

PUBLIC VERSION

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.

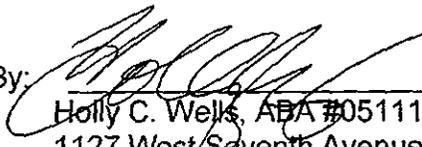
Docket No. 12-03

MOTION FOR PARTIAL SUMMARY JUDGMENT

The Respondents, the City of Homer, Alaska and the Port of Homer, Alaska (collectively referred to as "the City"), by and through their attorneys, Birch Horton Bittner & Cherot, hereby move for an order granting partial summary judgment as a matter of law as to the claim by Complainants Auction Block Company and Harbor Leasing, LLC (collectively referred to as "Auction Block") for reparations under 46 U.S.C. § 41102(c). This Motion is supported by the accompanying Memorandum and exhibits thereto, and the affidavits of Walt Wrede, Bryan Hawkins, Jo Johnson, and Holly C. Wells. A proposed Order is filed herewith.

DATED this 17<sup>th</sup> day of September 2012.

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Attorneys for Respondents

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CERTIFICATE OF SERVICE

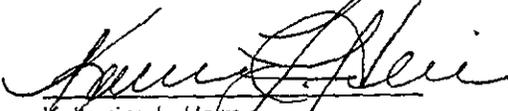
The undersigned hereby certifies that on the 17<sup>th</sup> day of September, 2012, a true and correct copy of the foregoing was served on the following in the manner indicated:

Mr. Steven J. Shamburek  
Law Office of Steven Shamburek  
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- U.S. Mail
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BIRCH HORTON BITTNER & CHEROT

By:

  
Katherine L. Heim

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FEDERAL MARITIME COMMISSION

THE AUCTION BLOCK COMPANY, an  
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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

**MEMORANDUM IN SUPPORT OF MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

The Respondents, the City of Homer, Alaska and the Port of Homer, Alaska (collectively referred to as "the City"), by and through their attorneys, Birch Horton Bittner & Cherot, hereby file this memorandum in support of the City's Motion for Partial Summary Judgment against Complainants The Auction Block Company and Harbor Leasing, LLC (collectively referred to as "Auction Block").

**I. INTRODUCTION**

Complainants brought an action against the City for more than \$1 Million in reparations based upon the alleged differences between the terms of lease between the City and Icicle Seafoods, Inc., formerly known as Seward Fisheries, Inc. ("Icicle"), executed in 1979, and amended in 1986 and 1987, and the terms of a lease between the City and Auction Block, which became effective March 26, 2008. Auction Block was indisputably aware of the allegedly discriminatory terms of the lease between Icicle and the City before entering into its own lease with the City, yet Auction Block proactively negotiated a lease with the City under different terms. Further, Auction

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Block did not challenge the negotiations of its lease terms until over four years after entering the lease. Consequently, Auction Block is now barred, as a matter of law, from seeking reparations against the City.

## II. Background

The City of Homer (the "City") is a small seaside community of approximately 5,000 people in Southcentral Alaska. The City owns and maintains the port and harbor facilities and most of the surrounding uplands adjacent to those facilities located on a 4.5-mile stretch of land extending into Kachemak Bay. Commercial and sport fishing for Salmon, Halibut, and Black Cod are mainstays of the local economy, providing income for many residents, a substantial tax base for the City, and drawing tourists from around the globe.

While the City is a unique community for many reasons, one of its most prevalent attributes is its belief in full public access to its waterways and its Port. While most communities in Alaska provide exclusive leases to major commercial fishing processors, which permit processors to operate without payment of any wharfage or dockage fees, the City refuses to grant exclusive use of any City dock. The result is a bustling port with open competition. Although Homer's open market approach ensures that every entity has an opportunity to prosper in the City, the City struggles to entice seafood processing/buying companies which receive full exemption from wharfage rates in other communities. The City consistently and strictly enforces its tariff rates except where a company offers a clear and tangible benefit to the City that warrants deviation from such rates. See Affidavit of Walt Wrede, filed herewith. True to its culture of open competition, the City has remained

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transparent regarding its open market approach. Indeed, it has even adopted a tariff provision expressly reserving the right to enter into agreements with entities for rates and services. See Homer Terminal Tariff Rule 34.4(d); Homer City Code 10.04.055(b), attached hereto as Exhibit 1.

The relationship formed between the City and Icicle provides a perfect example of the City's open market approach and the use of one-on-one negotiations to remain competitive despite the more exclusive benefits offered by its neighbor ports. In the 1960s, the City's port was primarily utilized by local fisherman with no large processing companies or prominent fish buyers utilizing the port and a fairly rudimentary dock for offloading fish. See Exhibit A to Affidavit of Bryan Hawkins, filed herewith. In 1978, Icicle, then known as Seward Fisheries, Inc.<sup>1</sup>, expressed its interest in leasing the City fish dock and its goal of building a new fish processing plant on the uplands near that dock. See September 27, 1978 letter from Seward Fisheries to Homer City Council, attached hereto as Exhibit 2. A greater presence by Icicle in the City at that time would revolutionize the fishing industry in Homer, providing a reliable income for the City from the upland lease, offering a plethora of jobs with competitive salaries and benefits for City residents, and creating and maintaining a returning fleet of fishing vessels and crew members, which would deliver fish to Icicle. However, unless the City granted an exclusive use lease to Icicle, Icicle, not the City, would be responsible for managing the dock, and the City

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<sup>1</sup> For purposes of readability, Icicle is referred to as Icicle throughout this pleading regardless of whether the action or activity at issue was undertaken when it was "Icicle Seafoods" or when it was "Seward Fisheries."

administration worried that Icicle would limit access to new users under that arrangement. See October 4, 1978 letter from the attorney for the City to Seward Fisheries, attached hereto as Exhibit 3. Ultimately, the City did not grant Icicle's request and chose instead to retain its public harbor approach.

As a result of the City's decision, Icicle and the City entered into negotiations for a lease that would provide Icicle incentive to operate in Homer and build its processing plant in Homer despite open competition on the fish dock. On September 14, 1979, Icicle and the City entered into a 25-year Lease Agreement with an additional 25-year option to renew (the "Icicle Lease"). See the Icicle Lease, attached hereto as Exhibit 4.

The Icicle Lease included a provision stating that every four years the parties would re-appraise the value of the property and then amend the lease with new rental rates. See Exhibit 4, p. 4. The appraisal expressly takes into account City services. When the parties amended the Icicle Lease in July 1986, they added the following provisions:

- Icicle was given use of the City Fish Dock, ice dispensing equipment, and one fish buying shed;
- Icicle was also given use of Fish Dock Cranes Nos. 7 and 8 for up to 1,850 hours per year, with a rate of \$15.00/hr for every hour thereafter; and
- The annual rental fee would now include all "seafood wharfage charges."

See Icicle Lease Amendments, attached hereto as Exhibit 5.

The Icicle plant in Homer processed various types of fish caught by its fleet in Western Alaska. But on or about July 1, 1998, the plant burned to the ground following an accident. Despite the loss of its processing plant, Icicle maintained its

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presence in Homer and, in 2004, Icicle exercised its option to renew its lease with the City. See March 5, 2004 Letter from Icicle HOMER000526, attached hereto as Exhibit 6.

Currently, Icicle retains an important presence in Homer, employing both seasonal and year-round employees, serving and attracting a sizeable fleet of fishing vessels, and operating a floating processing plant. It also provides substantial business for Auction Block and other companies like it, who contract with Icicle for custom offloading. See Affidavit of Bryan Hawkins.

Auction Block started operating as a seafood auction and logistics company in the City in the early 1990s. While Icicle is a wholesale seafood distributor, Auction Block acts as a middle man between fishermen/wholesalers and customers such as restaurants and grocers. It has leased, through Harbor Leasing, various lots of City property. In 2007, the City issued a Request for Proposal seeking entities to lease Lot 12C on the Homer Spit. See Request for Proposal, attached hereto as Exhibit 7. The Homer Spit is a long stretch of land housing the City's port, a strip of restaurants, shops, hotels, campgrounds, a theatre, ice rink, and some commercial enterprises. Harbor Leasing, and Auction Block through it, responded to the City's request. See Auction Block's Response to Proposal, attached hereto as Exhibit 8. The City awarded the proposal to Harbor Leasing and the entities began negotiating the terms of the lease at issue in this case. See collection of documents regarding the

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negotiations between Harbor Leasing and the City entitled "Negotiations," attached hereto as Exhibit 9.<sup>2</sup>

Almost immediately after Harbor Leasing's proposal was chosen, Auction Block began to demand substantial deviations from the terms in the proposal. See Exhibit 9, pp. 1-14. The City Administration worked diligently with Kevin Hogan, the President of Harbor Leasing and owner of Auction Block, to create a lease acceptable to both parties. See, i.e., Exhibit 9, pp. 9-10. While the City and Harbor Leasing conducted lengthy negotiations over the proposed lease of Lot 12C, the City entered into a temporary short-term lease with Harbor Leasing to permit Auction Block to use the property. See Affidavit of Walt Wrede. During these negotiations, Mr. Hogan made it clear that he had reviewed the Icicle Lease and was considering its terms while negotiating Auction Block's lease with the City. See discussion and exhibits cited below. Mr. Hogan even requested a copy of the Icicle Lease from the City Clerk's office, which was provided to him without a public records request because he was a member of the City Economic Development Advisory Commission at that time. See Affidavit of Jo Johnson, filed herewith. In a 2007 letter, Mr. Hogan requested that the lease include identical terms to the Fish Dock Crane provision in the Icicle Lease. See Exhibit 9, p. 6. At no time during negotiations or prior to signing its lease with the City did Complainants accuse the City of unlawful

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<sup>2</sup> This collection is by no means exhaustive and is intended only as a sample of the intensive negotiations between the parties. It also does not include numerous lease drafts that were produced which include parties' redline changes. See, i.e., HOMER000282-490.

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discrimination or a violation of the Shipping Act. See Affidavit of Walt Wrede; see also Affidavit of Jo Johnson.

Harbor Leasing and the City entered into a lease on March 26, 2008 (hereafter referred to as the "Harbor Leasing Lease"). See Harbor Leasing Lease, attached hereto as Exhibit 10. Harbor Leasing agreed to "pay for wharfage, crane use, ice, and other Port and Harbor services at the rates published in the Port and Harbor Terminal Tariff." See Exhibit 10, p. 7. Harbor Leasing also agreed to construct a "fish buying facility and associated office, warehouse, cold storage, staging, and operational and logistical support for dock operations." See Exhibit 10, p. 9.

The instant lawsuit began on April 10, 2012, with the filing of Complainants' first Complaint before the Federal Maritime Commission ("FMC"). The Complaint, and three iterations that followed it, claimed five violations of the Shipping Act of 1984 (46 U.S.C. § 40101 et seq.) (the "Act"):

- 1) **Violation of 46 U.S.C. § 41102(b):** Complainants alleged that the Iccle Lease was a "Common Carrier Agreement," as defined by the Shipping Act. All such agreements must be submitted for approval to the Federal Maritime Commission under this section of the Act, and the Iccle Lease was never submitted to the Commission. Complainants thus argued that the City was operating under an "unapproved agreement."
- 2) **Violation of 46 U.S.C. § 41102(c):** Complainants alleged that the City, as a Marine Terminal Operator ("MTO"), failed to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering of property," as required by the Act.
- 3) **Violation of 46 U.S.C. § 41106(1):** Complainants alleged that the City and another MTO (the City of Seward) agreed to boycott or unreasonably discriminate against Complainants.
- 4) **Violation of 46 U.S.C. § 41106(2):** Complainants alleged that the City has "given undue or unreasonable preference or advantage or imposed

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undue or unreasonable prejudice or disadvantage with respect to a person.”

- 5) **Violation of 46 U.S.C. § 41106(3):** Complainants alleged that the City “unreasonably refused to deal or negotiate” with them.<sup>3</sup>

Over the course of the litigation, Auction Block agreed to drop claims one and five.

### III. STANDARD OF REVIEW

Pursuant to Fed. R. Civ. P. 56(a), a party may move for summary judgment, identifying “. . . the part of each claim or defense on which summary judgment is sought.” Summary judgment shall be granted where the “movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The administrative law judge must view the facts in the light most favorable to the nonmoving party, giving the nonmoving party the benefit of all justifiable inferences derived from the evidence in the record. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 261 (1986). However, a motion for summary judgment should be granted when genuine disputes of material fact do not exist. See Rendezvous International v. Chief Cargo Services, Inc. et al., Docket No. 10-07, 7 (2010) quoting McKenna Trucking Co., Inc. v. A.P. Moller-Maersk Line and Maersk Inc., 27 S.R.R. 1045, 1052 (1997). “A ‘genuine’ issue is one that could be resolved in favor of either party . . . .” Calero-Cerezo v. U.S. Dep’t of Justice, 355 F.3d 6, 19 (1st Cir. 2004) citing Anderson v. Liberty Lobby, Inc., 477 U.S. at 248-50.

<sup>3</sup> Complainants also cited to 46 U.S.C. § 41302, which authorizes the Commission to bring its own lawsuit against an MTO for violation of the Shipping Act. The section has no bearing on a civil action by a private party, and is thus a superfluous part of the Complaint.

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#### IV. ARGUMENT

The Shipping Act specifically sets out a three-year statute of limitations for claims seeking reparations. 46 U.S.C. § 41301(a). The Act states that a "person may file with the Federal Maritime Commission a sworn complaint alleging a violation [and] [i]f the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations." Id. Further federal regulation states: "Complaints seeking reparation . . . shall be filed within three years after the cause of action accrues." 46 C.F.R. § 502.63. The FMC has adopted "the 'discovery rule' to determine when a cause of action accrues under the Shipping Act." Maier Terminals LLC v. Port Authority of N.Y. & N.J., FMC No. 08-03, 12 (FMC May 16, 2011). Under the discovery rule, "a cause of action accrues when a party knew or should have known that it had a claim." Id.

In Maier Terminals LLC v. Port Authority of New York and New Jersey, FMC Administrative Law Judge (ALJ) Clay G. Guthridge addressed whether the Shipping Act's statute of limitations barred a claim based on discrimination in the lease negotiations and in the lease itself. Id. In that case, Maier sought reparations from and a cease and desist order against the Port Authority for purported Shipping Act violations. Id. at 2. Maier claimed the Port Authority unreasonably prejudiced Maier, provided preference to others, refused to negotiate with Maier, failed to enforce reasonable regulations, and continued these discriminatory practices. Id. at 3. Applying the discovery rule, ALJ Guthridge found that the statute of limitations barred Maier's reparations claim. Id. at 2. ALJ Guthridge found that Maier entered into a lease with the Port Authority on October 1, 2000, and at that point the statute of

limitations for any claim based on lease negotiations or lease terms began to run. Id. at 22, 26. Specifically, ALJ Guthridge emphasized that on October 1, 2000, when Maher signed the lease, Maher knew the lease terms and “more importantly the differences between [its] Lease and [the other] Lease.” Id. at 23. ALJ Guthridge continued by expressly stating that whether Maher knew the Port Authority’s reasons for including different terms in the two leases, did not impact the running of the statutes of limitations. Id. at 26. Maher, ALJ Guthridge noted, filed its claim against the Port Authority on June 3, 2008 – over 7 years after the claim accrued and the statute of limitation began to run. Id. at 2-3. Thus, the three-year statute of limitations had run, barring Maher’s reparations claim. Id.

Further, ALJ Guthridge found that Maher failed to establish a continuing violation for statute of limitations purposes. Id. at 33. Maher alleged that “claims accruing outside of the limitations period do not bar complaints seeking reparations for claims of continuing violations inside the limitations period.” Id. at 34. ALJ Guthridge clarified, however, that the continuing violation rule required the party to “commit an overt act of discrimination within the limitations period for a plaintiff/complainant to receive damages.” Id. ALJ Guthridge explained, a party must engage in “a new and independent act that is not merely a reaffirmation of a previous act” and the new act must inflict new injury for it to be a continuing violation. Id. at 35. In other words “[a]cts that are merely ‘unabated inertial consequences’ of a single act do not restart the statute of limitations.” Id. at 37. As for Maher’s situation, ALJ Guthridge asserted that any overt discriminatory act by the Port Authority was committed on or before the parties signed the lease on October 1, 2000. Id. at 41.

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ALJ Guthridge affirmed that the Port Authority did not engage in an overt discriminatory act in the three years before Maher filed its claim. Id. As a result, ALJ Guthridge concluded that the statute of limitations barred Maher's reparations claim.

As the above-described case demonstrates, the Shipping Act's statute of limitations bars any reparation claim Auction Block asserts against Homer based on contract negotiations or contract terms. Complainants filed their claims on April 10, 2012, more than four years after signing their lease with the City on March 26, 2008. Like in Maher, Complainants are alleging that the purported violations of the Shipping Act began with the signing of their lease. Also like in Maher, Complainants were fully aware of the allegedly discriminatory terms of the Icicle Lease when they signed their own lease. In June 2007, Complainants sent the City a proposed lease clause for use of the Fish Dock Crane, stating "the clause is based on the Icicle lease." See Exhibit 9, p. 6. On March 5, 2008, as the parties were finally getting ready to sign, Mr. Hogan wrote to Mr. Wrede: "what we are looking at is the same as the provisions in the fish factory and Icicle leases." Exhibit 9, p. 14. Complainants' knowledge of the allegedly discriminatory terms of the Icicle Lease as of the date they signed their own lease cannot be disputed. Auction Block even vaguely admitted knowledge of the allegedly discriminatory terms in its answers to interrogatories. While it claimed that it did and does not have knowledge of all the terms of the Icicle Lease, it has not expressly denied knowledge of the allegedly discriminatory terms of the Icicle Lease at the time it negotiated the terms of the Harbor Leasing Lease and such a denial is

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not ethically possible in light of the written evidence to the contrary. Consequently, as in Maheer, Auction Block's claims are barred by the statute of limitations.

Complainants' delay in filing their complaint is even more egregious upon consideration of the relationship and role that Kevin Hogan, the owner and operator of Auction Block and President of Harbor Leasing, has had with the City. Mr. Hogan served on both the Port and Harbor Advisory Commission and the Economic Development Advisory Commission at the time of Harbor Leasing Lease negotiations. See Mayor's Certificates of Resignation and Letter of Resignation, attached hereto as Exhibit 11. As a member of those commissions, Mr. Hogan had detailed knowledge of the City's leasing policies and its relationship with Icicle and all its lessees. Mr. Hogan then became an elected member of the City Council on October 20, 2009, and as such was able to review all the City policies and laws and propose amendments to these laws. Despite this position, and to the best of the City's knowledge and memory, Mr. Hogan never challenged the City's tariff or the City Code provisions regarding Harbor leases as unlawful. See Affidavit of Jo Johnson. Instead, Mr. Hogan voted in favor of Tariff amendments as recently as 2011, and never proposed any Tariff amendments while sitting on Council. See April 25, 2011 City Council Minutes, attached hereto as Exhibit 12; Affidavit of Jo Johnson. He even went so far as to express his support for the Icicle Lease to the City Administration in informal conversations occurring while he held a position with the City. See Affidavit of Walt Wrede.

Auction Block has repeatedly engaged in negotiations with the City for leases involving and implicating use of the City Port and the uplands surrounding that port

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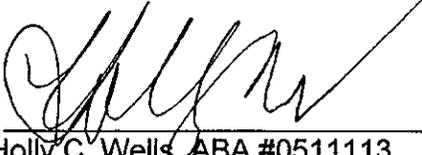
and has repeatedly requested and referenced the Icicle Lease during such negotiations. Auction Block's primary officer has been an active and engaged participant in City government on many levels and fully aware of the Icicle Lease's allegedly discriminatory terms. Yet, despite this intimate knowledge of the Icicle Lease and City operations, Auction Block knowingly entered its own lease with the City and waited over four years to challenge its terms under the Shipping Act. This is precisely the type of delay the statute of limitations was designed to prevent. Permitting Auction Block to move forward despite its inexcusable delay would subject the City and its taxpayers to a grave inequity.

**V. Conclusion**

The statute of limitations bars any reparation claim brought under the Shipping Act that is based on the City's lease with Auction Block and thus the City respectfully requests that the City's Motion for Partial Summary Judgment be granted.

DATED this 17th day of September, 2012.

BIRCH HORTON BITTNER & CHEROT  
Attorneys for Respondents

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17<sup>th</sup> 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, Suite 610  
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*and*  
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vs. )

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Respondents. )

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

Having considered Respondents' Motion for Partial Summary Judgment and any opposition thereto, and being fully advised in the premises, it is HEREBY ORDERED that Respondents' Motion is GRANTED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

By: \_\_\_\_\_  
Erin M. Wirth  
Administrative Law Judge

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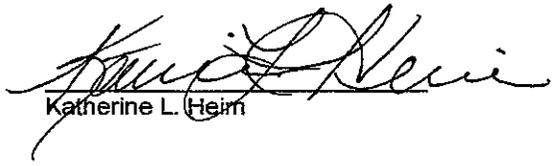
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AFFIDAVIT OF WALT WREDE

STATE OF ALASKA )

THIRD JUDICIAL DISTRICT )

) ss:

Walt Wrede, being duly sworn, hereby deposes and states as follows:

1. I am the City Manager of the City of Homer ("City") and have been employed in that position continuously since February of 2003. All facts stated herein are based upon my personal knowledge, and I am competent to testify thereto.

2. The City applies an open market approach to operating its Port. Accordingly, the City consistently and strictly applies its tariff rates to all companies using the port, except when a company provides clear and tangible benefits to the City that warrant deviation.

3. I, on behalf of the City Administration, participated in exhaustive negotiations with Harbor Leasing, LLC and its primary officer Kevin Hogan regarding the terms of the lease agreement between the City and Harbor Leasing effective in March of 2008 (hereafter referred to as the "Harbor Leasing Lease").

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BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
1127 WEST SEVENTH AVENUE  
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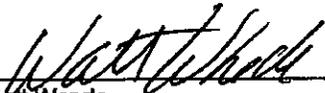
4. In an effort to support Auction Block's use of the property and its business operations during lease negotiations, the City entered into a short term lease with Auction Block during negotiations of the Harbor Leasing Lease.

5. During an informal conversation with me and while holding a position with the City, Kevin Hogan expressed support for the lease between Icicle Seafoods, Inc. ("Icicle") and the City ("Icicle Lease") and encouraged the City Administration to leave the incentives provided to Icicle in place.

6. Mr. Hogan has made references to the terms of the Icicle Lease on numerous occasions, specifically regarding discounts provided to Icicle for its use of the fish crane and its use of the City ice dispensing equipment. These comments were made before, during, and after the signing of the Harbor Leasing Lease.

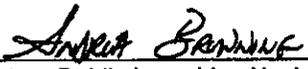
7. At no time during negotiations or prior to signing its lease with the City did Complainants accuse the City of unlawful discrimination or a violation of the Shipping Act.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Walt Wrede

SUBSCRIBED AND SWORN to before me this 17 day of September 2012.

ANDREA BROWNING  
Notary Public  
State of Alaska  
My Commission Expires  
With Office

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

BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
1127 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99501-3301  
TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-9680

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th 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, Suite 610  
Anchorage, AK 99501  
shamburek@gci.net

- U.S. Mail
- Facsimile
- Electronic Delivery
- Hand Delivery

BIRCH HORTON BITTNER & CHEROT

By:

  
Katherine L. Helm

FEDERAL MARITIME COMMISSION

THE AUCTION BLOCK COMPANY, an Alaska corporation, and HARBOR LEASING, LLC, an Alaska limited liability company,

Complainant,

vs.

THE CITY OF HOMER, a Municipal corporation and its PORT OF HOMER,

Respondents.

Docket No. 12-03

AFFIDAVIT OF JO JOHNSON

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

Jo Johnson, being duly sworn, hereby deposes and states as follows:

1. I am the City Clerk of Respondents City of Homer ("City"), and have been employed in that position continuously since February of 2007. All facts stated herein are based upon my personal knowledge, and I am competent to testify thereto.

2. While a member of the City Economic Development Advisory Commission, Kevin Hogan requested a copy of the lease between Icicle Seafoods, Inc. ("Icicle") and the City from the City Clerk's office. Because Hogan was a member of the City Economic Development Advisory Commission when he made the request, the City Clerk's office granted his request without a formal public records request.

BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
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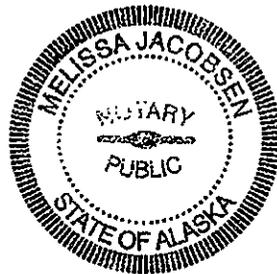
BIRCH HORTON BITTNER & CHEROT  
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TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

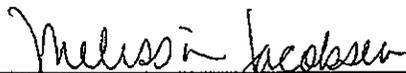
3. To the best of my recollection and after a review of the City Council minutes and the minutes of the Economic Development Advisory Commission and the Port and Harbor Commission, I do not recall nor could I find any record of Kevin Hogan challenging either the City's tariffs or City Municipal Code provisions regarding harbor leases as unlawful. Also I do not recall Hogan ever proposing a tariff amendment during his tenure as a City Council member. Hogan voted, however, in favor of tariff amendments, most recently in 2011, while he was a City Council member.

FURTHER AFFIANT SAYETH NAUGHT.

  
Jo Johnson

SUBSCRIBED AND SWORN to before me this 17<sup>th</sup> day of September 2012.



  
Notary Public in and for Alaska  
My Commission expires: 9/8/16

CERTIFICATE OF SERVICE

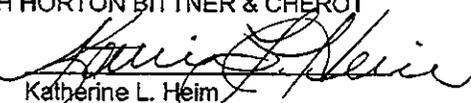
The undersigned hereby certifies that on the 17<sup>th</sup> day of September, 2012, a true and correct copy of the foregoing was served on the following in the manner indicated:

Mr. Steven J. Shamburek  
Law Office of Steven Shamburek  
425 G Street, Suite 610  
Anchorage, AK 99501  
shamburek@gci.net

- U.S. Mail
- Facsimile
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BIRCH HORTON BITTNER & CHEROT

By:

  
Katherine L. Heim

AUCTION BLOCK CO., ET AL.. V. CITY OF HOMER ET AL.  
AFFIDAVIT OF JO JOHNSON  
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CASE NO. DOCKET NO. 12-03  
PAGE 2 OF 2



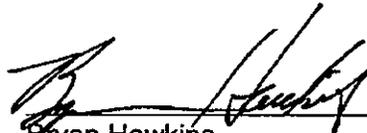
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3. In the late 1970s Icicle Seafoods, Inc. ("Icicle") built a processing plant in the City and began operating a processing business within the City. Based on research I conducted, including reviewing pictures and maps, and my own personal knowledge, Icicle's presence in the City was significant and noticeable; Icicle's presence transformed the City, its port, and its fishing industry. See Exhibit A.

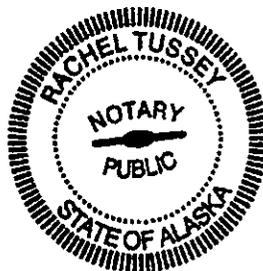
4. To this day Icicle maintains a presence in the City. Icicle provides benefits to the City through its operations in and around the City, which include employing seasonal as well as year-round employees; serving a sizeable fleet of fishing vessels; and operating a floating processing plant.

5. Today, Icicle also provides substantial business for Auction Block and other companies like it, who contract with Icicle for custom offloading.

FURTHER AFFIANT SAYETH NAUGHT.

  
Bryan Hawkins

SUBSCRIBED AND SWORN to before me this 17 day of September 2012.



  
Notary Public in and for Alaska  
My Commission expires: 11/17/2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17<sup>th</sup> day of September, 2012, a true and correct copy of the foregoing was served on the following in the manner indicated:

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Law Office of Steven Shamburek  
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Anchorage, AK 99501  
shamburek@gci.net

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BIRCH HORTON BITTNER & CHEROT

By:

  
Katherine L. Helm

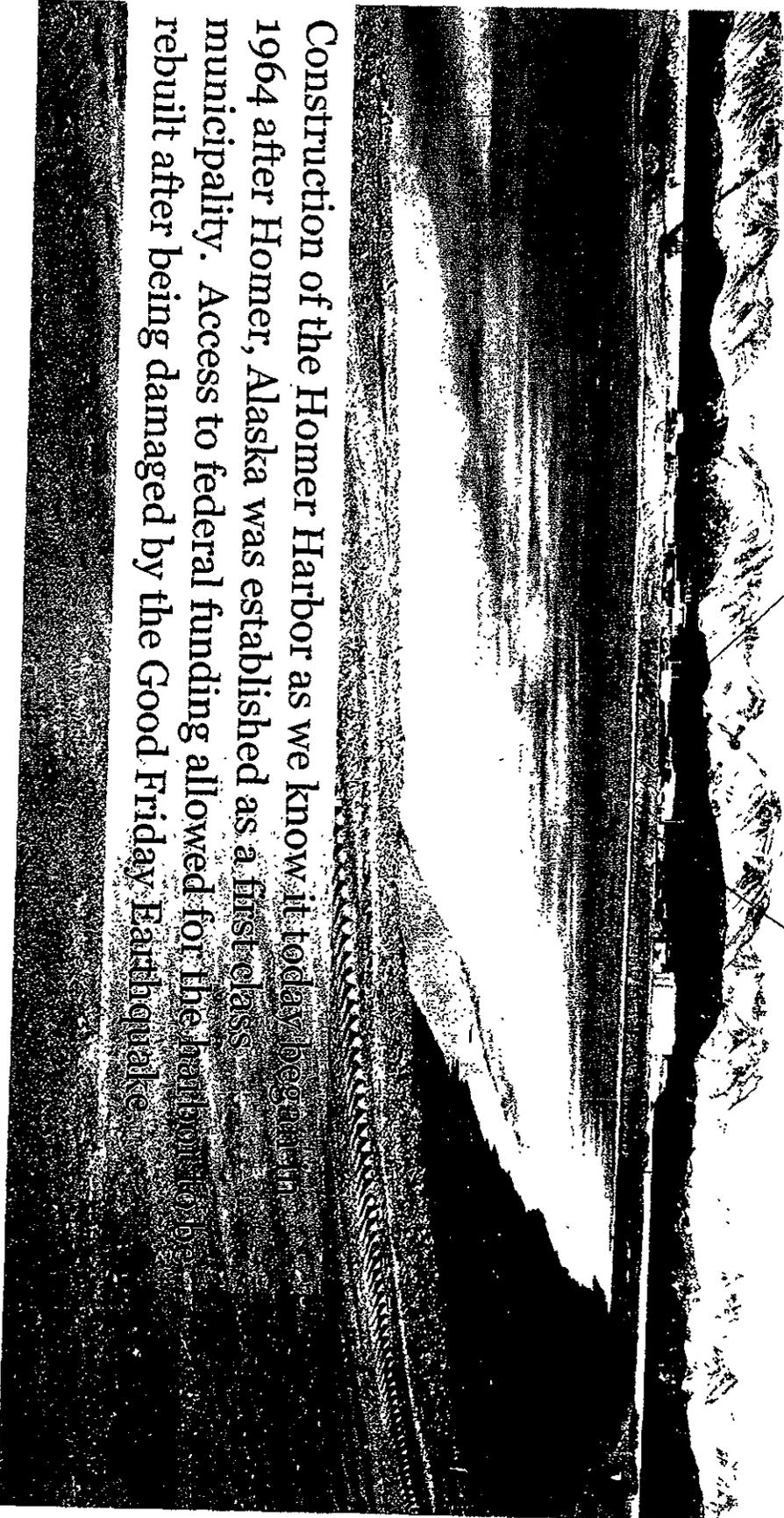
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1127 WEST SEVENTH AVENUE  
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# Homer Harbor

1965

Future location of the City of Homer's Fish Dock

Future location of Icycle Seafoods



Construction of the Homer Harbor as we know it today began in 1964 after Homer, Alaska was established as a first class municipality. Access to federal funding allowed for the harbor to be rebuilt after being damaged by the Good Friday Earthquake.



← First dredging of the harbor basin and entrance – 1964-65 →



After the initial construction, the harbor consisted of:

- Three ramps
- Floats B through K
- Fish Dock with two cranes
- 1-lane Load & Launch Ramp w/ Fuel Dock
- Main Dock
- Wooden Grid





Seward Fisheries built their fish processor plant in 1978. The City of Homer completed the new Fish Dock and Ice Plant in 1983.

FEDERAL MARITIME COMMISSION

THE AUCTION BLOCK COMPANY, an  
Alaska corporation, and HARBOR  
LEASING, LLC, an Alaska limited liability  
company,

Complainant,

vs.

THE CITY OF HOMER, a Municipal  
corporation and its PORT OF HOMER,

Respondents.

Docket No. 12-03

AFFIDAVIT OF HOLLY C. WELLS

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

HOLLY C. WELLS, and being first duly sworn, deposes and states as follows:

1. I represent the City of Homer ("City"), the defendant in the above captioned case. I have personal knowledge of all facts stated herein, and I am competent to testify to these facts.

2. Exhibits 1 through 12 filed with this motion are true and correct copies of the following documents:

Exhibit 1: Homer Terminal Tariff Rule 34.4(d) and Homer City code 10.04.055(b)

Exhibit 2: September 27, 1978 letter from Seward Fisheries to Homer City Council

Exhibit 3: October 4, 1978 letter from counsel for the City to Seward Fisheries

Exhibit 4: The lease between Seward Fisheries and the City effective September 14, 1979 and referred to throughout this affidavit, the Motion for Partial Summary Judgment,

BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
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and Memorandum in Support of that motion as the Icicle Lease.

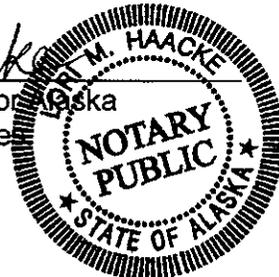
- Exhibit 5: 1986 and 1987 amendments to the Icicle Lease
- Exhibit 6: March 5, 2004 letter from Icicle to the City
- Exhibit 7: Request for Proposal issued by the City seeking proposals for a lease on Lot 12C of the Homer Spit
- Exhibit 8: Response by Harbor Leasing, LLC to the City's Request for Proposal submitted as Exhibit 7
- Exhibit 9: A collection of communications between the City and/or the Auction Block Company and Harbor Leasing, LLC regarding negotiations surrounding Lot 12C of the Homer Spit
- Exhibit 10: Lease between Harbor Leasing, LLC and the City effective March 26, 2008
- Exhibit 11: Mayor's Certificates of Resignation and letter of resignation from Kevin Hogan
- Exhibit 12: Minutes from April 25, 2011 City Council meeting

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Holly C. Wells

SUBSCRIBED AND SWORN to before me this 17<sup>th</sup> day of September 2012.

  
Notary Public in and for Alaska  
My Commission expires  
3/10/2015



CERTIFICATE OF SERVICE

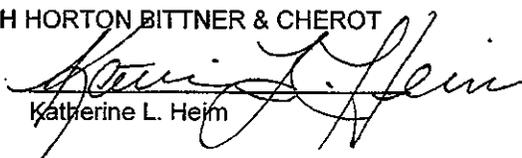
The undersigned hereby certifies that on the 17<sup>th</sup> day of September, 2012, a true and correct copy of the foregoing was served on the following in the manner indicated:

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BIRCH HORTON BITTNER & CHEROT

By:

  
Katherine L. Heim

BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
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PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603 PHONE: (907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	12
	NO.	REVISED PAGE NO.	3rd
	600		

**RULE: 34.4 - APPLICATION OF TARIFF**  
(continued)

**(b) TARIFF EFFECTIVE:**

Rates, charges, rules and regulations named in this Tariff and any additions, revisions, or supplements thereto shall apply to all vessels or users and to all freight received at facilities subject to this Tariff on and after the effective date of revisions, or supplements thereto. Unless otherwise specified all transit freight received at terminals and undelivered prior to effective dates of Tariff, revisions, or supplements thereto shall be charged the rates in effect on the date such freight was received until entire lot or shipment has been withdrawn.

**(c) ACCEPTANCE OF TARIFF:**

Use of the city docks and terminal facilities of the City shall be deemed acceptance of this Tariff and the terms and conditions named herein.

**(d) RESERVATION OF AGREEMENT RIGHTS:**

Right is reserved by the City of Homer to enter into agreement with carriers, shippers, consignees and/or their agents concerning rates and services, providing, such agreements are consistent with existing local, state and federal law governing the civil and business relations of all parties concerned.

**(e) COMPLIANCE WITH CONDITIONS OF BERTHING:**

Use of city docks and terminal facilities and the acceptance of services shall comply with any additional Conditions of Berthing set forth in Subsection 310 contained herein.

**RULE: 34.5 - APPLICATION OF RATES (C)**

EFF: 27DEC2000

**SUBSECTION 110**

Except as otherwise provided herein, rates apply per short ton which is 2,000 lbs., or per 40 cu.ft. as rated by ocean carriers, or per 1,000 feet board measure, or 42 gallons per barrel of bulk petroleum products corrected to 60 F. net, or 376 lbs. per barrel of bulk cement, or per bone dry wood chips as rated by ocean carrier.

PUBLISHED BY: GLENSERVE COMPANY (856) 939-1231 FAX (856) 939-1235

HOMER002416

**Chapter 10.04 General Port and Harbor Provisions**

Published on City of Homer Alaska Official Website (<http://www.cityofhomer-ak.gov>)

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**Chapter 10.04 General Port and Harbor Provisions**

Sections:

- 10.04.010 Short Title.
- 10.04.020 Scope--Administrative powers.
- 10.04.030 Definitions.
- 10.04.035 Homer Port and Harbor Tariff.
- 10.04.040 Harbormaster--Powers and duties.
- 10.04.050 Rule and regulation establishment authority.
- \* 10.04.055 Fees.
- 10.04.060 Revenues--Use of.
- 10.04.080 City docks--Other closure.
- 10.04.090 Underway requirement.
- 10.04.100 Vehicles and other wheeled conveyances.
- 10.04.110 Violation--Penalty.
- 10.04.120 Impounded vessel procedure.
- 10.04.130 Nuisances declared--Removal.
- 10.04.132 Nuisances--Abatement procedure.
- 10.04.134 Nuisances--Post-removal hearing.
- 10.04.135 Nuisances--Form of demand for hearing--Hearing Officer.
- 10.04.138 Interference with impoundment prohibited.
- 10.04.139 Lien on impounded or nuisance vessel.
- 10.04.140 Annual review required.
- 10.04.150 Required Equipment.

10.04.010 Short Title. This title shall constitute the Port and Harbor Code of the City and may be cited as such. (Ord. 88-2 (part), 1988).

10.04.020 Scope--Administrative powers. This title and the Homer Port and Harbor Tariff shall be deemed an exercise of the powers of the City for the protection, safeguarding, and orderly moorage and control of boats, and for the protection and general welfare of the public and all of its provisions shall be liberally construed for the accomplishment of the purpose. The City, through its properly appointed representatives, shall have the authority to board any vessel utilizing the harbor or port facilities for the purpose of enforcing this title and the Homer Port and Harbor Tariff. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.030 Definitions. Unless otherwise provided in this title or required by the context, definitions set forth in the Homer Port and Harbor Tariff shall apply to this title (Ord. 95-18(S)(part), 1995).

10.04.035 Homer Port and Harbor Tariff. The rates, charges, rules and regulations for wharfage, terminal storage, demurrage and other terminal services and privileges are set forth in the Homer Port and Harbor Tariff and as filed with the Federal Maritime Commission. Subject to the requirements of section 10.04.055, the Homer Port and Harbor Tariff may be amended from time to time by resolution of the City Council. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.040 Harbormaster--Powers and duties. A harbormaster, who shall have police powers, shall be appointed in the same manner as other city employees. The harbormaster shall be assigned to enforce the provisions of this title and the Homer Port and Harbor Tariff, maintain an accurate log of the registration data of all boats using Homer harbor facilities, showing the date of occupancy of berthing facilities, issue citations and impound vehicles, vessels, gear or equipment for violations of this title of the City Code, and collect or arrange for the collection of the established fees. The harbormaster is granted the power and authority from time to time, as circumstances require, but without any obligation to do so, and without any obligation or liability on his part, or that of the City for his failure to do so, to replace defective mooring lines, to pump vessels which are in a dangerous condition for lack thereof, and to move any boat for the purpose of protecting such boat from fire or from other hazard or for the protection of

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## Chapter 10.04 General Port and Harbor Provisions

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other vessels or property therefrom. Whenever the harbormaster shall perform or cause to be performed any of the actions authorized in this title or other emergency actions, after having given notice of the immediate need therefore, or having attempted to give such notice within the time limits prescribed by the exigencies of the situation, a fee as prescribed in the Homer Port and Harbor Tariff shall be assessed the vessel owner or operator. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.050 Rule and regulation establishment authority. The City Manager is empowered and authorized to establish additional rules and regulations governing the use of the Homer harbor, assignment of stalls, and the general conduct in, around and on harbor facilities and parking areas. Such rules and regulations shall become effective upon approval by the City Council. The Council may provide for a different effective date. The City Manager shall print and make available to the public copies of regulations adopted pursuant to this section. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.055 Fees. a. Fees for the approved use of Homer harbor facilities and services as set forth in the Homer Port and Harbor tariff may be changed by City Council resolution; provided, that a public hearing is held prior to approval of the resolution; and, provided further, that any such change is effective only after the change is filed with the Federal Maritime Commission as an amendment to the Homer Port and Harbor Tariff.

\* b. The harbormaster may negotiate special fees and charges with a vessel owner or operator where the owner or operator requires an exceptional volume of, or unique or unusual services or facilities, and it is in the best interest of the City to enter into special arrangements. In such event, the harbormaster shall inform the City Manager of such special, negotiated arrangements. (Ord. 95-18(S)(part), 1995; Ord. 91-13(S) 1, 1991; Ord. 88-2 (part), 1988).

10.04.060 Revenues--Use of. All revenues from the Homer harbor shall be expended for the maintenance, operation and improvement of the Homer harbor in accordance with generally accepted accounting principles. Revenues from the Homer Boat Harbor shall be expended solely for the furtherance of financial stability and self-sufficiency of the Homer harbor. (Ord. 95-18(S)(part), 1995; Ord. 92-22, 1992; Ord. 88-2 (part), 1988).

10.04.080 City docks--Other closure The City, through its City Manager or other duly constituted agent, may prohibit the use of any wharves and docking facilities owned or controlled by the City at any time when closing the facilities is required to protect and preserve the public welfare and safety. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.090 Underway requirement. On at least two days in each calendar year, separated by at least sixty (60) days, a vessel moored in the Homer harbor shall depart under its own power from the Homer harbor and travel beyond the one quarter mile turning basin of the Pioneer and Deep Water Docks before returning under the vessel's own power to the Homer harbor. The moorage charge for a vessel that fails to comply with this requirement shall be increased by 50% commencing at the time the vessel fails to comply and continuing during the period of non-compliance.

10.04.100 Vehicles and other wheeled conveyances. a. The harbormaster may designate restricted parking areas in the harbor area. In a restricted parking area, the harbormaster may:

- (1) Establish time limits for parking;
- (2) Designate areas for paid parking, and establish fees for paid parking there; and
- (3) Designate areas for permit parking, and establish the fees and qualifications for obtaining a permit.

"Restricted parking" areas pertain to the parking of any vehicle or trailer, private or commercial.

b. The harbormaster shall notify the public of time limits in restricted parking areas, fees required to park in restricted parking areas, and permit requirements for parking in restricted parking areas by the placement of official traffic control devices. No person may stop, stand or park a vehicle in violation of such an official traffic control device. Every day in which such a violation continues shall constitute a separate offense.

c. No person other than an employee of the City or other person acting on City business shall drive a vehicle upon the inside gravel slope of the Small Boat Harbor except in case of emergency. Parking or leaving boats, trailers and/or other vehicles and equipment related thereto by the public shall be limited to specific areas designated for such use.

d. Hauling out boats on skids is prohibited unless approved in advance by the harbormaster. (Ord. 11-15 §1, 2011; Ord. 95-8(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.110 Violation--Penalty. a. Except as provided in (b) of this section, any violation of the provisions contained in this title or regulations adopted pursuant to this title shall be unlawful and punishable as provided in Section 1.16.010 of this Code.

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## Chapter 10.04 General Port and Harbor Provisions

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b. A violation of HCC 10.04.100(b) is amenable to disposition without court appearance upon payment of a fine in the amount of \$25.00. The person cited for the violation may mail or personally deliver to the City Finance Department the amount of the fine plus any surcharge required to be imposed by AS 29.25.074, together with a copy of the citation signed by the person indicating the person's waiver of court appearance, entry of plea of no contest, and forfeiture of the fine. The payment of a fine under this subsection shall be treated as a judgment of conviction. The fine paid is complete satisfaction for the offense. If a person cited for a violation of HCC 10.04.100(b) appears in court to contest the citation and is found guilty, the maximum sentence which may be imposed is the scheduled fine amount plus any surcharge required to be imposed by AS 29.25.074. (Ord. 11-30 §1 (part, 2011; Ord. 11-15 §2, 2011; Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.120 Impounded vessel procedure. a. At least ten days prior to impounding any vessel, the City shall cause to be posted on the vessel, in the harbormaster's office, the City Clerk's office and on the bulletin board at the entrance of the United States Post Office, notice of such action to be taken by the City. A copy of the notice shall be mailed by certified mail return receipt requested, to the owner or operator of the vessel at his last known address, which address shall be the same as that furnished in accordance with the regulations of this tariff. The notice shall contain the name and/or number of the vessel, the name and address, if known, of the owner or operator and the location of the vessel.

b. As to any vessel proposed for impoundment, an owner or operator of the vessel has the right to a pre-impoundment administrative hearing to determine whether there is probable cause to impound the vessel if such person files a written demand, on forms so provided for such a hearing, with the City within ten days after such person has learned such vessel will be impounded or within ten days after the return of mail receipt of the notice required by subsection a. of this section, whichever occurs first.

c. A hearing shall be conducted before a hearing officer designated by the City Manager within forty-eight hours of receipt of written demand therefor from the person seeking the hearing unless the person waives the right to a speedy hearing. Saturdays, Sundays and City holidays are to be excluded from the calculation of the forty-eight-hour period. The hearing officer shall be someone other than the persons who will direct the impounding and storage of the vessel. The sole issue before the hearing officer shall be whether there is probable cause to impound the vessel in question. "Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was a breach of federal, local or municipal law or regulations, or any agreement entered into pursuant thereto, rendering the vessel subject to impoundment. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vessel. The harbormaster shall carry the burden of establishing that there is probable cause to impound the vessel in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision and reasons therefor shall be provided to the person demanding the hearing and the owner of the vessel if such owner is not the person requesting the hearing. The hearing officer's decision in no way affects any criminal proceeding connection with the impound in question and any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final and may only be appealed to the Superior Court. Failure of the owner or operator to request or attend a scheduled pre-impoundment hearing shall be deemed a waiver of the right of such hearing.

d. The hearing officer shall only determine that as to the vessel in question either that there is probable cause to impound the vessel or that there is no such probable cause. In the event that the hearing officer determines that there is no probable cause, the hearing officer shall prepare and date a Certificate of No Probable Cause, copies of which shall be given to the owner or operator and to the harbormaster. Upon receipt of such Certificate of Probable Cause, the harbormaster may proceed with impoundment and disposition of the vessel by removal, sale or destruction as authorized by this title.

e. Any vessel impounded shall be held by the City for a period of not less than thirty days during which the City shall publish in a newspaper of general circulation in the City a notice describing the vessel in general terms, the name and/or number, if any, the name and address of the owner, or operator, if known, or if not known shall so state the location of the vessel and the intention of the City to sell the same at public auction, on a day and at a place and time certain, not less than ten days prior to the sale, for cash to the highest and best bidder. At any time prior to the auction, the owner or operator may redeem the vessel by cash payment of all City charges against the vessel.

f. The minimum acceptable bid shall be a sum equal to the City's charges against the vessel. The proceeds of the sale shall be first applied to the cost of sale, then to accrued stall license fees and charges, service fees, storage charges, attorney fees and costs, and other expenses provided for in this title, and the balance, if any, shall be held in trust by the City for the owner of the vessel to claim; and if not claimed within one year, the balance shall be deposited into the Small Boat Harbor facilities fund. Upon the sale being made, the City shall make and deliver its

**Chapter 10.04 General Port and Harbor Provisions**

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bill of sale, without warranty, conveying the vessel to the buyer.

g. If at the public sale there are no bidders for the vessel, the City may destroy, sell at private sale or otherwise dispose of the vessel. The disposition is to be made without liability of the City, its employees or agents to the owner, master or any lien holder of the vessel. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.130 Nuisances declared--Removal. a. For the purposes of this title and in the interest of the greatest use of the facilities of the Homer harbor and the municipal waters by the general public, vessels in the Homer harbor and elsewhere on the municipal waters that are illegally moored, cause an obstruction to navigation, or that are abandoned or derelicts or unfit or unseaworthy or which are maintained in such manner as to make them liable to sinking for lack of being pumped or other maintenance, or which are unsafe or which are maintained in a manner as to constitute a fire hazard, and sunken vessels and vessels in imminent danger of sinking, are declared to be nuisances and subject to abatement and removal from the Homer harbor or other municipal waters by the City or its agents, without liability of the City for any damage done by virtue of the removal or for any of its consequences. b. Refuse of all kinds or any other obstructions or debris are declared to be public nuisances, and it shall be unlawful for any person to place, or cause to be placed, any public nuisance in the Homer harbor or in the municipal waters, or on the shores thereof. Nets, gear, and other material left on any float or dock for more than twelve hours are hereby declared a public nuisance. Any person causing or permitting the nuisances to be placed as aforesaid shall remove the same and upon his failure to do so, the same may be removed or caused to be removed by the harbormaster. When the harbormaster has authorized such nuisances to be removed or stored commercially, all costs of such commercial removal or storage shall be paid by and recoverable from the person creating the nuisances and shall not excuse the person responsible therefore from prosecution hereunder. Any nuisance under this subsection may be impounded, disposed of by destruction, private or public sale, or by any other means deemed reasonable by the harbormaster. Such disposition is to be made without liability of the City, its employees or agents to the owner, master or any lien holder of the nuisance.

c. Upon the harbormaster's written determination that a nuisance described in subsection a. of this section 10.04.130 exists that constitutes a clear and present danger to the public health, safety or general welfare, the nuisance may be summarily abated by the harbormaster according to section 10.04.132 without prior notice.

d. Vessels declared a nuisance under subsection a. of this section that do not constitute a clear and present danger to the public health, safety and general welfare may be moved, impounded, or disposed of according to the procedure provided in section 10.04.120. (Ord. 95-28 1, 1995; Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.132 Nuisances--Abatement procedure. a. Unless otherwise provided, the procedure set forth in this section shall apply whenever a vessel has been impounded or removed or a nuisance vessel abated pursuant to subsection 10.04.130(a) or otherwise, and the pre-impoundment administrative hearing procedures of section 10.04.120 were not followed.

b. An impoundment is effective when a written order of impoundment is placed on a vessel. An order of impoundment shall identify the vessel, state the reasons for impoundment, and be dated and signed by the harbormaster or his authorized designee. An impounded vessel may be immediately towed or otherwise removed upon the order of the harbormaster. Nothing in this subsection b. shall be construed to prevent the city from using alternatives to impoundment, including without limitation removal or other means to abate a nuisance.

c. When action is taken to impound, remove, or otherwise abate a nuisance vessel, notice of such action shall be placed on the vessel if possible, and within 6 hours a copy of the notice shall be personally delivered or placed in the U.S. mail addressed to the owner of the vessel. The notice shall include the following substantive provisions:

ATTENTION: The vessel \_\_\_\_\_ has been impounded/removed/abated by the City of Homer harbormaster as a public nuisance for the following reasons:

As the owner of the vessel you have the following options (those that apply are checked):

The vessel has been impounded and you may recover possession of the vessel by paying to the person having custody of the vessel the towing, storage, and other charges that may have accrued.  The vessel is at the following location: \_\_\_\_\_

The vessel has been removed and you may recover possession of the vessel at the following location: \_\_\_\_\_

The vessel has been destroyed. You may direct any inquiries to the City of Homer harbormaster.

