



## Homer City Hall

491 E. Pioneer Avenue

Homer, Alaska 99603

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

# City of Homer Agenda

## Port & Harbor Advisory Commission Special Meeting

Wednesday, November 18, 2020 at 1:00 PM

City Hall Cowles Council Chambers via Zoom

Webinar ID: 954 2610 1220 Password: 556404

Dial: 346-248-7799 or 669-900-6833; (Toll Free) 888-788-0099 or 877-853-5247

**CALL TO ORDER, 1:00 P.M.**

### AGENDA APPROVAL

**PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA** (3 minute time limit)

### PENDING BUSINESS

### NEW BUSINESS

- A. Salmon Sisters Holdings, LLC Lease Application for Lot 12C (AGC-Auction Block) **Page 2**
  - i. Lease Application – Salmons Sisters Holdings, LLC **Page 4**
  - ii. Homer City Code Chapter 18.08 City Property Leases **Page 18**
  - iii. 2020 Appraisal Comparable Sheet for Lot 12C **Page 28**
  - iv. DRAFT Resolution 20-XX Lease Reassignment from Alaska Growth Capital Bidco, Inc. to Salmon Sisters Holdings, LLC **Page 29**
  - v. DRAFT Lease Agreement – Salmons Sisters Holdings, LLC **Page 31**

**COMMENTS OF THE AUDIENCE** (3 minute time limit)

### ADJOURNMENT

Next Regular Meeting is **WEDNESDAY, DECEMBER 9, 2020 at 5:00 P.M.** All meetings scheduled to be held via Zoom Webinar in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.



# City of Homer

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

Port and Harbor

4311 Freight Dock Road  
Homer, AK 99603

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

(p) 907-235-3160

(f) 907-235-3152

## Memorandum

TO: PORT AND HARBOR ADVISORY COMMISSION  
FROM: BRYAN HAWKINS, HARBORMASTER  
DATE: NOVEMBER 10, 2020  
SUBJECT: LEASE ASSIGNMENT TO SALMON SISTERS HOLDINGS LLC

Alaska Growth Capital BIDCO assumed the 2008 lease from Harbor Leasing LLC. As mortgagee, AGC has requested to transfer the lease to Salmon Sisters Holdings LLC; approval of the transfer is contingent upon their cure of the defaults associated with the lease currently held by AGC.

The included application, draft lease, and proposed Resolution in your packet were put before Council at their November 9 2020 meeting for review. During the testimony portion of the meeting one of the applicants stated they were not satisfied with the fair market lease rent listed and requested that Council postpone the resolution for their lease approval that the Council members were considering. Council honored the applicant's request to postpone their own lease application approval and set it aside until their next meeting to be held on November 23 2020.

The requirements of City Code that dictate how property rent rates are to be set, including requirements that they be at least fair market value, and the City standard appraisal processes for how fair market value is concluded for all City properties were explained by staff during the meeting. Chapter 18.08 City Property Leases attached, see relevant sections listed below:

### 18.08.100 Appraisal.

(a) An appraisal of the fair market rent of the property will be required before final approval of a new lease or the transfer of a lease and within two years prior to the renewal of a lease.

*Staff Notes: The last appraisal for Lot 12C was conducted this year in March/April of 2020*

### 18.08.075 Lease rental rates.

(a) Except as otherwise provided in this section, all property shall be leased at no less than "fair market rent"

(d) Except as otherwise provided in this chapter, Council may approve a lease of City Land for less than fair market rent only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.

*Staff notes on 18.08.075 (d) "valuable public purpose or use"*

- *There are 3 other businesses of the same type currently operating on the spit with City Leases and all of them have a rent rate based on fair market value appraisal*

- *The City is already receiving the fair market rent value monthly from its current tenant for the property, AGC, who is under contract until 2028.*
- *Currently, the application as submitted does not contain information, supporting documentation, or justification from the applicant to provide to council for consideration of a “valuable purpose or use” reduction of rent.*
- *City Code is a municipal legal code carrying the weight of law and not a policy, and so different more restrictive criteria must be met to change or alter it.*

The applicant also stated at the time of the council meeting, that they do not want to assume a transfer of the existing lease but get a new lease. There are a couple of issues with this request, #1 the property currently has an existing tenant, AGC, and is not available for a new lease. #2 if the current tenant were to release all claim from the property and buildings they own and request to terminate the current lease, allowing the property to become available outside of a transfer, then per code the City would be required to advertise it for lease in an RFP to meet the requirement for fair and competitive management of the public’s property.

General notes on the application and Draft Lease:

- The lease has been updated to the new lease template approved by council in 2018
- There is a new term of lease per Salmon Sisters Holding’s LLC request. This new lease would end November 30 2040, instead of the current lease’s end date of March 2028, and has two consecutive 5 year extensions available. Total possible length of lease would now be until November 30 2050.
- The lease rate is set at the appraised fair market value of the property per code and is the same rent amount the City is already receiving from the current tenant
- Salmon Sisters Holdings LLC proposes using the “existing space to further develop their e-commerce direct to consumer fish and merchandise sales” among the other proposed uses outlined in the October 20, 2020 lease application. As confirmed by the Planning Department on November 5, 2020, the proposed business uses Salmon Sisters Holdings LLC has listed for the property conforms with Marine Industrial zoning code.
- Assigning the lease to Salmon Sisters Holdings LLC would cure AGC’s “occupational default” associated with the property, as the mortgagee will have found a tenant that can occupy the building and operate a business permissible under zoning code.

Staff are requesting the Port and Harbor Commission’s comment, direction, and recommendation on the following questions:

- 1) Does the Commission approve of the proposed use of this property?
- 2) Does the Commission recommend support of the lease transfer from Alaska Growth Capital to Salmon Sisters Holdings LLC?
- 3) Does the commission support the request from Salmon Sisters Holdings LLC for council to agree to a lease rate reduction? And, if so, what statement for valuable public purpose or use would they suggest council consider?

## **Recommendation**

For review and discussion. Any recommendation to Council or direction to staff should be made in the form of a motion.

Attached: Lease Application – Salmons Sisters Holdings, LLC  
Homer City Code Chapter 18.08 City Property Leases  
2020 Appraisal Comparable Sheet for Lot 12C  
DRAFT Resolution 20-XX Lease Reassignment  
DRAFT Lease Agreement – Salmons Sisters Holdings, LLC



## Lease Application/Assignment Form

### Directions:

1. Please submit this application form to the City Manager's Office, 491 Pioneer Avenue, Homer, AK, 99603.
2. Please answer all questions on this form, or put "N/A" in the space if it is non-applicable.
3. Please include all applicable fees in the form of a check, made payable to the City of Homer.

|  |  |
|--|--|
| Applicant Name:                            |  |
| Business Name:                             | Salmon Sisters Holdings LLC.                                   |
| Email Address:                             | claire.neaton@gmail.com  |
| Mailing Address                            | 1450 candlelight ct.   |
| City, State, ZIP code:                     | Homer, AK 99603  |
| Business Telephone No.                     | 907-299-0112   |
| Representative's Name:                     | Claire Neaton  |
| Mailing Address:                           | 1450 candlelight ct.   |
| City, State, ZIP code:                     | Homer, AK 99603  |
| Business Telephone No.                     | 907-299-0112   |
| Property Location:                         | 1401 Ice Dock Rd.  |
| Legal Description:                         | Lot 12 Port Industrial Subdivision 4<br>tax parcel 181-034-052 |
| Type of Business to be placed on property: | see Attached:  |
| Duration of Lease requested:               | 20 yrs   |
| Options to re-new:                         | 5 yrs + 5 yrs  |

**The following materials must be submitted when applying for a lease of  
City of Homer real property**

| 1.           | <b>Plot Plan</b><br><br><i>ON File</i>   | <u>A drawing of the proposed leased property showing:</u><br><input type="checkbox"/> Size of lot - dimensions and total square footage (to scale)<br><input type="checkbox"/> Placement and size of buildings, storage units, miscellaneous structures planned (to scale).<br><input type="checkbox"/> Water and sewer lines – location of septic tanks, if needed.<br><input type="checkbox"/> Parking spaces – numbered on the drawing with a total number indicated  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
|--------------|--|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------------|-------------------------------|-------|-------|-------|-------|-------|-------|
| 2.           | <b>Development Plan</b><br><br><i>NA</i>   | <input type="checkbox"/> <u>List the time schedule from project initiation to project completion, including major project milestones.</u><br><table border="0"> <thead> <tr> <th align="left">Dates</th> <th align="left">Tasks</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> </tbody> </table><br>For each building, indicate:<br><table border="0"> <thead> <tr> <th align="left">Building Use</th> <th align="left">Dimensions and square footage</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> </tbody> </table> | Dates | Tasks | _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ | Building Use | Dimensions and square footage | _____ | _____ | _____ | _____ | _____ | _____ |
| Dates        | Tasks  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| _____        | _____  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| _____        | _____  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| _____        | _____  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| _____        | _____  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| _____        | _____  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| Building Use | Dimensions and square footage  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| _____        | _____  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| _____        | _____  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| _____        | _____  |  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| 3.           | <b>Insurance</b><br><i>see letter</i>  | <input checked="" type="checkbox"/> Attach a statement of proof of insurability of lessee for a minimum liability insurance for combined single limits of \$1,000,000 showing the City of Homer as co-insured. Additional insurance limits may be required due to the nature of the business, lease or exposure. Environmental insurance may be required. If subleases are involved, include appropriate certificates of insurance.  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| 4.           | <b>Subleases</b><br><i>See Attachment</i>  | <input checked="" type="checkbox"/> Please indicate and provide a detailed explanation of any plans that you may have for subleasing the property. The City of Homer will generally require payment of 10% of proceeds paid Lessee by subtenants.  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |
| 5.           | <b>Health Requirements</b><br><i>City water + sewer</i><br><br><i>at Fall DEC permit # AKG520000</i> | <input checked="" type="checkbox"/> Attach a statement documenting that the plans for the proposed waste disposal system, and for any other necessary health requirements, have been submitted to the State Department of Environmental Conservation for approval. Granting of this lease shall be contingent upon the lessee obtaining all necessary approvals from the State DEC.  |       |       |       |       |       |       |       |       |       |       |       |       |              |                               |       |       |       |       |       |       |

