSR will be the main administrative headquarters of the Southwest Alaska Pilots Association (SWAPA). SWAPA currently operates from 1230 Ocean Drive, Homer, AK 99603 and will move its operations to 4400 HSR. SWAPA pilots may also use the premises as accommodation for pilots prior to vessel assignments. SWAPA is renting the upper level of 4400 HSR and has a lease agreement in place. There will also be two additional offices on the upper level which may be leased out.

The lower level of the property will consist of 3 separate rental commercial units. HF intends to rent these out beginning this summer and has leases in place with two local businesses.

Spittoon LLC – operating as a BBQ restaurant from Unit 1. This tenant has history of working with existing and long-standing businesses in Homer, including ‘Fat Olives’.

Uncle Thirsty’s LLC – operating as a liquor store from Unit 3. This tenant has history of working with existing and long-standing businesses in Homer, operating as The Grog Shop.

We are actively seeking a suitable tenant for Unit 2. We expect this to also be a retail space.

This location is prime for the summer season and these businesses will provide a service for locals and tourists alike, fostering community growth and economic development.

Plans and permits will be provided with this Lease Application.

Compatibility statement: SWAPA has been in the maritime business for 50 years. SWAPA pilots are transported to ships calling in Cook Inlet via the pilot vessels “Katmai” and “Mary Dele” which are docked in the Homer Harbor and are operated by Alaska Nautical Services, LLC (ANS). The members of Happy Face, LLC are also members of ANS.

The owners of Happy Face LLC have many years of experience in the proposed business. As owners of Berth II, Inc. they have been operating as local landlords since August 1993 and have had a presence in Homer since that time, with an excellent record both with the City and the Kenai Peninsula Borough. In addition to operating rental property in Homer, the owners have property in Seward, Anchorage, and Valdez, AK.

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

AND

BERTH II INC.

Dated July 1, 2024

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT ("Lease") dated as of July 1, 2024, between the CITY OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and BERTH II INC. an Alaska corporation ("Tenant"), whose address is 4400 Homer Spit Road, Homer, Alaska, 99603.

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

RECITALS

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

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

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

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

ARTICLE 1. DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

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

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

(c) "Base Rent" is defined in Section 4.01.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit "C" Legal Description of Property

Exhibit "D" Tenant's Lease Proposal

Exhibit "E" Site Plan

Exhibit "F" Required Improvements Floor Plan

Exhibit "G" Permission to Obtain Insurance Policies

ARTICLE 2. THE PROPERTY

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

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

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

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

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

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

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is 20 years, commencing on July 1, 2024, and ending on June 30, 2044 (the “Term”).

3.02 Lease Renewal.

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

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

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

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

3.05. Options to Extend Lease Term.

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

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

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

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of \$23,653.44 (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 \$1,971.12, plus sales and all other taxes Landlord is authorized or obligated to collect on such transactions, on July 1, 2024, and on the first (1st) day of each month thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

4.02 Rent Adjustments.

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

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

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

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

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

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

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

ARTICLE 5. SECURITY INTEREST

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

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

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

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

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

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

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

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

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

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

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

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

6.05 Additional and Replacement Improvements.

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

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

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

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

6.08 Disposition of Improvements at End of Term.

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

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

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

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

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

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

ARTICLE 7. CARE AND USE OF THE PROPERTY

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

7.02 Repair of Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 8. ASSIGNMENT AND SUBLEASE

8.01 Assignment or Sublease Absent Consent is Void.

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

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

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

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

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

ARTICLE 9. LIABILITY, INDEMNITY AND INSURANCE

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

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

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

9.04 Insurance Requirements.

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

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

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

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

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

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

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

ARTICLE 10. ENVIRONMENTAL MATTERS

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11. CONDEMNATION

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

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

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

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

ARTICLE 12. DEFAULT

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

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

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

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

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

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

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

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

(b) Landlord may by written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates Tenant's right of possession in accordance with this subsection (b), and to repossess the Property, to expel or remove Tenant and any others who may be occupying or within the Property, and to remove any and all property therefrom, using such force as may be necessary, with or without process of law, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(c) Subject to Section 12.01(e), Landlord may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term, as applicable, for any sum that Landlord may deem reasonable.

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

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

(1) from time to time, an amount equal to the sum of all Base Rent and other sums that have become due and remain unpaid, less the rent, if any, collected by Landlord on reletting the Property reduced by the amount of all expenses incurred by Landlord in connection with reletting the Property; or

(2) immediately upon Tenant's default, an amount equal to the difference between the Base Rent and the fair rental value of the Property for the remainder of the Term, discounted to the date of such default at a rate per annum equal to the rate at which Landlord could borrow funds for the same period as of the date of such default.

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

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

ARTICLE 13. LEASEHOLD MORTGAGES

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

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

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

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

13.05 Notice to Qualified Mortgagee.

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

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

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

13.06 Performance of Tenant Obligations.

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

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

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

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

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

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

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

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

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

ARTICLE 14. GENERAL PROVISIONS

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

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

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

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

Port Property Associate
Homer Port & Harbor
4311 Freight Dock Road
Homer, Alaska 99603
Facsimile: (907) 235-3160
Email: port@cityofhomer-ak.gov

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

John Stewart
BERTH II INC.
PO Box 3147
Homer, Alaska 99603
Email: office@swpilots.net

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

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

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

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

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

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

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

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

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

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

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

14.15 Attorney's Fees.

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

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

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

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

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

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

14.20 Prior Lease Amended and Superseded. Landlord and Tenant are parties to a prior lease affecting the Property dated January, 21st, 2019, a memorandum of which has been recorded in the records of the Homer Recording District under Document No. 2019-000183-0 (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of July 1, 2024, and on and after that date the Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Prior Lease prior to that date.

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

Landlord:

Tenant:

CITY OF HOMER

BERTH II INC.

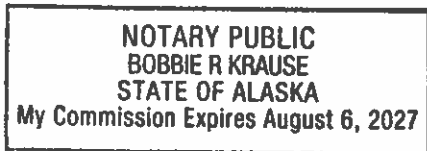
By: Melissa Jacobsen
Melissa Jacobsen, Interim City Manager

John Stewart
John Stewart, President

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

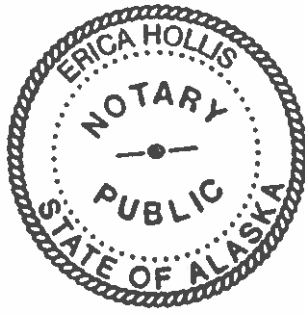
The foregoing instrument was acknowledged before me on July 29, 2024, by Melissa Jacobsen, Interim City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.



Bobbie R Krause
Notary Public in and for Alaska
My Commission Expires: 08/06/2027

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on July 19, 2024, by John Stewart, as President (title) of Berth II Inc (name of entity) on behalf of Berth II Inc (name of entity).



Erica Hollis

Notary Public in and for Alaska

My Commission Expires: 6/23/26

EXHIBIT A
SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP



THE STATE
of **ALASKA**

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

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

FOR DIVISION USE ONLY

Domestic Business Corporation

2023 Biennial Report

For the period ending December 31, 2022

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

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

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

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

Entity Name: BERTH II, INC.

Entity Number: 52170D

Home Country: UNITED STATES

Home State/Prov.: ALASKA

Physical Address: 1230 OCEAN DR, HOMER, AK 99603

Mailing Address: PO BOX 3147, HOMER, AK 99603

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

Name: Matthew Michalski

Physical Address: 5412 W DIMOND BLVD APT #4,
ANCHORAGE, AK 99502

Mailing Address: 5412 W DIMOND BLVD APT #4,
ANCHORAGE, AK 99502

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

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

Full Legal Name	Complete Mailing Address	% Owned	Alien Affiliate	Assistant Secretary	Assistant Treasurer	Director	President	Secretary	Shareholder	Treasurer	Vice President
James Cunningham	64255 FLINTLOCK LN, HOMER, AK 99603	6.66				X			X		X
Peter Garay	PO BOX 2653, HOMER, AK 99603	6.67							X		
Ian Maury	911 R St, ANCHORAGE, AK 99501	6.66							X		
Matthew Michalski	5412 W DIMOND BLVD APT #4, ANCHORAGE, AK 99502	6.66				X			X		
CHRISTOPHER MITCHELL	PO BOX 3245, HOMER, AK 99603	6.66				X			X		
MICHAEL O'HARA	9048 SAHALEE DR, ANCHORAGE, AK 99507	6.67							X		
Jeffrey Pierce	17321 YELLOWSTONE DR, EAGLE RIVER, AK 99577	6.67							X		
R. O. Baker II Revocable Trust	PO BOX 870, ANCHOR POINT, AK 99566	6.67							X		
Donal Ryan	57425 E. END RD, HOMER, AK 99603	6.67				X		X	X	X	
C VINCENT TILLION	791 OCEAN DR LP, HOMER, AK 99603	6.67							X		
Bryan Vermette	PMB 204 35555 KENAI SPUR HWY, SOLDOTNA, AK 99669	6.67							X		
CAROLYN VERMETTE	PO BOX 1105, KASILOF, AK 99610	6.66							X		
Andrew Wakefield	214 E 120TH AVE, ANCHORAGE, AK 99515					X	X				
WAKEFIELD REVOCABLE TRUST	214 E 120TH AVE, ANCHORAGE, AK 99515	6.67							X		
Ronald Ward, II	2164 ARCADIA DR, ANCHORAGE, AK 99517	6.67							X		
Joshua Weston	PO BOX 1692, HOMER, AK 99603	6.67				X			X		

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

Purpose: PROPERTY RENTALS

NAICS Code: 531110 - LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS

New NAICS Code (optional):

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

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

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

Mandatory. Do not leave blank.

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

Name: Annie Wiard

EXHIBIT B

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

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 24-068

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, APPROVING A LEASE ASSIGNMENT FROM Y & C, LLC TO BERTH II, INC.. FOR A NEW 20-YEAR LEASE WITH OPTIONS FOR 2 CONSECUTIVE 5 YEAR RENEWALS FOR LOT 32, AS SHOWN ON THE PLAT NO. 89-34, AT AN ANNUAL RATE OF \$23,653.44 AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE THE APPROPRIATE DOCUMENTS.

WHEREAS, Berth II, Inc. applied to transfer the Y & C LLC lease as part of its purchase of the site buildings; and

WHEREAS, Berth II, Inc. submitted a complete application pursuant to Homer City Code (HCC) Title 18; and

WHEREAS, Berth II, Inc., has indicated in their lease application their intention of subleasing the existing business space on the first floor, in addition to establishing sleeping quarters and administrative office space for their pilots and crew on the second floor; and

WHEREAS, Per HCC 18.08.110 the lease is in compliance and the past lease history has shown contractual obligations are satisfactorily met; and

WHEREAS, The City Administration and the Port and Harbor Advisory Commission on May 22, 2024 reviewed the application pursuant HCC 18.08.060 and recommend a 20-year lease with options for 2 consecutive 5-year renewals on Lot 32, as shown on the plat entitled HOMER SPIT filed as amended plat number 89-34; and

WHEREAS, HCC 18.08.160 (4) states the Council shall approve or deny the request for lease assignment via resolution.

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves the lease assignment of the aforementioned Lease from Y & C LLC. to Berth II, Inc., and authorizes the City Manager to execute a 20-year lease with options for 2 consecutive 5-year renewals on lot 32, as shown on the plat entitled HOMER SPIT filed as amended plat number 89-34, at an annual base rent of \$23,653.44 for the purpose of operating administrative office space, temporary pilot accommodations, and subleasing to local businesses.

PASSED AND ADOPTED by the Homer City Council on this 10th day of June, 2024.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



RENEE KRAUSE ACTING CITY CLERK

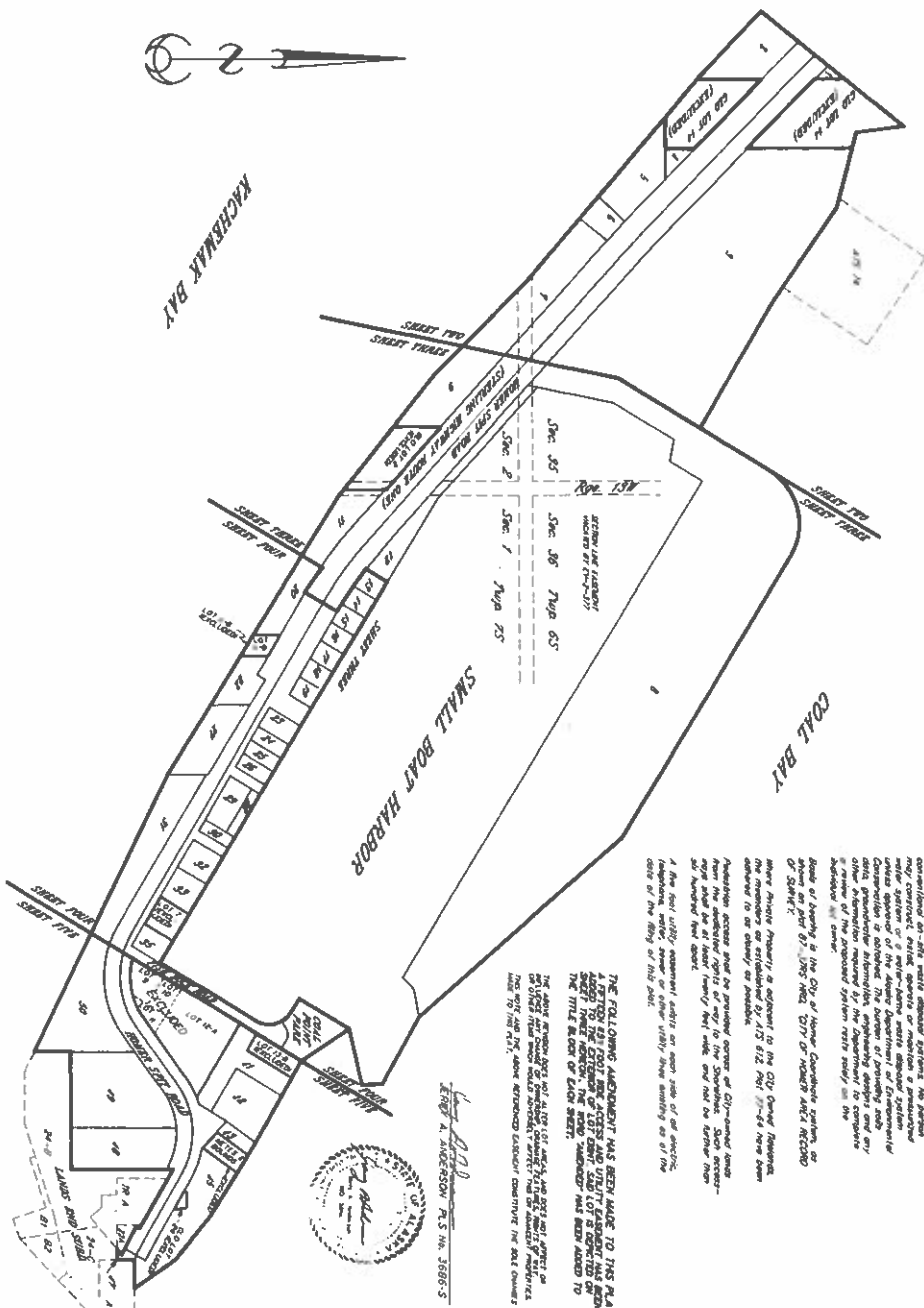
Fiscal Note: \$\$23,653.44 Annually



EXHIBIT C
LOCATION OF PROPERTY
(Section 2.01)

HOMER SPIIT

NOTE: SHEET 6 THROUGH SHEET 10 ARE SIGNATURE SHEETS ONLY



2) The boundaries rights of May and Escoments attributed part this plot constitutive BILHARDY AGRESTIENS among all Senators boundaries of this Plot are recorded herein.

Soils on these sites may or may not be suitable for conventional on-site waste disposal systems; the authors may construct, install, operate or maintain a permitted water system or a water-borne waste disposal system unless approved by the Agency Department of Environmental Conservation is obtained. The Agency of providing soils data, groundwater hydrology, engineering designs and other information required by the Department is an important part of the regulated system risks study. The

Boards of Nursing in the City of Homer Coordinated system, as shown on plot 87. 1705 AREA "CITY OF HOMER AREA A" RECORDED OF 5/24/17.

The first utility assessment adds an even state of all electric facilities, power or other utility, their existing as of the date of the filing of this suit.

THE FOLLOWING AMENDMENT HAS BEEN MADE TO THIS PLAT A FEETON #21 FOOT WIDE ACCESS AND UTILITY EASEMENT HAS BEEN ADDED TO THE EXTENSION OF LOT EIGHT. SAID LOT IS DEPICTED ON SHEET THREE HEREON. THE WORD "AMENDMENT" HAS BEEN ADDED TO THE TITLE BLOCK OF EACH SHEET.

THE ABOVE REVISION DOES NOT ALTER LOT AREAS AND DOES NOT AFFECT OR SUBJECT ANY OWNED OR OWNERSHIP CHANGING REALTY, RIGHTS OF USE OR OTHER ITEMS WHICH WOULD AFFECT THE OR ADVERSELY AFFECT THE VALUE AND THE ABOVE REVISIONED EASEMENT CONSTITUTE THE SOLE CHANGE MADE TO THIS P.L.A.

ERRY A. ANDERSON PLS No. 3686-5

89-34

HOMER

9-21-
10 22

89-15

1. COOP 200
MOWER REC. DIST
DATE 5-18 BY BP
AT 1:50 A.A.
AMOUNT OF ADJ./YR. 500000
ANNUAL P.D. ADJ. YRS
MOWER ANALYST 00000

CERTIFICATE OF OWNERSHIP
I hereby certify that I am the owner of the property shown and described herein, I hereby request approval of this bill showing such assessments for public utilities and roadways dedicated by me for public use, or to the lots shown

The Alaska
 City of Homer
 Dr. HMC, DEALY CITY, Alaska
 180 East Pioneer Avenue
 Homer, Alaska 99603
 Date 8/10/87
 ALVIN ANDERSON
 N. V. P. L. L. C.

NOTARY'S ACKNOWLEDGEMENT
Subscribed and sworn to before me this 1st day
of Nov 1947

11-9-87
My Commission Expires

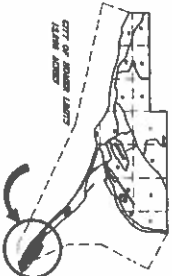
STUDY YOURS CAREFULLY

I hereby certify that this survey was performed by me or under my direct supervision. I declare that the information herein is true and correct to the best of my knowledge and belief.