The following action has been taken, and any option you may have is described below:

\_\_\_\_\_

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## Chapter 10.04 General Port and Harbor Provisions

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If you believe the vessel was improperly impounded, removed, or otherwise abated, you may:

- (i) In the case of an impoundment, recover possession of the vessel by paying any towing, storage, or other charges that have accrued, and you may claim a refund or reimbursement by filing a demand (on a form provided by the city) for an administrative hearing before a hearing officer as to whether the harbormaster had a sufficient factual and legal basis to impound the vessel; or
- (ii) In the case of an impoundment, you may demand return of the vessel without paying the towing, storage, or other charges by filing a demand (on a form provided by the city) for an administrative hearing before a hearing officer as to whether the harbormaster had a sufficient factual and legal basis to impound the vessel; or
- (iii) You may in any other case file a demand (on a form provided by the city) for an administrative hearing before a hearing officer as to whether the harbormaster had a sufficient factual and legal basis to impound, remove, or abate the vessel.

To be entitled to such a hearing, your written demand must be filed with the City Clerk (a) within 5 workdays after you learned that your vessel was impounded, removed, or otherwise abated or (b) within 15 workdays after the City mailed notice to the vessel owner of the action taken, whichever is earlier. If you fail to make a timely request for a hearing you will lose all right to challenge the sufficiency of the basis for the action taken.

If timely requested, the hearing must be held within 48 hours after the filing of your written demand, not including, Saturdays, Sundays, and city holidays, unless you waive your right to a speedy hearing. A determination that there was an insufficient factual or legal basis for the action taken will require the release of the vessel to the owner without payment of the towing, storage, or other accrued charges, or it will entitle the owner to a refund or reimbursement if the charges were already paid.

A hearing may be demanded by filing the appropriate form with the City Clerk at Homer City Hall between 8:00 a.m. and 5:00 p.m. on any day other than Saturday, Sunday and city holidays. (Ord. 95-28 2, 1995).

10.04.134 Nuisances—Post-removal hearing. a. If demand is timely made, the owner or person entitled to possession of the vessel is entitled to an administrative hearing to determine whether there was a sufficient factual and legal basis for the action to impound, remove, or otherwise abate the vessel. To be entitled to such a hearing, a written demand must be filed with the City Clerk (a) within 5 workdays after the owner or other person entitled to possession learned that the vessel was impounded, removed, or otherwise abated, or (b) within 15 workdays after the city mailed the notice required by section 10.04.132(c) to the vessel owner, whichever is earlier. If no timely request for a hearing is made, the factual and legal basis for the action taken will be conclusively deemed sufficient for all purposes.

b. The hearing will be held within 48 hours after the filing of a written demand, not including Saturdays, Sundays and city holidays, unless the person demanding the hearing waives a speedy hearing.

c. The hearing officer shall not be bound by formal rules of evidence. A copy of the harbormaster's written determination that a public nuisance exists will constitute prima facie proof of a sufficient factual and legal basis for the action. The burden will be on the vessel owner to prove by a preponderance of the evidence that there was not sufficient factual or legal basis for impounding, removing, or otherwise abating the vessel.

d. At the conclusion of the hearing, the hearing officer shall prepare a written decision, including the reasons for the decision. A copy of such decision shall be provided to the person demanding the hearing and the owner of the vessel. The hearing officer's decision in no way affects any criminal charges that may be pending. The decision of the hearing officer is final and may only be appealed to the Superior Court.

e. A determination by the hearing officer that there was not a sufficient factual or legal basis for the action taken will require the release of the vessel to the owner or other person entitled to possession without payment of the towing, storage, or the accrued charges, or will entitle the person to a refund or reimbursement by the city if the charges have already been paid. If the hearing officer determines there was a sufficient factual and legal basis for the action taken, the harbormaster may proceed to dispose of the vessel by sale according to subsections e-g of section 10.04.120, or the harbormaster may destroy or otherwise dispose of the vessel without sale if he makes a good faith determination that the value of the vessel does not exceed the costs of towing, storage, sale, and other harbor charges accrued against the vessel. (Ord. 95-28 3, 1995).

10.04.135 Nuisances--Form of demand for hearing--Hearing officer. a. The City Clerk shall prepare and make available a form of demand for a hearing pursuant to section 10.04.134. Upon receipt of a demand for a hearing the City Clerk shall immediately forward the demand to the City Manager or his designee, who shall schedule an administrative hearing and notify all parties.

b. The City Manager shall appoint a hearing officer to conduct hearings pursuant to section 10.04.134. No person with the authority to impound, remove, or otherwise abate a nuisance vessel shall be eligible to serve as a hearing

## Chapter 10.04 General Port and Harbor Provisions

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officer. (Ord. 95-28 4, 1995).

10.04.138 Interference with impoundment prohibited. a. Unless authorized by the harbormaster, it is unlawful for any person to remove an impoundment order from a vessel upon which it has been posted.

b. Unless authorized by the harbormaster, it is unlawful for any person to move a vessel after it has been posted with an impoundment order.

c. It is unlawful for any person to interfere with the harbormaster or any other person under the harbormaster's authority engaged in the impound, removal, or abatement of a vessel or public nuisance. (Ord. 95-28 5, 1995).

10.04.139 Lien on impounded or nuisance vessel. The City shall have a lien on any vessel impounded or abated as a nuisance under this title for charges for towing, storage, costs of abatement, costs of sale, attorneys fees, any other charges incurred in connection with the impoundment or abatement, and charges for harbor services, including without limitation, moorage, dockage, stall rental, utilities, and other services provided to or for the benefit of the vessel. (Ord. 95-28 6, 1995).

10.04.140 Annual review required. An annual review shall be required of all Port and Harbor rates. Such annual review shall be part of preparation of the Port, and charges and Harbor fiscal operating budgets. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.150 Required equipment. All water craft or vessels shall carry the equipment required by any applicable United States laws or regulations as now or hereafter amended, and shall be numbered or designated in accordance with any applicable United States laws or regulations as now or hereafter amended. In the absence of extenuating circumstances, failure of any boat or vessel within the Homer harbor to comply with applicable United States laws or regulations shall be in violation of this title. (Ord. 95-18(S)(part), 1995).

1. For Statutory provisions authorizing municipalities to provide for and regulate harbor facilities see AS 30. Ordinance 95-18(S) repealed and reenacted Title 10 with the bulk of Title 10 being incorporated into the Homer Port and Harbor Tariff 95-1, adopted by Resolution 95-69. Prior Ordinance History: Ord. 95-9, 1995; Ord. 95-4, 1995; Ord. 95-3, 1995; Ord. 92-46, 1992; Ord. 92-45, 1992; Ord. 92-23(A), 1992; Ord. 92-22, 1992; Ord. 91-25, 1991; Ord. 91-13(S), 1991; Ord. 90-17(A), 1990; Ord. 90-16, 1990; Ord. 90-8(A), 1990; Ord. 90-7, 1990; Ord. 89-6, 1989; Ord. 89-4, 1989; Ord. 88-11, 1988; Ord. 88-2, 1988.

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SEWARD FISHERIES

BOX 398  
HOMER, ALASKA 99603

(907) 235-8313

September 27, 1978

Homer City Council  
P. O. Box 335  
Homer, Alaska 99603

Dear Council Members:

Seward Fisheries would like to formally propose to lease the city dock from the City of Homer. The terms of the lease would have to be worked out with the best interest of both the City of Homer and Seward Fisheries. It would be in the best interest of both the City of Homer and all users of the dock, including all processors, for the City to lease the dock to Seward Fisheries.

Seward Fisheries would assume the following responsibilities if we lease the dock:

1. Seward Fisheries would maintain the dock facilities.
2. Seward Fisheries would maintain and operate the dock hoist. This would provide safer operations in the dock usage.
3. The dock would still be public dock. Seward Fisheries would just supply hoist operators and coordinate unloading schedules. No person or processor would be prohibited from using the dock provided they schedule their unloading times. This would make for a more orderly dock situation and would allow more product to come over the dock.

There would be many advantages for the City of Homer to lease the dock to Seward Fisheries. First the City of Homer would be relieved of all maintenance, maintenance costs and labor involved in maintaining the dock facilities. The City would also benefit from the revenue generated by the wharfage fees charged to the processors without incurring cost of maintaining the dock. This also would be a temporary means for the City to increase the poundage of product over the dock without discouraging any established or future processors until the harbor expansion is completed.

There would also be many advantages to current and future users of the dock facilities. The dock would be a much safer facility with a limited number of hoist operators. The scheduling of unloading times would allow for a more uniform use of the dock and allow processors to better schedule their operations.

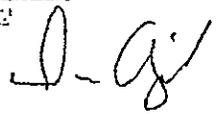
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Most importantly, this would also allow for more product to move over the dock.

Under the current dock situation, there are many negative affects toward all users of the dock. The volume of product coming over the dock is less and will continue to work against all processors and buying stations. The safety of the dock facility is questionable and will continue to get worse as more people use the dock. This situation will negatively affect established and future processors from considering future expansions.

Seward Fisheries would be the ideal choice to lease the dock. Seward Fisheries unloads more product over the dock than anyone else. Seward Fisheries has unloaded over 10 million pounds of product over the dock in the last year. Seward Fisheries has the facilities and personnel to maintain the dock facilities. Any problems or breakdowns with the dock could be handled right away rather than going through two or three people. The City, along with all users of the dock, would benefit from this lease between the City of Homer and Seward Fisheries.

SEWARD FISHERIES  
HOMER PLANT



Don Giles  
Plant Manager

DG:cm

HOMER002580

GRAHAM & DUNN  
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DONALD G. GRAHAM (1004-1074)

34<sup>TH</sup> FLOOR  
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1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101  
(206) 624-8800

DONALD G. GRAHAM, JR.  
PARTNER ON LEAVE

DWIGHT J. DRAKE  
LEGAL COUNSEL

October 4, 1978

Mr. Don Giles, Plant  
Manager  
Seward Fisheries  
P.O. Box 398  
Homer, Alaska 99803

Re: City dock lease

Dear Don:

This is in answer to your letter of September 28th regarding proposed lease of the city's dock in the boat harbor.

There are a number of rather important points which were not considered in your draft letter of September 27th addressed to the City Council. Let me mention the most important of these that comes to mind:

1. The lease area is not defined. There should be some general description of both the real and the personal property involved.
2. No lease term is stated or renewal options, if any.
3. What is the rental to be paid, if any, over and above maintaining the hoist and the dock.
4. It is important to define and place some limitations upon "maintenance." For example, who does driving of new piling and replacement of decking. Is the entire maintenance of the hoist to be at your cost?
5. Who determines and who bills the wharfage and unloading fees. Also, is the city to retain all these fees, and what about the payment for your own unloading time.
6. Who determines priority on the unloading schedules. Are new processors to have equal access or only "to the extent it is reasonably possible to accommodate" such new users. If the dock is overcrowded now, how can you be obligated to take on any and all new users.

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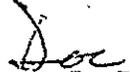
GRAHAM & DUNK

Mr. Don Giles  
Page Two  
October 4, 1978

7. Who is responsible for personal injury or damage to property of others. Who maintains the casualty and liability insurance and in what amounts.

I think these are the most important points which were not considered but should be in a final proposal. After you have given these some thought, why don't you give me a call and we can discuss them in further detail.

Yours truly,

  
James D. Rolfe

JDR/bp  
cc: Mr. Ralph Hoard

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LEASE AGREEMENT

This Lease, made and entered into as of the date of signature, by and between the CITY OF HOMER, an Alaskan Municipal Corporation, referred to hereinafter as Lessor, and SEWARD FISHERIES, a joint venture composed of Seward Seafoods, Inc., and Viking Seafoods Company, Alaskan Corporations, hereinafter referred to as Lessee,

WITNESSETH:

STATEMENT OF INTENT

WHEREAS, the parties to this Agreement recognize that the land area available for lease on the Homer Spit is extremely limited and therefore at a very high premium of demand; and,

WHEREAS, the parties further acknowledge that careful and intensive control and management of available land by the City of Homer is necessary to attain the maximum highest and best use thereof, and that provisions for such control and management should be specifically set forth in this Lease Agreement; and,

WHEREAS, it is vital that the parties, insofar as possible, anticipate and clearly set forth at this time the expected use of the leased premises as such use is governed by applicable zoning regulations;

NOW, THEREFORE, the parties having in good faith examined and approved the foregoing Statement of Intent, do hereby enter into a lease of real property upon the following terms and conditions:

LEGAL DESCRIPTION AND TERM

Lessor does hereby let and demise to the Lessee, and the Lessee does hereby lease from Lessor, the following-described real property:

LAW OFFICES OF  
HAHN, JEWELL  
& STANGFILL  
542 WEST SECOND AVE. 41  
ANCHORAGE, ALASKA  
279-1544  
HOMER, ALASKA  
235-8709

HOMER000548

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Beginning at the southerly most corner of lot 13, according to the City of Homer replat of the Homer Spit, thence S 58 46' 36" E 240.0 feet; Thence S 31 13' 24" W 68.29 feet, to the northerly right-of-way of the Sterling Highway, AKA the Homer Spit Road, thence along said right-of-way in a south easterly direction along the arc of a curve to the left, the center of which bears S 16 59' 42" E 459.26 feet, a distance of 15.47 feet; thence N 58 46' 36" E 419.89 feet, thence N 31 13' 24" E 80.00 feet to the most westerly corner of the aforementioned lot 13, thence along the southwesterly boundary of said lot 13, S 58 46' 36" E 90.00 feet, thence N 31 13' 24" E 252.58 feet to the meander line of Kachemak Bay, according to the Alaska Tidelands Survey #612, thence along said meander line, S 60 19' 13" E 100.04 feet to the southeasterly boundary of the aforementioned lot 13, thence along said boundary, S 31 13' 24" W 255.27 feet, to the most southerly corner of said lot 13 and the true point of beginning.

Said parcel as described contains 1.371 acres, and upon filing of the proposed plat, will be known as lot 13-A, of the City of Homer Port Industrial Subdivision #2.

TO HAVE AND TO HOLD the demised premises for a term of twenty-five (25) years commencing on the 14th day of September, 1979, and ending at 12:00 o'clock midnight on the 14th day of September, 2004, unless sooner terminated as hereinafter provided. Lessee shall have the option to renew this lease for one (1) successive period of twenty-five (25) years providing said option is exercised by giving written notice thereof to Lessor not less than six (6) months prior to the termination of the then existing term. The renewal period shall be on the same terms and conditions existing under the initial period of this lease, unless otherwise modified by the parties in writing. Any holding over after the expiration of this lease, or any extension hereof with the consent of the Lessor shall be deemed to be a tenancy from month to month. Termination of this lease during the initial period hereof shall terminate all rights of renewal or extension hereunder.

LAW OFFICES OF  
HANN, JEWELL  
& STANFILL  
843 WEST SECOND AVENUE  
ANCHORAGE, ALASKA  
273-1544  
HOMER, ALASKA  
235-8709

GENERAL CONDITIONS AND COVENANTS

1  
2  
3 1. RENTAL: In consideration for this lease, Lessee  
4 agrees to pay fair market rental for the above described premises  
5 to be determined as follows:

6 (a) A qualified real estate appraiser accep-  
7 table to both parties shall be selected for the pur-  
8 pose of computing the fair rental value of the leased  
9 premises. The Lessee shall be responsible for pay-  
10 ment of all fees and expenses charged by the appraiser  
11 for such computation.

12 (b) Fair rental value shall be computed by  
13 the appraiser within a reasonable time, not to  
14 exceed six (6) months, prior to the date of commence-  
15 ment of the lease term. The appraisal shall take into  
16 consideration all relevant factors of value pertaining  
17 to the lease premises including, by way of example,  
18 only and not limitation, the type and worth of muni-  
19 cipal services rendered by or available from the City  
20 of Homer.

21 (c) The fair rental value found by the appraiser  
22 shall be attached to this lease and shall constitute  
23 the annual rent payable during the term of this lease,  
24 subject, however, to the reappraisal provision set  
25 forth in the following paragraph (d) hereof. Rent  
26 shall be due and payable monthly in advance, with  
27 the first payment due on or before the first day of  
28 the lease term and on the same day of each succeeding  
29 month thereafter during the lease term or any exten-  
30 sion thereof. Interest shall accrue at the rate of  
31 10% per annum from and after the date any lease pay-  
32 ment is due until the same is paid in full.

LAW OFFICES OF  
HANN, JEWELL  
& STANFILL  
WEST SECOND AVENUE  
ANCHORAGE, ALASKA  
272-1514  
HOMER, ALASKA  
235-8709

1 (d) The annual fair rental as found by the  
2 appraiser prior to the commencement of this lease  
3 shall be reappraised every four (4) years thereafter  
4 and the rental determined by such reappraisal shall  
5 be paid by Lessee to Lessor during each four-year  
6 period of the lease term, or portion thereof follow-  
7 ing such reappraisal. The parties may use the same  
8 appraiser who initially determined fair rental value  
9 or they may agree upon another. All fees and ex-  
10 penses incident to the reappraisal shall be paid  
11 by Lessee. A copy of said reappraisal shall be  
12 attached to this lease and shall constitute the  
13 rental payable hereunder.

14 2. SURVEY REQUIREMENT: Lessee shall obtain a survey of  
15 the above described premises by a registered land surveyor. All  
16 costs of land surveys required herein and necessary for the pro-  
17 per and legally sufficient location of the leased premises shall  
18 be borne by Lessee.

19 3. USE OF PREMISES; DEVELOPMENT PLAN: Lessee shall not  
20 use the subject premises for any unlawful purpose and shall re-  
21 turn the same to the Lessor at the end of the lease period in as  
22 good condition as the same has been leased. Use of the above  
23 described premises under this lease is for a seafood processing  
24 plant, and operations related directly thereto. Any other use is  
25 prohibited without the prior written consent of the Lessor.  
26 Lessee shall comply with all applicable statutes, laws and ordin-  
27 ances in its use of the leased premises during the entire lease  
28 term or any extension or renewal thereof.

29 It is specifically understood and agreed that Lessee  
30 has not entered into this Lease for the purpose of speculation  
31

LAW OFFICES OF  
HARRI JEWELL  
& STANFILL  
342 WEST SECOND AVENUE  
ANCHORAGE, ALASKA  
272 1244  
HOMER, ALASKA  
232 8708

1 but in order to fully develop the above described property.  
2 Lessee shall submit a preliminary development plan to the  
3 Council, with its application to lease, showing the layout  
4 of buildings and other improvements on the said premises, the  
5 specific use of the said premises, and an estimate of total  
6 capital investment therein as well as the completion date for  
7 such improvements. The development plan shall by reference  
8 become part of this lease as though fully set forth herein, and  
9 any failure of Lessee to fully conform to final "as-built"  
10 plans based upon the preliminary development plan or to fully  
11 and timely comply with any other requirements set forth in the  
12 development plan, shall constitute a material breach of this  
13 lease agreement. It is further understood and agreed that this  
14 lease shall take effect only after approval of the preliminary  
15 development plan by the Homer City Council.

16 4. CONTROL OF EXCESS LAND: It is understood and agreed  
17 that Lessor shall retain full control over all land area not  
18 occupied by Lessee's buildings; provided however, that Lessee  
19 shall have use of any such unoccupied areas as approved in the  
20 development plan.

21 5. DISPOSAL OF WASTE MATERIALS: Lessee shall provide  
22 at its expense for the storage and disposal of all types of  
23 waste materials resulting from its operations. Any facility  
24 constructed or otherwise provided for the purposes of this sec-  
25 tion shall comply with the standards of government regulatory  
26 agencies then currently applicable. Failure to maintain any  
27 such facility in strict accordance with such standards shall  
28 constitute a material breach of this lease agreement.

29 6. VEHICLE PARKING: It is understood that the above  
30 described leased premises contain an area no larger than that  
31

LAW OFFICES OF  
HARRI, JEWELL  
& STAHPILL  
511 WEST SECOND AVENUE  
ANCHORAGE, ALASKA  
278 1544  
HOMER, ALASKA  
255-8709

1 required for the operation of Lessee's enterprise, exclusive of  
2 parking. Parking shall be provided by separate agreement with  
3 the City of Homer and shall comply with all applicable parking  
4 and zoning regulations. The parties agree to enter into a  
5 license agreement for sufficient off-site vehicular parking  
6 spaces to comply with applicable parking ordinances. Any  
7 violation of the terms of such separate parking agreement  
8 shall constitute a material breach of this lease. The terms  
9 and conditions of said license agreement for off-site parking  
10 are by this reference incorporated in this lease as though  
11 fully set forth herein. A copy of said license agreement is  
12 attached hereto as Exhibit "A".

13 The parties understand that Lessor does not guarantee  
14 the availability of parking spaces by either the terms of this  
15 lease or the license agreement.

16 7. RELOCATION OF UTILITIES: Lessee shall, at its expense,  
17 relocate any water or other utility lines, if necessary in the  
18 opinion of Lessor.

19 8. REMOVAL OF MATERIALS: Lessee hereunder shall not  
20 sell or remove for use elsewhere any stone, gravel, or any other  
21 materials valuable for building or commercial purposes; provided,  
22 however, that material from the leased premises, required in the  
23 enjoyment of this lease may be used after a written permit there-  
24 for has been obtained from the Lessor. The Lessee shall not  
25 commit waste or injury upon the lands herein leased.

26 9. IMPROVEMENTS: Lessee shall have the right to con-  
27 struct and maintain on the leased premises such buildings, im-  
28 provements, fixtures and equipment as Lessee may desire, to re-  
29 arrange or remodel the same and to remove the same or any part  
30 thereof, with the prior written approval of the Lessor. Lessee  
31 shall be subject to and agrees to comply with all statutes, laws

32  
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443 WEST SECOND AVENUE  
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235-8709

1 and ordinances, including zoning regulations and ordinances, of  
2 any State or local governmental entity having jurisdiction over  
3 said premises. This paragraph is subordinate to the provisions  
4 contained in Paragraph 3 of this lease.

5 10. SIGNS: No signs shall be erected or placed upon the  
6 leased premises without Lessee first obtaining the approval of  
7 Lessor.

8 11. INSPECTION OF PREMISES: Lessee shall allow the  
9 Lessor, through its duly authorized representatives, to enter  
10 upon the leased premises at any reasonable time, for the purpose  
11 of an inspection thereof.

12 12. RESIDENTIAL USE PROHIBITED: No living quarters of any  
13 kind shall be installed, erected, placed or maintained upon the  
14 leased premises during the lease term or any extension thereof,  
15 except for a watchman.

16 13. ASSIGNMENT, SUBLEASE OR OTHER TRANSFER OF INTEREST:  
17 This lease may be assigned, reassigned or subleased provided the  
18 written consent of the Lessor is first obtained, and the Lessor  
19 covenants and agrees that such consent will not unreasonably be  
20 denied by Lessor. If either or both corporate members of the  
21 joint venture Lessee shall sell or otherwise transfer a controll-  
22 ing interest in their respective corporate shares, such sale or  
23 transfer shall not in and of itself operate to assign or otherwise  
24 transfer the interest of such joint venture corporation in this  
25 Lease, without the written consent of Lessor being first obtained.

26 14. ABANDONMENT BY LESSEE; FORFEITURE: Lessor may re-  
27 enter and repossess the demised premises and declare the lease  
28 term forfeited if said premises shall be deserted or unused by  
29 Lessee for thirty (30) days or more. Lessor may pursue all  
30 remedies available under this lease or at law for a forfeiture  
31 by Lessee hereunder.

32  
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235-6709

1        15. BANKRUPTCY:    If the Lessee shall make any assignment  
2 for the benefit of creditors or shall be adjudged a bankrupt  
3 or if a receiver is appointed for the Lessee or Lessee's assets,  
4 or any interest under this Lease, and if the appointment of the  
5 receiver is not vacated within thirty (30) days, or if a volun-  
6 tary petition is filed under Section 18(a) of the Bankruptcy Act  
7 by the Lessee, then and in any event, the Lessor may, upon  
8 giving the Lessee thirty (30) days' notice, terminate this lease.

9        16. LIQUIDATED DAMAGES:    In the event the Lessee shall  
10 abandon this lease for any reason, or in the event Lessor shall  
11 take possession of the premises by reason of the bankruptcy or  
12 breach of covenant on the part of the Lessee, or in the event the  
13 Lessee shall be evicted for breach of covenant, then and in that  
14 event all rentals paid in advance by the Lessee to the Lessor shall  
15 be retained by the Lessor as liquidated damages for the breach of  
16 this agreement, and as additional rental for the use of the proper-  
17 ty. However, the retention of such rentals does not waive any  
18 right the Lessor may otherwise have for enforcing the terms and  
19 provisions of this agreement.

20        17. TAXES:    Lessee shall pay all taxes levied upon any per-  
21 sonal property of the Lessee situated upon the leased premises and  
22 owned by the Lessee or used in connection with the operation of the  
23 Lessee's business thereon, and any other taxes due or payable be-  
24 cause of Lessee's interest in the land or improvements described  
25 in this lease.

26        18. INSURANCE:    (a) Lessee specifically warrants that  
27 Lessee will hold Lessor harmless from any and all claims by third  
28 parties arising out of the operations of Lessee upon the leased  
29 premises and in this connection agrees to obtain at its expense,  
30 and maintain during the entire lease term or extension thereof,  
31 public liability insurance with limits of not less than

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235-8709

1 \$250,000.00 per person, \$1,000,000.00 per each occurrence,  
2 and \$50,000.00 property damage coverage.

3 (b) Lessee agrees to carry Workmen's Compensation Insur-  
4 ance and to furnish a certificate thereof to the Lessor.

5 (c) All contracts of insurance shall provide for not  
6 less than thirty (30) days' written notice to Lessor of cancella-  
7 tion or expiration or substantial change in policy conditions and  
8 coverage.

9 (d) The amount of insurance coverage shall be reviewed  
10 every four (4) years concurrently with the reappraisal provisions  
11 of Paragraph 1(d) of this Lease. The parties agree that such  
12 coverage may be increased or decreased pursuant to the findings  
13 of the four (4) year review.

14 19. DEFAULT AND TERMINATION: If Lessee shall default in  
15 any of Lessee's obligations hereunder and such default shall not  
16 be cured within a period of thirty (30) days after receipt by  
17 Lessee of written notice from Lessor of such default, it shall be  
18 lawful for Lessor at its option to terminate this lease by written  
19 notice and re-enter into the leased premises, or any part thereof,  
20 and expel Lessee or any person or persons occupying said premises  
21 and to so repossess and enjoy the premises as in Lessor's former  
22 estate. Should this lease at any time be terminated under the  
23 terms and conditions hereof, or in any other way, Lessee hereby  
24 covenants and agrees to surrender and deliver up the said premises  
25 and property to Lessor immediately upon the termination of the  
26 term hereof, subject to Lessee's rights hereunder.

27 Upon expiration of the term of this lease or upon ter-  
28 mination or cancellation of this lease from a breach of covenant  
29 by the Lessee and upon failure of the Lessee or other responsible  
30 party to cure any breach of covenant or default occurring under  
31 the terms hereof, any personal property remaining on the leased

32

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279 1544  
HOMER, ALASKA  
235-8703

-9-

HOMER000556

1 premises belonging to Lessee shall within thirty (30) days after  
2 the termination of this lease, be removed by Lessee; provided,  
3 the Lessor may extend the time for removing such property by con-  
4 sent of the Common Council of the City of Homer, Alaska. If any  
5 of the personal property and/or chattels of the Lessee are not  
6 removed within the time allowed, such personal property and/or  
7 chattels shall upon reasonable notice to the Lessee be sold at  
8 public sale under the direction of the Lessor. The proceeds of  
9 said sale shall first apply to any amount owing to Lessor under  
10 the terms of this lease; if no amount is owing, then the proceeds  
11 shall inure to the Lessee or any person or persons owning such per-  
12 sonal property and/or chattels on the land, after paying to the  
13 Lessor all rents due and owing and the costs and expenses of such  
14 sale. Lessee shall be responsible for all rent due under the  
15 terms of this lease for the entire period of possession or occu-  
16 pancy, and until all personal property is removed under the pro-  
17 visions of this paragraph, unless an agreement to the contrary is  
18 evidenced in writing and signed by the parties hereto.

19 20. SURRENDER ON TERMINATION: Lessee shall, on the last  
20 day of the term of this Lease or upon any earlier termination of  
21 this lease, peaceably surrender and deliver up the premises into the  
22 possession and use of Lessor without fraud or delay in as good con-  
23 dition as when Lessee first entered thereon, free and clear of all  
24 lettings and occupancies unless expressly permitted by Lessor in  
25 writing, and free and clear of all liens and encumbrances.

26 Upon the end of the term of this lease, any extension or  
27 any earlier termination thereof, Lessee shall have thirty (30)  
28 days to remove any buildings or other improvements from the leased  
29 premises. Title to the buildings and improvements remaining on  
30 the leased premises after such thirty (30) day period shall  
31 automatically vest in Lessor without requirement of any

32  
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& STANFILL  
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279-1544  
HOMER, ALASKA  
235-0709

1 deed, conveyance or bill of sale thereof. However, if Lessor  
2 should require any such document in confirmation thereof, Lessee  
3 shall execute, acknowledge and deliver any such document to  
4 Lessor.

5 21. OFFER TO LEASE; ACCEPTANCE: This instrument is  
6 understood to be an offer to lease subject to all applicable  
7 laws, ordinances and regulations of the City of Homer and may be  
8 withdrawn without notice at any time after Ninety (90) days from  
9 submission to Lessee unless within such Ninety (90) day period  
10 Lessee shall execute and return the lease to the City.

11 22. SPECIAL CONDITIONS: The following special condition  
12 shall apply to this lease:

13 (a) Every four (4) years concurrently with the  
14 reappraisal provisions of Paragraph 1 (d) of this lease, the  
15 development plan shall be compared to actual on-site development  
16 by a registered land surveyor who shall then re-certify the  
17 "as built" survey of the premises at that time.

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812 WEST SECOND AVENUE  
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HOMER ALASKA  
235-8709

1 23. NOTICES: Any notice or demand which must be given or  
2 made by the parties hereto shall be in writing and addressed to  
3 the parties at the following addresses:

4 Lessor: P. O. Box 335, Homer, Alaska 99603  
5 Lessee: P. O. Box 398, Homer, Alaska 99603.

6 24. SUCCESSORS IN INTEREST: This agreement shall be binding  
7 upon and inure to the benefit of the parties, their heirs, assigns,  
8 and successors in interest.

9 25. MODIFICATION: This lease and any addenda or exhibits  
10 attached hereto shall constitute the entire agreement between  
11 the parties and no modification of this lease shall be binding  
12 unless in writing and duly executed by the parties hereto.

13 IN WITNESS WHEREOF, the parties hereto have hereunto set  
14 their hands and seals, this 14 day of Sept, 1979.

15  
16 LESSOR: CITY OF HOMER, ALASKA

17 BY James C. Johnson  
18 City Manager

19  
20 LESSEE: SEWARD FISHERIES, a Joint Venture  
21 Composed of

22 Seward Seafoods, Inc.  
23 BY Robert W. Hamilton  
24  
25 BY Paul G. Killip, Vice Pres.  
26

27 and Viking Seafoods Company  
28 BY Arthur J. Killip, Vice Pres.  
29  
30 BY Edna M. Morsitt Secretary  
31  
32

LAW OFFICES OF  
HAHN, JEWELL  
& STANFILL  
519 WEST SECOND AVENUE  
ANCHORAGE, ALASKA  
291144  
HOMER, ALASKA  
235.6708

1 STATE OF ALASKA )  
2 THIRD JUDICIAL DISTRICT ) ss:

3 THIS IS TO CERTIFY that on the 27th day of August  
4 1979, before me, the undersigned Notary Public in and for Alaska,  
5 duly commissioned and sworn as such, personally appeared LARRY C.  
6 FARNEN, known to me to be the City Manager of the CITY OF HOMER,  
7 ALASKA, and he acknowledged to me the execution of the foregoing  
8 Lease Agreement for and on behalf of the City of Homer, Alaska,  
9 and further acknowledged to me that said instrument was signed  
10 and sealed by him on behalf of the City of Homer, Alaska, pur-  
11 suant to authorization duly adopted by the Common Council of  
12 Homer, Alaska.

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
14 my notarial seal, the day and year in this certificate first  
15 above written.



Robert O. Merrill  
Notary Public in and for Alaska  
My Commission Expires: 1/18/82

16 STATE OF ALASKA )  
17 THIRD JUDICIAL DISTRICT ) ss:

18 THIS IS TO CERTIFY that on the 14th day of Sept  
19 1979, before me, the undersigned Notary Public, in and for ~~WILKINSON~~ Va:  
20 duly commissioned and sworn as such, personally appeared me  
21 Robert M. Thorstenson and Richard C. Kelly, known to me to  
22 be the Pres and VP of SEWARD  
23 SEAFOODS, INC., a corporation organized under and existing by  
24 virtue of the laws of the State of Alaska, and they acknowledged  
25 to me the execution of the above and foregoing Lease Agreement  
26 to be their free and voluntary act and deed for and on behalf  
27 of said corporation for the uses and purposes therein set forth,  
28 pursuant to a duly enacted resolution of the corporation.

29 IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
30 my notarial seal, the day and year in this certificate first  
31 above written.



Therese McCune  
Notary Public in and for ~~ALASKA~~ Wash  
My Commission Expires: 8 31 1982

LAW OFFICES OF  
HARRI JEWELL  
& STANFILL  
545 WEST SECOND AVENUE  
ANCHORAGE, ALASKA  
279-1544  
HOMER ALASKA  
235-8799

STATE OF WASHINGTON )  
                          ) ss:  
COUNTY OF KING      )

THIS IS TO CERTIFY that on the 25th day of September 1979, before me, the undersigned Notary Public, in and for Washington, duly commissioned and sworn as such, personally appeared M. L. Crouz and E. C. Merritt, known to me to be the Vice President and Secretary of VIKING SEAFOODS COMPANY, a corporation organized under and existing by virtue of the laws of the State of Alaska, and they acknowledged to me the execution of the above and foregoing lease Agreement to be their free and voluntary act and deed for and on behalf of said corporation for the uses and purposes therein set forth, pursuant to a duly enacted resolution of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.



Jack Easton  
Notary Public in and for Washington  
My Commission Expires: 5-22-1983

HOMER000561

This addendum is made a part of that lease agreement entered into as of the date of December 10, 1979, by and between the City of Homer, an Alaskan Municipal Corporation, referred to hereinafter as Lessor, and Seward Fisheries, a joint venture composed of Seward Seafoods, Inc., and Viking Seafoods Company, Alaskan Corporations, hereinafter referred to as Lessee.

In addition to the real property leased in the above mentioned lease agreement, Lessor does hereby let and demise to the Lessee, and the Lessee does hereby lease from Lessor, the following, described real property:

The northeasterly 12 feet, measured at right angles to the lot line, of Lot 12B, of the proposed City of Homer Port Industrial #2 Subdivision, according to Exhibit 'B', attached.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, this 10<sup>th</sup> day of December, 1979.

LESSOR: CITY OF HOMER, ALASKA

By [Signature]  
City Manager

LESSEE: SEWARD FISHERIES, a Joint Venture Composed of Seward Seafoods, Inc.

By [Signature]  
By [Signature]

and Viking Seafoods Company

By [Signature]  
By [Signature]

APPROVED AS TO FORM:

By [Signature]  
City Attorney

STATE OF ALASKA                    )  
  )    ss:  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on the 19th day of November 1979, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared Larry C. Farnen, known to me to be the City Manager of the CITY OF HOMER, ALASKA, and he acknowledged to me the execution of the foregoing addendum for and on behalf of the City of Homer, Alaska, and further acknowledged to me that said instrument was signed and sealed by him on behalf of the City of Homer, Alaska, pursuant to authorization duly adopted by the Common Council of Homer, Alaska.

HOMER000562

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.



[Signature]  
Notary Public in and for Alaska  
My Commission Expires: 1/18/82

STATE OF ~~ALASKA~~ WASHINGTON )  
 )  
 ) ss:  
 )  
 )  
 )

County of King  
THIS IS TO CERTIFY that on the 10th day of December 1979, before me, the undersigned Notary Public, duly commissioned and sworn as such, personally appeared Robert M. Thorstenson and Richard C. Kelly, known to me to be the Pres and VP of SEWARD SEAFOODS, INC., a corporation organized under and existing by virtue of the laws of the State of Alaska, and they acknowledged to me the execution of the above and foregoing addendum to be their free and voluntary act and deed for and on behalf of said corporation for the uses and purposes therein set forth, pursuant to a duly enacted resolution of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

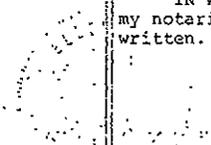


[Signature]  
Notary Public  
My Commission Expires: 8-31-82

STATE OF ALASKA ~~WASHINGTON~~ )  
 )  
 ) ss:  
 )  
 )  
 )

THIS IS TO CERTIFY that on the 7th day of December 1979, before me, the undersigned Notary Public, duly commissioned and sworn as such, personally appeared [Signature] and [Signature], known to me to be the [Signature] and [Signature] of VIKING SEAFOODS COMPANY, a corporation organized under and existing by virtue of the laws of the State of Alaska, and they acknowledged to me the execution of the above and foregoing addendum to be their free and voluntary act and deed for and on behalf of said corporation for the uses and purposes therein set forth, pursuant to a duly enacted resolution of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.



[Signature]  
Notary Public  
My Commission Expires: 10/14/82

Blk 0172<sup>M</sup> - 673  
forwarded 11/18/86

AMENDMENT OF LEASE AGREEMENT

1           WHEREAS, the CITY OF HOMER is Lessor under that certain  
2 lease dated September 14, 1979, and Addendum No. 1 to said lease  
3 dated December 18, 1979, wherein SEWARD FISHERIES, a joint  
4 venture composed of Seward Seafoods, Inc., and Viking Seafoods  
5 Company, Alaska Corporations, is Lessee, said lease and addendum  
6 being recorded in Book 111, at pages 884 through 899 of the  
7 Homer Recording District, Third Judicial District, State of  
8 Alaska, and

9           WHEREAS, through interim assignments, corporate mergers and  
10 reorganizations the above described lease and addendum herein-  
11 after referred to collectively as "the existing lease", the  
12 Lessee is now Icicle Seafoods, Inc., an Alaskan Corporation,  
13 doing business as Seward Fisheries, and

14           WHEREAS, the present Lessee and the Lessor have verbally  
15 agreed to amend the existing lease and now wish to reduce such  
16 amendments to writing.

17           NOW THEREFORE, in consideration of the premises and the  
18 mutual benefits to be derived herefrom, the parties agree as  
19 follows:

- 20           1. NAME OF LESSEE: The name of the Lessee under the  
21 original lease is changed to:  
22                   ICICLE SEAFOODS, INC.  
23                   an Alaskan Corporation,  
24                   d/b/a Seward Fisheries  
25                   4819 21st Ave. West  
26                   Seattle, Washington 98199
2. EFFECTIVE DATE: The effective date of the amendments  
contained in this agreement is July 1, 1986.

Law Office of MAHN, JEWELL & STANFILL  
451 WEST SEVENTH AVENUE, SUITE 312  
ANCHORAGE, ALASKA 99501 - TELEPHONE 273-1244  
HOMER, ALASKA - TELEPHONE 834-3700

HOMER000568

Book 6172 - pg 67A

3. RENTAL: Rent payable to Lessor shall be SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500.00) per year subject to review as set forth in Paragraph 4 of this agreement. Payments shall be one-twelfth of said annual amount due on or before the first day of July, 1986 and on or before the first day of each month of the lease term except as such rental may be increased or decreased as the result of reappraisal under Paragraph 1(d) of the original lease, as modified by the next succeeding paragraph of this agreement.

The current annual rental is allocated as follows:

Land Lease	\$29,115
Dock Use (As described in Paragraph 5 of this agreement	33,385
TOTAL	\$62,500

4. REAPPRAISAL. The next review of the rental due under the existing lease as amended shall be completed within the sixty (60) day period preceding September 14, 1987, and during the same period of every fourth year thereafter during the lease term.

(a) Land lease amount shall be determined by an independent appraiser acceptable to both parties as specified in Section 2, Rental of the Lease Agreement.

(b) Dock use amount shall be reviewed and renegotiated by lessor and lessee at the time the land lease amount is reviewed. Adjustment of the dock use amount shall take into consideration the then current use of the dock facility and equipment by the lessee.

Law Offices of RAHN, JEWELL & STANFILL  
431 WEST SEVENTH AVENUE, SUITE 212  
ANCHORAGE, ALASKA 99501 - TELEPHONE 273-1544  
HOMER, ALASKA - TELEPHONE 232-8703

HOMER000569

Book 0172-pp 675

1           5. USE OF PREMISES. Paragraph 3 of the original lease  
2 remains in effect. The following additional uses are included  
3 within the rental as stated above in Paragraph 3 of this agree-  
4 ment.

5           (a) Lessee shall have the use of the covered struc-  
6 ture at the Fish Dock.

7           (b) Lessee may continue to operate its ice dispensing  
8 equipment at its present location on the Fish Dock.

9           (c) Lessee shall have the use of loading cranes No. 7  
10 and 8 to a maximum of 1,850 hours per year. Use of the cranes  
11 by Lessee in excess of that time shall be at the rate of Fifteen  
12 Dollars (\$15.00) per hour.

13           (d) Seafood wharfage charges are included within the  
14 rental given above.

15           (e) Lessee shall have the use of one fish buying  
16 shed. Lessor shall have the right to select the specific shed  
17 for Lessee's use.

18           6. FISH PUMP. After April 1, 1987, if Lessee intends to  
19 install and operate a fish pump on the Homer Fish Dock during the  
20 lease term, the pump shall be located underneath the Fish Dock.  
21 The exact location of the pump and any subsequent modifications  
22 to the pump and/or its location shall first be approved by the  
23 Port/Harbor Director of the City of Homer.

24           7. EQUIPMENT MAINTENANCE AND REPAIRS. Lessee shall be  
25 responsible for maintaining all equipment installed or operated  
26 by Lessee on the leased premises, at Lessee's expense. Lessee  
is also responsible for repairing any damages by Lessee to

Law Offices of HAHN, JEWELL & STANFILL  
431 WEST SEVENTH AVENUE, SUITE 211  
ANCHORAGE, ALASKA 99501 - TELEPHONE 279-1544  
HOMER, ALASKA - TELEPHONE 235-8708

HOMER000570

Basie 0172, page 76

1 equipment owned by Lessor, and shall return equipment owned by  
2 Lessor at the termination of this Lease in the same condition as  
3 at its inception or the date of installation of such equipment,  
4 ordinary wear and tear from such usage excepted.

5 8. RECIPROCAL ICE PURCHASING. Lessor and Lessee agree  
6 that in the event of a shutdown of the ice manufacturing and  
7 dispensing equipment owned by either party, each will sell ice  
8 to the other in such quantities as may be requested at current  
9 retail market rates.

10 9. EXISTING LEASE CONTINUES. Except as amended by this  
11 agreement, the existing lease and addendum remain in full force  
12 and effect and terms and conditions thereof are hereby incor-  
13 porated by this reference as though fully set forth herein.

14 This agreement shall govern in the event of a conflict with  
15 any provision of the existing lease.

16 IN WITNESS WHEREOF, the parties have hereunto set their  
17 hands the 13<sup>th</sup> day of NOVEMBER, 1986.

LAW OFFICES OF HAHN, JEWELL & STANFILL  
431 WEST SEVENTH AVENUE, SUITE 214  
ANCHORAGE, ALASKA 99501 - TELEPHONE 278-1544  
HOMER, ALASKA - TELEPHONE 233-8709

18 LESSOR: CITY OF HOMER, ALASKA  
19  
20 By Philip C. Shealy  
Philip C. Shealy  
City Manager

22 LESSEE: ICICLE SEAFOODS, INC.  
d/b/a Seward Fisheries  
23  
24 By Robert P. [Signature]

25  
26 By \_\_\_\_\_

HOMER000571

B.L.A. 0172 pg 677

1 STATE OF ALASKA )  
 )ss.  
2 THIRD JUDICIAL DISTRICT)

3 THIS IS TO CERTIFY that on the 13<sup>th</sup> day of November, 1986,  
4 before me, the undersigned Notary Public in and for Alaska, duly  
5 commissioned and sworn as such, personally appeared PHILIP C.  
6 SREALY, known to me to be the City Manager of the CITY OF HOMER,  
7 ALASKA, and he acknowledged to me that said instrument was  
8 signed and sealed by him on behalf of the City of Homer, Alaska,  
9 pursuant to authorization duly adopted by the Common Council of  
10 Homer, Alaska.

11 IN WITNESS WHEREOF, I have hereunto set my hand and  
12 affixed my notarial seal, the day and year in this certificate  
13 first above written.

14 Parula G. Bluk  
15 Notary Public in and for Alaska  
16 My Commission Expires: 9/28/86

17 STATE OF WASHINGTON)  
18 )ss.  
19 COUNTY OF KING )

20 THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, 1986,  
21 before me, the undersigned Notary Public, duly commissioned and  
22 sworn as such, personally appeared Robert P. Rogers and  
23 \_\_\_\_\_, known to me to be the Plant Manager and  
24 of ICICLE SEAFOODS, INC., d/b/a SEWARD FISHERIES,  
25 a corporation organized under and existing by virtue of the laws  
26 of the State of Washington, and they acknowledged to me the  
execution of the above and foregoing agreement to be their free  
and voluntary act and deed for and on behalf of said corporation  
for the uses and purposes therein set forth, pursuant to a duly  
enacted resolution of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my notarial seal, the day and year in this certificate  
first above written.

