BIRCH HORTON BITTNER & CHEROT
ATTORNEYS AT LAW
1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501-3301
TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

FEDERAL MARITIME COMMISSION

THE AUCTION BLOCK COMPANY, an Alaska corporation, and HARBOR LEASING, LLC, an Alaska limited liability company, Complainants, vs. THE CITY OF HOMER, a Municipal corporation and its PORT OF HOMER, Respondents.	)	Docket No. 12-03

ANSWER TO FOURTH AMENDED COMPLAINT

Respondents, City of Homer and its Port of Homer, by and through undersigned counsel of record, for answer to the Fourth Amended Complaint in this proceeding, state as follows:

I. Respondents admit that The Auction Block Company is a for-profit corporation in good standing organized under the laws of the State of Alaska, whose principal shareholder is Kevin Hogan; that The Auction Block Company is a seafood processing and logistics firm engaged in the primary purchase of Alaskan seafood and providing fishing vessel services at the Port of Homer, that The Auction Block Company receives, handles, stores and delivers property; and that The Auction Block Company's principal place of business is 4501 Ice Dock Road, Homer, Alaska 99603. Respondents deny any other allegations in Paragraph I.

Respondents admit that Harbor Leasing, LLC, is a for-profit limited liability company in good standing, organized under the laws of the State of Alaska; that Harbor Leasing, LLC's members are Kevin Hogan and Bronwyn E. Kennedy; that Harbor Leasing, LLC is a real estate management company that leases property from

the City of Homer and leases property to The Auction Block Company. Respondents deny any other allegations in Paragraph I.

II. Respondents admit that the City of Homer is a municipal corporation, organized under the laws of the State of Alaska; that the City of Homer owns and operates the Port of Homer in Homer, Alaska; that the City Manager is Walt Wrede and the Harbormaster is Bryan Hawkins; and that the principal address of Respondents is 491 East Pioneer Avenue, Homer, Alaska 99603. Respondents deny any other allegations in Paragraph II.

III. Respondents admit that the City of Homer operates the Port of Homer and has filed the "Port of Homer Terminal Tariff No. 600 filed under ATFI Rules", which has been adopted and ratified by the Homer City Council. Respondents deny any other allegations in Paragraph III.

IV. Respondents admit that the State of Alaska levies a fish tax and shares revenue from that tax with municipalities, including Respondent City of Homer; that the City leases property in its harbor to Icicle Seafoods; that Icicle Seafoods formerly operated a fish processing plant on that property; that the Icicle Seafoods fish processing plant burned in 1998 and has not been rebuilt; that some of the fish that are delivered to Icicle Seafoods in Homer are transported to Seward for processing; that Complainant leases property from the City in the City Harbor; and that Complainant purchases fish for resale at its leased property in the City Harbor. Respondents deny any other allegations in Paragraph IV.

V. Respondents deny the allegations in Paragraph V, p. 3, lines 3 through 27. Respondents aver that the terms of the Terminal Tariff and the lease to

BIRCH HORTON BITTNER & CHEROT
ATTORNEYS AT LAW
1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501-3301
TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

Icicle Seafoods speak for themselves, and that no response to allegations regarding the terms of those documents is required. Respondents lack knowledge or information from which to form a belief as to the accuracy of the costs incurred by Complainants as alleged in Paragraph V, and therefore deny the same. Respondents deny any other allegations in Paragraph V, Sections A through E.

VI. Respondents deny all the allegations Paragraph VI.

VII. Respondents deny the allegations in Paragraph VII.

VIII. Respondents deny the allegations in Paragraph VIII.

BIRCH HORTON BITTNER & CHEROT
ATTORNEYS AT LAW
1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501-3301
TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

AFFIRMATIVE DEFENSES

I. The Commission lacks jurisdiction of the subject matter of Complainants' Fourth Amended Complaint.

II. Complainants' Fourth Amended Complaint fails to state a claim for which relief can be granted.

III. Reparations for the offenses alleged by Complainants are barred by the statute of limitations.

WHEREFORE, Respondents prays that the Federal Maritime Commission:

I. Dismiss Complainants' Fourth Amended Complaint with prejudice; and

II. Grant Respondents any other and further relief that the Commission deems appropriate.

DATED this 4th day of September, 2012.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Respondents

By: _____
Thomas F. Klinkner, ABA #7610112
Holly C. Wells, ABA #0511113
1127 West Seventh Avenue
Anchorage, AK 99501
Telephone: 907.276.1550
Facsimile: 907.276.3680
Email: tklinkner@bhb.com

BIRCH HORTON BITTNER & CHEROT
ATTORNEYS AT LAW
1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501-3301
TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of September, 2012, a true and correct copy of the foregoing was served on the following in the manner indicated:

Mr. Steven J. Shamburek Law Office of Steven Shamburek 425 G Street Anchorage, AK 99501 shamburek@gci.net	☑ ☐ ☑ ☐	U.S. Mail Facsimile Electronic Delivery Hand Delivery

BIRCH HORTON BITTNER & CHEROT

By: _____
Katherine L. Heim