DATE

This plot was approved by the Tamil Nadu Legislative Assembly
Planning Commission at the meeting of 2-10-87
BY Richard P. T. N. S.
Assistant Officer

VICINITY MAP 1" = 10,000'



DATE MAY 1986

SCALE 1" = 300'

GRID NO. N 1 NEU 5

FLD. BK. NA	175
DISK NA	218

JOE Na. 1778

A REASONABLE NUMBER OF SEC. 35 AND 36 TRAP 65 AND PORTIONS OF SEC. 1 AND 2 TRAP 7, ALL WITHIN ROL, LING, S.M. AND WITHIN THE CITY OF HONOLULU, ALASKA, WOULD BE ACCORDING DESTINY?

CHIC 199-429-0805 TOLL
ABILITY SURVIVES
JERRY A. ANDERSON P.S.

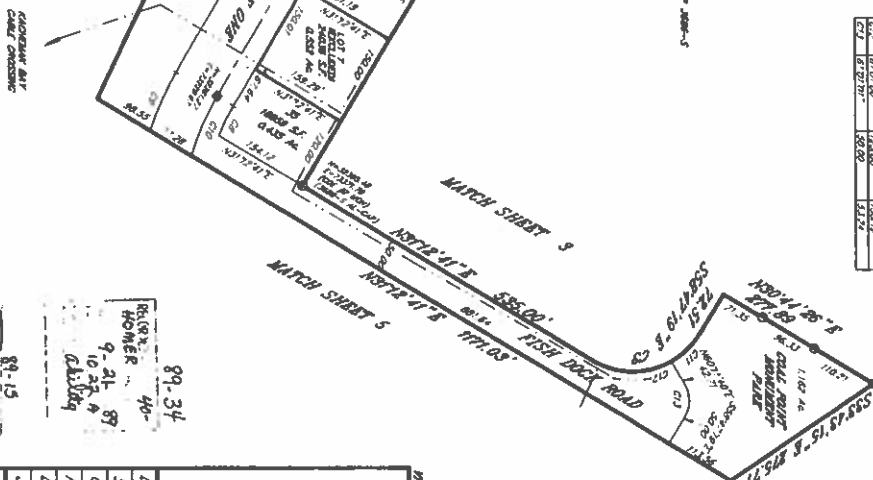
HANSON & CO.
MEMPHIS, TENNESSEE 38102
(A JOINT-VENTURE)

(907) 235-0440
Box 372, Homer Alaska 99603



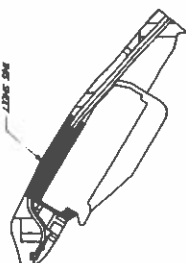
SHEET FOUR

№	Расс.	Возраст	Вз. (кг)
1	6-10-46	30,00-2,1	146,49
2	6-10-50	32,00-2,1	146,49
3	5-10-50	1,75	146,49
4	6-10-50	146,49-2,1	146,49
5	6-10-50	146,49-2,1	146,49
6	6-10-50	146,49-2,1	146,49
7	6-10-50	146,49-2,1	146,49
8	6-10-50	146,49-2,1	146,49
9	6-10-50	146,49-2,1	146,49
10	6-10-50	146,49-2,1	146,49
11	6-10-50	146,49-2,1	146,49
12	6-10-50	146,49-2,1	146,49
13	6-10-50	146,49-2,1	146,49
14	6-10-50	146,49-2,1	146,49
15	6-10-50	146,49-2,1	146,49
16	6-10-50	146,49-2,1	146,49
17	6-10-50	146,49-2,1	146,49
18	6-10-50	146,49-2,1	146,49
19	6-10-50	146,49-2,1	146,49
20	6-10-50	146,49-2,1	146,49
21	6-10-50	146,49-2,1	146,49
22	6-10-50	146,49-2,1	146,49
23	6-10-50	146,49-2,1	146,49
24	6-10-50	146,49-2,1	146,49
25	6-10-50	146,49-2,1	146,49
26	6-10-50	146,49-2,1	146,49
27	6-10-50	146,49-2,1	146,49
28	6-10-50	146,49-2,1	146,49
29	6-10-50	146,49-2,1	146,49
30	6-10-50	146,49-2,1	146,49
31	6-10-50	146,49-2,1	146,49
32	6-10-50	146,49-2,1	146,49
33	6-10-50	146,49-2,1	146,49
34	6-10-50	146,49-2,1	146,49
35	6-10-50	146,49-2,1	146,49
36	6-10-50	146,49-2,1	146,49
37	6-10-50	146,49-2,1	146,49
38	6-10-50	146,49-2,1	146,49
39	6-10-50	146,49-2,1	146,49
40	6-10-50	146,49-2,1	146,49
41	6-10-50	146,49-2,1	146,49
42	6-10-50	146,49-2,1	146,49
43	6-10-50	146,49-2,1	146,49
44	6-10-50	146,49-2,1	146,49
45	6-10-50	146,49-2,1	146,49
46	6-10-50	146,49-2,1	146,49
47	6-10-50	146,49-2,1	146,49
48	6-10-50	146,49-2,1	146,49
49	6-10-50	146,49-2,1	146,49
50	6-10-50	146,49-2,1	146,49
51	6-10-50	146,49-2,1	146,49
52	6-10-50	146,49-2,1	146,49
53	6-10-50	146,49-2,1	146,49
54	6-10-50	146,49-2,1	146,49
55	6-10-50	146,49-2,1	146,49
56	6-10-50	146,49-2,1	146,49
57	6-10-50	146,49-2,1	146,49
58	6-10-50	146,49-2,1	146,49
59	6-10-50	146,49-2,1	146,49
60	6-10-50	146,49-2,1	146,49
61	6-10-50	146,49-2,1	146,49
62	6-10-50	146,49-2,1	146,49
63	6-10-50	146,49-2,1	146,49
64	6-10-50	146,49-2,1	146,49
65	6-10-50	146,49-2,1	146,49
66	6-10-50	146,49-2,1	146,49
67	6-10-50	146,49-2,1	146,49
68	6-10-50	146,49-2,1	146,49
69	6-10-50	146,49-2,1	146,49
70	6-10-50	146,49-2,1	146,49
71	6-10-50	146,49-2,1	146,49
72	6-10-50	146,49-2,1	146,49
73	6-10-50	146,49-2,1	146,49
74	6-10-50	146,49-2,1	146,49
75	6-10-50	146,49-2,1	146,49
76	6-10-50	146,49-2,1	146,49
77	6-10-50	146,49-2,1	146,49
78	6-10-50	146,49-2,1	146,49
79	6-10-50	146,49-2,1	146,49
80	6-10-50	146,49-2,1	146,49



REC'D EILEY 40
HONEY ON
5-19 89
9:30 A.
Activity

89-34
RHX
HOMER 40-
9-21 87
10-27 4
Chisling



VELOCITY MAP $1^\circ = 1500$

DATE	MAY 1966
SCALE	1" = 100'
GRID	NA. N 1 TMS 5
FLD. BK.	NA. 179
DISY	NA. C1.18
JOB	NA. 1779

[illegible]

89-15

RECORDED FILED 40-	
Homer REC. DIST.	
DATE 5-19	1989
TIME 9:50	A M
Requested by Ability	
Address	

ABILITY SURVEYS
JERRY A. ANDERSON
REGISTERED LAND SURVEYOR
P.O. BOX 378
HOMER ALASKA 99603

(907) 235-8440

89-34

RECORDED - FILED 40-	
HOMER REC. DIST.	
DATE 9-21	1989
TIME 10:22	A M
Requested by Ability	
Address	

HOMER SPIT

CERTIFICATE OF OWNERSHIP

I hereby certify that I am the owner or lessee of the property shown and described hereon. I hereby request approval of this plat showing such easements for public utilities and roadways dedicated by me for public use, if any, and fixing the property boundaries as shown.

Robert C. Chalmers

Robert C. Chalmers
c/o Neal & Co.
Box 69
Adak, Alaska 98791

NOTARY'S ACKNOWLEDGEMENT
For Robert C. Chalmers

Subscribed and Sworn to before me this 29 day of July 1987

Patricia A. Ryder
NOTARY PUBLIC FOR ALASKA

MY COMMISSION EXPIRES: My Commission Expires: August 12, 1990

Lot No. 46

Tax Parcel: 181-050-1800

SHEET 6 of 18

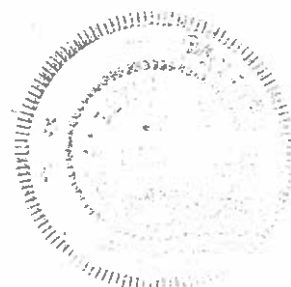


EXHIBIT D
TENANT'S PROPOSED USE OF THE PROPERTY
(Section 6.01)

Lease Application Narrative: Berth II

4400 Homer Spit Road, Homer, Alaska

Property Plan and Proposed Utilization

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

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

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

EXHIBIT E
SITE PLANS
(Section 6.02)

EXHIBIT F
FLOOR PLANS
(Section 6.02)

EXHIBIT G

PERMISSION TO OBTAIN INSURANCE POLICIES

(Section 9.04(d))

The City of Homer is hereby granted permission to request and obtain copies of Berth
II INC. ("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: 7/19/24

• • **BERTH II INC.**

By: John Stewart (printed name)
PRESIDENT (title)

By: _____ (printed name)
_____ (title)

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 24-068

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
APPROVING A LEASE ASSIGNMENT FROM Y & C, LLC TO BERTH II,
INC.. FOR A NEW 20-YEAR LEASE WITH OPTIONS FOR 2
CONSECUTIVE 5 YEAR RENEWALS FOR LOT 32, AS SHOWN ON THE
PLAT NO. 89-34, AT AN ANNUAL RATE OF \$23,653.44 AND
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE
THE APPROPRIATE DOCUMENTS.

WHEREAS, Berth II, Inc. applied to transfer the Y & C LLC lease as part of its purchase of
the site buildings; and

WHEREAS, Berth II, Inc. submitted a complete application pursuant to Homer City Code
(HCC) Title 18; and

WHEREAS, Berth II, Inc., has indicated in their lease application their intention of
subleasing the existing business space on the first floor, in addition to establishing sleeping
quarters and administrative office space for their pilots and crew on the second floor; and

WHEREAS, Per HCC 18.08.110 the lease is in compliance and the past lease history has
shown contractual obligations are satisfactorily met; and

WHEREAS, The City Administration and the Port and Harbor Advisory Commission on
May 22, 2024 reviewed the application pursuant HCC 18.08.060 and recommend a 20-year lease
with options for 2 consecutive 5-year renewals on Lot 32, as shown on the plat entitled HOMER
SPIT filed as amended plat number 89-34; and

WHEREAS, HCC 18.08.160 (4) states the Council shall approve or deny the request for
lease assignment via resolution.

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves the
lease assignment of the aforementioned Lease from Y & C LLC. to Berth II, Inc., and authorizes
the City Manager to execute a 20-year lease with options for 2 consecutive 5-year renewals on
lot 32, as shown on the plat entitled HOMER SPIT filed as amended plat number 89-34, at an
annual base rent of \$23,653.44 for the purpose of operating administrative office space,
temporary pilot accommodations, and subleasing to local businesses.

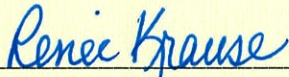
PASSED AND ADOPTED by the Homer City Council on this 10th day of June, 2024.

CITY OF HOMER



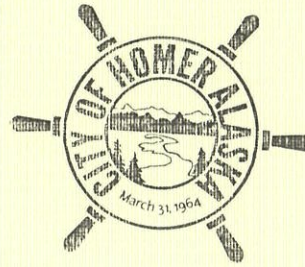
KEN CASTNER, MAYOR

ATTEST:



RENEE KRAUSE ACTING CITY CLERK

Fiscal Note: \$\$23,653.44 Annually



STATEMENT REGARDING OFFICIALS

ENTITY NAME: HAPPY FACE LLC

ENTITY NUMBER: 10287087

3/14/2025

TITLE (S)	MEMBER / MANAGER	% OWNED	MAILING ADDRESS
MEMBER MANAGER	JOHN M. STEWART	8.34%	P.O. BOX 3409, HOMER, AK 99603
MANAGER	ANDREW S. WAKEFIELD	0.00%	214 E 120TH AVENUE, ANCHORAGE, AK 99515
MEMBER MANAGER	JORDAN M. GOULD	8.34%	PMB 134, 35555 KENAI SPUR HWY, SOLDOTNA, AK 99669
MEMBER MANAGER	IAN H. MAURY	8.34%	911 R STREET ANCHORAGE, AK 99501
MEMBER MANAGER	MATTHEW J. MICHALSKI	8.34%	2550 CURLEW CIRCLE, ANCHORAGE, AK 99502
MEMBER MANAGER	C. VINCENT TILLION	8.33%	791 OCEAN DRIVE LOOP, HOMER, AK 99603
MEMBER	CUNNINGHAM COMMUNITY PROPERTY TRUST	8.33%	64255 FLINTLOCK LANE HOMER, AK 99603
MEMBER	CHRISTOPHER R. BUCKLEY	8.33%	6635 HOLLY LANE, ANCHORAGE, AK 99502
MEMBER	RONALD A. WARD, II	8.33%	2164 ARCADIA DRIVE, ANCHORAGE, AK 99517
MEMBER	CHRISTOPHER R. MITCHELL	8.33%	P.O. BOX 3245 HOMER, AK 99603
MEMBER	JOSHUA S. WESTON	8.33%	P.O. BOX 1692 HOMER, AK 99603
MEMBER	WAKEFIELD REVOCABLE TRUST	8.33%	214 E. 120TH AVENUE ANCHORAGE, AK 99515
MEMBER	BRYAN D. VERMETTE	8.33%	PMB 204, 35555 KENAI SPUR HWY SOLDOTNA, AK 99669

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

Happy Face LLC

PO BOX 3147, HOMER, AK 99603

owned by

HAPPY FACE LLC

is licensed by the department to conduct business for the period

October 11, 2024 to December 31, 2025
for the following line(s) of business:

53 - Real Estate, Rental and Leasing



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

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

Julie Sande
Commissioner

Happy Face LLC
PO BOX 3147
HOMER, AK 99603

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

HAPPY FACE LLC



IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective **October 4, 2024**.

A handwritten signature in black ink, appearing to read "Julie Sande", followed by a long horizontal line.

Julie Sande
Commissioner



THE STATE
of ALASKA

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

AK Entity #: 10287087
Date Filed: 10/04/2024
State of Alaska, DCCED

FOR DIVISION USE ONLY

Articles of Organization

Domestic Limited Liability Company

Web-10/4/2024 12:45:40 PM

1 - Entity Name

Legal Name: HAPPY FACE LLC

2 - Purpose

Any lawful purpose

3 - NAICS Code

531190 - LESSORS OF OTHER REAL ESTATE PROPERTY

4 - Registered Agent

Name: JOHN STEWART

Mailing Address: P.O. BOX 3409, HOMER, AK 99603

Physical Address: 41591 MANSON DRIVE, HOMER, AK 99603

5 - Entity Addresses

Mailing Address: P.O. BOX 3147, HOMER, AK 99603

Physical Address: 4400 HOMER SPIT ROAD, HOMER, AK 99603

6 - Management

The limited liability company is managed by a manager.

7 - Officials

Name	Address	% Owned	Titles
JOHN STEWART			Organizer

Name of person completing this online application

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: JENNIFER SITTON



THE STATE
of **ALASKA**

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

AK Entity #: 10287087
Date Filed: 10/15/2024
State of Alaska, DCCED

FOR DIVISION USE ONLY

Domestic Limited Liability Company

Initial Biennial Report

Entity Name: HAPPY FACE LLC

Entity Number: 10287087

Home Country: UNITED STATES

Home State/Prov.: ALASKA

Physical Address: 4400 HOMER SPIT ROAD, HOMER, AK
99603

Mailing Address: P.O. BOX 3147, HOMER, AK 99603

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

Name: JOHN STEWART

Physical Address: 41591 MANSON DRIVE, HOMER, AK
99603

Mailing Address: P.O. BOX 3409, HOMER, AK 99603

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
JAMES CUNNINGHAM	64255 FLINTLOCK LANE, HOMER, AK 99603	9.091	X	X
JORDAN GOULD	35555 KENAI SPUR HIGHWAY, #134, SOLDOTNA, AK 99669	9.091	X	X
MATTHEW MICHALSKI	2550 CURLEW CIRCLE, ANCHORAGE, AK 99502	9.091	X	X
CHRISTOPHER MITCHELL	PO BOX 3245, HOMER, AK 99603	9.091		X
JOHN STEWART	PO BOX 3409, HOMER, AK 99603	9.091	X	X
CLEMENT TILLION	791 OCEAN DRIVE LOOP, HOMER, AK 99603	9.091		X
JOSHUA WESTON	PO BOX 1692, HOMER, AK 99603	9.091		X
BRYAN VERMETTE	35555 KENAI SPUR HIGHWAY, #204, SOLDOTNA, AK 99669	9.091		X
WAKEFIELD REVOCABLE TRUST	214 E. 120TH AVENUE, ANCHORAGE, AK 99515	9.091		X
RONALD WARD, II	2164 ARCADIA DRIVE, ANCHORAGE, AK 99517	9.09	X	X
ANDREW WAKEFIELD	214 E. 120TH AVENUE, ANCHORAGE, AK 99515		X	
IAN MAURY	911 R STREET, ANCHORAGE, AK 99501	9.091		X

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

NAICS Code: 531190 - LESSORS OF OTHER REAL ESTATE PROPERTY

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: JENNIFER SITTON



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/14/2025

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

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

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

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL 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	X X	OPK10015116304	01/01/2025	01/01/2026	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000					
	MED EXP (Any one person) \$ 5,000					
	PERSONAL & ADV INJURY \$ 1,000,000					
GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 1,000,000
	AUTOMOBILE LIABILITY <input 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					COMBINED SINGLE LIMIT (Ea accident) \$
						BODILY INJURY (Per person) \$
						BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					EACH OCCURRENCE \$
	DED <input type="checkbox"/> RETENTIONS <input type="checkbox"/>					AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				\$
						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
						E.L. EACH ACCIDENT \$
						E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

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

Evidence of Insurance for City of Homer.

CERTIFICATE HOLDER

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Christopher Trainer

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Plan Review Approval Letter & Certificate

Grantor: State of Alaska, Department of Public Safety, Division of Fire & Life Safety

Grantee: HOMER CITY OF

Recording District:

Legal Description:

State of Alaska
Office of the State Fire Marshal
Plan Review

This is to certify that the plans for this building were reviewed by the *State Fire Marshal* on 1/24/2025 for conformance with AS 18.70.010 -- 100; 13 AAC 50.027.

This certificate shall be posted in a conspicuous place on the premises named Southwest Pilots Association Building and shall remain posted until construction is completed.

NOTICE: Any changes or modifications to the approved plans **must** be resubmitted for review by the *State Fire Marshal*.