|    |  |   |
|----|--|---|
| 6. | <b>Agency Approval</b><br><i>on file for existing buildings</i>                    | <input checked="" type="checkbox"/> Attach statement(s) of proof that your plans have been inspected and approved by any agency which may have jurisdiction of the project; i.e. Fire Marshall, Army Corps of Engineers, EPA, etc. The granting of this lease shall be contingent upon lessee obtaining approval, necessary permits, and/or inspection statements from all appropriate State and/or Federal agencies.   |
| 7. | <b>Fees</b>  | <u>All applicable fees must be submitted prior to the public meeting preparation.</u><br><br><input checked="" type="checkbox"/> <b>Application fee - \$30.00.</b> Please make check payable to the City of Homer.<br><br><input checked="" type="checkbox"/> <b>Lease fee - \$300.00.</b> Please make check payable to the City of Homer.  |
| 8. | <b>Financial Data</b><br><br><br><br><br><br><br><br><br><br><br><i>Attached ←</i> | <u>Please indicate lessee's type of business entity:</u><br><br><input type="checkbox"/> Sole or individual proprietorship.<br><input type="checkbox"/> Partnership.<br><input type="checkbox"/> Corporation.<br><input checked="" type="checkbox"/> Other – Please explain: <u>LLC</u><br><hr/> <input type="checkbox"/> <b>Financial Statement</b> – <u>Please attach a financial statement showing the ability of the lessee to meet the required financial obligations.</u><br><br><input type="checkbox"/> <b>Surety Information</b> – 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<br><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please attach a statement naming the surety or bonding company, date and amount of bond, and the circumstances surrounding the default or performance.<br><input type="checkbox"/> <b>Bankruptcy information</b> - 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?<br><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please attach a statement indicating state, date, Court having jurisdiction, case number and to amount of assets and debt.<br><input type="checkbox"/> <b>Pending Litigation</b> – Are you or any of the principals of your organization holding more than a 10% interest presently a party to any pending litigation?<br><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please attach detailed information as to each claim, cause of action, lien, judgment including dates and case numbers. |



| <b>9.</b>        | <b>Partnership Statement</b><br><br><div style="text-align: center; font-size: 1.5em; margin-top: 20px;">NA</div> | <input type="checkbox"/> If the applicant is a partnership, please provide the following:<br><br><b>Date of organization:</b> _____<br><b>Type:</b> <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership<br><b>Statement of Partnership Recorded?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Where _____ When _____<br><b>Has partnership done business in Alaska?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Where _____ When _____<br><b>Name, address, and partnership share. If partner is a corporation, please complete corporation statement.</b><br><br><i>Please attach a copy of your partnership agreement.</i>  |       |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
|------------------|---|--|-------|-------|---------|-------|---------------|---------|----------------------|-------|---------------|---------|--|-------|------------------|-----|------------------|-------|------------------|-----|---|-------|------|-------|---------------|---------------|--|--|--|--|--|--|
| <b>10.</b>       | <b>Corporation Statement</b>  | <input checked="" type="checkbox"/> If the applicant is a corporation, please provide the following:<br><br><b>Date of Incorporation:</b> <u>Oct 15, 2020</u><br><b>State of Incorporation:</b> <u>AK</u><br><br><b>Is the Corporation authorized to do business in Alaska?</b><br><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Is so, as of what Date? <u>Oct 15, 2020</u><br><br><b>Corporation is held?</b> <input type="checkbox"/> Publicly <input checked="" type="checkbox"/> Privately If publicly held, how and where _____ is _____ the _____ stock _____ traded?<br><br><b>Officers &amp; Principal Stockholders [10%+]:</b><br><table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Name</th> <th style="text-align: left; border-bottom: 1px solid black;">Title</th> <th style="text-align: left; border-bottom: 1px solid black;">Address</th> <th style="text-align: left; border-bottom: 1px solid black;">Share</th> </tr> </thead> <tbody> <tr> <td>CLAIRE NENTON</td> <td>MANAGER</td> <td>1450 Candlelight Ct.</td> <td>25.5%</td> </tr> <tr> <td>EMMA LAUKITIS</td> <td>MANAGER</td> <td>1101 17th Ave Apt 204<br/>Seattle, WA 98122</td> <td>25.5%</td> </tr> <tr> <td>Michael LAUKITIS</td> <td>MGR</td> <td>41630 GLADYS Ct.</td> <td>24.5%</td> </tr> <tr> <td>Shelley LAUKITIS</td> <td>MGR</td> <td>"</td> <td>24.5%</td> </tr> </tbody> </table><br><input checked="" type="checkbox"/> Please furnish a copy of Articles of Incorporation and By-laws.<br><b>Please furnish name and title of officer authorized by Articles and/or By-laws to execute contracts and other corporate commitments.</b><br><br><table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Name</th> <th style="text-align: left; border-bottom: 1px solid black;">Title</th> </tr> </thead> <tbody> <tr> <td>Claire Nenton</td> <td>Manager Agent</td> </tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table> | Name  | Title | Address | Share | CLAIRE NENTON | MANAGER | 1450 Candlelight Ct. | 25.5% | EMMA LAUKITIS | MANAGER | 1101 17th Ave Apt 204<br>Seattle, WA 98122 | 25.5% | Michael LAUKITIS | MGR | 41630 GLADYS Ct. | 24.5% | Shelley LAUKITIS | MGR | " | 24.5% | Name | Title | Claire Nenton | Manager Agent |  |  |  |  |  |  |
| Name             | Title   | Address  | Share |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
| CLAIRE NENTON    | MANAGER   | 1450 Candlelight Ct.   | 25.5% |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
| EMMA LAUKITIS    | MANAGER   | 1101 17th Ave Apt 204<br>Seattle, WA 98122   | 25.5% |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
| Michael LAUKITIS | MGR   | 41630 GLADYS Ct.   | 24.5% |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
| Shelley LAUKITIS | MGR   | "  | 24.5% |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
| Name             | Title   |  |       |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
| Claire Nenton    | Manager Agent   |  |       |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
|                  |   |  |       |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
|                  |   |  |       |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |
|                  |   |  |       |       |         |       |               |         |                      |       |               |         |  |       |                  |     |                  |       |                  |     |   |       |      |       |               |               |  |  |  |  |  |  |

# 11. Applicant References

Please 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.

Name: CINDA MARTIN

Firm: WELLS FARGO

Title: VICE PRESIDENT

Address: 88 STERLING HIGHWAY HOMER AK 99603

Telephone: 907 399 4574

Nature of business association with Applicant: Applicants have worked with Cinda Martin at Homer Wells Fargo branch for the past three years - knowledge of business expertise.

Name: DANA CARRELL

Firm: CRYSTAL CREEK LOGISTICS

Title: ACCOUNT MANAGER

Address: 2400 SALASHAN LOOP FERNDALE WA 98248

Telephone: 360 325 8129 dana@crystalcreeklogistics.com

Nature of business association with Applicant: salmon systems. com has used crystal creek logistics for the past three years to fulfill orders for frozen seafood.

Name: MARK ANDERSON

Firm: SILVER BAY SEAFOODS

Title: MANAGER-FLEET + FISH PASS ALASKA

Address: 4039 21ST AVE W SUITE 201, SEATTLE WA

Telephone: 206-300-1358 907 204 1123

Nature of business association with Applicant: Applicants have worked with Mark Anderson in commercial fishing sector for the past three years - knowledge of business expertise.

Name: MEMO TORRES

Firm: HONEYWELL SAFETY PRODUCTS - XTRATUF

Title: COLLECTIONS SPECIALIST

Address: 20 THURBER BLVD, SMITHFIELD RI 02917-1879

Telephone: 833 604 1197 ext 2117 Luisguillerma. torres@honeywell.com

Nature of business association with Applicant: ext: 8005028, salmon systems. com Purchased product - XTRATUF boots from Honeywell safety product for the past three years. collections specialist info above.

I hereby certify that the above information is true and correct to the best of my knowledge.

Signature:

*Clark*

Date:

November 4, 2020



## City of Homer Lease Application

Preamble --Salmon Sisters Holdings LLC. supports a working waterfront on the Homer Spit. The owners of the proposed lease are all commercial and sport fishermen who desire to maintain competitive buyers and fish processing in Homer.

We view our purchase of this bank owned facility as a distressed sale in that the facility was bankrupt and has been inoperable for over two years. Many prospective buyers have looked at this facility for their needs and passed. The enterprise value of the plant has declined dramatically. The condition of freezing and ice making plants is unknown. The status of fish stocks is dramatically lower than in 2008 when the last lease was adopted. Halibut landings in Homer in 2007 were 5 mil pounds and the Alaska total harvest was over 35 mil pounds. Last year Homer only processed approximately 2.5 mil pounds and state-wide only 17 million pounds of halibut were processed. The pacific cod GOA stocks declined 85% YOY in 2019, and the Kenai River Sockeye fishery is in long-term decline -- fishermen and processors are seeking a disaster declaration in 2020.) The VALUE of all of these fisheries has declined dramatically since 2008. On top of this there is only so much market share for fish landings to Homer. Any new processor potentially impacts existing processors that might be marginally healthy. The Covid pandemic magnifies business uncertainty. Our plans are under development, and we need flexibility to develop a sustainable business on this lease in Homer.

Type of business:

The facility has four spaces (see sublease description).

Salmon Sisters LLC will use existing space to further develop their e-commerce, direct to consumer fish and merchandise sales. They will use the retail counter for fish and merchandise, and the kitchen for “fresh catch” takeaway. They will use the warehouse for shipping and receiving, labeling, packaging and logistics.

The upstairs space may be utilized as a commercial office for marine related businesses, boat charter services or for marine equipment sales.

The processing, shop, mechanical, warehouse space will be used for processing commercial and sport seafood products, for secondary processing and manufacturing of food products, fish buying, cold storage, staging and logistical support, maintenance and repairs, as a general fisherman’s and shipyard mechanical support facility, drydock and storage. Magic Fish Co. (owner of three boats) will immediately occupy this and some outside space.

The outside spaces will be used in support of the indoor facility and separately for storage, drydock, marine support, parking and mobile food service.

