

**ASSEMBLY STANDING COMMITTEE  
LANDS AND RESOURCES COMMITTEE  
THE CITY AND BOROUGH OF JUNEAU, ALASKA**  
February 1, 2016, 5:00 PM.  
Assembly Chambers

**I. ROLL CALL**

**II. APPROVAL OF AGENDA**

**III. APPROVAL OF MINUTES**

- A. Jan. 4, 2016 Lands Committee Minutes

**IV. PUBLIC PARTICIPATION**

(Not to exceed a total of 10 minutes nor more than 2 minutes for any individual).

**V. AGENDA TOPICS**

- A. Tlingit Haida Regional Housing Authority Pederson Hill Partnership
- B. North Franklin Parking Lot Status Update

**VI. STAFF REPORTS**

**VII. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS**

**VIII. ADJOURNMENT**

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**ASSEMBLY STANDING COMMITTEE MINUTES  
LANDS AND RESOURCES COMMITTEE  
THE CITY AND BOROUGH OF JUNEAU, ALASKA  
MINUTES**

January 4<sup>th</sup>, 2016 5:00 PM.  
Assembly Chambers

**I. ROLL CALL**

Jesse Kiehl, Chair, called the meeting to order at 5:01pm.

**Members Present:** Chair Jesse Kiehl; Assembly members: Mayor Mary Becker, Jerry Nankervis, and Kate Troll

**Liaisons Present:** Christopher Mertl

**Liaisons Absent:** Bob Janes, Bill Peters

**Staff Present:** Greg Chaney, Lands Manager; Rachel Friedlander, Lands Specialist; Kim Kiefer, City Manager; Mila Cosgrove, Deputy City Manager; Rob Steedle, CDD Director

**II. APPROVAL OF AGENDA**

'Renninger Subdivision Appraisal' was added as supplemental material underneath Agenda Topics, section A. The agenda was then approved as amended.

**III. APPROVAL OF MINUTES**

A. November 23<sup>rd</sup>, 2015

The minutes of the November 23<sup>rd</sup>, 2015 Lands Committee meeting were approved as amended.

**IV. PUBLIC PARTICIPATION**

There was no public participation on non-agenda items.

**V. AGENDA TOPICS**

**A. Renninger Subdivision**

Mr. Chaney said working on Renninger subdivision has taken some time due to wetlands issues. The recorded plat of Renninger subdivision was used by Mr. Chaney to demonstrate the Jackie Street location, which should be built by Admiralty Construction June 2016. The plat shows 7 lots, but only 6 lots will be developed since lot 7 goes all the way to Lemon Creek, said Mr. Chaney. The appraisal values for the 6 lots were then revealed as being increased by 10% above the property values shown in the draft appraisal that was distributed to the Committee. This was because the appraiser had incorporated additional information that modified the draft appraisal estimates originally distributed in the Renninger Subdivision supplemental information memo. Mr. Chaney then quickly reviewed some of the benefits to each lot. Mr. Chaney emphasized that it costs

the City a lot of money to develop these lots, and that the returns made from these land sales will go towards helping the City develop future projects. Mr. Chaney reviewed a letter sent by Juneau Housing Trust, and stated that the City has given land at less than fair market value in the past. Mr. Chaney then requested that the Assembly provide the Lands and Resources Division with further direction on disposing of these properties. A brief overview of the CBJ land disposal process, outlined in the supplemental material, was presented by Mr. Chaney.

Mr. Nankervis said he likes the sealed competitive bid process and asked if the JSD & UAS Home Builder Project requested a specific lot, and if so, how much property. Mr. Chaney replied that Lot 3 had been selected and it is roughly an acre and they were considering building 5 or 6 single family homes in a semi-circle for cottage style housing.

Ms. Troll said she was interested in pursuing further discussions with groups like Pacific Development Group, and that she doesn't want to hold onto land but also wants the City to be creative with disposal options. Ms. Troll mentioned a discussion she had with Mayor Becker and Mr. Mike Davis of the Pacific Development Group regarding a Renninger development idea to build 50 units and create a private-public partnership while doing so. Ms. Troll said there is an opportunity to use public land as an incentive to develop a unique affordable housing unit with different mechanisms at play, and wants to know what local developers want to do. Ms. Troll requested guidance from staff on how to proceed with the Renninger land disposal without closing the door on other opportunities. Mr. Chaney replied that CBJ could do a request for proposals (RFP) so multiple developers could provide different options. Mr. Chaney said he wanted to make sure the City doesn't look like it's willing to sell for less than fair market value when disposing of property.

Mr. Mertl asked why there was a 10% increase with the appraised values and Mr. Chaney replied the appraiser had still been gathering information from developers when the original draft was submitted. Mr. Mertl also asked if the trail easements and lots are still being maintained and Mr. Chaney said yes and by the City. Mr. Mertl followed up by saying his preference was sealed competitive bid as a start off and if there are any parcels that aren't claimed, then a negotiated bid.

Mayor Becker asked about the factors contributing to the price per square foot and inquired if lot 2 and 3 would be the better parcels since they had the highest value per square foot, and Mr. Chaney replied yes because these lots would be the easiest to develop.

Chair Kiehl discussed RFPs and former Mayor Fisk's interest in City partnerships with developers so that land becomes an incentive, and asked if Mr. Chaney discussed this with former Mayor Fisk. Mr. Chaney replied yes but nothing

specific was discussed. Chair Kiehl followed up that a partnership could be created to work with a developer so that the developer pays for the lot after development finishes. Chair Kiehl asked if that would be something that happens through an RFP and Mr. Chaney replied it would be a negotiated sale.

Mr. Nankervis proposed changing the name of Jackie Street to pay tribute to an officer who passed away in the line of duty, and wanted to know the process for doing so. Mr. Chaney replied the Planning Commission is in charge of naming streets and that the plat is already recorded with Jackie Street. Pederson Hill subdivision is coming up however and will need street names, which could also serve this purpose, said Mr. Chaney. Mr. Nankervis agreed that Pederson Hill was a good idea.

Mr. Chaney reaffirmed the need for further guidance from the committee on the Renninger Subdivision land disposal. Mr. Nankervis made a motion of support for the sealed competitive bid process while reserving the option to hold one lot aside for the high school build group. Mayor Becker had concerns over lot 3 being given to the high school build group since it's such a high value property and Mr. Nankervis reaffirmed that his motion is not guaranteeing, only "reserving the option." Mr. Chaney offered clarification that the full Assembly would have to approve this as a whole, and that he is only asking for further direction to assist the Lands and Resources Division.

Ms. Troll vocalized again that she did not want this to preclude a potential negotiated sale agreement with private developers, and that she understands the sealed competitive bid process but does not want that to be the only option.

Mr. Mertl asked when the City disposes of land via sealed competitive bid process, are there lots left over and Mr. Chaney replied that Lands' experience is that there are a few left over and wouldn't be surprised if that happened again. Mr. Chaney also gave clarification that selling property to the school building program for 40% of fair market value is not a standard arrangement. Chair Kiehl added that the school district has been given foreclosed lots at no cost and Mr. Chaney replied that City was reimbursed for back taxes owed on the property.

Mr. Mertl vocalized again the importance of the sealed competitive bid process and if there are lots left over, to use other options.

Chair Kiehl responded that his concern with a sealed competitive bid is that only the most expensive and least developable lots will be left over for any public purpose or public-private partnership and does not want to reserve the worst for a public-private partnership. Chair Kiehl said his own interest was in disposing of some properties with sealed competitive bid while exploring options for partnerships.

Ms. Troll was in favor of Chair Kiehl's suggestion, and asked if this could happen concurrently, where Mr. Chaney could have discussions with the school district and the developer. Ms. Troll said she wants proposals, and if the City can get a novel 50 unit development out there with rent at less than fair market value, the City should get that development out there.

Mr. Chaney stated that he is asking for this guidance so Lands can bring something back to the committee. If Lands is directed to look at sealed competitive bid, Lands will get a draft sealed competitive bid packet ready that can be used to evaluate other proposals that come through in the meantime. Mr. Chaney said he's trying to move this along because Admiralty Construction has indicated that while they are building Jackie Street, they would be willing to build additional infrastructure at a lower price because they would already be present and mobilized. Mr. Chaney then asked if it would be acceptable to prepare packets for the sealed competitive bid process for the committee.

Chair Kiehl asked for clarification, and Mr. Chaney replied that he will supply a sealed competitive bid packet, which will be an informational list of each lot, the fair market value, and the pros and cons of each property. Chair Kiehl asked for the outlines of an RFP for a public private-partnership or other creative avenues.

Ms. Troll asked if this would include follow up discussions with UAS/JSD if there are specific proposals.

Chair Kiehl finished by asking if Mr. Chaney had what he needed to bring something back for the next meeting or if he needed a motion and Mr. Chaney replied that he understood the desires of the committee.

## **B. West Douglas Remote Subdivision**

Mr. Chaney offered an early discussion about the City extending the road on West Douglas. He used a map to demonstrate the proposed road development. It's a pioneer road, said Mr. Chaney, and if someone were to put one end of the proposed road at the airport, it would reach Backloop Road. This narrow, pioneer road will be 14 feet wide, all weather surface gravel, and the proposal is to put a gate of some sort at the beginning of the road. The CBJ does not own any water front property, only uplands, and there is no use of the road as of now. The West Douglas Master Plan has outlined development nodes at the end of the coastline, like a deep water port for the area. This is all on Goldbelt property though so the City cannot control development, only have a plan for it, said Mr. Chaney. The reason why Goldbelt did not have the road built on their property was because of their experience with vandalism at the end of the road in north Juneau. As Lands Manager, the Lands Division will be responsible for cleaning up the potential problem, said Mr. Chaney. This area will be great for recreational use, but beyond that Mr. Chaney is not sure. Illicit activities will most likely happen so Mr. Chaney proposed a remote subdivision for developing recreational properties so

there will be eyes on the area. If local property owners are using the road, they will report inappropriate events before things get out of hand. This will be unique in Juneau because it will be recreational property accessible from the road system. Mr. Chaney then discussed the remote subdivision ordinance and the West Douglas Master Plan in relation to the road development. Mr. Chaney then asked the committee if they would like Lands to explore this topic further.

Ms. Troll asked what would happen to the gate in the front of the road if the remote subdivision was developed and Mr. Chaney replied it would remain there to control traffic since the road is not a maintained right-of-way. Ms. Troll followed up by asking if the City would make arrangements for someone wanting to build a cabin on their land and Mr. Chaney answered potentially yes.

Mayor Becker then asked how many years in the future this road may be extended further and Mr. Chaney replied that this would be a multi-million dollar development node probably built in partnership with Goldbelt for the future. Deep water ports are really expensive, said Mr. Chaney.

Mr. Nankervis said he was not interested in looking at this further for a number of reasons and eluded to Hidden valley. Another reason is it sounds like the City is trying to design something that serves its own purpose, said Mr. Nankervis, who is hoping sooner rather than later that this isn't remote and that development happens. Mr. Nankervis was concerned about where the City was going to be at if it rushes to develop.

Mr. Mertl said he echoes Mr. Nankervis' sentiment. With budget issues, there doesn't seem to be the need to build the road, said Mr. Mertl.

Chair Kiehl also echoed Mr. Nankervis' comments, and said his highest priority is to identify the development node as an industrial road.

Mr. Chaney clarified that the road is going to be built and will be a road without a use.

Ms. Troll said she appreciates that staff is trying to be creative and think of solutions before problems occur, but that she has come down to same thinking as Mr. Nankervis.