[Signature]  
Notary Public in and for Washington  
My Commission Expires: 8-1-85

LAW OFFICES OF HAHN, JEWELL & STANFILL  
431 WEST SEVENTH AVENUE SUITE 212  
ANCHORAGE, ALASKA 99501 • TELEPHONE 278-1244  
HOMER, ALASKA • TELEPHONE 236-8769

HOMER000572

SECOND  
AMENDMENT OF LEASE AGREEMENT

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LAW OFFICES OF HAHN, JEWELL & STANFILL  
21 WEST SEVENTH AVENUE, SUITE 209  
ANCHORAGE, ALASKA 99501 - TELEPHONE 278-1344  
HOOPER, ALASKA - TELEPHONE 233-8700

WHEREAS, the CITY OF HOMER is Lessor under that certain lease dated September 14, 1979, and Addendum No. 1 to said lease dated December 10, 1979, and first Amendment of Lease Agreement dated July 1, 1986, wherein SEWARD FISHERIES, a joint venture composed of Seward Seafoods, Inc., and Vikings Seafoods Company, Alaskan Corporations, is Lessee, said lease and addendum being recorded in Book 111, at Pages 884 through 890 of the Homer Recording District, Third Judicial District, State of Alaska, and said first Amendment of Lease recorded in Book 172 at Pages 673 through 678 of the Homer Recording District, and

WHEREAS, the review of the rental due under the existing lease as amended has been completed within the Sixty (60) day period preceding September 14, 1987, and will be completed during the same period every fourth year thereafter during the lease term, and

WHEREAS, on October 26, 1987, the Homer City Council approved the following amendments to the lease agreement which the parties now desire to reduce to writing with an effective date of September 14, 1987.

NOW THEREFORE, in consideration of the premises and the mutual benefits to be derived herefrom, the parties agree as follows:

- 1. EFFECTIVE DATE: The effective date of the amendments contained in this agreement is September 14, 1987.

1 2. RENTAL: Rent payable to Lessor shall be FIFTY SIX  
2 THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$56,550.00) per year subject  
3 to review as set forth in Paragraph 3, REAPPRAISAL, of the  
4 Amendment of Lease Agreement dated July 1, 1986. Payments shall  
5 be one-twelfth of said annual amount due on or before the first  
6 day of each month of the lease term except as such rental may be  
7 increased or decreased as the result of reappraisal under  
8 Paragraph 1(d) of the original lease; as modified by the next  
9 succeeding paragraph of this agreement.

10 The current annual rental is allocated as follows:

11	Land Lease	\$25,650
12	Dock Use	
	(As described below)	<u>30,900</u>
13	TOTAL ANNUAL RENTAL	\$56,550

14 3. DOCK AND CRANE USE. Dock use includes crane use up to  
15 1300 hour maximum. All hours of use above the 1300 hour maximum  
16 shall be charged at the rate of \$15 per hour. Crane use is no  
17 longer limited to cranes No. 7 and 8.

18 4. USE OF PREMISES. Except as they may be changed by this  
19 agreement, Paragraph 3 of the original lease and Paragraph 5 of  
20 the Amendment to Lease dated July 1, 1986, remain in effect with  
21 the addition of the following:

22 (f) The existing camping area shall be relocated to a  
23 area reasonably close to Lessee's processing operations in order  
24 to facilitate placement of fill material on the West side of the  
25 Homer Spit.

LAW OFFICE OF HILVIN, JEWELL & STANFILL  
411 WEST KENYON STREET  
ANCHORAGE, ALASKA 99501 • TELEPHONE 278-1844  
HOMER, ALASKA • TELEPHONE 235-8700

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(g) The existing parking arrangements will be re-evaluated and amended to reflect changes resulting from the Interim Spit Plan at the next scheduled review of the lease.

5. EXISTING LEASE CONTINUES. Except as amended by this agreement, the existing lease, addendum and amendments remain in full force and effect and the terms and conditions thereof are hereby incorporated by this reference as though fully set forth herein.

This Second Amendment of Lease Agreement shall govern in the event of a conflict with any provision of the existing lease, addendum or prior amendments.

IN WITNESS WHEREOF, the parties have hereunto set their hands the 25<sup>th</sup> day of January, 1988.

LESSOR: CITY OF HOMER, ALASKA

By Philip C. Shealy  
Philip C. Shealy  
City Manager

LESSEE: ICICLE SEAFOODS, INC.  
d/b/a Seward Fisheries

By [Signature]  
By \_\_\_\_\_

LAW OFFICES OF HAHN, JEWELL & STANFILL  
431 WEST BEVCYNTH AVENUE, SUITE 105  
ANCHORAGE, ALASKA 99501 - TELEPHONE 279-1244  
HOMER, ALASKA - TELEPHONE 238-8700

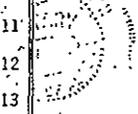
88-941

RECORDED - FILED	19
HOMER	SEC. DIST.
DATE	1-25-1988
TIME	2:22 P.M.
Requested by	City of Homer
Address	Homer, Alaska

1 STATE OF ALASKA )  
 2 ) ss.  
 3 THIRD JUDICIAL DISTRICT )

4 THIS IS TO CERTIFY that on the 25<sup>th</sup> day of January, 1988, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PHILIP C SHEALY, known to me to be the City Manager of the CITY OF HOMER, ALASKA, and he acknowledged to me the execution of the foregoing agreement for and on behalf of the City of Homer, Alaska, and further acknowledged to me that said instrument was signed and sealed by him on behalf of the City of Homer, Alaska, pursuant to authorization duly adopted by the Common Council of Homer, Alaska.

9 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.



Don Stan Whalin  
 Notary Public in and for Alaska  
 My Commission Expires: 8/12/89

14 ~~STATE OF ALASKA~~  
~~STATE OF WASHINGTON~~ )  
 15 ~~THIRD JUDICIAL DISTRICT~~ ) ss.  
 16 ~~COUNTY OF KING~~ )

17 THIS IS TO CERTIFY that on the 22 day of January, 1988, before me, the undersigned Notary Public, duly commissioned and sworn as such, personally appeared ROBERT P. ROGERS and \_\_\_\_\_, known to me to be the MANAGER and \_\_\_\_\_ of ICICLE SEAFOODS, INC., d/b/a SEWARD FISHERIES, a corporation organized under and existing by virtue of the laws of the State of Washington, and they acknowledged to me the execution of the above and foregoing agreement to be their free and voluntary act and deed for and on behalf of said corporation for the uses and purposes therein set forth, pursuant to a duly enacted resolution of the corporation.

22 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.



Enoch L. Johnson  
 Notary Public in and for Washington  
 My Commission Expires: 3-7-89

- Return To: City Clerk  
 491 E. Pioneer  
 Homer, AK 9960

545532

LAW OFFICE OF HAHN, JEWELL & STANFILL  
 321 WEST SEVENTH AVENUE, SUITE 105  
 ANCHORAGE, ALASKA 99501 - TELEPHONE 279-1544  
 HOMER, ALASKA - TELEPHONE 233-8709



CITY MANAGER

MAR 09 2004

CITY OF HOMER

March 5, 2004

City of Homer  
C/O Walt Wrede  
City Manager  
491 East Pioneer  
Homer, Ak. 99603

Dear Walt,

In accordance with the terms of our lease of lot 41, Icicle Seafoods, Inc is now giving notice of our intent to exercise our option to renew our lease of lot 41 for a period of 25 years. The renewal period shall be on the same terms and conditions existing under the initial period of this lease as stated there in. Icicle Seafoods, Inc is committed to continuing our mutually beneficial, long term relationship with the City of Homer and area fishermen. I look forward to hearing from you regarding this manner.

Sincerely,

Ken "Duff" Hoyt

Buying Station Manager  
Icicle Seafoods, Inc  
842 Fish Dock Road  
Homer, Ak 99603

**ICICLE SEAFOODS, INC.**

842 Fish Dock Road • Homer, Alaska 99603  
Tel: 907-235-8107 • Fax: 907-235-7796

HOMER000526

**REQUEST FOR PROPOSALS**

**CITY OF HOMER**

**TO LEASE CITY PROPERTY  
ON THE HOMER SPIT**

The City of Homer, Alaska is hereby advertising for sealed proposals and statements of qualifications from individuals or firms to lease the following lots:

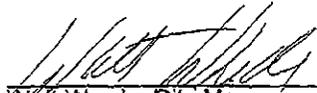
- Lot 9A, Port Industrial Subdivision, No. 4, located at the Homer Spit Fishdock.
- Lot 10A, Port Industrial Subdivision, No. 4, located at the Homer Spit Fishdock.
- Lot 12C, Port Industrial Subdivision, No. 4, located at the Homer Spit Fishdock.
- Lot 13B, Port Industrial Subdivision No. 2, near Fish Dock and Harbor Entrance
- Lot 12, Homer Spit Subdivision No. 5, located at the Homer Deep Water Dock

Lease agreements will be offered to the selected firm(s) for the development of these lots.

Responses to the City's request for proposals will be received at the office of the City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603, until 2:00 p.m., March 16, 2007 at which time they will be publicly opened, logged in, and provided to the City Lease Committee. **Proposals received after the time specified or proposals received from proposers not listed on the plan holders list will be considered non-responsive and shall not be considered.** A non-refundable lease application fee of \$30 is required.

Copies of the Request for Proposals package are available at the Office of the City Clerk, for a fee of \$20.00. To obtain a copy of the proposal package and to be listed on the plan holders list, please contact the City Clerk at (907) 235-3130. If you have any questions on the contents of the RFP package, please contact the City Manager at (907) 235-8121, extension 2222.

The City reserves the absolute right to reject any or all proposals, may waive any or all informalities or irregularities, and may permit the correction of errors or omissions in responses.

  
Walt Wrede, City Manager

\*\*\*\*\*

City of Homer Use Only

Publish: Homer News 2/1/2007 & 2/8/2007    ADN - 2/4 & 2/11  
Account #100.114.5227

RFP-ad-2-2007

HOMER000014

**City of Homer  
Request for Proposals  
to Lease City Property  
On the Homer Spit**

I. Invitation

The City of Homer, Alaska is soliciting proposals and statements of qualifications from individuals or firms to lease one or more of five City-owned parcels located on the Homer Spit in Homer, Alaska. The five parcels available are:

- Lot 9A, Port Industrial Subdivision, No. 4
- Lot 10A, Port Industrial Subdivision, No. 4
- Lot 12C, Port Industrial Subdivision, No. 4
- Lot 13B, Port Industrial Subdivision, No. 2
- Lot 12, Homer Spit Sub No. 5

Interested persons may offer proposals on one or more of the parcels. With respect to each of the parcels, the proposer whose proposal satisfies all minimum requirements and scores best on the City's evaluative criteria will be offered the opportunity to negotiate for a lease with the City.

Responses to the City's request will be received at the office of the City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603, until 2:00 p.m., March 16, 2007 at which time they will be publicly opened, logged in, and provided to the City Lease Committee. **Proposals received after the time specified or proposals received from proposers not listed on the plan holders list will be considered non-responsive and shall not be considered.** A non-refundable lease application fee of \$30 is required.

II. Description of Parcels

Parcels 1 through 5 are all zoned Marine Industrial under Homer City Code chapter 21.53, and all use of the parcels must conform to the requirements of the code. A copy of chapter 21.53 is included as Attachment 2. Proposers are strongly encouraged to review the entire Homer Zoning Code for other land use requirements that may be applicable to the proposer's use of the property. The zoning code may be obtained from the Homer Planning Department or the Homer City Clerk's office.

**Parcel 1**

Lot 9-A Port Industrial Subdivision No. 4, Homer Recording District, Homer, Alaska. See attachment #1 for lot location. This lot consists of approximately 23,161 square feet of land. A proposal to lease this parcel must be for a use related to the commercial fishing industry. This parcel is in a prime location and features direct access to the Homer Fish Dock and frontage on both Fish Dock Road and the Homer Spit Road.

**Parcel 2**

Lot 10-A Port Industrial Subdivision No. 4, Homer Recording District, Homer, Alaska. See attachment #1 for lot location. This lot consists of approximately 22,816 square feet of vacant

Requests for Proposals to Lease Property on the Homer Spit  
Page 2

land. A proposal to lease this parcel must be for a use related to the commercial fishing industry. This parcel is in a prime location and features direct access to the Homer Fish Dock and frontage on both Fish Dock Road and the Homer Spit Road.

**Parcel 3**

Lot 12-C Port Industrial Subdivision No. 4, Homer Recording District, Homer, Alaska. See attachment #1 for lot location. This lot consists of approximately 34,413 square feet of vacant land. A proposal to lease this parcel must be for a use related to the commercial fishing industry. This parcel is in a prime location and has direct access to the Fish Dock and frontage on both Fish Dock Road and the Homer Spit Road. The parcel currently contains some fishing equipment which is subject to a short term lease. This equipment will be removed within 30 days upon execution of a lease

**Parcel 4**

Lot 13 B, Port Industrial Subdivision No. 2, Homer Recording District, Homer Alaska. See attachment # 1 for lot location. This lot consists of approximately 22,622 square feet of vacant land. The parcel currently contains temporary buildings and fisheries related equipment subject to a short term lease. This equipment will be removed from the premises within thirty days of successful negotiation and approval of a lease. Although a proposed use related to the commercial fishing industry is encouraged, other uses permitted by the zoning code and consistent with the provisions of this RFP will be accepted. This parcel is a prime location. It is located on the waterfront near the entrance to the boat harbor and Coal Point Park. It has frontage on Fish Dock Road. The site was previously occupied by an eating and drinking establishment.

**Parcel 5**

Lot 12, Homer Spit Subdivision No. 5, Homer Recording District, Homer Alaska. See attachment #1 for lot location. This lot consists of approximately 217,800 (five acres) feet of vacant land. It contains certain improvements which remain from a prior tenant. The improvements include a cement pad and drainage system and a wooden wall enclosure. The lot is located within a short distance of the City's Deep Water Dock. The City is encouraging shipping and marine industrial uses that take advantage of the parcel's proximity to the dock. The City is proposing major new improvements at the Deep Water Dock and is seeking an "anchor tenant". The engineering, design, and feasibility studies will begin this year and this is an opportunity for proposers to get involved in the planning stages. All uses permitted in the Homer Marine Industrial District that require proximity to the Deep Water Dock will be considered.

III. City of Homer Statement of Objective

The City of Homer realizes that property on the Homer Spit is very valuable and limited. In an effort to stimulate the economy and to foster better use of the City's Fish Dock, the City is offering Parcels 1, 2, and 3 specifically for a seafood processing plant or a commercial fisheries-related business. Commercial fishing related uses are encouraged on Parcel 4 but any proposed use permitted within the zoning district will be considered.

Consistent with its objective, the City also expects that all successful proposals will include business and development plans showing how the proposer's development and use of the

Requests for Proposals to Lease Property on the Homer Spit  
Page 3

leased property will stimulate the local economy, increase employment opportunities for local residents, and increase tax and other revenues for the City.

IV. Schedule

The following is the anticipated schedule. Any date(s) may be extended by the City when in the interest of the City to do so.

A. Publish dates  
Homer News 2/1/2007 & 2/8/2007  
Anchorage Daily News 2/4/2007 & 2/11/2007

**B. Pre-application meeting 2/16/2007**  
**Council Chambers 11am (Question and Answer session)**

C. Proposals due to City Clerk 3/16/2007 / 2 PM

D. Proposal Evaluations / Preparation of Lease And Lease Negotiations 3/16/2007 to 4/13/2007 (a)

E. Port/Harbor Commission Review March/April 2007

F. Homer City Council Approval of Successful Proposer and Lease Agreement 4/23/2007 (a)

G. Execute Leases 4/24/2007

(a) Subject to change depending upon length of time necessary to complete negotiations with successful proposer.

V. Response Requirements

A proposal must be for the entire parcel(s). Proposals for a portion of a parcel will be rejected as nonresponsive. In all cases, the proposal must offer a rent payment to the City of not less than the fair market rent as determined by a qualified appraiser. Offers of less than that amount will be rejected as nonresponsive. **Proposers should note that fair market rent is the baseline, or minimum rent. Leases for these parcels will be offered on a competitive basis. The amount offered by the proposer for lease payments is an important factor in determining the successful proposal.**

The City anticipates that it will receive appraisals for all of these lots on or about March 2. Information regarding the appraisals will be available to interested parties at that time. For planning purposes, proposers can assume that fair market rent is likely to be within the range of .60 cents to .90 cents, per square foot, per year.

A proposal may include more than one parcel, in which case the proposal will be considered and acted on as a single proposal. However, if the proposer wishes to submit proposals for multiple parcels and have them considered independently of one another, the proposer must submit them as separate proposals.

Every proposal, to be deemed responsive, must contain the information requested in Chapter 5 of the City of Homer Property Management Policy and Procedures, Attachment #5, to include but not limited to the following:

RFP-spit property-2/2007

HOMER000017

**PROPOSALS SHALL BE SUBMITTED IN A SEALED ENVELOPE CLEARLY LABELED SPIT  
PROPERTY LEASE PROPOSAL**

- A. Proposer's Transmittal Letter, The transmittal letter should be produced on the proposer's letterhead stationery and list all items contained in the proposal submitted to the City. This letter must clearly identify which parcel(s) is included in the proposal.
- B. A completed application form provided by the City (Attachment #3) A standard lease is attached for information as Attachment #4 of this document
- C. Any applicable fees to include but not limited to Lease Application fee \$30, Lease fee of \$300.
- D. A clear and precise narrative description of the proposed use of the property. This will be the basis for drafting the lease clause that identifies the uses allowed on the property.
- E. A specific time schedule and benchmarks for development. This will form the basis for enforceable lease clauses that require development within the stated time. Failure to develop as and when specified in the lease will be a default.
- F. A proposed site plan drawn to scale that shows at a minimum property lines, easements, existing structures and other improvements, utilities, and the proposed development including all structures and their elevations, parking facilities, utilities, and other proposed improvements.
- G. Any other information that is directly pertinent to the proposal scoring criteria contained herein
- H. All other required attachments requested on the application form including, but not limited to, the following documentation: applicant information, plot plan, development plan, insurance, proposed subleases, environmental information, agency approvals and permits, fees, financial information, partnership and corporation statement, certificate of good standing issued by an entity's state of domicile, and references.
- I. Qualifications and Experience of Proposer.  
  
Attach information, which demonstrates that the proposer has adequate qualifications and experience in successfully conducting the activities proposed. Narratives should be brief, and emphasize their relevance to the proposed lease. Qualification of essential individuals should also be outlined.
- J. Familiarity with the City of Homer's Port/Harbor (Homer Spit).  
  
Attach information demonstrating the extent of your knowledge of the social, political, economic, climatic and geographic conditions of the City of Homer's Port/Harbor. Provide details as to prior business or leases with the City of Homer or in the vicinity of the Port/Harbor Describe how your proposed use of the parcel will interrelate with other ongoing activities in the Homer Port and Harbor area.
- K. Attach information demonstrating your ability to directly finance and/or obtain financing for proposed lease, development and use of property. Provide details regarding past credit history with the City, if available
- L. Compensation-Attach information, which describes how you and/or your firm propose to compensate the City for the use of the land under the lease agreement. A deposit of at least 10% of the first year's rent will be required at the time the lease is signed.  
  
The proposal should clearly state the offered rental rate and applicable period, including any proposed rent escalation factors.

The minimum acceptable lease bid is fair market rent as determined by a qualified appraiser. The desired lease term should be included in the proposal. The length of term approved by the City will be dependent primarily upon the amount of proposer's capital investment and other benefits to the community that will flow from the development.

- M. Amount of Investment- The proposal shall include the amount of investment the proposer expects will be necessary for the completion of the development.
- N. Management, Operation, and Maintenance Capability- Attach information that demonstrates you or your firm's capability and experience in the management, operation, and maintenance of the type of development proposed. Also, describe the planned operational aspects of the development, such as hours of operation and months of year of operation.
- O. Special Qualifications- Attach a narrative discussion and/or materials that demonstrate why the person or firm submitting this proposal is qualified to undertake the proposed development. Please include information not covered elsewhere in the proposal, such as special financial resources available, specialized systems, software and equipment available, special approaches or concepts relative to the proposed development.

VI. Other Requirements

A. Permits and Regulations

The lessee must comply with all appropriate federal, state, and local laws and regulations, including city zoning, water, sewer, building permits and requirements and Port and Harbor tariff.

B. Utilities

All utilities will be the responsibility of the proposer. City water and sewer are available to each parcel. It is the responsibility of the developer to extend the water and sewer into the parcel and make necessary connections, if necessary for proposed use

C. Fish Processor Outfall Connection

A fish processing facility of any size or scope located on Parcels 1, 2, 3 or 4 must connect to the City of Homer outfall line. This can be done either with a direct connection to the outfall line or for small volume processors, by working with the City contractor and delivering waste to the City fish grinder. For a direct connection to the outfall line, there is a one-time connection fee of \$7,000, with monthly usage fees of \$200 per month throughout calendar year 2007. At the end of the calendar year 2007, actual costs for operation of the outfall line in 2007 will be determined and the rate per user in calendar year 2008 will be adjusted to an amount equal to one-third of that total (or less if more than one additional processor connects). A draft connection agreement is included as Attachment #6.

VII. Evaluation of Proposals

Proposals that are inconsistent with the City of Homer Objective Statement, do not demonstrate financial capability, have a poor credit history, are incomplete, or are otherwise deemed nonresponsive will be rejected.

Responsive proposals will be evaluated based upon their level of satisfaction of (a) the requirements of this request for proposals and (b) the evaluation criteria listed in Chapter 6 of the City of Homer Property Management Policy and Procedures.

Proposals receiving unacceptably low rankings in any category will be eliminated from further consideration.

The selection committee will be comprised of the City of Homer lease committee.

#### VIII. Selection of Firm & Negotiation of Agreement

After evaluation and ranking of responses, the City will offer the highest ranking proposers for each lot an opportunity to negotiate lease agreements, subject to mutual agreement on terms and Homer City Council approval. The commencement date of the lease will be negotiated with the successful proposer.

If the City, in its sole discretion, determines that it will be unable to reach an acceptable agreement with a proposer within an acceptable period of time, the City may terminate negotiations with that proposer and begin negotiations with the next highest ranking proposer.

#### IX. Other Provisions

The City may withdraw any parcel from consideration at any time.

After ranking responsive proposals, the City may determine with respect to any parcel that no proposal will sufficiently advance the City's objectives, and make no offer to negotiate with any proposer.

The City reserves the absolute right to reject any or all responses, may waive any or all informalities or irregularities and permit the correction of errors or omissions in responses.

To arrange to view or inspect any parcel, contact

Steve Dean  
Port and Harbor Director  
Address: 4350 Homer Spit Road  
Homer, Alaska, 99603  
Telephone: (907) 235-3160  
Email: sdean@ci.homer.ak.us

For information about existing utility lines, submit written questions to Steve Dean, see above for contact information.

For information about the fish outfall line and connections, submit written questions to Steve Dean, see above for contact information.

Requests for Proposals to Lease Property on the Homer Spit  
Page 7

With the exception of the questions addressed above, no proposer shall contact or attempt to contact any member of the lease committee concerning the requirements of this request for proposals, or concerning the substance or evaluation of any proposal, except through written correspondence addressed to the City Manager at the address indicated below. All such correspondence will be deemed a public record and if pertinent the correspondence and any response from the City will be shared with other interested persons.

IX. Questions/Explanations About this RFP

Direct general questions concerning this request for sealed proposals to:

Walt Wrede  
City Manager  
491 E. Pioneer Ave.  
Homer, AK. 99603  
907-235-8121 EX 2222  
wwrede@ci.homer.ak.us

---

Walt Wrede, City Manager

Attachments:

1. Vicinity Maps
2. Homer City Code, Marine Commercial/Industrial zoning code
3. Lease Application
4. Standardized (boilerplate) Lease
5. Property Management Policy and Procedures Manual
6. Draft Outfall Line Connection Agreement

RECORDED - FILED 10-  
*Homer* REC. DIST.  
 DATE 10-31- 1980  
 TIME 11:46 A.M.  
 Prepared by K.P.B.  
 Address Hatsuta

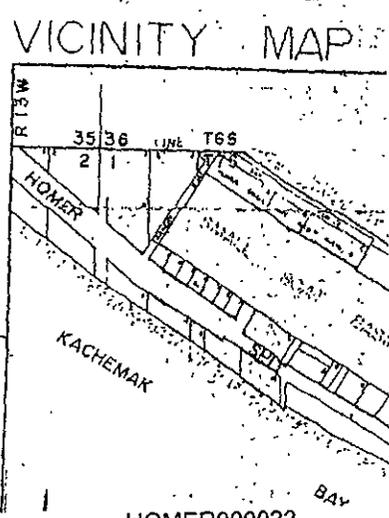
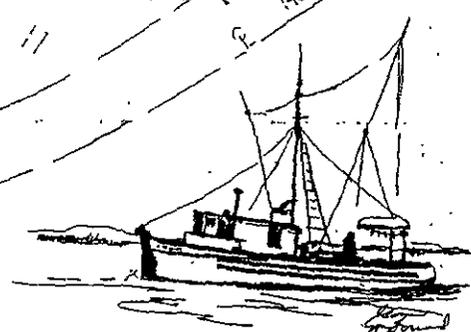
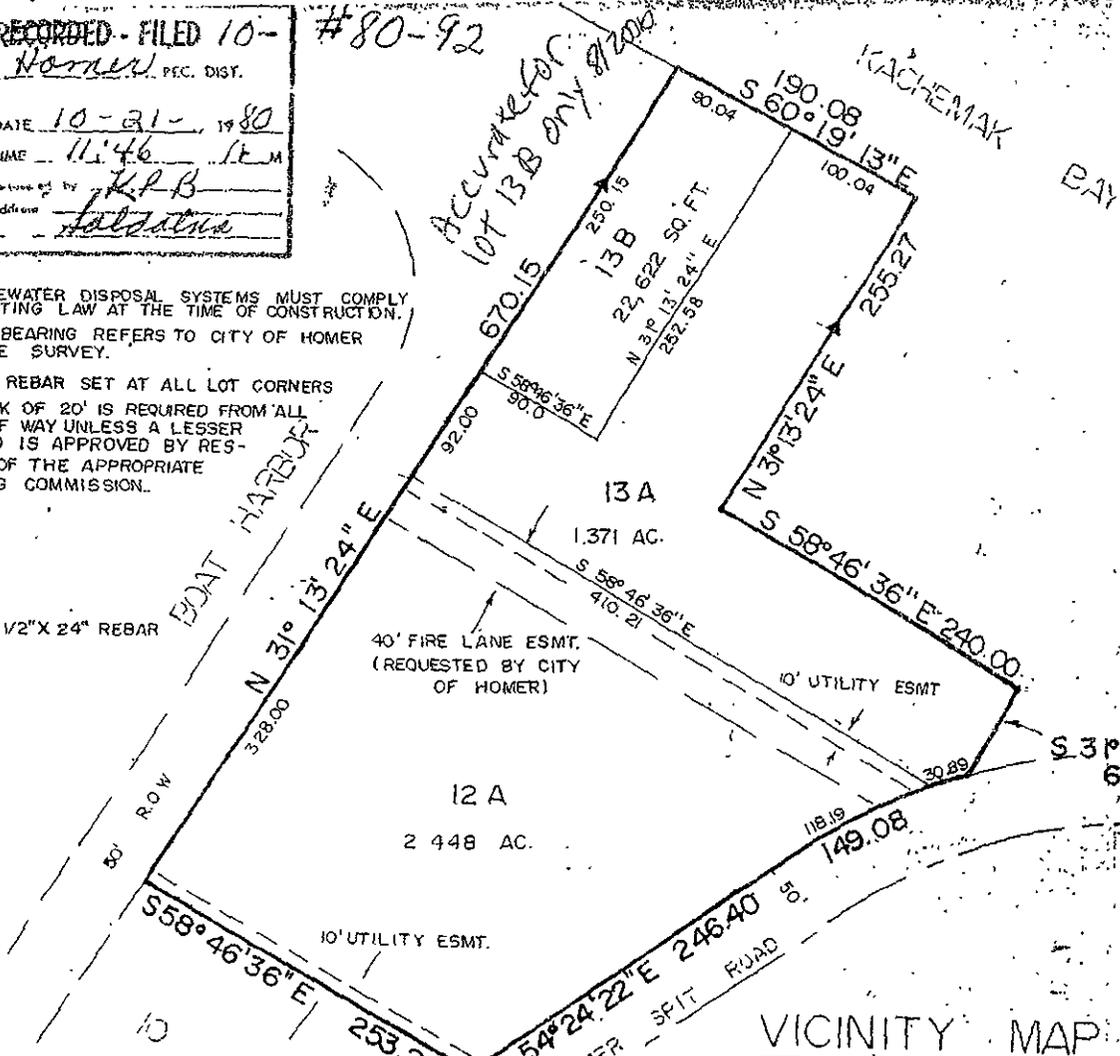
#80-92

Accuracy for  
 lot 13B only \$1200

WASTEWATER DISPOSAL SYSTEMS MUST COMPLY  
 WITH EXISTING LAW AT THE TIME OF CONSTRUCTION.  
 ALL BEARINGS AND DISTANCES REFER TO CITY OF HOMER  
 REVISION SURVEY.

1/4" REBAR SET AT ALL LOT CORNERS  
 SETBACK OF 20' IS REQUIRED FROM ALL  
 RIGHTS OF WAY UNLESS A LESSER  
 STANDARD IS APPROVED BY RESOLUTION  
 OF THE APPROPRIATE PLANNING COMMISSION.

WC., 1/2" X 24" REBAR



**STATEMENT OF OWNERSHIP**  
 I certify that I am the owner of the property shown and described  
 herein and I hereby request approval of this plat showing such easements  
 and utilities and roadways dedicated by me for public use.

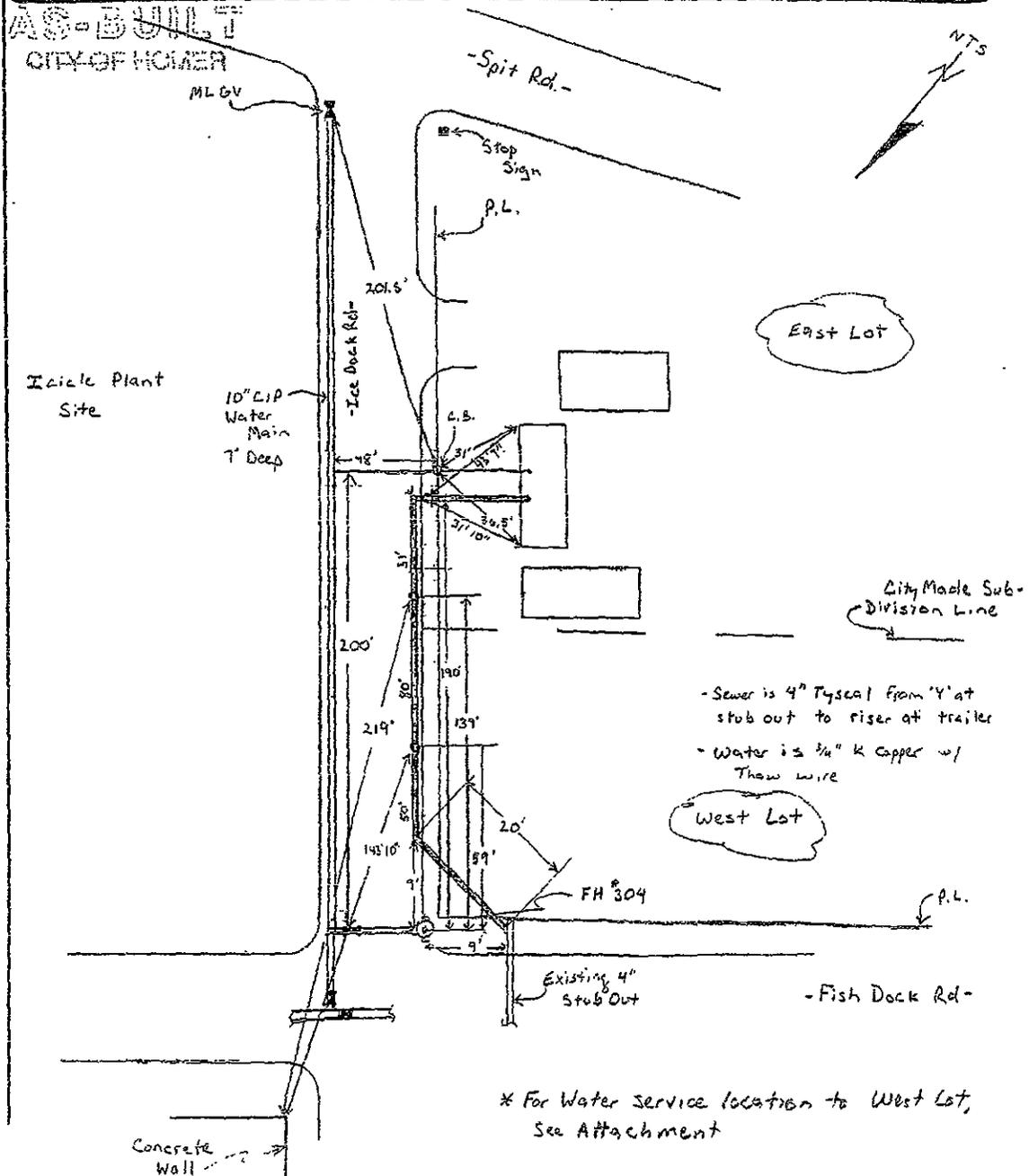
HOMER000022



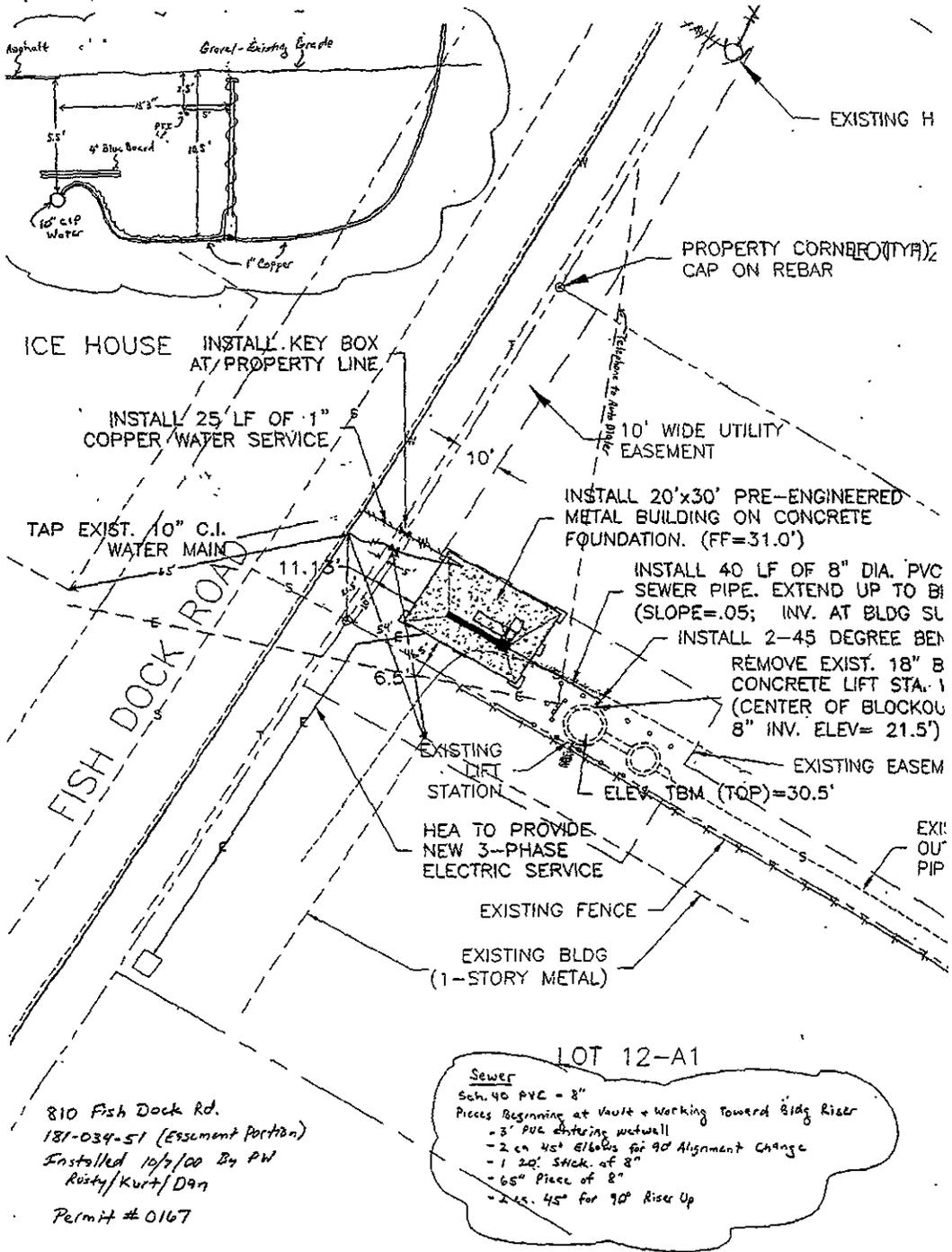
Address: 4630 Homer Spit

Sheet #1

PUBLIC WORKS DEPT.	Title: <u>Water/Sewer As-Built</u>	Project/Permit# <u>0131</u>
	Lot <u>12-A3</u> Blk _____ Subd. <u>City of Homer Port Industrial No. 3</u>	Contractor <u>Builder's Services</u>
	KPB No. <u>181-034-34</u>	Date Insp. <u>8/98</u>
	Insp. <u>Ken Frazier</u>	Date Complete <u>8/98</u>
		Owner <u>City of Homer / Icele</u>



HOMER000024



810 Fish Dock Rd.  
 181-039-51 (Easement Portion)  
 Installed 10/7/00 By PW  
 Rusty/Kurt/Dan  
 Permit # 0167

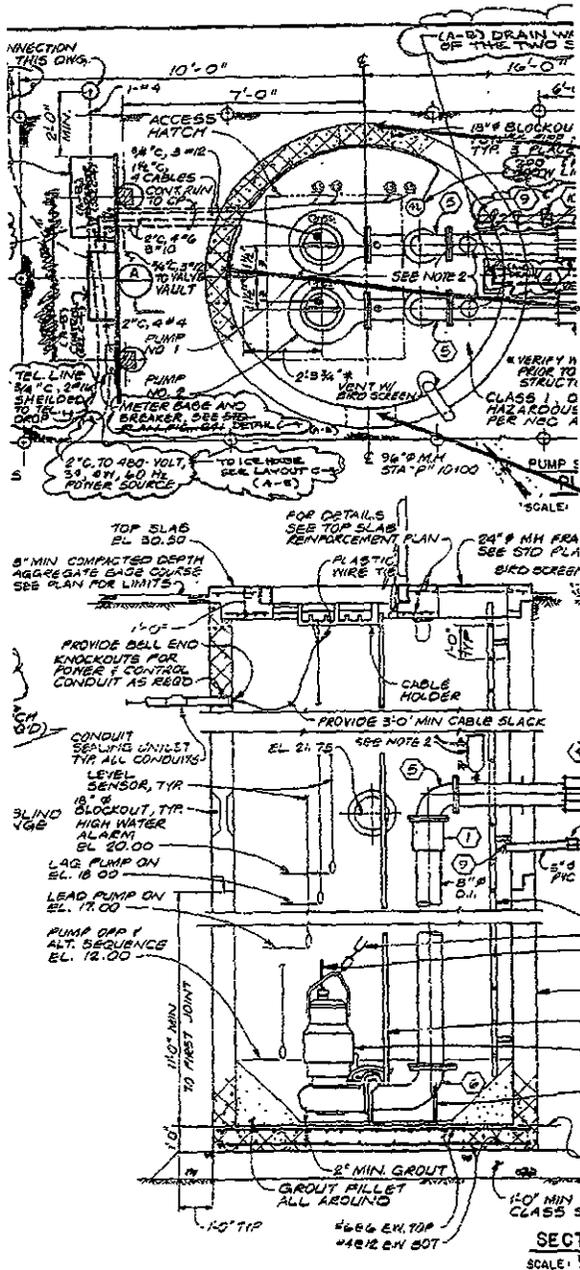
**LOT 12-A1**

Sewer  
 Sch. 40 PVC = 8"  
 Pieces Beginning at Vault + Working Toward Bldg Riser  
 - 3' PVC entering wetwell  
 - 2 ea 45° Elbows for 90° Alignment Change  
 - 1 20' Stack of 8"  
 - 65" Piece of 8"  
 - 2 ea. 45° for 90° Riser Up

	DATE	-
	SCALE	1" = 20'

STATE OF ALASKA -- FISH AND GAME DEPAR  
 SPORT FISH ACCESS GRANT

HOMER000025



**Spit Fish Outfall Pump Station  
Wet Well Connections**

Connection point for COH Grinder Facility (8" PVC)

Available connection point knock out. Under Elec. Control Panel  
Elevation: 21.75  
Top of Station elevation: 30.50

Connection point for Fish Factory

HOMER000026



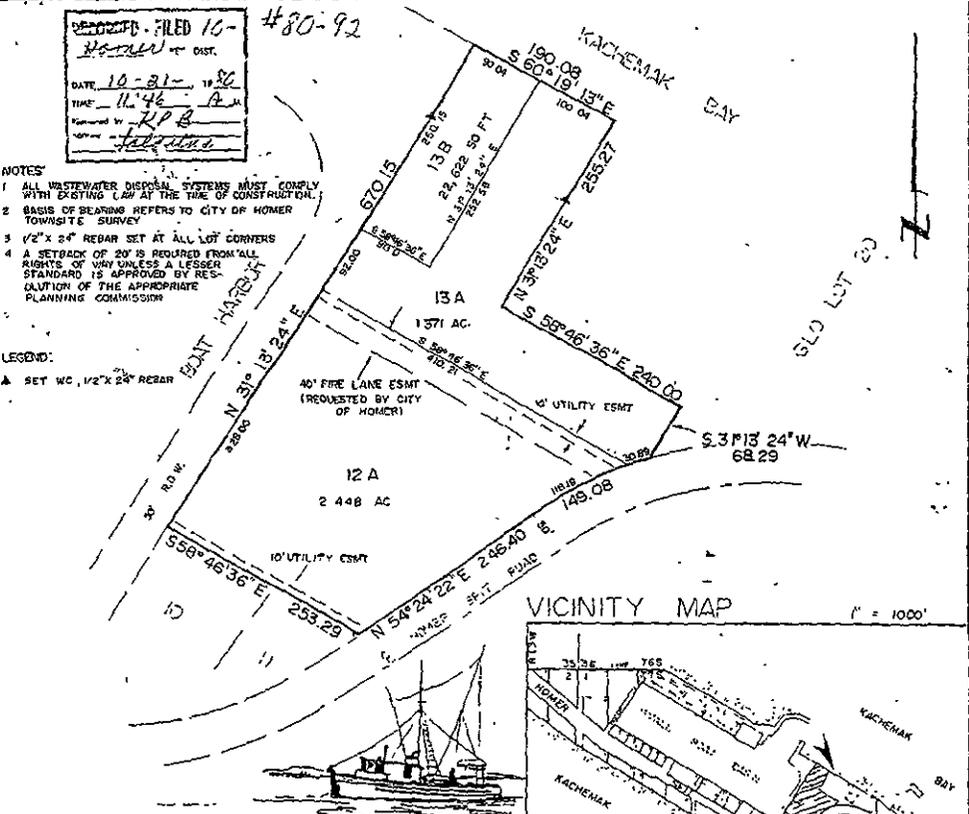


RECORDED - FILED 16-  
 #80-92  
 DATE 10-31-1980  
 TIME 11:46 AM  
 RECORDED BY RPB  
 FILED BY

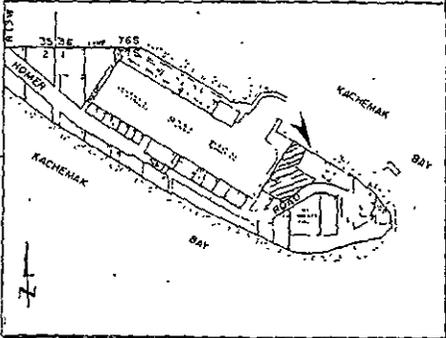
- NOTES
- 1 ALL WASTEWATER DISPOSAL SYSTEMS MUST COMPLY WITH EXISTING LAW AT THE TIME OF CONSTRUCTION.
  - 2 BASIS OF BEARING REFERS TO CITY OF HOMER TOWNSHIP SURVEY.
  - 3 1/2" X 24" REBAR SET AT ALL LOT CORNERS.
  - 4 A SETBACK OF 20' IS REQUIRED FROM ALL RIGHTS OF WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.

LEGEND:

A SET WC, 1/2" X 24" REBAR



VICINITY MAP



**CERTIFICATE OF OWNERSHIP**  
 I hereby certify that I am the owner of the property shown and described hereon. I hereby request approval of this plat showing such easements for public utilities and roadways dedicated to me for public use.