It may be necessary to have temporary seasonal caretaker housing.

And other uses as permitted under the City of Homer Marine Industrial District.

4. Subleases: Salmon Sisters Holdings LLC is currently developing plans for the lease and buildings. Our immediate identified business use will not fully utilize the facility or land. It is imperative that we sublet portions of the building and land to afford overhead costs.

The facility consists of four discrete spaces:

- 1.) upstairs office space (1600 ft sq);
- 2.) retail counter, commercial kitchen, warehouse e-commerce fulfillment space (approx. 1600 ft sq);
- 3.) processing/warehouse with blast and storage freezers and processing equipment, salt water pump and outfall line (2400 ft sq.)

All of the above have separate entrances and defined divisions.

4.) Outside spaces on the balance of the lot. Some of the outside space holds an ice machine and the refrigeration plant. We are determining at this time if these have value. Renting outside space for storage, logistics, maintenance, parking, etc. (as compatible with marine industrial zoning and our current use of the facility) will be developed.

We plan on immediately only occupying and using the number 2.) space. We are working on developing the best use for the other spaces either by our own businesses, partners or by others. For example, at this time we would look to rent the office space. (Possible tenants might be NMFS enforcement office, USCG, marine shipping or transportation companies, etc.)



November 4, 2020

Salmon Sisters Holdings, LLC

RE: City of Homer Lease Application

To whom it may concern,

This letter confirms that Salmon Sisters Holdings, LLC is working with Coastline Insurance Agency, and **will** have coverage in place for the property located 4501 Ice Dock Road, Homer, AK 99603. This coverage has been quoted, and is ready to be in place by December 1<sup>st</sup>, 2020.

Sincerely,

Brian Vecellio  
Owner  
Coastline Insurance Agency

Salmon Sisters Holdings LLC

Salmon Sisters Holdings LLC's managing members met on Oct 18 and approved the following Resolution:

Salmon Sisters Holdings LLC shall be authorized to enter into a long term ground lease with the City of Homer for Lot 12-C Port Industrial Subdivision and the Managing members ( and specifically the Managing Agent) shall be authorized to execute the required documents.

Claire Neaton

Claire Neaton Agent October 20 2020 Date



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](mailto:corporations@alaska.gov)  
Website: [corporations.alaska.gov](http://corporations.alaska.gov)

Date Filed: 10/15/2020  
State of Alaska, DCCED

FOR DIVISION USE ONLY

## Domestic Limited Liability Company

### Initial Biennial Report

**Entity Name:** Salmon Sisters Holdings, LLC

**Entity Number:** 10145239

**Home Country:** UNITED STATES

**Home State/Prov.:** ALASKA

**Physical Address:** 4501 ICE DOCK ROAD, HOMER, AK  
99603

**Mailing Address:** 1450 CANDLELIGHT COURT, 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:** Claire Neaton

**Physical Address:** 1450 CANDLELIGHT COURT, HOMER, AK  
99603

**Mailing Address:** 1450 CANDLELIGHT COURT, 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 | Member |
|------------------|---|---------|--------|
| Claire Neaton    | 1450 Candlelight Court, Homer, AK 99603 | 25.5    | X      |
| Emma Laukitis    | 1450 Candlelight Court, Homer, AK 99603 | 25.5    | X      |
| Michael Laukitis | 41630 Gladys Court, Homer, AK 99603     | 24.5    | X      |
| Shelly Laukitis  | 41630 Gladys Court, Homer, AK 99603     | 24.5    | 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.



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

**Salmon Sisters Holdings, LLC**



IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective **October 15, 2020**.



Julie Anderson  
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](mailto:corporations@alaska.gov)  
Website: [corporations.alaska.gov](http://corporations.alaska.gov)

Date Filed: 10/15/2020  
State of Alaska, DCCED

FOR DIVISION USE ONLY

## Articles of Organization

### Domestic Limited Liability Company

Web-10/15/2020 12:56:34 PM

#### 1 - Entity Name

**Legal Name:** Salmon Sisters Holdings, LLC

#### 2 - Purpose

Engage in the acquisition, development, lease and management of commercial property, and any other lawful purpose and business.

#### 3 - NAICS Code

531190 - LESSORS OF OTHER REAL ESTATE PROPERTY

#### 4 - Registered Agent

**Name:** Claire Neaton

**Mailing Address:** 1450 Candlelight Court, Homer, AK 99603

**Physical Address:** 1450 Candlelight Court, Homer, AK 99603

#### 5 - Entity Addresses

**Mailing Address:** 1450 Candlelight Court, Homer, AK 99603

**Physical Address:** 4501 Ice Dock Road, Homer, AK 99603

#### 6 - Management

The limited liability company is managed by its members.

#### 7 - Officials

| Name             | Address | % Owned | Titles    |
|------------------|---------|---------|-----------|
| Claire Neaton    |         |         | Organizer |
| Michael Laukitis |         |         | Organizer |
| Shelly Laukitis  |         |         | Organizer |
| Emma Laukitis    |         |         | Organizer |

**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

**Salmon Sisters Holdings, LLC**

1450 Candlelight Court, Homer, AK 99603

owned by

Salmon Sisters Holdings, LLC

is licensed by the department to conduct business for the period

October 15, 2020 to December 31, 2021  
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 Anderson  
Commissioner



**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:** Tracey Tillion

## Chapter 18.08 CITY PROPERTY LEASES

### Sections:

|                                  |   |
|----------------------------------|---|
| <a href="#"><u>18.08.005</u></a> | Purpose.  |
| <a href="#"><u>18.08.010</u></a> | Definitions.  |
| <a href="#"><u>18.08.020</u></a> | Land allocation plan – Property available for lease.                              |
| <a href="#"><u>18.08.030</u></a> | Standardized leases.  |
| <a href="#"><u>18.08.040</u></a> | Council approval of leases.   |
| <a href="#"><u>18.08.045</u></a> | Lease applications.   |
| <a href="#"><u>18.08.050</u></a> | Requests for proposals – Competitive bidding process.                             |
| <a href="#"><u>18.08.060</u></a> | Criteria for evaluating and approving proposals and competing lease applications. |
| <a href="#"><u>18.08.065</u></a> | Lease application and proposal documents.   |
| <a href="#"><u>18.08.070</u></a> | Notice to award.  |
| <a href="#"><u>18.08.075</u></a> | Lease rental rates.   |
| <a href="#"><u>18.08.080</u></a> | Lease execution and final approval.   |
| <a href="#"><u>18.08.090</u></a> | Development and use.  |
| <a href="#"><u>18.08.100</u></a> | Appraisal.  |
| <a href="#"><u>18.08.110</u></a> | Options to renew.   |
| <a href="#"><u>18.08.120</u></a> | Improvements.   |
| <a href="#"><u>18.08.130</u></a> | Lease renewal.  |
| <a href="#"><u>18.08.140</u></a> | Sublease.   |
| <a href="#"><u>18.08.150</u></a> | Early termination.  |
| <a href="#"><u>18.08.160</u></a> | Assignment.   |
| <a href="#"><u>18.08.170</u></a> | Insurance.  |
| <a href="#"><u>18.08.175</u></a> | Exception – Leasing to government entities.                                       |
| <a href="#"><u>18.08.180</u></a> | Assessments – Capital improvement projects.                                       |
| <a href="#"><u>18.08.190</u></a> | Connection to utilities.  |
| <a href="#"><u>18.08.195</u></a> | Processing and filing fees.   |

### **18.08.005 Purpose.**

The purpose of this chapter is to ensure that the lease of City-owned property maximizes the value of City assets and that the City awards leases that provide the highest and best use of City-owned property. It is the policy of the City to lease its property in a fair and nondiscriminatory way. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

### **18.08.010 Definitions.**

For the purpose of this chapter, the following words and phrases are defined as set forth in this section:

“Applicant” means a person applying to lease or acquire an interest in City-owned real property and includes bidders and proposers.

“Appraisal” means a valuation or estimation of value of property by an Alaska certified general real estate appraiser or an otherwise qualified appraiser selected by the City Manager.

“Assignment” means a transfer of a leasehold interest or rights to a leasehold interest, in its entirety, in City-owned real property.

“City Manager” means the City of Homer Manager or his or her designee.



"Fair market rent" means the rental income that a public or private property would most likely command in the open market, indicated by the current rents paid for comparable space as of the date of the appraisal.

"Irregularities" means deviations from the request for proposal that are not substantive in nature and/or typographical or scrivener errors that do not impact the integrity or responsiveness of the proposal.

"Long-term lease" means a written agreement granting exclusive possession or use of City-owned real property for more than one year.

"Short-term lease" means a written agreement granting exclusive possession or use of City-owned real property for one year or less.