### **C. Stabler's Point Quarry Expansion**

*Mr. Chaney used a map to show what Stabler's Point quarry currently looks like.* Mr. Chaney said Stabler is an important material source for construction projects, and that it is established to provide rock for City and State projects and then private projects. At this point, with this summer's efforts at Statter Harbor, the City has mined to the outer limits of what was approved in the City's conditional

use permit, said Mr. Chaney. There are two options: go down and remove less rock, or expand the quarry limits. Mr. Chaney proposed expanding the quarry uphill because there is more rock in the mountain. Mr. Chaney then went on to discuss the map and a couple options for expansion.

Mr. Nankervis said he's in favor of expanding the quarry, and brought up concerns from citizens at Fritz Cove Road about the noise. Mr. Nankervis said it's been found that the noise coming from Statter Harbor is louder than the quarry.

Mr. Merti said he agrees with Mr. Nankervis about expanding the quarry and added his concern about the quarry's visual impact, since that's what the ferry passengers will see. Mr. Chaney said when one looks back from the Alaska Marine Highway or when one is driving on the road, the quarry cannot be seen. The only time the quarry can be seen is from Statter Harbor, Mr. Chaney said, and that the visual impacts are more long distance than up-close. Mr. Chaney then asked if Lands has direction to continue in this way and Chair Kiehl confirmed it so.

## **VI. STAFF REPORTS**

Mr. Chaney let the committee know that the Planning Commission recommended approval of the draft Land Management Plan, and the draft Land Management Plan will be before the Assembly, Committee of the Whole, on February 1<sup>st</sup>.

## **VII. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS**

Mr. Nankervis thanked the Lands staff for their hard work.

## **VIII. ADJOURNMENT**

The meeting was adjourned at 5:57pm

**MEMORANDUM**

CITY/BOROUGH OF JUNEAU

Lands and Resources Office

155 S. Seward St., Juneau, Alaska 99801

Greg\_Chaney@ci.juneau.ak.us

Voice (907) 586-0205

Fax (907) 586-5385

**TO:** Assembly Lands Committee**FROM:** Greg Chaney, Lands and Resources Manager**DATE:** January 27, 2016**LOCATION:** Pederson Hill Subdivision**SUBJECT:** Exploring Options For Partnering with Tlingit Haida Regional Housing Authority

The Lands Division has been working with the CBJ Engineering Department and DOWL Engineering to develop a preliminary design and associated cost estimates for the Pederson Hill Subdivision. A large subdivision concept has been developed that would include approximately 200 single family lots. This subdivision is too large to be completed in one project so it has been partitioned into three phases (See Attachment A). The first phase would consist of approximately 86 lots. A preliminary design has been completed for Phase I. Due to cost concerns and funding availability, Phase I has been further divided into 3 smaller phases (See Attachments B&C).

1A Construct a primary access road from Glacier Highway to the subdivision site

1B Develop local access roads and build 41 residential lots

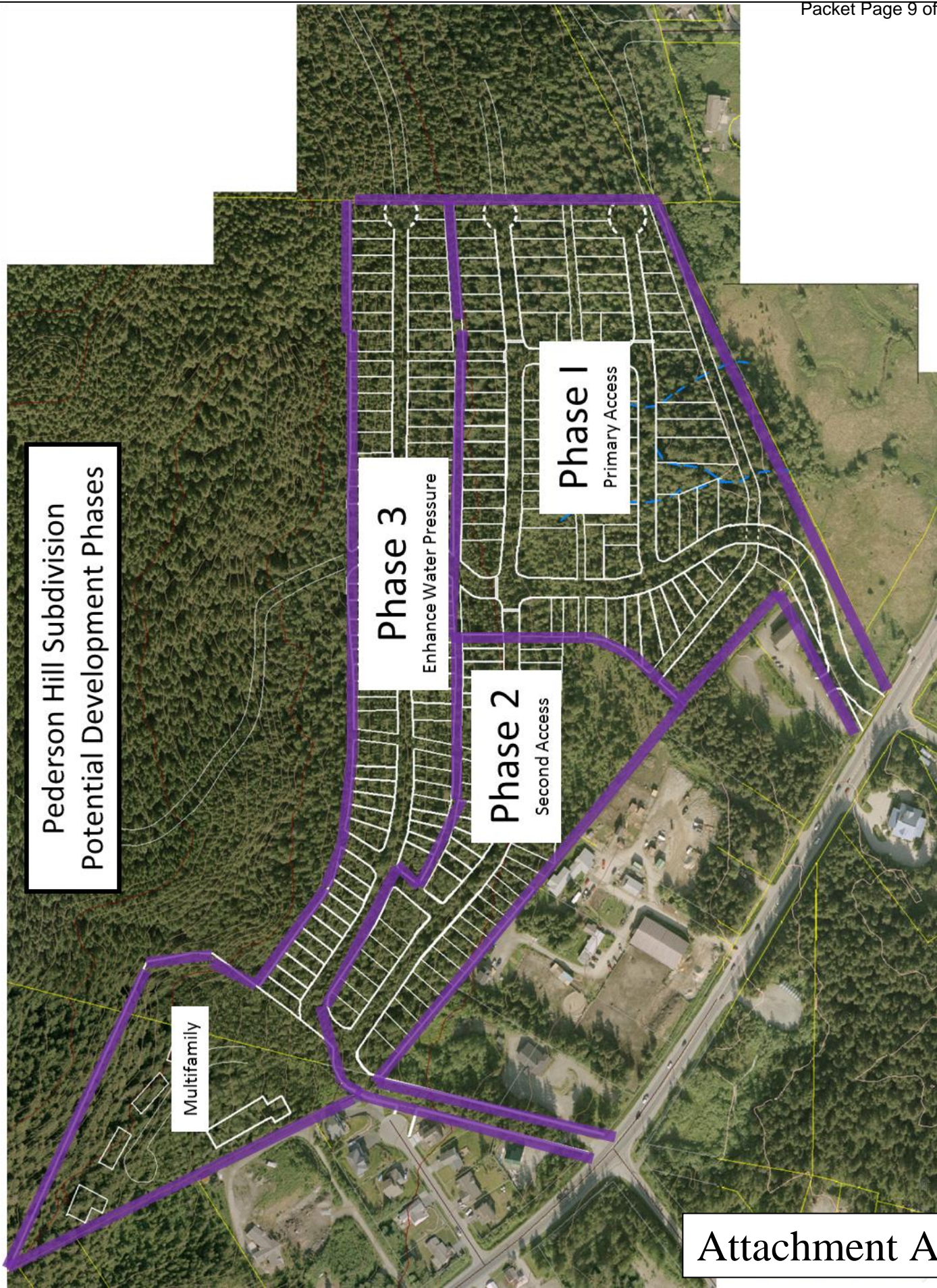
1C Develop additional local access roads and build 45 additional residential lots

Engineering cost estimates for developing these phases are shown on Attachment D. At the current time it appears that CBJ can only allocate approximately \$4,500,000 toward this project but the total cost for Phase I is estimated to be \$8,000,000. Given that budget constraint, an option would be to build phases 1A and 2A for an estimated cost of approximately \$4,800,000. However, this would result in a per lot cost of approximately \$119,400 which is above current market rates. Due to economies of scale, if all of phase I was done at once the per lot cost is estimated to be \$95,000. This lower cost per lot more closely matches current market conditions. Therefore, the Lands Division has reached out to the Tlingit Haida Regional Housing Authority (THRHA) to investigate a potential partnership.

The proposal is still tentative in that it would need both the THRHA's board's approval and CBJ Assembly approval but the basic agreement would consist of THRHA contributing 44.7% of the project costs in return for 38 completed residential lots. Attached is a letter from THRHA's president/CEO Ricardo Worl describing their interest in participating in this project (Attachment E).

Lands Staff is asking for a motion of support to continue to refine a partnership agreement between CBJ and THRHA to develop Phase I of the Pederson Hill Subdivision. The draft agreement would be brought to the Assembly for further consideration and, if appropriate, adopted by ordinance as stipulated in CBJ§53.09.260.





Attachment A





SHEET NO.  
1 of 4

PEDERSON HILL  
SUBDIVISION

PEDERSON HILL



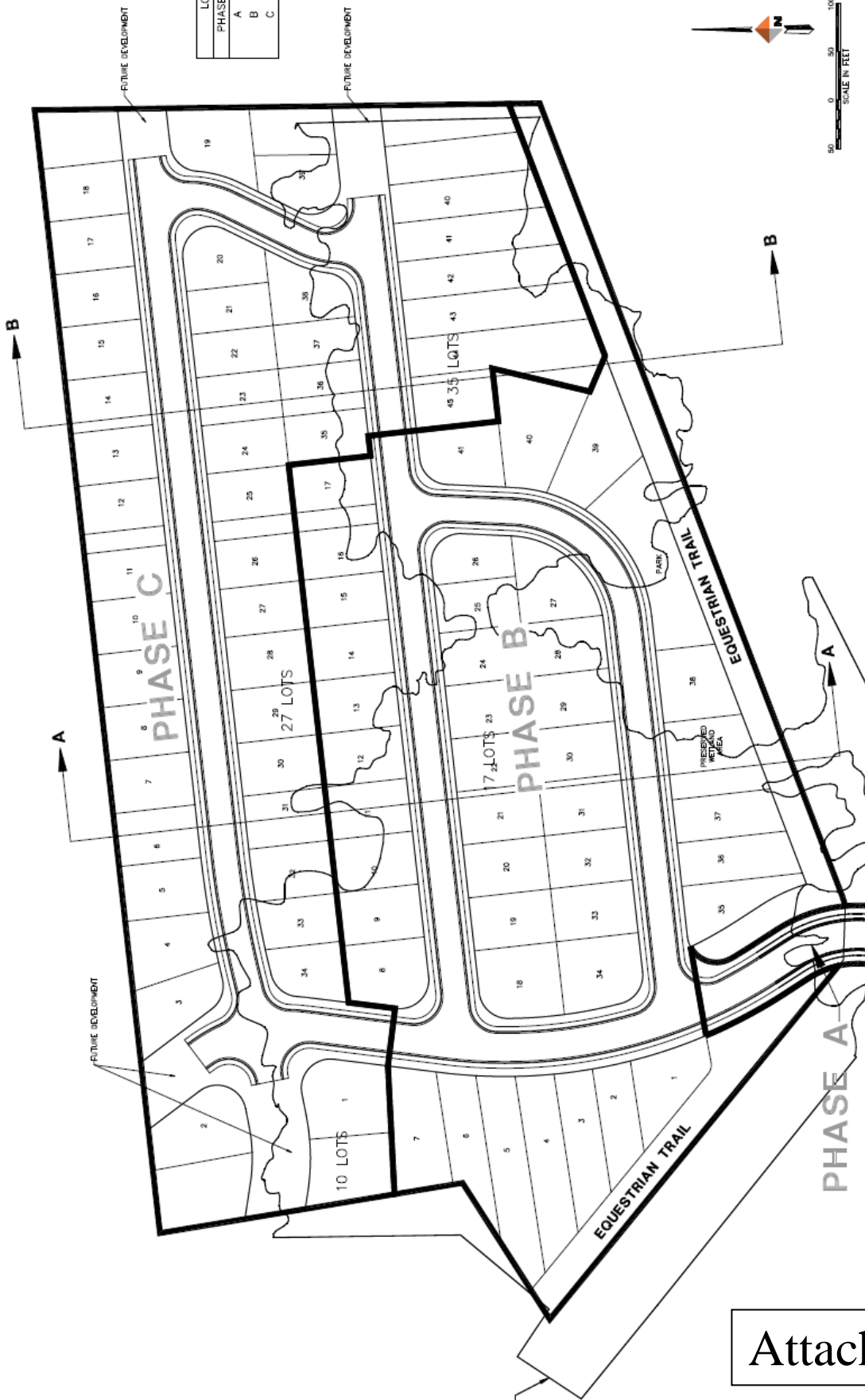
5368 Commercial Blvd.  
Juneau, Alaska 99801  
(907) 780-3333 Office  
(907) 780-3333 Fax