Plan Review #: 2024ANCH1038

By: Steven Josten

Authority: AS 18.70.080
Form: 12-741
(6/01) **Renovation**

Steven Josten
Building Plans Examiner I



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Public Safety

DIVISION OF FIRE AND LIFE SAFETY

Plan Review Bureau – Anchorage

5700 East Tudor Road

Anchorage, Alaska 99705-1225

Main: 907.269.2004

Fax: 907.269.0098

01/24/2025

Return to Applicant: Matt Early
5243 Kachemak Drive
Homer, AK 99603

SUBJECT: Southwest Pilots Association Building - Renovation
ADDRESS: 4400 Homer Spit Road
CITY: Homer
PLAN REVIEW: 2024ANCH1038
TYPE OF CONSTRUCTION: V-A
OCCUPANCY: B Business
ADDITIONAL OCCUPANCY: M Mercantile
2021 INTERNATIONAL BUILDING AND FIRE CODE

Dear Matt Early:

Plans for the Renovation have been reviewed by this office for conformity with the State Fire Safety Regulations and are hereby approved. Enclosed is a certificate of approval that must be posted on the premises until completion of the above project.

It is prohibited to occupy this building until construction is completed, and if applicable, the Automatic Fire System(s) is installed, tested, and certified as operable. Any changes to the approved plans must be submitted to this office for review and approval.

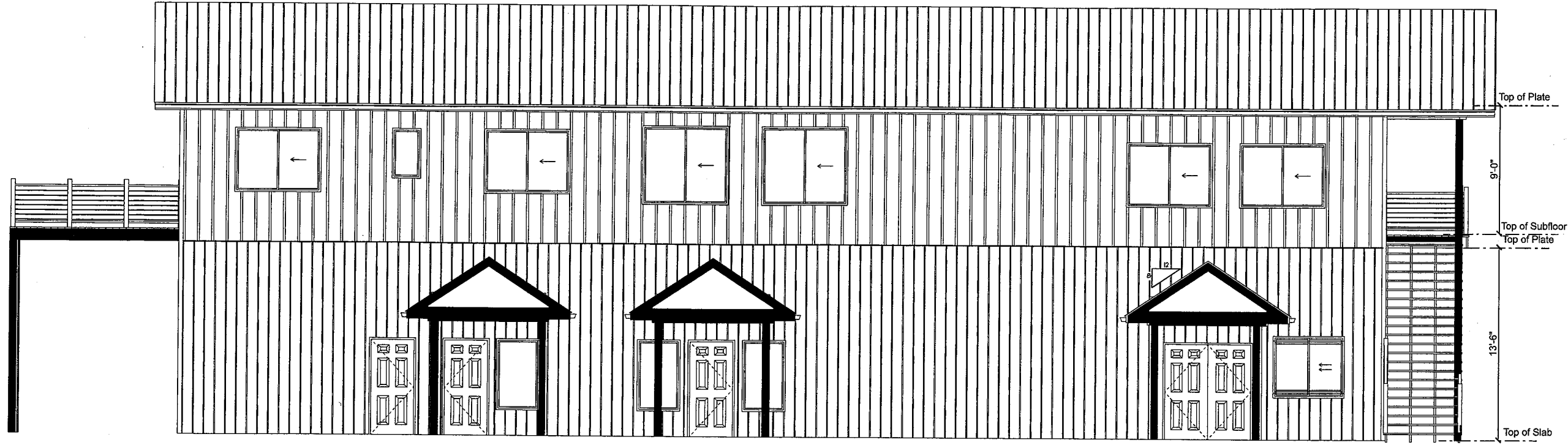
Approval of submitted plans is not approval of omissions or oversights by this office or noncompliance with any applicable regulations of the Municipal Government. The plans have not been reviewed for compliance with the federal Americans with Disabilities Act or structural requirements.

It must be understood that the inclusion of and compliance with State Fire Safety Regulations does not preclude the necessity of compliance with the requirements of local codes and ordinances.

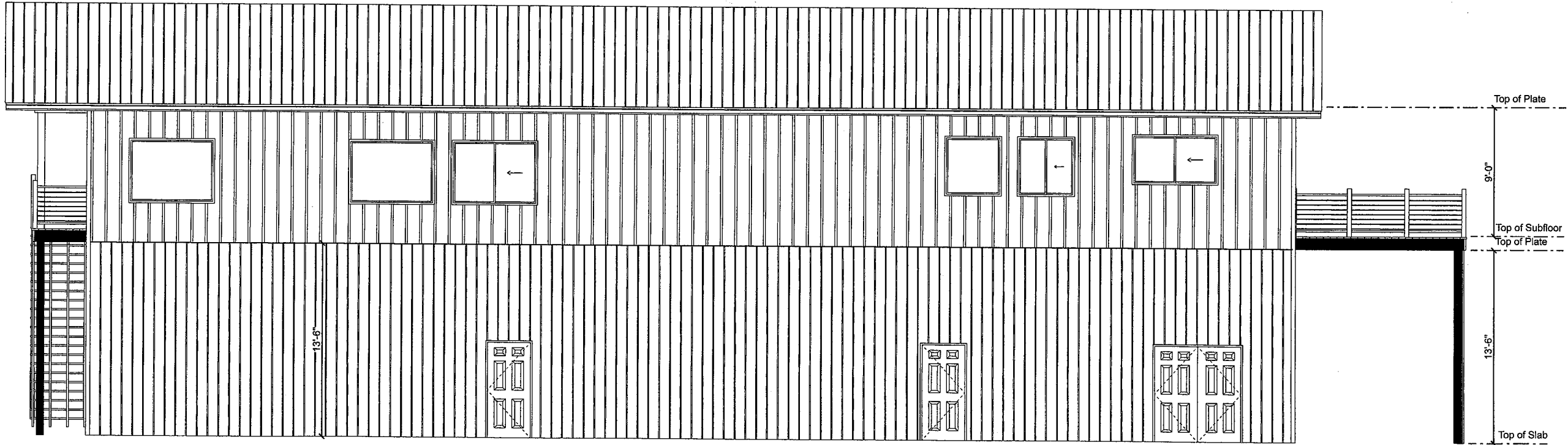
If we can be of further assistance in this matter, please feel free to contact us at the address above.

Approved By:
Steven Josten
Building Plans Examiner I
steven.josten@alaska.gov

Enclosure: Approval Certificate



NORTH ELEVATION
SCALE: 1/8" = 1'-0"



SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

Pilots Association Remodel

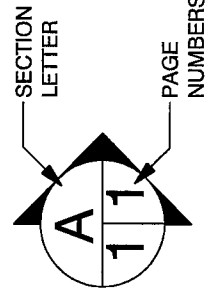
PHONE:
FAX:
MOBILE:

DRAWN BY:

SCALE: 1/8" = 1'-0"

DATE: Friday, December 20, 2024

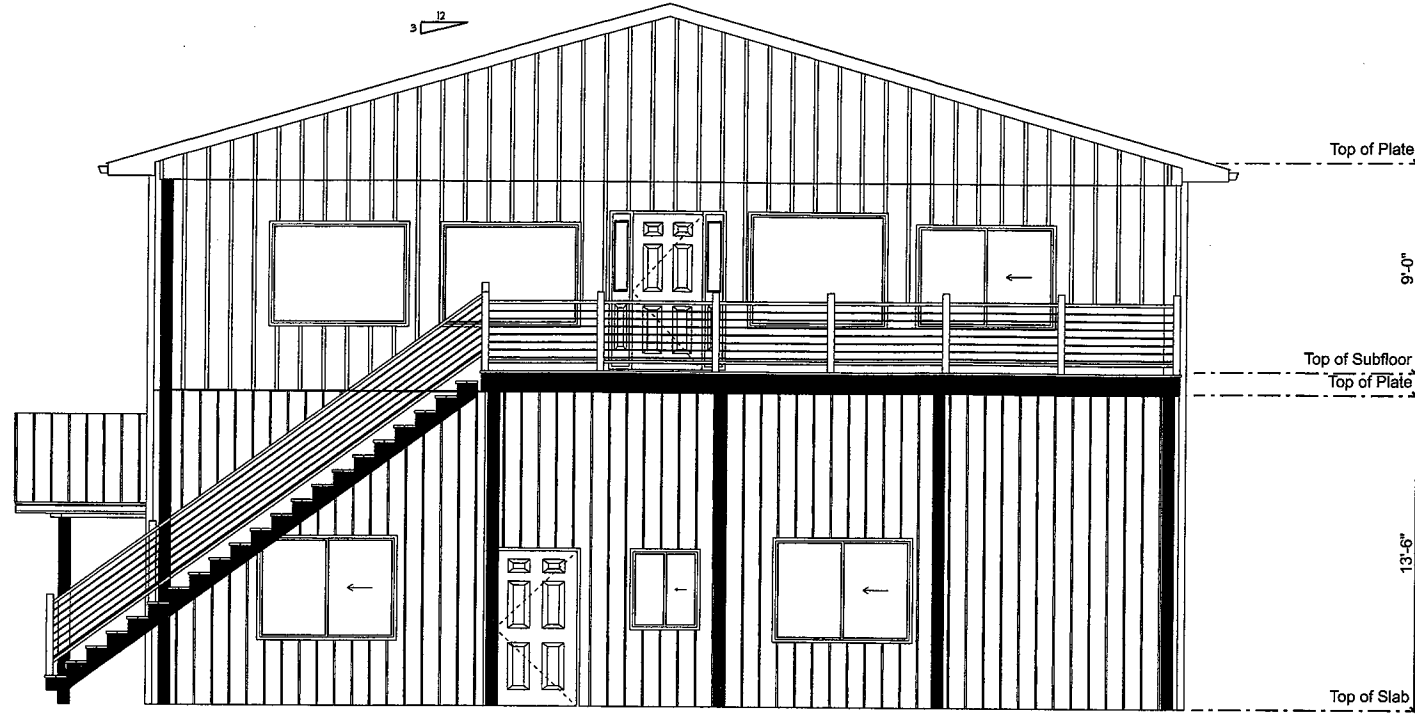
PAGE: **1/6**
Elevations 1



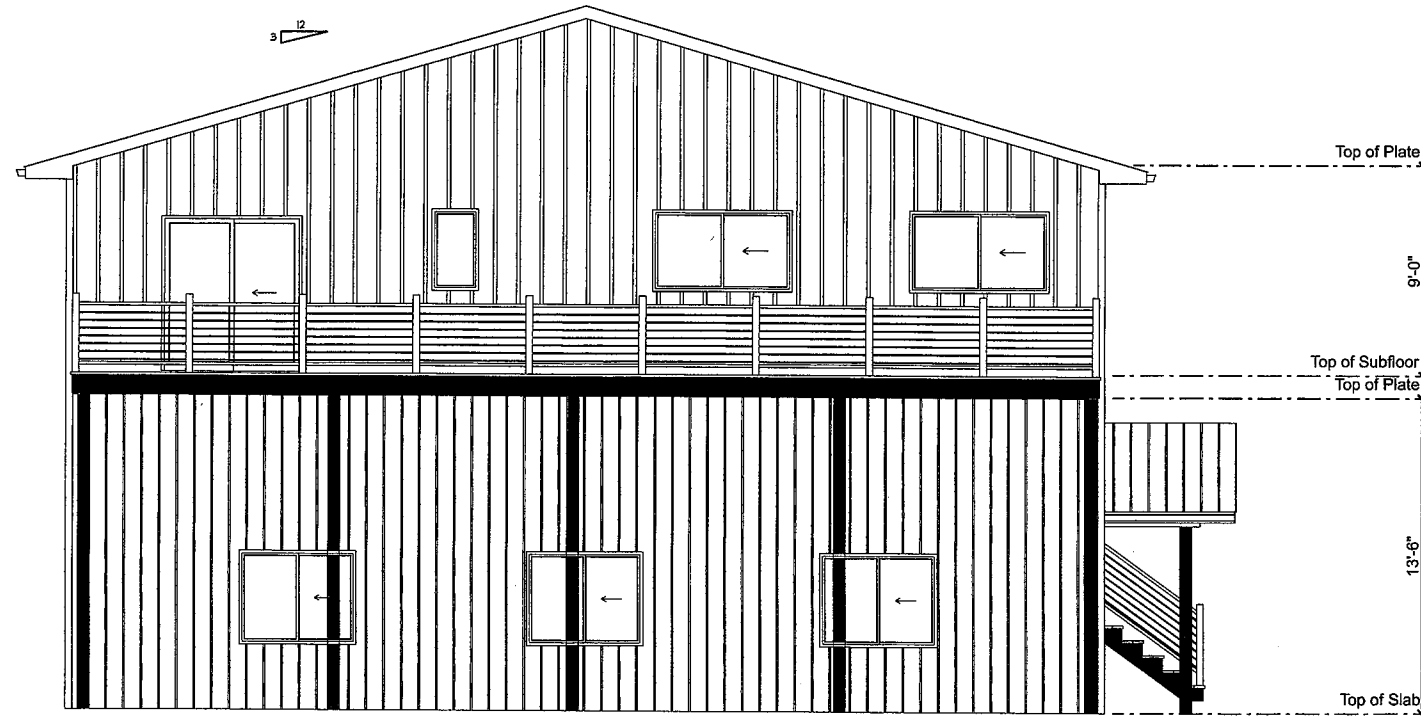
SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876
Homer AK FAX: 907-235-5521
99603 MOBILE: matt@bcihomer.com



WEST ELEVATION
SCALE: 1/8" = 1'-0"



EAST ELEVATION
SCALE: 1/8" = 1'-0"

Pilots Association Remodel

PHONE:
FAX:
MOBILE:

PAGE:

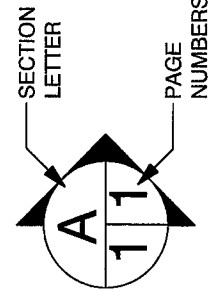
2/6

Elevations 2

DRAWN BY:

SCALE: 1/8" = 1'-0"

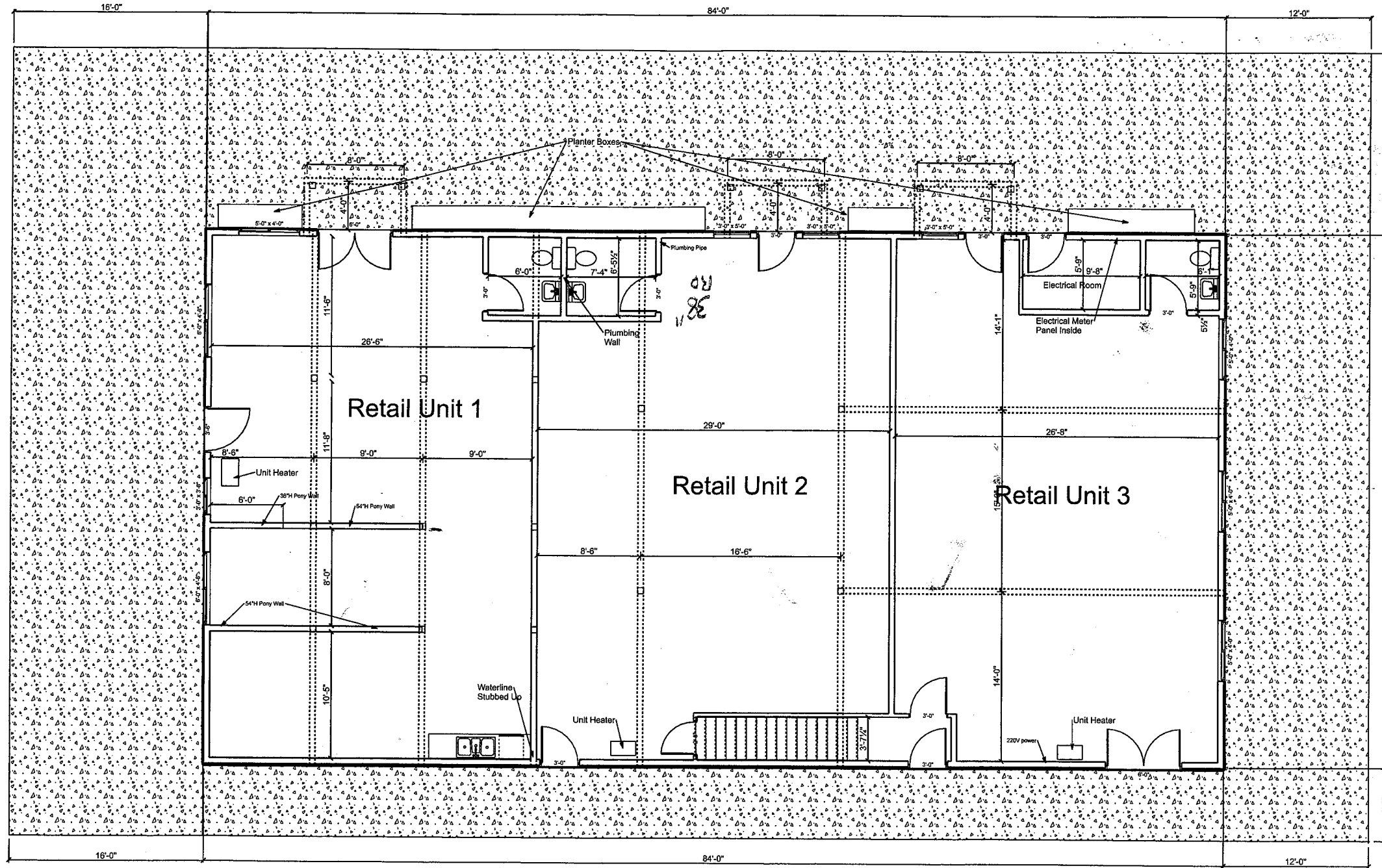
DATE: Friday, December 20, 2024



SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876
Homer FAX: 907-235-5521
AK MOBILE:
99603 matt@bcihomer.com



LOWER FLOOR
SCALE: 1" = 10'-0"

SOFTPIAN
ARCHITECTURAL DESIGN SOFTWARE

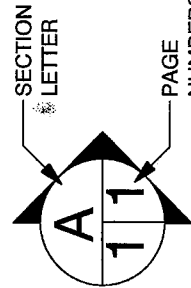
Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876

Homer FAX: 907-235-5521

AK MOBILE:

99603 matt@bcihomer.com



Pilots Association Remodel

PHONE:

FAX:

MOBILE:

DRAWN BY:

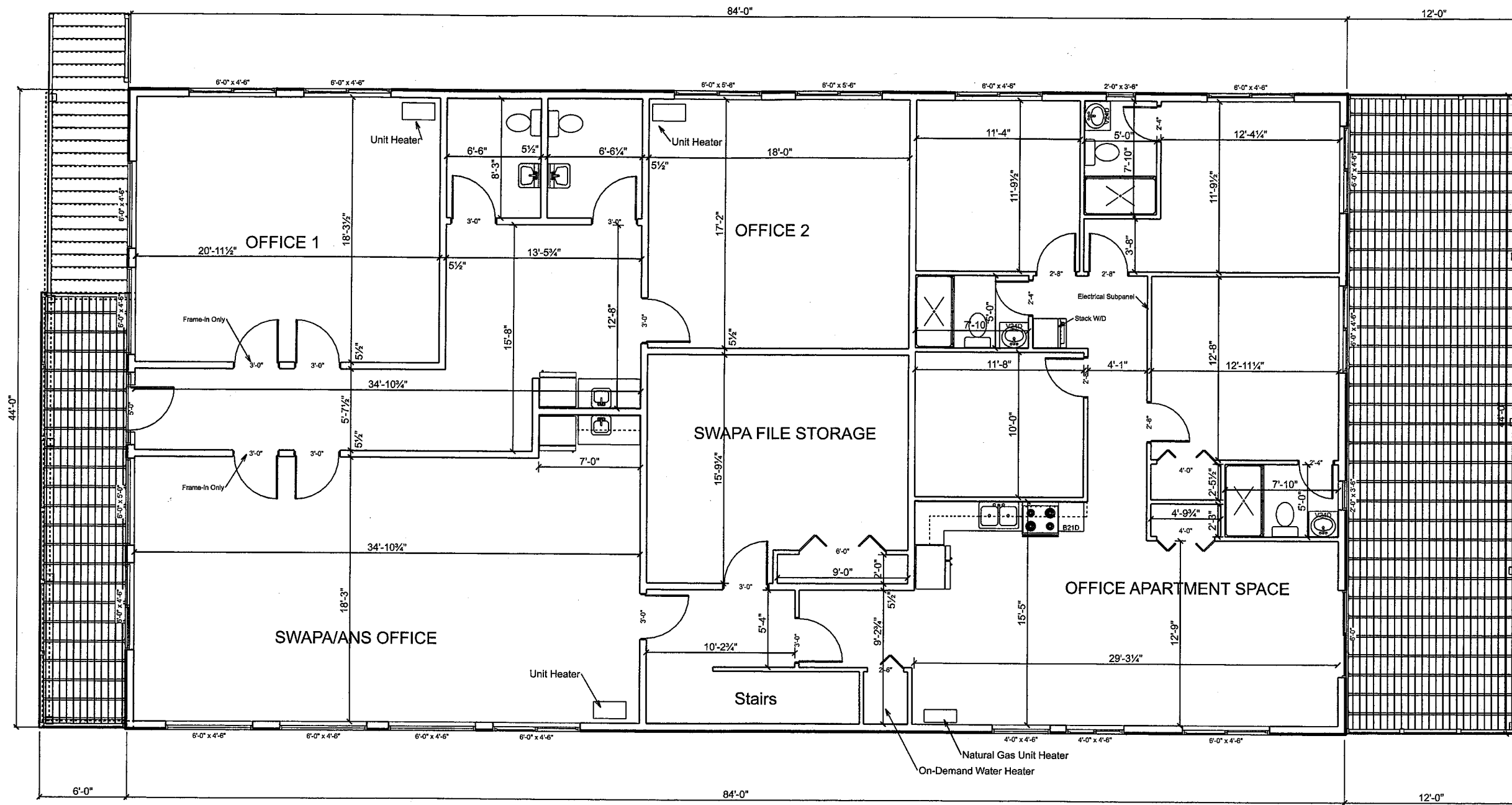
SCALE: 1" = 10'-0"

DATE: Friday, December 20, 2024

PAGE:

3/6

Lower Floor



UPPER FLOOR
SCALE: 1/8" = 1'-0"

SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.

5243 Kachemak Drive
Homer
AK
99603

PHONE: 907-235-8876

FAX: 907-235-5521

MOBILE:

matt@bcihomer.com

Pilots Association Remodel

PHONE:

FAX:

MOBILE:

DRAWN BY:

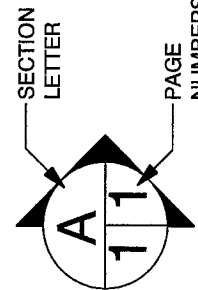
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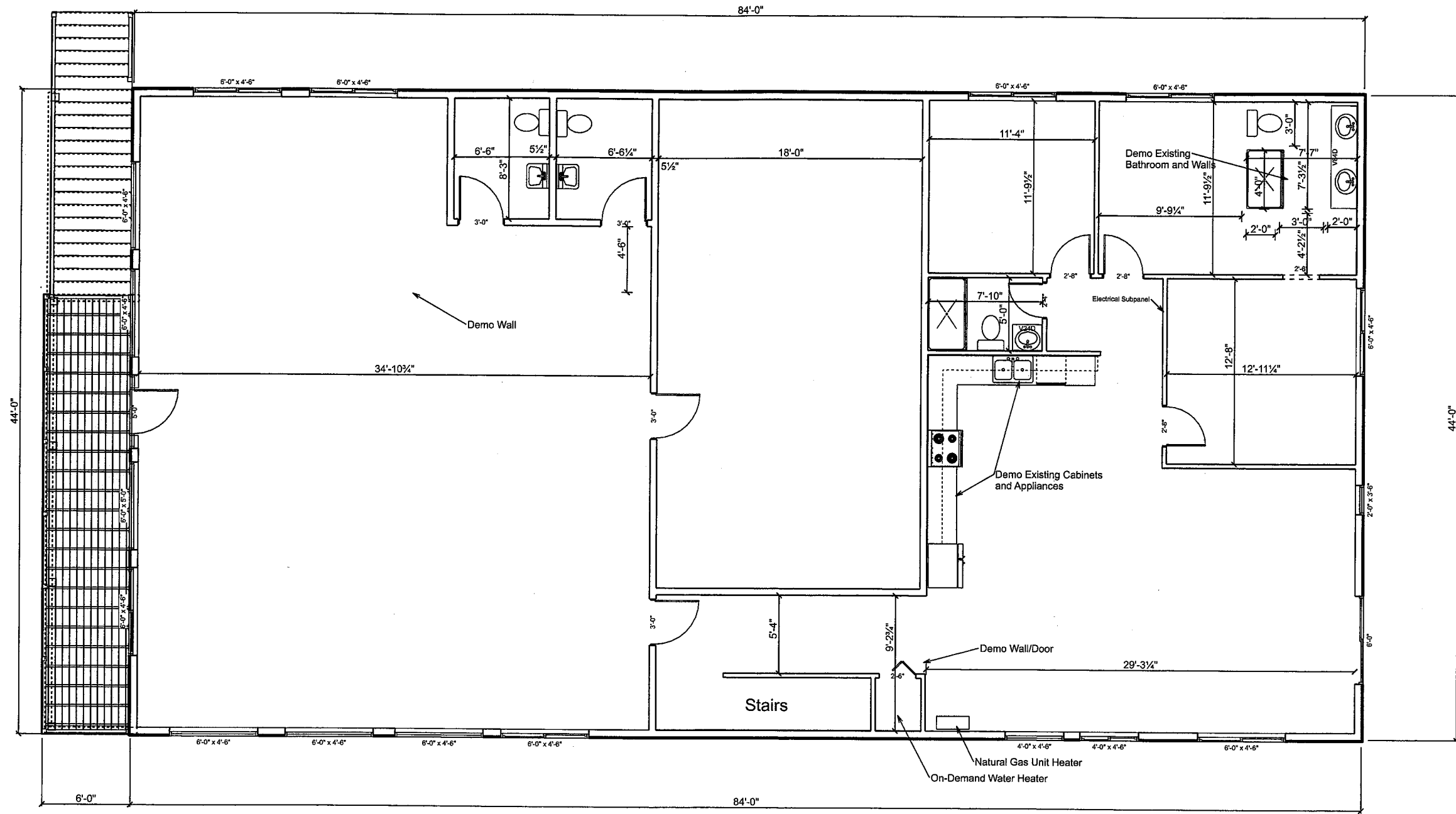
DATE: Friday, December 20, 2024

PAGE:

4/6

Upper Floor





UPPER FLOOR DEMOLITION
SCALE: 1/8" = 1'-0"

SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE
Beachy Construction, Inc.
5243 Kachemak Drive
Homer
AK
99603
PHONE: 907-235-8876
FAX: 907-235-5521
MOBILE:
matt@bcihomer.com

Pilots Association Remodel

PHONE:
FAX:
MOBILE:

DRAWN BY:

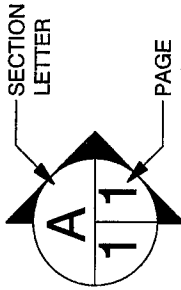
SCALE: 1/8" = 1'-0"

DATE: Friday, December 20, 2014

PAGE:

5/6

FLOOR DEMOLITION





ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876
Homer FAX: 907-235-5521
AK MOBILE:
99603 matt@bcihomer.com

SCALE: 1/8" = 1'-0"

DATE: Eridav December 30, 2024

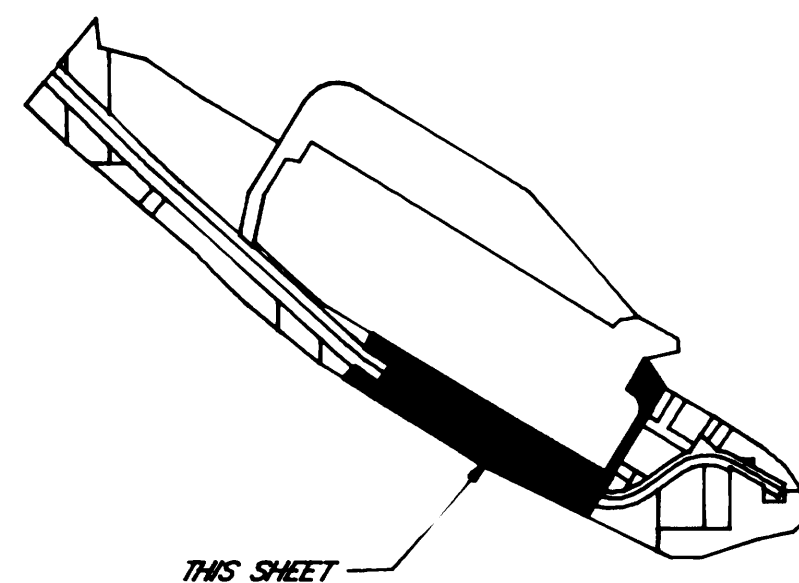
DATE: Friday, December 20, 2024

No.	Delta	Radius	Arc Length
C1	04°10'46"	2008.23	146.49
C2	07°40'04"	1828.23	244.67
C3	90°00'00"	125	196.35
C4	03°08'53"	1828.23	100.45
C5	03°08'12"	1828.23	100.09
C6	01°22'59"	1828.23	44.13
C7	04°10'46"	2008.23	146.49
C8	07°56'53"	379.1	52.59
C9	12°03'51"	484.1	101.93
C10	14°27'40"	409.1	103.25
C11	28°59'00"	125.00	63.23
C12	61°01'00"	125.00	133.12
C13	61°01'01"	50.00	53.24

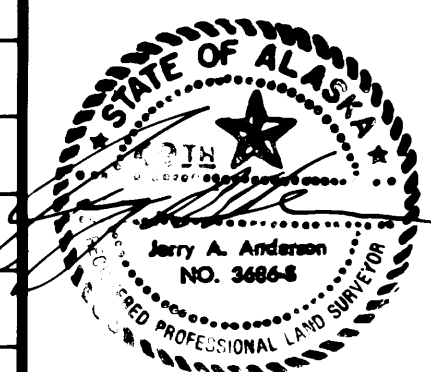
LEGEND

- ADH BC MON IN CASE
- FND BC MON
- 5/8"x30" REBAR WITH SURV-CAP 3686-S
- CONTROL POINT
- NOT MONUMENTED THIS SURVEY

VICINITY MAP 1" = 1500'

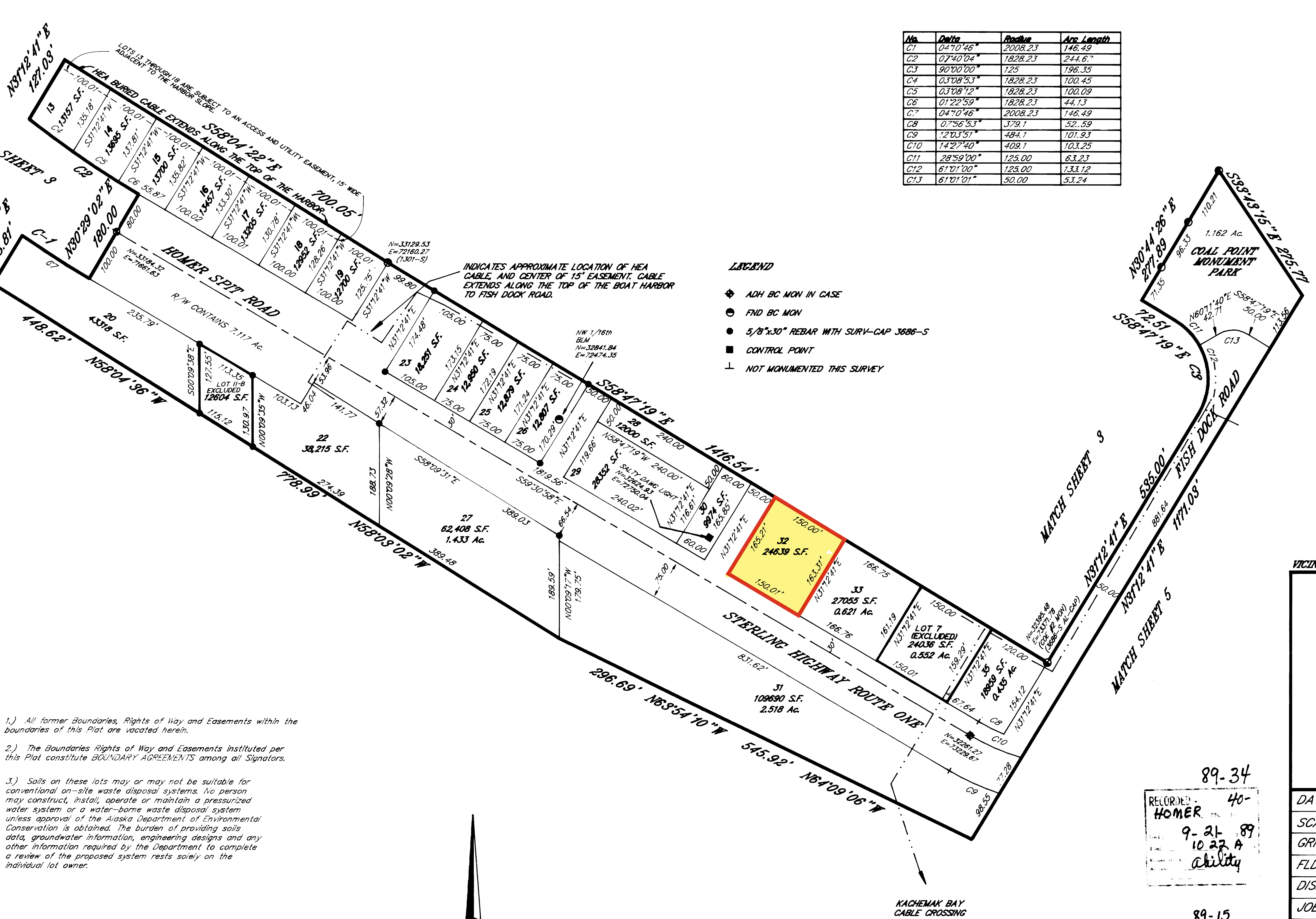


DATE MAY 1986
SCALE 1" = 100'
GRID No. H 1 THRU 5
FLD. BK. No. 176
DISK No. C.1.18
JOB No. 1776



HOMER SPIT
A RESUBDIVISION OF PORTIONS OF SEC. 35 AND 36
TWP. 6S. AND PORTIONS OF SEC. 1 AND 2, TWP. 7S.
ALL WITHIN RGE. 13W, S.4M. AND WITHIN THE CITY OF
HOMER, ALASKA

THIS SHEET SHOWING 20.318 ACRES
ABILITY SURVEYS
JERRY A. ANDERSON PLS
HANSON & CO.
MARVIN L. HANSON PLS
(A JOINT-VENTURE)
(907) 235-8440
BOX 378, HOMER ALASKA 99603



- All former Boundaries, Rights of Way and Easements within the boundaries of this Plat are vacated herein.
- The Boundaries Rights of Way and Easements instituted per this Plat constitute BOUNDARY AGREEMENTS among all Signators.
- Soils on these lots may or may not be suitable for conventional on-site waste disposal systems. No person may construct, install, operate or maintain a pressurized water system or a water-borne waste disposal system unless approval of the Alaska Department of Environmental Conservation is obtained. The burden of providing soils data, groundwater information, engineering designs and any other information required by the Department to complete a review of the proposed system rests solely on the individual lot owner.