"Surveyor" means a registered professional land surveyor. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.020 Land allocation plan – Property available for lease.**

a. Unless dedicated or reserved to another purpose, all real property including tide, submerged or shore lands to which the City has a right, title and interest as owner or lessee, or to which the City may become entitled, may be leased as provided in this chapter. In the case of any conflict between this chapter and any local, State or Federal law governing the leasing of City tide and submerged lands, the law governing the leasing of City tide and submerged lands shall prevail.

b. The City administration shall maintain a list of all City-owned properties authorized for lease by Council. This list shall be adopted annually and contain the information required under this chapter. The list may be called the land allocation plan and will be made available to the public at the City Clerk's office.

c. Council shall adopt a land allocation plan that identifies:

1. City-owned property available for lease;
2. The property description, lease rate, preferred length of the lease term for each available parcel; and
3. Any requirements, preferences or restrictions regarding use and/or development.

d. Council may identify property in the land allocation plan that is subject to competitive bidding. Property subject to competitive bidding in the land allocation plan need only identify the property description in the land allocation plan but all other terms required in subsection (c) of this section shall be identified in the request for proposal for such properties.

e. Prior to the adoption of the land allocation plan, Council shall hold a work session. Commission members and City staff may provide recommendations to Council during the work session regarding City-owned property available for lease and the terms of such leases.

f. The City shall provide public notice of the adoption of the land allocation plan and the City-owned real property available for lease no more than 60 days after its adoption.

g. All uses and activities on City-owned real property available for lease are subject to all applicable local, State, and Federal laws and regulations.

h. The Council may restrict specific City-owned properties to certain uses or classes of use that serve the City's best interest. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.030 Standardized leases.**

a. The City Manager shall develop a standardized ground lease that contains provisions generally applicable to the lease of City-owned property and a standardized building lease that contains provisions generally applicable to the lease of space in City-owned buildings. The standard lease documents shall be reviewed by the City Attorney and approved by Council.

b. Lease terms may deviate from the standardized lease terms when the City Manager determines such deviations are reasonable and necessary to protect the City's best interests and Council approves the lease as required in HCC [18.08.040](#). [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.040 Council approval of leases.**

a. All long-term leases for more than five years shall be approved by Council via ordinance. All long-term leases for five years or less shall be approved by Council via resolution.

b. The City Manager may execute short-term leases without Council approval when the City Manager determines that a short-term lease is in the best interest of the City and notifies the Council in writing of the short-term lease and its essential terms.

c. Short-term leases are not required to go through the competitive bidding process unless the short-term lease would result in the lease of City-owned property to the same lessee for more than one consecutive year.

d. Except as expressly provided in this chapter, property leased by the City from a third party that is available for sublease or the lease of space in City-owned buildings located on real property owned by a third party is exempt from this chapter. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.045 Lease applications.**

Except for property subject to competitive bidding under this chapter, persons interested in leasing City property may submit a lease application to the City Clerk. The City Manager shall consider all applications and determine if an application is complete and meets the criteria identified in the land allocation plan. When the City receives more than one lease application for a parcel that meets the criteria established for that parcel in the land allocation plan, the City Manager shall evaluate the applications using the criteria in HCC [18.08.060](#) and award the lease most advantageous to the City. If both applicants are equally advantageous to the City, the City Manager shall award the lease to the applicant who submitted a completed application first. Applicants may be charged a fee for processing a lease application. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.050 Requests for proposals – Competitive bidding process.**

a. The City Manager may issue a request for proposals to lease specific property identified in the land allocation plan at any time after posting the notice required in HCC [18.08.020\(f\)](#).

b. A request for proposal advertised by the City must identify the property description of the property available for lease, the time frame for the submission of requests for proposals, any preferred uses or industries, and the overall criteria the City intends to use to score and rank proposals.

c. The City Manager must obtain approval from the Council before requesting proposals to lease property not identified in the land allocation plan as property available for lease. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.060 Criteria for evaluating and approving proposals and competing lease applications.**

a. The criteria for evaluating proposals shall include, but are not limited to, the following:

1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Comprehensive Plan;

2. The development plan including all phases and timetables;
  3. The proposed capital investment;
  4. Experience of the applicant in the proposed business or venture;
  5. Financial capability or backing of the applicant including credit history, prior lease history, assets that will be used to support the proposed development;
  6. The number of employees anticipated;
  7. The proposed rental rate;
  8. Other financial impacts such as tax revenues, stimulation of related or spin-off economic development, or the value of improvements left behind upon termination of the lease;
  9. Other long-term social economic development; and
  10. The residency or licensure of the applicant 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.
- b. Determination of rent shall take into consideration the following factors:
1. Appraisal or tax assessed valuation;
  2. Highest and best use of land;
  3. Development (existing and planned);
  4. Economic development objectives;
  5. The location of the property; and
  6. Alternative valuation methodologies as negotiated by both parties. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.065 Lease application and proposal documents.**

Upon request by the City Manager or as required in a request for proposal or the lease allocation plan, an applicant or proposer shall provide, at its sole expense, the following:

- a. A property improvement plan with information regarding planned improvements by lessee, including schedule for commencement and completion of proposed improvements;
- b. A survey of the property subject to the proposed lease; and/or
- c. If only a portion of a lot is to be leased, a subdivision plat. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.070 Notice to award.**

- a. The City Manager shall consider all responses to the City's request for proposals that are timely and responsive. Untimely submissions shall be returned to the proposer without review and that proposer shall not be considered.
- b. The City Manager may, in his or her sole discretion, and upon a determination that none of the proposals are in the City's best interest, recommend rejection of all proposals.

- c. Upon a determination that a proposal is the most advantageous to the City, the City Manager shall recommend the proposal to Council for acceptance. If Council approves the recommendation, the City Manager shall issue a notice to award the lease to the successful proposer. The City Manager's recommendation shall be presented to Council in a written memorandum identifying the recommended winning proposer, the property description, the essential terms of the proposed lease, and the reasons the City Manager recommended the award.
- d. The City Manager shall submit any recommendation for approval of a proposal under this chapter for property located on the Homer Spit or in the Marine Commercial or Marine Industrial zoning districts to the Port and Harbor Advisory Commission for review and comment prior to recommending a proposal to Council.
- e. If the Council adopts the City Manager's recommendation, the City Manager shall negotiate with the winning applicant and present a final lease to the Council for approval. A notice to award is conditional upon the City Manager's successful negotiation of a final written lease consistent with the terms upon which the award was based.
- f. The City Manager may, with Council approval, rescind a notice to award. A notice to award becomes void on the date the City Manager provides written notice to the proposer that the award has been rescinded.
- g. The City Manager may rescind a notice to award at any time prior to the execution of a lease if the proposer can no longer meet the terms of the proposal.
- h. If the City Manager rescinds a notice to award, the City Manager may negotiate with the next most responsive proposer and submit a new recommendation for award to Council and Council may approve the award of the proposal to that recommended proposer. If negotiations with the next most responsive bidder are unsuccessful, all bids must be rejected and a new request for proposal may be issued.
- i. The Council may approve other bidding or proposal procedures or exceptions to these procedures via resolution. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.075 Lease rental rates.**

- a. Except as otherwise provided in this section, all property shall be leased at no less than "fair market rent."
- b. Payments of a higher than fair market rent resulting from a proposal or lease application is generally in the public interest and will help to establish fair market rent using current market forces.
- c. The Council may establish a minimum rent or "asking price." It may set a minimum rent at an amount equal to or higher than the estimated "fair market rent" if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.
- d. Except as otherwise provided in this chapter, Council may approve a lease of City land for less than fair market rent only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.
- e. The lease shall provide for payment of interest or a late fee for rent past due, and provide for recovery by the City of attorneys' fees and costs to the maximum extent allowed by law in the event the City is required to enforce the lease in court, and such additional provisions pertaining to defaults and remedies as the City Manager may determine to be in the City's interest.
- f. Lease amount to be adjusted annually based on the Anchorage Consumer Price Index. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].



**18.08.080 Lease execution and final approval.**

a. After a notice to award a lease is approved by Council or a lease application is approved by the City Manager, the City Manager is responsible for finalizing and executing the lease agreement with the successful applicant or proposer. After Council's approval of the notice to award but before Council approval under HCC [18.08.040](#), the City Manager may negotiate nonessential long-term lease terms and make changes necessary to clarify the terms of the long-term lease or correct clerical errors.

b. The City Manager has authority to negotiate all terms of short-term leases subject to the provisions of this chapter.

c. After a lease is executed by both parties, the City Manager shall draft and the City Clerk shall record a memorandum of lease. Lessee is responsible for the recording fees. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

**18.08.090 Development and use.**

a. All leases must require the lessee to comply with all applicable local, State, and Federal laws.

b. Except as provided otherwise in the lease agreement, an as-built survey including elevations performed by a surveyor shall be provided to the City within six months of completion of development on the leased property. Each additional structure or significant improvement shall require an updated as-built survey. All surveys are to be provided by lessees at their expense.

c. Except as provided otherwise in the lease agreement, at the time each as-built survey is submitted, a statement of value including leaseholds and all improvements shall be provided. The statement of value shall be either a letter of opinion or appraisal completed by an appraiser.

d. All development requirements and performance standards contained in the lease shall be strictly enforced and if not complied with or negotiated for modification shall be cause for the lease to be terminated. Failure to enforce the terms of the lease shall not constitute waiver of any such term.

e. The City may require a lease of City-owned property to be secured by any means that meet the City's best interest, including, without limitation, a security deposit, surety bond or guaranty. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

**18.08.100 Appraisal.**

a. An appraisal of the fair market rent of the property will be required before final approval of a new lease or the transfer of a lease and within two years prior to the renewal of a lease.

b. The requirement of an appraisal may be waived at the discretion of the City Manager for short-term leases.

c. All leased properties shall be appraised every five years from the effective date of the lease. The City may choose to have the property appraised at less than five-year intervals in order to appraise multiple properties at one time. An increase in rental rates resulting from appraisals occurring in less than five years from the last appraisal shall not be applied prior to date of appraisal permitted under this section or the effective date of the transfer or renewal of a lease.

d. Except as otherwise provided under this section or in a specific lease, lease rates shall be increased on the anniversary of the lease effective date to reflect property appraisal values. A lessee shall be notified of any increase in the appraised value of the property at least 30 days before the increased rental rate becomes effective.

e. In the event an appraisal reports a decrease in fair market rent, a lessee may petition or the City Manager may recommend to Council a reduction in the lease rate. Council may approve a reduction if it determines via



resolution that such reduction corresponds with the appraised fair market rent and is in the City's best interest.

f. Each year, the City will select and retain an appraiser to appraise all leased City-owned property due for appraisals in that year. The City will have sole discretion to select the appraiser and bears the cost of the appraisal. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.110 Options to renew.**

a. Leases may contain no more than two options to renew and each option must not exceed 25 percent of the length of the initial lease term.

b. A lessee may not exercise an option to renew unless the City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

c. A lessee whose initial lease and all options have expired shall have no automatic right of further renewal or extensions. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.120 Improvements.**

a. Except as otherwise provided in the lease agreement, construction of improvements shall take place only after review and approval of the construction plans by the City Manager and only after all applicable permits have been secured and legal requirements met.

b. Improvements not included in the lease agreement or improvements that are inconsistent with or deviate from those permitted in the lease agreement must be approved by Council via resolution. Council shall only approve such improvements upon recommendation by the City Manager and after review by the Port and Harbor Commission, the Homer Advisory Planning Commission, and any other commission determined to be appropriate by the City Manager. Inconsistent improvements may be approved if the proposed changes to the improvements serve the City's best interest and/or when changes are necessary due to relevant changes in industry or the local economy.