**DOWL HKM**

Consulting Engineers • Land Surveyors • Construction Administration  
JOB NO. J0867 | DRAWN BY: STAFF | DESIGNED BY: M. HOBBS | CHECKED BY: STAFF | DATE: JAN. 2018

Attachment B





LOT SUMMARY	
PHASE	TOTAL LOTS
A	0
B	41
C	45

SHEET NO.  
2 of 4

**PEDERSON HILL  
SUBDIVISION DETAIL**

**PEDERSON HILL**



**DOWL HKM**  
Consulting Engineers • Land Surveyors • Construction Administration  
5368 Commercial Blvd.  
Anchorage, Alaska 99501  
(907) 780-5533 Office  
(907) 780-5535 Fax  
JOB NO. 200607 DRAWN BY: STAFF CHECKED BY: R. WOODS DATE: JUL 2016

### Estimated Construction Cost For Pederson Hill Subdivision Phases 1A, 1B and 1C

	Estimated Cost	15% Contingency	Sub Total	CBJ Engineer's 30% Contingency	Total
Phase 1A					
Access Road	\$812,850	\$ 121,928	\$ 934,778	\$ 280,433	\$1,215,211
Phase 1B 41 Lots	\$2,261,060	\$ 339,159	\$2,600,219	\$ 780,065	\$3,380,285
Phase 1C 45 Lots	\$2,190,740	\$ 328,611	\$2,519,351	\$ 755,805	\$3,275,156
Corps Mitigation Fee (Estimated)					\$ 300,000
Combined Project Total					<b>\$8,170,652</b>

### Average Cost per lot:

\$119,402 Phase 1A+1B

or

**\$ 95,008** Phase 1A,1B + 1C (Lot All Phases Built at Once)

### Rough Estimate Available Funds

THRHA	\$3,600,000	38 lots	44.7%
CIP's	\$3,000,000	32 lots	37.2%
<u>Lands</u>	<u>\$1,400,000</u>	<u>16 lots</u>	<u>18.6%</u>
Total	\$8,000,000	86 lots	100.0%

**Attachment D**



January 27, 2016

Hi Greg,

Below are the basic concepts you and I informally discussed regarding a possible partnership with the City for development of the land on Peterson Hill. I want to be clear that the terms and ideas listed below are just concepts at this point but they do reflect our overall objectives of such a development. Ultimately, whatever we may agree on for both development and financing, the THRHA board of commissioners will have to approve. I will be discussing these concepts with them at our board meeting next Friday in Saxman.

- everything is conceptual at this point, but we are very interested in participating and partnering with the city on this project if the city wants us to;

- our goal would be to seek private financing up front so that we could minimize regulatory requirements and restrictions associated with our federal HUD funds and AHFC matching funds;

- there is a chance that after the subdivision is completed and the lots are ready for development, we may be obligated to offer a handful of the units to low-income owners – if they do not already qualify for potential homeownership programs;

- our goal for development on this entire project parallels the city's objectives – smaller and affordable housing units intended to serve the workforce and moderate income families;

- our goal is to not manage rental units, but rather develop and sell homeownership units;

**Attachment E**

- this could be achieved by:
  - \*selling lots directly to a family that has their own financing for construction
  - \*building homes and selling them outright to eligible buyers
  - \*building homes and financing the purchase directly or in partnership with a bank
  - \*allowing some of the units where tenants could rent for a year or two and be required to assume the loan once they have established credit and capacity to pay
  - \*if low-income units are allocated, we would provide some form of subsidy, but it would still be homeownership
- we anticipate that the majority of units will be required to pay property taxes;
- units that are rent to own, or subsidized, may be under PILT for the first year or two and until they assume the loan;
- at this point we are not aware and it is not our goal to make these units property tax exempt;
- THRHA has not secured any financing at this point, but we are prepared to seek financing letter of commitment or line of credit when the time is appropriate;
- THRHA would payoff its loan as individual lots/homes are sold, or when THRHA takes out construction financing to build individual homes;
- affordability will depend on the cost/value of each lot, our goal is to build homes in the 1,000 to 1,200 sf size and keeping the cost under \$290,000 – conceptually and hopefully;
- if appropriate for the neighborhood, and if THRHA has not tested prior to this development, we might consider constructing and testing a handful of “tiny” homes, perhaps 500 to 800 sf in size.
- THRHA will likely bid out home construction to private developers
- THRHA finds this partnership to be very appealing because our role would be limited to providing a portion of the funds to help ensure the completion the development of the lots and tract is done all at one time allowing for costs savings; the city would have complete control of planning, engineering and design for the neighborhood. In the end, we would end up with build-ready lots. This is a contrast when THRHA does development projects on its own as we would be held to very cumbersome and

burdensome federal regulatory compliance requirements (environmental, labor & wage rates, tribal consultation, total cost development figures, OMB procurement, etc.);

- with regard to possible private sector concerns or perceptions of fairness, THRHA is a non-profit entity so any net revenue beyond our costs would go directly to our mission of providing affordable housing; the homes we intend to build in this subdivision are not competing in pricing or size with what we have seen private developers building on City lands that were similarly put up for sale; we intend to serve a very specific segment of the population (workforce housing and moderate income families); we are likely to be providing some form of subsidy to help families achieve homeownership; we will be bidding out construction to private developers and we will be borrowing a significant amount of money from private sector local bankers;

- if we are successful at securing private financing, the units would not necessarily be restricted to Native American buyers, but THRHA's mission would give preference to Native American families;

I hope this outline helps folks understand our goals for participating in this project. A partnership with CBJ and THRHA is a win-win for everyone. We are grateful the City has considered us for such a venture.

***Ricardo Worl***

President/CEO

Tlingit-Haida Regional Housing Authority

# MEMORANDUM

CITY/BOROUGH OF JUNEAU

Lands and Resources Office  
155 S. Seward St., Juneau, Alaska 99801  
Dan.Bleidorn@juneau.org

Voice (907) 586-0224

**TO:** Assembly Lands Committee

**FROM:** Dan Bleidorn; Deputy Lands & Resources Manager

**SUBJECT:** North Franklin Parking Lot Status Update

**DATE:** January 26, 2016

At the April 7<sup>th</sup>, 2014 Lands Assembly meeting, Staff brought forward an application from Steve Soenksen of Juneau Legacy Properties L.P. to purchase the CBJ parcel currently being used as an hourly parking lot, located across from the Baranof Hotel at 2nd and North Franklin Streets,. A motion was passed to *“authorize the City Manager to negotiate with the parties that had submitted a proposal and any other party that submitted a proposal within 30 days of April 8, and to work the proposal through the Lands Committee.”* During the 30 day period allotted, Staff: drafted a Request for Proposals, drafted parameters for evaluating the proposals, advertised in the local newspaper, and set up a review team to review applications. No new proposals were received. The Lands Committee reviewed the original proposal at the June 2<sup>nd</sup>, 2014 meeting and passed a motion to *“forward the proposal from Juneau Legacy Properties with a recommendation we complete the sale.”*

At the February 26<sup>th</sup>, 2015 Lands Committee Meeting, Staff requested direction on the sale after the applicant had failed to provide additional information that was needed to move the proposal forward. The Lands Committee forwarded the request to the Committee of the Whole. The COW received a progress update at the March 2<sup>nd</sup>, 2015 meeting and passed a motion for Lands Staff to create a new RFP with a longer timeline to attract more proposals and suggested the Lands Committee review the RFP before it goes out. Concern over loss of control of the lot’s development, along with problematic reversion clauses; have led Staff to investigate a long-term lease as a disposal option. Draft documents for a long-term lease are attached to this memo. These draft documents have not yet been reviewed by Law and do not include in-depth Staff comments that will be submitted if the Assembly would like Lands to continue moving in this direction.

Since March, Staff has contracted with Tracy Ricker Consulting to assist with the development of an RFP and ground lease agreement. Tracy Ricker Consulting was chosen because of their experience working in Alaska on the sale and long-term lease of publicly owned property and undeveloped land to the private sector for development. At the January 11<sup>th</sup>, 2016 Assembly meeting, this topic was brought up during Assembly comments, and Assembly member Jones



requested a status update, which Staff will provide during the February 1<sup>st</sup>, 2016 Lands Committee meeting.

Staff has also reached out to the State of Alaska, Department of Administration, in order to gather information on the State's plan for their small parking garage adjacent to the City's parking lot and the lifespan of the garage. Depending on the State's response to the City's inquiry, there may be an opportunity to partner with the State to jointly redevelop these lots. Lands Staff will continue to investigate this option as we move forward with other disposal options under the direction of the Assembly.

Staff requests that the Lands Committee provide comments and direction on the long-term lease alternative for the disposal of the North Franklin Lot and considers a potential partnership with the State.

Attachments:

- Draft RFP Property Disposal by Long Term Lease
- Draft sample Ground Lease

# **CITY AND BOROUGH OF JUNEAU**

## **REQUEST FOR PROPOSAL**

### **PROPERTY DISPOSAL BY LONG TERM LEASE**

#### **NORTH FRANKLIN PARKING LOT**

**A City owned property containing 13,261 Sq Ft.  
Located on the NE corner of N Franklin and 2<sup>nd</sup> Street**

The City and Borough of Juneau (CBJ) is disposing by long term lease, through the Division of Lands and Resources, the property identified above. The Lease will be conducted using a sealed bid process. Bids must be received as specified below.

Property to be leased is located at **310 and 324 Second Street** (see map: Appendix A), legally described as:

Lot 1 and southeast 20 feet, measured on the lot lines, of Lot 8, Block 11. Also Lot 2 and the southwest of Lot 3, Block 11. Townsite of Juneau, First Recording District, Juneau Recording District.

This document and other related Information about this RFP is accessible electronically as a (.pdf) copy at the City and Borough of Juneau website through the following link:

**Or at:**

**The Lands and Resources Office located at 155 Seward Street, Juneau, AK  
99801**

The City and Borough of Juneau reserves the unilateral right to accept or reject bids. Bids must be submitted to the Purchasing Office located at the Municipal Way Building, 105 Municipal Way, Juneau, AK 99801, prior to time and date set for opening. Any bids received after that time will not be considered and will be returned unopened. Time of receipt of bids will be as determined by the time stamp in the Purchasing Office.

### **Time and Date of Opening**

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#### **I. Bid Procedures**

The Property is being leased via a sealed bid process following the timeline as described within. Minimum bid is Fair Market value (\$\_\_\_\_\_) annually. Bids will be accepted prior to the time and date specified for opening. Bids received after the time and date specified will not be opened.

The bid award will be based on the submission of documents demonstrating the contractors' bid meets the minimum requirements of the conceptual plan and other requirements for submission and the determination of highest responsive and responsible bidder.

A. All bidders shall provide in a sealed envelope (marked “Sealed Bid – Franklin Street Lot Proposal”):

- 1) \_\_\_\_\_ (\$\_00.00) Bid Guarantee, in cash or equivalent to cash, (must be in form of either a cashier’s check or other form of certified funds made payable to the City and Borough of Juneau.);
- 2) Completed Form A: Instructions
- 3) Completed Form B: Bidder Information and Certification;
- 4) Completed Form C: Applicant/Bidder Qualification Statement;
- 5) Completed Form D: Conflict of Interest Statement;
- 6) Completed Form E: Non-Collusion Affidavit; and
- 7) Proof of Authority to Sign Bid Form “A” if necessary.
- 8) Any proposed change(s) to Lease Agreement, see Paragraph 8, below.
- 9) A conceptual plan that addresses, at a minimum, the following development criteria not listed in priority order:
  - a) Positive impact on housing
  - b) Potential to provide other street level uses.
  - c) Overall concept design.
  - d) Parking
  - e) Neighborhood compatibility

**The CBJ Reserves the unilateral right to reject any and all proposals.**

### 3. Bidder Selection.

The Municipality will review each bid received to determine whether the bidder has met the minimum submittal requirement(s). If the bidder does not meet the minimums noted above, they will be declared non-responsive.

