

**SMALL BOAT HARBOR LEASE**  
**BETWEEN**  
**CITY OF SAINT PAUL**  
**AND**  
**CENTRAL BERING SEA FISHERMEN'S ASSOCIATION**  
**May 1, 2011**

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## SMALL BOAT HARBOR LEASE

THIS LEASE (herein "Lease") is by and between the City of Saint Paul Island, Alaska, an Alaska municipal corporation (herein called "Lessor"), whose mailing address is P.O. Box 901, Saint Paul Island, Alaska 99660 and Central Bering Sea Fishermen's Association, an Alaska non-profit corporation, (herein called "Tenant"), whose address is P.O. Box 288, Saint Paul Island, Alaska 99660.

### RECITALS

A. Lessor has obtained approval from the Alaska Department of Natural Resources of its application for conveyance of certain tidelands located within Village Cove Harbor, Saint Paul Island, Alaska pursuant to AS 38.05.825, expects to obtain such a conveyance, and currently has management authority to lease such tidelands pursuant to AS 38.05.825(c).

B. Lessor entered into an agreement in 1988 entitled Settlement Agreement with Tanadgusix Corporation, the Alaska Native village corporation for Saint Paul Island (herein "TDX"), resolving land claims on Saint Paul Island.

C. Lessor and TDX are parties to litigation in the United States District Court for the District of Alaska at Anchorage entitled *City of Saint Paul v. Donald Evans, et al.*, Case No. A97-0181 Civil concerning the 1988 Settlement Agreement and tidelands in Village Cove Harbor (herein "Litigation").

D. Lessor, the Aleut Community of Saint Paul Island, and TDX are parties to an Agreement for the Small Boat Harbor Project – Saint Paul Island, Alaska effective October 31, 2007 ("ASBHP") which was incorporated into a Partial Final Consent Judgment entered in the Litigation on June 20, 2008 which agreement amends the 1988 Settlement Agreement and resolves certain claims in the Litigation related to tidelands in Village Cove Harbor.

E. Lessor is the local sponsor of a project of the United States Army Corps of Engineers ("Corps") involving the construction of General Navigation Facilities ("GNF") and Local Service Facilities ("LSF") in Village Cove harbor as described in the Corps General Reevaluation Report, Saint Paul Small Boat Harbor dated February 2006 (herein "GRR").

F. Lessor is the Non-Federal Sponsor under a Project Cooperation Agreement Between the Department of the Army (the "Corps") and the City of Saint Paul for the Construction of the Saint Paul Small Boat Harbor dated September 18, 2006 ("PCA")

wherein Lessor is obligated among other things to construct, operate and maintain the LSF.

G. Tenant is willing and desires to (1) construct, operate and maintain the LSF in such configuration and design acceptable to Tenant and the Lessor including the construction and operation of concrete gangway base, floats, docks, float walkway ramps, and boat launch ramp, (2) acquire, operate and maintain a boat lift mechanism (crane or trailer), and (3) engage in vessel launch, recovery, moorage, supply, storage and repair all in Village Cove Harbor as described in the GRR.

H. Tenant has entered an agreement entitled "Long Form Prime Contract Between Owner and Contract between Central Bering Sea Fishermen's Association and Dutra Dredging Company" dated March 25, 2010 as may have been amended and as further modified by that certain letter agreement executed by Owner and Contractor on February 22, 2011" (herein "Dutra Contract") which provides for construction of some of the LSF and which is partially performed at this time.

I. The City Council of Lessor has approved this Lease by Resolution No. 11-03, a copy of which is attached hereto as Exhibit B.

J. The Board of Directors of Tenant has approved this Lease by resolution, a copy of which is attached hereto as Exhibit C.

K. The Corps has stated that it does not object to Lessor entering into this Lease in a letter dated May \_\_, 2011, a copy of which is attached hereto as Exhibit D.

## **ARTICLE 1 LEASED PREMISES AND TERM**

1.01 Leased Premises. Lessor, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Lessor, the vacant, unimproved land situated in the Aleutian Islands Recording District, Third Judicial District, State of Alaska, more particularly described as:

Parcel 1 (upland staging):

Lot 1A, Block 4 of proposed Harbor Subdivision

Parcel 2 (small boat basin):

Those tidelands to be conveyed to the City of Saint Paul by the State of Alaska which are seaward of Parcel 1 and not

within the federal maneuvering channel of proposed Harbor  
Subdivision

as illustrated on Exhibit A hereto together with all rights, easements, and privileges (herein called the "Leased Premises"). Lot 1A contains 0.85 acres, more or less, and the Small Boat Basin contains 2.94 acres, more or less.

1.02 Lessor's Improvements. Under the terms of the PCA, Lessor and the Corps have a) dredged a boat basin, b) placed armored and unarmored fill on Parcel 1, and c) constructed a slope for the boat launch ramp adjacent to Parcel 1 as described in the GRR. These improvements, shall be and remain property of Lessor or the Corps.

1.03. Lease Term. This Lease shall be and continue in full force and effect for a term of 55 years (the "Lease Term") commencing on May 1, 2011 unless earlier terminated as provided in this Lease.

1.04 Condition and Suitability of the Leased Premises. Lessor has made no representation and hereby disclaims any warranty concerning the condition of the Leased Premises, the suitability of the same for any particular purpose, or access to the Leased Premises. Tenant accepts the Leased Premises as is.

1.05 Additions to the Leased Premises. Lessor shall lease and Tenant shall take any or all of the land adjacent to the Leased Premises (hereinafter (the "Additional Premises"), the general location of which is shown on Exhibit A, with the actual boundaries to be established upon the recordation of the plat of survey described in condition precedent 2, below, upon the occurrence during the term of this Lease of the following conditions precedent:

1. The submittal by TDX and the approval by the Lessor in the exercise of its police power as an Alaska municipal corporation of a plat of proposed Harbor Subdivision and recordation of such plat;

2. The approval of a plat of survey and the issuance and recording of a conveyance to the Lessor by the Alaska Department of Natural Resources of and to any portion of the Option Premises which are tidelands; and

3. The conveyance to the Lessor by TDX of any portion of the Additional Premises which TDX owns.

Lessor and Tenant acknowledge and agree that Lessor may not ever acquire the Additional Premises, may acquire portions of the Additional Premises over time, or may acquire all of the Additional Premises at the same time. Lessor shall give written notice to Tenant not more than 60 days after Lessor's acquisition of title to any portion of the

Additional Premises. Lessor agrees to work cooperatively and in good faith with all parties as necessary for the resolution and satisfaction of the conditions set forth above in this Section 1.05. Lessor shall work expeditiously to approve the plat described above after its submission and to accept the conveyance of tidelands and other property described above when made. The occurrence or waiver of the occurrence of all of the conditions shall be evidenced by the recording of one or more amended memoranda of this Lease described in paragraph 11.02. Thereafter, such Additional Premises shall be part of the Leased Premises for all purposes under this Lease. Tenant may, entirely at its own risk of loss or liability, enter upon the Additional Premises prior to the occurrence of these conditions, but such entry shall not constitute a waiver by either party of any of the conditions set forth in this subparagraph. Tenant shall have the right to remove all improvements it constructs on the Additional Premises if Lessor fails to obtain title to the Additional Premises and a third party makes demand on Tenant to vacate the Additional Premises.

## **ARTICLE 2 RENTS**

2.01 Rents. Tenant shall pay \$100 per year to Lessor as rent due on January 1st of each year commencing with the first such date after the recording of the memorandum of lease described in paragraph 11.02. Rent shall remain unchanged after any additions to the Leased Premises.

2.02 Rent for Mortgagee in Possession or Purchaser at Foreclosure. In the event a Mortgagee enters into possession of the Leased Premises or they are sold by foreclosure proceedings, the rent shall be the fair market value rent as defined by paragraph 7.03, below.

## **ARTICLE 3 QUIET ENJOYMENT**

3.01 Basic Covenant. Except as provided in paragraph 3.02, below, upon timely payment by Tenant of all of such rents and other payments required to be paid by Tenant under this Lease, and upon full and faithful observance and performance by Tenant of all of its covenants contained in this Lease, and so long as such observance and performance continues, Tenant shall peaceably hold and enjoy the Leased Premises during the Lease Term without hindrance or interruption by Lessor or anyone lawfully claiming by, through or under Lessor.

3.02 Exceptions. Tenant's quiet enjoyment may be disturbed by one or more of the following, none of which shall give rise to liability of Lessor to Tenant:



A. The exercise by the United States of its rights under its navigational servitude, if any, over the Leased Premises;

B. The exercise by the State of Alaska of any rights reserved in its conveyance to Lessor or on the approved plat thereof of the lands of which the Leased Premises are a part, including, but not limited to, the right to extract any minerals, oil, or gas from the Leased Premises;

C. The exercise by the public or the State of Alaska of any rights under the public trust doctrine to use the Leased Premises for navigation, commerce, fishing, and other purposes; or

D. The exercise by TDX of any rights to the Leased Premises adjudicated to them in the Litigation.

E. The exercise of any rights of entry reserved by the Lessor in this Lease, including but not limited to, the rights of entry for construction and maintenance of Lessor's improvements as provided in paragraph 1.02, above and paragraph 9.01, below.

#### **ARTICLE 4 TENANT'S COVENANTS**

##### **4.01 Permitted Use and Duty to Construct, Operate and Maintain.**

A. Tenant shall use Parcel 2 of the Leased Premises only for vessel launch, recovery, and moorage, including, but not limited to, construction of the LSF or substitutions thereof. Tenant shall use Parcel 1 of the Leased Premises only for (i) vessel supply, storage and repair, (ii) LSF storage, including the docks, and (iii) vehicle (including but not limited to cranes, trailers for towing heavy equipment and boat trailers) parking related to previously described uses of Parcels 1 and 2.