c. All improvements constructed upon leased property become the property of the City upon termination of the lease unless otherwise provided in the lease agreement or agreed to by the parties in writing.

d. Lessee shall be responsible for all taxes, including property taxes on the leasehold interest in the real property and improvements and any sales tax on rent payments. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.130 Lease renewal.**

a. Council, upon written recommendation by the City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such exemption serves the City's best interests.

b. A lessee seeking to enter into a new lease with the City exempted from competitive bidding under this section must submit a lease application and a written request for a new lease to the City Manager at least 12 months but no more than 18 months prior to the expiration of the existing lease. The City Manager shall notify Council of new lease requests under this section. The City will review the application but is under no obligation to enter into a new lease.

c. If Council approves the new lease without a competitive process, it must do so by resolution within six months of the date the lease application is filed with the City.

d. Council shall consider the following factors when determining whether to exempt a lease from competitive bidding under this section:

1. Lessee's past capital investment and binding commitment to future capital investment;

2. Lessee's financial condition and prior lease history;
3. The number of persons employed and the prospect for future employment;
4. Tax revenues and other financial benefits to the City anticipated in the future if the lease is renewed;
5. Consistency of past use and intended future use with all applicable laws, including land use codes and regulations, the Comprehensive Plan, and overall economic development plan;
6. Other opportunities for use of the property that may provide greater benefit to the City; and
7. Other social, policy, and economic considerations as determined by Council. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.140 Sublease.**

- a. City property may be subleased if expressly permitted in the lease agreement and approved in writing by Council.
- b. Except as provided otherwise in the lease agreement, all subleases must be in writing, executed by the parties, and approved by Council after a recommendation is provided by the City Manager.
- c. Approval must be granted prior to occupancy of the leased premises by a sub-tenant.
- d. Lessee shall be assessed additional rent equal to at least 10 percent of the current rent for the subleased area upon approval of a sublease.
- e. Subleasing shall not be used to transfer substantially all of a leasehold interest.
- f. All subleases must comply with all applicable Federal, State, and local laws. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.150 Early termination.**

Except as provided otherwise in the lease agreement, Council shall approve the termination of a lease for failure to comply with the lease terms. The City Attorney shall be consulted prior to termination of a long-term lease for failure to comply with lease terms. The City Manager may only terminate a lease for failure to comply with the lease terms after receiving Council approval to do so. The City Manager shall seek approval to terminate under this section in executive session. The name of lessee and description of the leased property shall not be included in any public notices or documents circulated by the City unless and until Council approves termination of the lease under this section. The City Manager shall notify a lessee in writing that Council will be considering termination of the lease and provide the date, time, and place of the meeting at which Council will consider such termination. Lessee may waive the right to confidentiality under this section and request Council hold its discussion of termination in public. This section shall not prevent the City from sending lessee, or other parties with an interest in the lease, notifications and/or correspondence related to the lease or lessee's compliance with its terms. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.160 Assignment.**

- a. Except as provided in the lease agreement, Council must approve the assignment of a lease to another party.
- b. Except as otherwise provided in this section or the lease agreement, the City Manager must make a determination that a lessee is in full compliance with a lease before an assignment will be effective. The City Manager may, in his or her sole discretion, consent to assignment of a lease where lessee is in full compliance with the lease terms except for payments owed so long as assignor and/or assignee agree in writing to pay the full amount owed within 90 days of the assignment. An assignment shall not be effective and shall constitute default by lessee if full payment is not received within 25 days of the assignment.

c. Except as otherwise provided in the lease agreement, if the lessee is in good standing and eligible to assign the lease, the following procedures apply:

1. The lessee shall file a written request for assignment and a complete new lease application to the City Manager;
2. The City Manager shall review the request and new lease application and determine whether the proposed assignee is qualified under this chapter and the assignment is in the City's best interests;
3. The City Manager shall make a recommendation on the assignment to Council for final action; and
4. Council shall approve or deny the request for assignment via resolution.
5. Assignment of long-term leases on the Homer Spit or within the Marine Commercial or Marine Industrial zoning districts shall be reviewed by the Port and Harbor Advisory Commission prior to submission to Council for approval. Except as otherwise provided in the lease agreement, assignment of all other long-term leases shall be reviewed by the Homer Advisory Planning Commission prior to Council approval.

d. Council may approve assignment of a lease to a bank or other financial institution if it determines the assignment is in the best interest of the City and the City Manager recommends approval.

e. Where a lessee intends to assign the lease as part of a sale of the business located on the leased lot, the person who intends to purchase the business may apply to extend the lease term to allow the continuation of the business and to secure financing for the purchase of that business. Any significant changes in the terms (use) of the existing lease must be reviewed by the Port and Harbor Commission and approved by City Council by resolution as an amendment to the lease. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.170 Insurance.**

a. All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than \$1,000,000 coverage per occurrence for bodily injury, including death, and property damage. The City shall be named as an additional insured.

b. Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than \$2,000,000 in environmental impact insurance and/or environmental clean-up policy, or the equivalent subject to review and approval by the City Manager. The City shall be named as an additional insured. The City will determine on a case-by-case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.

c. Certificates of insurance showing the required insurance is in effect and identifying the City as an additional insured shall 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.

d. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

e. Insurance requirements that exceed those required in this section may be imposed in the terms of a lease agreement. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.175 Exception – Leasing to government entities.**

a. Except as otherwise prohibited by law, leases to Federal or State government entities or political subdivisions or agencies of the State of Alaska or the United States are exempted from this chapter upon a finding by

Council that it is in the City's best interest to do so.

b. The City may lease real property to the United States, the State of Alaska, a political subdivision of the State, or an agency of any of these entities, for less than fair market rent if Council determines it is in the City's best interest to do so. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.180 Assessments – Capital improvement projects.**

a. Lessees of City property shall pay all real property special assessments levied and assessed against the property to the full extent of installments billed during the lease term.

b. In the event the City completes a capital improvement project which directly benefits the leasehold property and no local improvement district is formed to pay the cost of that project, the City may, in its sole discretion, impose, and the lessee shall pay as additional rent, the leasehold property's proportionate share of the cost of the project. The amount of additional rent imposed annually by the City under this subsection shall not exceed the amount which would have been payable annually by the lessee if a local improvement district had been formed which provided for installment payments on a schedule and bearing interest at rates typical of other local improvement districts of the City for that type of capital improvement. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.190 Connection to utilities.**

Lessees of City real property shall connect to City utilities and bear all costs of connections and adhere to all applicable local, State and Federal regulations. Connections to newly installed City utilities shall be made as soon as possible after completion. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.195 Processing and filing fees.**

Fees for lease applications, lease, subleases and assignments, and other related fees shall be established by Council by resolution. Failure to pay fees owed may result in the rejection of a lease application or denial of lease renewal, assignment or sublease. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].


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**The Homer City Code is current through Ordinance 18-47,  
passed November 26, 2018.**

Disclaimer: The City Clerk's Office has the official version of the Homer City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.



**Comparable Adjustment Table**

| PARCEL 1 - Alaska Growth Capital - City of Homer 2020 Homer Spit Revaluations         |                         |                        |                      |                   |                         |                        |                    |  |
|---|-------------------------|------------------------|----------------------|-------------------|-------------------------|------------------------|--------------------|--|
|   | Subject                 | Comparable 1           | Comparable 2         | Comparable 3      | Comparable 4            | Comparable 5           | Comparable 6       |  |
| Legal Description   | L12C, Port              | Lot 12-A1, Por. 12-B   | L32, Homer Spit      | L88-2, Homer Spit | L13B, Homer             | Por. GLO 20, Sec. 1    | Tract 1-C, The     |  |
| Lessee  | Industrial S/D #4       | Port Industrial #3     | Amended              | #2 Amended        | Port Industrial #2      | T7S, R13W              | Fishin' Hole #2    |  |
| KPB Parcel No.  | (AK Growth Capital)     | (Alaskan Fish Factory) | (Shogun Restaurant)  | (Yourkowski)      | (Copper River Seafoods) | (US Coast Guard)       | (Sportsman Supply) |  |
|   | 181-034-52              | 181-034-21LH01 & 51    | 181-034-32LH01       | 181-034-42LH01    | 181-034-25LH01          | 181-034-45             | 181-031-10         |  |
| Annual Rent   | \$26,343                | \$27,553               | \$20,982             | \$12,398          | \$14,128                | \$13,822               | \$12,206           |  |
| Rent/square foot (unadjusted)   | \$0.77                  | \$0.88                 | \$0.85               | \$0.94            | \$0.92                  | \$0.91                 | \$0.97             |  |
| Lease Term (CPI adjustment)   | CPI Adj.                | CPI Adj.               | CPI Adj.             | CPI Adj.          | CPI Adj.                | CPI Adj.               | CPI Adj.           |  |
| Market Conditions (last rent revaluation)   | Mar-15                  | Apr-14                 | Apr-19               | Apr-19            | Apr-19                  | Apr-18                 | Sep-17             |  |
| (** CPI adj. applied each Jan. since last revaluation)                                | **                      | **                     | **                   | **                | **                      | **                     | **                 |  |
| Size [Sq. Ft.]  | 34,236                  | 31,295                 | 24,639               | 13,135            | 15,300                  | 15,246                 | 12,528             |  |
| Size Adjusted Rent/sq. ft.  | \$0.77                  | \$0.88                 | \$0.85               | \$0.85            | \$0.83                  | \$0.82                 | \$0.88             |  |
| Other Characteristics   |                         |                        |                      |                   |                         |                        |                    |  |
| Street Frontage/Access  | Spit/Ice, Fish Dock Rds | Spit/Fish Dock Rds.    | Homer Spit Rd.       | Homer Spit Rd.    | Homer Spit Rd.          | Homer Spit Rd.         | Freight Dock Rd.   |  |
| Location/commercial exposure  | Excellent               | Similar                | Similar              | Similar           | Similar                 | Similar                | Inferior           |  |
| Bay or Harbor Frontage  | Fish Dock across street | Similar                | S. side of harbor    | S. side of harbor | S. of K. Bay            | S. of K. Bay           | Similar            |  |
| Topography  | Level, gravelly soils   | Similar                | Similar              | Similar           | Similar-No beach        | Similar-No beach       | Similar            |  |
| Utilities Available   | E, T, W/S, G            | Same                   | Same                 | Same              | Same                    | Same                   | Same               |  |
| Zoning/Easements  | MI/Typical              | MI/Similar             | MC/Util. Ped. Esmts. | MC/Similar        | MI/None known           | MI/None known          | MC/Similar         |  |
| Shape   | Rectangular             | Rectangular            | Rectangular          | Rectangular       | Rectangular             | Rectangular            | Rectangular        |  |
| Compound Adjustment %   |                         | 0%                     | 0%                   | 0%                | 0%                      | 0%                     | 0%                 |  |
| (street frontage - shape)   |                         |                        |                      |                   |                         |                        |                    |  |
| Indicated Rent of Subject (\$/sq. ft.)  |                         | \$0.88                 | \$0.85               | \$0.85            | \$0.83                  | \$0.82                 | \$0.88             |  |
| Qualitative adjustment (+/-/=)  |                         |                        | +                    |                   |                         |                        | +                  |  |
| Comparable weighting ~ cumulative = 100%  |                         | 30%                    | 20%                  | 20%               | 10%                     | 10%                    | 10%                |  |
| Measures of Central Tendency (excluding Qualitative adjustments)                      |                         |                        |                      |                   |                         |                        |                    |  |
| Mean (unweighted)   | \$0.84                  |                        |                      |                   |                         |                        |                    |  |
| Mean (weighted)   | \$0.86                  |                        |                      |                   |                         |                        |                    |  |
| Median  | \$0.85                  |                        |                      |                   |                         |                        |                    |  |
| Concluded Market Rent   |                         |                        |                      |                   |                         |                        |                    |  |
| Site size- sq. ft.  | 34,236                  | Rent ~ \$/sq. ft.      | \$0.87               | = Indicated rent  | \$29,785                | Annual Market Rent (R) | \$29,800           |  |
|  |                         |                        |                      |                   |                         |                        |                    |  |