### 4. Inspections/Site Visits.

ALL INTERESTED BIDDERS ARE STRONGLY URGED TO PHYSICALLY INSPECT THE PROPERTY BEFORE SUBMITTING A BID. CBJ ASSUMES NO RESPONSIBILITY FOR DISCLOSING MATTERS WHICH WOULD HAVE BEEN DISCLOSED BY AN INSPECTION OF THE PROPERTY.

### 5. Question Period.

Questions concerning the process must be in writing and received by the Lands and Resources Division (155 Seward Street, Juneau, AK. 99801) not later than 4:00 p.m., \_\_\_\_\_, 2016. Questions based on omissions, errors, or content of this document may be disallowed if not made, in writing, and received by the date/time specified above.

### 6. Disqualifications.

Any of the following shall **automatically disqualify** a bid if the:

- a) Bid is submitted for less than the \$\_\_\_\_\_ minimum bid price.
- b) Bid is received without the correct BID GUARANTEE deposit amount (\$\_\_\_\_\_).
- c) Bid Form and other required forms (Form A thru E) are not completed in full, submitted, and manually signed.
- d) Bid is received after time and date established for bid opening.

## 7. Bid Opening.

Within 10 business days immediately following the bid opening date and time, the highest responsive and responsible bidder shall tentatively be named successful bidder and will be notified by phone and in writing by the CBJ.

The bidder so notified must within thirty (30) business days:

- a. Provide information to the CBJ for its determination of responsibility based on the following criteria:
  - i. The skill and experience of the bidder;
  - ii. The bidder's record for honesty and integrity;
  - iii. The bidder's capacity to perform in terms of facilities, personnel and financing; and
  - iv. The bidder's past development performance: i.e. development of projects of a similar nature; and
- b. Provide detailed conceptual plans and proof of financing, see paragraph II.7.C, below; and
- c. Completion of the Lease Agreement. (See Appendix B)

A negotiation period is expected to last thirty (30) calendar days, beginning on the date of the selection and notice that the bidder has been named "successful bidder." Upon completion of the negotiation process, the bidder shall promptly complete, sign, and return the Lease Agreement in form and substance acceptable to the CBJ along with FIVE PERCENT (5%) of the Lease price in the form of a cashier's check or other form of certified funds. In the event the successful bidder fails to provide the information, plans and proof required and other information by this paragraph or does not sign and return a Lease Agreement in form and substance acceptable to the CBJ, with additional deposit, within the aforementioned thirty (30) days, **the bidder will forfeit the Bid Guarantee**. In this event the CBJ reserves the right to enter negotiation with the next highest responsive and responsible bidder who shall be notified and invited to engage in negotiations for Lease of the Property.

## 8. Lease Agreement.

In addition to carefully reading all of the information in these Bidding Instructions, bidders must carefully read and review the attached sample Lease Agreement (Appendix B) ("Lease Agreement"). The successful bidder shall be required to enter into a Lease Agreement with the CBJ, which will be substantially similar to the sample. At the time of bid submittal, the bidder is requested to make any proposed change(s) to the Lease Agreement. All changes must be made legibly and conspicuously on all copies submitted. Page(s) on which the change(s) appear must be tabbed as to be easily identified. CBJ will not consider or accept material changes to the Lease Agreement.

The Lease Agreement shall provide, *inter alia*, as follows:

- a. Due diligence period of sixty (60) days, subject to loss of Bid Guarantee (\$00.00);
- b. Closing within ninety (90) days after completion of negotiations.
- c. Conveyance of Property **as-is, where-is**;
- d. Recording of covenants, conditions and restrictions in a form satisfactory to Lessee;

e. Deposit of \_\_\_\_\_determined amount\_\_\_\_\_ or equivalent security satisfactory to the CBJ for performance of development covenants (see paragraphs II.7D and E, below); (this \$00.00 deposit is in addition to the 5% bid deposit, see paragraph II.1 below, and \$00,000 bid guarantee, see paragraph I.7 above) and

f. Indemnification of the City and Borough for, *inter alia*, all Environmental Events.

## 9. Additional Qualifications.

All bidders are required to complete the conflict of interest report (Form “D”), if applicable, and the non-collusion statement (Form “E”). CBJ reserves the right to refuse any bid of any bidder either a) with a conflict or the appearance of a conflict of interest, or b) who participated in any prohibited collusion in connection with the Property. The lessee must be in good standing with City billing, liens, and taxes.

## 10. Other.

The CBJ is not obligated to sell or lease the Property nor pay any costs incurred by parties participating in the submission or preparation of bids. The CBJ reserves the right to: 1) unilaterally reject any and all bids; 2) reject any and all parties whom it has determined are not responsive or responsible or do not otherwise meet the qualification requirements; 3) accept a bid without further discussions; 4) waive any informality in the bids received; 5) tentatively accept a bid in the best interest of the CBJ; and 6) withdraw the Property from this bid offering at any time for any reason.

## **II. Terms and Conditions of the Lease**

1. The highest three bids and deposits will be held by the CBJ for a minimum of thirty-five (35) calendar days following bid opening. In the event the successful bidder fails to either a) demonstrate responsibility, see paragraph I.7, above; b) provide conceptual plans and proof of financing, see paragraph II.7.C, below; or c) sign and return a Lease Agreement in form and substance acceptable to the CBJ, along with the FIVE PERCENT (5%) payment, see paragraphs I.7 & I.8, above, within thirty (30) calendar days of the time and date of the bid opening, the Bid Guarantee (\_\_\_\_\_ THOUSAND DOLLARS (\$00,000)) deposited by the successful bidder shall be retained by the CBJ, and the next highest responsive and responsible bidder shall be notified and invited to engage in negotiations for Lease of the Property.
2. The successful bidder, as Lessee, shall be responsible for paying all closing costs, including escrow fees, title insurance (if Lessee so chooses to acquire), recording fees, deed preparation, or other fees associated with closing.
3. The Property shall be conveyed by statutory warranty deed, subject to the Permit, *see* paragraph I.1, above, and the covenants, conditions and restrictions mentioned in paragraphs II.7.D, E and F, below.
4. The CBJ makes no warranties, either expressed or implied, nor assumes any liability whatsoever regarding the social, economic, or environmental aspects of the Property, to include without limitation, the environmental condition, soil conditions, water drainage, physical access, condition of improvements, natural or artificial hazards which may or may not exist, or merchantability, suitability or profitability of the Property or improvements for any use or purpose.

5. **The Property will be leased “AS IS-WHERE IS.”** It is the responsibility of the bidder(s) to, among other things, investigate and determine existing or pending regulations, restrictions and potential defects, including those created by prior use, which would affect the use of the Property. The feasibility and costs to remedy defects, such as obtaining permits, variances, replatting and rezoning should be determined prior to bidding. All such costs shall be borne by the bidder. No adjustments to a bid price or reimbursement to a bidder will be made by the CBJ. The bidder is responsible for investigating any pending assessments or tax liability.
6. Utilities shown on the maps may not be constructed at this time. The construction and maintenance of roads, drainage systems, and the use of other common areas shall be the responsibility of the Lessee to determine. Lessee shall be required, if applicable, to comply with, among others, the State of Alaska Department of Environmental Conservation regulations regarding water and sewer installation, repair or replacement and, if applicable, the regulations of the U.S. Army Corps of Engineers regarding filling, altering or draining any area of the Property which may be designated as wetlands by the appropriate authority.
7. The CBJ hereby discloses the following that may have an effect on the Property:
  - A) **Appraisal.** Appraisal by \_\_\_\_\_, dated \_\_\_\_\_, 201\_, enclosed herewith (Appendix B). Full electronic copies are available upon request.
  - B) **Permit.** The Lessee is required to accept the Property subject to the Permit and authorized uses therein without modification or alteration.
  - C) **Conceptual Plans & Proof of Financing.** Within thirty (30) days of the time and date of bid opening, Lessee shall provide the CBJ with Lease Agreement, detailed conceptual plans substantially the same as the concept plans submitted with its bid, and proof of financing for development of the Property to ensure, to a reasonable degree of certainty, Lessee’s ability to develop the Property in accordance with Lessee’s conceptual plan.
  - D) **Development Covenants.** Subject to the terms and conditions of the Permit, Lessee shall complete construction of the Project. The Project shall be completed in accordance with all federal, state and municipal requirements, as established by issuance of a final certificate of occupancy by the City and Borough of Juneau within the project timeline as described in Appendix D.
  - E) **Security.** Lessee shall deposit at closing the amount of \_\_\_\_\_ (\$\_\_\_\_\_) with an escrow agent or provide another form of security acceptable to the CBJ as security for performance of the aforementioned development covenants.
  - F) **Survey Monuments.** The Lessee shall maintain or replace any CBJ monuments of record. Lessee shall be responsible for preserving, protecting and replacing all monuments and lot corners, line stakes, grade stakes, reference points and hubs. In the event of their loss or destruction, Lessee shall pay all costs for their replacement.

Notice of the covenants, conditions and restrictions mentioned in subparagraphs D, E and F, above, in form satisfactory to the Municipality, shall be recorded against the Property at closing.

### **III. BIDDING SUPPORT DOCUMENTS**

Form A, Bid Form  
Form B, Bidder Information and Certification  
Form C, Applicant/Bidder Qualification Statement  
Form D, Conflict of Interest Statement  
Form D, Non-Collusion Affidavit  
Appendix A: Location Map  
Appendix B: Sample Lease Agreement (“Lease Agreement”)  
Appendix C: Appraisal  
Appendix D: Project Timeline.

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# FORM A

## BID FORM

### Instructions

Please type or print legibly, using blue or black ink. This form must be filled out completely. Each bidder must sign this Bid Form attesting that each individual/business named meets the bidder qualifications.

#### Remember:

- All names appearing on the bid must be the same as those names that will, ultimately, appear on the lease issued by the CBJ. No names may be added to or deleted from the lease.
- Each bid must be accompanied by a \$00.00 earnest money payment, in the form of a check.
- After placing the Bid Form and \$00.00 check into an envelope, seal and label the outside of the envelope with the following information: **“North Franklin Parking Lot”**.
- If mailing your bid, place the sealed and labeled envelope that contains your bid into a second envelope and address it to CBJ Purchasing Office, 155 S. Seward Street, Juneau, AK 99801.
- If hand delivering your bid, deliver it to the CBJ Purchasing Office located at 105 Municipal Way Building, Juneau.

Bids will be accepted at the CBJ Purchasing Office only. Bids must be received at the CBJ Purchasing Office **no later than 4:00 p.m., Alaska Time, \_\_\_\_\_, 2016** in order to be considered. Late bids will not be accepted. A postmark by that date is insufficient.

### Bid

**I/we hereby submit a bid to Lease 310 and 324 Second Street** (see map: Appendix A), per the provisions of this Bid document and the terms and conditions of the Sample Lease Agreement (Appendix B).

**The amount of my/our bid is: \$\_\_\_\_\_.**

### Earnest Money

Check here to indicate that you have enclosed \$\_\_\_\_\_ in the form of a check payable to the City and Borough of Juneau.



# FORM B

## Bidder Information and Certification

Bidders submitting a bid as an individual or group of individuals must complete **Section A** below. Bidders submitting a bid as a business entity, skip **Section A** and go to **Section B**.

### Section A: Individual(s)

Check this box if you are an individual or a group of individuals submitting this bid. If multiple persons are submitting the bid, each person must sign the certification below. If needed, add lines to those provided below, and ensure each person signs.