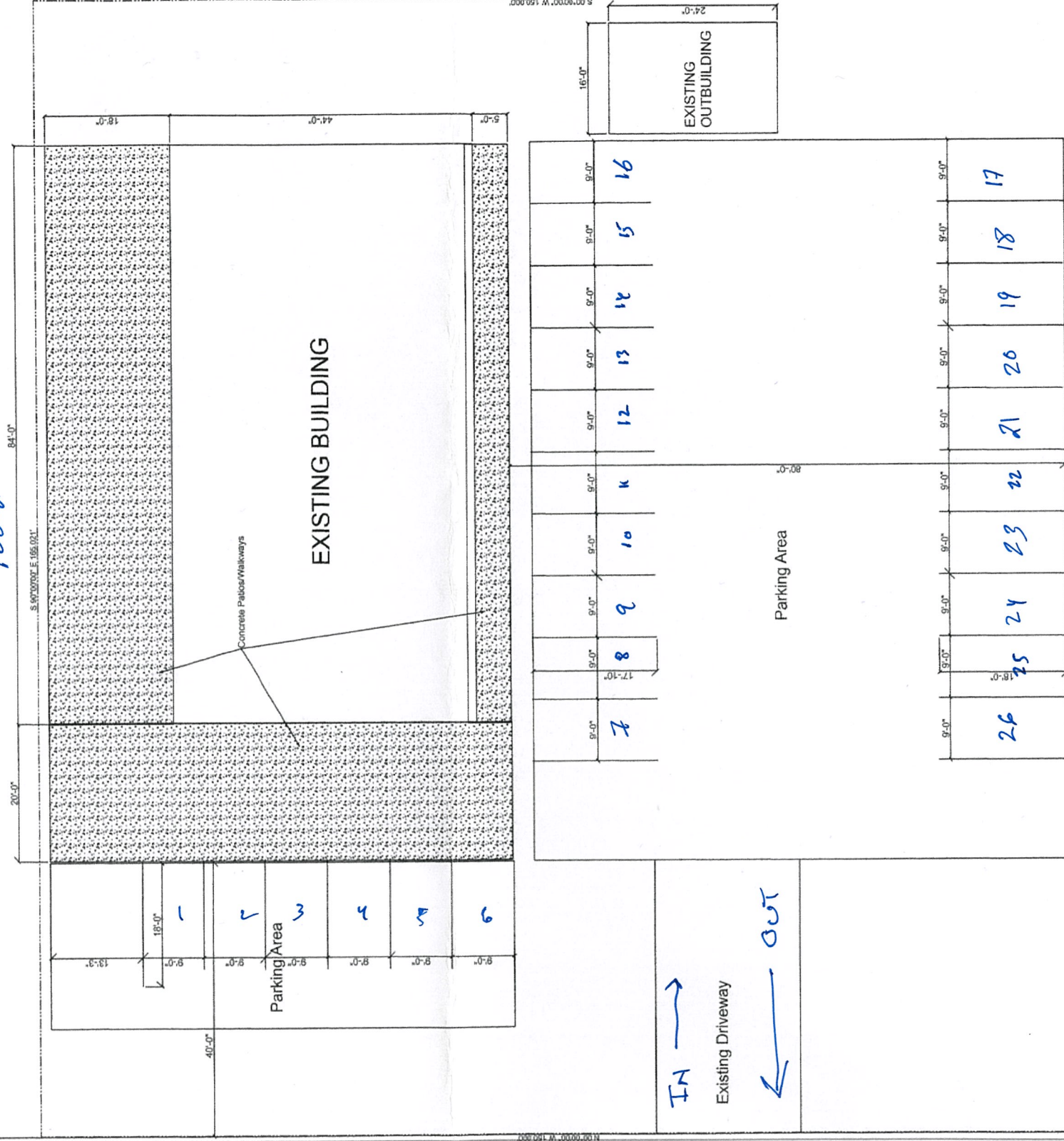
SHEET FOUR

HM 89-34

HOMER SPIT ROAD

150.01

165.21



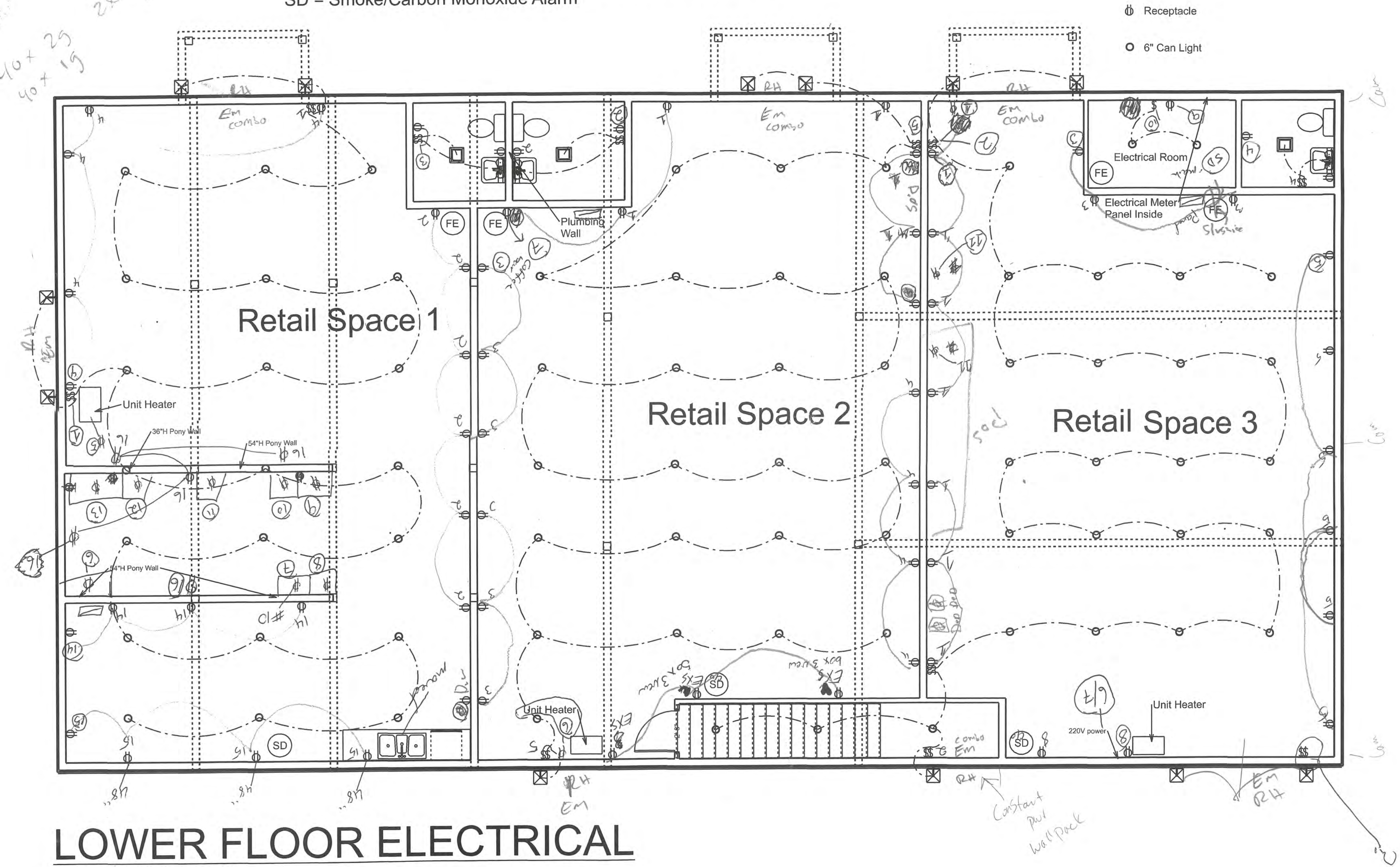
150.0

165.21 163.31

* Above every exterior Door EXH ~~FE~~ Lt
combo with Remote head
*-

2x 2way Back + 12
2x 1 Pole 600 + 30
40x 25
40x 19
2x 55gms

FE = Fire Extinguisher, Multi-Purpose 10 lbs, UL Rating 4A:80B:C
SD = Smoke/Carbon Monoxide Alarm

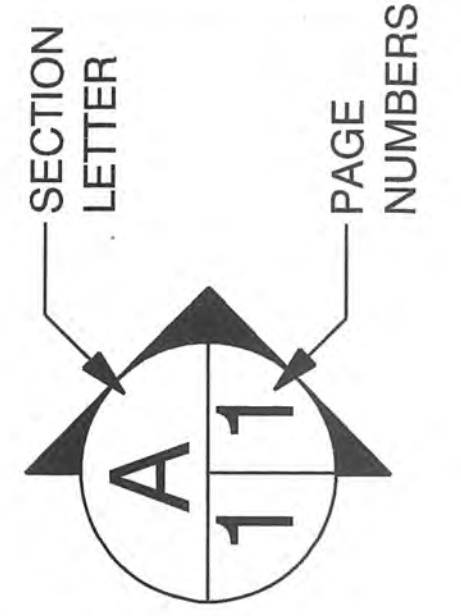


LOWER FLOOR ELECTRICAL
SCALE: 1/8" = 1'-0"

1/0 Smoke in each

SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.
5243 Kachemak Drive
Homer
AK
99603
PHONE: 907-235-8876
FAX: 907-235-5521
MOBILE: matt@bcihomer.com



Pilots Association Remodel

PHONE:
FAX:
MOBILE:

DRAWN BY:

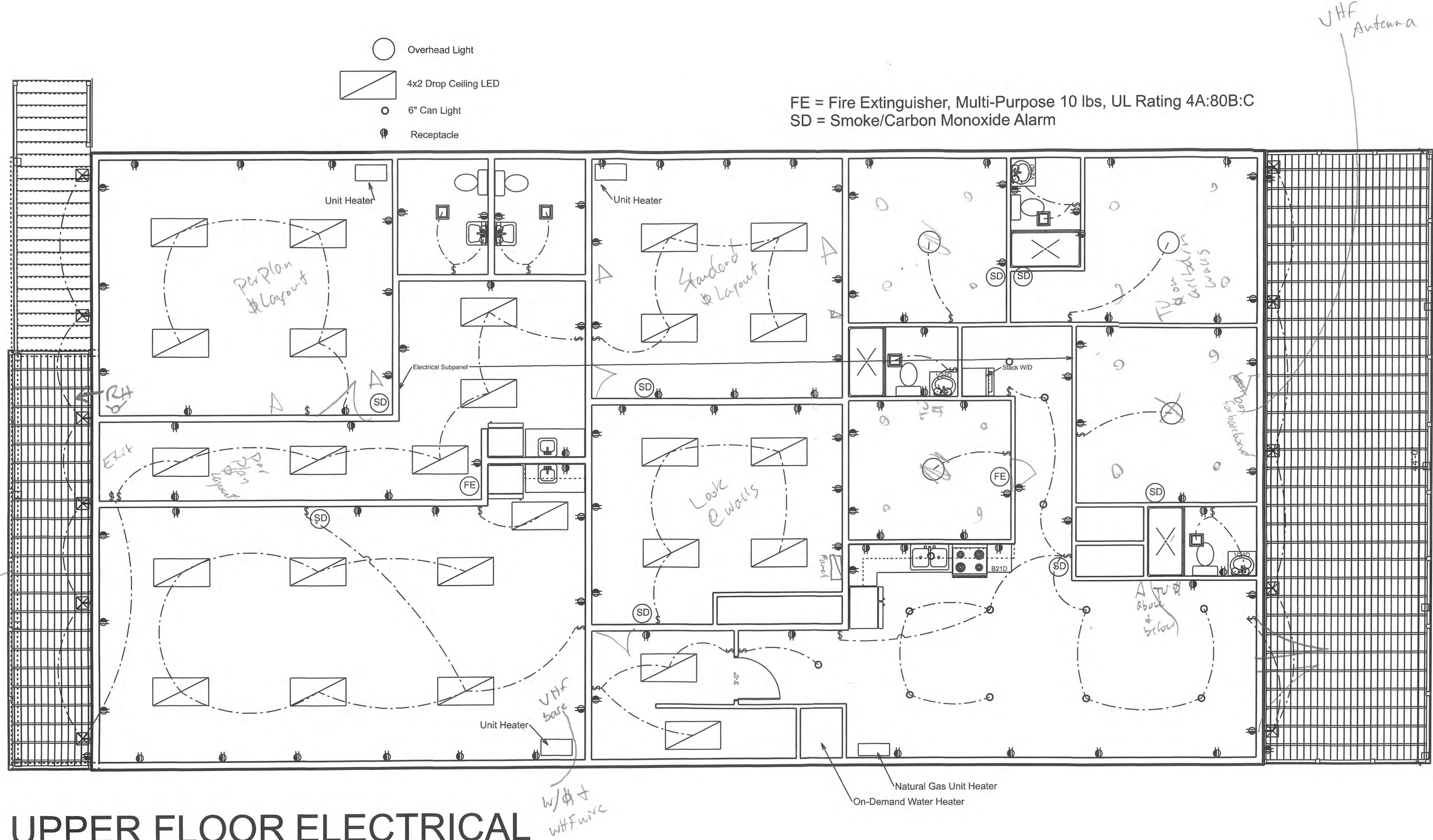
SCALE: 1/8" = 1'-0"

DATE: Friday, January 03, 2025 Electrical Lower Floor

PAGE:

7/8

*Delete cameras on front



UPPER FLOOR ELECTRICAL
SCALE: 1/8" = 1'-0"

FE = Fire Extinguisher, Multi-Purpose 10 lbs, UL Rating 4A:80B:C
SD = Smoke/Carbon Monoxide Alarm

VHF Antenna

Pilots Association Remodel

PHONE:
FAX:
MOBILE:

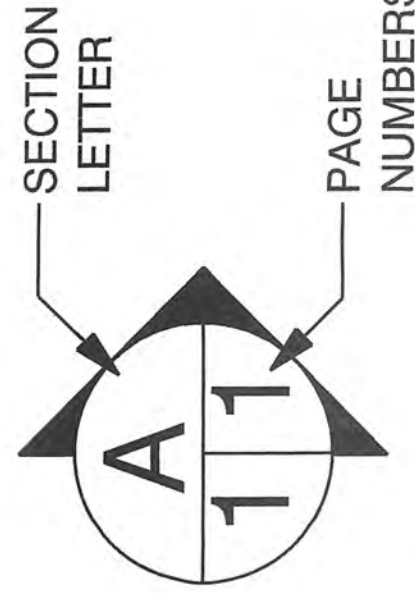
DRAWN BY:

SCALE: 1/8" = 1'-0"

DATE: Friday, January 03, 2025 Electrical Upper Floor

PAGE:

8/8



SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876

Homer FAX: 907-235-5521

MOBILE:

matt@bcihomer.com

99603

ZONING PERMITCHANGE OF USE COU-025-001**CITY OF HOMER**

Planning & Zoning
491 East Pioneer Avenue
Homer, Alaska 99603-7624
(907) 235-3106
Fax (907) 235-3118

Name of owner: HAPPY FACE LLCStreet Address: 4400 Homer Sp.4 RD. Homer AK 99603Legal Description: T 7S R 13W SEC 1 Seward Meridian HM 0890034 Homer Sp.4KPB Tax Parcel #: 18103432Change of Use Start Date: 1/25/25Name of NEW business at the above address: HAPPY FACE LLCName of FORMER business at the above address: HAPPY FACE LLC

New Use Will Be:

- | | |
|---|--|
| <input type="checkbox"/> Assembly (church, auditorium, theater) | <input type="checkbox"/> Storage |
| <input type="checkbox"/> Restaurant | <input type="checkbox"/> Service |
| <input type="checkbox"/> Educational (school, child care) | <input type="checkbox"/> Residential (Non-Commercial) |
| <input checked="" type="checkbox"/> Mercantile (retail store, drug store, etc.) | <input checked="" type="checkbox"/> Other: <u>Employee Housing</u> |

(attach additional sheet(s) for description if necessary)

I understand that if the use of the structure or parcel is changed without prior approval from the City of Homer P & Z Department, the City may take any necessary action to bring the structure into compliance.

It is my responsibility to contact the Fire Marshall at (907) 269-5604 to schedule a State Fire Marshall inspection. If this use is a conditionally permitted use that requires Homer Advisory Planning Commission (HAPC) approval, a Conditional Use Permit (CUP) must be completed and approved by the HAPC prior to beginning this new use. Where applicable, an approved parking plan must be on file with P&Z.

Signature: Date: 2/25/2025Mailing Address: PO Box 977 Homer AK 99603Phone #: 720-326-6675**FOR P&Z OFFICE USE ONLY**Zoned: MC

Is new proposed use permitted in this zone?

☒ Y, outright ☐ Y, with additional standards ☐ Y, conditionally ☐ NoIs there sufficient parking/an approved parking plan? yesExplain any special circumstances and attach parking plan if required. PARKING PLAN ATTACHEDChanges in signage? NO

Conditions:

Edward D. Gross Associate Planner 3/28/25☒ Approved ☐ Approved with conditions ☐ DeniedFee from schedule: \$50.00Pmt Rcv'd By: Paid By: John StewartDate: 2/25/25

Code 21-2106



City of Homer, AK

City of Homer

491 E. Pioneer Avenue
Homer, AK 99603

<https://www.cityofhomer-ak.gov/>

PERMIT

COU-025-001

CHANGE OF USE

SITE ADDRESS: 4400 HOMER SPIT RD HOMER
PRIMARY PARCEL: 18103432
PROJECT NAME: HAPPY FACE BUILDING COU; RESTAURANT
REDUCED; ADD TWO RETAIL SPACES, MARINE COMMERCIAL

ISSUED: 03/28/2025

EXPIRES: 09/28/2026

APPLICANT: City of Homer
491 East Pioneer Avenue
HOMER, AK 99603

OWNER: City of Homer
491 East Pioneer Avenue
HOMER, AK 99603

PERMIT DETAILS

Detail Name	Detail Value
Describe The Type Of Structure And How It Will Be Used	Happy Face Building COU; Restaurant Reduced; Add Two Retail Spaces, Marine Commercial
Legal Description of the Property (If Unknown write "N/A")	T 7S R 13W SEC 1 SEWARD MERIDIAN HM 0890034 HOMER SPIT AMENDED LOT 32
Enter The Estimated Market Value Of Improvements	750000
Enter The Total Floor Area That Will Be Added With Your Project In Square Feet (All Floors Of All Proposed Buildings Combined).	0
How Many Total Buildings Are Currently Onsite?	1
Enter The Total Floor Area Of The Existing Buildings, In Square Feet (All Floors Of All Existing Buildings Combined).	7392
Select Zoning District of the Project Location	Marine Commercial District (MC)
Current Use	Restaurant
Proposed Use	Restaurant, Retail, Employee Housing

FEES:

Change of Use Fee

Paid

\$50.00

Due

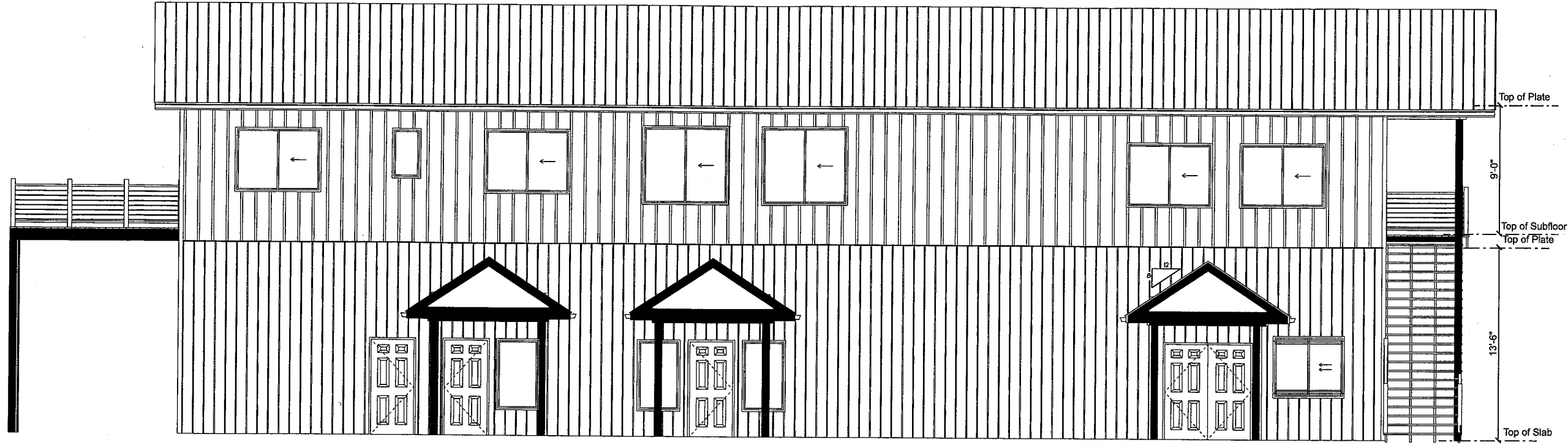
\$0.00

Totals :