**CITY OF HOMER  
HOMER, ALASKA**

City Manager

**RESOLUTION 20-0xx**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, APPROVING A LEASE ASSIGNMENT ORIGINALLY HELD BY HARBOR LEASING LLC AND ASSUMED BY ALASKA GROWTH CAPITAL BIDCO, INC. TO SALMON SISTERS HOLDINGS LLC AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE THE APPROPRIATE DOCUMENTS FOR A NEW TWENTY YEAR LEASE WITH OPTIONS FOR TWO CONSECUTIVE FIVE YEAR RENEWALS FOR A PORTION OF LOT 12C, PORT INDUSTRIAL SUBDIVISION NO. 4, PLAT 99-43, AT AN ANNUAL RATE OF \$29,785.32.

WHEREAS, Alaska Growth Capital BIDCO (“AGC”) has requested to transfer its leasehold interest assumed from Harbor Leasing, LLC to Salmon Sisters Holdings, LLC as a result of their pending, time sensitive sale; and

WHEREAS, Per Section 14.04 (f) of the lease originally held by Harbor Leasing LLC, as mortgagee AGC has the right to assign or transfer the estate to Salmon Sisters Holdings, LLC upon obtaining the City’s consent, which will not be unreasonably withheld or delayed; and

WHEREAS, HCC 18.08.160 Assignment (b) states the City Manager must make a determination that a lessee is in full compliance with a lease before an assignment will be effective; and

WHEREAS, Salmon Sisters Holdings, LLC submitted a lease application pursuant Homer City Code (HCC) 18 and will provide the City with any required additional documents prior to Port and Harbor Advisory Commission review and execution of the lease; and

WHEREAS, HCC 18.08.70 and HCC 18.08.160 (c) 5. requires the Port and Harbor Advisory Commission review of the proposal prior to Council approval; and

WHEREAS, Given the pending, time sensitive sale of the improvements from AGC to Salmon Sisters Holdings, LLC, HCC 18.08.70 and HCC 18.08.160 (c)5. are waived so that lease assignment approval is contingent upon receiving all required materials and a positive recommendation from the Port and Harbor Advisory Commission; and

WHEREAS, Per both Section 14.04 (f) of the current lease and HCC 18.08.160 (4), Council shall approve or deny the request for lease assignment via resolution.

42 NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves the  
43 lease assignment from Alaska Growth Capital BIDCO to Salmon Sisters Holdings, LLC, and  
44 authorizes the City Manager to negotiate and execute a new lease for a twenty year term with  
45 options for two consecutive five year renewals on a portion of Lot 12C, Port Industrial  
46 Subdivision No. 4, Plat 99-43, at an annual base rent of \$29,785.32.

47  
48 BE IT FURTHER RESOLVED that the City Manager will make a determination that AGC is  
49 in full compliance with a lease before an assignment to Salmon Sisters Holdings, LLC will be  
50 effective.

51  
52 BE IT FURTHER RESOLVED that the lease assignment to Salmon Sisters Holdings, LLC is  
53 contingent upon the City receiving all required documents and a positive recommendation  
54 from the Port and Harbor Advisory Commission.

55  
56  
57 PASSED AND ADOPTED by the Homer City Council on this 9<sup>th</sup> day of November, 2020.

58  
59 CITY OF HOMER

60  
61  
62  
63 \_\_\_\_\_  
64 KEN CASTNER, MAYOR

65 ATTEST:

66  
67  
68 \_\_\_\_\_  
69 MELISSA JACOBSEN, MMC, CITY CLERK

70  
71 Fiscal Note: \$29,785.32 annually

**GROUND LEASE AND SECURITY AGREEMENT**

**BETWEEN**

**CITY OF HOMER, ALASKA**

**AND**

**Dated** \_\_\_\_\_, 20\_\_

## GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT (“Lease”) dated as of [REDACTED], 20 [REDACTED], between the CITY OF HOMER, an Alaska municipal corporation (“Landlord”), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and Salmon Sisters Holdings LLC, an Alaskan Limited Liability Company (“Tenant”), whose address is 1450 Candlelight Ct. Homer AK 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 12(c) Port Industrial Subdivision No. 4, Plat 99-43, Homer Recording District, State of Alaska, as depicted on **Exhibit C**, containing 34,413 square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 18103452;

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 December 1, 2020, and ending on November 30, 2040 (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 5 year periods (each an "Extended Term"), provided that:

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

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

## **ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES**

**4.01 Base Rent.** Tenant shall pay to Landlord an initial annual rent of \$ 29,785.32(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 \$2,482.11, plus sales and all other taxes Landlord is authorized or obligated to collect on such transactions, on December 1, 2020, and on the 1<sup>st</sup> day of each month



thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

#### **4.02 Rent Adjustments.**

(a) **Five-Year Appraised Rent Adjustments.** In the fifth year of the Term, 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.

**4.08 Outfall Line Connection Agreement.** Tenant shall connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant shall enter into a Fish Processor Outfall Line Connection Agreement with Landlord, and thereafter at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement. Tenant shall comply with the terms of the Fish Processor Outfall Line Connection Agreement until the earlier to occur of (i) the expiration or earlier termination of the Term, and (ii) the date the City of Homer ceases to maintain the outfall line. Any default under the Fish Processor Outfall Line Connection Agreement shall be considered a default under this Lease.]

## **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.

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

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

## **ARTICLE 8. ASSIGNMENT AND SUBLEASE**

### **8.01 Assignment or Sublease Absent Consent is Void.**

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

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

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

**8.02. Events that Constitute an Assignment.** If Tenant is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of one or more partners or members owning 25% or more of the entity, or the dissolution of the entity, will be deemed an assignment to the Tenant as reconstituted, subject to Section 8.01 and the Lease Ordinance. If Tenant is a corporation, any dissolution, merger, consolidation or other

reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of 25% of the value of the assets of Tenant, will be deemed an assignment to the Tenant as reconstituted, subject to Section 8.01 and the Lease Ordinance; provided that if Tenant is a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of Tenant will not constitute such an assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 25% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors.

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

## **ARTICLE 9. LIABILITY, INDEMNITY AND INSURANCE**

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

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

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

### **9.04 Insurance Requirements.**

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

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

- (1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance shall also be endorsed to



provide contractual liability insuring Tenant's obligations to indemnify under this Lease.

- (2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.
  - (3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.
  - (4) Environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.
  - (5) Property insurance covering the Required Improvements described in Section 6.02 in an amount not less than full replacement cost of the Required Improvements. This policy shall include boiler and machinery coverage.
- (c) During any construction of the Required Improvements and during any subsequent alteration or restoration of the Required Improvements at a cost in excess of \$250,000 per job, Tenant shall maintain builder's risk insurance in an amount equal to the completed value of the project.
- (d) Tenant shall furnish Landlord with certificates evidencing the required insurance not later than the date as of which this Lease requires the insurance to be in effect, and the provision of any such certificates due at or prior to the commencement of the Term shall be a condition precedent to the commencement of the Term. The certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire, and limits of liability will not be reduced, without at least 30 days' prior written notice to Landlord. Landlord shall be named as an additional insured under all policies of liability insurance required of Tenant. Landlord's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Lease. Tenant also shall grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord such authorizations substantially in the form of **Exhibit G** as Landlord may request.

## ARTICLE 10. ENVIRONMENTAL MATTERS

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

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

**10.03 Compliance with Environmental Laws.** Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

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

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

**10.06 Indemnification.** Subject to Section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property. The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting

for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within 10 days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

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

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

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

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

## ARTICLE 11. CONDEMNATION

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

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

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

**11.04 Compensation.** Landlord and Tenant each may make a claim against the condemning or taking authority for the amount of just compensation due to it. Tenant shall make no claim against

Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that if a single award to Landlord includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.

## **ARTICLE 12. DEFAULT**

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

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

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

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

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

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

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

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

(b) Landlord may by written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord

terminates Tenant's right of possession in accordance with this subsection (b), and to repossess the Property, to expel or remove Tenant and any others who may be occupying or within the Property, and to remove any and all property therefrom, using such force as may be necessary, with or without process of law, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

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

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

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

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

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

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

## **ARTICLE 13. LEASEHOLD MORTGAGES**

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

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

**13.03 Notice to Landlord.** Tenant shall give Landlord notice before executing each Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Landlord's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified

Mortgagee as that term is used in this Lease. Tenant also shall deliver to Landlord a true and correct copy of any notice from a Qualified Mortgagee of default or acceleration of the maturity of the note secured by a Leasehold Mortgage promptly following Tenant's receipt thereof.