Names of all persons submitting this bid (type or print clearly):

(1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_  
 (4) \_\_\_\_\_ (5) \_\_\_\_\_ (6) \_\_\_\_\_

Contact Information (of first individual listed above): Mailing address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

Daytime phone: (\_\_\_\_) \_\_\_\_\_ Evening phone: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

#### I/We certify that:

- I/We have read and understood the bid and accept the terms and conditions of the lease as described therein;
- I/we am/are (or will be) at least 18 years old on the date of the bid opening, \_\_\_\_\_ 2016;
- I/we have not defaulted on nor am/are currently in default on payments for any prior purchase of CBJ land within the past 5 years; and
- The bid submitted herein is the lease rate I/we will pay if my/our bid is accepted.

_____ (1) Signature of Bidder                      Date	_____ (2) Signature of Bidder                      Date
_____ (3) Signature of Bidder                      Date	_____ (4) Signature of Bidder                      Date
_____ (5) Signature of Bidder                      Date	_____ (6) Signature of Bidder                      Date

### Section B: Business Entities

Check this box if you are an authorized agent submitting this bid on behalf of a business entity and provide the information requested below.

Name of business entity (type or print clearly): \_\_\_\_\_

Name of agent authorized to represent said business: \_\_\_\_\_ Agent's title: \_\_\_\_\_

Business mailing address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

Business telephone number: (\_\_\_\_)\_\_\_\_\_ Business email address:\_\_\_\_\_

**I certify, as the agent authorized to represent the business entity shown herein, that:**

- I have read and understood the CBJ Lease brochure and any amendments for CBJ Lease Disposal No. \_\_\_\_\_ and, on behalf of said business entity, accept the terms and conditions of lease disposal as described therein;
- The business entity, for which I am an agent, is licensed to do business in the State of Alaska and has not defaulted on nor is currently in default on payments for any prior purchase of CBJ land; and
- The bid submitted is the bid price said business entity will pay if its bid is accepted.

\_\_\_\_\_

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(date)

**FORM D**  
**CONFLICT OF INTEREST STATEMENT**

Pursuant to CBJ Municipal Code \_\_fill in #\_\_\_\_ (Code of Ethics), I,

\_\_\_\_\_ Certify as follows:

- (1) Have read and understand the provisions of \_\_\_\_\_(put the name of the code of ethics title)
- (2) Disclose the following actual or potential conflict of interest.

(If there is no conflict of interest, print or type "NONE" below this line.)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

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

The document then continues on to include 4 blank pages with the following titles that will be filled in by the Lands and Resources Division staff:

**APPENDIX A: PROPERTY LOCATION**

**APPENDIX B: SAMPLE LEASE AGREEMENT**

**APPENDIX C: APPRAISAL**

**APPENDIX D: PROJECT TIMELINE**

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## GROUND LEASE

**THIS GROUND LEASE AGREEMENT** (this "Lease") is made effective as of \_\_\_\_\_ ("Effective Date") entered into on the date last executed below by and between the \_\_\_\_\_, ("Landlord") as Landlord, and \_\_\_\_\_, \_\_\_\_\_ having a mailing address of \_\_\_\_\_ ("Lessee") as lessee, to lease property (the "Premises") for the construction of certain "Improvements" more particularly described on Exhibit B on the property described below (the "Property") located at \_\_\_\_\_, in the City and Borough of Juneau, State of Alaska. Landlord and Lessee are at times collectively referred to as "Parties" or individually as a "Party."

**PREMISES.** This Lease is for the permitted use described below at the following Property, as further described in Exhibit A attached hereto:

\_\_\_\_\_

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Landlord and Lessee hereby agree as follows:

### ARTICLE 1 LEASE TERM AND USE

Subject to the terms, provisions and conditions hereinafter set forth, Landlord hereby leases to Lessee, and Lessee hereby leases from Landlord, the Premises.

**1.1 Term.** Unless sooner terminated under the provisions hereof, this Lease shall be and continue in full force and effect for a term (the "**Lease Term**") of \_\_\_\_\_ (\_\_\_\_) years, commencing on \_\_\_\_\_ (the "**Commencement Date**") and, unless sooner terminated as set forth herein, terminating on \_\_\_\_\_. All obligations of Landlord and Lessee hereunder, other than the payment of Rent by Lessee which shall commence on the Commencement Date, shall be binding on the parties on the Effective Date.

As used herein, the term "**Effective Date**" shall mean the date set forth in the introductory paragraph of this Lease; provided that if such information is left blank, then the Effective Date shall be the Landlord's date of signature. The initial term of this Lease shall be \_\_\_\_\_ years commencing on the earlier of the first day of the month following the start of construction or \_\_\_\_\_ (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term"). The word "Term" refers to both the Initial Term and Renewal Term (as defined below).

**1.2 Term Extension Option.** This Agreement may be extended for \_\_\_\_\_ additional \_\_\_\_\_ terms upon \_\_\_\_\_ months written notice and request for extension given by Lessee to Landlord and written acceptance made by the Landlord. Unless otherwise specified in the written acceptance made by the Landlord, all of the provisions of this Agreement shall apply during the extension periods. The Landlord within its sole discretion may accept or reject

Lessee's request for an extension. If the Landlord fails to give written notice of its acceptance of Lessee's request for an extension \_\_\_\_\_ days prior to the date this Agreement would otherwise expire, then this Agreement shall terminate on that date. This option must be exercised by the giving to Landlord, at least sixty (60) days prior to expiration of the Lease, written notice of the exercise of the option by Lessee, but Lessee shall in no event be entitled to renew the term of this Agreement, even though the notice be timely given, unless Rent is determined and unless Lessee shall have timely performed all of its obligations under this Lease, and shall not be in default in the performance of any such obligations, on the date of the expiration of the initial term of this Lease. Any renewal of this Lease will be subject to all provisions of the CBJ Municipal Code then in effect, including approval of the Juneau Assembly. Any holding over by Lessee after the expiration of the Initial Term and any Renewal Term, without the consent of the Landlord, shall be construed to be a tenancy from month to month on the terms and on the conditions set forth herein, except that the Rent under Section 4 and/or Section 5 shall be at twice the amount set forth therein, prorated and paid monthly in advance.

### 1.3 Use.

- A. The Premises, as more particularly described in Exhibit B attached hereto, may be used by Lessee for the (*As approved by CBJ by RFP response*) and not for any other purpose. Lessee shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations in connection with the use of (and operations, maintenance, construction and/or installations at) the Premises.
- B. Lessee shall not use, or allow any other person or entity to use, any portion or part of the Premises and/or the Improvements for an unlawful purpose, as a nuisance, as a fire hazard, or for a purpose inconsistent with any grant, lease, permit, patent, deed or bond of the City and Borough of Juneau.
- C. Lessee is solely responsible for determining the compatibility and adequacy of the proposed Premises and/or Improvements for Lessee's purposes. Lessee shall have no claim, including damages, against the Landlord, in the event the Premises and/or Improvements are determined not compatible or adequate for Lessee's purposes.

**1.4 As-Is Condition.** Lessee acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty, expressed or implied, and has not assumed and shall not have any liability whatsoever, with respect to the condition of the Premises or the suitability of the Premises for the conduct of Lessee's business or any development contemplated by Lessee. Lessee's possession of the Premises establishes that the Premises are accepted by Lessee "As Is," in their present condition and without any representation or warranty of Landlord whatsoever with respect to the condition thereof or the suitability for Lessee's use. Such disclaimer includes, but is not limited to, the condition of the soils, water drainage, access natural or artificial hazards that may exist, or the merchantability, profitability, or fitness for any particular purpose, and authorizes the use of the lands, rights and resources subject to this Agreement without any warranty of habitability.

## ARTICLE 2



## RENT

**2.1 Rent.** On or before the Commencement Date, Lessee shall pay Landlord, as rent, \$\_\_\_\_\_ for the first year of the Initial Term of this Lease. At the beginning of each Lease Year thereafter, the rent will be adjusted by the Anchorage Anchorage CPI Adjustment on the first annual anniversary of the Commencement Date, and each annual anniversary thereafter (including during "Renewal Terms", as defined below). Anchorage CPI Adjustment shall mean the percentage increase, if any, between the monthly Consumer Price Index for all Urban Consumers, Anchorage, Alaska for all Items published by the Bureau of Labor Statistics, United States Department of Labor ("CPI") available on the Commencement Date and the CPI in effect at the end of the calendar year most immediately preceding the Land Adjustment Date. Any Rent not paid within 10 days of the due date shall be assessed a 5% late fee and shall bear interest at 2% per month or (if less) at the highest rate allowed by law. If this Lease is terminated at a time other than on the last day before the anniversary date, then except as provided below Rent shall be prorated as of the date of termination for any reason (other than a default by Lessee) and all prepaid Rent shall be immediately refunded to Lessee.

**2.2 Rent Adjustment based on Land Value.** Rental shall be adjusted at the beginning of the sixth \_\_\_\_\_ (6th) Lease Year of the term and every fifth year thereafter. (hereinafter, singularly a "**Land Value Adjustment Date**") to an amount equal to the greater of (a) the Rental for the preceding Lease Year increased by the Anchorage CPI Adjustment, or (b) \_\_\_\_\_ percent (\_\_\_\_%) multiplied by the Land Value (as hereinafter defined). Land Value shall be determined by an appraiser acceptable to the Landlord and Lessee. Cost related to Land Value adjustments will be borne by the Lessee. The Rental determined on each Land Value Adjustment Date shall then be annually adjusted by the Anchorage CPI Adjustment until the next Land Value Adjustment Date.

**2.3 Place of Payment.** Rental shall be payable to Landlord at the original or changed address of Landlord as provided for in herein.

**2.4 Guaranty.** Contemporaneously upon execution of this Lease by Lessee, Lessee shall cause \_\_\_\_\_ (the "**Guarantor**") to execute and deliver to Landlord a guaranty in the form of **Exhibit C** attached hereto and incorporated herein by this reference (the "**Guaranty**").

**2.5 Security Deposit.** Landlord acknowledges receipt of a security deposit from Lessee in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "**Security Deposit**") as security for the full and faithful performance of Lessee's obligations under this Lease. Landlord may (but shall not be required to) use the Security Deposit or any portion thereof to cure any defaults on the part of Lessee or to compensate Landlord for any damage or costs Landlord incurs as a result of Lessee's failure to perform any of its covenants or obligations hereunder. In such event, and upon written notice from Landlord to Lessee specifying the amount of the Security Deposit so utilized by Landlord and the purpose for which such amount was applied, Lessee shall immediately deposit with Landlord an amount sufficient to return the Security Deposit to the original amount. Lessee acknowledges that any use of the Security Deposit shall not constitute a bar or defense to any of Landlord's remedies under this Lease, at law or in equity. Within a reasonable period of time after expiration of the Term or

earlier termination of this Lease, the Security Deposit shall be returned to Lessee, reduced by those amounts that may be required by Landlord to remedy defaults on the part of Lessee in the payment of Rental or otherwise, to repair damages to the Premises caused by Lessee and to restore the Premises to the condition required by this Lease. Landlord shall have no obligation to segregate the Security Deposit from its general funds or to pay interest thereon. If Landlord conveys or transfers its interest in the Premises, and as a part of such conveyance or transfer, assigns its interest in this Lease, then Landlord shall be released and discharged from any further liability to Lessee with respect to the Security Deposit.

### ARTICLE 3 IMPROVEMENTS

**3.1. Construction.** Lessee intends to construct on the Premises certain new improvements (collectively, whether one or more separate structures, the “**Building**”), in accordance with plans and specifications to be submitted to and approved by Landlord. The term “**Building**” shall also mean and include any replacement structures, renovations or improvements which may be constructed on the Premises during the Lease Term, from time to time. As used in this Lease, the term “**Commencement of Construction**” shall mean the date upon which Lessee has obtained all necessary permits and approvals for construction of the Building and has begun construction activity on the Premises. As used in this Lease, the term “**Completion Date**” means the date upon which a certificate of occupancy is issued by the CBJ Building Official for the Building, permitting occupancy and use thereof by Lessee.