B. Tenant shall complete construction of the LSF, or substitutions thereof, within five years of the commencement of the term of this Lease as provided in paragraph 1.03. Tenant shall not alter or permanently remove such improvements without the written approval of Lessor and (if required) the Corps, and all such activities must be performed in compliance with paragraph 4.02. Notwithstanding the foregoing, Lessor acknowledges the design of Tenant's improvements requires such improvements to be seasonally removed from Parcel 2 and stored on Parcel 1 or elsewhere until re-installation each year and consents to such removal.

C. Tenant shall operate and maintain the Leased Premises and the improvements described in subparagraph 4.01.B above in a manner compatible with the

authorized purposes of the facilities as described in the GRR and, without limiting paragraph 4.05, in compliance with the PCA, including, but not limited to, any federal civil rights and labor laws made applicable by the PCA to the Leased Premises or Tenant's activities thereon.

4.02 Construction or Removal of Improvements, Additions and Alterations.

A. "Significant Work," as used in this paragraph 4.02, means all work on the Leased Premises or any portion of adjacent lands within Lot 5, Block 3 as subsequently platted costing more than \$25,000.00 (as reasonably adjusted by changes in the real value of the dollar), which (1) involves the excavation, filling, or other alteration of the grade or drainage of the Leased Premises, or (2) involves the construction, demolition, or removal on or from the Leased Premises of any improvement (but excluding the seasonal removal Lessor has consented to in paragraph 4.01.B), any addition or alteration, or (3) if the fees or other charges therefore are not timely paid, will subject the Leased Premises or the interest of Lessor or Tenant therein to any lien or other encumbrance.

B. Tenant shall not begin any Significant Work without first obtaining the prior written approval of Lessor with respect to such work and to the preliminary plans for such work, if any, and to the final plans and specifications for such work. This approval is in addition to and not in lieu of any approvals of Lessor in its capacity as regulator of land uses. The preliminary plans and the final plans and specifications shall be prepared by a licensed architect or engineer and shall include, but not be limited to, a detailed plot plan, a landscaping plan, appropriate cross sections, elevations, and floor plans indicating building heights, bulk, density, functions, materials, and utility systems, and itemized estimate of the total cost of such work, and a timetable for completion. No approval by Lessor or by its architects or engineers of such preliminary plans or final plans and specifications shall be deemed a warranty or other representation by any of them that the improvements, additions, alterations, or other work contemplated thereby are legal, safe, or sound or constitute the highest and best use of the Leased Premises. All of such work by Tenant on the Leased Premises shall be supervised by a licensed architect or engineer. Tenant hereby acknowledges that except as provided in paragraph 11.02 with respect to removal of improvements upon written expiration of the Lease Term or earlier termination of this Lease, Lessor has not authorized or required and does not authorize or require Tenant to improve the Leased Premises in any manner that permits Lessor's interest in and title to the Leased Premises to become subject to the liens of Tenant's mechanics and materialmen.

C. Tenant represents that it has provided an accurate and complete copy of the Dutra Contract and any plans, drawings and specifications referenced therein to Lessor. Lessor hereby approves the performance of the Dutra Contract on the Leased Premises provided that any modifications or substitutions of the LSF are acceptable to the

Corps. Any changes, deletions, modifications or amendments to the Dutra Contract shall be governed by paragraph 4.02(B), above.

D. Tenant shall not make any improvements, including but not limited to placement or stabilization of fill or armor rock, which will reduce the depth or extent of or otherwise interfere with the operation of the small boat basin.

#### 4.03 Permits from Corps of Engineers and Others Including Lessor.

A. Tenant shall obtain all necessary permits from the Corps of Engineers and any other governmental entity with authority over the occupancy or construction of improvements on or adjacent to navigable waters and tidelands or wetlands including permits of Lessor acting in its capacity as regulator of land uses. Tenant shall give Lessor notice of its proposed application for any such permit thirty (30) days before submission of the application to the governmental entity and obtain Lessor's approval of the proposed work as provided in paragraph 4.02 of this Lease. If Lessor fails to respond to the notice of proposed application given by Tenant within the thirty (30) day period, it shall be deemed to have approved the proposed work.

B. Any application to the State of Alaska or other governmental entity for water rights appurtenant to the Leased Premises shall be made by Tenant on behalf and in the name of Lessor. Tenant shall give Lessor notice of its proposed application for such water rights thirty (3) days before submission of the application and obtain Lessor's approval. Tenant shall bear the costs associated with such application and shall have the rights accruing from such application, if granted for the entire Lease Term, without payment of additional compensation to Lessor.

4.04 Repair and Maintenance. Tenant shall, at Tenant's expense and without notice from Lessor at all times during the Lease Term, keep all improvements now or hereafter built on the Leased Premises, including but not limited to, exterior building walls, windows, doors, fences, signs, refuse disposal equipment and facilities, pavement, exterior lighting, and drainage facilities, in good order, condition, maintenance, operability, and repair and of a neat, clean, and pleasing appearance satisfactory to Lessor.

#### 4.05 Observance of Laws Including Regulations of Lessor and Environmental Provisions.

A. General Compliance. Tenant, at all times during the Lease Term, at its own expense, and with all due diligence, shall observe and comply with all laws, ordinances, rules, and regulations which are now in effect or may later be adopted by any governmental authority and which may be applicable to the Leased Premises or any improvement on it or any use of it. Without limiting the foregoing, Tenant shall comply

with regulations enacted by Lessor in the exercise of police powers granted to municipal corporations by Alaska statutes or by any other applicable law or regulation. Without limiting the foregoing, Tenant shall comply with regulations enacted by the Lessor and enforced, through public safety officers, a harbormaster or otherwise, concerning the use of and vessel operations within the harbor of which the Leased Premises is a part.

B. Environmental Laws. In furtherance and not in limitation of the foregoing paragraph, Tenant must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Leased Premises during the Lease Term or any holdover thereafter, Tenant shall immediately notify Lessor and shall, at Tenant's own expense, clean and restore the Leased Premises to the satisfaction of Lessor and any governmental body or court having jurisdiction of the matter.

C. Hazardous Materials on Leased Premises. Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Leased Premises by Tenant, its agents, employees, contractors or invitees except in a manner that complies with all laws regulating any such Hazardous Materials so brought upon or used or kept in or about the Leased Premises.

D. Environmental Indemnity. Tenant agrees to indemnify, hold harmless and defend Lessor against all liability, cost and expenses (including, without limitation, any fines, penalties, diminution in value of the Leased Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against Lessor to the extent that such liability, cost or expense results from Tenant's breach of this paragraph 4.05 or results from any discharge, leakage, spillage, emission or pollution on or discharge from the Leased Premises, without regard to whether such liability, cost or expense arises during or after the Lease Term; provided, however, that Tenant shall not be required to indemnify Lessor under this paragraph to the extent that the parties agree or a court of competent jurisdiction determines that such liability, costs or expense is caused by the negligence of Lessor. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

E. "Hazardous Material". For purposes of this Lease, the term "Hazardous Material" means any hazardous or toxic substances, material or waste, including but not limited to those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the U.S. Environmental Protection Agency as hazardous materials and wastes that are or become regulated under any applicable local, state or federal law.

4.06 Inspection and Repair by Lessor. Tenant shall repair, maintain and make good all conditions required under the provisions of this Lease to be repaired or maintained within (1) three (3) days from the date of written notice from Lessor with regard to removal of trash or debris, pavement or sidewalk sweeping, snow removal or cleaning, or parking lot lighting replacement and repair, and (2) thirty (30) days from the date of written notice from Lessor with regard to all other matters. If Tenant refuses or neglects to repair or maintain the Leased Premises as required under the terms of this Lease to the reasonable satisfaction of Lessor after written demand, then Lessor, without prejudice to any other right or remedy it has under this Lease or otherwise, may perform such maintenance work or make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise or other property or Tenant's business by reason thereof. Upon completion of any such repair or maintenance, and no later than thirty (30) days after presentation of a bill therefore, Tenant shall pay as additional rent Lessor's costs for making such repairs or performing such maintenance plus fifteen percent (15%) to cover its overhead.

4.07 Waste and Wrongful Use. Tenant shall not commit or suffer any strip or waste of the Leased Premises or any unlawful, unsafe, improper, or offensive use thereof or any public or private nuisance thereon.

4.08 Taxes, Assessments and Charges. Tenant shall pay, not less than ten (10) days before they become delinquent, all real property taxes, assessments, special assessments or other charges of every description for which the Leased Premises, or any improvement thereon or any use thereof, are now or during the Lease Term may be assessed or become liable, whether made by governmental authority or by any public utility or community service company, and whether assessed to or payable by Lessor or Tenant. Nothing contained in this Lease shall prevent Tenant from contesting in good faith the validity or the amount of such real property taxes or assessments by appropriate proceedings commenced before such real property taxes or assessments become delinquent.

4.09 Liens. Tenant shall not commit or suffer any act or neglect whereby the Leased Premises or the interest of Lessor or Tenant therein at any time during the Lease Term may become subject to any attachment, execution, lien, charge, or other encumbrance, other than a statutory lien for nondelinquent real property taxes or assessments or a mortgage approved by Lessor, and shall indemnify and hold Lessor harmless against all losses, costs, and expenses, including reasonable attorneys' fees, paid or incurred by Lessor in connection therewith. Tenant shall not incur any cost or expense with respect to the Leased Premises which, if not timely paid, may subject the Leased Premises or the interest of Lessor or Tenant therein to any lien or other encumbrance, without first complying with the requirements of paragraph 7.02 of this Lease.