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

**13.05 Notice to Qualified Mortgagee.**

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

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

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

**13.06 Performance of Tenant Obligations.**

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

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

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

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

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

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

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

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

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

## ARTICLE 14. GENERAL PROVISIONS

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

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

**14.03 Delivery of Notices -Method and Time.** All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, (ii) reputable overnight air courier service, or (iii) electronic mail or facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy

mailed by first class mail no later than the day after transmission) to the address for the recipient in Section 14.04 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

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

City Manager  
City of Homer  
491 East Pioneer Avenue  
Homer, Alaska 99603  
Facsimile: (907) 235-3148  
Email: citymanager@cityofhomer-ak.gov

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

Salmon Sisters Holdings LLC  
1450 Candlelight Ct  
Homer AK 99603  
Email: Claire.neaton@gmail.com

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

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

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

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

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

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

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



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

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

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

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

**14.15 Attorney's Fees.**

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

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

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

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

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

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

**14.20 Prior Lease Amended And Superseded.** Landlord and Tenant are parties to a prior lease affecting the Property dated March 26, 2008, a memorandum of which has been recorded in the records of the Homer Recording District under Document No. 2009-000543-0 (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of \_\_\_\_\_, 20\_\_, 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**

**SALMON SISTERS HOLDINGS LLC**

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

\_\_\_\_\_  
Claire Neaton, Manager

#### ACKNOWLEDGMENTS

STATE OF ALASKA                     )  
   ) ss.  
THIRD JUDICIAL DISTRICT         )

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

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

STATE OF ALASKA                     )  
   ) ss.  
THIRD JUDICIAL DISTRICT         )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ (title) of Salmon Sisters Holdings LLC on behalf of Salmon Sisters Holdings LLC.

\_\_\_\_\_  
Notary Public in and for Alaska

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

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

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

The managing members and their percentage of ownership are as follows:

Name Claire Neaton 25.5 %

Address: 1450 Candlelight Ct. Homer AK 99603

Name Emma Laukitis 25.5 %

Address: 1101 17<sup>th</sup> Ave Apt 204 Seattle WA 98122

Name Michael Laukitis 24.5 %

Address: 41630 Gladys Ct. Homer AK 99603

Name Shelly Laukitis 24.5 %

Address: 41630 Gladys Ct. Homer AK 99603

TOTAL 100 %

**EXHIBIT B**

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

**EXHIBIT C**  
**LOCATION OF PROPERTY**

**(Section 2.01)**

**Lot 12(c) Port Industrial Subdivision No.4, Plat 99-43, Homer Recording District, State of Alaska,  
also known as Kenai Peninsula Borough Tax Parcel No. 181-034-52**

**The described parcel contains approximately 34,413 square feet, more or less**

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

## City of Homer Lease Application

Preamble --Salmon Sisters Holdings LLC. supports a working waterfront on the Homer Spit. The owners of the proposed lease are all commercial and sport fishermen who desire to maintain competitive buyers and fish processing in Homer.

We view our purchase of this bank owned facility as a distressed sale in that the facility was bankrupt and has been inoperable for over two years. Many prospective buyers have looked at this facility for their needs and passed. The enterprise value of the plant has declined dramatically. The condition of freezing and ice making plants is unknown. The status of fish stocks is dramatically lower than in 2008 when the last lease was adopted. Halibut landings in Homer in 2007 were 5 mil pounds and the Alaska total harvest was over 35 mil pounds. Last year Homer only processed approximately 2.5 mil pounds and state-wide only 17 million pounds of halibut were processed. The pacific cod GOA stocks declined 85% YOY in 2019, and the Kenai River Sockeye fishery is in long-term decline -- fishermen and processors are seeking a disaster declaration in 2020.) The VALUE of all of these fisheries has declined dramatically since 2008. On top of this there is only so much market share for fish landings to Homer. Any new processor potentially impacts existing processors that might be marginally healthy. The Covid pandemic magnifies business uncertainty. Our plans are under development, and we need flexibility to develop a sustainable business on this lease in Homer.

Type of business:

The facility has four spaces (see sublease description).

Salmon Sisters LLC will use existing space to further develop their e-commerce, direct to consumer fish and merchandise sales. They will use the retail counter for fish and merchandise, and the kitchen for “fresh catch” takeaway. They will use the warehouse for shipping and receiving, labeling, packaging and logistics.

The upstairs space may be utilized as a commercial office for marine related businesses, boat charter services or for marine equipment sales.

The processing, shop, mechanical, warehouse space will be used for processing commercial and sport seafood products, for secondary processing and manufacturing of food products, fish buying, cold storage, staging and logistical support, maintenance and repairs, as a general fisherman’s and shipyard mechanical support facility, drydock and storage. Magic Fish Co. (owner of three boats) will immediately occupy this and some outside space.

The outside spaces will be used in support of the indoor facility and separately for storage, drydock, marine support, parking and mobile food service.

It may be necessary to have temporary seasonal caretaker housing.



And other uses as permitted under the City of Homer Marine Industrial District.

4. Subleases: Salmon Sisters Holdings LLC is currently developing plans for the lease and buildings. Our immediate identified business use will not fully utilize the facility or land. It is imperative that we sublet portions of the building and land to afford overhead costs.

The facility consists of four discrete spaces:

- 1.) upstairs office space (1600 ft sq);
- 2.) retail counter, commercial kitchen, warehouse e-commerce fulfillment space (approx. 1600 ft sq);
- 3.) processing/warehouse with blast and storage freezers and processing equipment, salt water pump and outfall line (2400 ft sq.)

All of the above have separate entrances and defined divisions.

4.) Outside spaces on the balance of the lot. Some of the outside space holds an ice machine and the refrigeration plant. We are determining at this time if these have value. Renting outside space for storage, logistics, maintenance, parking, etc. (as compatible with marine industrial zoning and our current use of the facility) will be developed.

We plan on immediately only occupying and using the number 2.) space. We are working on developing the best use for the other spaces either by our own businesses, partners or by others. For example, at this time we would look to rent the office space. (Possible tenants might be NMFS enforcement office, USCG, marine shipping or transportation companies, etc.)

**EXHIBIT E**  
**SITE PLANS**  
**(Section 6.02)**

HM 99-43

# SURVEYORS CERTIFICATE

I hereby certify that I am a Registered Land Surveyor and that this plan represents a survey made by me or under my direct supervision and the monument shown hereon actually exist as described and that the dimensions and other objects are correct to the best of my knowledge.

*Robert W. Moore*  
 Date: 12-14-99  
 12-14-99

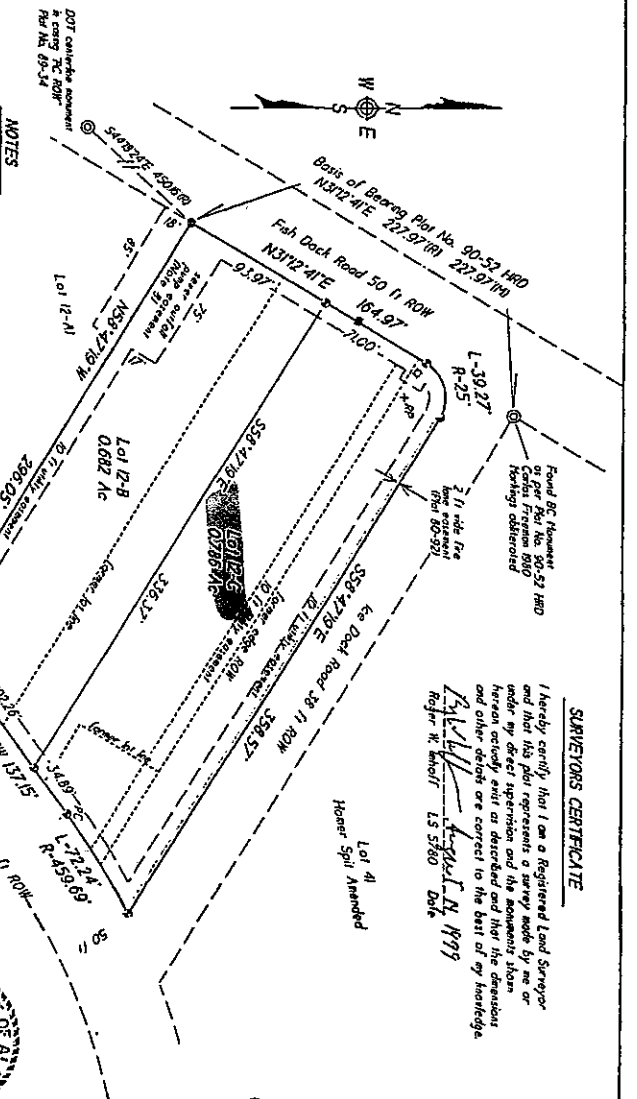
# OWNERSHIP CERTIFICATE

We hereby certify that we are the owners of the real property shown and described hereon and that we hereby adopt this plan of subdivision and by our free consent dedicate all right-of-way to public use and grant all easements to the use shown.

*A. D. Dwyer*  
 Date: 8-16-99  
 City of Homer  
 Ron Dwyer, City Manager  
 499 East Pioneer Ave  
 Homer, AK 99603

Notary's Acknowledgment:  
 Subscribed and sworn to me before me this 16th day of August, 1999.

for the City of Homer:  
*Mayor, D. Dwyer*  
 Notary Public for Alaska  
 1/6 Commission Expires 12-24-99



## NOTES

1. All exterior disposal systems shall comply with existing applicable law at the time of construction.
2. No permanent structures shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
3. Railroad spikes in Fish Dock Road as shown on Plat 90-52 HRD not removed this survey.
4. 30 ft portion of Ke Dock Road vacated by action of the KPB Planning Commission at their meeting on July 12, 1999.
5. No access to State maintained right-of-way permitted unless approved by State of Alaska Department of Transportation.
6. Source of data for Homer Spit Road is Plat No. 90-52 HRD.
7. All found and set monuments are buried 61 ft below grade.
8. Street curbed ramp easement includes the front 40 ft of the 30 ft building setback of Fishdock Road and the stormwater 10 ft of Lot B-B.