**3.2 Approval of Plans.** Prior to Commencement of Construction, Landlord shall have the right to review and approve Lessee’s plans and specifications for the Building (the “**Plans**”). No new improvement shall be constructed on the Premises unless the Plans therefore have been reviewed and approved by Landlord as provided herein. The Plans shall be prepared by a licensed architect selected by Lessee. Landlord’s approval shall also be required for any material change in the Plans previously approved by Landlord. Any material changes shall be reviewed by Landlord within ten (10) Business Days after submittal. Lessee shall, upon receipt of Landlord’s reasonable objections, modify the Plans submitted, taking into account Landlord’s objections, and resubmit such revised Plans for approval by Landlord. Such process of submittal, review and comment by Landlord, and resubmitted by Lessee shall continue until such time as the Plans have been approved by Landlord, or are deemed approved as provided herein.

**3.3 CBJ Planning and Zoning Approval.** Where applicable, Lessee shall submit construction plans and specifications to CBJ Community Development Department, and Lands and Resources Division for review, approval and permitting including, but not limited to:

- a) Coordination with various CBJ departments;
- b) Securing a Conditional Use Permit, Building Permit, , and any other necessary permits;
- c) Securing site plan review and approval;
- d) Attending public hearings Planning Commission and Assembly meetings as required;
- e) Coordinating final zoning inspections;
- f) Preparing an application package

g) Other requirements, as necessary, to obtain a Certificate of Occupancy.

**3.4 Licenses, Permits, and Fees.** All building permits and other permits, licenses, permissions, utility agreements, consents, and approvals required to be obtained from governmental agencies or third parties (collectively, “**Governing Bodies**”) in connection with construction of the Building shall be acquired by and at the sole cost and expense of Lessee. Landlord agrees to cooperate reasonably with Lessee and the Governing Bodies as required for Lessee to apply for and obtain all such permits and approvals, provided that should Landlord incur any cost or expense (including but not limited to attorney’s fees) in connection therewith, Lessee shall reimburse Landlord therefore promptly after receipt of an invoice from Landlord. Landlord’s obligation to cooperate shall include the obligation to consent to any reasonable conditions that CBJ Building Official and Planning Commission may impose on the issuance of a building permit for the Building.

**3.5 Approvals, Consents in General.** All approvals or consents by Landlord required under the terms of this agreement:

(a) shall not be unreasonably withheld or delayed;

(b) shall be deemed given if not denied in a written notice delivered to Lessee within the time specified for response herein (if Lessee’s submittal or request for approval expressly states therein the time for response or else approval shall be deemed given),

(c) if such approval or consent is denied or conditioned, such denial or conditional approval or consent must be in writing and must specify with particularity the matters to which Landlord objects, and

(d) any costs or expense incurred by Landlord in connection therewith shall be reimbursed by Lessee promptly after receipt of an invoice from Landlord.

At the request of either Landlord or Lessee, each party shall designate an individual to give consents and approvals on their behalf hereunder (which designation may be changed from time to time by such party upon written notice to the other party). The consent or approval of such designated individual shall be binding upon Landlord or Lessee, as appropriate. The initial designee of Landlord for such purposes is CBJ City Manager and the initial designee of Lessee for such purposes is \_\_\_\_\_.

**3.6 Construction of Improvements.** Lessee shall construct on the Premises certain new improvements in accordance with the approved plans, specifications, requirements, and conditions of Landlord. Lessee shall act as construction manager and contractor for the construction and shall ensure all construction is in accordance with applicable federal, state, and municipal laws and regulations. Lessee shall ensure all construction is performed in a good and workmanlike manner. CBJ shall perform a final inspection of the Improvements, and provide results of the inspection(s) to Lessee in writing.

**3.7 Evidence of Funding; Completion Guaranty or Bond.** Prior to Commencement of Construction, Lessee shall provide Landlord with:

(1) evidence reasonably satisfactory to Landlord that all funds necessary for development and construction of the Building (including equity capital and loans) have been secured or committed; and

(2) a surety bond or other guaranty of completion, in form and substance satisfactory to Landlord and issued or provided by a surety or guarantor acceptable to Landlord, providing for lien-free completion of the Building in accordance with the Plans.

**3.8 Contractor; Builder's Risk Insurance.** Lessee shall contract with an experienced, qualified general contractor licensed in the State of Alaska and approved by Landlord for construction of the Building ("**Contractor**"). Lessee shall not replace the Contractor without Landlord's prior written consent. Lessee or the Contractor shall obtain and maintain in force at all times during which construction is in progress on the Premises builder's risk insurance as required under Article 10, and such insurance shall name Landlord as an additional insured thereunder.

**3.9 Independent Contractor.** Lessee is an independent contractor with respect to performance of all work under this Lease, and neither Lessee nor any party employed by Lessee shall be deemed for any purpose to be an employee, agent, servant, or representative of Landlord. Unless otherwise specified herein, Lessee shall provide all labor, materials, equipment, tools, machinery, transportation, and other Improvements and services necessary for the proper execution and completion of all work under this Lease.

**3.10 Utilities.** Lessee shall have the right to install utility lines serving the Premises, at Lessee's expense, and to improve the present utilities on the Property, all at Lessee's expense. Lessee shall install separate meters for utilities on the Property used by Lessee. Lessee shall pay when due all charges for utilities serving the Premises during the Term of the Lease.

**3.11 Liens**

**Lessee shall keep the Premises free from any liens arising out of work performed, materials furnished to or obligations incurred by Lessee.** **3.12 Progress Reports.** From and after the Commencement of Construction and through the Completion Date, Lessee, shall provide to Landlord monthly progress reports consisting of, at a minimum: (a) the then current construction schedule prepared by the Contractor (including the expected Completion Date); (b) a summary of all change orders approved by Lessee subsequent to the preceding monthly progress report

**3.13As-Built Drawings; Survey.** Within ninety (90) days following the Completion Date for any Building, Lessee shall deliver to Landlord two (2) copies of complete as-built drawings of the Building (which may consist of the Plans, annotated with field notes identifying all changes made thereto in the course of construction) and an as-built survey prepared by a licensed surveyor, certified to Landlord and showing the location of the Building, all improvements, easements and utilities, (including underground utilities).

**3.14Ownership of Improvements.** During the Term of this Lease, the Building and all other improvements located on the Premises, including without limitation, all additions, alterations, and improvements thereto or replacements thereof and all Lessee fixtures, machinery, and equipment installed therein, shall be the property of Lessee. At the expiration or earlier termination of this Lease, the Building and all improvements and all additions, alterations, and

improvements thereto or replacements thereof and all Lessee fixtures, machinery, and equipment installed therein, shall become the property of Landlord.

**3.15 Surrender Upon Termination.** Upon expiration or earlier termination of this Lease, Lessee shall remove Lessee's personal property and equipment that is not attached to the Building or the Premises (excluding such equipment as is necessary for the proper and normal operation of the Building, all of which shall remain on the Premises and become the property of the Landlord) and shall surrender the Premises and equipment necessary for the proper and normal operation of the Building to Landlord in good condition and repair, ordinary wear and tear and casualty excepted. Lessee shall not remove from the Premises any Lessee fixtures, machinery, or equipment, attached to or used in connection with operation of the Building, or any additions to or replacements thereof made during the Term of this Lease, it being the intent of the parties that upon expiration or earlier termination of this Lease, Landlord shall receive an operating Building. All operating manuals, computer programs and software, maintenance records, warranties and other personal property, tangible or intangible, owned by Lessee and necessary to operation of the Building or the systems within the Building shall be delivered to Landlord upon expiration or sooner termination of this Lease without cost to Landlord. Lessee's personal property and equipment not removed by Lessee at expiration or other termination of this Lease shall be considered abandoned and Landlord may dispose of such property in accordance with the law governing abandoned property then in effect.

Notwithstanding the foregoing, upon the expiration or sooner termination of this Lease, Landlord shall have the right, but not the obligation, in its sole and absolute discretion, to require Lessee or any successor in interest to Lessee or substituted Lessee or assignee, as the case may be, at such party's sole expense, to demolish and remove all improvements on the Premises and to restore the Premises to materially the same condition as existed on the Effective Date. Upon due notice to the Lessee, Lessee shall have sixty (60) calendar days from the effective termination or expiration date to complete all required demolition, removal and restoration activities. Prior to surrender, Lessee shall comply with all provisions of this Lease concerning Hazardous Substances, including but not limited to the provisions of Section 1.5 and Article 7, and complete any subsequent repairs or abatement, as necessary.

## **ARTICLE 4 ACCESS AND RIGHT OF ENTRY**

### **4.1 Lessee's Access and Landlord's Right of Entry.**

- A. As partial consideration for Rent paid under this Lease, Landlord hereby grants Lessee an easement in, under and across the Property for ingress, egress, utilities such water, sewer, power, and telephone service and access to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to access and service the Premises and the Improvements at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements are non-exclusive, and Landlord retains for itself, its lessees, successors and assigns, the right fully to use and enjoy said Easements and any roads or roadways located thereon. The Easements shall have the same Term as this Lease.

- B. Lessee shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the Initial Term of this Lease and any Renewal Term. Landlord and its agents shall have the right to enter the Premises at reasonable times to examine and inspect the Tower, equipment and structures and the Premises; however, Landlord, its employees or agents shall not impede or deny access to Lessee, its employees or agents.
- C. Landlord shall have the right to enter the Improvements at reasonable times for the purpose of inspection and to perform obligations as appropriate for safety. Landlord agrees not to interfere with Lessee's use and enjoyment of the Improvements. Landlord shall contact Lessee to make arrangements to access the Lessee's Facility. In the event of an emergency, Landlord shall have the right to immediate access of the Improvements by means of previous arrangement with Lessee. Lessee's Improvements shall remain secure at all times.
- D. Lessee understands and agrees that Landlord has the exclusive right to control and deny access to the Premises in cases of emergency that affect Lessee's use of the Premises for police, fire or other public safety purposes.

## **ARTICLE 5 MAINTENANCE AND EXPENSES**

### **5.1 Maintenance and Operation.**

- A. Lessee shall be responsible for structural repairs, maintenance, and other repairs required as the result of repair, failure to repair, misuse, or the acts or omissions of Lessee, its employees, affiliates, agents, successors, assigns, contractors, subcontractors, or licensees.
- B. Lessee shall use due diligence to avoid creating untidy or unsafe conditions in or about the Premises, and shall immediately remedy, at its sole cost and expense, any untidy or unsafe condition Lessee creates or causes, or otherwise arises in connection with its Improvements.
- C. Lessee shall, at its own expense, maintain the Premises and all improvements, equipment and other personal property on the Premises in good working order, condition and repair. Lessee shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.

**5.2 Operating Expenses.** Except as otherwise expressly stated in this Lease, Lessee shall pay or cause to be paid all costs of any kind relating to the use, operation, maintenance, repair and replacement of the Building and land improvements, including without limitation all charges for gas, electricity, light, heat, power, water, sewer, telephone, cable communications and other services used, rendered or supplied upon or in connection with the Premises, or levied or charged against the Premises beginning on the Commencement Date and continuing throughout the Lease Term.

**5.3 Improvements/Alterations.** Throughout the term of this Lease, the Lessee shall only make alterations, additions, and/or improvements to the Improvements following written request, not to be unreasonably withheld or conditioned, except like-kind equipment changes or minor routine repairs or minor alterations, or modifications to the Improvements. Such additional improvements shall be governed by the terms and conditions of this Lease. Lessee shall ensure all alterations, additions, and/or improvements are performed in a good and workmanlike manner. Prior to Lessee commencing construction on the Property, Lessee shall provide Landlord with the name of the contractor that will be constructing the improvements. The contractor is subject to the prior written approval of Landlord, such approval not to be unreasonably withheld.