*James C. Farnen*  
 CITY OF HOMER  
 BY (CARR) FARNEN, CITY MANAGER  
 60X 335  
 HOMER, AK 99603

**NOTARY'S ACKNOWLEDGEMENT**  
 Subscribed and sworn to before me this 20th day of Dec., 1979.  
*John A. Anderson* 711710  
 Notary Public for Alaska My commission expires

**SUBJECT'S CERTIFICATE**  
 I, the undersigned registered surveyor, hereby certify that a land survey has been completed by me or under my direct supervision and that corners and monuments have been located and established and that dimensions shown hereon are true and correct.  
*Jerry Anderson* 9/24/79  
 JERRY ANDERSON, RLS 3695-S DATE

**PLAT APPROVAL**  
 This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of August 20, 1979.

KENAI PENINSULA BOROUGH  
 BY *Charles Waring* Authorized Of 10.01

DATE AUGUST, 1979  
 SCALE 1" = 100'  
 DRAWN BY S W  
 DESIGNED BY J A  
 JOB NO. 1110, 1103  
 FLD BK NO. 73, 78



**CITY OF HOMER PORT INDUSTRIAL NO. 2**  
 WITHIN THE CITY OF HOMER  
 BEING A REPLAT OF LOTS 12 & 13 OF OLD LOT 18 & 19, S. 1, T. 7 S., R. 13 W., S. 4  
 CONTAINING 4.398 ACRES

**Ability-Surveys**  
 REGISTERED SURVEYORS  
 ENGINEERS - PLANNERS  
 Jerry Anderson - Marvin Jensen  
 Box 1247 - Homer, Alaska 99603 - (907) 235-8440

26-08 WH

HOMER000029

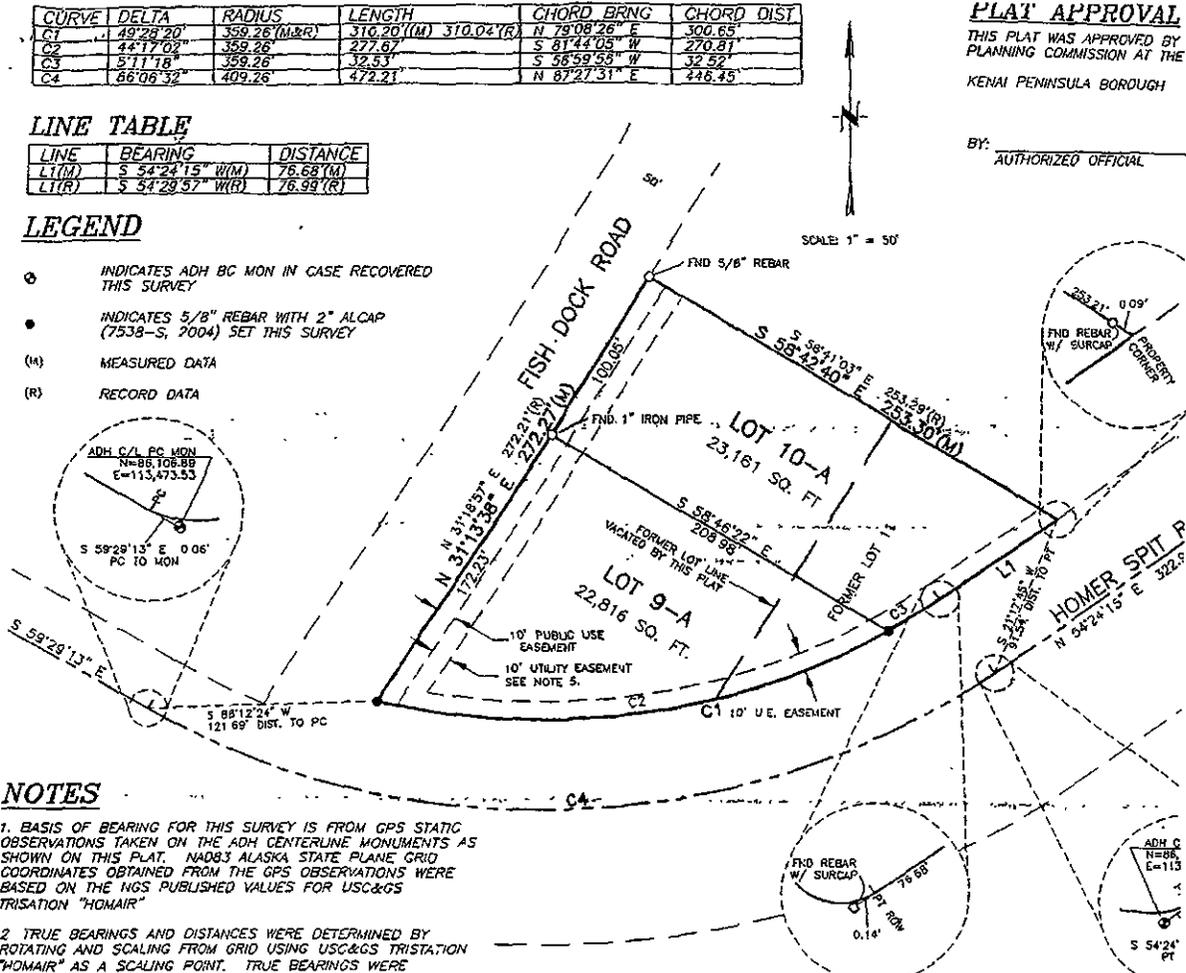
CURVE	DELTA	RADIUS	LENGTH	CHORD BRNG	CHORD DIST
C1	49°28'20"	359.26 (M&R)	310.20 (M)	N 79°08'26" E	300.65
C2	44°17'02"	359.26	277.67	S 81°44'05" W	270.81
C3	31°17'18"	359.26	32.53	S 56°59'58" W	32.52
C4	66°06'32"	409.26	472.21	N 87°27'31" E	446.45

**LINE TABLE**

LINE	BEARING	DISTANCE
L1(M)	S 54°24'15" W(M)	76.68(M)
L1(R)	S 54°29'57" W(R)	76.99(R)

**LEGEND**

- INDICATES ADH BC MON IN CASE RECOVERED THIS SURVEY
- INDICATES 5/8" REBAR WITH 2" ALCAP (7538-S, 7004) SET THIS SURVEY
- (M) MEASURED DATA
- (R) RECORD DATA



**PLAT APPROVAL**  
 THIS PLAT WAS APPROVED BY  
 PLANNING COMMISSION AT THE  
 KENAI PENINSULA BOROUGH

BY: \_\_\_\_\_  
 AUTHORIZED OFFICIAL

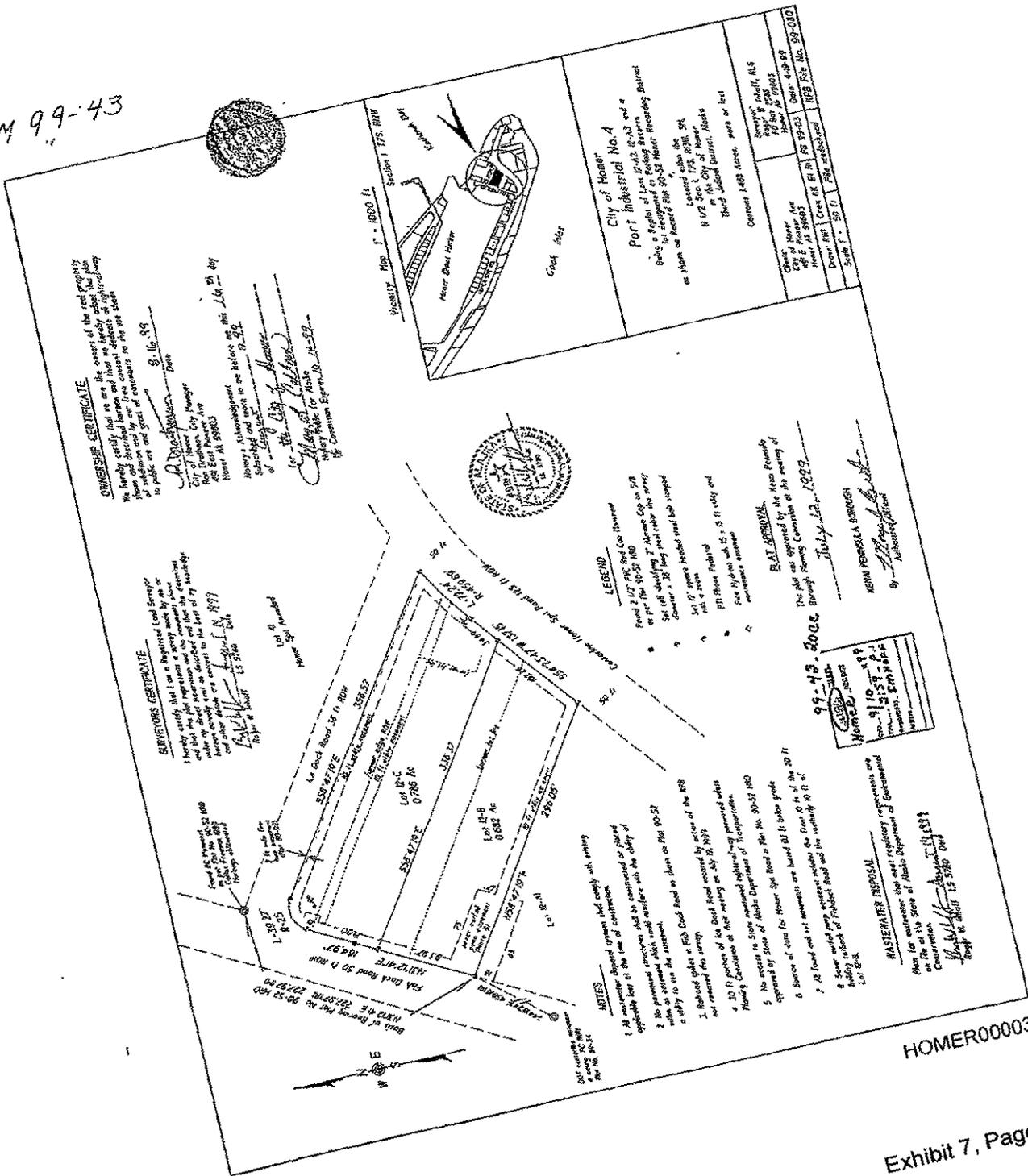
**NOTES**

1. BASIS OF BEARING FOR THIS SURVEY IS FROM GPS STATIC OBSERVATIONS TAKEN ON THE ADH CENTERLINE MONUMENTS AS SHOWN ON THIS PLAT. NAD83 ALASKA STATE PLANE GRID COORDINATES OBTAINED FROM THE GPS OBSERVATIONS WERE BASED ON THE NGS PUBLISHED VALUES FOR USC&GS TRISTATION "HOMAIR"
2. TRUE BEARINGS AND DISTANCES WERE DETERMINED BY ROTATING AND SCALING FROM GRID USING USC&GS TRISTATION "HOMAIR" AS A SCALING POINT. TRUE BEARINGS WERE

ATTACHMENT #1

HOMER000030

HM 99-43



**OWNER'S CERTIFICATE**

We hereby certify that we are the owners of the real property therein described herein, and that we hereby certify that the plan shown and by our free consent to the public use of public use and grant of easements to the public use.

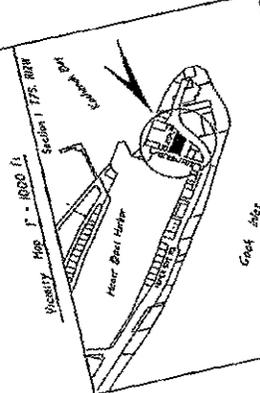
*A. David [Signature]*  
 City of Homer City Manager  
 400 Washington Ave  
 Homer, Alaska 99603

Survey, Alutaiquigmit  
 Surveyed and shown to me before me this 16th day of July 1999  
 at the City of Homer  
 in the presence of  
*John [Signature]*  
 City Clerk  
 City of Homer, Alaska  
 by Commission Expires on 10-25-99

**SURVEYOR'S CERTIFICATE**

I hereby certify that as a Registered Land Surveyor I have surveyed the above described property and that the plan represents a true and correct survey of the property and that the same is in accordance with the laws of the State of Alaska and the rules and regulations of the Board of Land Surveyors of the State of Alaska.

*John [Signature]*  
 Registered Professional Land Surveyor  
 No. 15586



City of Homer  
 Port Industrial No. 4  
 Being a Right of Way and Easement  
 Being in Section 175 800 ft Homer Receiving District  
 as shown on Record 99-43  
 Located within the  
 Section 175 800 ft  
 8 1/2 Sec. City of Homer  
 Third National District, Alaska  
 Contact 1488 Homer, Alaska or 1411  
 Surveying Office, ALS  
 1411 Homer  
 Homer, AK 99603  
 City of Homer  
 400 E. Adams Ave  
 Homer, AK 99603  
 Denser 888, Cree at 81.81 AS 19-213  
 State 1-30-00  
 PER 1488/1488  
 PER FILE NO. 99-030



**LEGEND**

- 1. 2 1/2" PVC 4" dia. (Homer) Road 2 1/2" PVC 4" dia. (Homer) Road 2 1/2" PVC 4" dia. (Homer) Road 2 1/2" PVC 4" dia. (Homer) Road
- 2. 4" dia. (Homer) Road 4" dia. (Homer) Road 4" dia. (Homer) Road 4" dia. (Homer) Road
- 3. 6" dia. (Homer) Road 6" dia. (Homer) Road 6" dia. (Homer) Road 6" dia. (Homer) Road
- 4. 8" dia. (Homer) Road 8" dia. (Homer) Road 8" dia. (Homer) Road 8" dia. (Homer) Road
- 5. 10" dia. (Homer) Road 10" dia. (Homer) Road 10" dia. (Homer) Road 10" dia. (Homer) Road
- 6. 12" dia. (Homer) Road 12" dia. (Homer) Road 12" dia. (Homer) Road 12" dia. (Homer) Road
- 7. 14" dia. (Homer) Road 14" dia. (Homer) Road 14" dia. (Homer) Road 14" dia. (Homer) Road
- 8. 16" dia. (Homer) Road 16" dia. (Homer) Road 16" dia. (Homer) Road 16" dia. (Homer) Road
- 9. 18" dia. (Homer) Road 18" dia. (Homer) Road 18" dia. (Homer) Road 18" dia. (Homer) Road
- 10. 20" dia. (Homer) Road 20" dia. (Homer) Road 20" dia. (Homer) Road 20" dia. (Homer) Road

**PLAT APPROVAL**

This plat was approved by the Alaska Planning Board on July 12, 1999.

*John [Signature]*  
 Alaska Planning Board



**NOTES**

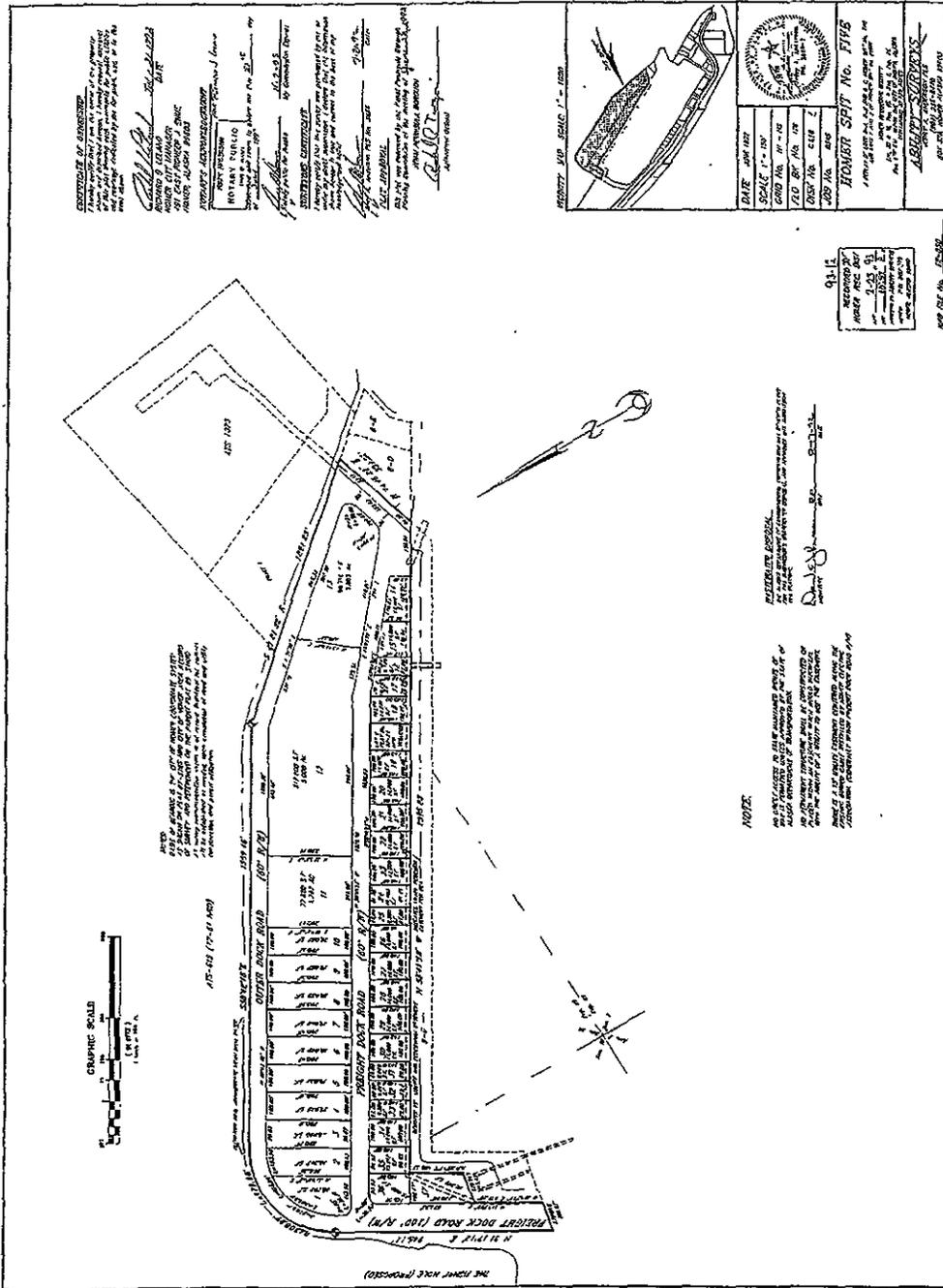
1. All existing proposed streets and easements shall be constructed to the standards of the City of Homer.
2. All proposed streets shall be constructed to the standards of the City of Homer.
3. All proposed streets shall be constructed to the standards of the City of Homer.
4. All proposed streets shall be constructed to the standards of the City of Homer.
5. The project is State approved right-of-way project.
6. The project is State approved right-of-way project.
7. All proposed streets shall be constructed to the standards of the City of Homer.
8. The project is State approved right-of-way project.
9. The project is State approved right-of-way project.
10. The project is State approved right-of-way project.

**WASTEWATER DISPOSAL**

Plans for wastewater disposal are subject to review and approval by the Alaska Department of Environmental Conservation.

*John [Signature]*  
 Alaska Department of Environmental Conservation

HOMER000031



**CONTRACTOR'S CERTIFICATE**  
 I hereby certify that the above described work has been completed in accordance with the plans and specifications and that the same are correct and true to the original design and that the same are in accordance with the laws and regulations of the State of Alaska and the City of Homer.

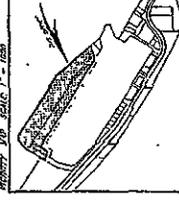
**DATE** 12/1/1953  
**BY** [Signature]  
**REGISTERED PROFESSIONAL ENGINEER**  
**STATE OF ALASKA**

**PROPERTY MAP SCALE 1" = 100'**

**DATE** 12/1/1953  
**BY** [Signature]  
**REGISTERED PROFESSIONAL ENGINEER**  
**STATE OF ALASKA**

**PROPERTY MAP SCALE 1" = 100'**

**DATE** 12/1/1953  
**BY** [Signature]  
**REGISTERED PROFESSIONAL ENGINEER**  
**STATE OF ALASKA**



<b>DATE</b> 12/1/1953	<b>SCALE</b> 1" = 100'
<b>GRID</b> 100' x 100'	<b>GRID</b> 100' x 100'
<b>GRID</b> 100' x 100'	<b>GRID</b> 100' x 100'
<b>GRID</b> 100' x 100'	<b>GRID</b> 100' x 100'
<b>GRID</b> 100' x 100'	<b>GRID</b> 100' x 100'
<b>GRID</b> 100' x 100'	<b>GRID</b> 100' x 100'

**HOMER SPIT NO. 11115**

**REGISTERED PROFESSIONAL ENGINEER**  
**STATE OF ALASKA**

**NOTES**

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

**GRAPHIC SCALE**  
 1" = 100'

**PROPERTY MAP SCALE 1" = 100'**

**DATE** 12/1/1953  
**BY** [Signature]  
**REGISTERED PROFESSIONAL ENGINEER**  
**STATE OF ALASKA**

**NOTES**

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

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3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

**GRAPHIC SCALE**  
 1" = 100'

**PROPERTY MAP SCALE 1" = 100'**

**DATE** 12/1/1953  
**BY** [Signature]  
**REGISTERED PROFESSIONAL ENGINEER**  
**STATE OF ALASKA**

**NOTES**

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

**GRAPHIC SCALE**  
 1" = 100'

**PROPERTY MAP SCALE 1" = 100'**

HOMER000032

Updated 12/23/04  
Chapter 21.53

## MI MARINE INDUSTRIAL DISTRICT

### Sections:

21.53.010 Purpose.

21.53.020 Permitted uses and structures.

21.53.030 Conditional uses and structures.

21.53.040 Dimensional requirements.

21.53.050 Site and Access Plan.

21.53.060 Site Development Requirements.

21.53.070 Nuisance Standards.

21.53.080 Lighting Standards.

21.53.090 Traffic Standards.

21.53.100 Evidence of Compliance.

21.53.010 Purpose. a. The purpose of the Marine Industrial District is to provide adequate space for those industrial uses that require direct marine access for their operation and to encourage the most efficient utilization of land. The intention of this district is to promote those marine-dependent industries that are important to Homer's economic base, such as fishing, fish processing, marine transportation, off-shore oil development and tourism; to give priority to those uses, and to minimize conflicts among industrial, commercial and recreational uses. (Ord. 82-15 4 (part), 1982).

21.53.020 Permitted uses and structures. The following uses are permitted outright in the Marine Industrial District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

- a. Port and harbor facilities;
- b. Manufacturing processing and packing of sea products;
- c. Cold-storage plants;
- d. Drydocks;
- e. Wharves and docks, marine loading facilities, ferry terminals, marine railways;
- f. Marine equipment services, storage, sales or rentals.

<http://clerk.ci.homer.ak.us/document/2153.htm>

1/31/2007

ATTACHMENT #2

HOMER000033

- g. Boat launching or moorage facilities, marinas, boat charter services;
- h. Warehouse and marshaling yards for storing goods awaiting transfer to marine craft or awaiting immediate pickup by land-based to transportation;
- i. Public utilities required to serve marine industrial uses, such as water and sewer lines and treatment facilities;
- j. Other similar uses, including marine commercial uses as determined by the Commission, provided they meet the following standards:
  - 1. The proposed use is consistent with the purpose of marine industrial districts and services of those industries,
  - 2. The proposed use is compatible with land use development plans for the Homer Spit and the comprehensive plan,
  - 3. Public facilities and services are adequate to serve the proposed use,
  - 4. The City of Homer Port and Harbor commission makes a written finding to the Homer Advisory Planning Commission that conditions 1 through 3 of this subsection have been met;
- k. Temporary storage of commercial equipment being used in conjunction with a specific construction project for the duration of that project only;
- l. Mobile commercial structures on a temporary basis during construction of a permanent structure. If the mobile commercial structure is used in conjunction with a road, water or sewer construction project for which no zoning permit is issued, said use of a mobile commercial structure will be allowed for the duration of the project only;
- m. Mobile food services;
- n. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;
- o. Recreational vehicle parks, provided they shall conform to the standards in 21.61.090. (Ord. 04-11(A) 7, 2004; Ord. 99-12(A) 13, 1999; Ord. 91-18(A) 19, 1991; Ord. 90-35(S)11 and 12, 1990; Ord. 89-3(A)(part), 1989; Ord. 84-35 (A) , 1984; Ord. 82-15 4(part), 1982).

21.53.030 Conditional uses and structures. The following uses are permitted in the marine industrial district when authorized in accordance with Chapter 21.61:

- a. Planned unit development; (Ord. 95-12 4, 1995).
- b. Boat storage and boat manufacturing;
- c. Restaurants and drinking establishments;
- d. Extractive enterprises related to other permitted uses;

<http://clerk.ci.homer.ak.us/document/2153.htm>

1/31/2007

HOMER000034

- e. Campgrounds;
  - f. Bulk petroleum storage;
  - g. Accessory caretaker's residence;
  - h. Heliports;
  - i. Pipelines and railroads;
  - j. More than one building containing a permitted principal use on a lot.
  - k. Retail or wholesale business in excess of 30,000 square feet of area in a single building.
    - 1. Permitted uses that exceed 100 vehicles during peak hour or more than 500 vehicles per day based on the proposed land use and density, calculated utilizing the Trip General Manual, Institute of Traffic Engineers, most current edition;
  - m. Indoor recreational facilities such as skating rinks, equestrian arenas or similar uses;
  - n. Outdoor recreational facilities such as skating rinks, driving ranges, batting cages, sports fields, equestrian arenas, open air performing arts centers or similar uses. ( Ord. 04-48(A), 2004; Ord. 04-38(A) §1, 2004; Ord. 04-11(A) §7, 2004; Ord. 95-12 §4, 1995; Ord. 90-2(part), 1990; Ord. 82-15 §4(part), 1982).
- 21.53.040 Dimensional requirements. a. Lot Size. The minimum lot size shall be six thousand square (6,000) feet, subject to Borough and State size requirements for lack of sewer and/or water utilities.
- b. Setbacks.
    - 1. Twenty (20) feet from all dedicated rights-of-way. Alleys are not subject to a 20 foot setback requirement. The setback requirements from any lot line abutting an alley will be determined by the dimensional requirements of subparagraph (2) below.
    - 2. Buildings shall be set back five (5) feet from all other lot boundary lot lines unless adequate firewalls are provided and adequate access to the rear of the building is otherwise provided (e.g., alleyways) as defined by the State Fire Code and enforced by the State Fire Marshal.
  - c. No lot shall contain more than 8,000 square feet of building area, nor shall any lot contain building area in excess of 30% of the lot area without an approved conditional use permit.

d. Building Area and Dimensions - Retail and Wholesale.

- 1. The total square feet floor area of retail and wholesale business uses within a single building shall not exceed 25,000 square feet.
- 2. In no event may a conditional use permit or variance be granted that would allow a building to

<http://clerk.ci.homer.ak.us/document/2153.htm>

1/31/2007

HOMER000035

exceed the limits of subparagraph (1) and no nonconforming use or structure may be expanded in any manner that would increase its nonconformance with the limits of subparagraph(1).

e. Sign Area. Sign Area shall include the area of any tenant-specific motifs or architectural devices including, but not limited to, roof forms, canopies, awnings, building color or finish, striping or color bars. The entire area of backlit awnings with translucent material shall be counted as a sign area. (Ord. 04-11(A) 7, 2004; Ord. 03-70(S), 2003; Ord. 03-39 5, 2003; Ord. 03-25(S)(A), 5, 2003 (2); Ord. 82-21 1(10), 1983; Ord. 82-15 4(part), 1982).

21.53.050 Site and access plan. a. A zoning permit for a building or structure within the marine industrial district shall not be issued by the City without an approved site and access plan that conforms to the requirements of HCC 21.50.050. (Ord. 04-11(A) 7, 2004; Ord. 99-12(A) 14, 1999; Ord. 82-15 4(part), 1982).

21.53.060 Site Development Requirements a. All industrial development shall conform to the performance standards contained in HCC 21.49.069.

b. Point source discharges to a waterway shall be in conformance with the Alaska Department of Environmental Conservation regulations.

(Ord. 04-11(A) 7, 2004.)

21.53.070 Nuisance Standards. All development and structures shall conform to the Nuisance Standards contained in HCC 21.49.070. (Ord. 04-11(A) 7, 2004.)

21.53.080 Lighting Standards. All uses and structures shall conform to the Lighting Standards contained in HCC 21.49.080. (Ord. 04-11(A) 7, 2004.)

21.53.090 Traffic Standards. All uses shall conform to the Traffic Standards contained in HCC 21.49.090. (Ord. 04-11(A) 7, 2004.)

21.53.100 Evidence of Compliance. Upon request by the City, information sufficient to determine the degree of compliance with the standards of this chapter shall be furnished by the property owner or owner's representative. Such request may include a requirement of continuous records of operation likely to violate the standards for periodic survey in the event a question arises as to compliance. (Ord. 04-11(A) 7, 2004.)

1. Ordinance 03-70(S) is of a temporary nature and expires 04/30/04.

## Chapter 21.52

MC MARINE COMMERCIAL DISTRICTSections:

- 21.52.010 Purpose.
- 21.52.020 Permitted uses and structures.
- 21.52.030 Conditional uses and structures.
- 21.52.040 Dimensional requirements.
- 21.52.050 Site and Access Plan.
- 21.52.060 Site Development Requirements.
- 21.52.070 Nuisance Standards.
- 21.52.080 Lighting Standards.
- 21.52.090 Traffic Standards.
- 21.52.100 Evidence of Compliance.

21.52.010 Purpose. a. The purpose of the marine commercial zone is to provide adequate space for the commercial needs which service and support water-dependent industries and facilities; to encourage adequate separation between allied but potentially incompatible commercial and industrial uses while providing proximate locations for the mutual benefit of such water-oriented commercial and water dependent industrial uses.

b. Commercial enterprise is permitted to the extent that it services and supports the water-dependent industries which are important to Homer's economic base, such as fishing, marine transportation, off-shore energy development, recreation and tourism; and to the extent that location elsewhere creates unnecessary hardship for the users of such commercial services.

c. It is recognized that unique natural features of Homer's marine environment contribute significantly to the economic and social environments, therefore performance standards are required to minimize the impact of commercial development on the natural features on which it depends. (Ord. 04-38(A) §1, 2004; Ord. 82-15 4(part), 1982).

21.52.020 Permitted uses and structures. The following uses are permitted outright in the Marine Commercial District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

- a. Boat charter offices;
- b. Marine equipment and parts sales and services;
- c. Retail outlets for seafood products, sporting goods, curios, and arts and crafts;
- d. Business offices for marine development operations, such as fish brokers, off-shore oil and gas service companies, and stevedores;
- e. Customary accessory uses which are clearly subordinate to the main use of the lot or building such as piers or wharves, provided that separate permits shall not be issued for the construction of an accessory structure prior to that of the main structure;

258-4

(Homer 12/06)

21.52.020(f)-21.52.030(o) (3)

- f. Temporary storage of commercial equipment being used in

<http://clerk.ci.homer.ak.us/document/2152.htm>

1/31/2007

HOMER000037

conjunction with a specific construction project for the duration of that project only;

g. Mobile commercial structures on a temporary basis during construction of a permanent structure. If the mobile commercial structure is used in conjunction with a road, water or sewer construction project for which no zoning permit is issued, said use of a mobile commercial structure will be allowed for the duration of the project only;

h. Mobile food services;

i. Itinerant merchants;

j. Recreational vehicle parks, provided they shall conform to the standards in HCC 21.61.090. (Ord. 06-63(A) §1 (part), 2006; Ord. 04-11(A) 6, 2004; Ord. 99-12(A) 11, 1999; Ord. 91-18(A) 18, 1991; Ord. 90-35(S) 9 and 10, 1990; Ord. 89-3(A) (part), 1989; Ord. 82-21 1(9), 1983; Ord. 82-15 4 (part), 1982).

21.52.030 Conditional uses and structures. The following uses are permitted in the marine commercial district when authorized in accordance with HCC Chapter 21.61:

a. Restaurants and drinking establishments;

b. Cold-storage facilities;

c. Public utility facilities and structures;

d. Dredge and fill required for any use permitted outright;

e. Wholesale outlets for marine products;

f. Pipelines and railroads;

g. Heliports;

h. Hotels and motels;

i. More than one building containing a permitted principal use on a lot.

j. Planned unit developments;

k. Indoor recreational facilities such as skating rinks, equestrian arenas or similar uses;

l. Outdoor recreational facilities such as skating rinks, driving ranges, batting cages, sports fields, equestrian arenas, open air performing arts centers or similar uses.

m. Campgrounds;

n. Manufacturing, processing, cooking, and packing of seafood products.

o. Other similar uses, as determined by the Planning Commission, including but not limited to those uses authorized in the Marine Industrial district under Sections 21.53.020 and 21.53.030, provided the use meets the following standards:

1. The proposed use is consistent with the purpose of the Marine Commercial District,

2. The proposed use is compatible with the land use development plan for the Homer Spit and the Comprehensive Plan,

3. Public facilities and services are adequate to serve the proposed use, and

258-5

(Homer 12/06)

21.52.030 (c) (4)~21.52.050 (a) (1)

4. On City owned-land that the City of Homer Port and Harbor Commission, after a public hearing, makes a written recommendation to the Homer Advisory Planning commission concerning the proposed use, including

<http://clerk.ci.homer.ak.us/document/2152.htm>

1/31/2007

HOMER000038

specifically whether conditions 1 through 3 of this subsection are met by the proposed use. (Ord. 06-63(A) §2 (part), 2006; Ord. 04-48(A), 2004; Ord. 04-38(A) §§ 1,7, 2004; Ord. 04-11(A) 6, 2004; Ord. 95-12(A) 3, 1995; Ord. 90-2(part), 1990; Ord. 82-15 4(part), 1982).

21.52.040 Dimensional Requirements. The following dimensional requirements shall apply to all uses in the marine commercial district, unless otherwise provided in HCC Chapter 21.61:

a. The minimum lot size is twenty thousand (20,000) square feet, except for lots platted before (effective date of ordinance here). The minimum lot width is one hundred fifty (150) feet, except for lots platted before (effective date of ordinance here).

b. Buildings shall be setback twenty (20) feet from all dedicated rights-of-way and five (5) feet from all other lot boundary lines. Alleys are not subject to a 20 foot setback requirement.

c. The maximum building height shall be thirty-five (35) feet as measured from the bottom of the first floor.

d. No lot shall contain more than 8,000 square feet of building area, nor shall any lot contain building area in excess of 30% of the lot area without an approved conditional use permit.

e. Building Area and Dimensions - Retail and Wholesale.

1. The total square feet of floor area of retail and wholesale business uses within a single building shall not exceed 25,000 square feet.

2. In no event may a conditional use permit, Planned Unit Development, or variance be granted that would allow a building to exceed the limits of subparagraph (1) and no nonconforming use or structure may be expanded in any manner that would increase its nonconformance with the limits of subparagraph (1).

f. Sign Area. Sign Area shall include the area of any tenant-specific motifs or architectural devices including, but not limited to, roof forms, canopies, awnings, building color or finish, striping or color bars. The entire area of backlit awnings with translucent material shall be counted as a sign area. (Ord. 06-63(A) §3 (part), 2006; Ord. 04-11(A) 6, 2004; Ord. 03-70(S), 2003; Ord. 03-39 4, 2003; Ord. 03-25(S) (A), 4, 2003; Ord. 83-30 Exbt. 1(part), 1983; Ord. 82-15 4(part), 1982).

21.52.050 Site and Access Plan. a. A zoning permit for use within the marine commercial district shall not be issued by the City without an approved site and access plan. In addition to the requirements of HCC Chapter 21.42 Zoning Permit. The plan shall show:

1. Existing site features and conditions, including topography, drainage, mean high-water line and high-water line;

258-5a

(Homer 12/06)

21.52.050(a)(2)-21.52.100

2. Relationship to existing right-of-way and access, including driveway and curb cuts, with arrows indicating vehicular traffic patterns on, into and out of the site and to and from all parking areas;

3. On-site parking, traffic and pedestrian circulation systems;

<http://clerk.ci.homer.ak.us/document/2152.htm>

1/31/2007

HOMER000039

4. Existing and proposed structures;
5. Copies of applications and permits, if issued, from any State or Federal agency having jurisdiction.
6. All, access roads and frontage roads shall be developed to conform to the policies in the City Master Roads and Streets Plan and the ordinances of the City. (Ord. 04-11(A) 6, 2004; Ord. 99-12(A) 12, 1999; Ord. 82-15 4(part), 1982).

21.52.060 Site Development Requirements. All development shall conform to the Site Development Requirements contained in HCC 21.49.060 and the following:

- a. Development shall not impair or unnecessarily impede use by the public of adjacent publicly owned tidelands.
- b. The location of buildings and roads shall be planned to minimize alteration to the natural terrain.
- c. Grading and filling shall not alter the storm berm except as necessary to correct unsafe conditions.
- d. Point source discharges to a waterway shall be in conformance with the Alaska Department of Environmental Conservation regulations. (Ord. 04-11 (A) 6, 2004.)

21.52.070 Nuisance Standards. All development and structures shall conform to the Nuisance Standards contained in HCC 21.49.070. (Ord. 04-11(A) 6, 2004.)

21.52.080 Lighting Standards. All uses and development shall conform to the Lighting Standards contained in HCC 21.49.080. (Ord. 04-11(A) 6, 2004.)

21.52.090 Traffic Standards. All uses shall conform to the Traffic Standards contained in HCC 21.49.090. (Ord. 04-11(A) 6, 2004.)

21.52.100 Evidence of Compliance. Upon request by the City, information sufficient to determine the degree of compliance with the standards of this chapter shall be furnished by the property owner or owner's representative. Such request may include a requirement of continuous records of operation likely to violate the standards for periodic survey in the event a question arises as to compliance. (Ord. 04-11(A) 6, 2004.)

258-5b

(Homer 12/06)

**City of Homer  
Lease Application/Assignment Form**

**Directions:**  
 1. Please type.  
 2. Please submit this application form to the City Clerk's Office, 491 Pioneer Avenue, Homer, Alaska 99603.  
 3. Please answer all questions on this form, or put "N/A" in the space if it is non applicable.

<b>Applicant Name:</b> Social Security No.s	
<b>Mailing Address:</b>	
<b>City, State, ZIP code:</b>	
<b>Business Telephone No.</b>	
<b>Representative's Name:</b>	
<b>Mailing Address:</b>	
<b>City, State, ZIP code:</b>	
<b>Business Telephone No.</b>	
<b>Property Location:</b>	
<b>Legal Description:</b>	
<b>Type of Business to be placed on property:</b>	
<b>Size of Buildings to be placed or leased:</b>	
<b>Duration of Lease requested:</b>	
<b>Options to re-new:</b>	
<b>Special lease requirements:</b>	
<b>Number of parking spaces required, per code:</b>	

The following materials must be submitted when applying for a lease of City of Homer real property																				
1.	Plot Plan	<p>A drawing of the proposed leased property showing:</p> <p><input type="checkbox"/> Size of lot - dimensions and total square footage. - to scale, please.</p> <p><input type="checkbox"/> Placement and size of buildings, storage units, miscellaneous structures planned -- to scale, please.</p> <p><input type="checkbox"/> Water and sewer lines - location of septic tanks, if needed.</p> <p><input type="checkbox"/> Parking spaces - numbered on the drawing with a total number indicated - please refer to Homer City Code _____</p>																		
2.	Development Plan	<p><input type="checkbox"/> List the time schedule from project initiation to project completion, including major project milestones.</p> <table border="0"> <thead> <tr> <th>Dates</th> <th>Tasks</th> </tr> </thead> <tbody> <tr> <td>_____</td> <td>_____</td> </tr> </tbody> </table> <p>For each building, indicate:</p> <table border="0"> <thead> <tr> <th>Building Use</th> <th>Dimensions and square footage</th> </tr> </thead> <tbody> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> </tbody> </table>	Dates	Tasks	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	Building Use	Dimensions and square footage	_____	_____	_____	_____
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Building Use	Dimensions and square footage																			
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3.	Insurance	<p><input type="checkbox"/> Attach a statement of proof of insurability of lessee for a minimum liability insurance for combined single limits of \$1,000,000 showing the City of Homer as co-insured. Additional insurance limits may be required due to the nature of the business, lease or exposure. Environmental insurance may be required. If subleases are involved, include appropriate certificates of insurance.</p>																		
4.	Subleases	<p><input type="checkbox"/> Please indicate and provide a detailed explanation of any plans that you may have for subleasing the property. The City of Homer will generally require payment of 25% of proceeds paid Lessee by subtenants. Refer to chapter 13 of the Property Management Policy and Procedures manual.</p>																		
5.	Health Requirements	<p><input type="checkbox"/> Attach a statement documenting that the plans for the proposed waste disposal system, and for any other necessary health requirements, have been submitted to the State Department of Environmental Conservation for approval. Granting of this lease shall be contingent upon the lessee obtaining all necessary approvals from the State DEC.</p>																		

6.	Agency Approval	<input type="checkbox"/> Attach statement(s) of proof that your plans have been inspected and approved by any agency which may have jurisdiction of the project; i.e. Fire Marshall, Army Corps of Engineers, EPA, etc. The granting of this lease shall be contingent upon lessee obtaining approval, necessary permits, and/or inspection statements from all appropriate State and/or Federal agencies.
7.	Fees	<p><u>All applicable fees must be submitted prior to the preparation and/or execution of a lease.</u></p> <input type="checkbox"/> <b>Application fee - \$30.00.</b> Covers costs associated with processing the application. <input type="checkbox"/> <b>Lease fee - \$300.00.</b> Covers the costs of preparing and processing the actual lease. <input type="checkbox"/> <b>Assignment fee - \$250.00.</b> Covers the costs of preparing and processing the lease transfer.
8.	Financial Data	<p><u>Please indicate lessee's type of business entity:</u></p> <input type="checkbox"/> Sole or individual proprietorship. <input type="checkbox"/> Partnership. <input type="checkbox"/> Corporation. <input type="checkbox"/> Other - Please explain: _____ <hr/> <input type="checkbox"/> <b>Financial Statement</b> - Please attach a financial statement showing the ability of the lessee to meet the required financial obligations. <input type="checkbox"/> <b>Surety Information</b> - Has any surety or bonding company ever been required to perform upon your default or the default of any of the principals in you organization holding more than a 10% interest <input type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please attach a statement naming the surety or bonding company, date and amount of bond, and the circumstances surrounding the default or performance. <input type="checkbox"/> <b>Bankruptcy information</b> - Have you or any of the principals of your organization holding more than a 10% interest ever been declared bankrupt or are presently a debtor in a bankruptcy action? <input type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please attach a statement indicating state, date, Court having jurisdiction, case number and to amount of assets and debt. <input type="checkbox"/> <b>Pending Litigation</b> - Are you or any of the principals of your organization holding more than a 10% interest presently a party to any pending litigation? <input type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please attach detailed information as to each claim, cause of action, lien, judgment including dates and case numbers.

9.	Partnership Statement	<input type="checkbox"/> If the applicant is a partnership, please provide the following: Date of organization: _____ Type: <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership Statement of Partnership Recorded? <input type="checkbox"/> Yes <input type="checkbox"/> No Where _____ When _____ Has partnership done business in Alaska? <input type="checkbox"/> Yes <input type="checkbox"/> No Where _____ When _____ Name, address, and partnership share. If partner is a corporation, please complete corporation statement. Limited/ <table border="1"> <thead> <tr> <th data-bbox="634 654 716 679">General</th> <th data-bbox="777 654 841 679">Name</th> <th data-bbox="1049 654 1130 679">Address</th> <th data-bbox="1312 654 1393 679">Share %</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	General	Name	Address	Share %																
General	Name	Address	Share %																			
		Please attach a copy of your partnership agreement.																				

10.	Corporation Statement	<input type="checkbox"/> If the applicant is a corporation, please provide the following: <b>Date of Incorporation:</b> _____ <b>State of Incorporation:</b> _____ <b>Is the Corporation authorized to do business in Alaska?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes. Is so, as of what Date? _____ <b>Corporation is held?</b> <input type="checkbox"/> Publicly <input type="checkbox"/> Privately If publicly held, how and where is the stock traded? _____ <b>Officers &amp; Principal Stockholders [10%+]:</b> <table border="0"> <thead> <tr> <th style="text-align: left;"><u>Name</u></th> <th style="text-align: left;"><u>Title</u></th> <th style="text-align: left;"><u>Address</u></th> <th style="text-align: left;"><u>Share</u></th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> <input type="checkbox"/> Please furnish a copy of Articles of Incorporation and By-laws. <b>Please furnish name and title of officer authorized by Articles and/or By-laws to execute contracts and other corporate commitments.</b> <table border="0"> <thead> <tr> <th style="text-align: left;"><u>Name</u></th> <th style="text-align: left;"><u>Title</u></th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> </tbody> </table>	<u>Name</u>	<u>Title</u>	<u>Address</u>	<u>Share</u>																																									<u>Name</u>	<u>Title</u>																				
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11.	Applicant References	<p>Please list four persons or firms with whom the Applicant or its owners have conducted business transactions with during the past three years. Two references named shall have knowledge of your financial management history, of which at least one must be your principal financial institution. Two of the references must have knowledge of your business expertise.</p> <p>_____</p> <p>Name: _____  Firm: _____  Title: _____  Address: _____  Telephone: _____  Nature of business association with Applicant: _____</p> <p>_____</p> <p>Name: _____  Firm: _____  Title: _____  Address: _____  Telephone: _____  Nature of business association with Applicant: _____</p> <p>_____</p> <p>Name: _____  Firm: _____  Title: _____  Address: _____  Telephone: _____  Nature of business association with Applicant: _____</p> <p>_____</p> <p>Name: _____  Firm: _____  Title: _____  Address: _____  Telephone: _____  Nature of business association with Applicant: _____</p> <p>_____</p>
-----	----------------------	--

I hereby certify that the above information is true and correct to the best of my knowledge.  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

LEASE AND SECURITY AGREEMENT  
BETWEEN  
TENANT  
AND THE  
CITY OF HOMER, ALASKA

Date

ATTACHMENT #4

-i-

HOMER000047

**LEASE AND SECURITY AGREEMENT**

THIS LEASE AND SECURITY AGREEMENT ("Lease") is made this \_\_\_<sup>st</sup> day of \_\_\_\_\_, 2008, between the CITY OF HOMER, 491 East Pioneer Avenue, Homer, Alaska 99603, a municipal corporation organized under the laws of the State of Alaska, hereinafter referred to as "Landlord" and \_\_\_\_\_, hereinafter referred to as "Tenant".

Landlord and Tenant agree as follows:

**1. PROPERTY**

**1.01. Property**

Subject to the terms, covenants, conditions, rights and obligations set forth in this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property:

KPB # \_\_\_\_\_ Lot \_\_\_\_\_ Fishing Hole Subdivision No. 2, Homer  
Recording District, State of Alaska

The parcel contains approximately \_\_\_\_\_ ± square feet and is referred to herein as the "Property."

**1.02. Quiet Enjoyment, Restrictions, Easements, Etc.**

Landlord covenants and agrees that Tenant, upon paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Lease on Tenant's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation, subject, however, to the rights and reservations expressed in the U.S. or State patent to the Property, the existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property.

**1.03. Property Accepted "As Is"**

Tenant acknowledges that it has inspected the Property and accepts the same "as is" and without reliance on any representations or warranties of Landlord, its agents, servants, or employees as to the physical condition of the Property, including, but not limited to, subsurface and soil conditions, the presence of any hazardous waste as defined in paragraph 16.03, or as to the habitability or fitness of the Property for any particular purpose.

**1.04. No Subsurface Rights**

This Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Property as stated in this Lease. Landlord makes no warranty or representation as to whether the Property is open or closed to mineral claims or leases under state or federal law.

## 2. TERM

### 2.01. Lease Term

The term of this Lease is for \_\_\_\_\_ years (the "Term"), and shall commence on \_\_\_\_\_ (the "Commencement Date") and end on \_\_\_\_\_.

### 2.02 Renewal Options

Tenant has the option to renew this Lease for \_\_\_\_\_ additional, consecutive \_\_\_\_\_ year periods ("Renewal Terms"), provided:

(a) exercise of any option shall be mutually agreed upon by both the City and Tenant;

(b) that Tenant shall exercise its option to renew not more than one year and not less than 120 days prior to the last day of the Term or Renewal Term of this Lease;

(c) that Tenant is not materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease;

(d) that Tenant shall exercise its option to renew only by sending written notice thereof in accordance with the provisions of paragraph 17.17 of this Lease;

(e) that Tenant shall exercise only one renewal option per Term or Renewal Term, i.e., Tenant shall not be entitled to exercise more than one renewal option during each period of time described in subparagraph (a); and

(f) that at the time of exercise of the option the Tenant is still using the Property as required or permitted under this Lease.

### 2.03. Hold-Over

If Tenant shall hold-over after the expiration of the term of this Lease such tenancy shall be from month to month, terminable upon 30 days written notice given by either party at any time, subject to all the terms, covenants and conditions of this Lease, and shall not operate as a renewal or extension of this Lease.

### 2.04. Surrender of Possession

Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant shall promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in paragraph 6.01. Tenant agrees to execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all right, title and interest of Tenant in and to the Property and such buildings and improvements that will remain thereon under paragraph 6.01.

### 3. RENT, TAXES, ASSESSMENTS AND UTILITIES

#### 3.01. Rent

(a) Rent. Tenant agrees to pay to Landlord an annual rent of \$\_\_\_\_\_ ( \_\_\_\_\_ cents per square foot) (the "Base Rent"), payable monthly in advance in equal installments of \$ \_\_\_\_\_, plus tax, the first monthly payment being due on \_\_\_\_\_, and subsequent monthly payments are due on the first day of each calendar month thereafter. Rent shall be payable in the City of Homer office, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent shall bear penalty fee at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended.

(b) Appraisal of Property. For purposes of paragraph 3.01(c), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and shall not include the value of buildings or improvements placed on the Property (with exception of utilities). The cost of the appraisal shall be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal in which case the amount paid shall become additional rent immediately due and payable under this Lease. The fair market rental value shall be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent shall be conclusive between the parties.

(c) Periodic Appraised Adjustment of Rent. The annual rent shall be adjusted on January 1, 2008 and on January 1, every five years thereafter ("the "rent adjustment date") and every five years thereafter to equal the reappraised market rent of the Property. The market rent shall be determined by appraisal as set forth in paragraph 3.01(b) not less than six months before the rent adjustment date. Tenant is responsible for appraisal costs.

(d) Annual Rent Adjustment. The rent shall be adjusted on the first day of January, 2008, and on the first day of January every year thereafter (each such day being a "Rent Adjustment Date") throughout the Term and all Renewal Terms as follows:

The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The Index published for the month of January, 2000 is (the "Beginning Index".) The Index published for the month nearest, but preceding, the Rent Adjustment Date shall be the "Extension Index". On each Rent Adjustment Date the Base Rent shall be increased from the Base Rent on the Commencement Date by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case shall the rent be reduced because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Rent Adjustment Date.

If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued or revised.

### **3.02. Tenant to Pay Taxes**

Tenant agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located a applicable real property taxes levied or assessed upon or against the Property and all buildings and improvements thereon during the term of this Lease. Tenant further agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all applicable personal property taxes on personal property situated on the Property and placed thereon by Tenant, its agents, servants, or employees. Tenant further agrees to pay prior to delinquency any other taxes for which it may be liable. Tenant shall, within thirty (30) days after any such tax, assessment or other charge, whether or not constituting a lien on the Property, shall become due and payable, produce and exhibit to Landlord satisfactory evidence of payment thereof.

Tenant acknowledges that it is subject to and will pay applicable municipal taxes, including property tax on Tenant's leasehold interest in the Property.

### **3.03. Tenant to Pay Assessments**

Tenant during the term of this Lease agrees to pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or all of the costs of any public work or improvement assessed according to benefit found by the levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, Tenant may elect to pay the same in installments, and in such case Tenant shall be liable only for such installments as shall become due during the term of this Lease. Landlord warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by Landlord.

### **3.04. Proration of Taxes and Assessments**

If Tenant's obligation to pay taxes or assessments commences or ends during a tax year by reason of commencement or termination of this Lease, such taxes or assessments shall be prorated between Landlord and Tenant.

### **3.05. Contest**

Tenant shall have the right to contest any taxes or assessments that Tenant is obligated to pay under paragraphs 3.02 or 3.03 of this Lease. Such proceedings shall, if instituted, be conducted promptly at Tenant's own expense and free from all expense to Landlord. Before instituting any such proceedings, Tenant shall pay under protest any such taxes or assessments, or shall furnish to Landlord a surety bond written by a company acceptable to Landlord or other security acceptable to Landlord, sufficient to cover the amount of such taxes or assessments, with interest for the period that such proceedings may reasonably be expected to take, and costs, securing the payment of such taxes or assessments, interest and costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, Tenant shall pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part thereof, might be forfeited. The proceedings referred to in this paragraph 3.05 shall include appropriate appeals from any order or judgments therein, but all such proceedings shall be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and shall be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge,

Tenant shall pay the amount that shall be finally levied or assessed against the Property or adjudicated to be due and payable, and if there shall be any refund payable by the governmental authority with respect thereto, Tenant shall be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.04 of this Lease. Landlord, at Landlord's option, may, but shall not be obligated to, at Landlord's own expense contest any such taxes or assessments, which shall not be contested as set forth above, and, unless Tenant shall promptly join with Landlord therein, Landlord shall be entitled to receive and retain any refund payable by any governmental authority with respect thereof.

**3.06. Tenant to Pay Utility Charges**

Tenant shall pay or cause to be paid all charges for gas, oil, electricity, water, sewer, heat, snow removal, refuse removal and any and all other utilities or services used upon the Property throughout the term of this Lease, including any connection fees.

**3.07. Tenant to Pay for City Services Related to the Property or to Tenant's Operations**

(a) Tenant shall pay for all services provided by the City of Homer which are related to the Property or to Tenant's operations, including but not limited to Port and Harbor services, whether incurred by Tenant, or any business entity owned in whole or in part by Tenant or by one or more partners of Tenant.