#### 4.10 Indemnification.

A. Tenant shall indemnify and hold Lessor harmless from and against any and all claims arising from (1) Tenant's use of the Leased Premises, or from the conduct of Tenant's business, or from any activity, work or things done, permitted or suffered by Tenant in or about the Leased Premises or elsewhere; (2) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (3) any negligence of Tenant, or any of Tenant's agents, contractors, customers, employees, or any person claiming by, through or under Tenant; and (4) any accident on or in connection with the Leased Premises, or any fire thereon, or any nuisance made or suffered thereon. Tenant shall further indemnify and hold Lessor harmless from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any proceeding brought against Lessor by reason of any such claim. Tenant, upon notice from Lessor, shall defend any of the above-described claims at Tenant's expense by counsel satisfactory to Lessor. Tenant, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Leased Premises, arising from any cause and Tenant hereby waives all claims in respect thereof against Lessor. The provisions of this paragraph 4.10.A shall not apply to the extent that the parties agree or a court of competent jurisdiction determines that such claims or liabilities arise out of the negligent or otherwise tortious acts or omissions of Lessor.

B. Tenant acknowledges that, before entering this Lease, it has fully inspected or been provided with an opportunity to fully inspect the Leased Premises and all documents in the possession of Lessor relating to the condition of the Leased Premises, and to test or examine all conditions of or on the Leased Premises. Tenant further acknowledges that, at the time this Lease is entered into and on the basis of the foregoing inspection or opportunity to inspect, Tenant is as knowledgeable about the physical condition of the Leased Premises as Lessor and, on that basis, assumes all risks relating to the condition of the Leased Premises, including but not limited to Latent defects that may be unknown both to Tenant and Lessor at the time this Lease is entered into.

4.11 Costs and Expenses of Lessor. Tenant shall forthwith pay to Lessor all costs and expenses, including reasonable attorneys' fees, which are (1) paid or incurred by Lessor but are required to be paid by Tenant under any provision of this Lease; (2) paid or incurred by Lessor in enforcing any covenant of Tenant contained in this Lease, in protecting itself against or remedying any breach thereof, in recovering possession of the Leased Premises or any part thereof, or in collecting or causing to be paid any delinquent rents, real property taxes, assessments or rates; (3) incurred by Lessor in reviewing any matter for which Lessor's approval is sought and in processing such approval; or (4) incurred by Lessor in connection with any action in any respect related to this Lease, the Leased Premises or Tenant's actions or omissions on the Leased Premises,

other than a condemnation action filed by or against Tenant, to and in which Lessor is made a party but not adjudicated to be at fault. The term "costs and expenses" as used in this Lease shall include but not be limited to all of Lessor's out-of-pocket expenditures attributable to the matter involved. Except as otherwise expressly provided herein, all costs and expenses of Lessor shall be payable by Tenant to Lessor forthwith after mailing or personal delivery of statements therefore to Tenant and shall bear interest from the date which is thirty (30) days after the date of such mailing or personal delivery at the rate of ten and one-half percent (10 ½%) per annum. Such obligations and interest shall constitute additional rents.

4.12 Holdover. If Tenant remains in possession of the Leased Premises after expiration of the Lease Term without the execution of a new lease or of an extension of this Lease, and in such a manner as to create a valid holdover tenancy, and if no notice of termination has been delivered by Lessor to Tenant, Tenant shall be deemed to occupy the Leased Premises only as a tenant at will from month-to-month, upon and subject to all of the provisions of this Lease which may be applicable to a month-to-month tenancy, including but not limited to, the provisions of paragraph 11.02 of this Lease. Rent during any holdover over period shall be the fair market rent established in accordance with paragraph 7.03.

4.13 Responsibility Upon Damage to or Destruction of Property. In the event a building or improvement situated on the Leased Premises is destroyed or damaged by fire or other casualty, Tenant shall comply in full with one of the following conditions within one year of such destruction or damage (or within such other time period as is mutually agreed to in writing):

A. Tenant may repair, rebuild, or otherwise reinstate the damaged improvement(s) in a good and substantial manner and in substantially the same form as it previously existed. In such event, the Lease shall continue in full force and effect without abatement of rental.

B. Tenant may repair, rebuild or otherwise reinstate the damaged improvement(s) in a manner and style different from the previously existing improvement, so long as the plans therefore are previously approved by Lessor if required under paragraph 4.02 of this Lease. In such event, the Lease shall continue in full force and effect without abatement of rental.

C. Tenant may remove the damaged improvement(s) in which event Tenant must also restore the Leased Premises to the condition specified in Article 10 of this Lease. In such event, the Lease shall continue in full force and effect without abatement of rental until such removal is complete.

D. Tenant may elect to terminate the Lease by performing each of the following:

1. Giving written notice to Lessor of its intention to terminate,
2. Removing the damaged improvement(s) and restoring the Leased Premises to the condition specified in Article 10, and
3. Tendering to Lessor the total amount of rents to come due during the remaining term of the Lease, applying the rental rate then in effect to the remainder of the Lease Term, and discounting the total at the Federal discount rate in effect at the date of notice.

## **ARTICLE 5 INSURANCE**

5.01 Liability Insurance. During the entire Lease Term, and during any holdover thereafter, whether or not authorized by Lessor, Tenant shall keep in full force and effect a policy or policies of general liability insurance which includes bodily injury, property damage, and personal injury acceptable to Lessor with respect to the Leased Premises and the business operated by Tenant in which the limits for each shall be not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence or such higher limits as Lessor may specify from time to time consistent with prudent business practice then prevailing in the State of Alaska; provided, however, that no such limit shall in any way limit Tenant's liability or be construed as a representation of sufficiency to fully protect Tenant or Lessor. The policy or policies purchased pursuant to this paragraph shall name both Lessor and Tenant as insureds, with respect to the Leased Premises and the business operated by Tenant on the Leased Premises.

5.02 Property Insurance. During the Lease Term and any holdover thereafter, whether or not authorized by Lessor, Tenant shall keep all improvements now or hereafter erected or placed on the Leased Premises insured against loss or damage on an all risk basis in an amount equal to the full replacement cost of all such improvements and shall pay all premiums thereon at the time and place the same are payable. Every policy shall be made payable in case of loss or damage to the Tenant and Lessor jointly and shall be distributed according to their interests in the improvements unless otherwise specified by this paragraph. All compensation, indemnity or other monies paid on account of any loss or damage, other than rental value insurance, shall with all convenient speed be paid out in rebuilding, repairing or otherwise reinstating the same improvements or in constructing different improvements unless Tenant exercises its option not to rebuild under paragraph 4.13 of this Lease.



5.03 Policy Provisions. Each policy of comprehensive general liability or property insurance described in paragraphs 5.01 and 5.02 of this Lease shall:

A. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim, any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for Lessor, Tenant, or any person claiming by, through, or under any of them;

B. Provide that such policy requires thirty (30) days notice to Lessor of any proposed cancellation, expiration, or change in material terms thereof and that such policy may not be cancelled, whether or not requested by Tenant, unless the insurer first gives not less than thirty (30) days prior written notice thereof to Lessor; and

C. Contain a waiver by the insurer of any right of subrogation to proceed against Lessor or against any person claiming by, through, or under Lessor.

5.04 Proof of Insurance. Tenant shall deliver to Lessor certificates of insurance on or before the effective date of this Lease or at such other date as agreed to in writing by Lessor and annually thereafter upon renewal of the insurance.

## **ARTICLE 6 EMINENT DOMAIN**

6.01 Effect of Eminent Domain on Lease. The terms “taking” and “to take” (in any of its forms) as used in this paragraph refer to any competent authority’s acquisition by the power of eminent domain, including inverse condemnation, of all or any part of the Leased Premises or an interest therein, at any time during the Lease Term. In the event of a taking of all or materially all the Leased Premises, this Lease shall terminate on the earlier of vesting of title in, or the taking of possession by, the condemner. If less than materially all of the Leased Premises are taken, this Lease shall continue in effect except as to the portion so taken or condemned, but the fair market value rent to be paid by Tenant shall thereafter be reduced by the same ratio as the value of the portion of the Leased Premises so taken bears to the value of the Leased Premises before taking. If no portion of the net useable area of the Leased Premises is taken, or if the portion thereof so taken is subterranean or aerial and does not interfere with the use of the surface, then Tenant shall not be entitled to any adjustment of rent hereunder.

### 6.02 Disposition of Proceeds.

A. Total Taking. In the event of a total taking, the rights of Lessor and Tenant to share in the net proceeds of any and all awards for land, building, improvements and damages shall be in the following order of priority:

1. To Lessor, a sum equal to the fair market value of the fee simple interest in the Leased Premises unencumbered by this Lease or any sublease, and including Lessor's Improvements and excluding Tenant's Improvements.

2. To Tenant, a sum representing the fair market value of Tenant's Improvements. In no event shall Tenant be entitled to any claim for its leasehold interest, and any compensation therefore is hereby assigned to Lessor.

3. To Lessor, the balance of the award, excluding interest.

Interest shall be allocated between the parties in proportion to their respective shares of the total award provided above. If the value of such respective interests of Lessor and Tenant have been separately determined in such condemnation proceeding, the values so determined shall be conclusive upon Lessor and Tenant. If such values have not been so determined, they may be fixed by agreement between Lessor and Tenant, or if the parties cannot agree, then by arbitration under Article 8 of this Lease.

B. Partial Taking. In the event of a partial taking, rental shall be abated as provided in subparagraph 6.01, and the net proceeds of the award shall be divided between Lessor and Tenant as follows:

1. To Lessor, a sum representing the fair market value of the fee simple interest of the part or parts of the Leased Premises so taken, unencumbered by this Lease, including Lessor's Improvements and excluding Tenant's Improvements; plus an amount representing consequential damages to the part or parts of the land remaining after such taking, considered as if vacant and unimproved.

2. To Tenant, the balance of the award, which shall be applied by Tenant first to restoration of Tenant's Improvements as nearly as reasonably possible to their condition before such taking.