## LEGEND

- Found 2 1/2" PVC Rod Cap Monument on per Plat 90-52 HRD
- Set self identifying 2" Aluminum Cap on 5/8" diameter x 16" long steel rebar this survey with a cross
- Set 12" square headed steel ball stopped
- PVI Rhine Federal
- Fire Hydrant with 15 x 15 ft utility and maintenance easement

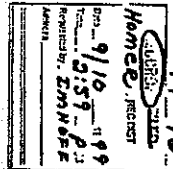
## PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of July 12, 1999.

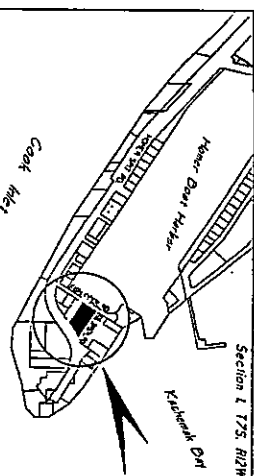
KENAI PENINSULA BOROUGH  
*Author: [Signature]*

## WASTEWATER DISPOSAL

Plans for wastewater that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.  
 Approved by: August 14, 1999  
 Roger W. Moore, LS 5760, Dated



Vicinity Map 1" = 1000 ft



## City of Homer

Port Industrial No. 4  
 Being a Replat of Lots B-12, B-13, and a lot designated as Parking Reserve as shown on Record Plat 90-52 Homer Recording District

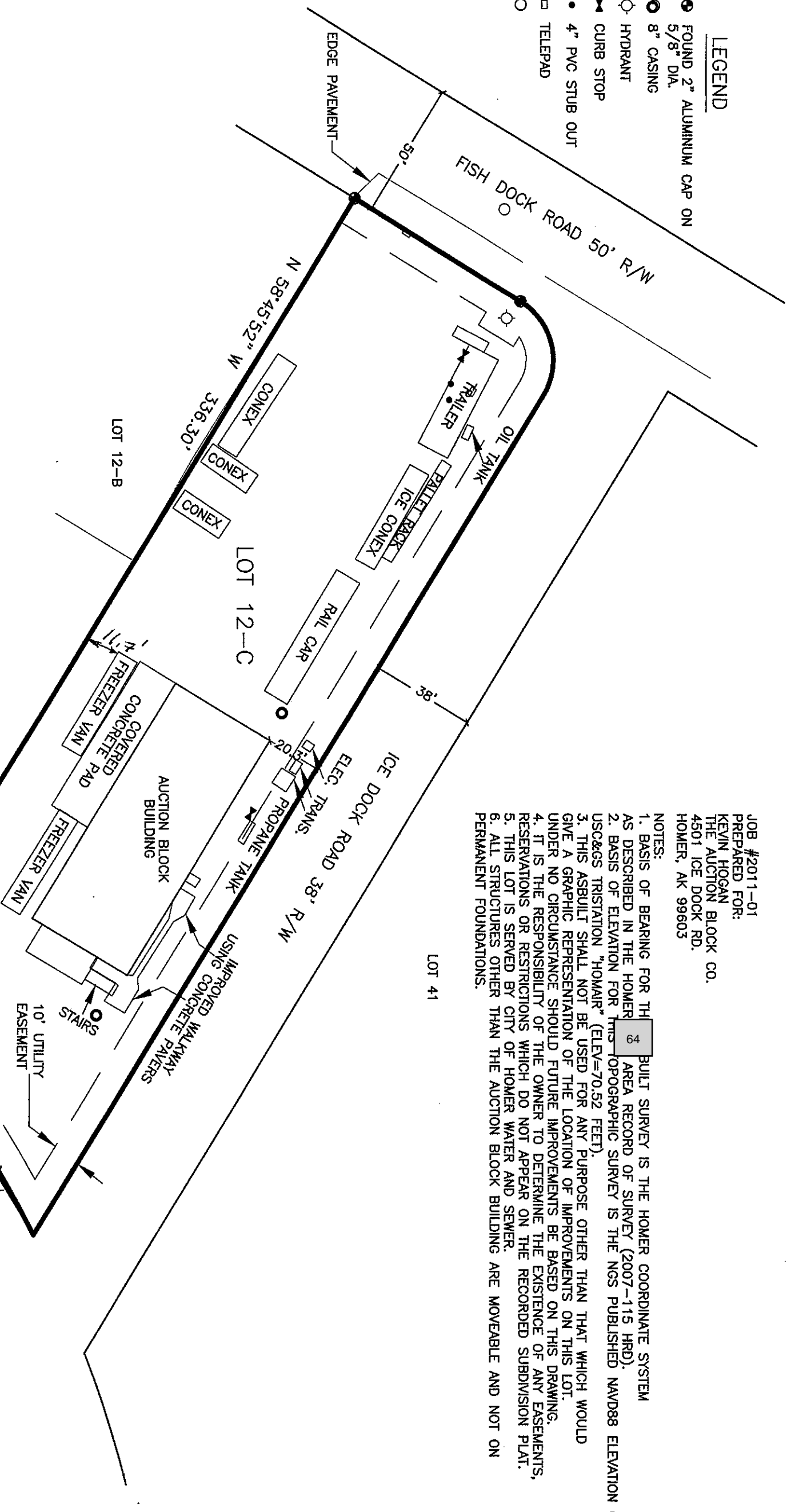
Located within the N 1/2 Sec. 1, T2S, R13W, S4 in the City of Homer Third Judicial District, Alaska Contains 1.668 Acres, more or less

|   |  |
|---|--|
| Client:<br>City of Homer<br>499 E. Pioneer Ave<br>Homer, AK 99603 | Surveyor:<br>Roger W. Moore, RLS<br>PO Box 4388<br>Homer, AK 99603 |
| Drawn: PHW  | Cross: KE, EI, RI, FB 99-03  |
| Scale: 1" = 30 ft   | File: Redacted   |
|   | KPB File No. 99-080  |

**EXHIBIT F**  
**FLOOR PLANS**  
**(Section 6.02)**

LEGEND

- FOUND 2" ALUMINUM CAP ON 5/8" DIA.
- 8" CASING
- HYDRANT
- ✕ CURB STOP
- 4" PVC STUB OUT
- TELEPAD

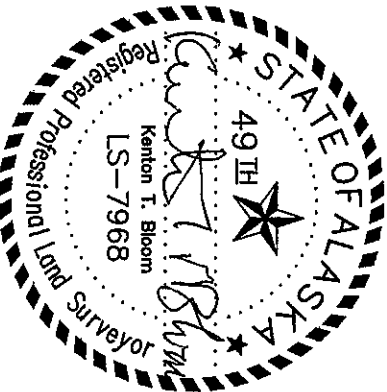


- JOB #2011-01  
PREPARED FOR:  
KEVIN HOGAN  
THE AUCTION BLOCK CO.  
4501 ICE DOCK RD.  
HOMER, AK 99603
- NOTES:
1. BASIS OF BEARING FOR THIS SURVEY IS THE HOMER COORDINATE SYSTEM AS DESCRIBED IN THE HOMER AREA RECORD OF SURVEY (2007-115 HRD).
  2. BASIS OF ELEVATION FOR THIS TOPOGRAPHIC SURVEY IS THE NGS PUBLISHED NAVD88 ELEVATION OF USCGS TRISTATION "HOMER" (ELEV=70.52 FEET).
  3. THIS ASBLT SHALL NOT BE USED FOR ANY PURPOSE OTHER THAN THAT WHICH WOULD GIVE A GRAPHIC REPRESENTATION OF THE LOCATION OF IMPROVEMENTS ON THIS LOT. UNDER NO CIRCUMSTANCE SHOULD FUTURE IMPROVEMENTS BE BASED ON THIS DRAWING.
  4. IT IS THE RESPONSIBILITY OF THE OWNER TO DETERMINE THE EXISTENCE OF ANY EASEMENTS, RESERVATIONS OR RESTRICTIONS WHICH DO NOT APPEAR ON THE RECORDED SUBDIVISION PLAT.
  5. THIS LOT IS SERVED BY CITY OF HOMER WATER AND SEWER.
  6. ALL STRUCTURES OTHER THAN THE AUCTION BLOCK BUILDING ARE MOVEABLE AND NOT ON PERMANENT FOUNDATIONS.

I HEREBY CERTIFY THAT I HAVE SURVEYED THE FOLLOWING REAL PROPERTY:  
LOT 12-C, PORT INDUSTRIAL NO. 4 (PLAT No. 99-43 HRD)  
LOCATED IN THE N 1/2 SEC. 1, T. 7 S., R. 13 W., S.M., ALASKA, HOMER RECORDING DISTRICT,  
AND THAT THE IMPROVEMENTS SITUATED THEREON ARE LOCATED AS SHOWN ON THIS PLAT AND  
THAT THERE ARE NO ROADWAYS, TRANSMISSION LINES OR OTHER VISIBLE EASEMENTS OR  
ENCROACHMENTS ON SAID PROPERTY EXCEPT AS SHOWN.

DATED, AT HOMER, ALASKA THIS 30TH DAY OF MARCH, 2011.

SEABRIGHT SURVEY + DESIGN  
1044 EAST END ROAD, SUITE A  
HOMER, ALASKA 99603  
(907) 235-4247



GRAPHIC SCALE

**THE AUCTION BLOCK CO.**  
PORT INDUSTRIAL NO. 4  
ASBLT AND TOPO

DATE APRIL 2008  
DRAWN SCS  
CHECKED SCS  
SCALE AS SHOWN  
PROJ NO. 08-11

SEABRIGHT SURVEY + DESIGN

1044 EAST RD. SUITE A  
HOMER, ALASKA 99603  
(907) 235-4247  
SEABRIGHT@SEABRIGHTALASKA.COM

SHEET NO.

1 OF 1

**EXHIBIT G**

**PERMISSION TO OBTAIN INSURANCE POLICIES**

**(Section 9.04(d))**

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

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

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

**TENANT NAME**

By:

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

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