(b) Tenant shall pay for wharfage, crane use, ice, and other Port and Harbor services at the rates published in the Port and Harbor of Homer Terminal Tariff, which is subject to change from time to time. In the event the City of Homer changes the method of establishing or publishing any or all such rates, then Tenant shall pay for such services at the rates so established by such changed method. Tenant further agrees to provide the City of Homer with the necessary information to determine wharfage, crane use, ice and other Port and Harbor services.

**3.08. Additional Rent and Landlord's Right to Cure Tenant's Default**

All costs and expenses that Tenant assumes or agrees to pay pursuant to this Lease shall, at Landlord's election, be treated as additional rent, and in the event of nonpayment, Landlord shall have all rights and remedies provided in this Lease in the case of nonpayment of rent or of a breach of condition, at Landlord's election. If Tenant shall default in making any payment required to be made by Tenant or shall default in performance of any term, covenant or condition of this Lease on the part of Tenant to be kept, performed or observed that shall involve the expenditure of money by Tenant, Landlord at Landlord's option may, but shall not be obligated to, make such payment, or, on behalf of Tenant, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended by Landlord, with interest thereon at the legal rate of interest from the date of such expenditure until repaid, shall be, and shall be deemed to be, additional rent and shall be repaid by Tenant to Landlord, on demand, provided, however, that no such payment or expenditure by Landlord shall be deemed a waiver of Tenant's default, nor shall it affect any remedy of Landlord by reason of such default.

### 3.09 Security Deposit

Upon execution of this Lease, Tenant shall deposit with Landlord 10% of the annual rent, \$ \_\_\_\_\_; as security for the performance of Tenant's obligations under this Lease. Landlord shall invest the security deposit in an interest bearing account in Landlord's name, subject to Tenant's approval, which will not be unreasonably withheld. If Tenant is in default with respect to any covenant or condition of this Lease, including but not limited to the payment of rent, Landlord may apply all or any portion of the security deposit, including interest earned thereon, to the payment of any sum in default or any damage suffered by Landlord as result of the default, or any sum which Landlord may be required to incur by reason of Tenant's default. Tenant shall upon demand deposit with Landlord the amount so applied so that Landlord shall have the full deposit on hand at all times during the Term or Renewal Term of this Lease. If Tenant has fully complied with all of the covenants or conditions of the Lease, the Landlord shall remit to the Tenant the security deposit, including any interest on deposit, within thirty days after the expiration or termination of this Lease. On each Rent Adjustment Date, the principal amount of the security deposit shall be adjusted to ten percent of the annual rent, after making the adjustment under paragraph 3.01. Within 30 days of notification of the adjustment of the rent, Tenant shall deposit with Landlord the amount of the increase in the security deposit.

### 4. GRANT OF SECURITY INTEREST

To secure Tenant's obligation for payment of rent and all other sums agreed to be paid by Tenant under this Lease, Tenant hereby grants to Landlord a lien and security interest in the following collateral: (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest shall be in addition to Landlord's liens provided by law.

This Lease shall constitute a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord shall have all rights and remedies afforded a secured party under the UCC. Tenant shall execute, as debtor, such financing statement or statements as Landlord may now or hereafter reasonably request further evidencing said security interest.

### 5. USE AND CARE OF THE PROPERTY

#### 5.01. Use

Tenant shall use the premises for no other purposes without the Landlord's written consent, which consent shall not be unreasonably withheld. Tenant shall not use the property for any unlawful purpose and shall comply with all applicable statutes, laws and ordinances during the entire term of the lease and any extension or renewal thereof. If Tenant ceases to use the Property for the approved purposes, Landlord may, as one of its remedies, terminate this Lease upon thirty days written notice.

**5.02. Care of the Property**

Tenant at its own cost and expense shall keep the Property and all buildings and improvements that at any time may be situated thereon in good condition and repair during the term of this Lease, ordinary wear and tear excepted. The Property shall always be kept by Tenant neat, clean and free of litter.

**5.03. Restoration or Removal of Damaged Buildings and Improvements**

Except as provided in paragraph 6.02, in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant shall at Tenant's expense restore the same to good and tenable condition or shall remove the same as soon as is reasonably possible, but in no event shall the period of restoration exceed eighteen (18) months nor shall the period of removal exceed forty-five (45) days.

**5.04. Property Returned to Previous Condition**

At the termination of this Lease, Tenant shall remove all debris and return the Property clean and in as good order and condition as when the Tenant took possession, failing which Landlord may restore the Property to such condition and Tenant shall pay the cost thereof on demand.

**5.05. Access Rights of Landlord**

Landlord, its agents, servants, or employees, shall have the right to enter into and upon the Property and all buildings or improvements situated thereon upon reasonable notice to Tenant and during normal business hours (defined as 9 a.m. to 5 p.m. Monday through Friday, except for holidays as defined in paragraphs 17.06 of this Lease) for the purpose of inspecting the Property and all buildings and improvements situated thereon for compliance with the terms of this Lease.

**5.06. Nuisances Prohibited**

Tenant shall immediately remove from the Property any abandoned or junk vehicles, buildings, improvements, equipment, machinery or fixtures. Tenant shall not permit any nuisance or public nuisance to exist or to be created or maintained on the Property. Tenant agrees that any nuisance or public nuisance as defined by the Homer City Code, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Homer, may, after fifteen (15) days written notice to Tenant or after four (4) hours notice in writing, by telephone, facsimile, or in person to Tenant if Landlord makes a written finding that such nuisance or public nuisance constitutes a threat of imminent harm to public health, safety or welfare, be removed by Landlord without Tenant's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefore, all the costs of such removal to be paid by Tenant to Landlord as additional rent under the terms of this Lease. This paragraph shall not be construed as any limitation on any other legal rights or remedies available to the City of Homer to abate any nuisance or to prosecute any violation of the Homer City Code.

**5.07. Compliance with Laws**

Tenant shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting Tenant's activities on the Property or any buildings or other improvements that may be situated thereon.

**5.08. Radio Interference**

At Landlord's request, the Tenant shall discontinue the use of any machine or device that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

**5.09. Signs**

Tenant shall be entitled to erect signs upon the Property that comply with the local sign ordinance. City Planning Department approval is required prior to the erection of any sign on the Property.

**5.10 Garbage Disposal**

Tenant is responsible for removing all garbage generated by Tenant's business to a Kenai Peninsula Borough solid waste facility or transfer station. Tenant shall not use the Landlord's Homer Spit garbage disposal facilities.

**5.11 Outfall Line Connection Agreement (this section applies to fish processors)**

Tenant shall connect to the City of Homer fish processor outfall line. On or before the Commencement Date Tenant and Landlord shall enter into Fish Processor Outfall Line Connection Agreement. Tenant shall continue to maintain such an agreement in force for so long as the City of Homer continues to maintain the outfall line. Tenant shall at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement.

**5.12 Fish Dock Use Permit**

Before using the City of Homer Fish Dock, Tenant shall obtain from the Landlord a Fish Dock Use Permit. Tenant shall continue to have a current Fish Dock Use Permit in force for so long as Tenant intends to use the Fish Dock.

**6. IMPROVEMENTS**

**6.01. Ownership of Buildings and Improvements**

(a) Any and all buildings, fixtures, and improvements of any nature whatsoever constructed or maintained on the Property by Tenant shall be and remain the property of Tenant at all times during the Term and any Renewal Terms and may be removed or replaced by Tenant, subject, however, to the obligations concerning the Required Improvements set forth in paragraph 6.02.

(b) Upon the expiration or termination of the Lease, all buildings, improvements, and fixtures shall remain upon the Property and shall be surrendered with the Property to Landlord, unless Landlord elects to require the removal of any or all of such property. Should Landlord require that buildings, improvements, and fixtures, or any part of them, be removed, Tenant shall remove the same at its expense and repair or pay Landlord the cost of repairing any damage resulting therefrom. Approximately 60 days prior to the Tenant's scheduled vacation of the Property, Landlord and Tenant shall meet to decide what items shall be removed and what items shall remain.

**6.02. Development Requirements**

Tenant must, at Tenant's sole expense, construct certain Required improvements on the Property. Tenant must at all times during the Term and any Renewal Term keep and maintain the Required Improvements, or their equivalent of equal or greater value, as the minimum development on the Property. The Required Improvements are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tenant's proposed site plan and floor plans for the Required Improvements are attached as **Exhibit C** and **Exhibit D**. Tenant must commence construction of the Required Improvements within one year of the date of commencement of the Term and Complete construction within one additional year. When Completed, the Required Improvements must have an appraised value of not less than \$\_\_\_\_\_.

(b) Tenant warrants that it has not entered into this Lease for the purpose of speculation, but in order to fully develop the Property with such Required Improvements and to operate it for Tenant's proposed operations. Tenant's promise to timely construct the Required Improvements and operate on the Property is a major and material consideration to Landlord in granting this Lease.

(c) In the event the Required Improvements are damaged or destroyed by fire, earthquake, tsunami or other casualty, Tenant shall, at Tenant's expense, restore or replace the same to good and tenable condition as soon as is reasonably possible, but in no event shall the period of restoration or replacement exceed 12 months. Modifications to the Required Improvements will be allowed only if approved by Landlord, whose approval will not be unreasonably withheld. If such damage or casualty to the Required Improvements occurs within three years of the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

**6.03. Construction Prerequisites**

No construction on the Property, including the Required Improvements, shall be commenced unless the following events have occurred:

(a) Not less than 30 days prior to the intended start of construction, Tenant shall submit to Landlord for its approval preliminary plans and specifications and an application for a City of Homer zoning permit. The preliminary plans and specifications shall show the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, and drainage plan. Tenant shall also certify that the preliminary plans and specifications satisfy the capital investment requirements of paragraph 6.02. Landlord shall not unreasonably disapprove preliminary plans and specifications. Approval or disapproval shall be communicated in the manner provided for notices, and disapproval shall be accompanied by specification of the grounds for disapproval.

(b) Tenant shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by Landlord, submit them to the appropriate governmental agencies for approval, and deliver to Landlord one complete set as approved by the governmental agencies. Changes from the preliminary plans shall be considered to be within the scope of the preliminary plans if they are not substantial or if they are made to comply with suggestions, requests, or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five days prior to the commencement of any construction, Tenant shall give written notice of intent to commence construction and furnish to Landlord proof that all applicable federal, state, and local permits have been obtained or applications therefor have been submitted to the appropriate governmental agency.

(d) Not less than five days prior to the commencement of any construction, Tenant shall furnish to Landlord certificates of insurance in the amounts and for the purposes specified in paragraphs 11.01 through 11.04 of this Lease.

(e) Tenant shall from time to time deliver to Landlord satisfactory proof that workers' compensation insurance has been procured to cover all persons employed in connection with the construction. Upon notice to Tenant of any deficiency in workers' compensation coverage, such deficiency shall be cured immediately, and no work will be performed on the project until Tenant has provided Landlord satisfactory proof that proper workers' compensation insurance is in place.

(f) On completion of the improvements, Tenant shall give Landlord notice of all changes in plans or specifications made during the course of the work. Landlord acknowledges that it is common practice in the construction industry to make numerous changes during the course of construction on substantial projects. Changes that do not substantially alter plans and specifications previously approved by Landlord do not constitute a breach of Tenant's obligations.

(g) At any time and from time to time, Tenant may, but is not obligated to, construct or otherwise make new improvements on any part or all of the Property and to demolish, remove, replace, alter, relocate, reconstruct, or add to the existing improvements in whole or in part, provided Tenant is not then in default under any condition or provision of this Lease and provided the improvements following the work are at least equal in value to any improvements as they were before the being demolished, removed, replaced, altered, relocated, reconstructed, modified, or changed. All salvage shall belong to Tenant. Once the work is begun, Tenant shall with reasonable diligence prosecute to completion all construction of improvements, additions, or alterations.

**6.04. As-Built Survey**

Within thirty (30) days after completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes, of all or any part of any structure on the Property, Tenant shall provide Landlord with three (3) copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines, and pre-existing improvements.

**6.05 Definitions**

As used in this Article 6 of this Lease, the following terms and phrases shall have the meanings given here, unless the context requires otherwise:

"Complete" and "Completion" mean that construction is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including, but not limited to, the receipt of any applicable certificate of occupancy and other applicable permits, licenses, certificates, or inspection reports necessary to the improvement's legally authorized use. The existence of a contractor's punch list of items to be performed to finish the construction shall not prevent the improvement from being Complete if the improvement otherwise meets the requirements of this definition.

"Excusable Delay" means delay due to strikes, act of God, inability to obtain labor or materials, governmental requirements, such as laws and requirements of any governmental authority having jurisdiction over the improvements or over any permits or licenses needed for Tenant's proposed operations, removal of Hazardous Materials discovered at any time after the Commencement Date, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

**6.06 Extensions of Time for Completion of Required Improvements**

An extension of the time to Complete the Required Improvements shall be granted for any event of Excusable Delay if Tenant has commenced construction in a timely manner and is proceeding diligently to complete construction.

**7. RESERVED**

**8. ASSIGNMENT**

**8.01. Assignment or Sublease Without Consent Generally Prohibited**

Tenant shall not voluntarily assign, encumber or sublease its interest in this Lease or in the Property without first obtaining Landlord's consent. Any assignment, encumbrance or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. Any request for Landlord's consent shall be made to Landlord in writing at least thirty (30) days prior to the proposed effective date of the assignment, encumbrance

or sublease. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this paragraph. Any assignment effected pursuant to this paragraph 8.01 shall require the assignee to assume the Tenant's obligations hereunder. An assignment shall not release the Tenant from liability hereunder unless specifically so provided in writing and approved by Landlord. Tenant shall promptly deliver to Landlord a copy of any instrument or shall promptly notify Landlord of any unwritten agreement, that assigns, encumbers or subleases the Property. Landlord's consent to assign, encumber or sublease the Property shall not be withheld unreasonably. Subleasing shall comply with chapter 12 of City of Homer Property Management Policy and Procedures

#### **8.02. Change of Ownership**

If Tenant is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of any partner(s) or member(s) owning twenty-five percent (25%) or more of the entity, or the dissolution of the entity, shall be deemed a voluntary assignment under paragraph 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of twenty-five percent (25%) of the value of the assets of Tenant, shall be deemed a voluntary assignment under paragraph 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors. As to a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such a Tenant corporation will not be deemed to be a voluntary assignment. Attached as Exhibit A is a schedule describing the method of organization of Tenant, each owner of Tenant, and the percentage of ownership of each owner. Exhibit B is a conformed copy of a resolution authorizing Tenant to enter into this lease and authorizing the undersigned officer to execute the Lease on behalf of Tenant.

#### **8.03. Costs of Landlord's Consent to be Borne by Tenant**

Tenant must pay Landlord's reasonable costs, including attorney's fees, and the expenses of due diligence inquiries, incurred by Landlord in connection with any request by Tenant for Landlord to consent to any assignment or subletting by Tenant.

### **9. PROHIBITION OF LIENS**

Tenant shall not suffer or permit any liens, including without limitation, mechanic's or materialmen's liens, to be recorded against the Property. If any such liens shall be recorded against the Property, Tenant shall cause the same to be removed, or, in the alternative, if Tenant in good faith desires to contest the same, Tenant shall be privileged to do so, but in such case Tenant hereby agrees to indemnify and save Landlord harmless from all liability for damages occasioned thereby and shall, in the event of a judgment or foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this Lease shall be construed to be a waiver of the provisions of AS 09.38.015(c), as may be amended from time to time.

## 10. INDEMNITY

### 10.01. Indemnity Generally

Tenant agrees to protect, indemnify and hold Landlord harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on or relating to the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorneys fees, incidental to the defense of and by Landlord therefrom, excepting only liability arising from the sole negligence of Landlord. If any action or proceeding is brought against Landlord by reason of any such occurrences, Landlord shall promptly notify Tenant in writing of such action or proceeding.

### 10.02. Indemnity For Emergency Service Costs

Without limiting the generality of paragraph 10.01, in the event of a major fire or other emergency, Tenant shall reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant or the Property, or elsewhere if the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this paragraph, a major fire or other emergency is one that requires more than five hours of effort by the Homer Department of Public Safety or its successors.

## 11. INSURANCE

### 11.01. Liability Insurance

(a) Tenant shall at all times carry at its expense public liability insurance covering Tenant's operations and the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence to protect against liability for bodily injury, death or property damage that might arise from the construction, occupancy or use of the Property and the operations conducted on, from or related to it. Such insurance shall include coverage for comprehensive general liability; bodily injury and property damage liability; premises and operations liability, including underground, products and completed operations; broad form property damage liability; blanket contractual liability; personal injury liability; and comprehensive automobile liability including without limitation bodily injury and property damage and all owned, hired, and non-owned automobiles. Such insurance policy or policies shall be additionally endorsed to provide sudden and accidental pollution coverage arising out of activities or events taking place on or adjacent to the Property.

(b) Tenant shall at all times carry, at its expense, environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and gradual pollution coverage. Such coverage shall also include clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. Tenant shall maintain limits of liability of ONE MILLION DOLLARS (\$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance shall extend to loss arising as a result of: (i) liability of others assumed by Tenant under contract or agreement; or (ii) clean-up operations; or (iii) activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials upon which Tenant performs actions; or (iv) the work or services or products

furnished, used or handled in connection with Tenant's operations contemplated pursuant to this Lease.

**11.02. Worker's Compensation and Employer's Liability Insurance**

Tenant, during the term of this Lease, shall carry at its expense Worker's Compensation Insurance as required by statute and Employer's Liability Insurance.

**11.03. Named Insured, Notice to Landlord, and Waiver of Subrogation**

All insurance policies required to be maintained by Tenant under paragraph 11.01 shall name Landlord, and its officers, employees and agents, as additional insured, but shall not contain any exclusion from coverage for Tenant's liability for damages or loss incurred by Landlord because of Landlord's status as an additional insured. All policies issued under paragraph 11.01 shall contain a waiver of any subrogation rights any insurer might have against Landlord. All policies issued under paragraphs 11.01 or 11.02 shall contain an agreement by the insurers to provide at least thirty (30) days prior written notice to Landlord of cancellation, expiration or substantial changes in policy conditions and coverage. Tenant shall furnish insurance certificates and copies of all such insurance policies to Landlord promptly after the issuance thereof.

**11.04. Fire and Extended Coverage Insurance**

Tenant may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover buildings, equipment, inventory, fixtures, personal property and improvements made to the Property by Tenant subsequent to Tenant's taking possession of the Property under this Lease.

**11.05 Required Endorsements and Authorization**

In addition to, and without limiting the requirements of paragraphs 11.01 through 11.04, Tenant shall at all times maintain and give to the Landlord, for Landlord's benefit, current insurance endorsements substantially in the form of Exhibit E and Exhibit F. Tenant shall also grant Landlord permission to obtain copies of insurance policies from all insurer's providing required coverage to Tenant by executing an authorization substantially in the form of Exhibit G. Tenant shall, from time to time, execute and deliver to Landlord such additional authorizations (Exhibit G) that Landlord may request.

**12. CONDEMNATION**

**12.01. Condemnation**

In the event the Property, or any part thereof or interest therein, shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease shall be as provided in this Article 12.

#### **12.02. Total Taking**

If all of the Property is taken or so transferred, this Lease and all the right title and interest thereunder of Tenant shall cease on the date title to the Property vests in the condemning authority.

#### **12.03. Partial Taking - Termination of Lease**

In the event the taking or transfer of part of the Property leaves the remainder of the Property in such location, or in such form, shape or reduced size, or so inaccessible as to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, then this Lease and all of the right, title and interest thereunder of Tenant shall cease on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession.

#### **12.04. Partial Taking - Continuation of Lease**

In the event the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively and practicably usable in the opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease shall terminate and end as to the portion of the Property so taken or transferred as of the date title to such portion vests in the condemning authority and the condemning authority enters into possession, but shall continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease shall abate for the portion of the Property taken in the proportion that such portion bears to all of the Property.

#### **12.05. Compensation**

If any compensation is payable as a result of eminent domain proceedings or a transfer in lieu thereof, Landlord and Tenant shall each make a claim against the condemning or taking authority for the amount of any damage incurred by or done to them respectively, and Tenant shall make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business. Neither Tenant nor Landlord shall have any rights in or to any award made to the other by the condemning authority; provided, that in the event of a single award to Landlord that includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages recoverable by Landlord, Landlord shall transmit such separately awarded damages to Tenant.

### **13. DEFAULT**

#### **13.01. Default**

Each of the following events shall be deemed an event of default by the Tenant under this Lease and a breach of the terms, covenants and conditions of this Lease:

(a) A default in the payment of the rent and additional sums due under this Lease, or any part thereof, for a period of ten (10) days from the due date for the payment of such rent or additional sums.

(b) A default in the performance of any other term, covenant or condition on the part of the Tenant to be kept, performed or observed for a period of fifteen (15) days after Landlord give to Tenant a written notice specifying the particular default or defaults; provided, however, that any default on the part of Tenant in the performance of work or acts required to be done, or conditions to be modified, shall be deemed to be cured if steps shall have been taken promptly (and in no event later than thirty (30) days after such notice has been given) by Tenant to rectify the same and shall be prosecuted to completion with diligence and continuity.

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

(d) The abandonment of the Property by Tenant. If the Property is deserted or Tenant does not use the Property for the purposes stated in paragraph 5.01 for 12 months or more, it shall be deemed abandoned, even if Tenant continues to pay rent.

(e) Tenant making an assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver, or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the filing of any such petition or application, or the commencing of any such proceeding against it, in which an order for relief is entered or which remains undismissed for a period of 30 days or more; or Tenant by any act or omission indicating its consent to, approval of, or acquiescence in any such petition, application, or proceeding or order for relief or the appointment of a custodian, receiver, or any trustee for it or any substantial part of any of its properties, or the suffering of any such custodianship, receivership, or trusteeship to continue undischarged for a period of 30 days or more.

(f) Tenant being generally unable to pay its debts as such debts become due.

(g) Tenant having concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay, or defraud its creditors or any of them, or making or suffering a transfer of any of its property that may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint that is not vacated within 30 days from the date thereof.

### **13.02. Landlord's Remedies**

In the event of any default by Tenant as recited in paragraph 13.01 of this Lease, Landlord shall have all of the below-enumerated rights and remedies, all in addition to any rights and remedies that Landlord may be given by statute, common law or otherwise. All rights of Landlord shall be cumulative, and none shall exclude any other right or remedy. Landlord's rights and remedies include the following:

(a) Landlord may declare the term of this lease ended by written notice to Tenant. Upon termination of this Lease, Tenant shall surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove

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

(b) Landlord may by written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. Upon such termination of Tenant's right to possession, Landlord shall have all the rights to repossess the Property and remove Tenant and Tenant's property that are enumerated in paragraph 13.02 (a).

(c) Landlord may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the term of this Lease, for any sum that Landlord may deem reasonable, except as provided in (e) of this paragraph.

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

(e) Landlord may recover, whether this Lease be terminated or not, from Tenant, damages provided for below consisting of items (i), and (ii), or, at Landlord's election in lieu of (ii), item (iii):

(i) actual attorney's fees and other expenses incurred by Landlord by reason of the breach or default by Tenant; and

(ii) an amount equal to the amount of all rent and additional sums reserved under this Lease, less the net rent, if any, collected by Landlord on reletting the Property, which shall be due and payable by Tenant to Landlord on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days Tenant shall pay to Landlord the amount of deficiency then existing. Such net rent collected on reletting by Landlord shall be computed by deducting from the gross rent collected all expenses incurred by Landlord in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of renovating or remodeling the Property or the buildings or improvements thereon, provided, however, Landlord must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of Tenant under this Lease or else Landlord will not have access to the remedy set out in this subparagraph 13.02(e)(ii); or

(iii) an amount to be due immediately on breach, equal to the difference between the rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable shall be discounted to the date of such breach at the rate of eight percent (8%) per year.

(f) Reentry or reletting of the Property, or any part thereof, shall not be deemed a termination of this Lease, unless expressly declared to be so by Landlord.

(g) If this Lease shall be deemed terminated, Tenant's liabilities shall survive and Tenant shall be liable for damages as provided in this paragraph 13.02.

### **13.03. Assignment of Rents to Landlord**

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

## **14. REMOVAL OF TRADE FIXTURES, EQUIPMENT, AND MACHINERY UPON EXPIRATION OR TERMINATION OF LEASE**

### **14.01 Removal Upon Expiration**

Trade fixtures, machinery, equipment, and other items of personal property owned by Tenant shall be considered Tenant's property at all times during this Lease and shall be removed by Tenant at its own expense from the Property upon the expiration of the Term or Renewal Term of this Lease, unless Landlord gives written consent to allow such property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant shall repair such injury or damage or pay Landlord the full amount to repair the same. In the event Tenant, without Landlord's written consent, fails to remove such property on or before the expiration of this Lease, the Landlord may, at its election, immediately (a) declare all or any part of the property abandoned, in which case title to such property shall vest in Landlord, or (b) to the extent Landlord does not elect to declare it abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

### **14.02 Removal After Early Termination**

In the event this Lease terminates for any reason before the scheduled expiration of the Term or Renewal Term of this Lease, Tenant shall within one month after such early termination date remove Tenant's trade fixtures, machinery, equipment and other items of personal property, unless Landlord gives written consent to allow such personal property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant shall repair such injury or damage or pay Landlord the full amount to repair the same. On or before the end of such one month period, Tenant may extend the time for removal of such personal property for an additional one month upon written notice to Landlord accompanied by payment of rent for the entire two month period following the early termination date at 125% of the then current monthly rental rate. Acceptance of such rent shall not extend the term of the Lease nor create a month-to-month tenancy. In the event Tenant fails to remove such property within one month after the early termination of this Lease, or within two months if Tenant elects to extend by giving timely notice and paying rent, the Landlord may, at its election, immediately (a) declare all or any part of the property abandoned, in which case title to such property shall vest in Landlord, or (b) to the extent Landlord does not elect to declare abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or

otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

## 15. HAZARDOUS MATERIALS

### 15.01. Use of Hazardous Materials on the Property

(a) Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by Tenant or its authorized representatives, customers, invitees or sublessees, except for such Hazardous Material as is necessary or useful to Tenant's lawful use of the Property.

(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material. Such Hazardous Material shall be handled only by properly trained personnel.

(c) Tenant shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the Landlord, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (i) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (ii) the condition, use or enjoyment of the Property or any other real or personal property.

(d) If any discharge, leak, spill, emission, or pollution of any type occurs upon or from the Property during the Lease term or any holdover, Tenant will immediately notify Landlord and all appropriate federal, state, and local authorities, and will act immediately to contain the spill, repair any damage, absorb and clean up the spill area and restore the Property to comply with the applicable portions of any federal, state, or local law or regulation then in effect.

(e) Tenant hereby agrees that it shall be fully liable for all costs and expenses related to the handling, use, storage, and disposal of Hazardous Material brought or kept on the Property by the Tenant, its authorized representatives, customers, invitees and sublessees, and the Tenant shall give immediate notice to the Landlord of any violation or potential violation of the provisions of subparagraphs 15.01 (a), (b), (c) and (d).

### 15.02. Indemnification of Landlord

Any other provisions of the Lease to the contrary notwithstanding, Tenant shall defend, indemnify and hold harmless Landlord and its authorized representatives, from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind of nature, known or unknown, contingent or otherwise, arising out of or in any way related to: (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the Property, soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; and/or (d) any violation of any laws applicable thereto. However, this paragraph shall apply only if the acts giving rise

to the claims, demands, penalties, fines, expenses: (i) occur in whole or in part during the term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on the Property by Tenant or its employees, agents, customers, invitees or contractors. The provisions of this paragraph shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and shall survive the termination of this Lease.

#### **15.03. Hazardous Material Defined**

"Hazardous Material" is any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Alaska, or the United States government. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" also includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.

### **16. GENERAL PROVISIONS**

#### **16.01. Estoppel Certificates**

Either party shall at any time and from time to time upon not less than thirty (30) days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments), that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.

#### **16.02. Conditions and Covenants**

All the provisions of this Lease shall be deemed as running with the land, and shall be construed to be "conditions" as well as "covenants", as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

#### **16.03. No Waiver of Breach**

No failure by either Landlord or Tenant to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

#### **16.04. Attorney's Fees**

(a) If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made

a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant shall pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

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

**16.05. Time of Essence**

Time is of the essence of the Lease and of each provision.

**16.06. Computation of Time**

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

**16.07. Successors in Interest**

Each and all of the terms, covenants and conditions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of Landlord and Tenant.

**16.08. Entire Agreement**

This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement of promise made by any party that is not contained in the Lease shall be binding or valid.

**16.09. Governing Law and Venue**

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

**16.10. Partial Invalidity**

If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or enforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such provisions are considered by Tenant to be integral to Tenant's use of the Property for the purposes stated herein in which case Tenant will have the authority to terminate this Lease upon thirty (30) days written notice to Landlord

**16.11. Relationship of Parties**

Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

**16.12. Interpretation**

The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not for or against Landlord or Tenant as both Landlord and Tenant have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.

**16.13. Number and Gender**

In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.

**16.14. Mandatory and Permissive**

"Shall", "will" and "agrees" are mandatory; "may" is permissive.

**16.15. Captions**

Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

**16.16. Amendment**

This Lease is not subject to amendment except in writing executed by all parties hereto.

**16.17. Delivery of Notices - Method and Time**

All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, or (ii) facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the addresses stated in paragraph 17.18 and shall be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

**16.18. Notices**

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

City Manager

City of Homer  
491 East Pioneer Avenue  
Homer, Alaska 99603  
Facsimile: (907) 235-3148

**16.19 Change of Address or Agent**

Each party shall have the right, from time to time, to designate a different address or different agent for service of process by notice given in conformity with paragraph 17.17.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates hereinbelow set forth.

**Landlord:**

**CITY OF HOMER**

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

By \_\_\_\_\_  
Walt Wrede,  
City Manager

**Tenant:**

\_\_\_\_\_

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

By \_\_\_\_\_

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

By \_\_\_\_\_

**ACKNOWLEDGMENTS**

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2008, by **Walt Wrede**, City Manager of the City of Homer, on behalf of the City of Homer.

\_\_\_\_\_  
Dru Corbin, Administrative Assistant,  
My Term Expires: \_\_\_\_\_

STATE OF ALASKA            )  
                                  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
2008, by \_\_\_\_\_.

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

STATE OF ALASKA            )  
                                  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
2008, by \_\_\_\_\_.

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

**EXHIBIT A**

**SCHEDULE OF ORGANIZATION, OWNERS,  
PERCENTAGE OF OWNERSHIP**

\_\_\_\_\_ is organized under the laws of the State of Alaska. The partners and their percentage of ownership are as follows:

**PERCENTAGE OF OWNERSHIP**

Name:	50%
Address: _____	
_____	
Name:	50%
Address: _____	
_____	
TOTAL	<u>100</u> %

**EXHIBIT B**

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

- 4 -

HOMER000073

EXHIBIT C  
SITE PLANS

-2-

HOMER000074

**EXHIBIT D**  
**FLOOR PLANS**

**EXHIBIT E**  
**GENERAL LIABILITY INSURANCE ENDORSEMENT**

- 4 -

HOMER000076

**EXHIBIT F**  
**WORKER'S COMPENSATION/EMPLOYER'S LIABILITY**  
**ENDORSEMENT**

- 5 -

HOMER000077

**EXHIBIT G**

**PERMISSION TO OBTAIN INSURANCE POLICIES**

The City of Homer is hereby granted permission to request and obtain copies of

\_\_\_\_\_

\_\_\_\_ (APermittee@) insurance policies from its broker/insurance carrier, \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_ (Abroker/insurance carrier@)

It is understood that the Permittee may revoke this permission at any time by written notice to its broker/insurance carrier and to City of Homer; however, such revocation shall constitute a default of this lease from the City of Homer.

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

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

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

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

Table of Contents

CHAPTER 1:  
Lease Policies / Goals, Purpose, and Responsibility.....3

CHAPTER 2:  
Lease Committee.....4

CHAPTER 3:  
Properties Available for Lease.....5

CHAPTER 4:  
RFP Process / Competitive Bidding.....6

CHAPTER 5:  
Lease Application Process.....7

CHAPTER 6:  
Application / Proposal Evaluation Process.....8

CHAPTER 7:  
Lease Rental Rates.....9

CHAPTER 8:  
Reconsideration.....10

CHAPTER 9:  
Lease Implementation.....11

CHAPTER 10:  
Improvements.....13

CHAPTER 11:  
Length of Leases / Options.....14

CHAPTER 12:  
Lease Rate Adjustments.....16

CHAPTER 13:  
Sub-Leasing.....17

ATTACHMENT #5

HOMER000079

✓  
CHAPTER 14:  
Assignments.....18

CHAPTER 15:  
Insurance.....20

CHAPTER 16:  
Hazardous Materials.....22

CHAPTER 17:  
Performance Standards.....23

CHAPTER 18:  
Conclusion of Lease.....24

CHAPTER 19:  
Surplus Equipment Disposal.....

APPENDICES:

Homer City Code / Chapter 18.08 – City Property Leases

Resolution 04-25(A), adopted April 26, 2004.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

CHAPTER 1: LEASE POLICIES / GOALS, PURPOSE, AND RESPONSIBILITY

1.1 GOALS AND PURPOSE

- A. The property lease management policies contained herein are authorized by HCC 18.08 and are intended to provide guidance, clarity, and standardization for all leasing activities on City owned property.
- B. It is the policy of the City of Homer to lease property when it is in the overall best interest of the City to do so. The City will seek to maximize the value of its assets and lease property for the highest and best use.
- C. It is the policy of the City to implement its leasing program in a fair and nondiscriminatory manner. Opportunities for long term leases on City owned properties will be made available to the public through the RFP process described herein.
- D. It is the policy of the City to lease property for a specific purpose or use. Leasing for the purpose of speculation and/or subleasing land will be discouraged.

1.2 RESPONSIBILITY

- A. The Lease Committee described herein shall be responsible for reviewing this policy manual and making recommendations to the City Council as needed, advising the City Manager or designee as to terms, stipulations, and negotiating approach with respect to leases, evaluating lease applications, and making recommendation to the City Council regarding proposed leases.
- B. The City Manager or designee is responsible for all lease negotiation activities and for implementing and administering the lease policies and procedures.
- C. The City Council has responsibility for approving and adopting the lease policies and for final approval of all leases over six months in duration.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

CHAPTER 2: LEASE COMMITTEE

2.1 POLICY

- A. It is the policy of the City of Homer to establish and maintain a Lease Committee.

2.2 PROCEDURES

- A. The City Manager shall establish a Lease Committee that will consist of the Manager, the Finance Director, and the Planning Director. The Manager and Lease Committee may consult with other department heads such as the Port and Harbor Director, the Fire Chief, and the Public Works Director and /or outside professionals as needed and appropriate.
- B. The Lease Committee is responsible for:
- Reviewing the Lease Policies and Procedures as needed and making recommendations to the City Council
  - Advising the City Manager or designee as to the terms, purposes, stipulations and negotiation approach to proposed leases
  - Reviewing all proposed leases and making recommendations to the City Council
- C. In all cases, the Lease Committee shall make recommendations that are consistent with this policy and procedures manual or make specific findings as to why a deviation is warranted and justified.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 3: PROPERTIES AVAILABLE FOR LEASE

3.1 POLICY

- A. It is the policy of the City of Homer to provide property for lease through a fair, nondiscriminatory, and standardized process that the public can readily understand and support.
- B. It is the policy of the City that public land shall be leased in a way that maximizes the value of City assets, promotes activities and uses that are in the overall best interest of the City, and are consistent with the Comprehensive Plan.

3.2 PROCEDURES

- A. The Lease Committee shall maintain a list of all City properties that have been authorized for lease by the City Council. This list shall be made readily available to the public. The Lease Committee may also develop a list of additional properties, for City Council review, that it recommends should be made available for lease.
- B. The City Council shall identify which City properties are available for lease through its annual land allocation workshop process which includes the Lease Committee, the Planning Commission, the Port and Harbor Commission, and the Parks and Recreation Commission.
- C. All properties identified as available for lease by the City Council shall be subject to the lease policies and procedures contained herein.
- D. All uses and activities on lands made available for lease are subject to the City Comprehensive Plan, zoning ordinances, flood ordinance, subdivision ordinance, and other applicable local, state, and federal laws and regulations.
- E. The City Council may restrict specific City properties to certain uses or classes of use. Such properties will be available for leasing only such uses.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 4: REQUEST FOR PROPOSALS (RFP)

4.1 POLICY

- A. It is the policy of the City of Homer that a request for proposals, or a competitive bidding process be used for the leasing of City owned property. Exceptions to this policy may be made by the City Council as per section 10.2.E of these policies and/or under special or exceptional circumstances. The Council shall review recommendations of the Lease Committee and, if an exception is granted, adopt a resolution finding that it is in the public interest and approving the exception.

4.2 PROCEDURES

- A. Properties that are available for lease will be advertised by the Lease Committee through the normal City of Homer public notice process a minimum of one time per year. The Lease Committee shall provide such notice within 60 days of the completion of the annual land allocation process and adoption by the Council of the Land Allocation Plan. The committee may advertise more frequently as needed and appropriate.
- B. Requests for Proposals shall be solicited by the Lease Committee during a time frame identified in the advertisements and proposal submittal documents.
- C. The criteria used to score and rank proposals shall include, but not necessarily be limited to, the criteria listed in the evaluation chapter herein.
- D. The Lease Committee shall review, evaluate, score, and rank all responsive proposals and make recommendations to the Manager. If none of the responsive proposals is satisfactory, the Lease Committee may recommend against all of the proposals. The manager shall notify the City Council of the Committee's recommendations.
- E. The Lease Committee must obtain approval from the City Council before requesting proposals to lease property that is not on the approved list of properties available for lease.
- F. The City Council may by resolution in particular cases approve other bidding or proposal procedures or exceptions to these procedures.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 5: LEASE APPLICATION PROCESS

5.1: POLICY

- A. It is the policy of the City of Homer to provide for a streamlined, standardized, and easily understood lease application process. A full and complete application packet shall be provided to all applicants. Applicants must be qualified under Section 18.08.50 of the Homer City Code.
- B. The City administration will provide for pre-application meetings with all potential applicants to provide relevant information on things like land use regulations, lease policies, the permitting process, and other relevant topics.

5.2 PROCEDURES

- A. A responsive lease application / proposal shall include:
  - ✓1. A completed application form provided by the City
  - ✓2. Any applicable fees
  - ✓3. A clear and precise narrative description of the proposed use of the property
  - ✓4. A specific time schedule and benchmarks for development
  - ✓5. A proposed site plan drawn to scale that shows at a minimum property lines, easements, existing structures and other improvements, utilities, and the proposed development including all structures and their elevations, parking facilities, utilities, and other proposed improvements.
  - 6. Any other information that is directly pertinent to the proposal scoring criteria contained herein
  - 7. All other required attachments requested on the application form including, but not limited to, the following documentation: applicant information, plot plan, development plan, insurance, proposed subleases, environmental information, agency approvals and permits, fees, financial information, partnership and corporation statement, certificate of good standing issued by an entity's state of domicile, and references.
  - 8. Any other information required by the solicitation or request for proposals.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 6: APPLICATION / PROPOSAL EVALUATION PROCESS

6.1 POLICY

- A. It is the policy of the City of Homer to provide for a fair, standardized and objective proposal evaluation process.

6.2 PROCEDURES

- A. All lease proposals shall be evaluated and scored by the Lease Committee.
- B. The Criteria for evaluating proposals shall include but is not limited to the following:
1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Comprehensive Plan.
  2. The development plan including all proposed phases and timetables.
  3. The proposed capital investment.
  4. Experience of the applicant in the proposed business or venture.
  5. Financial capability or backing of the applicant including credit history, prior lease history, assets that will be used to support the proposed development.
  6. The number of employees anticipated.
  7. The proposed rental rate.
  8. Other financial impacts such as tax revenues, stimulation of related or spin-off economic development.
  9. Other long term social and economic development.
- C. Lease Rental Rates
1. The determination of lease rental rates is addressed in Chapter 7.
- D. After evaluating and scoring the proposals, the Lease Committee shall make a recommendation on a successful bidder to the City Council. The recommendation shall be contained in the form of a memorandum from the City Manager to the City Council that appears on the consent calendar of a regular meeting agenda. If a recommendation to approve a proposal is adopted, the Manager or his designee shall finalize a lease document for presentation to Council for approval. If the Council approves the lease, it will not be executed until the period for reconsideration under section 8.3 passes.
- E. Final approval of long term leases ( more than six months) rests with the City Council The Council shall either:
1. Approve the proposed lease
  2. reject the proposed lease; or
  3. remand the unapproved lease to the Manager with comments

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 7: Lease Rental Rates

7.1 POLICY

It is the policy of the City of Homer to provide for a lease rental rate structure that stimulates business activity, promotes the best use of City land, and maximizes the value of City owned real property.

7.2 PROCEDURES

A. Lease Rental Rates Generally

1. All property shall be leased at no less than "fair market rent". Fair market rent is defined as the rental income that a public and private property would most likely command in the open market; indicated by the current rents paid for comparable space as of the date of the appraisal.
2. Payment of a higher than market rent resulting from an applicant's proposal is generally in the public interest and will help to establish fair market rent using current market forces.
3. The City Council may establish a minimum rent or "asking price." It may set the minimum rent at an amount equal to or higher than the estimated "fair market rent" if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.
4. The Council may approve a lease of City land for less than fair market rent, minimum rent, or uniform rental rate only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.

B. Rental Rate Determination: Factors that may be considered when determining the specific lease rate for individual leases include:

1. The bid amount contained in the sealed bid proposal
2. The fair market rent as determined by an appraisal
3. The highest and best use of the land
4. The City's economic development objectives
5. The location of the property
6. Alternative valuation methodologies as negotiated by both parties.
7. Parameters set out by the City Council under 7.2 A

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 8: RECONSIDERATION

8.1 POLICY

It is the policy of the City of Homer to provide for a reconsideration process so that a fully responsive bidder may seek remedies to actions by the City Council that he or she may believe are in error, unfair, or otherwise unsatisfactory. The reconsideration provisions apply only to final approval of a lease by the City Council.

8.2 RESPONSIBILITY

- A. The City Council is responsible for hearing reconsiderations and for making the final determination on them.
- B. The City Manager is responsible for providing all required staff support necessary to assist the Council in hearing and deciding reconsiderations.

8.3 PROCEDURE

- A. A fully responsive bidder who believes that the City Council final action on the terms of a proposed lease is unsatisfactory may request a reconsideration.
- B. Reconsideration Process:
  - 1. A written request for reconsideration must be filed by a fully responsive bidder with the City Clerk within 15 days of the City Council action which is to be reconsidered. Any decision for which reconsideration is not requested within that period shall become final.
  - 2. The City Clerk shall schedule the matter for reconsideration before the City Council at an appropriate regular meeting.
  - 3. The person requesting reconsideration and all parties involved in the Council action to be reconsidered, shall be notified by the Clerk of the reconsideration request and the date upon which the Council will reconsider. Such notice shall be given not less than 15 days prior the scheduled reconsideration.
  - 4. An electronic tape recording shall be kept of the entire reconsideration proceeding and typewritten minutes shall be prepared. The electronic tape recording shall be preserved according to the City's records retention policy at the time.
  - 5. The decision of the City Council on reconsideration shall be final. There shall be no appeal.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 9: LEASE IMPLEMENTATION

9.1 POLICY

It is the policy of the City of Homer that all leases shall be negotiated and administered in a fair, standardized, and professional manner that is consistent with the Homer City Code and these policies and procedures.

9.2 PROCEDURES

- A. The Lease Committee and the City Manager shall develop a standardized ground lease document that contains standard provisions applicable to all ground leases. Similarly, the Lease Committee and the City Manager may develop one or more standardized building leases (as many as necessary to apply to each City building available for leasing) containing standard provisions applicable to all leases of space in a city building. The standard lease documents shall be reviewed by the City attorney and approved by the City Council.
- B. The terms and conditions of each lease shall be reviewed by the Lease Committee prior to execution. The committee shall make recommendations on terms and conditions to the Manager and the City Council.
- C. The City Manager or designee is responsible for lease negotiations, including any negotiated changes in the standard lease terms. The Manager shall take into consideration the following when negotiating the terms of a lease:
  1. the nature of the proposed use
  2. the type and cost of the improvements to be placed on the property
  3. the period of time required to amortize the improvements
  4. the overall benefit to the City
  5. consistency with the Comprehensive Plan and all other relevant land use codes and regulations
  6. the public need and benefit
  7. the date of commencement and completion of improvements
  8. the value and usefulness of buildings, structures, and other permanent improvements that will remain on the City's land after termination of the lease.
  9. other factors deemed relevant by the Lease Committee or the City Manager.
- D. The determination of lease rental rates is addressed in Chapter 7.
- E. All leases and attachments, or in the direction of the City Manager a memorandum of lease, shall be recorded in the proper recording office by the Clerk's office. The Lessee is responsible for the recording fees.

- F. All leases must require the lessee to comply with applicable zoning, parking, sign, flood, and other pertinent local ordinances and state and federal statutes and regulations.
- G. If a lease is awarded, an as-built survey including elevations performed by an RPLS(Registered Professional Land Surveyor) shall be provided to the City within 6 months of completion of permitted or required development or requirements under the lease. Each additional structure or significant improvement shall require an additional or updated as-built except that the Manager may waive the RPLS requirement. The lessee will be required to subdivide and replat city owned parcels if the lease so requires. All surveys are to be provided by the lessee at his/her expense.
- H. At the time each as-built is submitted, a statement of value including leaseholds and all improvements shall be provided. The Statement of Value shall be either a letter of opinion or appraisal completed by an Alaska Certified General Appraiser.
- I. All development requirements and performance standards contained in the lease shall be strictly enforced and if not complied with or negotiated for modification as per 10.2.B, shall be cause for the lease to be terminated.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 10: IMPROVEMENTS

10.1 POLICY

It is the policy of the City of Homer that all improvements installed, maintained, occupied, and used on leased City property shall be strictly monitored and shall be consistent with the terms and conditions of the lease and all other applicable codes and regulations.

10.2 IMPLEMENTATION

- A. Construction of improvements on leased properties shall take place only after review and approval of the construction plans by the Lease Committee and all applicable permits and legal requirements are secured.
- B. Construction of improvements that are not consistent with the lease agreement are prohibited unless they are approved by an amendment to the lease approved by the City Council. The amendment is subject to the same review process as initial leases.
- C. Unless otherwise provided in the lease, or agreed to by the parties in writing, the lessee shall on or before the lease termination date remove all improvements the lessee is authorized or required to remove and restore the property to the same condition it was in at the time the lease was executed by the lessee.
- D. The lessee shall, during the course of the lease term, be subject to and responsible for payment of assessments related to local improvement districts, payment of its share of the cost of capital improvement projects completed by the City that benefit the property pursuant to the provisions of HCC 18.08.180, and the cost of connection to utilities pursuant to the provisions of HCC 18.08.190.
- E. Lessee shall be responsible for all municipal property taxes on the leasehold interest in the real property and improvements and sales taxes on the rent payments.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 11: LENGTH OF LEASES / OPTIONS

11.1 POLICY

It is the policy of the City of Homer that the duration of all leases including all options shall be consistent with the provisions of Chapter 18.08 of the Homer City Code and the provisions of these policies and procedures.

11.2 PROCEDURES

- A. The initial term of leases shall be related to a large degree upon the magnitude of the lessee's financial investment and the value and usefulness of improvements that lessee will make and leave on the property upon the termination of the lease. It shall also be related, to a lesser degree, upon lessee's financing and the reasonable amortization requirements of the lessee and financing agency. Generally speaking, the larger the investment, and the greater the value and usefulness of permanent improvements that will remain on the property after termination of the lease, the longer the lease period.
- B. Leases that extend beyond 30 years (including all options) will be treated as exceptional and shall be evaluated on a case by case basis.
- C. Leases shall contain no more than two options for renewal and each option shall be for no more than 25% of the length of the initial base term. The exercise of any option shall be dependent upon lessee not being in breach of any provisions of the lease at that time.
- D. If the lease or the lessee's approved development plan provides for utilization of the lot for several months a year and the lessee installs improvements or infrastructure, occupies the lot (by persons or things), or does anything else that precludes or devalues utilization of the lot for the remainder of the year by the City or another party, the lessee shall pay either a premium rent for the months the parcel is actually in use or fair market rental for the entire lease year.
- E. It is the policy of the City that equal opportunities should be provided to compete for leasing available public property. A lessee whose initial lease and all options have expired shall have no automatic right of further renewal or extension. In general, it is the policy of the City that the Lease Committee shall offer such properties to the public through the RFP/competitive bidding process described herein.
- F. Lease Renewals: The City Council, after reviewing a recommendation from the Lease Committee, may elect to not require a competitive bidding process for a property whose lease has expired (including all options) if it finds that it is in the best interest of the City to enter into a new lease agreement with the current lessee. If the current lessee is interested in entering into a new lease agreement, he/she must indicate so in writing to the City Manager at least 12 months prior to

the expiration of the lease and submit a formal lease application/proposal for evaluation by the Lease Committee. The City will review the application but is under no obligation to enter into a new lease. If the Council chooses to approve such a new lease without a competitive process, it must approve such new lease by resolution within six months that includes a finding that it is in the public interest to do so, after consideration of relevant facts including, but not limited to, the following:

1. The lessee's past capital investment and binding commitment to future capital investment
2. The lessee's financial condition and prior lease history
3. The number of persons employed and the prospects for future employment
4. Tax revenues and other financial benefits to the City of Homer anticipated in the future if the lease is renewed.
5. Consistency of the past use and intended future use with all applicable land use codes and regulations, the Comprehensive Plan, and Overall Economic Development Plan
6. Other opportunities for use of the property that may provide greater benefits to the City of Homer.
7. Other social, policy, and economic considerations as determined by the Council

G. Short Term Leases

1. A short term lease of 6 months or less may be approved by the City Manager after review and recommendations by the Lease Committee.
2. Short term leases are not required to go through the competitive bidding/FFP process described herein
3. Short term leases shall not include renewable options and no consecutive short term leases for the same property to the same lessee may be issued without the approval of the City Council.
4. Applicants for short term leases must go through the formal application process described herein.
5. The City Manager will advise the Council through memorandum or the Manager's report of all short term leases.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES

CHAPTER 12: LEASE RATE ADJUSTMENTS

12.1 POLICY

It is the policy of the City of Homer to adjust lease rental rates from time to time in order to compensate for inflation, increases in the cost of living, and changing real estate market conditions.