## **ARTICLE 6 SUB-LEASE OR ASSIGNMENT**

### **6.1 Assignments or Sub-leasing.**

- A. Lessee shall not assign, with the exception of Lessee's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of merger, acquisition or other business organization, or sublet any interest in this Lease, any interest in the Improvements, or any interest in the Premises, or permit any other person or entity to occupy any part of the Improvements or Premises, without the prior written consent of Landlord. Any violation of this covenant shall constitute a default, and subject Lessee to the remedies under Articles 14 and 15 below.
- B. A proposed assignment or sublease of Lessee's interest in this Lease, the Improvements, or Premises shall not be acceptable unless:
  - 1. The proposed assignee or subLandlord agrees, in writing, to assume the liabilities attached to the applicable portion of the Premises, and to fully perform all the terms, conditions and covenants contained in the Lease, or as imposed by Landlord; and
  - 2. Lessee remains fully liable for all performance and obligations under this Lease.
- C. Lessee shall furnish Landlord with a copy of any proposed assignment or sublease for prior review and approval, such approval not to be unreasonably withheld or conditioned. If an assignment or sublease is approved, Lessee shall furnish within ten (10) days, without demand or request, a fully executed copy of the assignment or sublease to Landlord.

Any assignment, sublease, or occupancy permitted by Landlord's prior written consent shall not relieve Lessee of any obligations herein. Lessee shall hold Landlord harmless from any loss, including loss caused by nonpayment of rents, taxes, assessments or other charges by any assignee and/or sublessee.

## **ARTICLE 7 TAXES and ASSESSMENTS**

**Taxes and Assessments.** Lessee shall pay, when due and before delinquency, all taxes, assessments and charges during the term of this Lease. Lessee shall furnish, for Landlord's inspection, official receipts from the appropriate taxing authorities evidencing payment within thirty (30) days after the date any such amount is payable, without request or demand by Landlord. Lessee shall have the right to protest an assessment of taxes or other assessments or charges provided, prior to such protest, Lessee shall deposit with Landlord any sum in dispute, to insure payment in the event such contest is not successful.

## **ARTICLE 8 DEFAULT**

### **8.1 Default and Right to Cure.**

- A. Notwithstanding the foregoing to the contrary, it shall be a default under this Lease if Lessee fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by Lessee if the failure to perform the obligation interferes with Landlord's or another Lessee's ability to conduct its business on the Property, provided, however, that if the parties agree that the nature of the obligation is such that more than five (5) days is reasonably required for its performance, then it shall not be a default under this Lease if performance is commenced within the five (5) day period and thereafter diligently pursued to completion.
- B. **Landlord Default.** In the event there is a breach by Landlord with respect to any of the provisions of this Lease, Lessee shall give Landlord written notice of such breach. After receipt of such written notice, Landlord shall have thirty (30) days to cure any such breach. Landlord shall have an extended period beyond the thirty (30) day period to cure a breach if the parties agree that the nature of the cure is such that it reasonably requires more than thirty (30) days, and the parties agree to a timeline for cure.
- C. Notwithstanding the foregoing to the contrary, it shall be a default under this Lease if Landlord fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by Landlord if the failure to perform the obligation interferes with Lessee's ability to conduct its business on the Property, provided, however, that if the parties agree that the nature of the obligation is such that more than five (5) days is reasonably required for its performance, then it shall not be a default under this Lease if performance is commenced within the five (5) day period and thereafter diligently pursued to completion.

## **ARTICLE 9 TERMINATION**

**9.1** The Lease may be terminated as follows:



- A. By mutual consent of the Parties;
- B. For cause pursuant to the default provisions as set forth herein;
- C. After the Initial Term with sixty days prior written notice to Lessee;

**9.2.** In the event of a default, Landlord shall have the right, at its option, in addition to and not exclusive of any other remedy Landlord may have by operation of law, without any further demand or notice, to re-enter the Premises and eject all persons therefrom, and either:

- A. Declare this Lease at an end, in which event Lessee shall immediately remove the Improvements, repair any damage to the Premises, and pay Landlord a sum of money equal to the total of:
  - (i) the amount of the unpaid Rent accrued through the date of termination;
  - (ii) the amount by which the unpaid Rent reserved for the balance of the Term exceeds the amount of such rental loss to Landlord that could be reasonably avoided (net of the costs of such reletting); and
  - (iii) any other amount necessary to compensate Landlord for all detriment proximately caused by Lessee's failure to perform its obligations under the Lease, or
- B. Without terminating this Lease, relet the Premises, or any part thereof, for the account of Lessee upon such terms and conditions as Landlord may deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due to [or place ,] Landlord hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, Lessee shall pay Landlord any deficiency monthly, notwithstanding that Landlord may have received rental payments in excess of the rental stipulated in this Lease in previous or subsequent months, and Landlord may bring an action therefore as such monthly deficiency shall arise.

## **ARTICLE 10 INSURANCE**

**10.1** Lessee shall procure and maintain the following:

**A.** From and after the Effective Date, commercial general liability insurance covering all claims with respect to injuries or damages to persons or property sustained in, on or about the Premises and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, which shall contain a "breach of warranty" and a cross-liability clause, with limits of liability no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate.

**B.** Physical damage insurance covering all real and personal property, but excluding, if applicable, property owned by sub-Lessees and paid for by sub-Lessees or paid for by Lessee for which sub-Lessees have reimbursed Lessee, located on or in, or constituting a part of, the Premises, in an amount equal to at least one hundred percent (100%) of the new replacement cost of all such property (or such lesser amount as Landlord may approve in writing). Such insurance shall:

(a) be provided on a broad-form property coverage as may be customary for like properties in the vicinity of the Premises from time to time during the term of this Lease;

(b) cover explosion of steam and pressure boilers and similar apparatuses located in the Premises;

(c) include earthquake, landslide and flood coverage if available at commercially reasonable rates;

(d) be subject in each case to deductibles no greater than those customary in the locality of the Premises for like properties, with the determination as to whether a deductible is customary to be made by Landlord in Landlord's sole and absolute discretion;

(e) include coverage for demolition and increased cost of construction due to operation of building laws;

(f) provide for replacement cost building valuation; and

(g) waive any coinsurance penalties.

**C.** During construction of any improvements on the Premises and during any subsequent restorations, alterations or changes in the Premises that may be made by Lessee or Sub-Lessee, builder's risk insurance shall be maintained during the entire work on the Premises in the amount of one hundred percent (100%) replacement value thereof against "all risks" of physical loss or damage to the property insured, including earthquake, flood, and landslide.

**D.** Workers' compensation and employer's liability insurance in respect of any work by employees of Lessee on or about the Premises, as required under applicable law.

**E.** The policies required under herein shall name Landlord as additional insured (except for worker's compensation insurance) and/or loss payee, as appropriate, and Lessee shall provide to Landlord certificates of insurance and copies of policies obtained by Lessee hereunder promptly upon the request of Landlord. All policies of insurance required shall:

(a) be written as primary policies not contributing with and not in excess of coverage that Landlord may carry;

(b) contain an endorsement providing that such insurance may not be materially changed or amended with respect to Landlord or Insurance Trustee except after twenty days(20) prior written notice from the insurer to Landlord, and may not be cancelled with respect to Landlord or

Insurance Trustee except after thirty days(30) prior written notice from the insurer to Landlord (ten (10) days for nonpayment of premium);

(c) expressly provide, if available, that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums; and

(d) be written by insurance companies having a Best's rating of "A" or equivalent, which insurance companies shall otherwise be reasonably acceptable to Landlord.

**F.** If Lessee at any time during the Term fails to procure or maintain insurance required hereunder or to pay the premiums therefore, Landlord shall have the right to procure the same and to pay any and all premiums thereon, any amounts paid by Landlord in connection with the acquisition of insurance shall be immediately due and payable as additional rent, and Lessee shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the Applicable Rate from the date of such expenditure by Landlord until repayment by Lessee.

## **ARTICLE 11 INDEMNIFICATION**

Lessee agrees to indemnify, defend and hold Landlord harmless from and against any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees and disbursements) arising or alleged to arise from:

(a) injury to person or to property occurring within or about the Premises, the Building or any other improvements on the Premises;

(b) Lessee's, its employees', agents', invitees' or subLessee's acts or omissions relating to the use or occupancy of the Premises, the Building, or any improvement on the Premises;

(c) a breach or default by Lessee in the performance of any of its obligations under this Lease; or

(d) Lessee's violation of any applicable law or statute relating to the Premises, the Building or any other improvement on the Premises or their use or occupation; provided, however, that Landlord shall not be indemnified for [and shall indemnify, defend, protect and hold Lessee harmless from] all damages, liabilities, judgments, actions, claims, attorneys' fees, consultants' fees, payments, costs and expenses to the extent arising from the grossly negligent, reckless or intentionally tortious acts or intentionally tortious omissions of Landlord, its employees or agents in breach of Landlord's obligations under this Lease.

Lessee hereby agrees that Landlord shall not be liable for injury to Lessee's business or any loss of income therefrom for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, agents, contractors, invitees, subLessees or any other person in or about the Premises, the Building or any other improvements on the Premises. [Except for negligent, reckless or intentionally tortious acts or omissions of Landlord or its employees or agents] Landlord shall not be liable for injury to the person of Lessee, Lessee's employees, agents, contractors, invitees or subLessees, whether such damage or injury is caused by or results

from fire, steam, electricity, gas, water or rain, landslide, floods, earthquake or the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, whether said damage or injury results from conditions arising from the Premises or from other sources or places. Landlord shall not be liable for any damages arising from any act or omission of any subLessee in the Building or any other third party.

## **ARTICLE 12 HAZARDOUS MATERIALS**

Lessee shall be responsible for compliance of its activities on the Property with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or other policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as such laws may now or at any time hereafter be in effect. Lessee shall hold Landlord harmless and indemnify Landlord from and assume all duties, responsibility, and liability at its sole cost and expense, for all duties, responsibilities, and liability (including without limitation for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation, or proceeding which is in any way related to:

- (i) Lessee's failure to comply with any environmental and industrial hygiene law, including any regulations, guidelines, standards, or other policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as such laws may now or at any time hereafter be in effect; and
- (ii) (ii) any environmental conditions arising out of or in any way related to Lessee's activities conducted on the Property.

## **ARTICLE 13 GENERAL PROVISIONS**

**13.1 Quiet Enjoyment.** If Lessee performs and fulfills all covenants, agreements, conditions, and provisions as set forth in this Lease, Lessee shall have, at all times during the term of this Lease, the peaceable and quiet enjoyment of the Premises and/or Improvements without any hindrance, interruption, ejection, or molestation by Landlord or by any other person or persons whatsoever.

**13.2 Force Majeure.** Neither Party shall be liable for failure to perform any obligation under this Lease if prevented by a cause beyond reasonable control and by use of due diligence cannot be overcome including, but not limited to, acts of God, natural disaster, civil commotion, terrorism, quarantine, fire, labor disputes, or any action or non-action of the United States government, including changes in existing legislation affecting the subject matter of this Lease.

**13.3 Non-Waiver.** No provision of this Lease may be waived unless agreed to by the Parties in writing. The failure of either Party at any time to enforce a provision of this Lease shall not constitute a waiver of the provision, or in any way affect the validity of this Lease or any part hereof, or the right of the Parties to thereafter enforce each and every provision.

**13.4 Integration.** This Lease constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both Parties.

**13.5 Severability.** If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

**13.6 Jurisdiction.** This Lease shall be construed in accordance with the laws of the State of Alaska. Any action arising from this Lease shall be brought in the Third Judicial District, State of Alaska at Anchorage.