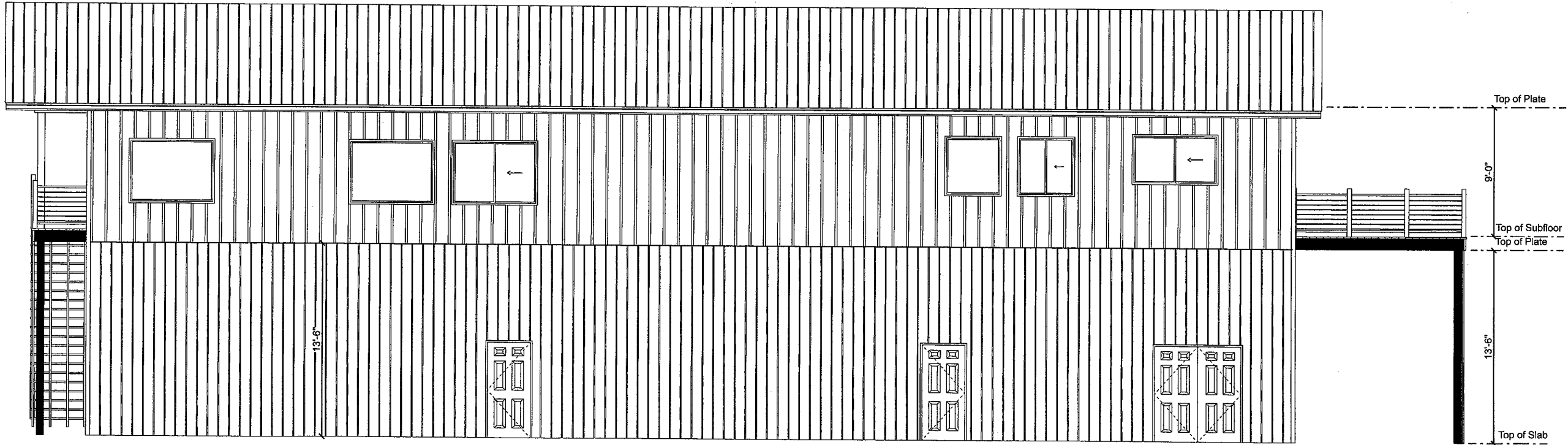
\$50.00

\$0.00

REQUIRED INSPECTIONS



NORTH ELEVATION
SCALE: 1/8" = 1'-0"



SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

Pilots Association Remodel

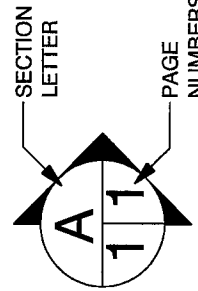
PHONE:
FAX:
MOBILE:

DRAWN BY:

SCALE: 1/8" = 1'-0"

DATE: Friday, December 20, 2024

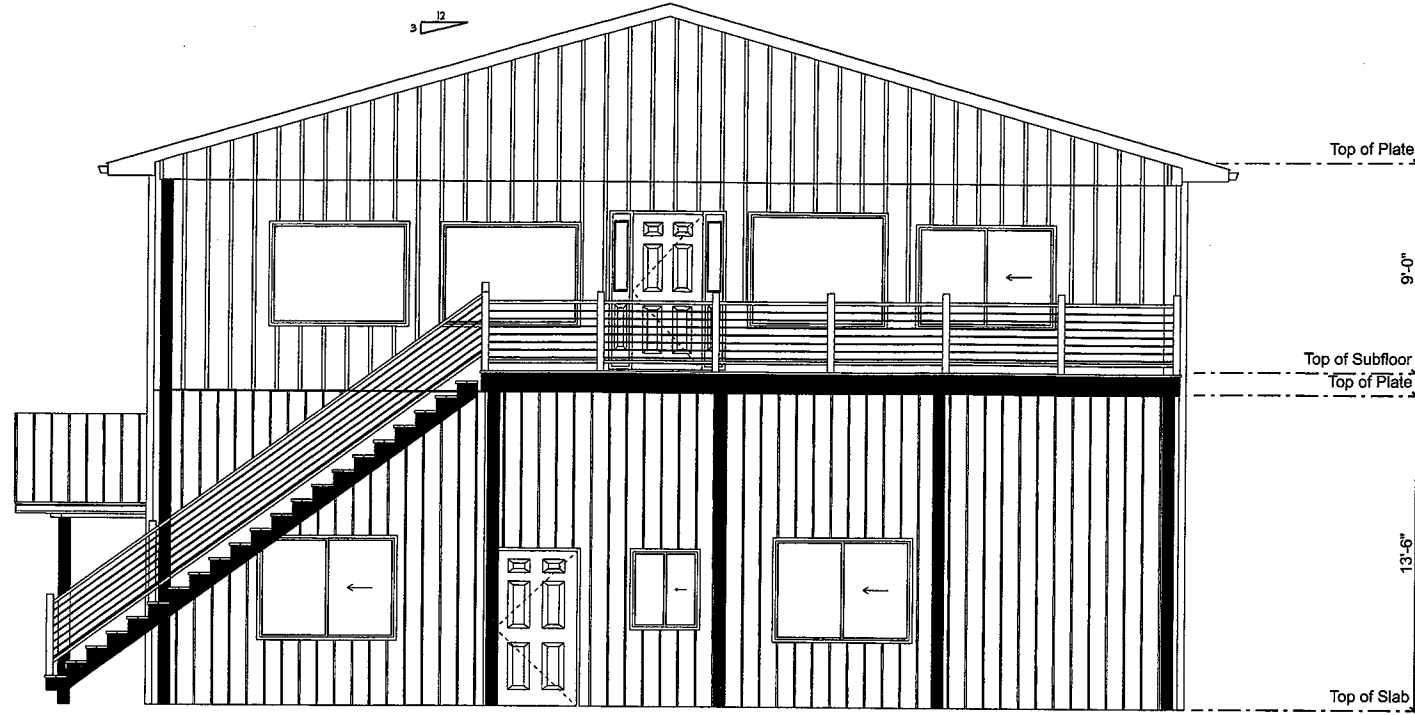
PAGE: **1/6**
Elevations 1



SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

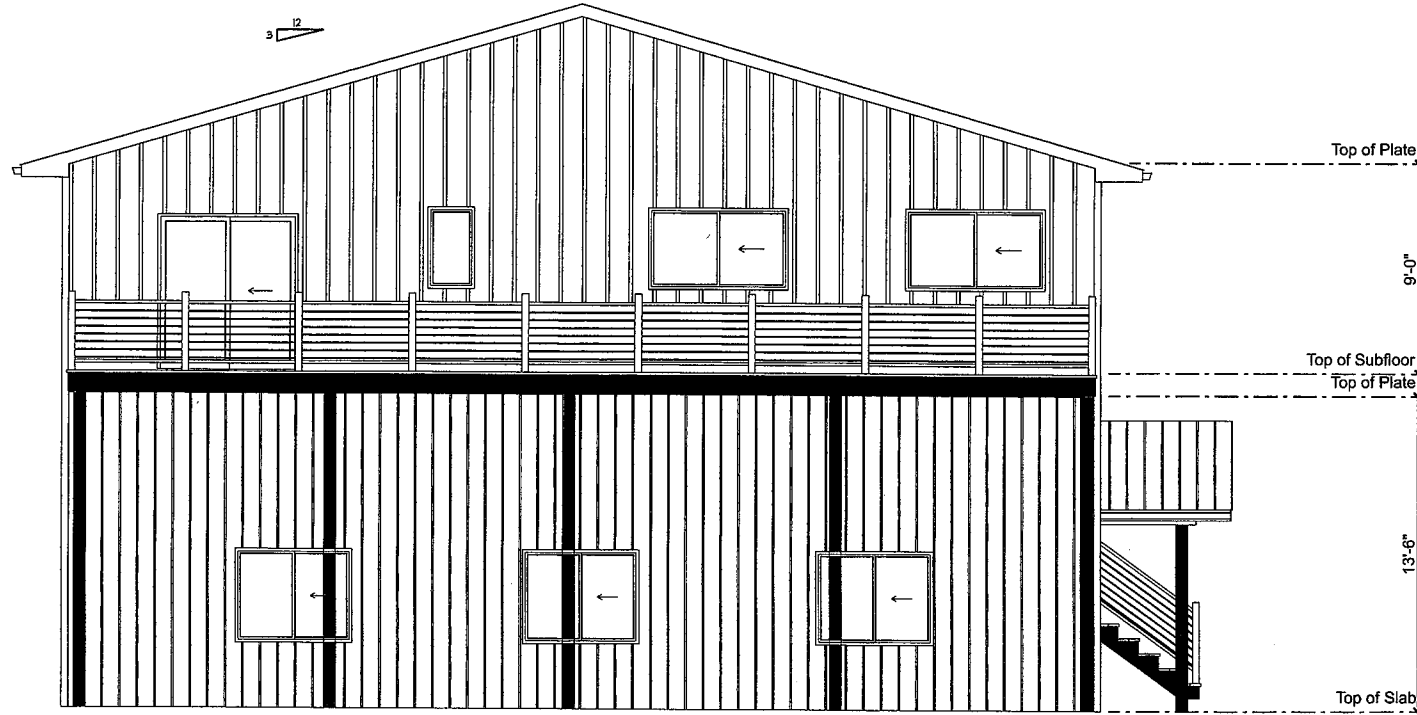
Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876
Homer AK FAX: 907-235-5521
99603 MOBILE: matt@bcihomer.com



WEST ELEVATION

SCALE: 1/8" = 1'-0"



EAST ELEVATION

SCALE: 1/8" = 1'-0"

Pilots Association Remodel

PHONE:
FAX:
MOBILE:

DRAWN BY:

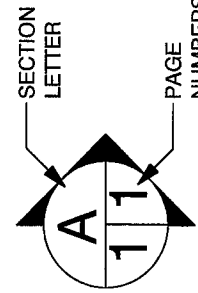
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DATE: Friday, December 20, 2024

PAGE:

2/6

Elevations 2



SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

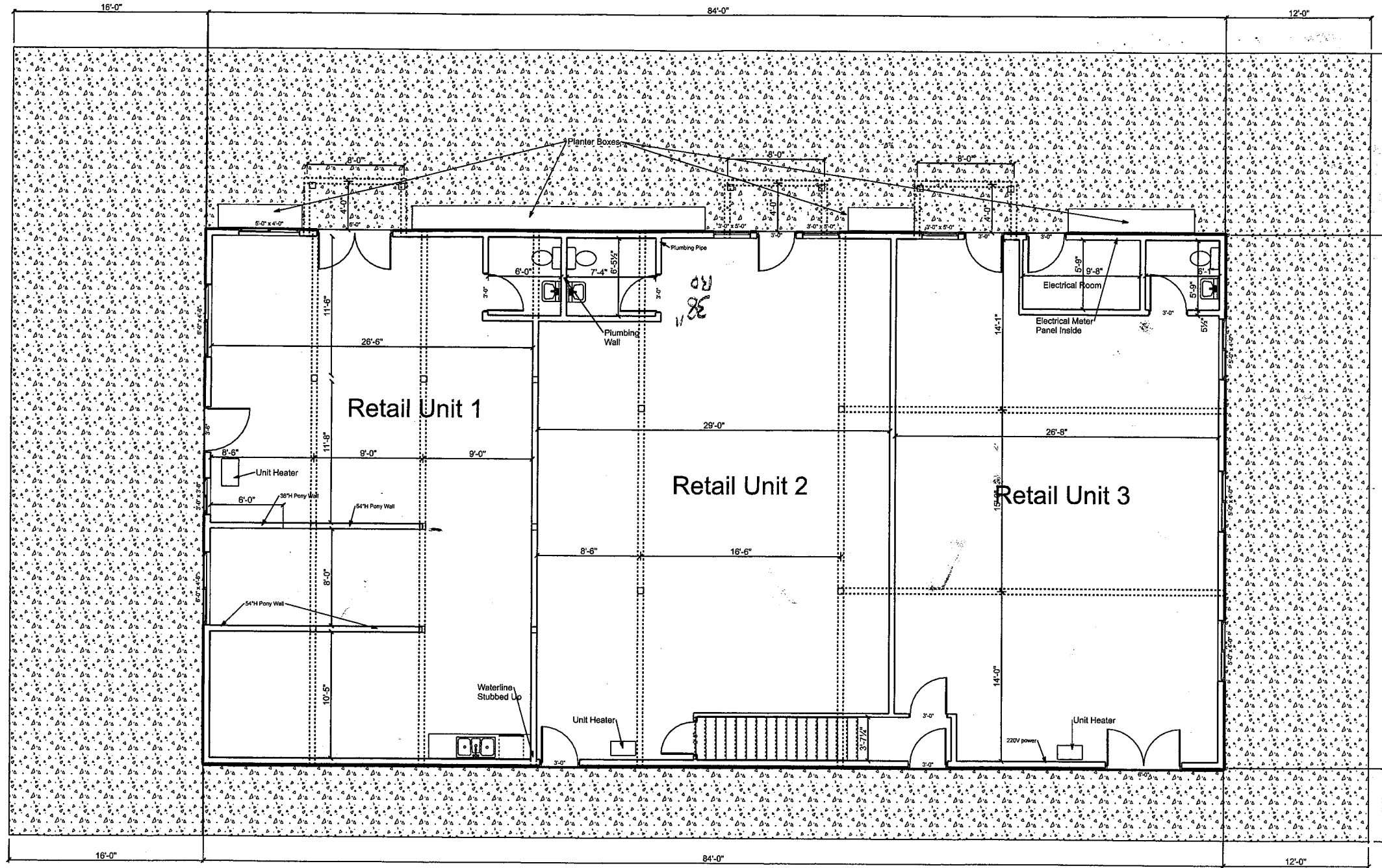
Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876

Homer FAX: 907-235-5521

AK MOBILE:

99603 matt@bcihomer.com



LOWER FLOOR
SCALE: 1" = 10'-0"

SOFTPIAN
ARCHITECTURAL DESIGN SOFTWARE

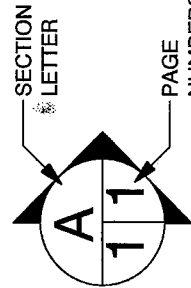
Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876

Homer FAX: 907-235-5521

AK MOBILE:

99603 matt@bcihomer.com



Pilots Association Remodel

PHONE:

FAX:

MOBILE:

DRAWN BY:

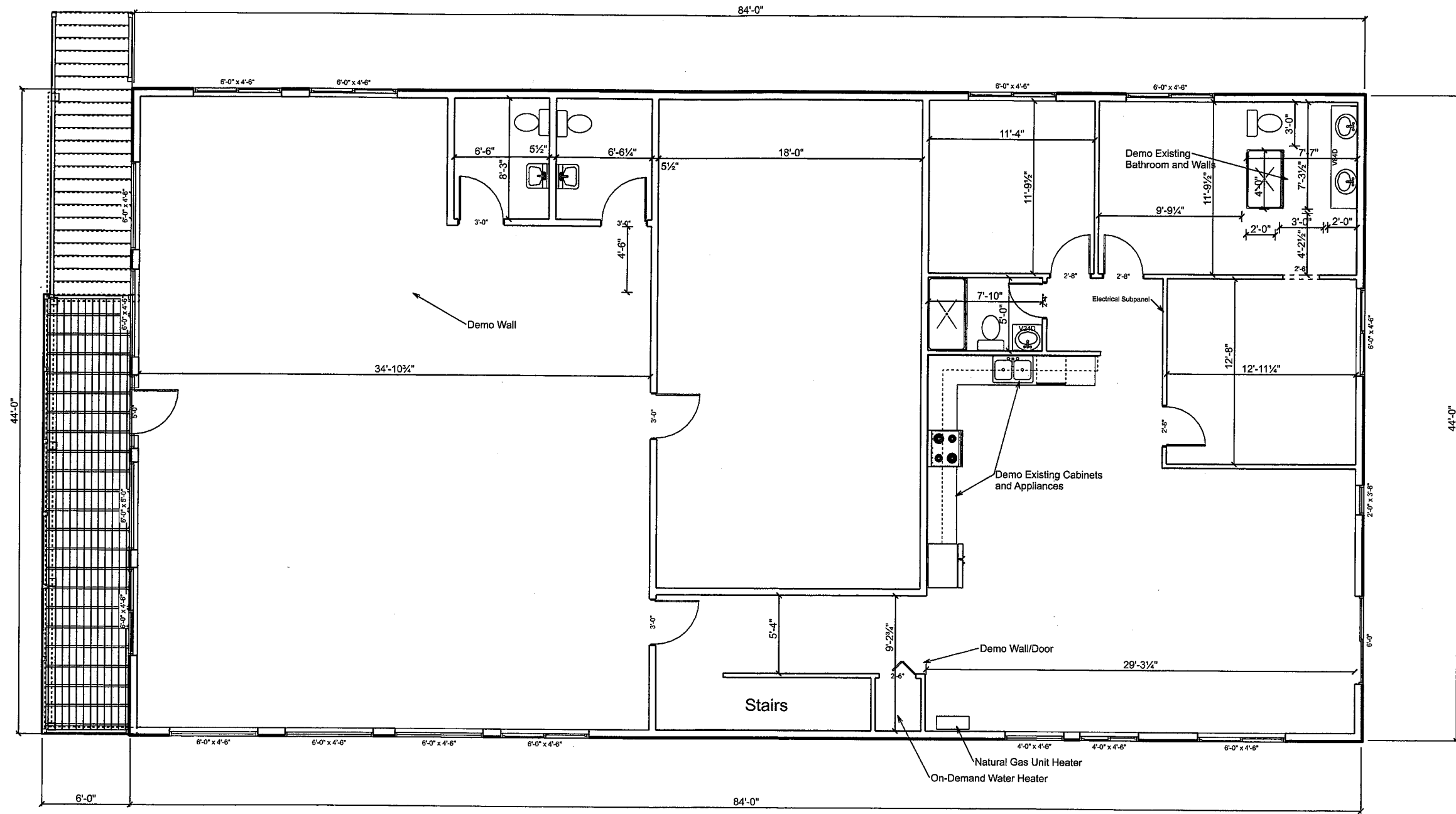
SCALE: 1" = 10'-0"

DATE: Friday, December 20, 2024

PAGE:

3/6

Lower Floor



UPPER FLOOR DEMOLITION

SCALE: 1/8" = 1'-0"

SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE
Beachy Construction, Inc.
5243 Kachemak Drive
Homer
AK
99603
PHONE: 907-235-8876
FAX: 907-235-5521
MOBILE:
matt@bcihomer.com

Pilots Association Remodel

PHONE:
FAX:
MOBILE:

DRAWN BY:

SCALE: 1/8" = 1'-0"

DATE: Friday, December 20, 2014

PAGE:

5/6

FLOOR DEMOLITION



SCALE: 1/8" = 1'-0"

SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.