12.2 PROCEDURES

- A. All leased properties shall be appraised every fifth year. The appraisal shall be conducted by an Alaska Certified General Real estate Appraiser. Appraisals shall be subject to the following:
  1. The lease rate shall be adjusted upward based upon increased property appraisal values. This periodic adjustment compensates for changing market conditions in the area by determining the fair rental value.
  2. The cost of the appraisal shall be borne by the lessee. The parties shall select the appraiser by mutual agreement and arrange for the appraisal.
  3. All properties shall be appraised within 6 months prior to the anniversary date of the adjustment year. The newly adjusted lease rate will take effect on the anniversary date.
- B. In addition, all rental rates shall be adjusted annually based upon changes in the Anchorage Consumer Price Index (CPI). No CPI adjustments shall be made in the initial year of the lease or in any year in which an appraisal adjustment occurs.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES MANUAL

CHAPTER 15: INSURANCE

15.1 POLICY

It is the policy of the City of Homer to require lessees to carry general public liability insurance, environmental insurance if appropriate, workers compensation insurance, and any other insurance coverage determined to be necessary by the City in order to protect City assets and the public interest.

15.2 PROCEDURES

- A. All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than \$1 million coverage per occurrence for bodily injury (including death) and property damage. The City of Homer shall be named as an additional insured.
- B. Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than \$2 million in environmental insurance (Environmental Impact Insurance and/or Environmental Clean-up Policy, or the equivalent subject to review and approval by the City Manager) with the City of Homer as an additional insured. Environmental Insurance for the purposes of City leasing procedures shall meet the standards of the Environmental Insurance Requirement document attached as Appendix A to these policies. The following procedures apply in determining whether a significant risk of environmental contamination is present:
  1. The City will determine on a case by case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.
  2. If the City determines that a significant risk is present, the environmental insurance requirement shall apply.
  3. Recommendations by the Manager and Lease Committee on environmental insurance are subject to final approval by the Homer City Council through the lease approval process.
  4. The following are examples of uses that generally will not involve a significant risk of environmental contamination. This list is not exhaustive or all inclusive and is provided for illustrative purposes only: restaurants, retail/charter businesses, commercial fishing gear storage (provided the storage does not include fuels, lubricants, hydraulic fluids, and solvents, or machinery containing any of them, campgrounds, entertainment establishments, drinking establishments, and the ordinary use of commonly used household cleaning agents and office products.

5. The following are examples of uses that generally will involve a significant risk of environmental contamination. This list is not exhaustive and is provided for illustrative purposes only: a) Storage or processing of logs, chips & other wood products, b) sale, manufacture, distribution, fueling of equipment, or storage of petroleum products, c) repair shops involving the use of solvents, d) activities in the tidelands or in close proximity to environmentally sensitive areas, e) the use of drums to collect, transport, or store waste oil, solvents, or other hazardous materials, f) the use of hazardous materials in manufacturing or processing, g) storage of hazardous waste in quantities sufficient to trigger reporting obligations under the Resource Conservation and Recovery Act, h) outside use or storage of equipment with a risk of leaking fuels, lubricants, solvents or hydraulic fluid.
- C. Certificates of Insurance showing the required insurance is in effect and identifying the City of Homer as an additional insured shall be provided to the City of Homer initially at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.
- D. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICY AND PROCEDURES MANUAL

CHAPTER 16: HAZARDOUS MATERIALS

16.1 POLICY

It is the policy of the City of Homer to require that all lessees on City owned property take the precautions necessary to protect city property and the surrounding environment from pollution and contamination. All leases of City property, whether they are subject to the Environmental Insurance Requirement or not, shall include terms which impose the minimum requirements for environmental protection set out below.

16.2 PROCEDURES

- A. The lessee shall not allow hazardous materials to be used or kept on City property, except as specifically permitted or necessary for the lessee's lawful use and approved of the property.
- B. The lessee's use of hazardous materials, if permitted, shall comply with all applicable laws and regulations.
- C. The lessee shall not pollute or contaminate the environment with discharges, leaks, or emissions of hazardous materials.
- D. The lessee shall be required to promptly notify the appropriate authorities and the City of any discharge or spill and to clean up the impacted area at lessee's own expense in compliance with applicable laws.
- E. Lessee shall be fully liable for all damages, costs and expenses related to a violation of the terms of the lease with respect to the use, storage, cleanup, remediation, or disposal of hazardous materials.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

CHAPTER 17: PERFORMANCE STANDARDS

17.1 POLICY

It is the policy of the City of Homer that leased properties and the improvements on them shall be maintained in a way that provides for the health and safety of the community, and is consistent with community values with respect to zoning, aesthetics, architecture, and other values as determined by the City Council.

17.2 PROCEDURES

- A. All properties leased by the City are to be maintained in a proper, safe, clean, and orderly fashion taking into consideration its permitted use, surrounding properties, zoning, and other applicable laws and regulations.
- B. The City of Homer reserves the right to enter leased property and the structures thereon at all reasonable times. This includes regular annual inspections.
- C. All commercial structures shall at all times be in compliance with applicable building, fire, mechanical, electrical and other regulations.
- D. Applicable building code and fire marshal inspections must be performed and certified to the City upon completion of all renovations, remodels, and / or new construction.
- E. Easements or Rights-of-Way on the leased parcel shall not be used in any way that interferes with the rights of the holders or any person(s) lawfully using the easement or right-of-way.
- F. Easements or Rights-of-Way outside of the leased parcel and/or immediately adjacent to it shall not be used for storage, parking, or any other authorized uses.
- G. Failure to comply with the performance standards listed in this section or any other provisions or stipulations contained in the lease are grounds for termination of the lease if the lessee does not rectify the problem after reasonable notice by the City.

CITY OF HOMER  
PROPERTY MANAGEMENT  
POLICIES AND PROCEDURES

CHAPTER 18: CONCLUSION OF LEASE

18.1 POLICY

It is the policy of the City of Homer to provide for a smooth transition and the restoration of City property at the time a lease expires.

18.2 PROCEDURE

- A. Improvements constructed by the Lessee or sub-lessees shall be left in place unless removal is authorized or required by the provisions of the lease. If the lease authorizes or requires removal of improvements, they may be removed prior to the conclusion of the lease if doing so would not damage the leased property or adjoining properties. Removing improvements shall be coordinated with and approved by the City Manager prior to commencement of activities.
- B. Unless otherwise agreed by the parties, when the lessee is authorized or required to remove improvements, the lessee shall remove all improvements made on the property by lessee prior to termination of the lease.
- C. When authorized or required to remove improvements, if lessee fails to do so prior to the termination date of the lease, lessee shall forfeit the improvements to the City and shall receive no compensation therefore, or, at the City's election, pay to the City the costs incurred by the City in removing and disposing of the improvements.
- D. Unless otherwise provided in the lease, or agreed to in writing by the parties, the lessee shall restore the property to the same condition it was in at the time the lease was executed by the lessee.
- E. An environmental inspection (Phase I, plus further testing, including test holes if the need for such further testing is indicated by the Phase I inspection) shall be completed at the termination of the lease at the lessee's expense. Identified environmental problems shall be rectified by lessee at his/her expense.

WILL USE EXISTING WASTE BUILDING

FISH PROCESSOR OUTFALL LINE  
CONNECTION AGREEMENT

The City of Homer, an Alaska municipal corporation, referred to as "CITY," and \_\_\_\_\_, referred to as "PROCESSOR," agree as follows:

1. Term. Subject to the terms, covenants, conditions, rights and obligations met forth in this Agreement, CITY agrees to provide, make and keep in repair a Fish Processor Outfall Line ("Outfall Line"), which consists of a pump station, an eight-inch diameter sewer line, and a diffuser at City's harbor facilities, and hereby grants PROCESSOR the right to discharge effluent to the Outfall Line. The term of this Agreement shall commence on \_\_\_\_\_ and end on \_\_\_\_\_.
2. Connection Charge. PROCESSOR shall pay to CITY the sum of SEVEN THOUSAND DOLLARS (\$7,000) as a connection charge for connecting PROCESSOR's service connection line to CITY's Outfall Line. PROCESSOR has the option to pay the connection charge in five equal annual installments of ONE THOUSAND FOUR HUNDRED DOLLARS (\$1,400), plus 7% interest.
3. Operation and Maintenance Charge. PROCESSOR shall pay to CITY an operation and maintenance charge (O & M charge") in advance on January 1<sup>st</sup> of each year, beginning in 200 \_\_\_\_\_. The annual O & M charge shall TWO THOUSAND FOUR HUNDRED DOLLARS (\$2,400) subject to adjustment by CITY. CITY shall give written notice to PROCESSOR of any adjustment in the O & M charge at least 30 days prior to January 1 of each year.
4. Default. CITY shall be entitled to terminate PROCESSOR's water service and use of the Outfall Line if PROCESSOR: (a) fails to pay any sums due under this Agreement for a period of ten (10) days from the due date; or (b) fails to keep any other term, covenant or condition of this Agreement for a period of fifteen (15) days after CITY provides PROCESSOR a written notice specifying the particular default or defaults; provided, however, that any default on the part of PROCESSOR shall be deemed to be cured if steps have been taken promptly to rectify the default (and in no event later than fifteen (15) days after such notice has been given), and prosecuted to completion with diligence.
6. Increasing or Decreasing Use of Outfall Line. If any additional parties connect to the Outfall Line or if PROCESSOR ceases to use the Outfall Line, PROCESSOR shall not be refunded or receive credit for previously paid connection charges, O & M charges or equipment replacement fund charges.
7. Payments. All payments due under this Agreement shall be payable at the office of the Finance Department, 491 East Pioneer Avenue, Homer, Alaska 99603-7624, or at such other place as CITY may designate in writing. Delinquent payments shall bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereafter amended. This Agreement incorporates by reference applicable terms of the City Credit Policy as now adopted or hereafter amended.
8. Discharge of Waste to Outfall Line. PROCESSOR shall install grinding apparatus to

Outfall Line Agreement  
Page 1 of 5

ATTACHMENT #6

HOMER000100

ensure that all waste discharged to the Outfall Line has a maximum particle size of one-quarter inch or less. PROCESSOR shall install screening apparatus to prevent the entry of foreign materials that could impede or damage the operation of the Outfall Line (e.g., rubber gloves, knives and rocks). PROCESSOR shall install flow control apparatus to ensure that discharge to the Outfall Line does not exceed maximum flow contribution. PROCESSOR's flow contribution is not to exceed 280 gallons per minute in any case.

9. Compliance With Laws. PROCESSOR shall comply with all applicable laws, ordinances and regulations or duly constituted public authorities now or hereafter in any manner affecting PROCESSOR's discharge to the Outfall Line. In particular, PROCESSOR shall obtain a National Pollutant Discharge Elimination System (NPDES) permit from the Environmental Protection Agency, shall pre-treat effluent to meet requirements imposed by the NPDES permit, and shall comply with all other permit requirements, including effluent sampling and reporting requirements. PROCESSOR shall provide CITY with a copy of all reports submitted to state or federal agencies in order to comply with reporting requirements regarding effluent imposed by the NPDES permit, state or federal laws.

10. Construction of Connection. PROCESSOR shall not commence construction of a service connection line to the Outfall Line unless the following events have occurred:

(a) PROCESSOR shall furnish to CITY proof that all applicable federal, state, and local permits have been obtained, including a NPDES discharge permit from the Environmental Protection Agency and a Sewer Connection Permit from CITY's Planning Department. PROCESSOR's application for a Sewer Connection Permit shall include a complete copy of PROCESSOR's NPDES permit.

(b) PROCESSOR shall furnish engineering plans, including plumbing diagrams, for PROCESSOR's service connection line to CITY's Public Works Department. The engineering plans shall demonstrate PROCESSOR's ability to grind fish waste, screen foreign materials and limit flow as required by this Agreement.

(c) PROCESSOR shall furnish to CITY proof that all necessary easements and rights-of-way for construction of a service connection line between PROCESSOR's facility and the Outfall Line pump station have been obtained.

11. Licensed and Bonded Contractor; Inspection of Construction. PROCESSOR shall use a licensed and bonded contractor to construct the service connection line. Prior to any discharge by PROCESSOR, CITY shall inspect the installation at the service connection at the pump station of the Outfall Line, and PROCESSOR's screening, grinding and flow control apparatus.

12. As-Built Drawings. Within 30 days after connection to the Outfall Line, PROCESSOR shall provide CITY with three (3) copies of as-built drawing of the service connection line drawn to scale and in a format acceptable to CITY.

13. RIGHT OF ENTRY. CITY, its agents, servants or employees, shall have the right to enter into and upon PROCESSOR's buildings or property at any time PROCESSOR is in operation for the purpose of inspecting whether PROCESSOR is in compliance with the terms of

Outfall Line Agreement  
Page 2 of 5

HOMER000101

this Agreement. If PROCESSOR is not operating, CITY shall have the right to enter upon reasonable notice to PROCESSOR and during normal business hours (9 a.m. to 5 p.m. Monday through Friday except for holidays).

14. Indemnity.

(a) PROCESSOR shall protect, indemnify and hold CITY harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever relating to PROCESSOR's service connection line or use of the Outfall Line causing injury to or death of persons, or loss of or damage to property, and from any expense, including attorney's fees, incident to the defense of and by CITY therefrom. If any action or proceeding is brought against CITY by reason of any such occurrences, CITY shall promptly notify PROCESSOR in writing of such action or proceeding.

(b) PROCESSOR shall protect, indemnify and hold harmless CITY and its authorized representatives, from and against any claims, demands, penalties, fines, judgment, loss, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to: (a) any violation by PROCESSOR of the NPDES permit, or local, state or federal regulation or law related to effluent discharge by PROCESSOR; (b) the presence, disposal, release, or threatened release of any Hazardous Material discharged by PROCESSOR to the sewer connection line or Outfall Line that is in, on, from, or affecting soil, water, vegetation, buildings, personal property, persons, animals or otherwise; (c) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Material discharged by PROCESSOR to the sewer connection line or Outfall Line; and/or (d) any lawsuit brought or threatened, settlement reached or government order relating to Hazardous Material discharged by PROCESSOR to the sewer connection line or Outfall Line. The provisions of this subparagraph (b) shall be in addition to any other obligations and liabilities PROCESSOR may have to CITY at law or equity and shall survive the termination of this Agreement.

For the purpose of this subparagraph (b), "Hazardous Material" is any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Alaska, or the United States government. "Hazardous Material" included any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to local, state, or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" also included, but is not restricted to, asbestos, polychlorobiphenyls ("PCBs") and petroleum and petroleum products.

15. Damage to or Non-Operation of Outfall Line. PROCESSOR shall pay CITY for any damage to the Outfall Line resulting from PROCESSOR's discharge to or use of the Outfall Line. CITY shall not be liable to PROCESSOR for damages to PROCESSOR resulting from: (a) damage to the Outfall Line, whether caused by PROCESSOR or any other user of the Outfall Line; (b) non-operation of the Outfall Line due to maintenance; or (c) non-compliance with applicable laws by PROCESSOR or other users resulting in non-operation of the Outfall Line pursuant to an order issued by governmental agency or court.

Outfall Line Agreement  
Page 3 of 5

HOMER000102

16. Delivery of Notices - Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by mail, certified or registered, postage prepaid, to the address stated below and shall be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

All notices, demands and requests from PROCESSOR to CITY shall be given to CITY at the following address:

City Manager  
City of Homer  
491 E. Pioneer Avenue  
Homer, AK 99603  
(907) 235-8121

All notices, demands and request from CITY TO PROCESSOR shall be given to PROCESSOR at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates therein below set forth.

CITY OF HOMER

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

By: \_\_\_\_\_  
City Manager

PROCESSOR

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

Outfall Line Agreement  
Page 4 of 5

HOMER000103

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

State of Alaska        )  
                              )  
Third Judicial District )       ss.

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me, the undersigned Notary Public, personally appeared  
known to me to be the City Manager of the City of Homer, a municipal corporation organized  
and existing under the laws of the State of Alaska, and he/she acknowledged to me that he/she  
executed this Lease Agreement on behalf of said corporation for the uses and purposes therein  
set forth.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year first  
hereinabove written.

Notary Public in and for Alaska  
My Commission Expires:

State of Alaska        )  
                              )  
Third Judicial District )       ss.

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me, the undersigned Notary Public, personally appeared \_\_\_\_\_,  
known to me to be the \_\_\_\_\_ of  
\_\_\_\_\_, a corporation organized and existing under the laws  
of the State of \_\_\_\_\_, and he/she acknowledged to me that he/she  
executed this Lease Agreement on behalf of said corporation for the uses and purposes therein  
set forth.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year first  
hereinabove written.

Notary Public in and for Alaska  
My Commission Expires:

## SUMMARY APPRAISAL REPORT

### Market Rent

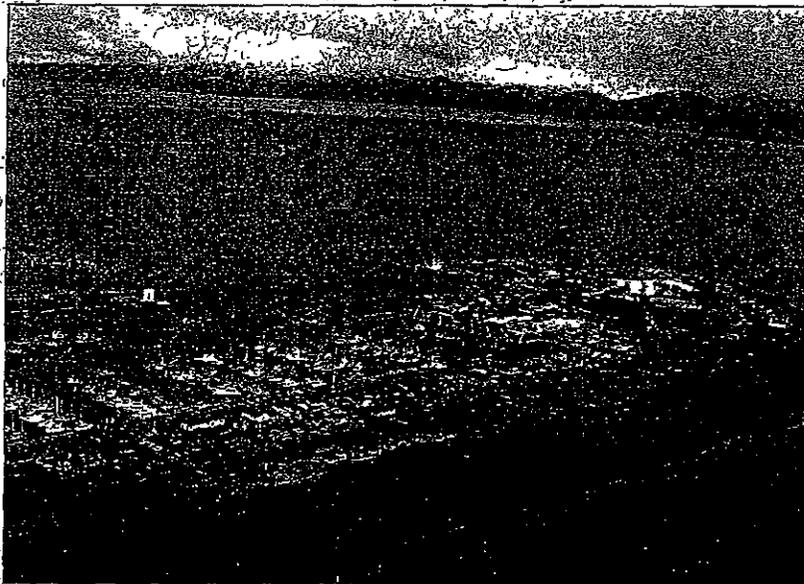
Lots 9-A & 10-A, Homer Spit Replat 2006

Lot 12-C, Port Industrial S/D No. 4

Lot 13 B, Port Industrial S/D No. 2

Lot 12, Homer Spit S/D No. 5

Homer, AK



Prepared for

CITY OF HOMER  
491 E. PIONEER AVENUE  
HOMER, AK 99603

February 17, 2007



**DERRY & ASSOCIATES, Inc.**

Real Estate Appraisers & Counselors

(907) 260-8434 • derry@alaska.com

Box 2882 • Kenai, AK 99611

HOMER000105



**DERRY & ASSOCIATES, Inc.**  
Real Estate Appraisers & Counselors  
(907) 260-8434 • derry@alaska.com  
Box 2882 • Kenai, AK 99611

March 2, 2007

Walt Wrede, City Manager  
City of Homer  
491 E. Pioneer Avenue  
Homer, AK 99603

Dear Mr. Wrede:

Following is the appraisal report you requested on behalf of the City of Homer for five lots the City is proposing to lease on the Homer Spit. The purpose of this appraisal is to estimate the current Market Rent of each lot for your use in rent negotiations. An inspection of the lots was made on February 17, 2007.

As the basis for estimating the current Market Rent of the land an analysis was made of the annual rents of other City-owned lots on the distal end of the Spit. A discussion of the lease comparables and analysis process is included in the Property Valuation section.

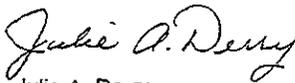
A description of the site improvements on Lot 12, Homer Spit S/D No. 5 (former Circle DE Pacific/Gates wood chip storage facility), their contributory value, and the Market Rent conclusion is included in the respective sections. Recognizing the property design and limited utility, the recommended method of achieving the maximum rent is to offer the improvements rent free for an initial term (for example 5+/- years) as part of the longer term land lease. The prospective lessee then would bid what they view the contributory value of those improvements to be over the balance of the lease term. The initial rent concession would provide a financial incentive to make whatever modifications are needed to adapt the improvements to their particular use.

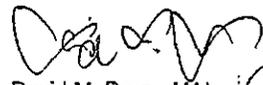
The Summary, page 3, presents in abbreviated format pertinent property details, Hypothetical Conditions, Extraordinary Assumptions, and the Market Rent conclusions.

This **Summary Appraisal Report** is prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; and in conformity with and subject to the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

Thank you for this assignment and the opportunity to be of service to the City of Homer. If you have any questions regarding this report please call.

Respectfully submitted,

  
Julie A. Derry

  
David M. Derry, MAI



HOMER000106

Table of Contents

	Page No.
Assumptions and Limiting Conditions .....	1
Summary .....	3
Photographs .....	4
Appraisal Assignment .....	14
Scope of Work	
Appraisal Development and Reporting Process	
Market Rent Definition	
Legal Description	
Ownership/Lease History	
Property Description .....	18
Location/Neighborhood	
Access/Road Frontage	
Utilities	
Topography	
Legal Constraints	
Improvements – Lot 12	
Highest and Best Use	
Property Valuation .....	24
Certification .....	38
Qualifications of the Appraisers .....	39



HOMER000107

### *Assumptions and Limiting Conditions*

1. This is a Summary Appraisal report which is intended to comply with the reporting requirements set forth under Standard Rule 2-2 (b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal report. As such, it may include summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's conclusion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraiser is not responsible for unauthorized use of this report.
2. No responsibility is assumed for legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated in this report.
3. The property is appraised free and clear of any or all liens and encumbrances unless otherwise stated in this report.
4. Responsible ownership and competent property management are assumed unless otherwise stated in this report.
5. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
6. All engineering is assumed to be correct. Any plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
7. It is assumed that there are no hidden or unapparent conditions of the property or subsoil that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
8. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless otherwise stated in this report.
9. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in this appraisal report.
10. It is assumed that all required licenses or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.
11. Any site plan in this report may show approximate dimensions and is included to assist the reader in visualizing the property. Maps and exhibits found in this report are provided for reader reference purposes only. No guarantee as to accuracy is expressed or implied unless otherwise stated in this report. No survey has been made for the purpose of this report.
12. It is assumed that the utilization of the land is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless otherwise stated in this report.
13. The appraiser is not qualified to detect hazardous waste and/or toxic substances. Any comment by the appraiser that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, ureaformaldehyde foam insulation, polychlorinated biphenyl, petroleum leakage, agricultural chemicals or without limitation other potentially hazardous materials may affect the value of the property. The appraiser's value



estimate is predicated on the assumption that there is no such substance on or in the property or in proximity to it that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraiser's descriptions and resulting comments are the result of the routine observations made during the appraisal process.

14. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event, only with proper written qualification and only in its entirety.
15. Neither all nor any part of the contents of this report (especially any conclusion as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news sales, or other media without prior written consent and approval of the appraiser.
16. The appraisers herein by reason of this appraisal are not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
17. The estimate of Market Value in this report is not based in whole or in part upon the race, color, or national origin of the prospective owners or occupants of the property appraised, or upon the race, color, or national origin of the present owners or occupants of the properties in the vicinity of the property appraised.



**Summary**

<b>Client</b>	City of Homer
<b>Property Appraised</b>	Market Rent for four vacant lots and one improved 5-acre site located on the distal end of the Homer Spit Homer, Alaska
<b>Legal Description</b>	Lots 9-A & 10-A, Homer Spit Replat 2006 (preliminary plat) Lot 12-C, Port Industrial Subdivision No. 4 (Plat 99-43) Lot 13 B, Port Industrial Subdivision No. 2 (Plat 80-92) Lot 12, Homer Spit Subdivision No. 5 (Plat 93-12)
<b>Zoning</b>	Marine Industrial
<b>Interest Appraised</b>	Market Rent of the Fee Simple Estate
<b>Highest and Best Use Options</b>	Interim use: holding each lot vacant as-is. Develop as financially feasible with uses permitted by City lease documents.
<b>Hypothetical Conditions</b>	The Market Rent conclusions for Lots 9-A and 10-A, Homer Spit Replat 2006 are based on the lots being in environmentally "clean" condition and <u>not</u> impacted by contamination.  Lots 9-A and 10-A, Homer Spit Replat 2006 are valued assuming recordation of the preliminary subdivision plat as appraised.  Lot 12-C, Port Industrial S/D No. 4 is valued assuming no utilities are located within the utility easement bisecting 30-40' south of the lot's Ice Dock Rd. frontage.
<b>Extraordinary Assumptions</b>	The concrete pad/slab on Lot 12, Homer Spit S/D No 5 was under snow/ice cover at the time of inspection. The concrete is reported as being in good condition, assumed for valuation as accurate. The concrete pad is reported as 8" thick. The appraisers reserve the right to modify the



value/rent conclusion at their sole discretion if found to be otherwise.

The Lot 12 improvements were constructed as a special purpose property which has limited market utility. The estimated Market Rent is developed based on the depreciated cost due to the lack of other market comparables. The appraisers recommend utilizing an incentive bid process to test actual market interest which may result in higher or lower rents than concluded.

**Effective Appraisal Date** February 17, 2007

**Date of Report** March 2, 2007

**Market Rent Conclusions**

Lot 9-A, Homer Spit Replat 2006	\$16,000/year
Lot 10-A, Homer Spit Replat 2006	\$16,200/year
Lot 12-C, Port Industrial Subdivision, No. 4	\$20,250/year
Lot 13 B, Port Industrial Subdivision No. 2	\$13,600/year
Lot 12, Homer Spit Subdivision No. 5	\$106,700/year - Land
	\$ 12,600/year -Improvements





NE over Homer Spit Rd. at Lot 9-A and 10-A. The lots' Fish Dock Rd. frontage is visible at left and Homer Spit Rd. frontage to right. Yellow building is on adjacent Lot 12-A1.



North on Fish Dock Rd. Lots 9-A and 10-A on right side of photo. Building at arrow is the City's ice house on the fish dock which is out of view at the end of the harbor.



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HOMER000112



West over Homer Spit Rd. at Lots 9-A (at curve to left) and 10-A (to right side of photo).



Looking westerly to Lot 12-C from the intersection of the Homer Spit Rd. (mostly out of view at left) and Ice Dock Rd. (at far right) along the lot's northerly boundary. Vans stored on-site block the view of the lot which extends west to its frontage on Fish Dock Rd.





South of Fish Dock Rd. from near the NW corner of Lot 12-C at the intersection with Ice Dock Rd., out of view at lower left.



East over Lot 12-C from Fish Dock Rd.



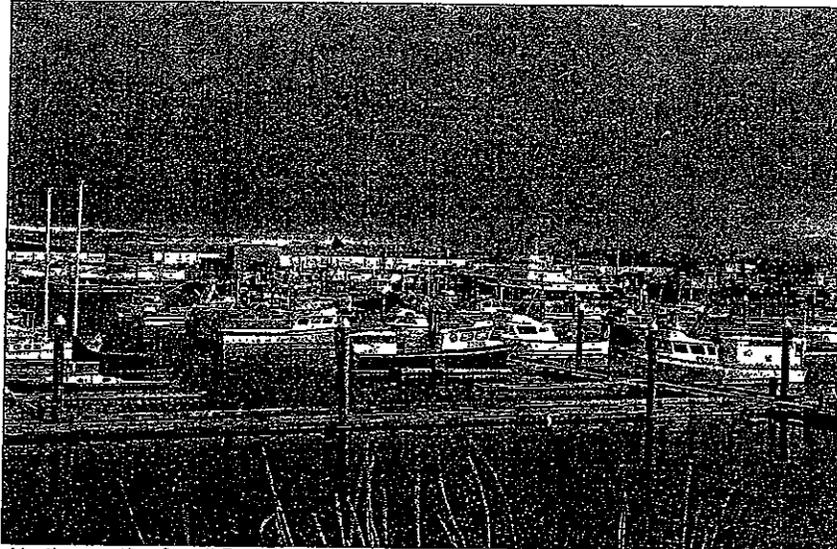


East along the sloping beach frontage of Lot 13 B. The upper portion of the lot is beyond the logs at arrow. The fence visible beyond is along the upper portion of adjacent Lot 41, leased by Icicle Seafoods.



South over Lot 13 B from vantage point of previous photo. Fish Dock Rd. is at far right. Totes, equipment, etc. at arrow are temporarily stored on the lot.





North over the Small Boat Harbor to Lot 12. Fence/enclosure visible at arrow.



SE on Freight Dock Rd. to Lot 12. The fencing visible starts approximately 150' east of the lot's west boundary and the footprint extends close to the balance of the perimeter of the lot boundaries.



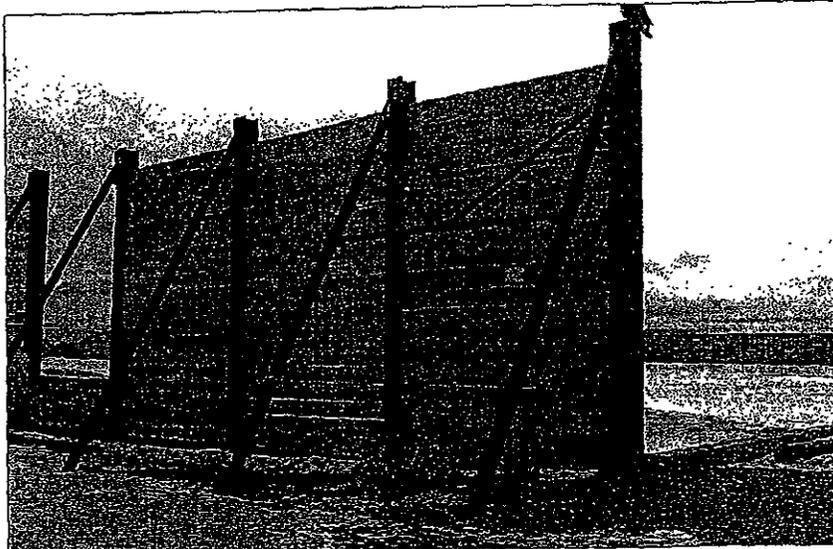


West to Lot 12 from near the opposite end of Freight Dock Rd. from the previous photo. The red roofed building at left fronts on the boat harbor.



SE on Outer Dock Rd. from near the western edge of the fence/enclosed concrete pad. The City's deep water dock is visible in the distance.



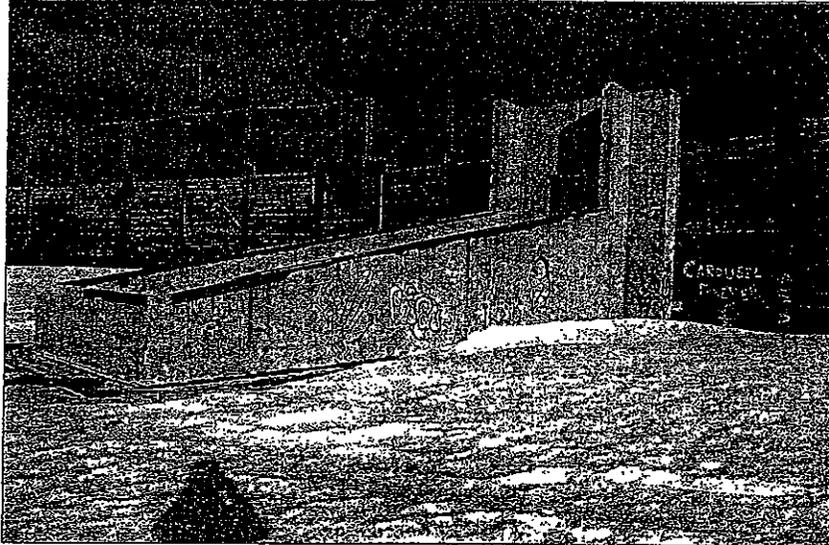


Close-up of a typical fence panel along the north side of the enclosure.

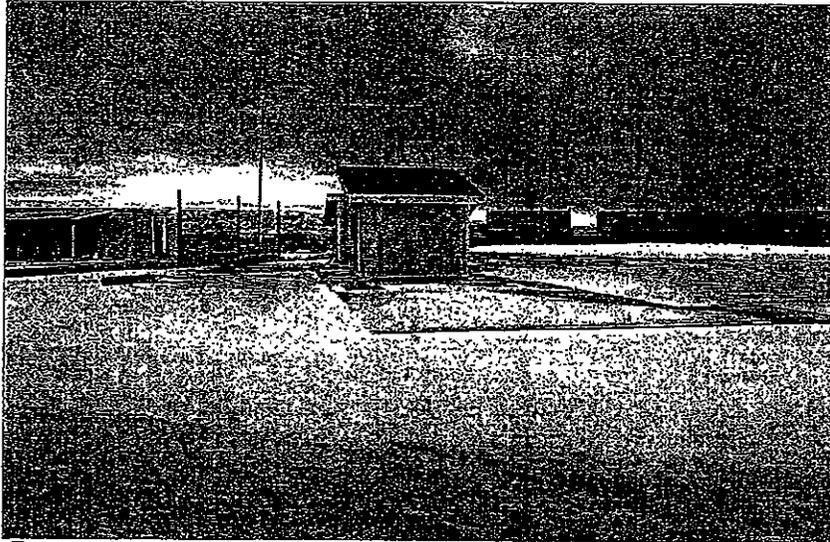


The perimeter of the fenced concrete pad from the NW corner. Area at red arrow is the conveyor pit. At blue arrow is the truck loading platform in the SW corner.



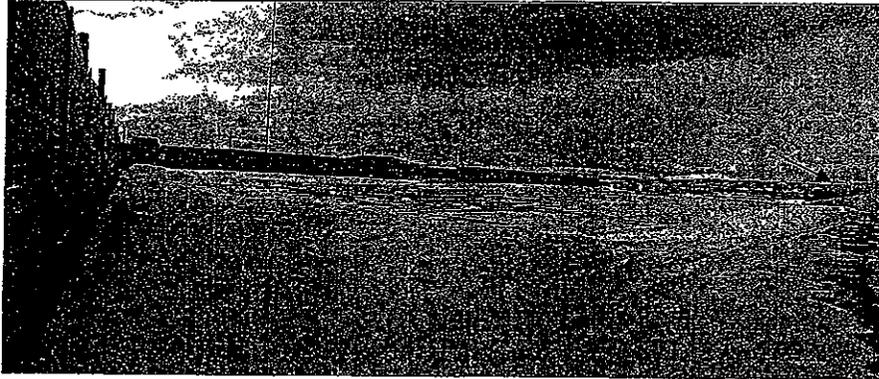


Close up of conveyor pit.

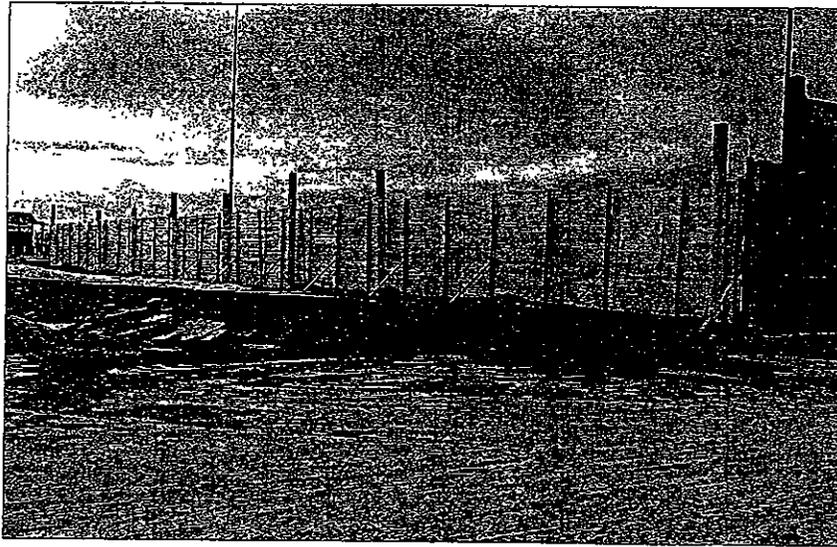


Truck loading platform/island. Snow blocks view of curb around the raised concrete pad.





View SW/NW of enclosure/pad area. For reference conveyor pit is at far right at red arrow. The fence at left is near the lot's east boundary.



View of the east fence line which is lower and lacks the I beams along the north wall, partially visible at the right. Freight Dock Rd. frontage is at far left.



## Appraisal Assignment

**Client**

City of Homer  
491 E. Pioneer Avenue  
Homer, AK 99603

**Intended Use/  
Purpose**

To estimate current Market Rent of the subject lots for use by the client in lease negotiations with prospective lessees.

**Scope of Work**

Consistent with the intended use/purpose, the appropriate Scope of Work was developed.

- A physical inspection was made of each of the lots appraised and other market data on the Homer Spit.
- The Market Land Rent conclusions were developed based on a comparison/analysis of the annual rental rate of other lots on the Homer Spit. Data sources include the appraisers' market data bank and the City of Homer (the primary land owner/lessor on the distal end of the Spit). In the analysis process adjustments are applied for variations in date of lease and physical features (usability, size, utilities, etc.).
- The Market Rent of the improvements (concrete pad, fence, etc.) on Lot 12, Homer Spit No. 5 is estimated using the Cost Approach at an applicable lease rate.

**Reporting  
Process**

This is a **Summary Appraisal Report** which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraisers' conclusions of Market Rent. Supporting documentation that is not provided with the report is retained in the appraisers' file. The depth of the discussion contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraisers are not responsible for unauthorized use of this report.

**Market Rent  
Definition**

The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently, knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:

1. Lessee and lessor are typically motivated.
2. Both parties are well informed or well advised, and acting in what they consider their best interests.



3. A reasonable time is allowed for exposure in the open market.
4. The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract.
5. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.<sup>1</sup>

**Appraisal Dates**

Effective Date of Appraisal and Date of Inspection: February 17, 2007

Date of Report: March 2, 2007

**Interest Valued**

Market Rent of the Fee Simple Estate, as-if vacant.

**Legal Description**

Lots 9-A & 10-A, Homer Spit Replat 2006 (preliminary plat)  
 Lot 12-C, Port Industrial Subdivision No. 4 (Plat 99-43)  
 Lot 13 B, Port Industrial Subdivision No. 2 (Plat 80-92)  
 Lot 12, Homer Spit Subdivision No. 5 (Plat 93-12)

The lots are located in the Homer Recording District, Third Judicial District, State of Alaska.

**Extraordinary Assumptions**

The concrete pad/slab on Lot 12, Homer Spit S/D No 5 was under snow/ice cover at the time of inspection. The concrete is reported as being in good condition, assumed for valuation as accurate. The concrete pad is reported as 8" thick. The appraisers reserve the right to modify the value/rent conclusion at their sole discretion if found to be otherwise.

The Lot 12 improvements were constructed as a special purpose property which has limited market utility. The estimated Market Rent is developed based on the depreciated cost due to the lack of other market comparables. The appraisers recommend utilizing an incentive bid process to test actual market interest which may result in higher or lower rents than concluded.

**Hypothetical Conditions**

The Market Rent conclusions for Lots 9-A and 10-A, Homer Spit Replat 2006 are based on the lots being in environmentally "clean" condition and not impacted by contamination.

Lots 9-A and 10-A, Homer Spit Replat 2006 are valued assuming recordation of the preliminary subdivision plat as appraised.

Lot 12-C, Port Industrial S/D No. 4 is valued assuming no utilities are located within the utility easement bisecting 30-40' south of the lot's Ice Dock Rd. frontage.

<sup>1</sup> Dictionary of Real Estate Appraisal, The Appraisal Institute, Fourth Edition, 2002, pg. 176.



**Ownership/  
Lease History**

The current owner of record is the City of Homer who has owned the lots in excess of the three-year reporting period.

According to the client they have recently advertised a "Request for Proposals" (RFP) to lease the lots which are located on the distal tip of the Homer Spit. Prospective lessees have until March 16, 2007 to submit proposals to lease the lots. In the RFP the City stated that "for planning purposes, proposers can assume that fair market rent is likely to be within the range of .60 cents to .90 cents, per square foot, per year."

Due to their proximity to the City's Fish Dock Lots 9-A, 10-A and 12-C must be developed with uses related to the commercial fishing industry. The same use is "encouraged" for Lot 13 B, however in their RFP the City states other uses permitted by the zoning code will be considered. For Lot 12 which is near the deep water dock the City is seeking an "anchor tenant" for an expanded dock area that will enhance shipping and marine industrial uses benefiting from the dock's proximity.

Lots 9-A and 10-A were formerly improved with buildings that have been razed. They were rented by the City on a month-to-month basis until the tenants were given an eviction notice as of April 30, 2006.

The City reports that over the last several years a portion of Lot 12-C has been rented seasonally as a fish buying station for \$1,000/month.

Lot 13 B has been used temporarily for a tenant misplaced by the razing of the buildings on Lots 9-A and 10-A.

Lot 12 had a long term lease until it was relinquished in July 2004. The rent per square foot is briefly discussed in the Property Valuation section, under "Site Size". The preferential annual rent for the five acres in 2004 was at \$.43/sf; \$93,654/year.

**Legal  
Constraints**

Legal constraints on development and property use are primarily imposed by the City of Homer lease requirements and/or Zoning Ordinance; discussed in more detail in the Property Description section.

**Environmental  
Risks/Hazards**

At the time of inspection there were piles of gravel observed on Lots 9-A and 10-A. According to Walt Wrede, City Manager, a fuel oil spill had occurred on the lots, estimated at under 500 gallons. The City received a Phase 1 Environmental Assessment of the lots, however it was not reviewed during the course of this appraisal. Mr. Wrede reports the clean-up/soil remediation is nearing completion and the piles could be removed from the lots "in a moment's notice". As instructed the lots are valued subject to the Hypothetical Condition.



Site  
Improvements

There were no environmental hazards observed on any of the other lots at the time of inspection, however they were mostly snow covered. The reader is specifically referred to paragraph 13 of the preceding Assumptions and Limiting Conditions.

Although there are structures or equipment temporarily located on some of the lots, Lot 9-A, 10-A, 12-C and 13 B are valued as-if vacant.

The existing improvements on Lot 12 are discussed in the Property Description section and included in the Market Rent conclusion analyzed in the Property Valuation section.



## Property Description

### Location/ Neighborhood

The subject lots are located on the distal end of the Homer Spit. The Spit has long been a focal point in the city and the center for tourism and the commercial fishing/seafood industry. The majority of uplands on the distal tip of the Spit is owned and leased by the City of Homer. The land west of the distal end is subject to varying depths of daily tidal flood and has limited development. The City owned "Fishing Hole" is a popular, easily accessible fishing area for hatchery stocked salmon.

The appeal of Lots 9-A, 10-A and 12-C is their dual road frontage on Fish Dock Rd. and Homer Spit Rd., and proximity across from the City's Fish Dock. Lot 13 B is a waterfront site at the north end of Fish Dock Rd. with a sloping bank down to Kachemak Bay at the north. There is good visibility of the lot as boaters go into and out of the harbor

Nearby uses along Fish Dock Rd. include the City-owned fish dock and icehouse at the east end of the harbor, seafood buyers on City leased lots, and a fuel supplier near the mouth of the harbor. Other uses on the distal tip of the Spit southeast include the Pioneer Dock, State of Alaska ferry terminal building, Land's End Resort and townhouses, Petro Marine bulk fuel storage facility, and the Homer Spit Campground (seasonal). Retail shops, restaurants, and fishing charter offices are predominant on lots south of the boat harbor along the Homer Spit Rd., southwest of the immediate area of Fish Dock Rd.

Lot 12 is on the north side of the Small Boat Harbor. The lot benefits from its proximity to the north side of the harbor, the City's deep water dock to the northeast, and long expanse of frontage on Freight Dock Rd. at the south and Outer Dock Rd. to the north. Although the immediate area is platted into multiple lots they currently are mostly vacant and used for harbor parking and gear storage. The lots adjacent to the west were formerly leased for log storage prior to being shipped out over the deep water dock.

### Lot Sizes

Lot 9-A: 22,816sf (.52 acre)  
Lot 10-A: 23,161sf (.53 acre)  
Lot 12-C: 34,238+/-sf (.786 acre)  
Lot 13 B: 22,622sf (.52 acre)  
Lot 12: 217,800sf (5 acres)

Lot sizes are from the subdivision plats.

### Access

All of the lots have frontage on publicly maintained streets. The exposure of Lots 9-A, 10-A and 12-C is enhanced by the dual frontage on both Fish Dock Rd. and the well-traveled Homer Spit Rd.



Lot 13 B is at the north end of Fish Dock Rd. where it dead-ends at Kachemak Bay. There is no developed access from the Bay to the lot.

Although Lot 12 on the north side of the harbor has less vehicular traffic than the other lots it is visible from the Homer Spit Rd. along the open areas south of the harbor that are primarily used for parking. There is also visibility from Kachemak Bay at the north. Outer Dock Rd. is constructed along the north boundary, between the lot and the Bay. The lot benefits from its close proximity to the deep water dock.

**Utilities**

Public water/sewer, electrical and telephone are available to all of the lots. There is no natural gas currently available in the Homer area.

**Topography**

Site topography for the lots is similar to others on the distal end of the Spit. Usability is enhanced by their mostly level, sandy/gravelly soils, not typical for the Homer city center.

The northern portion of Lot 13 B slopes to the Kachemak Bay beach/water. Due to the lack of a current survey showing the top of the bank/bluff an estimate of the quantity of sloping beach frontage was calculated/scaled using a copy of the City's aerial overlay following. Approximately 7,020sf of the lot is estimated to consist of sloping beach frontage. For appraisal purposes then about 30% of the lot has reduced usability.

**Legal Constraints**

All of the lots are zoned Marine Industrial (MI). According to the City's Zoning Ordinance the purpose of this zone is to provide adequate space for those industrial uses that require direct marine access for their operation and to encourage the most efficient utilization of land. Permitted uses include seafood processing plants; wharves and docks; port and harbor facilities; marine equipment services including sales, repair, and storage; warehouses; and cold-storage plants. Also permitted within this zone are mobile food services and potentially marine commercial uses that meet the requirements of the Planning Commission.

The required use identified in the Request for Proposals for lease of Lots 9A, 10A and 12-C is a use related to commercial fishing. This use is encouraged for Lot 13 B, however widened to include any of those uses permitted under the MI zone. Use of Lot 12, close to the deep water dock, is identified in the RFP as any use permitted in the MI district that requires proximity to the dock.

There is a 10' wide utility easement that bisects Lot 12-C about 30-40' in from the lot's Ice Dock Rd. frontage (see copy of the plat following). According to Dan Gardner of the City's Public Works Department there are no water or sewer lines located within this easement. The Homer Electric Association's line location map



indicates the underground power line in this area is north of Ice Dock Rd. Although there may be a buried telephone line within the easement, for appraisal purposes Lot 12-C is valued assuming no utilities are buried within the utility easement. To insure that a future lessee has no problems regarding building construction within the easement it is recommended the City pursue having the easement vacated. Otherwise it potentially adversely impacts usability within the northern 40' of the lot.

Easements identified on the subdivision plats of the other lots are considered typical and do not impair overall usability.

**Flood Zone**

The Federal Insurance Administration and FEMA have issued flood hazard maps for the Kenai Peninsula. The entire Homer Spit has been classified as a "flood Zone VII" with a base elevation of 27 feet established. This zone is identified as "an area of 100-year coastal flood with velocity (wave action), base flood elevations, and flood hazard determined.

**Taxation**

	<u>KPB Parcel No</u>	<u>Assessed Value</u>	<u>R E. Taxes</u>
Lot 9-A	181-034-23	Land: \$131,600	\$1,691.06
Lot 10-A	181-034-24	Land: \$108,500	\$1,394.23
Lot 12-C	181-034-52	Land: \$192,100	\$2,468.49
Lot 13 B	181-034-25	Land: \$141,900	\$1,823.42
Lot 12	181-032-20	Land: \$669,000 Impr. 540,000 Total \$1,209,000	\$15,535.65

The reported taxes are based on the 2006 assessed value and tax rate of 12.85 mills; composed of City of Homer - 4.5 mills, Kenai Peninsula Borough - 6.5 mills, South Peninsula Hospital Service Area - 1.75 mills, and Kenai Peninsula College - .1 mill. The 2007 tax assessed values and mill rate will be finalized by the end of June following conclusion of the Borough budget hearings.