6.03 Lessor's Power of Eminent Domain. Lessor possesses the power of eminent domain and nothing in this Lease shall limit the exercise by Lessor of that power subject to Lessor's obligation to pay just compensation as required by law.

## **ARTICLE 7**

### **ASSIGNMENTS, MORTGAGES, SUBLEASES AND SUBDIVISION**

7.01 No Right to Assign. Tenant shall not assign or otherwise transfer Tenant's interest in this Lease.

7.02 Mortgage of Leasehold Interest. Tenant shall have the right at any time, and from time to time, to subject the leasehold estate including any or all of Tenant's

Improvements situated on the Leased Premises to one or more mortgages or assignments as security for a loan or loans or other obligation of Tenant (each of which instruments is herein called a "Leasehold Mortgage"), subject to the limitations of this paragraph and paragraph 7.03, below.

A. Subordinate to Lease. The Leasehold Mortgage and all rights acquired under it shall be subject to subordinate to each and all covenants, conditions, and restrictions stated in this Lease, and to all rights and interests of Lessor except as otherwise provided in this Lease.

B. Notice to Lessor. Tenant shall give Lessor prior notice of any such Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Lessor's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified Mortgagee as that term is used in this Lease.

C. Notice of Default and Opportunity to Cure. Upon any default on any of the terms of the Lease by Tenant, Lessor, in addition to notifying Tenant pursuant to paragraph 8.02 below, shall also notify each Qualified Mortgagee of such default. Upon receipt of a written notice of default, any such Qualified Mortgagee shall have the length of time set forth in paragraph 8.02 of this Lease to cure the default.

D. Possession by Mortgagee. A Qualified Mortgagee may take possession of the Leased Premises and vest in the interest of Tenant in the Lease upon the performance of the following conditions:

1. The payment to Lessor of any and all sums due to Lessor under the Lease, including but not limited to accrued unpaid rent.

2. The sending of a written notice to Lessor and Tenant of Qualified Mortgagee's intent to take possession of the Leased Premises and assume the Lease.

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

E. No Liability of Mortgagee Without Possession. A qualified Mortgagee shall have no liability or obligation under the Lease unless and until it sends to Lessor the written notice described in paragraph 7.02.D.2 above. Nothing in this Lease or in the taking of possession of the Leased Premises and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Tenant of any duty or liability to Lessor under the Lease.

F. Subsequent Assignee. In the event the Qualified Mortgagee forecloses the Leasehold Mortgage, any subsequent assignee or transferee of the leasehold estate proposed by the Qualified Mortgagee must be approved by Lessor, whose discretion in the matter shall be complete.

7.03 Determination of Fair Market Value Rent. A mortgagee in possession or an assignee or transferee after foreclosure (either herein referred to as "Lessee") shall pay the fair market value rent for the Leased Premises determined and adjusted every five years in accordance with this paragraph.

A. Appraisal of Fair Market Value of Fee Simple Interest. Lessor shall select an appraiser from a list of qualified appraisers compiled by Lessor and kept available for public inspection at Lessor's office. The appraiser shall determine, as of the date within one hundred eighty (180) days before or after the beginning of the applicable rent period, the fair market value of the fee simple interest in the Leased Premises, unencumbered by this Lease, and including improvements owned by Lessor (identified in paragraph 1.02 of this Lease), and excluding improvements owned by Lessee (identified in paragraph 4.02 of this Lease). A copy of the appraisal report shall be provided by Lessor to Lessee at Lessee's request.

B. Fair Market Value Rent. The fair market value rent shall be the product derived from multiplying the fair market value of the Leased Premises established in accordance with subparagraph A by 8%.

C. Appeal and Arbitration of Rent Increases. In the event Lessee disagrees with an appraisal of fee simple value made by Lessor pursuant to subparagraph 7.03.A of this Lease, Lessee may appeal the value determined in such appraisal by notifying Lessor in writing of its demand for appeal within ten (10) days of receiving Lessor's notice of change in rent. Lessee's failure to give said notice will constitute a waiver of Lessee's right to appeal a change in rent based on such appraisal, and Lessee shall be bound by Lessor's determination of the fair market value rent. In the event Lessee so appeals a change in rent, Lessee shall, at its own expense, obtain an appraisal of the fair market value of the fee simple interest in the Leased Premises, unencumbered by this Lease, and including Lessor's Improvements and excluding Lessee's Improvements, and provide the same to Lessor no later than sixty (60) days after receiving Lessor's notice of change in rent. Said appraisal shall be performed in accordance with Lessor's Standard Appraisal Instructions in effect at the time of appraisal. If within fifteen (15) days after Lessor receives Lessee's appraisal, the parties are unable to agree as to the fair market value of the fee simple interest, Lessee may, at its option, refer the matter to arbitration in accordance with the procedures contained in subparagraph E of this Lease by notifying Lessor in writing of its demand for arbitration within ten (10) days after expiration of the 15-day period provided above. Otherwise,

Lessee shall have no right to refer a rent dispute to arbitration and shall be bound by Lessor's determination of rent under this Lease. Notwithstanding the foregoing, Lessee shall pay all rent at the new rate provided in Lessor's notice of change in rent until the issue of fair market value of the Leased Premises is resolved.

D. Retroactive Rent. Until a change in rent is determined, Lessee shall pay the same Basic Rent as in the previous year. When the adjusted Basic Rent has been determined, and Lessee notified, such Basic Rent as so determined shall be due and payable to Lessor retroactive to the commencement of the lease year for which such rent adjustment is made and any deficiency resulting from such rent adjustment shall be payable within thirty (30) days after the giving of such notice to Lessee. However, at no time will the Lessee be responsible for more than ninety (90) days of unbilled retroactive rent at the increased level.

E. Appointment of Arbitrators and Conduct of Arbitration. If Lessor and Tenant fail to agree upon (1) the appraisal of a fee simple interest under this paragraph, the matter of disagreement, upon the election of either of them, shall be submitted to and determined by a single arbitrator, mutually appointed by them, whose decision and award shall be final, conclusive, and binding upon both of them. If Lessor and Tenant fail to mutually appoint a single arbitrator, the matter shall be submitted to and determined by three (3) arbitrators, in which event either Lessor or Tenant may give to the other written notice of election to have the matter of disagreement so arbitrated and shall appoint therein one of the arbitrators. The other party shall, within twenty (20) days after the receipt of such written notice, appoint a second arbitrator. If he fails to do so, the party who has already appointed an arbitrator may have the second arbitrator appointed by any judge of the Superior Court of Alaska resident in the district where the Leased Premises are situated. The two arbitrators so appointed in either manner shall appoint the third arbitrator, and if the first two arbitrators fail to appoint a third arbitrator within twenty (20) days after the appointment of the second arbitrator, either Lessor or Tenant may have the third arbitrator appointed by any judge of the Superior Court of Alaska resident in the district where the Leased Premises are situated. Each of the arbitrators appointed under this paragraph shall possess the professional qualifications provided in subparagraph F hereof. The three arbitrators so appointed shall thereupon proceed to arbitrate the matter of disagreement, upon such rules of procedure as they may adopt, and shall render a written decision containing their findings and conclusions. The Lessor and Tenant shall share equally the costs associated with the arbitration.

F. Special Qualifications of Arbitrators. Each arbitrator appointed pursuant to subparagraph E shall be a person who (1) has not less than five (5) years appraisal experience in the State of Alaska prior to his appointment; (2) has appraised similar classes of property throughout the State of Alaska; and (3) is a member (MAI [but not RM]) of the American Institute of Real Estate Appraisers, a Senior Real Estate Analyst (SREA), or a Senior Real Property Appraiser (SRPA) of the Society of Real

Estate Appraisers. It is understood and agreed that if any of such institutes or societies is merged or otherwise consolidated with another duly qualified appraisal or counseling organization, and thereby loses its name or designation, the arbitrator may be appointed from among the members of such other organization.

G. Judicial Review of Arbitration Decision. The decision of the arbitrator or arbitrators shall be final and unreviewable by any court, except to the extent authorized by Alaska Statutes 09.43.110, .120 and .130. If the court determines that the arbitration decision should be set aside on one of the grounds enumerated in such statutes, it may proceed to decide the merits of the matter at the instance of either party to the Lease and neither party shall be required to submit to re-arbitration of the matter.

7.04 Right to Sublet. Tenant shall have the right during the Lease Term to sublet all or any part or parts of the Leased Premises or the improvements, or both, and to assign, encumber, extend, or renew any sublease providing the following provisions are complied with:

A. Each sublease shall contain a provision satisfactory to Lessor requiring the subtenant to attorn to Lessor if Tenant defaults under this Lease and if the subtenant is notified of Tenant's default and is instructed to make subtenant's rental payments to Lessor.

B. Prior to execution of each sublease, Tenant shall notify Lessor of the name and mailing addresses of the proposed subtenant and provide Lessor with photocopies of the proposed sublease. Tenant shall not execute any such sublease until it has received the written consent of Lessor, which shall not be unreasonably withheld. Promptly after execution, Tenant shall provide Lessor with a photocopy of the executed sublease.

C. The term of any single sublease, including any rights of renewal or extension, shall not exceed 10 years.

D. A Qualified Subtenant is a subtenant in possession under an existing sublease as to which the foregoing conditions have been met and as to which Lessor has given its written consent.

E. No sublease shall relieve Tenant of any of its covenants or obligations under this Lease, and any provisions of a sublease purporting to do so shall be deemed a nullity as between Lessor and Tenant notwithstanding Lessor's failure to object to the sublease.

F. Moorage and other agreements pursuant to which Tenant grants a third party the right to moor a vessel, park a vessel trailer or engage in similar activities

on a portion of the Leased Premises do not constitute subleases subject to the requirements of this Section 7.04.