55243 Kachemak Drive PHONE: 907-235-8876
Homer FAX: 907-235-5521
AK MOBILE:
99603 matt@bcihomer.com

SECTION LETTER

PAGE NUMBERS

Pilots Association Remodel

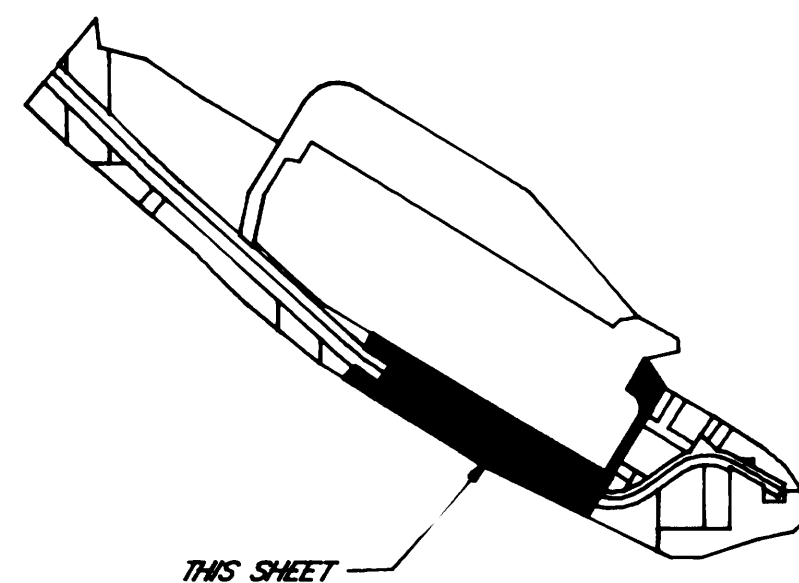
DRAWN BY: SCALE: 1/8" = 1'-0" DATE: Friday, December 30, 2024 PAGE: 6/6

No.	Delta	Radius	Arc Length
C1	04°10'46"	2008.23	146.49
C2	07°40'04"	1828.23	244.67
C3	90°00'00"	125	196.35
C4	03°08'53"	1828.23	100.45
C5	03°08'12"	1828.23	100.09
C6	01°22'59"	1828.23	44.13
C7	04°10'46"	2008.23	146.49
C8	07°56'53"	379.1	52.59
C9	12°03'51"	484.1	101.93
C10	14°27'40"	409.1	103.25
C11	28°59'00"	125.00	63.23
C12	61°01'00"	125.00	133.12
C13	61°01'01"	50.00	53.24

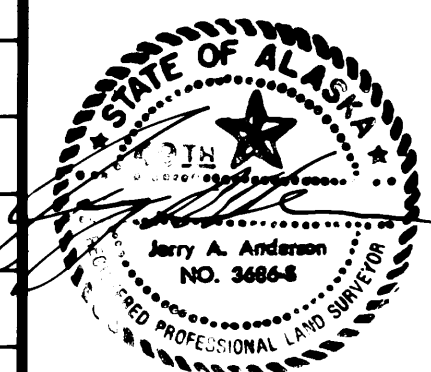
LEGEND

- ADH BC MON IN CASE
- FND BC MON
- 5/8"x30" REBAR WITH SURV-CAP 3686-S
- CONTROL POINT
- NOT MONUMENTED THIS SURVEY

VICINITY MAP 1" = 1500'

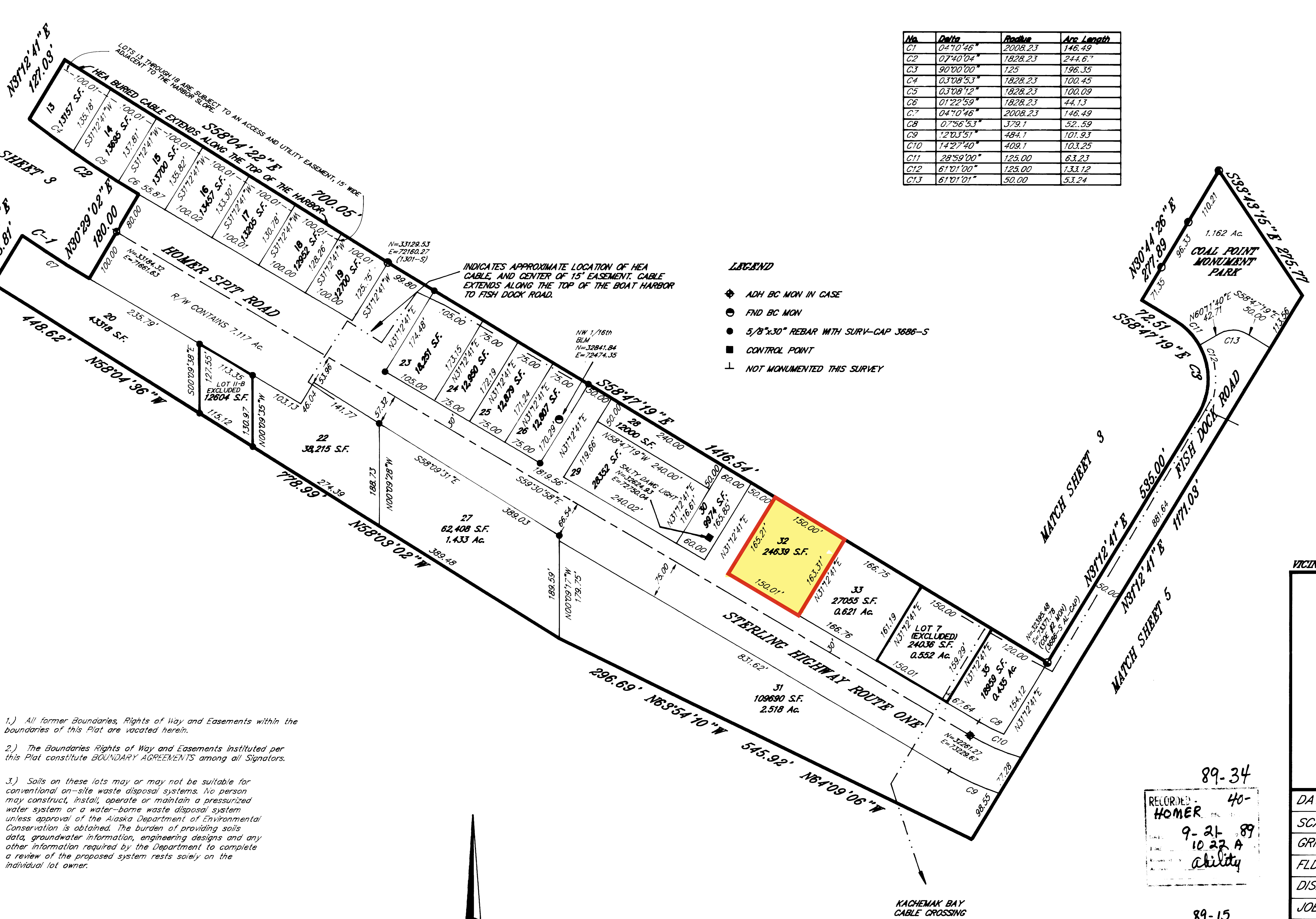


DATE MAY 1986
SCALE 1" = 100'
GRID No. H 1 THRU 5
FLD. BK. No. 176
DISK No. C.1.18
JOB No. 1776



HOMER SPIT
A RESUBDIVISION OF PORTIONS OF SEC. 35 AND 36
TWP. 6S. AND PORTIONS OF SEC. 1 AND 2, TWP. 7S.
ALL WITHIN RGE. 13W, S.1M. AND WITHIN THE CITY OF
HOMER, ALASKA

THIS SHEET SHOWING 20.318 ACRES
ABILITY SURVEYS
JERRY A. ANDERSON PLS
HANSON & CO.
MARVIN L. HANSON PLS
(A JOINT-VENTURE)
(907) 235-8440
BOX 378, HOMER ALASKA 99603



- All former Boundaries, Rights of Way and Easements within the boundaries of this Plat are vacated herein.
- The Boundaries Rights of Way and Easements instituted per this Plat constitute BOUNDARY AGREEMENTS among all Signators.
- Soils on these lots may or may not be suitable for conventional on-site waste disposal systems. No person may construct, install, operate or maintain a pressurized water system or a water-borne waste disposal system unless approval of the Alaska Department of Environmental Conservation is obtained. The burden of providing soils data, groundwater information, engineering designs and any other information required by the Department to complete a review of the proposed system rests solely on the individual lot owner.

SHEET FOUR

HM 89-34

HOMER SPIT ROAD

150.01

POS. PARKING

IN →
Existing Driveway

← OUT

Existing Seating

165.21

RAMP

Parking Area

Concrete Patios/Walkways

EXISTING BUILDING

FENCE
5'x

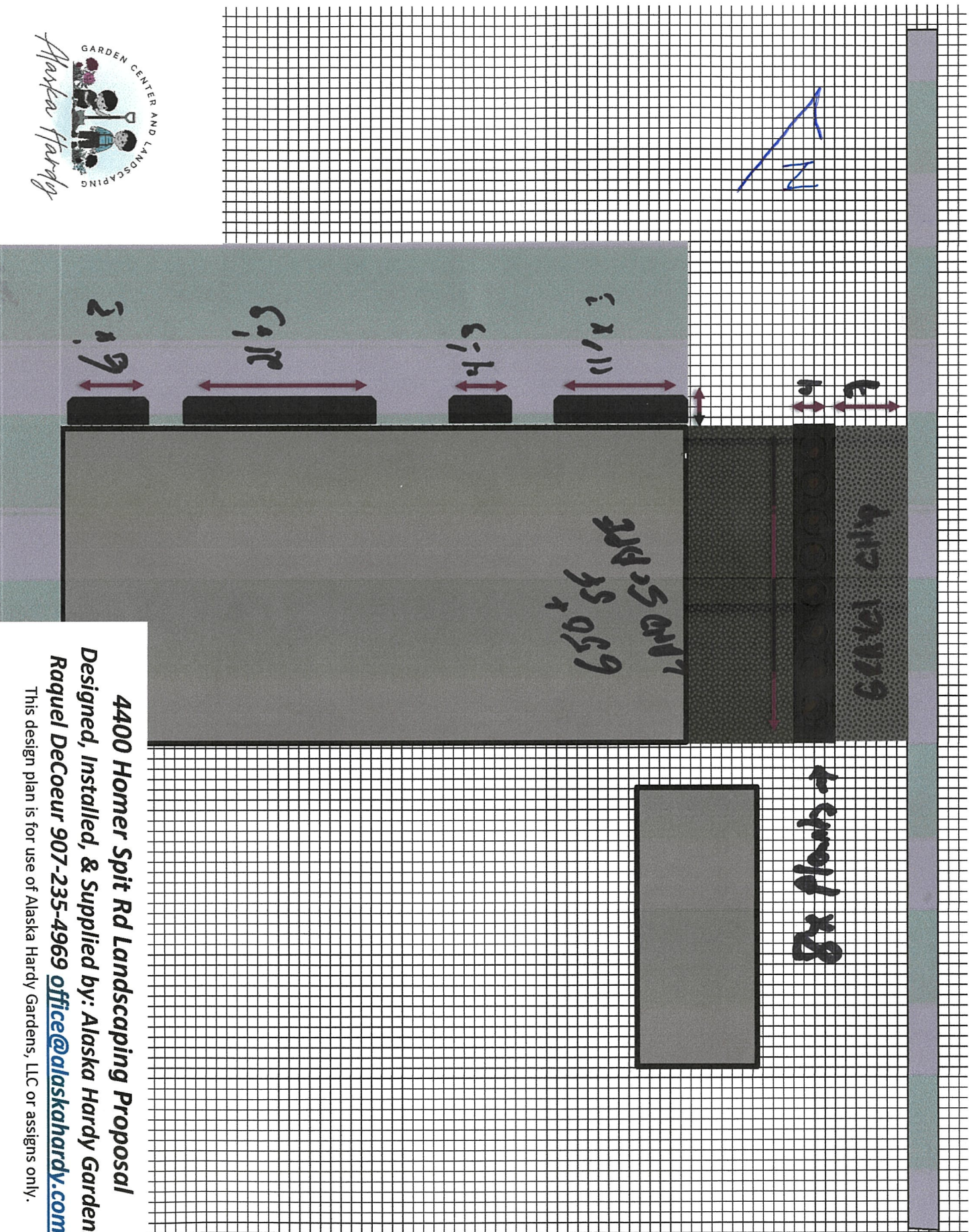


EXISTING OUTBUILDING

Pos. CREW
PARKING

165.21 163.31

150.0



4400 Homer Spit Rd Landscaping Proposal

Designed, Installed, & Supplied by: Alaska Hardy Gardens

Raquel DeCoeur 907-235-4969 office@alaskahardy.com

This design plan is for use of Alaska Hardy Gardens, LLC or assigns only.



City of Homer

491 E. Pioneer Avenue

Homer, AK 99603

DZP-2025-001

SITE ADDRESS: 4400 HOMER SPIT RD

PROJECT NAME: Build 657 Sq. Ft of Decks off north and South ends of building,
Marine Commercial District

Deck Zoning Permit

ISSUED: 02/26/2025

EXPIRES: 08/26/2026

PARCEL: 18103432

LEGAL DESCRIPTION: T 7S R 13W SEC 1 SEWARD MERIDIAN HM
0890034 HOMER SPIT AMENDED LOT 32

PROJECT DESCRIPTION: Build Decks off of north and south ends of building

APPLICANT: City of Homer
491 East Pioneer Avenue
HOMER, AK 99603

OWNER: City of Homer
491 East Pioneer Avenue
HOMER, AK 99603

SPECIAL CONDITIONS

NOTE: Approval of this application by the City of Homer pertains only to the City's regulatory jurisdiction, and thus compliance with City Regulation does not necessarily ensure compliance with federal or state laws.

- 1). AS-BUILT SUBMITTAL REQUIREMENT: HCC 21.70.040(b). A zoning permit for a building or structure shall require the applicant to submit to City Planning an as-built survey, completed by a licensed surveyor, of the location, foundation, dimensions, and proximity to all lot lines of all buildings and structures covered by the permit, promptly after completion of the work.

I/we hereby agree to comply with all applicable laws and regulations relating to building construction and acknowledge that I am/we are further responsible for determining which laws and regulations I/we must follow. I/we further understand that issuance of a permit does not grant a waiver of any law, building ordinance, or regulation. The permit will be issued with the understanding that the City of Homer assumes no responsibility with regard to (1) the work performed, (2) maintenance of private drainage systems that terminate in City ditch lines or drainages, including but not limited to foundation drains, proper location of lot lines, or site dimensions, (3) the accuracy of any City-held drawings, or for the permittee's interpretation thereof, and/or (4) any other matter for which the City of Homer has not expressly acknowledged its responsibility in a writing signed by all parties. I/we hereby agree to defend, indemnify, and hold harmless the City of Homer, its employees and agents from all suits, actions, or claims arising from or relating to (1) any work undertaken as a result of the issuance of the permit applied for or (2) denial of a permit.

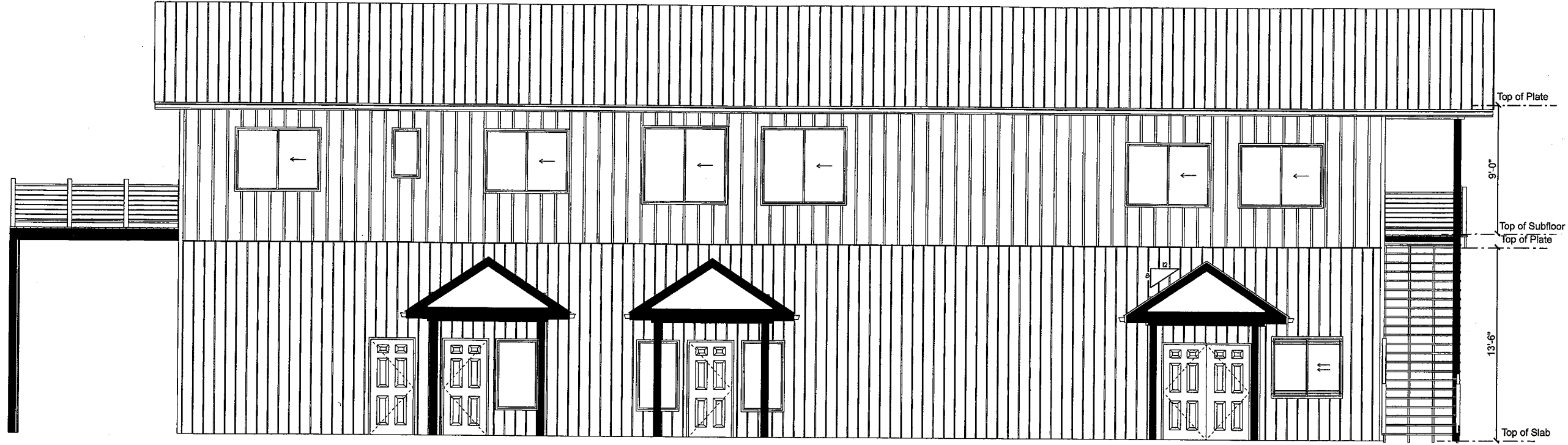
I/we understand that the application fee covers the costs associated with processing this application, and that payment of same is nonrefundable and does not assure approval of the site plan. I/we acknowledge that by signing this application I am/ we are authorizing employees or agents of the City access for exterior site inspections. This permit must be displayed so that it is readily visible from the nearest street, at the site for which the permit was obtained. If the exterior work is not completed by the permit's expiration date, one reasonable extension may be granted for good cause shown.