The tax identification numbers and assessed values reported for Lots 9-A and 10-A are for the former Lots 9 and 10 prior to replat with the additional site area in adjacent Lot 11. The revised Assessing data/values will not be effective until the 2008 tax year, assuming the plat is recorded in 2007.

**Site Improvements**

Lot 9-A, 10-A, 12-C and 13 B are valued as-if vacant and available for site development.

Lot 12 is improved with the former Circle DE Pacific/Gates wood chips storage facility. This facility consists of the concrete pad/ slab and perimeter retaining wall/fencing. The project was developed specifically to accommodate a chip storage facility and a conveyor system that extended from this site on to the Deep



Water Dock. The installation was built in 1992 with operations terminated in 2004 and the conveyor system subsequently removed. The facility is classified as a special use property, designed for the specific use of wood chip storage and shipment. At the time of inspection the concrete slab was under snow and ice cover with only portions visible. Steve Dean, Port Director, for the City reports that the concrete surface is in good condition.

To verify the slab thickness inquiries were made with Terry Best, Best Transit Mix; Terry Nininger, former partner in Circle DE Pacific; John Kosch, K's Concrete; and Steve Dean, Port Director.

Best Transit had the contract to provide the concrete for the original construction. Terry Best reported that the actual on-site project management was performed by his former partner but he was on-site several times over the course of the project. He recalled that the job required about 3-4,000 cubic yards of concrete and thought the slab thickness would be about 12" +/- . He also reported that the slab was well reinforced with steel and completed as a good commercial quality job. Terry Nininger was involved in the project from conception to shortly before Gates Construction assumed the facility. Mr. Nininger reported that the facility was engineered by Tryck, Nyman and Hayes of Anchorage and the slab is 8" thick with extensive reinforcement steel installed. Steve Dean reports he has a copy of the engineer's plans and also confirms that the plans show the slab to be 8" thick with reinforcing steel. John Kosch reports he provided some supplies for the project and also confirms that reinforcing steel was installed.

The facility has a retaining wall installed on three sides consisting of a combination of steel I beams, steel piles, and wood timbers. The retaining wall along the north (Kachemak Bay) side is built with 12" I beams, 12' on center, 20'+/- high. Solid wood timbers are installed horizontally between the I beams and provide a retaining wall. The southeast side and partially along the south (harbor side) have 12' diameter steel piles with a wood beam retaining wall although lighter weight than the north wall. Six inch I beams then extend along the remainder of the southwest side and a wood retaining wall. The wall height on the southeast and south sides is 13' +/- .

A "conveyor pit" is located on the northeast side which provided the mounting point and loading area for the former conveyor system to the Deep Water Dock. This area consists of poured concrete walls ranging from 4' - 12'+/- high in a chute configuration generally 13'+/- x 48'+/- (see photos). A sump is reportedly located near the southeast corner, designed to drain surface water from the slab. At the time of inspection the sump was snow covered and not visible. The truck scale area consists of a raised pad portion near the southwest corner 23' x 80'. An



electric transformer for underground power is also located here and a hose bib.

Based on measurements at the time of inspection, the sizes calculate at:

- Concrete slab -- 168,078 sq.ft. (3.86 acres)
- Perimeter retaining wall/fencing -- 1,429 linear feet

Recognizing the special purpose design of the facility comments were solicited from the contractors and owners interviewed (previously referenced), the City Manager, and other appraisers regarding the possible utility and uses for this facility.

Mr. Nininger reports that wood chip storage pads have been installed at Port McKenzie and Valdez used for the same purpose as this facility. Both of those pads were constructed with asphalt rather than concrete. The Valdez facility has not operated for at least a year.

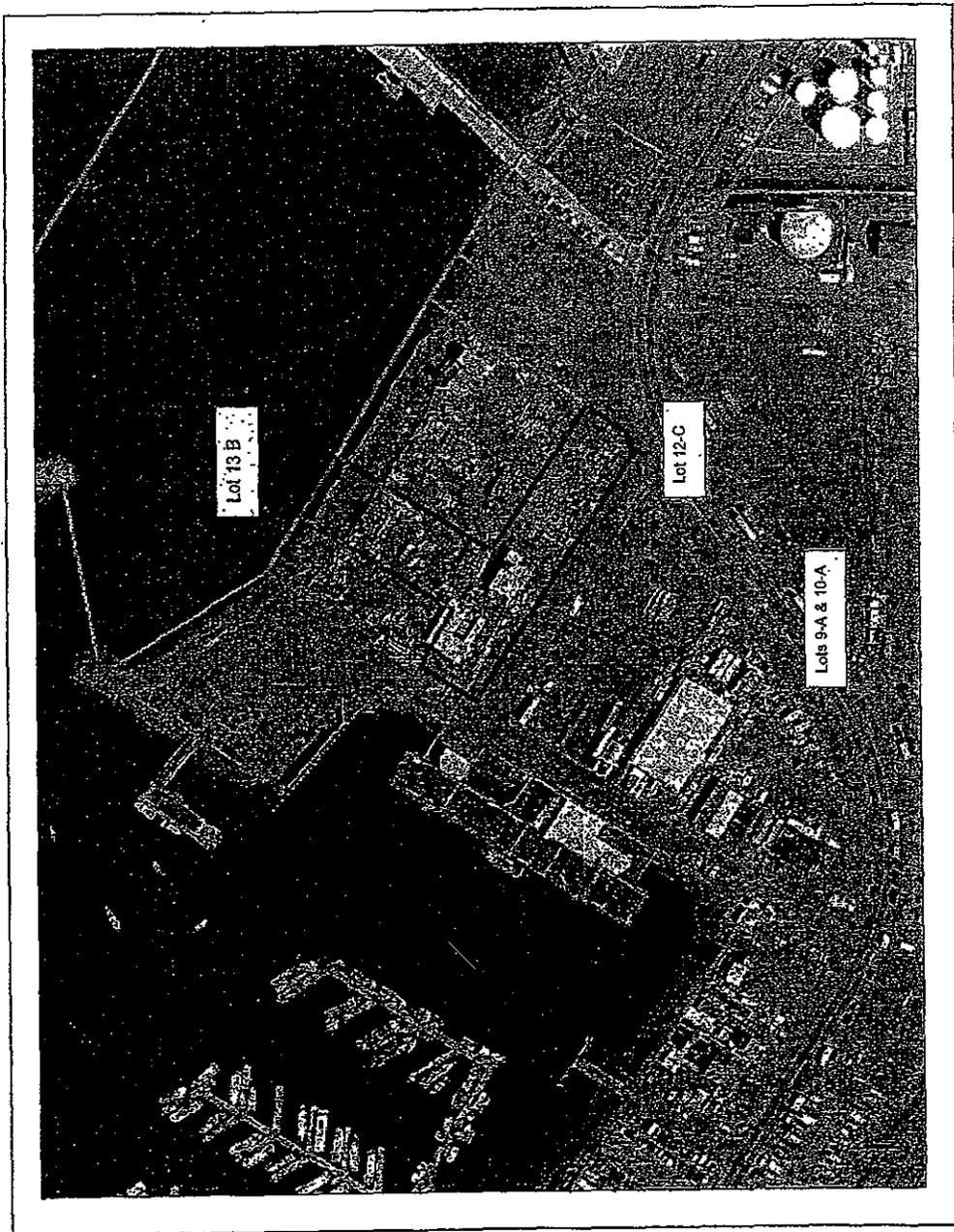
Alternate uses suggested for the facility range from storage, possible roofed storage, building foundations, and storage silos. Each of those uses presents their own unique challenges in adapting and modifying the slab for use. For example, construction of a building could be accommodated but would require drilling the slab for anchor bolts then likely removal of part of the slab to accommodate plumbing and electrical extensions. Some roofing design may be possible incorporating part of the retaining wall into the wall/support, but again requiring special design characteristics.

In summary, the facility design provides some alternate uses however with limited utility and market appeal. Likely the best option to identify potential uses would be on an incentive bid basis to encourage innovative use alternatives.

Highest and  
Best Use

As an interim use, maintain the lots as-is. As determined financially feasible commercial or industrial use in conformance with zoning and/or City of Homer lease requirements.





23

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## Property Valuation

### Market Overview

To estimate the current Market Rent of the subject lots a review/analysis was made of existing annual rents for other lots (as-if vacant) on the Homer Spit.

As part of this process an inventory of City of Homer long-term (more than annual, seasonal) leases was compiled. Currently there are 17 long-term lessees for 17 lots ranging in size from .07 to 4.43 acres. Nine of the lots range from .15 to .35 acre (6,534 to 15,246 sq.ft.). Three others are .46 - .63 acre and three are 1.5 - 4.5+/- acres. One .07 acre uplands lot is leased to a fuel supplier with additional overslope. Not included in the current totals are two building leases, and the \$12/year annual rent for an antennae site that permits shared use with the City of Homer.

The current total reflects a decline of nine lots from 2004 due to the termination of the leases for lots on the north side of the harbor that had been used for log storage and the 5-acre wood chip storage/transfer facility located on subject Lot 12. The nine lots total 11.5+/- acres

The current annual rents range from \$.21 - .83 per square foot. The lowest rent is for the only lot not located on the distal tip of the Spit. The 1.5+/- acre lot is on the south side of the Homer Spit Rd. from the Fishing Lagoon and subject to partial tidal inundation. The improvements are constructed on a raised boardwalk to keep them above tidal flood. Ten of the other leases rent at a range of \$.66 - .83 per square foot. These lots are on the distal tip of the Spit and fully usable. The variation in rent is credited in large part to differences in the lease provisions and whether revaluation/adjustment is permitted over the term of the lease. Recently some lessees have been subject to annual escalations based on changes in the CPI whereas the annual rent of others has remained stable for over ten years.

In January 2005 the City of Homer advertised for sealed bids to lease nine different lots on the Homer Spit at a minimum annual rent of \$.80 per square foot. The lots varied in location from Fish Dock Rd., Homer Spit Rd. and on the north side of the Small Boat Harbor. Three of the lots included at that time were subject Lots 9-A, 10-A and 12-C. According to the City Administration at that time they received one responsive bid, however a lease was never consummated.

According to the City Manager the City has received numerous inquiries and interest regarding leasing lots on the Homer Spit. However, over the past several years there have been few potential lessees that are interested in a long term lease requiring commercial fishing related development that the City is requiring



for the Fish Dock Rd. lots currently being offered. The restricted use is due to their proximity to the fish dock and ice house. Although the City has a large inventory of vacant lots on the north side of the boat harbor they are purposely maintaining them vacant until a long-range parking plan for the Spit is finalized.

**Comparable Rentals**

The following table lists the comparables analyzed in the valuation process. Emphasis was placed on selecting those leases with the most current date of revaluation or adjustment and similarity in size and/or physical features. The date reported is the most recent date, according to the City, that the annual rent was subject to adjustment, even though it may have remained unchanged from the previous period.

**Comparable Rentals**

Comp No.	Legal Description (Lessee)	Date	Size-Sq.Ft. (Acre)	Annual Rent	Rent/Sq.Ft.
1	Lot 88-1, Homer Spit #2 (South Central Radar)	1/06	10,186 (.23)	\$7,370	\$.72
2	Lot 12A-1, Port Industrial S/D No. 3 (Fish Factory)	1/06	27,270 (.63)	\$18,053	\$.66
3	L88-4, Homer Spit #2 (AK Custom Seafoods)	8/05	13,383 (.31)	\$11,108	\$.83
4	L88-2, Homer Spit S/D No. 2 Amended (Varied)	1/06	12,524 (.29)	\$8,877	\$.71
5	Por. GLOL20, S1, T7S, R13W (181-034-45, US Coast Guard)	10/06	15,246 (.35)	\$11,007	\$.72
6	Por. Lots 49, 50, Homer Spit Amended (Homer Spit Campground)	1/06	192,970 (4.43)	\$70,077	\$.36
Subject	Lot 9-A	2/07	22,816	---	---
	Lot 10-A		23,161	---	---
	Lot 12-C		34,238	---	---
	Lot 13 B		22,622	---	---
	Lot 12		217,800 (5.0)	---	---

**Summary of the Comparables**

In recent years the annual rents of C1, 2, and 4-6 have been subject to change annually based on increases in the CPI. The adjustments, however, to C1, 2, 4, and 6 have not yet been calculated for the change due in January 2007 for 2006.



Public water/sewer, electrical, and telephone are available to all of the lots. Each has frontage on publicly maintained roads and considered to offer good to excellent commercial exposure, similar to the lots appraised. The shape of the comparables is generally rectangular except for C6 which is irregular.

The topography of all of the comparables except C6 consists of level, graveled sites that are fully useable. C6 includes some gradually sloping beachfront acreage that potentially may be subject to tidal action during storms or extremely high tides.

Comparable 1 is the most recent new long-term lease on the Spit. The lot was leased by the City Council in November 2003 following application by the Lessee. The annual rent was reportedly established by the Council based on recommendations from the City administration; initially at \$.68/sq.ft. and subject to CPI changes annually. The lease term is ten years with two five-year renewal options.

The rent reported for Comparable 6 is based on annualizing the four-month rent paid by the Lessee who closes during the winter months. This lease is analyzed since it is the only current lease of a larger acreage parcel similar to subject Lot 12. About 15% of C6 consists of sloping beach frontage.

**Methodology**

To develop the estimates of Market Rent the comparables are adjusted for variations in comparison to the lots appraised. Elements of comparison include conditions of rental, market conditions (date of lease inception or revaluation), location, and physical characteristics (size, availability of utilities, etc.).

Due to the similarity of the lots appraised a "key" lot concept is used. By this method the comparables are analyzed in comparison to one "key" subject lot. The Market Rent of each of the remaining subject lots is then concluded in comparison to the rent conclusion for the "key" lot by applying adjustments for differences between each lot appraised and the key lot value. Lot 9-A is selected as the key lot for this analysis

An adjustment grid for the "key" lot follows the discussion of the varied elements of comparison.

**Market Analysis**

**Conditions of Rental**

This element takes into consideration whether a lease is negotiated as an arm's length transaction; essentially an agreement concluded between unrelated parties without duress. Since the City of Homer is the lessor of the subject lots and all of the comparables it is assumed the leases were negotiated freely



without duress and are not between related parties. As a result no adjustments are required for variations in conditions of rental.

#### **Market Conditions**

The leases analyzed were selected for their relatively recent dates of revaluation or adjustment based on changes in the CPI.

In recent years rental rates on the Homer Spit have indicated only modest increases, if any. The most recent increases have been due to the adjustments tied to the annual change in the CPI. Since this has been in effect the past 3-4 years annual increases for the affected lots have averaged 2-3%/year, compounded monthly. This rate is much lower than recent value increases reflected for commercial lots within the city center.

The majority of leases on the Spit do not have a provision for annual adjustment based on the change in the CPI. Some rely on periodic adjustment (3-5+/- years) based on revaluations in an appraisal. The annual rent of other leases have remained unchanged for years and apparently have no provision for adjustment/revaluation over the term of the lease.

Considering the modest increases in rental rates on the Homer Spit a market conditions adjustment is applied at 2.5%/year, compounded monthly to October 2006. This adjustment is applied for the earlier revaluation dates of all of the comparables except C5.

#### **Location/Road Frontage**

Historically there has been sufficient land available for lease on the Spit so that lessees have been able to locate where desired. Normally each has chosen a location that is the most suitable for their business requirements; i.e. fish processors are in close proximity to the fish dock and ice house, log storage was near the deep-water dock, and retail-oriented businesses have been centrally located along the Homer Spit Rd. There has been no indication that one location reflects a rental premium over another. Similarly, no premium has been indicated for those lots that also have frontage on Kachemak Bay or the Small Boat Harbor. As a result no location adjustments are applied to any of the comparables in comparison to the "key" or other subject lots.

#### **Physical Characteristics**

This element of comparison primarily considers differences in lot size, topographic features, availability of utilities, shape, easements/legal constraints, etc. Only those elements requiring adjustment are discussed.



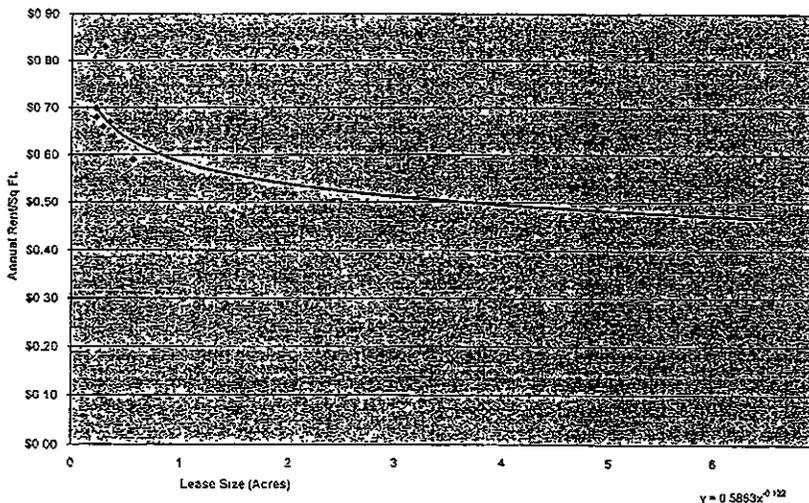
Site Size

Normally the size/rent relationship is inverse; the smaller the lot size the higher the rent paid per square foot and vice versa. A comparison of the unadjusted rent per square foot of the smaller comparables (C1-5) in comparison to C6 supports this premise.

To help quantify the size/price relationship from available market data a series of scatter plot graphs with regression analysis were developed from the annual rent per square foot of 9-10 City leases as of December 2003. This date was chosen because at that time there were more leases of larger sites than there are currently. These included subject Lot 12 (5 acres) and the combined lease of eight adjacent lots totaling 6.45 acres. According to City records at that time the lessee was paying a preferential rate of \$.43/sf for subject Lot 12 (chip loading facility), based on a sufficient quantity of wharfage over the deep-water dock. However, the non-preferential rate at \$.55/sf is used in the comparison illustrated here. In addition, the total 6.45 acre size of the 8-lots leased for log storage is included rather than reporting the \$.55/sf rent on a smaller per lot ( 8+/- acre) basis. The two lowest rents shown on the graph are for the Icicle Seafoods and the Homer Spit Campground leases which were adjusted up for inferior topography since they both include sloping beach frontage.

The following graph illustrates the data arrayed in one of the comparisons. (Four others were configured however not included.) For ease in presentation the lot sizes are reported on a per acre basis although the annual rent is per square foot.

Size - Rent/Sq.Ft. Comparison - Homer SpIt



Size adjustments are applied to the comparables in comparison to the key lot considering the results from using the x/y equation based on this regression analysis and the four others plotted from the rents analyzed.

*Topography*

In comparison to the level terrain of the key lot an upward adjustment is applied to C6. The topography of the remaining comparables is similar to the key lot and thus require no adjustment.

*Shape*

A small upward adjustment is applied for the irregular shape of C6 which adversely impacts overall usability of the site. No adjustment is required to the other comparables which are rated similar to the key lot.

Adjustment  
Grid

The following table lists the adjustments applied to the comparable rents in comparison to the key lot.



**Comparable Adjustment Grid  
Key Lot - Lot 9-A**

Subject	Comparable 1	Comparable 2	Comparable 3	Comparable 4	Comparable 5	Comparable 6
Key Lot	L88-1, Homer	L12A-1, Port	L88-4, Homer	L88-2, Homer	Por. GLO 20, S1	Comparable 6
Lot 9-A	Spit #2 (So. Cent. Radar)	Indus. No. 3 (Fish Factory)	Spit #2 (AK Customs Sids)	Spit No. 2 Amnd. (Varied)	T7S, R13W (US Coast Guard)	Por. Lots 49, 50 Homer Spit Amnd (H.S. Campground)
Area/Perch	\$7,370	\$18,053	\$11,108	\$8,877	\$11,007	\$70,077
Realt/SqRt	0.72	0.66	0.83	0.71	0.72	0.36
Market Conditions (date of lease)	Jan-06	Jan-06	Aug-05	Jan-06	Oct-06	Jan-06
Time Adjusted Price	1% \$0.73	1% \$0.67	2% \$0.85	1% \$0.72		1% \$0.37
Size (sq ft) / Adjusted Rent/Sqft	10,186 -10% \$0.66	27,270 \$0.67	13,383 -10% \$0.76	12,524 -10% \$0.64	15,246 -5% \$0.68	192,970 40% \$0.51
Other Characteristics						
Location/Exposure	Similar	Similar	Similar	Similar	Similar	Similar
Topography/Slope	Similar	Similar	Similar	Similar	Similar	Similar
Utilities/Available	Similar	Similar	Similar	Similar	Similar	Similar
Zoning/Permitted Use	Similar	Similar	Similar	Similar	Similar	Similar
Shape	Similar	Similar	Similar	Similar	Similar	Similar
Comparable Adjustments	0%	0%	0%	0%	0%	27%
Final Value	\$0.66	\$0.67	\$0.76	\$0.64	\$0.68	\$0.65



**Conclusion of Market Rent – Land**

Following analysis the comparables develop a range in Market Rent for the key lot at \$.64 - .76 per square foot. The highest rent is indicated by C3 which is across the street from the "key" lot and historically indicates higher than other leases analyzed. The annual rent for this comparable has actually remained unchanged since lease inception in 1990. The lot was initially leased based on the results of a City RFP/competitive bid.

The remaining comparables indicate a closer range at \$.64 - .68/sq.ft. Of these the highest rent is indicated by the lot with the most current revaluation (10/06). C2 at \$.67/sf is most similar to the key lot since it requires no adjustment for difference in size, topography, etc.

Considering the general similarities of the comparables and the general market trend for Homer Spit lease rates the annual Market Rent for the key lot is concluded at \$.70/sq.ft.

Annual Market Rent calculates at:

$$22,816 \text{ sq.ft.} \times \$ .70/\text{sq.ft.} = \$15,971$$

Rounded to: \$16,000

**Summary – Market Rent Conclusions - Land**

The following table lists the remaining subject lots and their Market Rent conclusions. In comparison to the key lot downward adjustments are required to the key lot value (per sq.ft.) for the larger sizes of Lot 12-C and Lot 12. The Market Rent of Lot 13 B requires a downward adjustment for the inferior usability due to about 15% of the lot consisting of sloping beach frontage.

The Market Rent conclusion below for Lot 12 is for land only. The discussion of valuation and conclusion of Market Rent for the improvements follows.

<u>Lot</u>	<u>Size</u>	<u>Rent/ Sq.Ft.</u>	<u>Annual Market Rent</u>
9-A (key lot)	22,816sf	\$.70	\$16,000
Lot 10-A	23,161sf	\$.70	\$16,200
Lot 12-C	34,238sf	\$.65	\$20,250
Lot 13 B	22,622sf	\$.60	\$13,600
Lot 12 (land only)	217,800sf	\$.49	\$106,700

*Former Circle DE Pacific/Gates Wood Chip Storage Facility*

**Methodology**

Improved properties are typically valued utilizing the Cost, Sales Comparison, or Income Approaches to Value. Each approach has particular applicability depending on the property characteristics and comparable data available. Comparable data is used to



weigh market characteristics, apply adjustments for differences between the comparable property and the property appraised which then provides a basis for developing a value estimate.

In this case no sales of similar facilities could be located to use as a basis for comparison. In the Income Approach rentals of similar properties are analyzed to identify the income attributable to the property which is then capitalized into a value indication. Again, no rentals of similar facilities were available to use as a basis for an Income Approach analysis. The Cost Approach then was the only approach that could be used. In the Cost Approach the current replacement cost new of the improvement less accrued depreciation is calculated.

**Estimated  
Cost**

Recognizing the special purpose characteristics of the improvement, some of the components were excluded in the cost calculation. First, the conveyor pit and truck unloading platform/scales are not included in the concrete square foot calculations or the cubic yard calculations. Both of these components are considered very special use with no market appeal or utility. Similarly, the retaining wall with a combination of steel beams and heavy timbers would require contractor estimates to provide a current replacement cost. Recognizing that the retaining wall essentially provides security fencing, the contributory cost/value of that component is considered to be as security fencing. Following that premise the perimeter fencing cost is based on the cost of chain link fencing.

Alternatively, the retaining wall timbers may have personal property value by disassembly and sale of the timbers for dimension lumber, timber-frame building construction, blocking, etc. Any value under that scenario is considered beyond the scope of this assignment.

The estimated replacement cost new for each of the components is developed from the Marshall Valuation Service published by Marshall & Swift and a concrete estimate from Best Transit Mix. The cost calculations are reported in the following cost calculation sheet.

Section I identifies the concrete pad/slab cost from the Marshall Valuation Service and Section II from Best Transit. In both calculations the concrete pad thickness at 8" is used for a reinforced slab and a perimeter footing.



Improvement/Replacement Cost Calculations			
Property	Former Circle DE Pacific/Gates wood chip storage facility		
Address	4380 Freight Dock Rd, Homer		
Effective date:	February 17, 2007		
	Section I	Section II	Section III
Building Component/Occupancy type	Concrete pad/slab	Concrete pad/slab	Security fencing
Cost manual reference (section/page)	S51/P3	Best Transit Mix	S66/P4
Construction class	N/A	N/A	(chain link fencing)
Quality rating	Average	Average	Average
Number of stories	N/A	N/A	N/A
Height per story (feet)	N/A	N/A	15.50
Average floor area (sq. ft.)	168,078	4,150	(weighted average height)
Average perimeter (linear ft.)	N/A	cubic yards	1,429
Code (A-C) (if effective)	A15/E15+/-	A15/E15+/-	A15/E15+/-
Base Square Foot Cost	\$4.25	\$240.00	\$28.25
Square Foot Refinements		(cost/cubic yard)	(per linear ft.)
Heating/cooling base	n/a	n/a	n/a
Miscellaneous			
Footings included as a lump sum below	\$0.00	\$0.00	\$1.80
Adjusted square foot costs	\$4.23	\$240.00	\$30.05
Height & size refinements			
Number of stories multiplier	1.000	1.000	1.000
Height per story multiplier	1.000	1.000	1.000
Floor area-perimeter multiplier	1.000	1.000	1.000
Combined height/size multiplier	1.000	1.000	1.000
Final Calculations			
Refined Sq. Ft. Cost (base x multiplier)	\$4.23	\$240.00	\$30.05
Current Monthly Cost multiplier	1.11	1.00	1.08
Kenac Peninsula cost adjustment multiplier	1.23	1.00	1.23
Final Square Foot cost	\$5.78	\$240.00	\$38.82
Total Section Cost (final Sq. ft. cost x area)	\$970,687	\$996,000	\$57,043
Lump Sum Costs			
excludes conveyor pit & truck-loading pad	\$0	\$0	
perimeter footing - 12" x 12" x 7.17' (see notes)	\$21,684	included in cubic yardage	
Total Section Replacement Cost New	\$992,371	\$996,000	\$57,043
Total Property Replacement Cost New	\$1,051,229	(mid range of Sections I & II, plus Section III)	



**Summary –  
Cost New**

Both Sections I and II develop close cost estimates at \$992,371 and \$996,000 respectively. The perimeter footing is added separately under Section I, included in the concrete quantity for Section II. These costs are based on an 8" reinforced professionally finished concrete slab.

Section III provides the estimated cost of chain link security fencing with a 15.5' average height. The average height is calculated based on the weighted average of the heights of each of the lengths of the perimeter retaining wall. A top fence rail is also included in that cost.

The final estimated replacement cost of the concrete pad/slab is based on the mid-range of Sections I and II plus Section III, reported on the preceding cost calculation sheet.

**Depreciation  
Overview**

Accrued depreciation is deducted from the estimated replacement cost new. This loss in value can result from physical deterioration, functional obsolescence, and external obsolescence. Due to the special purpose design and limited utility of the improvements, both functional obsolescence and external obsolescence are present.

**Physical  
Deterioration**

This form of accrued depreciation is intrinsic and caused by the process of aging, wear and tear on the improvements through use, or damage by accident. Physical deterioration is subcategorized as curable physical deterioration (deferred maintenance) and incurable physical deterioration (attributed to the process of aging on the improvement).

Based on the reported condition of the concrete slab no curable physical deterioration was identified. Since the slab was under snow and ice cover at the time of inspection the improvement is subject to the Extraordinary Assumption.

Incurable physical deterioration is calculated based on the actual and effective age and typical economic life, reported on the improvement cost calculation sheet. The contractors and suppliers interviewed as part of the improvement research identified typical improvement lives at 25-30-40 years. Two of the interviewees underscored the importance of maintaining the slab, keeping water and ice off of it as important to preventing damage and extending its life. Based on the reported life expectancy, a 30-35 year total economic life is used.

**Functional  
Obsolescence**

Functional obsolescence relates to defects in the project, project design, or changes that, over time, have made some aspect of the improvements, material or design obsolete by current standards.



The special purpose nature of the property limits the utility and by definition creates functional obsolescence. Considering the impact of functional obsolescence on building designs due to design changes, a functional obsolescence deduction at 20% is concluded and used.

**External  
Obsolescence**

External obsolescence is described as usually an incurable defect caused by negative influences outside of the property itself. External obsolescence can include a wide variety of factors ranging from incompatible neighborhood uses to an oversupply of commercial space or adverse economic conditions. External obsolescence in this case results from the likely rent that would be achieved from the improvements compared to the cost new and the rents required to develop an economically feasible project based on those costs new.

Considering prevailing external obsolescence rates for commercial buildings in the Homer market, external obsolescence is concluded at 20%.

**Cost Approach Conclusion**

The following table summarizes the estimated replacement cost new, accrued depreciation, and the final indicated value by the Cost Approach.



**Cost Approach Summary**

Improvement replacement cost new		\$1,051,229
Less Accrued depreciation:		
Physical Deterioration		
Curable	assume none	\$0
Incurable	30%	\$315,369
Functional Obsolescence	25%	\$262,807
External Obsolescence	25%	<u>\$262,807</u>
Total Accrued Depreciation		<u>\$840,983</u>
Depreciated Improvement Value		<u>\$210,246</u>
Contributory site improvement value		\$0
Land Value		<u>Leasehold</u>
Indicated Value		<u>\$210,246</u>
	<b>Rounded to:</b>	<b>\$210,000</b>

*Market Rent - Improvements*

**Rent Conclusion**

The estimated **Market Rent** of the improvements is calculated based on the prevailing market lease rates and the Cost Approach conclusion. The selection of a lease rate was based on a review of land lease rates typically ranging from 6-8% to building capitalization rates that range from 6-8.5%. An important distinction to note is that the building capitalization rates reflect both the land and building in their rates.

Recognizing that an incentive lease rate would likely be needed to encourage a lessee, a lease rate toward the lower range at 6% is concluded and used.

The **Market Rent** then calculates at:

Estimated Value - \$210,000 x 6% = \$12,600/year.

**Rent Recommendation**

The lack of direct comparable data to develop the **Market Rent** estimate may result in the City achieving a higher rent attributed to these improvements or less. Until the property is actively



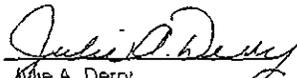
*Certification*

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- This appraisal was not based on a requested minimum valuation, a specific valuation, or the approval of a loan
- Our analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- No one provided significant real property appraisal assistance to the persons signing this report
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Appraisal Institute's Code of Professional Ethics and Standards of Professional Appraisal Practice, which include the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report David M. Derry, MAI has completed the continuing education program of the Appraisal Institute

We have personally inspected the subject property as legally described in the Summary, page 3.

After consideration of the available data and factors, subject to the Assumptions and Limiting Conditions contained in this report, it is our conclusion that the estimated Market Rent of the fee simple estate of each lot as of February 17, 2007 is concluded as stated in the Summary, page 4.

  
Julie A. Derry

  
David M. Derry, MAI



38

HOMER000144

*Qualifications of the Appraiser  
Julie A. Derry*

♦ Experience

Real Estate Appraiser, Derry & Associates, Inc. 1984 to present.  
Research Assistant/Office Manager, Derry & Associates, 1978 to 1984.  
Secretary, Hillas Appraisal Company, 1976 to 1978.

♦ Education

University of Alaska, additional year to obtain teaching certificate.  
Oregon State University, Bachelor of Science degree, Home Economics.

Business Practices and Ethics, Appraisal Institute (AI), Anchorage, AK, 2006.

Standards of Professional Practice, Part C, AI, Anchorage, 2000.

Report Writing & Valuation Analysis, AI, Anchorage, 1992.

Standards of Professional Practice, Parts A & B, AI, Anchorage, 1991.

Capitalization Theory & Techniques, Parts A & B, American Institute of Real Estate Appraisers (AIREA), San Diego, CA, 1988.

Basic Valuation Procedures, AIREA, San Diego, CA. 1985.

Real Estate Appraisal Principles, AIREA, San Diego, CA 1985.

Appraisal Seminars

Case Studies in Commercial Highest & Best Use, AI, 2007; USPAP Update, AI, 2005; Rates and Ratios, AI, 2005; Uniform Appraisal Standards for Federal Land Acquisitions, ASFMR, 2005; Subdivision Analysis, AI, 2004; The Road Less Traveled: Special Purpose Properties, AI 2004; Scope of Work: Expanding Your Range of Services, AI, 2003; Land Valuation Adjustment Procedures, and Land Valuation Assignments Workshops, AI, 2002; Intro to Statistics & Supporting Adjustments, AI, 2002; Partial Interest Valuation – Divided, and Partial Interest Valuation – Undivided, AI, 2001; Easements, AK State Professional Land Surveyors, 1999; Eminent Domain & Condemnation Appraising, AI, 1999; Public Interest Value vs. Market Value, AI, 1999; Valuation of Detrimental Conditions in Real Estate, AI, 1999; Appraisal of Nonconforming Uses, AI, 1999; Special-Purpose Properties: The Challenges of Real Estate Appraising in Limited Markets, AI, 1999; The Internet and Appraising, AI, 1997; Appraisal of Retail Properties, AI, 1996; Dynamics of Office Building Valuation, AI, 1996; The Appraiser as Expert Witness, AI, 1995; Appraisal Practice for Litigation, AI, 1995; Understanding Limited Appraisals & Appraisal Reporting Options: General, AI, 1994; Feasibility Analysis and Highest & Best Use, AI, 1992; General State Certification Review Seminar, AI, 1991; Cash Equivalency and Rates, Ratios and Reasonableness, AIREA, 1988; The Basic Use of the Marshall Valuation Service: Calculator Method, and The Basic Use and Understanding of the Residential Cost Handbook, Marshall & Swift, 1985.



◆ **Business and Professional**

Associate Member, Appraisal Institute  
Licensed "General Real Estate Appraiser"; State of Alaska, License No. 88  
Affiliate Member, Kachemak and Kenai Peninsula Boards of Realtors

◆ **Typical Appraisal Clientele**

The Conservation Fund  
The Nature Conservancy of Alaska  
Alaska Mental Health Trust Land Office  
The Trust for Public Land  
U.S. Fish & Wildlife Service  
State of Alaska, Department of Natural Resources  
State of Alaska, Division of Parks  
State of Alaska, Department of Commerce & Economic Development  
Exxon Valdez Oilspill Council  
Federal Aviation Administration  
City of Homer  
City of Kenai  
City of Soldotna  
University of Alaska  
Bureau of Indian Affairs  
Cook Inlet Region, Inc.  
Cook Inlet Aquaculture Association  
ARCO Alaska, Inc.  
Safeway, Inc.  
National Bank of Alaska/Wells Fargo Bank Alaska  
First National Bank Alaska  
KeyBank  
Alaska USA Federal Credit Union  
Bank of America  
Various individuals, attorneys and companies



*Qualifications of the Appraiser  
David M. Derry, MAI*

♦ **Business and Employment Experience**

Principal, Derry & Associates, Inc. 1978 to present.  
Co-owner, Peninsula Appraisal Group, Inc., Soldotna, 1991 to present.  
Real Estate Appraiser, Hillas Appraisal Co., Homer, 1976-1978.

National Bank of Alaska, part time 1961-69; full time 1969-76. Most recent position:  
Manager, Homer branch.

♦ **Education**

Texas Tech University, Business Administration major.  
University of Alaska, Business Administration major.  
College equivalency granted, American Institute of Real Estate Appraisers, 1986.

Business Practices and Ethics, Appraisal Institute (AI), Anchorage, AK 2006.

Standards of Professional Practice, Part C, AI, Anchorage, 2000.

Standards of Professional Practice, Parts A & B, AI, Anchorage, 1995.

Standards of Professional Practice, Parts A & B, AI, Anchorage, 1991.

Case Studies in Real Estate Valuation, American Institute of Real Estate Appraisers (AIREA), Portland, OR, 1986.

Capitalization Theory & Techniques, Parts A & B, AIREA, Seattle, WA, 1986

Valuation Analysis & Report Writing, AIREA, Cocoa, FL, 1985.

Capitalization Theory & Techniques, Parts 1 & 2, AIREA, Boulder, CO, 1982.

Standards of Professional Practice, AIREA, Tempe, AZ, 1981.

Course VII, AIREA, Houston, TX, 1978.

Course 1-A, AIREA, Houston, TX, 1977.

♦ **Appraisal Seminars**

Case Studies in Commercial Highest & Best Use, AI, 2007; USPAP Update, AI, 2005; Rates and Ratios, AI, 2005; Small Hotel/Motel Valuation, AI, 2005; Uniform Appraisal Standards for Federal Land Acquisitions, ASFMRA, 2005; Subdivision Analysis, AI, 2004; The Road Less Traveled: Special Purpose Properties, AI 2004; Scope of Work: Expanding Your Range of Services, AI, 2003; Land Valuation Adjustment Procedures and Land Valuation Assignments Workshops, AI, 2002; Intro to Statistics & Supporting Adjustments, AI, 2002; Partial Interest Valuation – Divided, & Partial Interest Valuation –



Undivided, AI, 2001; Communication Corridors, Tower Sites, & Property Rights, AI, 2001; Eminent Domain & Condemnation Appraising, AI, 1999; Public Interest Value vs. Market Value, AI, 1999; Valuation of Detrimental Conditions in Real Estate, AI, 1999; Appraisal of Nonconforming Uses, AI, 1999; Special-Purpose Properties: The Challenges of Real Estate Appraising in Limited Markets, AI, 1999; Skills of Expert Testimony, IRWA, 1998; Understanding & Using Discounted Cash Flow Software, AI, 1997; Alternative Residential Reporting Forms, AI, 1997; Appraising One-to-Four Family Income Properties, AI, 1997; The Internet and Appraising, AI, 1997; Appraisal of Retail Properties, AI, 1996; Dynamics of Office Building Valuation, AI, 1996; Preserving Family Lands, KHLT, 1995; The Appraiser as Expert Witness, AI, 1995; Appraisal Practices for Litigation, AI, 1995; Understanding Limited Appraisals & Appraisal Reporting Options: General & Residential, AI, 1994; Appraisal Regulations of the Federal Banking Agencies, AI, 1993; Appraisal Review, AI, 1993; Feasibility Analysis and Highest & Best Use, AI, 1992; Statistics & Sales Ratio Analysis, IAAO, 1992; General State Certification Review Seminar, AI, 1991; Appraising Under Financial Institutions Reform Act (FIRREA), Office of Thrift Supervision, 1990; Highest & Best Use, AIREA, 1988; Cash Equivalency and Rates, Ratios and Reasonableness, AIREA, 1987; Capitalization Workshop, AIREA, 1987; Guide to Uniform Residential Appraisal Report, SREA, 1987; R41C Seminar, AIREA, 1987; Market Analysis, AIREA, 1986; Demonstration Report Writing Seminar, AIREA, 1986; FHLBB Regulation R41-B and the Appraiser, AIREA, 1985; Mortgage Energy Valuation, SREA, 1985; Computer Applications for Investment Analysis and Valuation of Income Producing Properties, AIREA, 1985; Basic Use & Understanding, Residential Cost Handbook and Marshall Valuation Service, Marshall & Swift, 1984; Real Estate Lending and Investment Strategy Alaska Today and Contemporary Appraisal Issues for Large Income Properties, AIREA, 1983; Reviewing and Appraising Easements, NARA, 1983; Market Extractions Seminar, SREA, 1981; Introduction to Mobile Home Appraising, SREA, 1980; Income Capitalization Workshop, SREA/AIREA, 1979; Appraising Apartments, 1978; Contemporary Real Estate Analysis Methods, SREA/AIREA, 1977; Marketability and Market Analysis, AIREA/SREA, 1977.

The appraiser has completed the requirements of the Continuing Education Program of the Appraisal Institute, certified through December 31, 2007; and satisfied the State of Alaska Board of Certified Real Estate Appraisers Continuing Education requirements, valid to 6/30/05. The Appraisal Institute requires 100 hours every 4 years and the State Board 28 hours every 2 years.

♦ **Representative Clientele**

Seldovia Native Association, Inc.	City of Homer
University of Alaska	City of Kenai
Alaska Renewable Resources Corp.	City of Soldotna
Ninilchik Native Association, Inc.	City of Seldovia
Kenai Peninsula Borough	Port of Anchorage
United States Postal Service	Chevron USA
Gilbert/Commonwealth, Inc.	Icicle Seafoods
Small Business Administration (U.S.)	Kenai Native Association
Bureau of Indian Affairs	Northern Enterprises
Resolution Trust Corporation (RTC)	Wells Fargo Bank Alaska
Federal Deposit Insurance Corp. (FDIC)	First National Bank Alaska



State of AK, Dept. of Natural Resources      Alaska USA Federal Credit Union  
State of AK, Division of Parks                      Key Bank of Alaska  
State of AK, Dept. of Transportation & Public Facilities  
Cook Inlet Region, Inc. (CIRI)                      ARCO Alaska  
U.S. Fish & Wildlife Service                      Bank of America

Form appraisals of land and residential properties accepted by commercial banks, credit unions, mutual savings banks, and mortgage banking firms throughout the State of Alaska.

♦ **Professional Designation**

Designated Member, Appraisal Institute, MAI designation; Appraisal Institute Member No. 7939.

♦ **Professional Licenses, Registrations, & Experience**

Licensed "General Real Estate Appraiser"; Board of Certified Real Estate Appraisers, State of Alaska, Certification No. 36.  
President, Alaska Chapter Appraisal Institute - 2001 and 2002; Vice President, 2000.  
Affiliate Member, Kachemak and Kenai Peninsula Boards of Realtors.  
FNMA (Federal National Mortgage Association) Level 1 Appraiser, No. 1094539.  
HUD/FHA designated fee appraiser, No. 2025.  
Veterans administration designated fee appraiser.  
AHFC approved appraiser, No. 80-32  
Instructor, Kenai Peninsula Community College (U of A), "Real Estate Appraisal", 1980.  
Qualified as an Expert Witness, Superior and District Courts, Third Judicial District, State of Alaska.  
Qualified as an Expert Witness, Federal Bankruptcy Court.  
Served as a court-appointed Master on right-of-way cases involving State of Alaska right-of-way acquisitions, Third Judicial District.

♦ **Major Counseling and Valuation Assignments**

**Homer Harbor Slope Development Study** – a two-phase study to identify demand for development of the Homer Harbor overslope and the market supply of existing facilities and competition. The demand analysis included a mail-out market survey with a tabulation and analysis of the responses. The market supply survey consisted of a state-wide telephone survey of existing facilities, seasons of operation, density, and charges/fees.  
Client: City of Homer

**Electric Transmission Line Right-of-Way Appraisals** – This assignment consisted of valuing the electrical transmission line right-of-way from the Fritz Creek Station (Homer) to Soldotna, encompassing a distance of about 70 miles. The estimated just compensation to the property owners was developed utilizing a before and after approach. The electrical transmission line was subsequently constructed within this right-of-way to carry power from the Bradley Hydroelectric project to Soldotna and then on to the South Central energy grid.  
Client: Gilbert/Commonwealth, Inc., Construction Mgr. for Homer Electric Assoc.



**State of Alaska-Seldovia Native Association Land Exchange Appraisals** – This project consisted of appraising 90 state-owned parcels in 12 geographic areas throughout the Kenai Peninsula and on the west shore of Cook Inlet. These parcels were proposed for exchange with the Seldovia Native Association as part of the acquisition of inholdings in Kachemak Bay State Park. This project included acreage tracts at the head of Kachemak Bay near the Bradley Lake Hydroelectric project, an island in Seldovia Bay, acreage tracts on Kalgin Island, acreage at Granite Point, and various other locations around Soldotna, Kaslof River, and Tustumena Lake.

Client: State of Alaska, Department of Natural Resources.

**Kachemak Bay State Park Land Evaluation Panel** – Selected by the State of Alaska and the Seldovia Native Association to serve on the 3-member Land Valuation Panel to establish the value of the Seldovia Native Association's 19,325 acres of inholdings within the Kachemak Bay State Park. The panel process included reviewing appraisal reports and interviews with the appraisers who had appraised the property, a physical inspection of the property, consideration of a parklands Highest and Best Use, and a review of Alaska and Pacific Northwest land sale comparables. Value estimates were developed for the property in its natural condition and with 4,435 acres as cut-over (logged) land. The value conclusion developed by the panel was used as the sale price for the purchase of the property, consummated in 1993.

Client: State of Alaska, Department of Natural Resources

**Mental Health Trust Lands Evaluation Panel** – Selected by the plaintiffs in the Mental Health Trust Lands project to service on the 3-member South Central Valuation Panel. The panel's work consisted of valuing 1,100 parcels of proposed substitute land throughout South Central Alaska, ranging from Kodiak to Cordova to the Matanuska-Susitna Valley. The value estimates were developed based on a review and analysis of comparable sales applicable to the geographic area and parcels. The panel valuation process was a key part of the plan to reconstitute the Mental Health Land Trust

Client: Law Offices of James B. Gottstein

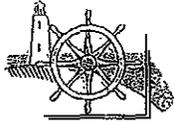




WAS:pin@

HARBOR LEASING LLC  
PROPOSAL for LOT 12C,  
Open First  
5 copies

HOMER000151



## HARBOR LEASING LLC

PO BOX 2228  
Homer AK 99603  
Ph. 907-399-8090  
FAX 907-235-4833

2/24/07  
City of Homer  
Leasing Committee  
491 East Pioneer Ave.  
Homer AK 99603

Please find enclosed our proposal regarding your RFP for Lot-12C---  
**Harbor Leasing LLC** is an Alaskan limited liability company whose primary members are **Kevin Hogan** and **Bronwyn Kennedy**. Kevin Hogan is the President of **The Auction Block Company**, a seafood auction and Logistics Company. Ms. Kennedy is a Registered Nurse. Harbor Leasing's primary occupant in this development will be The Auction Block Co.. The following is included in this packet:

- A. Cover Letter and Contents
- B. City of Homer application form
- C. Qualifications
- D. Proposal Narrative
- E. Proposed Development Schedule
- F. Site Plan
- G. *Economic impact*
- H. Attachments including references (confidential)

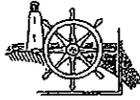
Included with the Attachments will be financial references and statements. Any information related to finances of the principals, their businesses, and letters of reference or documents from prospective investors, are expected to remain confidential. Public disclosure, outside of the lease committee, of any material marked "confidential" without authorization is prohibited.

Please contact me if you have any questions

Kevin Hogan

A

HOMER000152



**HARBOR LEASING LLC**

Homer AK 99603

Ph. 907-399-8090

**B.**

**Lease Application form**

HOMER000153

**City of Homer  
Lease Application/Assignment Form**

**Directions:**  
 1. Please type.  
 2. Please submit this application form to the City Clerk's Office, 491 Pioneer Avenue, Homer, Alaska 99603.  
 3. Please answer all questions on this form, or put "N/A" in the space if it is non applicable.