7.05 Subdivision of Leased Premises. Tenant shall not subdivide the Leased Premises or any part thereof.

## **ARTICLE 8 DEFAULT AND DEFEASANCE**

8.01 Events of Default. Each of the following events shall be a default by Tenant and breach of this Lease:

A. Failure to Perform Lease Covenants. Tenant's abandonment or surrender of the Leased Premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or any other sum required by this Lease to be paid by Tenant, or to perform as required by any other covenant or condition of this Lease.

B. Appointment of Receiver. The appointment of a receiver or trustee to take possession of the Leased Premises or improvements or of the Tenant's interest in the leasehold estate or of Tenant's operations on the Leased Premises for any reason.

C. Insolvency, Bankruptcy. An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any provision of the U.S. Bankruptcy Code.

### 8.02 Notice and Right to Cure.

A. Notices. As a precondition to pursuing any remedy for an alleged default by Tenant, Lessor shall, before pursuing any remedy, give notice of default to Tenant. Each notice of default shall state the alleged event of default and the intended remedy, but the identification of the intended remedy shall not limit Lessor's right to seek or use any other available remedy not identified in the notice.

B. Method of Giving Notice. Lessor shall give notice of default in accordance with subparagraph A by personal delivery to each party required to receive it; or by (1) mailing by certified mail (return receipt requested) a copy of the notice to each party required to receive it at the last address provided by that party to Lessor and (2) mailing by first class mail a copy of the same notice to each such party at the same address. To be effective, personal delivery shall be documented by written acknowledgment of receipt by Tenant or by an affidavit of the personal delivery by Lessor's representative.

C. Tenant's Right to Cure Defaults.

1. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Tenant as provided in Article 2 and 4 or elsewhere in this Lease directed to be paid as rent, Tenant shall have thirty (30) days after the notice is given to cure the default.

2. If, in the reasonable opinion of Lessor, the alleged default substantially endangers either the person or property of Lessor or a third party, or human health or environment, Tenant shall commence curing the default immediately upon notice and complete the cure within such reasonable time period as is imposed by Lessor or any governmental body having jurisdiction in the matter.

3. For the cure of any other default, Tenant shall promptly and diligently after the notice commence curing the default and shall have sixty (60) days after notice is given to complete the cure.

8.03 Nonwaiver. Acceptance by Lessor or its agents of any rents, whether basic or additional, shall not be deemed to be a waiver by it of any breach by Tenant of any of its covenants contained in this Lease or of the right of Lessor to reenter the Leased Premises or to declare a forfeiture for any such breach. Waiver by Lessor of any breach by Tenant shall not operate to extinguish the covenant the breach of which is so waived, nor be deemed to be a waiver of the right of Lessor to declare a forfeiture for any other breach thereof or of any other covenant.

8.04 Right of Lessor to Protect Against Default. If Tenant fails to observe or perform any of its covenants contained herein, Lessor, at any time thereafter and without notice, shall have the right but not the obligation to observe or perform such covenant for the account and at the expense of Tenant, and shall not be liable to Tenant or anyone claiming by, through, or under it for any loss or damage by reason thereof to the occupancy, business, or property of any of them. All costs and expenses paid or incurred by Lessor in observing or performing such covenant shall constitute additional rents, which Tenant shall forthwith pay to Lessor upon statements therefore.

8.05 Lessor's Remedies. If any default by Tenant shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default under paragraph 8.02 of this Lease, Lessor has the following remedies in addition to all other rights and remedies provided by law or equity or other provisions of this Lease, to which Lessor may resort cumulatively or in the alternative. The election of one remedy for any one default shall not foreclose an election of any other remedy for another default or for the same default at a later time.

A. Termination. Lessor may, at Lessor's election, terminate this Lease by giving Tenant notice of termination in accordance with the procedures specified in



paragraph 8.02 of this Lease. On the giving of the notice, all Tenant's rights in the Leased Premises and in all improvements thereon shall terminate, unless Lessor expressly and in writing requires Tenant to remove specified improvements (in which event Tenant's rights shall continue in the improvements required to be removed). Promptly after notice of termination, Tenant shall surrender and vacate the Leased Premises and all improvements not required to be removed in a broom-clean condition, and Lessor may reenter and take possession of the Leased Premises and all remaining improvements and eject all parties in possession, or eject some and not others, or eject none. Termination under this paragraph shall not relieve Tenant, or any of its guarantors, insurers, or sureties, from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Tenant.

B. Re-entry Without Termination. Lessor may, at Lessor's election, reenter the Leased Premises, and, without terminating this Lease, at any time and from time to time relet the Leased Premises and improvements, or any part or parts of them, for the account and in the name of Tenant or otherwise. Lessor may, at Lessor's election, eject all persons or eject some and not others or eject none. Any reletting may be for the remainder of the Lease Term or for a longer or shorter term. Lessor may execute any leases made under this provision either in Lessor's name or in Tenant's name, and shall be entitled to all rents from the use, operation, or occupancy of the Leased Premises or improvements or both. Lessor shall apply all rents from reletting as provided in paragraph 8.07 of this Lease. Tenant shall nevertheless pay to Lessor on the due dates specified in this Lease, the equivalent of all sums required of Tenant under this Lease, plus Lessor's expenses, less the proceeds of any reletting. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease unless Lessor gives Tenant notice of termination.

C. Recovery of Rent. Lessor shall be entitled, at Lessor's election, to each installment of rent or to any combination of installments for any period before termination, plus interest at the rate of ten and one-half percent (10 ½%) per annum from the due date of each installment. If Lessor elects to relet the Leased Premises without terminating this Lease, the proceeds of such reletting shall be applied, when received, as provided in paragraph 8.07 of this Lease.

D. Tenant's Personal Property. Lessor may, at Lessor's election use Tenant's personal property and trade fixtures on the Leased Premises, or any such property and fixtures, without compensation and without liability for use or damage, or store them for the account and at the cost of Tenant.

E. Damages. Lessor shall also be entitled, at Lessor's election, to damages in the following sums: (1) all amounts that would have fallen due as rent between the time of termination and the time the property is relet; provided that Lessor shall exert reasonable efforts to relet the property at prevailing market value; and (2) the

amount, if any, by which the Basic Rents under this Lease exceed the rents under any subsequent lease upon letting calculated over the Lease Term; and (3) all administrative, marketing, brokerage, repair, cleaning and similar costs incurred by Lessor and necessary or useful to reletting the Leased Premises or placing it in good and marketable condition.

8.06 Assignment of Subrents. Tenant assigns to Lessor all subrents and other sums falling due from subtenants, licensees and concessionaires (referred to as "Subtenants" in this paragraph 8.06) during any period in which Lessor has the right under this Lease, whether exercised or not, to reenter the Leased Premises for Tenant's default, and Tenant shall not have any right to such sums during that period. Lessor may at Lessor's election reenter the Leased Premises and improvements with or without process of law, without terminating this Lease, and either, or both, collect these sums or bring action for the recovery of the sums directly from Subtenants. Lessor shall apply all such collected subrents as provided in paragraph 8.07. Tenant shall nevertheless pay to Lessor on the due dates specified in this Lease the equivalent of the all sums required of Tenant under this Lease, plus Lessor's expenses, less the avails of the sums assigned and actually collected under this paragraph 8.06. Lessor may proceed to collect either the assigned sums or Tenant's balances, or both, or any installment or installments of them, either before or after expiration of the Lease Term, but the period of limitations shall not begin to run on Tenant's payments until the due date of the final installment to which Lessor is entitled under this Lease, nor shall it begin to run on the payments of the sums assigned under this paragraph 8.06 until the due date of the final installment due from the respective Subtenants.

8.07 Application of Sums Collected by Lessor. Lessor shall apply all subrents and proceeds of reletting as follows: first, to the payment of reasonable expenses (including attorneys' fees and brokers' commissions or both) paid or incurred by or on behalf of Lessor in recovering possession, placing the Leased Premises and improvements in good condition, and preparing or altering the Leased Premises or improvements for reletting; second, to the reasonable expense of securing new Tenants; third, to the fulfillment of Tenant's covenants to the end of the Lease Term; and fourth, to Tenant's uses and purposes.

## **ARTICLE 9 GENERAL PROVISIONS**

9.01 Lessor's Right to Entry, Inspection and Repair. Lessor may enter and inspect the Leased Premises at any time during regular business hours, with or without the presence of Tenant or its authorized representative, after giving twenty-four (24) hours' advance notice to Tenant of such inspection. In the event of any emergency, Lessor may enter and inspect the Leased Premises on reasonable notice (including no notice to Tenant if the circumstances warrant) and make such repairs or institute such measures, on the account and at the expense of Tenant, as may be necessary to avert or

terminate the emergency. An emergency is any action, event, or condition, either extant or imminent, that threatens significant damage to property or injury to persons on or near the Leased Premises, and includes but is not limited to flood, fire, explosion, avalanche, earthquake, uncontrolled or dangerous discharge or release of water or other fluids, unauthorized or illegal placement of hazardous or toxic materials on the Leased Premises, and shifting, settling or loss of earth or support on the Leased Premises. Without limiting the foregoing, Lessor may enter on the Leased Premises to dredge and otherwise maintain the boat basin and to reestablish and stabilize slopes for same.

9.02 Notices. Any notice other than notice of default under subparagraph 8.02.A and B of this Lease, or demand to Lessor or Tenant provided for in this Lease may be given sufficiently for all purposes in writing, mailed by registered or certified mail, return receipt requested, and addressed to such party or its agent at its mailing address specified herein or at the last such address specified by such party in writing to the other, or may be delivered personally within the State of Alaska to such party or its agent. Except as otherwise expressly provided herein, such notice shall be conclusively deemed to have been given on the date of such mailing or personal delivery. If at any time during the Lease Term Tenant is more than one person or entity, any notice given by Lessor to any of them shall constitute notice to all of them, and any agreement or approval with or in favor of Lessor made or given by any of them shall bind all of them.