**13.7 Amendment.**

- A. This Lease shall only be amended, modified, or revised by writing, executed by the authorized representatives of the Parties, with the same formality as the execution of this Lease.
- B. For the purposes of any amendment, modification, or revision to the terms and conditions of this Lease, the authorized representatives of the Parties are:

**If to LESSEE:**

**With copy to:**

**If to LANDLORD:**

- C. Any attempt to amend, modify or revise this Lease by either an unauthorized representative or unauthorized means shall be void.

Notice.

- A. Any notice under this Lease shall be in writing and shall be sent by Certified Mail, return receipt requested to the following addresses:

With a copy to:

and:

If to LESSEE:

With copy to:

- B. Any written notice, demand, request, or other communication, except payments or other monies required under this Lease, shall be deemed given at the time of deposit, by certified mail, in any U.S. Post Office or hand-delivered to the party's address set forth above.
- C. Notwithstanding any other provision in this section, any notices and/or communications affecting the rights, privileges, or responsibilities under this Lease shall be served upon the parties as provided by law.

**LESSEE**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DRAFT

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, the person authorized on behalf of the Municipality to execute this Lease as the free act and voluntary act of the Municipality for the uses and purposes therein stated.

WITNESS my hand and official seal the day and year in this certificate first above written.

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
 )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, the person authorized on behalf of \_\_\_\_\_ to execute this Lease as the free act and voluntary act of \_\_\_\_\_ for the uses and purposes therein stated.

WITNESS my hand and official seal the day and year in this certificate first above written.

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



**EXHIBIT A**

**Legal Description**

**Legal Description of Parent Parcel Owned by Landlord**

**The Property is legally described as follows:**

DRAFT

**EXHIBIT B**

**The description of the Premises being Leased by Lessee and  
the location of the Premises within the Property  
(together with access and utilities)  
are more particularly described and depicted on the Site Plan as follows:**

DRAFT

## EXHIBIT C GUARANTY

As an inducement to CITY AND BOROUGH OF JUNEAU ("Landlord"), to enter into that Lease dated [\_\_\_\_\_, 20\_\_] which covers certain premises legally described as:

(the "Lease") with \_\_\_\_\_ ("Lessee"), the undersigned ("Guarantor"), being financially interested in Lessee and benefiting from the Lease, hereby unconditionally and irrevocably guarantees to Landlord the prompt payment and faithful performance of all liabilities, obligations, duties, terms, conditions and covenants (including, but not limited to, the payment of rent) imposed upon, required of or to be performed by Lessee under the Lease (collectively, the "Obligations"). If Lessee fails to make such payment or render such performance when due, such payment or performance shall be deemed due concurrently from Guarantor, and Guarantor shall forthwith pay all rent and the other sums that may be due, perform all such Obligations and pay all damages that may result from the nonpayment or nonperformance thereof by Lessee. Guarantor's obligations hereunder are joint and several, and independent of the obligations of Lessee, and a separate action or actions may be brought and prosecuted against Guarantor regardless of whether an action is brought against Lessee and regardless of whether Lessee is joined in any such action or actions, and Guarantor waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof.

Notwithstanding anything contained herein to the contrary, the maximum principal liability of Guarantor under this Guaranty shall be an amount equal to one (1) year of rent under the Lease (including Impositions) plus any interest on such unpaid rent due under the Lease and all costs of enforcement incurred by Landlord (provided that Guarantor shall not be obligated for any enforcement costs incurred after Guarantor has paid all amounts due hereunder).

The terms of the Lease may be extended, altered, amended, renewed, affected, modified or changed by agreement between Landlord and Lessee, or by a course of conduct, all without the consent of or notice to Guarantor, and the Lease may be assigned or the Premises sublet and Guarantor shall forthwith pay all rent and the other sums that may be due, perform all such Obligations and pay all damages that may result from the nonpayment or nonperformance thereof by Lessee or such assignee or sublessee. No course of conduct in which Landlord or Lessee consults with or informs Guarantor of any of the foregoing shall require Landlord or Lessee to consult with or inform Guarantor in any other instance.

Following any breach or default by Lessee, Landlord shall have the right, in Landlord's sole discretion and without previous notice to or demand upon either Lessee or Guarantor, to bring an action against Guarantor, any one or more of them if there are more than one and/or Lessee for the enforcement of any rights which Landlord may have against Lessee pursuant to or under the terms of the Lease, at law or in equity. Landlord may maintain successive actions for other defaults. Its rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless the Obligations have been paid and fully performed.

Guarantor hereby expressly waives:

- (i) notice of default in payment of rent under the Lease or notice of default in the performance of any other Obligation of Lessee under the Lease,
- (ii) notice of acceptance of this Guaranty,
- (iii) demand for payment, presentation and protest,
- (iv) all right to assert or plead any statute of limitations as to or relating to this Guaranty and/or the Lease,
- (v) any right under applicable law to require Landlord to proceed against Lessee, any other guarantor or any other person or entity liable to Landlord, before proceeding against Guarantor, it being expressly agreed by Guarantor that its liability under this Guaranty shall be primary and that in any right of action which may accrue to Landlord under the Lease or this Guaranty, Landlord may proceed against Guarantor without having taken or commenced any action or obtained any judgment against Lessee or any other person or entity liable to Landlord,
- (vi) any right under applicable law to require Landlord to exhaust or apply to any default, any security or collateral held by Landlord, including, without limitation, any security deposit Landlord may hold under the Lease, before proceeding against Guarantor,
- (vii) any right under applicable law to require Landlord to proceed against Guarantor,
- (viii) any right of subrogation to Landlord's rights against Lessee and all rights of Guarantor against Lessee until the Obligations of Lessee under the Lease shall have been fully paid and fully performed, as well as any right to assert or claim that Guarantor is exonerated by any action taken by Landlord which impairs Guarantor's right to be so subrogated or Guarantor's right to proceed against Lessee for reimbursement, or both,
- (ix) any provisions under applicable law which limit a surety's obligation by reason of the principal's personal disability or the alteration of the Lease or any Obligation without the consent of Guarantor and
- (x) the benefit of any defenses or rights of setoff of Lessee that may arise by reason of:
  - i. the lack of legal capacity or authority of Lessee to execute, deliver and perform the Lease,
  - ii. the failure of Landlord to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of Lessee or any other or others,
  - iii. the unenforceability in whole or in part of the Lease or this Guaranty, or

- iv. any taking, modification or release of any collateral or guaranties for any obligation of Lessee to Landlord under the Lease or any failure to perfect any security interest in, or the taking of or failure to take any other action with respect to, any collateral securing said Obligations.

The liability of Guarantor hereunder shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of liability of Lessee or its estate or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Federal Bankruptcy Code, or any similar law or statute of the United States or any state thereof covering insolvency, bankruptcy, rehabilitation, liquidation or reorganization, it being the intention of Guarantor that Guarantor's liability hereunder shall be determined without regard to any rule of law or order which may relieve Lessee of any of the Obligations.

Guarantor agrees that in the event Lessee shall become insolvent, have an order for relief entered against it under the Federal Bankruptcy Code or file a petition for reorganization, arrangement or similar relief under any present or future provision of the Federal Bankruptcy Code or any similar law or statute of the United States or any state thereof; if such a petition filed by creditors of Lessee shall be approved by a Court; if Lessee shall seek a judicial readjustment of the rights of its creditors under any present or future federal or state law; or a receiver of all or part of its property and assets is appointed by any state or federal court, and in any such proceeding the Lease shall be terminated or rejected or the Obligations of Lessee thereunder shall be modified, Landlord shall have the option to either:

- (a) require Guarantor, and Guarantor hereby so agrees, to execute and deliver to Landlord a new Lease as Lessee for the balance of the term then remaining as provided in the Lease and upon the same terms and conditions as set forth therein; or

- (b) recover from Guarantor that which Landlord would be entitled to recover from Lessee under the Lease in the event of a termination of the Lease by Landlord because of a default by Lessee, and such shall be recoverable from Guarantor without regard to whether Landlord is entitled to recover the same from Lessee in any such proceeding.

Guarantor agrees that, in the event any Obligation is performed by Lessee, the liability of Guarantor under this Guaranty shall remain in full force and effect in the event that all or any part of such performance is avoided or recovered from Landlord as a preference or fraudulent transfer or otherwise, in any bankruptcy, insolvency, liquidation, reorganization or other proceeding involving Lessee.

Guarantor will file all claims against Lessee in any bankruptcy or other proceeding in which the filing of claims is required by law upon any indebtedness of Lessee to Guarantor and will assign to Landlord all rights of Guarantor thereunder. If Guarantor does not file any such claim, Landlord, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Landlord's discretion, to assign the claim and to cause proof of claim to be filed in the name of Landlord's nominee. In all such cases, whether in administration, in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the full amount thereof, and to the full extent necessary for the purpose, Guarantor hereby assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled.

Guarantor hereby subordinates all existing or future indebtedness of Lessee to Guarantor to the obligations owed to Landlord under the Lease and this Guaranty.

The term "Landlord" whenever used herein refers to and means the Landlord specifically named in the Lease and any assignee of Landlord, whether by outright assignment or by assignment for security, and any successor to the interest of Landlord or of any assignee of such Lease or any part thereof, whether by assignment or otherwise. So long as Landlord's interest in or to the Premises or the rents, issues and profits therefrom or in, to or under the Lease are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantor of Landlord's interest in the Premises or under the Lease shall affect the continuing obligation of Guarantor under this Guaranty, which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment; any purchaser at a sale by judicial foreclosure or under private power of sale; and the successors and assigns of any such mortgagee, beneficiary, trustee, assignee or purchaser.

The term "Lessee" whenever used herein refers to and means the Lessee specifically named in the Lease, any assignee of the Lease and any successor to the interest of Lessee.

If Landlord shall employ an attorney to present, enforce or defend any or all of Landlord's rights or remedies hereunder, Guarantor shall pay all attorneys' fees, costs and expenses and all other costs and expenses incurred by Landlord in connection therewith (including any fees related to any Lessee or Guarantor bankruptcy filing), whether or not an action is commenced by Landlord for such purpose.

Any amount due from Guarantor to Landlord which is not paid when due shall bear interest at the lesser of (a) the maximum rate allowed by law, or (b) the prime rate of interest as announced from time to time by \_\_\_\_\_ (or any comparable financial institution selected by Landlord), \_\_\_\_\_ percent (\_\_\_%) per annum, but the payment of such interest shall not excuse or cure the failure to make such payment when due.

This Guaranty shall be binding upon Guarantor and the successors, heirs, personal representatives, executors and administrators of Guarantor without the necessity of filing any claim or notice with the estate of Guarantor and shall inure to the benefit of Landlord and Landlord's successors and assigns.

Landlord may assign or transfer the Lease and this Guaranty, or both, without notice to Guarantor, and no such assignment or transfer shall extinguish or diminish the liability of Guarantor under this Guaranty. Guarantor shall reaffirm and or confirm in writing the continued validity of this Guaranty upon request.

Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

No provision of this Guaranty or right of Landlord hereunder can be waived, nor can Guarantor be released from Guarantor's obligations hereunder, except in writing duly executed by an authorized officer of Landlord. No such waiver shall be applicable except in the specific instance for which given.

Wherever in this Guaranty the context so requires, reference to either the singular or the plural shall be deemed to include the other.

This Guaranty shall be construed and interpreted in accordance with, and all disputes hereunder shall be governed by, the laws of the State of Alaska and venue in any action related to this Guaranty shall in the Municipality of Juneau and Guarantor waives any claim related to the inconvenience of such forum.

Each person that signs this Guaranty on behalf of an entity represents and warrants that he or she has the power and authority to sign on behalf of such entity. Guarantor acknowledges that Landlord will rely on the foregoing representation and that it is a material term of this Guaranty.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty on \_\_\_\_\_, 20\_\_.

**GUARANTOR:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DRAFT