**Planning Staff's Signature of
Approval:**

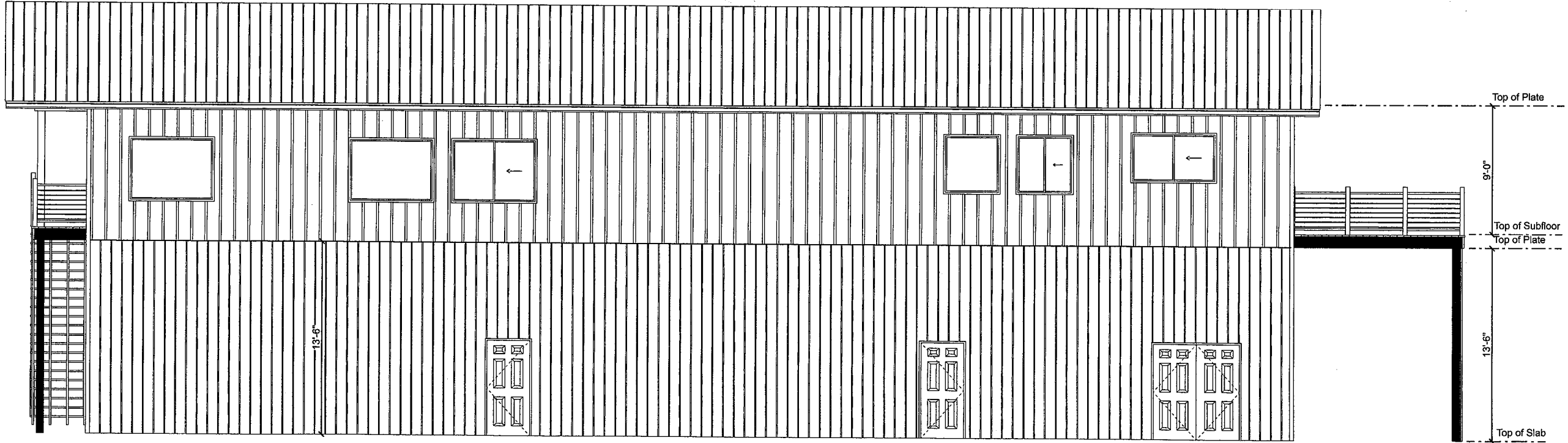
Edward Gross

City Official

Date: 02/26/2025



NORTH ELEVATION
SCALE: 1/8" = 1'-0"



SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

Pilots Association Remodel

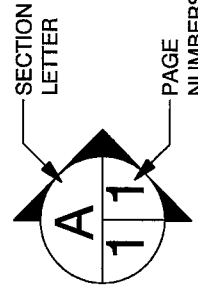
PHONE:
FAX:
MOBILE:

DRAWN BY:

SCALE: 1/8" = 1'-0"

DATE: Friday, December 20, 2024

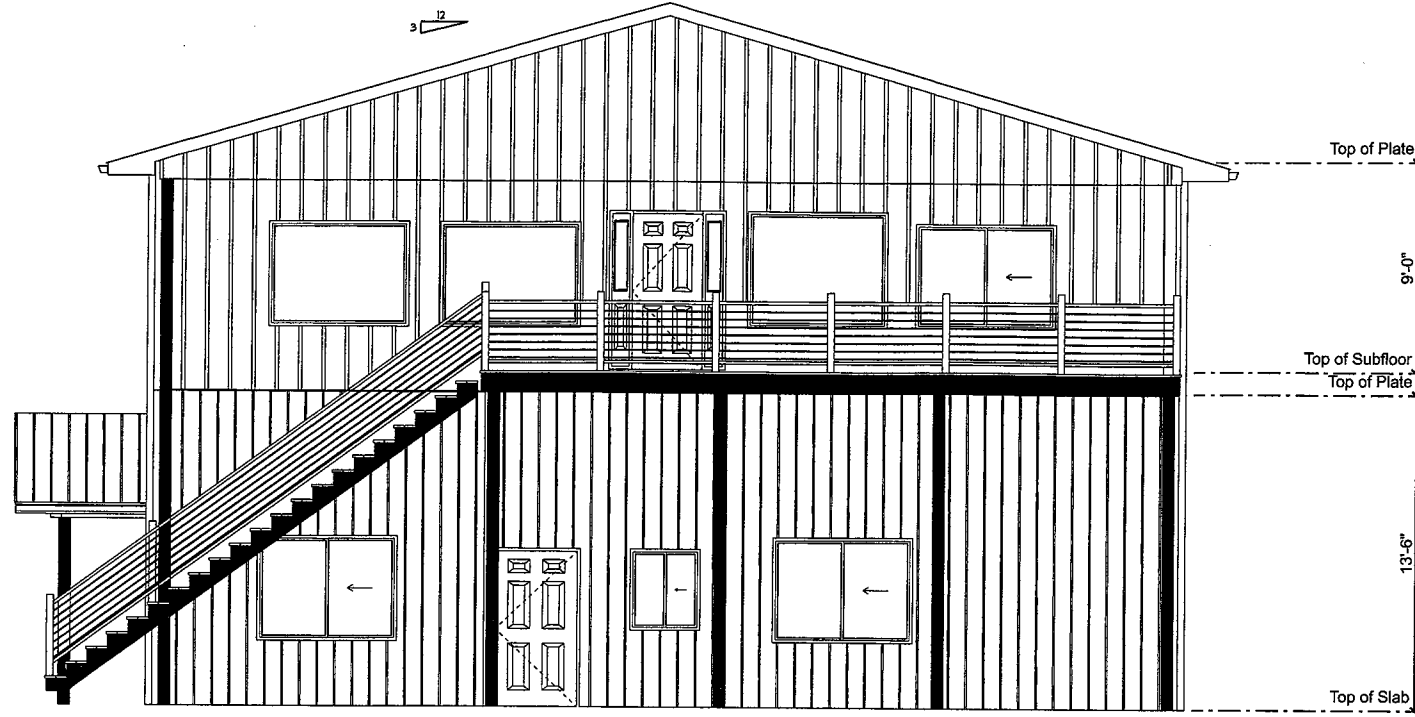
PAGE: **1/6**
Elevations 1



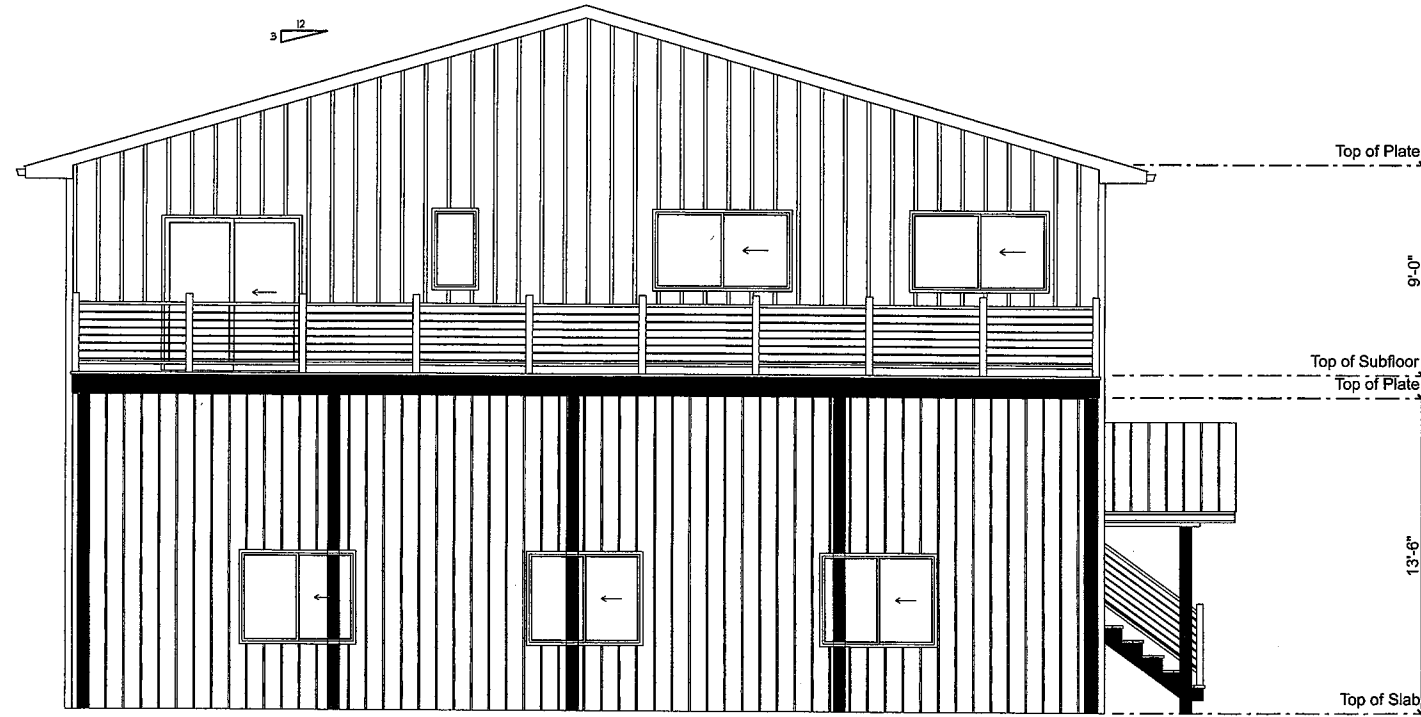
SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.

5243 Kachemak Drive
Homer AK 99603
PHONE: 907-235-8876
FAX: 907-235-5521
MOBILE: matt@bcihomer.com



WEST ELEVATION
SCALE: 1/8" = 1'-0"



EAST ELEVATION
SCALE: 1/8" = 1'-0"

Pilots Association Remodel

PHONE:
FAX:
MOBILE:

DRAWN BY:

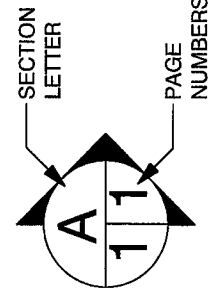
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DATE: Friday, December 20, 2024

PAGE:

2/6

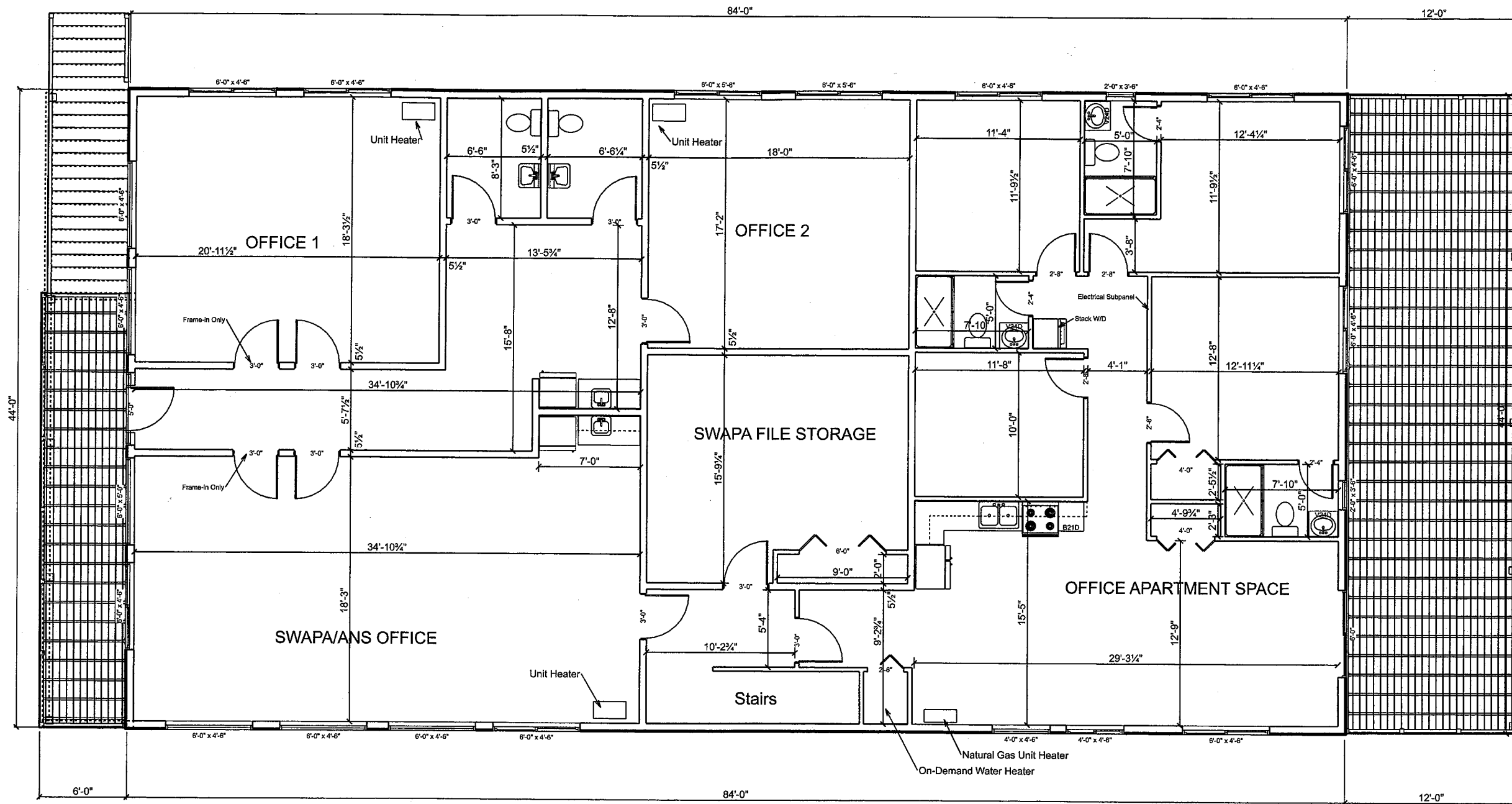
Elevations 2



SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.

5243 Kachemak Drive PHONE: 907-235-8876
Homer FAX: 907-235-5521
AK MOBILE:
99603 matt@bcihomer.com



UPPER FLOOR
SCALE: 1/8" = 1'-0"

SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE

Beachy Construction, Inc.
5243 Kachemak Drive
Homer
AK
99603
PHONE: 907-235-8876
FAX: 907-235-5521
MOBILE: matt@bcihomer.com

Pilots Association Remodel

PHONE:
FAX:
MOBILE:

DRAWN BY:

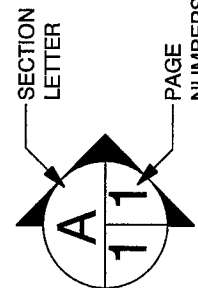
SCALE: 1/8" = 1'-0"

DATE: Friday, December 20, 2024

PAGE:

4/6

Upper Floor



ASSIGNMENT AND AMENDMENT TO LEASE AGREEMENT

This Assignment and Amendment of Lease Agreement ("Assignment") is made and entered into as of April 15, 2025 ("Effective Date") by and among the **City of Homer**, an Alaska municipal corporation ("Landlord") whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and **Berth II, Inc.**, an Alaska Limited Liability Company ("Tenant") whose address is 4400 Homer Spit Road, Homer, AK 99603, and **Happy Face LLC** ("Assignee") whose address is P.O. Box 3147 Homer, Alaska 99603, and assigns and amends the Lease dated July 1, 2024.

RECITALS

WHEREAS, Tenant and Landlord are parties to that certain Ground Lease and Security Agreement ("Lease") dated February 1, 2019 assigned to tenant in Assignment dated July 1, 2024, (a copy of which is attached hereto as Exhibit F) for the property entitled T 7S R 13W SEC 1 SEWARD MERIDIAN HM 0890034 HOMER SPIT AMENDED LOT 32, for a term of twenty (20) years which expires June 30, 2044 with two (2) additional five (5) year renewal terms;

WHEREAS, Under Section 8.01 of the Lease Tenant shall not assign or sublease its interest in this Lease or in the Property without first obtaining the written consent of City Council, which will not be withheld unreasonably, and in accordance with Section 18.08.160(b) of the Code of Ordinances of the City of Homer, Alaska ("Homer City Code"), Tenant submitted to Landlord a written Request for Assignment on April 8, 2025;

WHEREAS, Landlord has reviewed the request and determined Tenant is in good standing and eligible to assign the lease, and Assignee's application (attached hereto as Exhibit A) and determined the Assignee can fulfill the terms of the Lease and requirements under Homer City Code Chapter 18.08;

NOW, THEREFORE in consideration of the mutual consent of all listed parties and the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Assignment/Assumption:

Effective as the Effective Date, Tenant hereby assigns and transfers to Assignee all of Tenant's (a) right, title and interest, claim and demand in the Lease including, but not limited to, all renewal rights thereunder, and (b) rights to all improvements, tenements, hereditaments, and appurtenances belonging or appertaining to the Property. Assignee hereby accepts such Assignment, expressly assumes Tenant's interest in the Lease and agrees to perform all the obligations imposed on the Tenant under the Lease (as amended by this Agreement) as a direct obligation to Landlord.

2. Landlord's Consent:

Landlord provides its written consent dated April 14, 2025 (a copy of which is attached hereto as Exhibit B), to the Assignment as set forth in Section 1 above.

3. Amendment(s) to Lease:

3.1 ARTICLE 14 GENERAL PROVISIONS, Section 14.04 Addresses for Notices, shall be amended to read as follows:

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

Port Property Associate Homer Port
& Harbor 4311 Freight Dock Road
Homer, Alaska 99603
Facsimile: {907} 235-3152
Email: leases@ci.homer.ak.us

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

John Stewart, President
Happy Face LLC
PO Box 3147
Homer, Alaska 99603
Email: office@swpilots.net

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.

4. No Further Verification.

Except as set forth in this Agreement, all of the terms and provisions of the Lease shall continue to apply and shall remain unmodified and in full force and effect Effective as of the date hereof, all references to the "Lease" shall refer to the Lease as amended by this Agreement.

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

LESSOR: CITY OF HOMER

By: _____
Melissa Jacobsen, City Manager

TENANT: BERTH II INC.

By: _____
John Stewart, President

ASSIGNEE: Happy Face LLC

By: _____
John Stewart, President

STATE OF ALASKA)
) SS.
THIRD JUDICIAL DISTRICT)

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

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) SS.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 20 ____ by John Stewart, President of Berth II Inc., an Alaska Corporation.

Notary Public in and for Alaska
My Commission Expires: _____

The foregoing instrument was acknowledged before me on _____, 20 ____ by John Stewart, President of Happy Face LLC, an Alaska Limited Liability Company.

Notary Public in and for Alaska
My Commission Expires: _____

After recording return to:

Port Property Associate
Homer Port and Harbor
4311 Freight Dock Road
Homer, AK 99603

EXHIBIT A

ASSIGNEE'S LEASE APPLICATION INCLUDING THE PROPOSED USE OF THE PROPERTY, & SCHEDULE OF ORGANIZATIONS, OWNERS, PERCENTAGE OF OWNERSHIP

Assignee, Happy Face LLC, is an Alaska Limited Liability Company organized under the laws of the State of Alaska. Attached to this exhibit is the Assignee's lease application including the proposed use of the property, a certificate issued by that state describing its legal organization and certifying that the Assignee is licensed in the State of Alaska and is in good standing.

EXHIBIT B

**CONFORMED COPY OF CITY OF RESOLUTION AUTHORIZING ASSIGNMENT AND AMENDMENT OF
LEASE AND AUTHORIZING SIGNERS TO SIGN ASSIGNMENT AND AMMENDMENT TO LEASE
AGREEMENT ON BEHALF OF TENANT**

EXHIBIT C

CERTIFICATE OF INSURANCE

As required per Section 9.04(d) of the Original Ground Lease found in Exhibit F.

EXHIBIT D

PERMISSION TO OBTAIN INSURANCE POLICIES

As required per Section 9.04(d) of the Original Ground Lease found in Exhibit F.

The City of Homer is hereby granted permission to request and obtain copies of Happy Face, 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: _____

Happy Face LLC

By:

John Stewart, President

EXHIBIT E

MOBILE FOOD VENDOR PERMIT ISSUED BY THE CITY OF HOMER

[Not Applicable]

EXHIBIT F

ORIGINAL GROUND LEASE & SECURITY AGREEMENT

Attached to this exhibit is the Ground Lease and Security Agreement ("Lease") dated January 21, 2019, entered into by the City of Homer and Happy Face LLC, previously assigned as amended to Berth II Inc. in the Assignment and Amendment dated July 1, 2024, and assigned as amended to The Happy Face LLC, herewith this Assignment and Amendment to Lease Agreement.