9.03 Covenants and Conditions. Every provision in this Lease which imposes an obligation upon Tenant or invests an option, power, or right in Lessor shall be deemed to be a covenant of Tenant in favor of Lessor, and the time of observance and performance by Tenant of each such covenant shall be of the essence. Full and faithful observance and performance by Tenant of each of its covenants contained in this Lease shall be a condition hereof.

9.04 Integration and Amendments. Except as otherwise expressly provided in this Lease and except for the provisions of the Memorandum of Lease, this Lease is a complete integration of every agreement and representation made by or on behalf of Lessor and Tenant with respect to the Leased Premises, and no implied covenant or prior oral or written agreement shall be held to vary the provisions of this Lease, any law or custom to the contrary notwithstanding. In the event of any conflict between this Lease and the Memorandum of Lease, the provisions of the Memorandum of Lease shall control. No amendment or other modification of the provisions of this Lease shall be effective unless incorporated in a written instrument duly executed and acknowledged by Lessor and Tenant.

9.05 Approvals of Lessor. Except as otherwise expressly provided in this Lease and except for amendments or modifications of this Lease, Lessor shall neither unreasonably, capriciously, nor arbitrarily withhold any approval required to be obtained by Tenant hereunder, nor require any consideration therefore as a condition thereof other

than payment forthwith by Tenant to Lessor of all costs and expenses paid or incurred by Lessor in connection with the review of the matter for which such approval is sought and the processing of such approval.

9.06 Survival and Severability. The rights and obligations of Lessor and Tenant provided in paragraphs 4.05 and 4.10 through 4.14 of this Lease, and in the Memorandum of Lease, except to the extent expressly varied or superseded by subsequent instrument executed by Lessor and Tenant, shall survive the expiration or earlier termination of this Lease. If any provision of this Lease is held to be void or otherwise unenforceable by any court or other tribunal of competent jurisdiction, other than at the initiative or with the support of Lessor, within thirty (30) days after receipt of written notice of such holding Lessor shall have the right and option, exercisable by written notice thereof to Tenant, to terminate this Lease effective as of the date of such written exercise. It is understood and agreed that otherwise this Lease, except for such provision so held to be void or otherwise unenforceable, shall remain in full force and effect.

9.07 Lessor's Authority to Convey Fee Title. Lessor retains the absolute and unconditional right to convey fee title in the Leased Premises, or an interest or estate therein, subject to this Lease and the interest of any Qualified Mortgagee or Subtenant under this Lease.

9.08 Powers of Lessor as Municipal Corporation. Nothing in this Lease restricts or limits the authority of Lessor in the exercise of police powers granted to municipal corporations by Alaska statutes or by any other applicable law or regulation. Without limiting the foregoing, nothing in this Lease shall limit the authority of Lessor to enact and enforce, through public safety officers, a harbormaster or otherwise, regulations concerning the use of the harbor of which the Leased Premises is a part.

9.09 Authority to Contract. Lessor has authority to enter into this Lease pursuant to AS 29.35.010 and 38.05.825(c). The City Council of Lessor has authorized the making of this Lease by the adoption of Resolution No. 11-03, a copy of which is attached hereto as Exhibit B. Tenant has authority to enter into this Lease pursuant to AS 10.20.011(4). Tenant's Board of Directors has authorized the making of this Lease by the adoption of Resolution No. 11-07, a copy of which is attached hereto as Exhibit C.

9.10 Applicable Law and Court Jurisdiction. This Lease shall be governed by the law of the State of Alaska and suit by either party to enforce or declare rights under it shall be brought in the courts of the State of Alaska.

9.11 Captions. The captions of the articles and paragraphs hereof are for convenience only, are not an operative part hereof, and neither limit nor amplify in any way the provisions hereof.

## **ARTICLE 10**

### **DUTIES UPON TERMINATION OR EXPIRATION**

10.01 Surrender of Leased Premises. Upon expiration or early termination of this Lease, Tenant shall surrender to Lessor the possession of the Leased Premises. Tenant shall leave the surrendered Leased Premises and any improvements in a broom-clean condition, as noted in paragraph 10.02. If Tenant fails to surrender the Leased Premises at expiration or termination, Tenant shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including but not limited to claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender. In the event of failure or refusal of Tenant to surrender possession of the Leased Premises, Lessor shall have the right to reenter the Leased Premises and remove therefrom Tenant or any person, firm or corporation claiming by, through or under Tenant and to obtain damages for trespass from Tenant.

#### 10.02 Removal of Improvements upon Termination.

A. Upon the expiration or termination of this Lease or any extension thereof, including termination resulting from Tenant's breach ("termination"), Tenant shall leave the Leased Premises in a broom-clean and leasable condition, which shall include removal of all improvements, buildings, foundations and footings to buildings, personal property, trash vehicles, and equipment, except as noted in subparagraphs 10.02.B and C below. Any excavation on the property, including excavation to remove Tenant's Improvements shall be filled and compacted with material approved by Lessor.

B. Lessor may, at its option, allow Tenant to leave some or all of Tenant's Improvements on the Leased Premises upon termination. If Lessor so elects, such improvements shall become the property of Lessor upon termination.

C. Any improvements owned by Lessor and identified in paragraph 1.02, or added to the Leased Premises by Lessor after execution of this Lease, shall not be removed by Tenant.

10.03 Abandonment of Tenant's Property. All property that Tenant is not required or allowed to leave on the Leased Premises shall, on the tenth (10<sup>th</sup>) day following termination, be conclusively deemed abandoned. Abandoned property shall, at the election of Lessor, become the property of Lessor or be destroyed or removed by Lessor.

10.04 Liability for Cleanup Expenses. Tenant shall be liable for all costs and expenses incurred by Lessor to remove or destroy abandoned property and improvements not required or allowed to be left on the Leased Premises, and for the removal of trash or other debris left thereon. In addition, nothing in this Lease shall relieve Tenant of any

obligation or liability for removal of hazardous substances (including wastes) or inappropriate fill material placed on the Leased Premises during the term of the Lease by or at the direction of Tenant, regardless of when such hazardous substance (including waste) or inappropriate fill material is discovered.


## ARTICLE 11 EXECUTION AND MEMORANDUM OF LEASE


11.01 Execution and Counterparts. This Lease is executed in two or more counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

11.02 Recordation of Memorandum of Lease. This Lease shall not be recorded. Within a reasonable time after the execution of this Lease, the parties shall execute in suitable form for recordation a memorandum of this Lease ("Memorandum of Lease"), which shall be recorded. The parties shall execute in suitable form for recordation an Amended Memorandum of Lease to evidence of record additions to the Leased Premises.

LESSOR:  
CITY OF SAINT PAUL

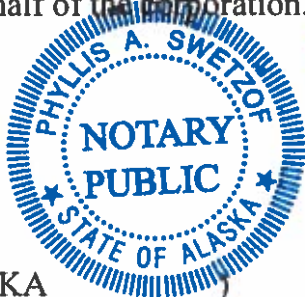
TENANT:  
CENTRAL BERING SEA  
FISHERMEN'S ASSOCIATION


  
\_\_\_\_\_  
Linda Snow  
City Manager  
Date: 5/25/11

  
\_\_\_\_\_  
Name: Phillip Lestenko  
Title: President  
Date: May 25, 2011

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

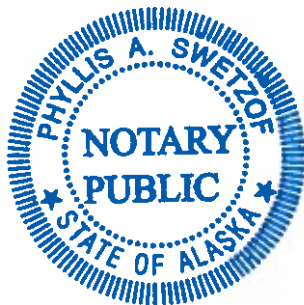
The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of May, 2011, by Linda Snow, City Manager of the City of Saint Paul, an Alaska municipal corporation, on behalf of the corporation.




  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission expires: 11/20/2012

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

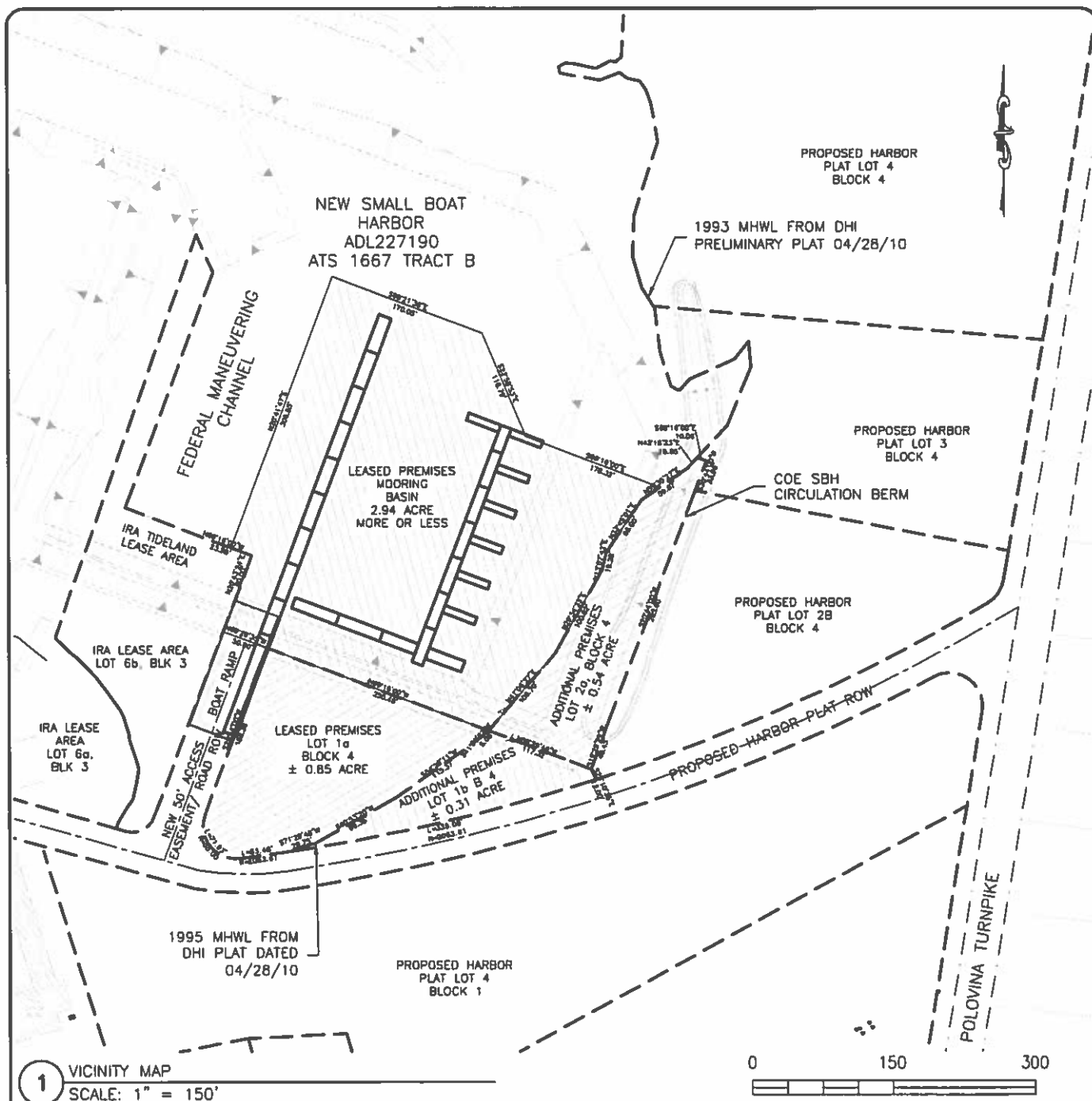
The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of May, 2011, by Valley Lestenkof, President of the Central Bering Sea Fishermen's Association, an Alaska nonprofit corporation, on behalf of the corporation.



  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission expires: 11/20/2012

## **Exhibit A – Drawing of Leased Premises**





#### NOTES:

1. THIS MAP IS ONLY INTENDED TO REPRESENT THE CENTRAL BERING SEA FISHERMENS ASSOCIATION LEASE AREA.

2. HARBOR PROPERTY LINES, LOT AND BLOCK NUMBERS, AND ROAD RIGHT-OF-WAYS SHOWN ARE FROM A PROPOSED HARBOR PLAT TITLED "A PLAT OF HARBOR SUBDIVISION" DATED 4-28-10, SHEET 1 OF 2, PREPARED BY DHI CONSULTING ENGINEERS. ROAD ALIGNMENT ON THE SOUTH BOUNDARY OF PROPOSED LOTS 1a, 1b AND 2b WAS ADJUSTED TO PROVIDE A 12' PROPERTY LINE ON THE EAST BOUNDARY OF LOT 1b PER DISCUSSIONS BETWEEN THE CITY AND TDX. ROAD RIGHT-OF-WAY ALIGNMENT AND LOT BOUNDARY'S HAVE NOT BEEN FINALIZED. FINAL BOUNDARY OF LOTS 1a, 1b AND 2a WILL BE IN ACCORDANCE WITH FINAL APPROVED HARBOR SUBDIVISION PLAT.

3. HARBOR IMPROVEMENTS ARE FROM "ST. PAUL, ALASKA, HARBOR IMPROVEMENTS, PHASE 3" PREPARED BY THE US ARMY CORPS OF ENGINEERS, OCTOBER 2007.

4. EXISTING PROPERTY LINES FROM BLM SURVEY T35S R132W SEC. 25 MAY 14, 1986; BLM RESURVEY OF T35S R132W SM TRACTS 45 & 46 JUNE 3, 1997; ATS 1399, ARD PLAT #91-27, 8-6-90; AND ATS 1472, ARD PLAT #95-2, 7/15/94.

5. CONTROL AND BUILDINGS SURVEYED SEPTEMBER 30, 2005 TO OCTOBER 3, 2005 AND JUNE 20, 2006 TO JUNE 22, 2006 USING REAL-TIME-KINEMATIC (RTK) GPS EQUIPMENT AND TECHNIQUES BY SLANA SURVEY.

DATE: 3/3/11  
DESIGNED: MD  
DRAWN: MD  
CHECKED: MD  
SCALE: 1"=150'-0"  
FILE: SHPBASE

DRAWING

#### PROPOSED CBSFA LEASE AREAS

polarconsult alaska, inc.

ENERGY SYSTEMS • ENVIRONMENTAL SERVICES • ENGINEERING DESIGN

1605 WEST 33RD AVE, SUITE 310  
ANCHORAGE, ALASKA 99503

PHONE (907) 858-8480  
FAX (907) 858-8419

PROJECT

CITY OF SAINT PAUL  
HARBOR IMPROVEMENTS, PHASE 3  
SMALL BOAT HARBOR  
St. Paul Island, Alaska

SHEET

A

**Exhibit B – Resolution No. 11-03 of the City of Saint Paul**

RESOLUTION 11-03

A RESOLUTION OF THE CITY OF SAINT PAUL, ALASKA AUTHORIZING THE  
LEASE OF TIDELANDS TO THE CENTRAL BERING SEA FISHERMEN'S ASSOCIATION  
FOR CONSTRUCTION AND OPERATION OF A SMALL BOAT HARBOR AND STAGING  
AREA IN VILLAGE COVE HARBOR

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAINT PAUL:

Section 1. Classification of Property. Pursuant to Section 6.07.030(a)(1) of the City's Code of Ordinances, the property which is the subject of this ordinance is dredged and filled tidelands within proposed Alaska Tideland Survey No. 1667 and has been classified by the City Manager as real property.

Section 2. Disposal by Lease. Pursuant to Section 6.07.030(a)(3) of the City's Code of Ordinances, it is hereby determined that the property which is the subject of this ordinance should be leased not sold because a) the statute under which the property will be conveyed to the City, AS 38.05.825(c) prohibits the sale of such lands, and b) in the event of default in the operation of the small boat harbor on the property, the City may wish to recover the property and operate the harbor itself.

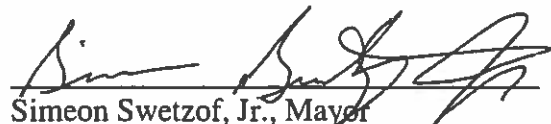
Section 3. Separate Property. Pursuant to Section 6.07.030(a)(4) of the City's Code of Ordinances, of the City's Code of Ordinances, it is hereby determined that the property which is the subject of this ordinance should be leased separately and not be combined with other property for lease.

Section 4. Rent. Pursuant to Section 6.07.040(e) of the City's Code of Ordinances, it is hereby determined that fair market rent for the property which is the subject of this ordinance need not be determined by appraisal because the property a) is uniquely suited for quasi-public use as a small boat harbor and staging area, b) will be improved for that use by the Central Bering Sea Fishermen's Association (herein "CBSFA") at an estimated cost of \$7,000,000, and c) will be used as a small boat harbor and staging area by CBSFA which is a non-profit corporation organized for the purpose of advancing the welfare of the City's residents engaged in fishing. A nominal rent of \$100 per year is appropriate for the use unless, as provided in the proposed lease, some other party acquires CBSFA's interest at which time fair market rent will be established.

Section 5. Authorization. The City Manager is authorized to execute a lease with CBSFA substantially similar in form, terms and conditions to the Small Boat Harbor Lease attached hereto as Exhibit A.

Section 6. Effective Date. This resolution shall become effective immediately.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE COUNCIL OF THE  
CITY OF SAINT PAUL THIS 27<sup>th</sup> DAY OF APRIL 2011.

  
Simeon Swetzof, Jr., Mayor

ATTEST:

  
Phyllis Swetzof, City Clerk



**Exhibit C – Resolution No. 11-07 of the Board of Directors of the Central Bering Sea  
Fishermen’s Association**

RESOLUTION 11-07

A RESOLUTION OF THE CENTRAL BERING SEA FISHERMEN'S ASSOCIATION (CBSFA) BOARD OF DIRECTORS APPROVING THE SMALL BOAT HARBOR LEASE BETWEEN CITY OF SAINT PAUL AND CBSFA.

WHEREAS, Central Bering Sea Fishermen's Association ("CBSFA") is a corporation formed and existing under the laws of Alaska that has an Internal Revenue Service determination letter of qualification as a tax-exempt organization under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, CBSFA is the owner of certain Local Service Facilities ("LSF") currently located in the Small Boat Harbor on Saint Paul Island, Alaska which LSF include but are not limited to a float and anchor system and launch ramp; and

WHEREAS, CBSFA has been negotiating the terms of a lease (the "Small Boat Harbor Lease") with the City of Saint Paul (the "City") of certain tidelands and uplands located in the Saint Paul Island small boat harbor where the LSF are currently located and where a portion of the LSF will be placed during the winter months; and

WHEREAS, the Board of Directors of CBSFA has reviewed the terms and conditions set forth in the proposed Small Boat Harbor Lease presented to the Board of Directors of CBSFA today and finds such terms and conditions generally acceptable; and

WHEREAS, the CBSFA Board of Directors believes that the remaining items to be completed or resolved in the Small Boat Harbor Lease are within the authority of the CBSFA officers.

NOW THEREFORE BE IT RESOLVED THAT the Board of Directors of CBSFA approves the Small Boat Harbor Lease Between City of Saint Paul and CBSFA; and

BE IT FURTHER RESOLVED THAT the Board of Directors of CBSFA authorizes each officer of CBSFA, severally, to negotiate changes to the form of Small Boat Harbor Lease presented to the Board of Directors of CBSFA today as each such officer deems appropriate or necessary in order to protect the best interests of CBSFA; and

BE IT FURTHER RESOLVED THAT the Board of Directors of CBSFA authorizes each officer of CBSFA, severally, to execute the final form of the Small Boat Harbor Lease and to take such other actions and enter into all documents and instruments as each such officer deems necessary or advisable to carry out the actions authorized hereunder.

PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE BOARD OF DIRECTORS OF THE CENTRAL BERING SEA FISHERMEN'S ASSOCIATION THIS 13<sup>th</sup> DAY OF May, 2011, BY A VOTE OF 8 FOR AND 0 OPPOSING AND    ABSTENTION(S):

  
Myron Melovidov, Chairman

  
Bena Kudrin, Secretary

**Exhibit D – Letter of No Objection of the United States Army Corps of Engineers**



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
**U.S. ARMY ENGINEER DISTRICT, ALASKA**  
**P.O. BOX 898**  
**ANCHORAGE, ALASKA 99506-0898**

Civil Project Management Branch

25 May 2011

Ms. Linda Snow  
City Manager  
City of Saint Paul  
P.O. Box 901  
Saint Paul Island, AK 99660

Dear Ms. Snow:

Thank you for informing the Corps of Engineers that the City of Saint Paul intends to lease the small boat harbor mooring area and part of the dredge disposal area 1 to Central Bering Sea Fisherman's Association (CBSFA). It is our understanding that CBSFA will construct, operate and maintain the floats and docks in the small boat harbor, and the City will maintain public access to the harbor. The City will also be responsible for maintaining the project depths in the mooring area.

This division of responsibilities between the City and CBSFA is consistent with the provisions of the Saint Paul Small Boat Harbor Project Cooperation Agreement between the City and the Corps dated September 29, 2006.

We are very pleased that the various government and non-government entities on Saint Paul Island have come together to make the small boat harbor a reality. The unprecedented speed with which the floats and docks were constructed allow Saint Paul, the State of Alaska, and the Nation to realize the benefits of the small boat harbor immediately after construction of the general navigation features.

As always, please do not hesitate to contact me if you have any questions. My telephone number is (907) 753-5680.

Sincerely,

Andrea Elconin  
Project Manager

**FIRST AMENDMENT TO  
SMALL BOAT HARBOR LEASE BETWEEN  
CITY OF SAINT PAUL AND  
CENTRAL BERING SEA FISHERMEN'S ASSOCIATION**

The City of Saint Paul Island, Alaska, an Alaska municipal corporation (herein "Lessor"), whose mailing address is P.O. Box 901, Saint Paul Island, Alaska 99660 and Central Bering Sea Fishermen's Association, an Alaska non-profit corporation, (herein called "Tenant"), whose address is P.O. Box 288, Saint Paul Island, Alaska 99660, Lessor and Tenant respectively under the Small Boat Harbor Lease dated May 25, 2011 ("Lease"), hereby amend the lease as set forth below.

**RECITALS**

1. The Additional Premises described in Paragraph 1.05 of the Lease have been platted as:

Lots 1B and 2B, Block 4, Harbor Subdivision, according to Plat Number 2013-19 of the records of the Aleutian Islands Recording District, Third Judicial District, State of Alaska.

2. Lessor received conveyance of the Additional Premises by Quitclaim Deed from Tanadgusix Corporation ("TDX") recorded September 24, 2013 at recording number 2013-000459-0.

3. During the course of negotiations between Lessor and TDX for the settlement of a dispute between them and public platting processes leading to the recording of the plat and the conveyance to Lessor, the proposed harbor plat which was the basis of Exhibit A to the Lease, the drawing of the leased premises, was modified. Pursuant to note 2 of Exhibit A to the Lease, however, the final boundaries of the Leased Premises are to be in accordance with approved plats.

4. Lot 1A, Block 4 is shown on Plat 2013-19 for information purposes only as Lessor only had management authority over that parcel, not title, at the time of the plat. A final plat of the tidelands of which Lot 1A and the Small Boat Basin are a part has not yet been completed and approved by the State nor have the tidelands been conveyed to Lessor. Further amendment of the description of the Leased Premises may be required when those events have occurred.



## AMENDMENT

1. Paragraph 1.01 of the Lease is amended to add the following after the indented words "proposed Harbor Subdivision":


Lots 1B and 2B, Block 4, Harbor Subdivision, according to Plat Number 2013-19 of the records of the Aleutian Islands Recording District, Third Judicial District, State of Alaska.

2. Exhibit A to the Lease is amended by deleting the words "ADDITIONAL PREMISES" in the two locations where they appear.


3. All other terms of the Lease remain in effect.

4. The execution of this amendment has been approved and authorized by Resolution 14-01 of the City Council of Lessor and by Resolution 14-02 of the Board of Directors of Tenant, copies of excerpts of which are attached as Exhibits A and B respectively.

LESSOR:  
CITY OF SAINT PAUL

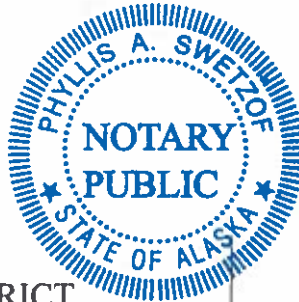
  
\_\_\_\_\_  
Kenneth L. Weaver  
City Manager  
Date: 7/25/14

TENANT:  
CENTRAL BERING SEA  
FISHERMEN'S ASSOCIATION

  
\_\_\_\_\_  
Name: Phillip Zestenkof  
Title: President  
Date: July 25, 2014

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

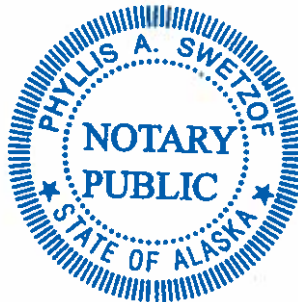
The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2014, by Kenneth L. Weaver, City Manager of the City of Saint Paul, an Alaska municipal corporation, on behalf of the corporation.



  
Notary Public in and for Alaska  
My Commission expires: 11/20/2016

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2014, by Phillip Lestenkof President of the Central Bering Sea Fishermen's Association, an Alaska nonprofit corporation, on behalf of the corporation.



  
Notary Public in and for Alaska  
My Commission expires: 11/20/2016



## CITY OF SAINT PAUL

P.O. BOX 901  
SAINT PAUL ISLAND, ALASKA  
99860-0901  
Admin: (907) 548-3110  
FAX (907) 548-3188

### RESOLUTION NO 14-01

A RESOLUTION OF THE CITY OF SAINT PAUL, ALASKA AUTHORIZING THE  
EXECUTION OF THE FIRST AMENDMENT TO THE SMALL BOAT HARBOR LEASE  
BETWEEN THE CITY AND THE CENTRAL BERING SEA FISHERMEN'S ASSOCIATION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAINT PAUL:

Section 1. The City Manager is hereby authorized to execute the First Amendment to the Small Boat Harbor Lease, which is attached hereto as Exhibit A for the reasons set forth in the recitals of that Amendment.

Section 2. Effective Date. This resolution shall become effective immediately.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE COUNCIL OF THE CITY OF  
SAINT PAUL THIS 29<sup>th</sup> DAY OF MAY 2014.

  
Jacob N. Mercurief, Mayor

ATTEST:

  
Phyllis Swetzof, City Clerk

RESOLUTION 14-02

**A RESOLUTION OF THE CENTRAL BERING SEA FISHERMEN'S ASSOCIATION (CBSFA) BOARD OF DIRECTORS APPROVING THE FIRST AMENDMENT TO SMALL BOAT HARBOR LEASE BETWEEN CITY OF SAINT PAUL AND CBSFA.**

WHEREAS, CBSFA is the management organization for St. Paul Island under the Western Alaska Community Development Quota Program (CDQ); and

WHEREAS, CBSFA is a corporation formed and existing under the laws of Alaska that has an Internal Revenue Service determination letter of qualification as a tax-exempt organization under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, CBSFA is the owner of certain Local Service Facilities ("LSF") currently located in the Small Boat Harbor on Saint Paul Island, Alaska which LSF includes but are not limited to floating docks, anchor system and launch ramp; and

WHEREAS, CBSFA negotiated the terms of a lease (the "Small Boat Harbor Lease") with the City of Saint Paul (the "City") of certain tidelands and uplands located in the Saint Paul Island Small Boat Harbor where the LSF are currently located and where a portion of the LSF are placed during the winter months; and

WHEREAS, the Board of Directors of CBSFA authorized the execution of the Small Boat Harbor Lease through its adoption of Resolution No. 11-07 on May 13, 2011; and

WHEREAS, the Small Boat Harbor Lease contemplated the addition of premises to the area leased from the City (the "Additional Premises") upon the recordation of certain plats and conveyance of certain property to the City; and

WHEREAS, the conditions precedent to the inclusion of the Additional Premises under the Small Boat Harbor Lease have been satisfied; and

WHEREAS, the Board of Directors of CBSFA has reviewed the terms and conditions set forth in the proposed First Amendment to Small Boat Harbor Lease, a copy of which is attached hereto as Exhibit A and finds such terms and conditions acceptable;

NOW THEREFORE BE IT RESOLVED THAT the Board of Directors of CBSFA approves the First Amendment to Small Boat Harbor Lease Between City of Saint Paul and CBSFA; and

BE IT FURTHER RESOLVED THAT the Board of Directors of CBSFA authorizes each officer of CBSFA, severally, to execute the final form of the First Amendment to Small Boat Harbor Lease and to take such other actions and enter into all documents and instruments as each such officer deems necessary or advisable to carry out the actions authorized hereunder.

PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE BOARD OF DIRECTORS OF THE CENTRAL BERING SEA FISHERMEN'S ASSOCIATION THIS 26th DAY OF JUNE, 2014, BY A VOTE OF 6 FOR AND 0 OPPOSING AND 0 ABSTENTION(S).

  
Myron Melovidov, Chairman

  
Rena Kudrin, Secretary