<b>Applicant Name:</b> Social Security No.s	HARBOR LEASING LLC EIN# 92-0175217
<b>Mailing Address:</b>	P.O. Box 2228
<b>City, State, ZIP code:</b>	HOMER AK 99603
<b>Business Telephone No.</b>	907-399-8090
<b>Representative's Name:</b>	KEVIN HOGAN
<b>Mailing Address:</b>	SAME AS ABOVE
<b>City, State, ZIP code:</b>	
<b>Business Telephone No.</b>	↓
<b>Property Location:</b>	LOT 12C Port Industrial Shdv # 4
<b>Legal Description:</b>	
<b>Type of Business to be placed on property:</b>	SEAFOOD Processing
<b>Size of Buildings to be placed or leased:</b>	100 x 40 WITH ATTACH - 60 x 15 SILED ROOF
<b>Duration of Lease requested:</b>	MAXIMUM ALLOWED
<b>Options to re-new:</b>	" " " "
<b>Special lease requirements:</b>	
<b>Number of parking spaces required, per code:</b>	5 (7.12.142 [6])

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

1.	<b>Plot Plan</b>  SEE ATTACHED	A drawing of the proposed leased property showing: <input checked="" type="checkbox"/> Size of lot - dimensions and total square footage. - to scale, please. <input checked="" type="checkbox"/> Placement and size of buildings, storage units, miscellaneous structures planned - to scale, please. <input checked="" type="checkbox"/> Water and sewer lines - location of septic tanks, if needed. <input checked="" type="checkbox"/> Parking spaces - numbered on the drawing with a total number indicated - please refer to Homer City Code <u>REQUIRED 5' ACTUAL 10'</u>																				
2.	<b>Development Plan</b>  SEE ATTACHED E	<input type="checkbox"/> List the time schedule from project initiation to project completion, including major project milestones. <table border="1"> <thead> <tr> <th>Dates</th> <th>Tasks</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> </tbody> </table> <p>For each building, indicate:</p> <table border="1"> <thead> <tr> <th>Building Use</th> <th>Dimensions and square footage</th> </tr> </thead> <tbody> <tr> <td>"A" PROCESSING/OFFICE</td> <td>45 X 100 MAIN FLOOR 40 X 40 LOFT</td> </tr> <tr> <td>"B" STAGING/STORAGE</td> <td>15 X 60 900 sq'</td> </tr> <tr> <td>"C" REFRIGERATION PACKAGE</td> <td>40 X 16 MAIN 20 X 8 UPPER 900 sq'</td> </tr> </tbody> </table>	Dates	Tasks											Building Use	Dimensions and square footage	"A" PROCESSING/OFFICE	45 X 100 MAIN FLOOR 40 X 40 LOFT	"B" STAGING/STORAGE	15 X 60 900 sq'	"C" REFRIGERATION PACKAGE	40 X 16 MAIN 20 X 8 UPPER 900 sq'
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"B" STAGING/STORAGE	15 X 60 900 sq'																					
"C" REFRIGERATION PACKAGE	40 X 16 MAIN 20 X 8 UPPER 900 sq'																					
3.	<b>Insurance</b>	<input checked="" type="checkbox"/> Attach a statement of proof of insurability of lessee for a minimum liability insurance for combined single limits of \$1,000,000 showing the City of Homer as co-insured. Additional insurance limits may be required due to the nature of the business, lease or exposure. Environmental insurance may be required. If subleases are involved, include appropriate certificates of insurance.																				
4.	<b>Subleases</b>	<input type="checkbox"/> Please indicate and provide a detailed explanation of any plans that you may have for subleasing the property. The City of Homer will generally require payment of 25% of proceeds paid Lessee by subtenants. Refer to chapter 13 of the Property Management Policy and Procedures manual.																				
5.	<b>Health Requirements</b>	<input type="checkbox"/> Attach a statement documenting that the plans for the proposed waste disposal system, and for any other necessary health requirements, have been submitted to the State Department of Environmental Conservation for approval. Granting of this lease shall be contingent upon the lessee obtaining all necessary approvals from the State DEC.																				
6.	<b>Agency Approval</b>	<input type="checkbox"/> Attach statement(s) of proof that your plans have been inspected and approved by any agency which may have jurisdiction of the project; i.e. Fire Marshall, Army Corps of Engineers, EPA, etc. The granting of this lease shall be contingent upon lessee obtaining approval, necessary permits, and/or inspection statements from all appropriate State and/or Federal agencies.																				

5600  
□  
Total

HOMER000155

7.	Fees	<p>All applicable fees must be submitted prior to the preparation and/or execution of a lease.</p> <p><input type="checkbox"/> Application fee - \$30.00. Covers costs associated with processing the application.</p> <p><input type="checkbox"/> Lease fee - \$300.00. Covers the costs of preparing and processing the actual lease.</p> <p><input type="checkbox"/> Assignment fee - \$250.00. Covers the costs of preparing and processing the lease transfer.</p>				
8.	Financial Data	<p>Please indicate lessee's type of business entity:</p> <p><input type="checkbox"/> Sole or individual proprietorship.</p> <p><input type="checkbox"/> Partnership.</p> <p><input type="checkbox"/> Corporation.</p> <p><input type="checkbox"/> Other - Please explain: _____</p> <hr/> <p><input type="checkbox"/> Financial Statement - Please attach a financial statement showing the ability of the lessee to meet the required financial obligations.</p> <p><input type="checkbox"/> Surety Information - Has any surety or bonding company ever been required to perform upon your default or the default of any of the principals in your organization holding more than a 10% interest</p> <p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please attach a statement naming the surety or bonding company, date and amount of bond, and the circumstances surrounding the default or performance.</p> <p><input type="checkbox"/> Bankruptcy information - Have you or any of the principals of your organization holding more than a 10% interest ever been declared bankrupt or are presently a debtor in a bankruptcy action?</p> <p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please attach a statement indicating state, date, Court having jurisdiction, case number and to amount of assets and debt.</p> <p><input checked="" type="checkbox"/> Pending Litigation - Are you or any of the principals of your organization holding more than a 10% interest presently a party to any pending litigation?</p> <p><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. If yes, please attach detailed information as to each claim, cause of action, lien, judgment including dates and case numbers.</p>				
9.	Partnership Statement	<p><input type="checkbox"/> If the applicant is a partnership, please provide the following:</p> <p>Date of organization: _____</p> <p>Type: <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership</p> <p>Statement of Partnership Recorded? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Where _____ When _____</p> <p>Has partnership done business in Alaska? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Where _____ When _____</p> <p>Name, address, and partnership share. If partner is a corporation, please complete corporation statement.</p> <table border="0"> <tr> <td>Limited/ General</td> <td>Name</td> <td>Address</td> <td>Share %.</td> </tr> </table>	Limited/ General	Name	Address	Share %.
Limited/ General	Name	Address	Share %.			

Principal is Plaintiff in Exxon lawsuit →



11. Applicant References

Please list four persons or firms with whom the Applicant or its owners have conducted business transactions with during the past three years. Two references named shall have knowledge of your financial management history, of which at least one must be your principal financial institution. Two of the references must have knowledge of your business expertise.

Name: JENNIFER McLAY  
Firm: WELLS FARGO  
Title: BUSINESS BANKER  
Address: HOMER BRANCH  
Telephone: 235-2444  
Nature of business association with Applicant: BANKER

Name: DANA BESECKER  
Firm: DANA BESECKER CO  
Title: OWNER  
Address: 7525 SE 24<sup>TH</sup> # 610 MERCEY ISL WA 98040  
Telephone: 206-232-5040  
Nature of business association with Applicant: CUSTOMER

Name: Robert SCOTT  
Firm: SALMON OF SEAFOODS  
Title: President  
Address: MILE 1.5 BRIDGE ACCESS RD. KENAI AK  
Telephone: 407-283-7000  
Nature of business association with Applicant: CUSTOMER/VENDOR

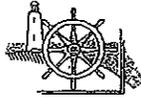
Name: SEAN O'LEARY  
Firm: BEAR/WOLF SALMON CO/ARCTIC WOOL CO.  
Title: MGR  
Address: 4209 21<sup>ST</sup> AVE W SEATTLE WA  
Telephone: 206-281-7777  
Nature of business association with Applicant: CUSTOMER/VENDOR

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

Signature: \_\_\_\_\_

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

3/13/67



## HARBOR LEASING LLC

Homer AK 99603

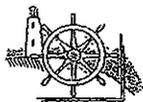
Ph. 907-399-8090

### C.

#### Qualifications of Proposer

The key principal of Harbor Leasing LLC, is Kevin Hogan, a 32 year resident of Homer, who has been active in the Commercial Fishing industry for over 33 years. He has fished commercially and is currently a permit holder in Upper Cook Inlet. He has been a fish buyer in Homer since 1991, Managing local operations for Kikko Seafoods, Great Pacific Seafoods & Sahalee Seafoods. Since 1997 he has served as President of The Auction Block Co., which has since 1998, been the largest Halibut Buyer in the State, and has put Homer on the map as the #1 halibut port. The Auction Block Co. also has facilities in Seward and Kasilof. The Auction Block has been an innovator and leader in the industry, developing the weighing system that has become the standard around the state in IFQ fish landings. The Auction Block's internet fish Auction was one of the nations first B to B commerce auction sites and was widely credited with elevating ex-vessel prices to their current levels. The applicant has demonstrated the ability and vision to bring creative solutions to market challenges. Civic contributions include support of youth organizations and being the founder of Public Radio station KBBI.

HOMER000159



## HARBOR LEASING LLC

PO Box 2228  
Homer AK 99603  
Ph. 907-399-8090

### D Proposal

Harbor Leasing is proposing to

1. Construct a new building of 4000sq. feet. Footprint of 55x 100 (Total square foot usage will be approx. 6400 square feet)
2. Pave portions of the yard area of the lot and parking areas, and upgrade storm drainage. Tasteful site organization, landscaping and privacy screening will be intended to cure the current "dog patch" ambience of the area.
3. The new facility will be occupied primarily by *The Auction Block Co.*

The facility will house a primary and secondary seafood processing facility. One bay of the building (40x40) will house sport fish processing and small retail seafood sales. Above this section will be office space. The remainder of the building 60x60 will be utilized by The Auction Block Co. as warehouse/processing space in support of fish dock operations and cold storage for marketing support. Processing activities are envisioned to be full utilization of the waste stream, minimizing the need for outfall usage, however outfall hookup is intended. A saltwater well is planned for processing activities and fire suppression.

Future additions of detached maintenance and fisherman's support facilities are envisioned at a later date.

#### **Investment**

Harbor Leasing good faith estimate of project cost is \$560,000+

#### **Term**

Harbor Leasing LLC requires a 20 year base term with (2) 5 year renewal options. We are willing to offer and encourage the establishment of performance standards in the terms of the lease.

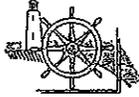
#### **Rate**

Harbor Leasing proposes a rental rate of "fair market rent" {City of Homer Property Management Policy and Procedures Manual (PMPP) 7.2 (A) [1] & (B)}

As determined by an Appraisal conforming to Uniform Standards of Professional Appraisal Practice Standard 1 (2006)

Future rental rate adjustments will be governed by terms of lease document negotiated with the city.

HOMER000160



## HARBOR LEASING LLC

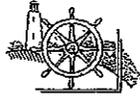
PO Box 2228  
Homer AK 99603  
Ph. 907-399-8090  
FAX 907-235-4833

### E. DEVELOPMENT SCHEDULE

4/2007	Lease executed
5/2007	Permitting
6/15/2007	Utilities, drainage & foundation
7/15/2007	Building Erection
1/2008	Processing activities resulting in fish tax revenue sharing
6/2008	Pave parking areas and yard.

This time schedule is contingent on final lease signing by 4/1/05 and no delays in the permitting process. If these assumptions are not valid, project timeline may be delayed for a construction season..

HOMER000161



## HARBOR LEASING LLC

Homer AK 99603

Ph. 907-399-8090

**F**

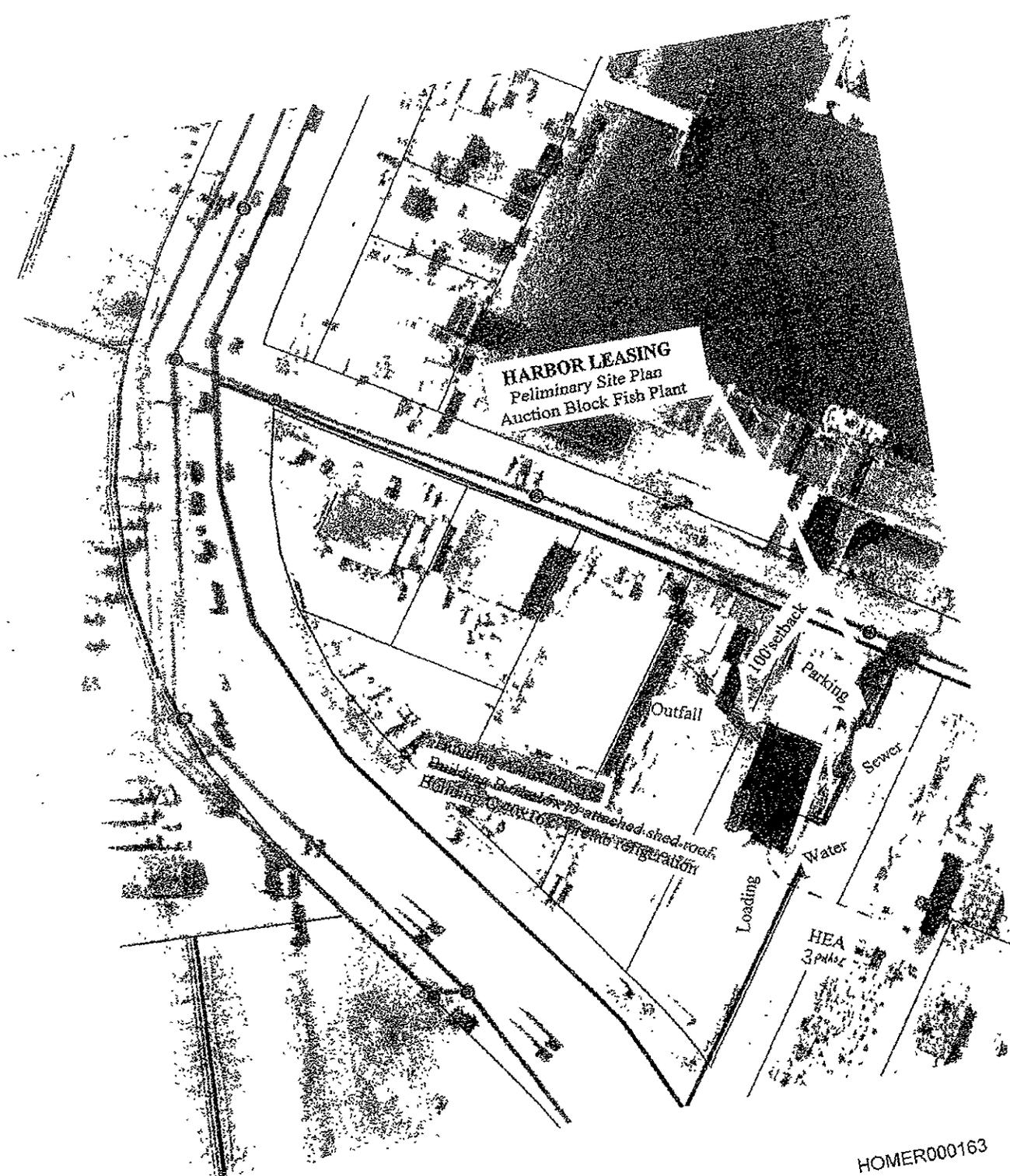
### **Site Plan**

Next Page

Approximate scale

1" = 100'

HOMER000162



**HARBOR LEASING**  
Preliminary Site Plan  
Auction Block Fish Plant

Outfall

Parking

Sewer

Water

Loading

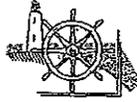
HEA  
3 phases

Building with attached shed roof  
Building with attached shed roof  
Building with attached shed roof

100 setback

HOMER000163





## HARBOR LEASING LLC

Homer AK 99603

Ph. 907-399-8090

### G.

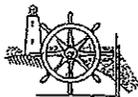
#### **Economic Impact of proposed uses**

The proposed occupant of this project is a healthy ongoing businesses located on the Spit for the past ten years.

The Auction Block Co. provides fish dock logistics and Internet fish marketing services to the commercial fishing fleet. Since 1998, the company has been the states largest registered buyer of Halibut, providing primary fish buying services for numerous customers. Since 1999, The Auction Block Co. has paid to the City of Homer \$854,000.00 in direct fees related to its operations. In FY 2004, The Auction Block paid the City of Homer \$187,474.10. In FY 2004, it paid \$854,000 to the State of Alaska in taxes, of which 25% of future collection will revert directly to the city treasury. In 2004 The Auction Block handled \$28,000,000.00 of ex-vessel value seafood product, with approximately 65% going through the Port of Homer. The Auction Block Co. averages 11 full time employees, up to 60 seasonal workers and an annual payroll in the high six figures.

Based on current ex-vessel value trends, revenues to the city as a result of Auction Block operations are projected to exceed \$300,000 annually based on rent, fees and taxes.

HOMER000165



## HARBOR LEASING LLC

Homer AK 99603

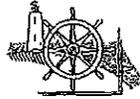
Ph. 907-399-8090

### H.

#### COMPANY INFORMATION

- A. Company Information : **Harbor Leasing**
- B. Company Information : **The Auction Block Co.**
- C. Certificate of Good Standing: **Harbor Leasing**
- D. Certificate of Good Standing : **The Auction Block Co.**
- E. Insurance Reference : **Harbor Leasing**
- F. Insurance Certificate: **The Auction Block Co.**
- G. Business Licenses: **The Auction Block Co.**
- H. Banking Reference: **The Auction Block Co. & Harbor Leasing**
- I. Balance Sheet : **The Auction Block Co.** (Confidential, lease committee only)

HOMER000166



## HARBOR LEASING LLC

PO Box 2228  
Homer AK 99603  
Ph. 907-399-8090  
FAX 907-235-4833

### Company Information

DBA/ Business Name: *Harbor Leasing LLC*  
Federal EIN # 92-0175217  
Established 2001 Alaskan Limited Liability Corporation

Address Harbor Leasing LLC  
PO Box 2228  
Homer AK 99603

Members Bronwyn E. Kennedy 51%  
Kevin Hogan 49%

Management Kevin Hogan  
Managing Member

References *Jennifer McLay*  
Wells Fargo  
Homer AK  
235-2444

Steve Zimmerman  
Desperate Marine  
Homer AK  
399-3003

Mike Disler  
On Demand  
399-1838

HOMER000167

# THE AUCTION BLOCK co.

## Alaska's Seafood Auction Site

P.O. Box 2228

Phone 907-235-7267

Homer Alaska 99603

Fax 907-235-4833

### > Company Information

DBA/Business Name: The Auction Block Co.

Federal EIN#: 92-0166383 Established in 1997

"C" Type Corporation

Dunn & Bradstreet # 099648466

Corporate Officers: Kevin H. Hogan, President

Jessica M. Yeoman, Corporate Secretary

Website: [www.auctionblock-ak.com](http://www.auctionblock-ak.com) Office Phone: 907-235-7267 Fax 907-235-4833

### > Addresses/ Locations

Permanent Mailing Address: P.O. Box 2228 Homer, AK. 99603

Homer Facility: 770 Fish Dock Rd #7 Homer AK Phone: 907-235-7267

Seward Facility: 1603 Leirer Rd. Seward, AK. 99664 Phone: 907-224-2286

Kasilof Dock Site: Kalifornsky Beach Rd.

### > Personnel

Corporate: Kevin Hogan ; [kevin.auctionblock@xyz.net](mailto:kevin.auctionblock@xyz.net) Cellular: 907-399-8090

Sales: [jessica.auctionblock@xyz.net](mailto:jessica.auctionblock@xyz.net) Cellular: 907-299-0790

AVR: Operations; Jeff Choinski [jeff.auctionblock@xyz.net](mailto:jeff.auctionblock@xyz.net) Cellular: 907-299-0226

AVP, Payroll: Shannon Schrader – [sschrader@acsalaska.net](mailto:sschrader@acsalaska.net)

### > Licensing Information

Fisheries Business License #: 3785

Federal Processor Permit #: 60523

### > Financial Information

Banking: Wells Fargo N.A. Homer AK Branch Routing #.125200057

Jennifer McLay, Business Banker 907-235-8151

### > Trade References

City of Homer

235-3160

Contact: Bonnie

Salamatof Seafoods

907-283-7000

Contact: Sheryl

Frontier Packaging

206-575-7772

Contact: Dave Brockmeyer

Seafreeze Ltd.

401-295-2585

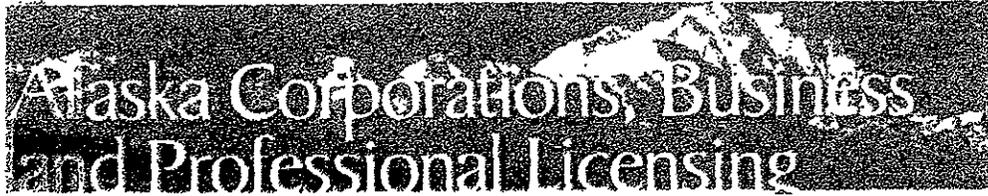
Contact: James

TOTEM Ocean Trailer

800-234-8683

Contact: Mike Arnold

HOMER000168



Date: 3/5/2007

Filed Documents  
(Click above to view filed documents that are available.)

Entity Name History

Name	Name Type
HARBOR LEASING, LLC	Legal

Limited Liability Company Information

AK Entity #: 72185D  
 Status: Active - Good Standing  
 Entity Effective Date: 01/29/2001  
 Primary NAICS Code:  
 Home State: AK  
 Principal Office Address: 4735 Tamara St  
 Homer AK 99603  
 Expiration Date: Perpetual  
 Last Biennial Report Filed Date: 11/24/2006  
 Last Biennial Report Filed: 2007  
 Biennial Report Month:

Registered Agent

Agent Name: KEVIN H HOGAN  
 Office Address: P O BOX 2228  
 HOMER AK 99603  
 Mailing Address:  
 Principal Office Address: 4735 Tamara St  
 Homer AK 99603

Organizers

Name: Bronwyn E. Kennedy  
 Address: 4735 Tamara St  
 Homer AK 99603  
 Title: Member  
 Owner Pct: 51

Name: Kevin Hogan  
 Address: 4735 Tamara St  
 Homer AK 99603  
 Title: Member

<https://myalaska.state.ak.us/business/soskb/corp.asp?272547>

3/5/2007

HOMER000169

# Alaska Corporations, Business and Professional Licensing

Date: 3/13/2007

### Filed Documents

(Click above to view filed documents that are available.)

### Print Blank Biennial Report

(To view the report, you must have Acrobat Reader installed.)

#### Entity Name History

Name	Name Type
THE AUCTION BLOCK COMPANY	Legal

#### Business Corporation Information

AK Entity #:	65237D
Status:	Active - Good Standing
Entity Effective Date:	11/19/1998
Primary NAICS Code:	
Home State:	AK
Principal Office Address:	PO BOX 2228 HOMER AK 99603
Expiration Date:	Perpetual
Last Biennial Report Filed Date:	11/1/2005
Last Biennial Report Filed:	2005
Biennial Report Month:	

#### Registered Agent

Agent Name:	KEVIN HOGAN
Office Address:	770 FISH DOCK RD #7 HOMER AK 99603
Mailing Address:	PO BOX 2228 HOMER AK 99603
Principal Office Address:	PO BOX 2228 HOMER AK 99603

#### Officers, Directors, 5% or more Shareholders, Members or Managers

Name:	Kevin Hogan
Address:	PO Box 2228 Homer AK 99603
Title:	President
Owner Pct:	79

<https://myalaska.state.ak.us/business/soskb/corp.asp?265618>

3/13/2007

HOMER000170

<b>Name:</b>	Kevin Hogan
<b>Address:</b>	PO Box 2228 Homer AK 99603
<b>Title:</b>	Director
<b>Owner Pct:</b>	79
<b>Name:</b>	Jessica M Stack
<b>Address:</b>	51053 East End Rd Homer AK 99603
<b>Title:</b>	Secretary
<b>Owner Pct:</b>	16
<b>Name:</b>	Jessica M Stack
<b>Address:</b>	51053 East End Rd Homer AK 99603
<b>Title:</b>	Treasurer
<b>Owner Pct:</b>	16
<b>Name:</b>	Jessica M Stack
<b>Address:</b>	51053 East End Rd Homer AK 99603
<b>Title:</b>	Vice President
<b>Owner Pct:</b>	16
<b>Name:</b>	Jessica M Stack
<b>Address:</b>	51053 East End Rd Homer AK 99603
<b>Title:</b>	Director
<b>Owner Pct:</b>	16

---

Officers & Directors

System: SOSKB - Corporations Subunit



MAC 13226 010  
4014 Lake Street, Suite 101  
Homer, AK 99603  
907.235.8105 Voice  
907.235.7074 Fax  
800.478.7708 In-State Toll-Free

March 5, 2007

Wells Fargo  
Insurance Services  
of Alaska, Inc.

City of Homer  
491 E Pioneer Ave.  
Homer AK 99603

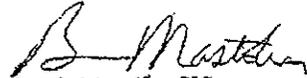
Re: Harbor Leasing, LLC

To Whom It May Concern:

Please be advised that Kevin Hogan has contacted our agency regarding insurance for Harbor Leasing, LLC. Although coverages are not in place at this time, we are not aware of any reason that would prevent us from securing the necessary policy(s) when needed.

Kevin Hogan and the Auction Block Company have been clients in good standing with our agency for many years and we look forward to assisting with Harbor Leasing's insurance as well.

Sincerely,

  
Bonnie Masteller, CIC  
Account Executive

HOMER000172

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

*Tax Division*

SARAH PALIN, GOVERNOR

State Office Building  
PO Box 110420  
Juneau, AK 99811-0420  
(907)465-2320 (ph)  
(907)465-3566 (fax)

[fish\\_excise@revenue.state.ak.us](mailto:fish_excise@revenue.state.ak.us)

February 26, 2007

Auction Block, Inc.  
PO Box 2228  
Homer, AK 99603

### CERTIFICATION FOR PRIMARY FISH BUYER/PROCESSOR

#### ***Auction Block, Inc.-Homer – Lic# 3785***

*This is to certify that the above named company has complied with the requirements of AS 44.25.040 and is eligible to apply for an Alaskan Fisheries Business License as a Primary Fish Buyer/Processor.*

*This certification is effective from*

***February 26, 2007 - December 31, 2009***

Fish Unit  
Phone (907) 465-2320  
Fax (907) 465-3566

HOMER000173

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 3/6/2007
PRODUCER Wells Fargo Insurance Services of Alaska, Inc. 48014 Lake Street Suite 101 Homer, AK 99603	(907) 235-8105	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED The Auction Block Co. P.O. Box 2228 Homer, AK 99603-2228		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: Indemnity Ins Co of N. America		43675
INSURER B: Cornhusker Casualty Company		20044
INSURER C: Commerce & Industry		19410
INSURER D: Evanston		
INSURER E:		

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

TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
AA	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	NO1192371	6/7/2006	6/7/2007	EACH OCCURRENCE \$ 1,000,000
	GENL. AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> CO-INSUR <input type="checkbox"/> LOC <input type="checkbox"/>				DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 50,000 MED EXP (ANY ONE PERSON) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 Stevedores Liability \$ 1,000,000
BB	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	AKA000489	3/12/2006	3/12/2007	COMBINED SINGLE LIMIT (EA ACCIDENT) \$ 1,000,000
	DAMAGE LIABILITY <input type="checkbox"/> ANY AUTO				BODILY INJURY (Per Person) \$ BODILY INJURY (Per Accident) \$ PROPERTY DAMAGE (Per Accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY - EA ACC \$ AGG \$
CC	PROFESSIONAL LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DUCTIBLE \$ RETENTION \$	WC2955827	3/12/2006	3/12/2007	EACH OCCURRENCE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PEOPLE (BOTH PARTNER/EXECUTIVE OR EMPLOYEE) EXCLUDED? If yes, describe in Special Provisions below OTHER				AGGREGATE \$ \$ \$ \$
DD	Pollution	06CPLC00394	6/15/2006	6/16/2007	Pollution Liability \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

<b>CERTIFICATE HOLDER</b> City of Homer 481 E. Pioneer Avenue Homer, AK 99603	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. <i>[Signature]</i> AUTHORIZED REPRESENTATIVE
--	---

ACORD 25 (2004/08)

© ACORD CORPORATION 1988

HOMER000174

ISSUING NMFS OFFICE:  
Restricted Access Management  
P.O. Box 21668  
Juneau, AK 99802-1668



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NOAA Fisheries Service

## FEDERAL PROCESSOR PERMIT

**Permit Holder**

THE AUCTION BLOCK CO.  
P.O. BOX 2228  
HOMER, AK 99603

**Vessel or Processor Name**

THE AUCTION BLOCK CO.

**Official No.**      **ADF&G No.**      **Tons**      **LOA**

**Homeport**

**Processor Permit Number**  
6053

**Operation Categories:**    Shoreside Processor

**Gear Types:**

**Inshore/Offshore:**

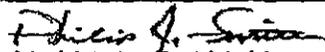
**VMS Fisheries:**

**Areas:**

**Date Effective**  
01-JAN-2006

**Date Expires**  
31-DEC-2008

**Facility:**    THE AUCTION BLOCK  
770 FISH DOCK ROAD  
  
HOMER, AK 99603

  
Administrator, Restricted Access Management

Owner's Signature

*Note: A variety of state and federal regulations govern commercial fishing and processing privileges. It is the responsibility of any person conducting fishing activities under the authority of this permit to understand and comply with those requirements.*

Logbook Code(s)

SP

Plant ID: 6053

HOMER000175

**CITY OF SEWARD BUSINESS LICENSE**  
P.O. Box 187, Seward, AK, 99664

No. **2300**

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE AT THE LOCATION.  
THIS LICENSE IS NOT TRANSFERABLE OR ASSIGNABLE.

BUSINESS TYPE: **FISHING AND FISH PROCESSING** ISSUED: **01-25-2007**

LICENSEE: **AUCTION BLOCK CO., THE** EXPIRES: **12/31/2007**  
**PO BOX 2228**  
**HOMER, AK, 99603**

CITY CLERK  
ISSUED BY: *[Signature]*

**DEPARTMENT OF REVENUE**  
Tax Division  
PO Box 110420  
Juneau AK 99811-0420  
Ph: 907-465-2320  
Fax: 907-465-2375

The Auction Block Co.  
PO Box 2228  
Homer AK 99603

**ALASKA DEPARTMENT OF REVENUE**  
**Fisheries Business License**  
Valid Feb. 26, 2007 through Dec. 31, 2007

License No  
**3785**

Licenses  
The Auction Block Co.

---

Licensed Location  
The Auction Block Co  
Homer AK 99603

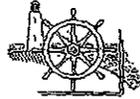
Licensed Activity: Buyer/Exporter

Licensed to perform activity as a fisheries business that exports unprocessed fishery resources described under AS 43.75

This certifies that the licensee agrees to file a fisheries business tax return stating the value of fisheries resources processed or exported from the state for the license period and to pay fisheries business taxes in full on or before March 31 following the end of the license period. Licensee agrees to comply with all statutes and regulations governing fisheries business taxes. This license cannot be transferred or assigned.

*[Signature]*  
Licensing Specialist Issue Date  
02/26/2007

HOMER000176



## HARBOR LEASING LLC

Homer AK 99603

Ph. 907-399-8090

### Appendix Project Financing

The developer of this project sees no obstacle to obtaining funding for the project. Materials for the project have already been purchased including the building package and refrigeration package. Considering that during the previous RFP process the developer had financing commitments expire during lease negotiations, as well as considerable expenses on contractors, engineering, and administrative development, it is our position that long term financing will be obtained after we receive a signal that the city is serious about attracting development for this property. In the meantime, attached find an Auction Block corporate resolution regarding funds for a construction loan which is still valid. Commercial backing of the construction phase is also available.

HOMER000177



## The Auction Block Co.

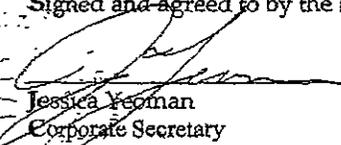
P.O. Box 2228 @770 Fish Dock Road #7 Homer Alaska 99603

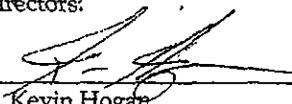
E-mail: fishbid@xyz.net Web Site: www.auctionblock-ak.com

February 1, 2005

The Auction Block Co. hereby resolves to authorize loan of Auction Block Co cash reserves up to the amount of \$350,000.00 to Harbor Leasing LLC for a construction loan for a facility on Fish Dock Rd on Homer Spit . Initial term is two years at 6% interest and if it becomes a long term loan it will be a 15 year amortization loan at market rate.

Signed and agreed to by the Board of Directors:

  
Jessica Yeoman  
Corporate Secretary

 2/1/05  
Kevin Hogan  
President

Phone 907-235-7267 or 235-6238 Fax 907-235-4833  
12:36 PM 2/8/2005

HOMER000178

Homer Store  
88 Sterling Highway  
Homer, AK 99603



Kevin Hogan  
Auction Block / Harbor Leasing  
PO Box 2228  
Homer, AK 99603

March 3, 2007

RE: Bank Reference

Dear Mr. Hogan:

I am writing in response to your request for a bank reference letter. As you know, Wells Fargo has enjoyed a strong relationship with you and your companies, including the Auction Block and Harbor Leasing, for well-over ten years.

Your deposit accounts, both business and personal, have always been handled in a professional manner, and maintain average balances in the mid-six figure range. You have also maintained a borrowing relationship for many years, and have paid all obligations as agreed. You currently have lines of credit in the low-six figure range, with a high percentage of available credit.

Wells Fargo appreciates your business, and considers you a High Value client. If you need additional information to support our strong recommendation of your character and professional financial management of your companies, please don't hesitate to contact me. You are welcome to list Jennifer McLay or me as a bank reference contact. Thank you Kevin, and we look forward to working with you in yet another successful year.

Sincerely,

A handwritten signature in cursive script that reads "Julie Woodworth".

Julie Woodworth  
Vice President  
Business Banking Manager  
907-235-6125 ext 250

HOMER000179

PAGES 30-33 OF EXHIBIT 8  
REMOVED TO PROTECT  
COMPLAINANTS'  
CONFIDENTIALITY

Walt Wrede

---

From: kevin.auctionblock@xyz.net  
Sent: Monday, November 19, 2007 10:46 PM  
To: Walt Wrede  
Subject: Re: Your Latest Proposal

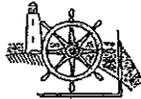
Walt

1. Re fuel I can't see any case where on site storage would exceed 500 gal..at any rate any storage tanks would be contained. The issue is not the amount of coverage but following the guidelines that are in place. Once a coverage is required, it should be enforced. I know of 2 leases that require the environmental endorsement, yet there is nothing in their file to indicate the coverage is in place. IT IS OUR INTENTION TO DO EVERYTHING WE SAY. NOT LIKE EVERYONE ELSE JUST SIGN WHATEVER BECAUSE NO ONE BOTHERS TO READ THE LEASES LET ALONE ENFORCE THEM 2. I have researched the code, the ordinances, resolutions and memos and have asked the clerks office to do the same. There is no base lease or boilerplate that has been adopted by the council..so lets quit pretending there is..the code states all lease terms except those required by code are negotiatable...and in case you haven't figure out my position it is simply this...the longer this is delayed, the more I'm going to ask for. In the private sector time is money, & the meter is running. 3. Re Incentives Parity of lease terms may sound good to armchair philosophers but the reality is that each lease is unique and other than the salty dog and icicle there are no leases out there that are in compliance. If it is your intent to extend any incentives that I might negotiate, to everyone else, there are numerous provisions, incentives, lazefair sweetheart deals, oversights, and unenforced provisions and non compliance that I should expect also? 4. It is apparant that the code calls for negetiations to be conducted by the lease committee. This is not being observed. 5. Our latest proposal was tendered 10/15.. if we don't see some positive movement very soon we will seek a more proactive course. Best Regards kh

Kevin:

>  
> I just wanted to take a minute to let you know that we are still  
> looking at your recent proposal. We have been very busy. I am  
> currently in Anchorage and on my way to Fairbanks for the rest of the  
> week. I hope to have a formal response to you by sometime next week.  
>  
> I do have some general observations that I can share with you right  
> now.  
>  
> First, on the insurance. I do not recall that the City ever took a  
> real strong position on the environmental insurance. I think we even  
> talked about reducing the coverage from 2 million to 1 million. But, I  
> don't remember. It seems like you recall it differently. At any rate,  
> I am willing to look at it. You would not argue that fish processors  
> are immune from hazardous spills or toxic releases would you? I think  
> the key would be how much fuelling of equipment you would do at the  
> site, if any. Would you store any fuel or waste oil at the site? Any  
> hazardous materials? Please let us know your intent in writing. If we  
> do not require environmental insurance, we would want to write into  
> the lease exactly what activities are allowed, and what activities  
> would trigger an insurance requirement. Let me know and I'll consider  
> it and run it past the lease committee.  
>  
> Second, I was having a hard time following some of your changes. I  
> think the problem is that I am not sure what you are referring to as  
> the working draft. Further, I am not sure what changes you think we  
> agreed to. When I get back I'll look at the color coding again. To  
> make it simple for everyone, I suggest that we just go back to the  
> base lease I gave you from the start and use that as the working  
> document There have been too many stops and starts and too many things  
> inserted in the margin.  
>  
> On the crane fees, we ran some numbers and it turns out that this

> would be a significant hit on the Harbor Enterprise Fund. It would  
> have to be made up somewhere else. I do appreciate that this incentive  
> is based upon performance, unlike the Icicle Lease. This is another  
> thing I would want to run past the Lease Committee and perhaps, the  
> Port and Harbor Commission since it is their money. Incentives are  
> something many of us have been talking about. At this point, I think  
> my recommendation would be that we leave this out of the lease for  
> now, but bring it up again after you are up and running and have a  
> track record of processing fish. I would recommend that if we go with  
> incentives, that we apply them across the board to all who are  
> processing fish here.  
>  
> Walt  
>



## HARBOR LEASING LLC

PO Box 2228  
Homer AK 99603  
Ph. 907-399-8090  
FAX 907-235-4833

Mr. Walt Wrede  
Homer City Manager  
Via E-mail

Walt

We have reviewed the proposed lease and have the following comments and proposals. Action items and revisions from the working draft are highlighted in violet. References to amendments and deletions are based on the working draft. References to applicable portions of City Code or Policy are highlighted in Red.

INSURANCE

We have researched the insurance requirements and have found that the coverage requested in your proposed lease are available but are expensive.

We have the environmental coverage for our Kasilof fuel operations....getting it for Homer may or may not be an additional premium... best guess is \$5,000 additional premium. The underwriters seem perplexed that the city would require the coverage when the proposed uses indicate no activities that warrant the coverage.

Insurance: The following excerpt from the PMPP illustrates the criteria for requiring environmental coverage.

### CHAPTER 15. INSURANCE

#### 15.1 POLICY

It is the policy of the City of Homer to require lessees to carry general public liability insurance, environmental insurance if appropriate, workers compensation insurance, and any other insurance coverage determined to be necessary by the City in order to protect City assets and the public interest

#### 15.2 PROCEDURES

- A All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than \$1 million coverage per occurrence for bodily injury (including death) and property damage. The City of Homer shall be named as an additional insured.
- B Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than \$2 million in environmental insurance (Environmental Impact Insurance and/or Environmental Clean-up Policy), or the equivalent subject to review and approval by the City Manager with the City of Homer as an additional insured. Environmental insurance for the purposes of City leasing procedures shall meet the standards of the

HOMER000254

Environmental Insurance Requirement document attached as Appendix A to these policies. The following procedures apply in determining whether a significant risk of environmental contamination is present:

1. The City will determine on a case by case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.
  2. If the City determines that a significant risk is present, the environmental insurance requirement shall apply.
  3. Recommendations by the Manager and Lease Committee on environmental insurance are subject to final approval by the Homer City Council through the lease approval process.
  4. The following are examples of uses that generally will not involve a significant risk of environmental contamination. This list is not exhaustive or all inclusive and is provided for illustrative purposes only: restaurants, retail/charter businesses, commercial fishing gear storage (provided the storage does not include fuels, lubricants, hydraulic fluids, and solvents, or machinery containing any of them), campgrounds, entertainment establishments, drinking establishments, and the ordinary use of commonly used household cleaning agents and office products.
  5. The following are examples of uses that generally will involve a significant risk of environmental contamination. This list is not exhaustive and is provided for illustrative purposes only: a) Storage or processing of logs, chips & other wood products, b) sale, manufacture, distribution, fueling of equipment, or storage of petroleum products, c) repair shops involving the use of solvents, d) activities in the tidelands or in close proximity to environmentally sensitive areas, e) the use of drums to collect, transport, or store waste oil, solvents, or other hazardous materials, f) ~~the use of hazardous materials in manufacturing or processing, g) storage of hazardous waste in quantities sufficient to trigger reporting obligations under the Resource Conservation and Recovery Act, h) outside use or storage of equipment with a risk of leaking fuels, lubricants, solvents or hydraulic fluid~~
- C. Certificates of insurance showing the required insurance is in effect and identifying the City of Homer as an additional insured shall be provided to the City of Homer initially at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.
- D. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

The City's position on this issue seems overreaching and excessive given Tenants activities.

Additionally, the existing leases on the spit that require the environmental coverage do not appear to have such in effect. I would like to point out that for a number of years now, our fish dock operations are the only one which carries a stevedoring endorsement, which provides coverage for actual operations conducted on the dock. We have done this at considerable expense and competitive disadvantage, (approx \$30,000 per year).

Our agent said the term in section (a) "blanket contractual liability" is obsolete.

Bottom Line regarding Insurance clauses:

Sec 11 Sec. (a) delete "Blanket contractual liability"

Delete paragraph (b)

We do not object allowing the city reserving the right to negotiate future additional insurance requirements with proper justification.

Regarding the other issues

Sec 1.01

We suggest that the property description be changed to the original lot. If not, we would like the Fire Easement excluded from the property description, not just deducted from the rent calculation.

We would like to know if setback requirements apply to fencing.

1.02 Delete "and to encroachments ascertained by physical inspection of the Property"  
If encroachments exist they should be dealt with prior to finalizing lease.

1.03 agreed

1.04 agreed

2.01 agreed

HOMER000255

- 2.02 agreed
- 2.03 agreed (restore deletion re: improvements)
- 2.04 agreed

Sec. 3.01  
(a) Agreed

(b) **Periodic Appraised Adjustment of Rent.** The Base Rent will be adjusted *within 90 days* of completion of improvements, based on lending institution appraisal, to be based on "Fair Market Rental Value" of the property without improvements as determined by a certified appraiser according to Standard 1 (2006) of the Uniform Standards of Professional Appraisal Practice ("USPAP"). ~~Date of delivery of the appraisal report to the Landlord shall be deemed "Appraisal Date"~~ Appraised adjustment of rent shall occur every five years thereafter (appraisal date is a "Five Year Rent Adjustment Date") to determine current fair market rental value of the Property, determined by appraisal as set forth in paragraph 3.01(d) not more than six months before the Five Year Rent Adjustment Date. ~~{Add} The adjusted rent will thereafter be referred to as the Base Rent.~~

This revision reflects our proposal to the RFP regarding determination of rent. (Harbor Leasing RFP Response, page 9, Sec. D, "RATE")

(c) **Annual Rent Adjustment.** In addition to the five year rent adjustments provided in paragraph 3.01(b), the Base Rent will also be adjusted annually (the "Annual Rent Adjustment") on the first day of January 2012, and on the first day of January every year thereafter, excluding each of the years of the five year rent adjustment, (each such day being an "Annual Rent Adjustment Date") throughout the Term and all Renewal Terms as provided in The City of Homer Property Management Policy and Procedures Manual ("PMPP") Section 12.2B.

The city has agreed to the date changes. The simplification in defining the index makes sense, but if the city insists on the original wording, we will not object, with the exception that we do not agree to the inclusion of "In no case will the Base Rent be reduced because of a decrease in the Index"

(d) **Appraisal of Property.** For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal shall be paid by tenant... The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant according to Standard 1(2006) of the Uniform Standards of Professional Appraisal Practice ("USPAP"). The appraiser's determination of fair market rent will be conclusive between the Parties. ~~[Add] If the USPAP is updated the most recent standard shall apply.~~

(e) Rental Credits and Additional Rent

HOMER000256

Tenant shall pay an annual Crane fee of \$31,000, in 12 monthly installments for up to 1300 hours of annual crane usage, including wharfage, calculated on actual usage. Crane usage in excess of 1300 hours shall be billed at the rate of \$15 per hour. Parties agree that the terms of this clause are incentives based on the tenant's performance. This clause shall not take effect until tenant has commenced fish processing operations which result in Raw Fish Tax Revenue Sharing for the City and Borough under the Laws State of Alaska that are in effect at the time of this agreement. In any year of this agreement that the Tenant does not operate a primary Fish Processor on the property, the provisions of this clause shall not apply.

This clause is based on the Icicle lease; however these incentives are performance based, unlike those currently in effect with other long term leases. (Harbor Leasing Proposal, page 9.)

Our proposal was endorsed by the Port and Harbor Commission in it's April meeting, "THE PORT AND HARBOR COMMISSION STRONGLY RECOMMENDS THAT THE CITY DO WHAT IT CAN TO PUT TOGETHER THIS PROPOSAL WITH HARBOR LEASING" The commission noted for the record "the city should make concessions if needed to encourage this entrepreneur"

3.02 agreed

3.03 agreed

3.04 agreed

3.05 delete: and free from all expense to landlord. Reinsert deletion re payment

3.06 agreed

3.07 (a) agreed

(b) Add Except as provided under provisions of Sec 3.01 (e)

(c) Delete

3.08 agreed

4. Agreed

5.01 agreed

5.02 agreed

5.03 delete

5.04 agreed

5.05 agreed

HOMER000257

5.06 agreed

5.07 agreed

5.08 agreed

5.09 agreed

5.10 agreed

5.11 agreed as amended

5.12 agreed

---

6.01 agreed as amended

6.02 agreed as amended ...restore deletion re. Valuation replace "not less than" with "approximately" (as in Fish Factory Lease)

6.03 agreed

6.04 agreed

6.05 agreed as amended as per proposal

The Proposal as well as the Council acceptance of it in Memorandum 07-59 specifically indicates the project is a phased project. *The proposed development main uses include primary and secondary seafood processing, warehouse space cold storage, dock operations support, and associated office space. A second phase of the development may include maintenance and fisherman support facilities. (07-59)*

6.06 agreed

8.01 agree as amended

8.02 agreed

8.03 agreed

8.04 agreed as amended *re-insert clause "additional rent for sublease" [change] percentage to 5%*

9 Agreed as amended

10 agreed as amended

10.02 agreed

11.01 delete (a) "blanket contractual liability"

See comments above re: (b)

HOMER000258

11.02 agreed

11.03 agreed

11.4 agreed

11.05 agreed

12.01 agreed as amended

12.02,3 4 agreed

13.01 restore deletions.

---

13.02 As amended

14 Insert wording similar to fish factory lease:

14.01 Option to install Fish Pump

Tenant intends to install and operate a Fish Pump and associated Fish unloading and handling equipment at the City of Homer Fish Dock. The exact location shall be approved by the Port and Harbor Director of the City of Homer.

15.01 As amended

16.01 As amended

16.02 As amended

17 & beyond: agreed

Conclusion

We are interested in resolving this and proceeding in development. From our review of the City Code, it appears that we should be proceeding with negotiations with the Lease Committee. However we are interested in whatever forum brings this issue to the Council and it's conclusion in the most expedient manner.

Sincerely

Kevin Hogan

Harbor Leasing

HOMER000259



**City of Homer**  
City Manager  
491 East Pioneer Avenue  
Homer, Alaska 99603  
907-235-8121, X-2222

Fax: (907) 235-3148 E-mail: [wwrede@ci.homer.ak.us](mailto:wwrede@ci.homer.ak.us) Web Site: [www.ci.homer.ak.us](http://www.ci.homer.ak.us)

February 15, 2008

Mr. Kevin Hogan  
Harbor Leasing LLC  
Box 2228  
Homer, AK 99603

**SUBJECT:** Status of Lease Negotiations / Lot 12 C

Dear Mr. Hogan:

The purpose of this correspondence is to seek clarification regarding where you think we are with respect to negotiations on a lease for Lot 12 C. Last September, we had several meetings in Anchorage which included both the City Attorney and your personal attorney. We proposed those meetings because we wanted to make one last concerted effort to reach an agreement. After two meetings that lasted a total of about seven hours, you declared that you thought we were really close and that it came down to about four remaining issues. We agreed that you would consult with your insurance agent, draft some suggested language for the remaining items, and get back with us.

On October 15 you submitted a new proposal. The proposal was confusing in many respects because of the references it contained but it did seem to narrow the scope of issues. After reviewing the proposal, the City sent you a response in an e-mail dated November 19<sup>th</sup>. The e-mail contained several follow-up questions regarding fueling and fuel storage activities and your vague references to document amendments and agreed upon language. The correspondence contained another explanation about why we did not think it was appropriate to provide you with a large subsidy on crane fees. It was also suggested that we go back to the original base lease as a foundation for future discussions because there were too many multi - color edited versions (all created by you) in play which created far too much confusion. At the time the note was written, the City was optimistic that real progress was actually being made.

Your response to that correspondence was not helpful. Instead of answering our questions and taking positive steps to close this transaction, you apparently thought it would be more productive to go backwards, revisit old points of contention, and:

- Complain about enforcement of existing leases
- Deny the existence and validity of the base ground lease
- Argue again that all terms of the base lease are negotiable
- Argue that the Lease Committee should be able to provide you with incentives and special breaks that were not contained in your proposal
- Assert that the City should provide you, through the lease, with competitive advantages over other fish dock users and harbor businesses.

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- Assert that you should be able to negotiate the terms of your lease directly with the Lease Committee.
- Make vague threats about a "more proactive course" if things did not proceed to your satisfaction.

Since that time, you have continued to operate outside of the formal negotiation process by lobbying in public, through the Port and Harbor Commission, and with City Council members. You have attempted to sponsor two separate initiatives that would ask the voters to award you a lease. Based on these activities, and the response we received to our correspondence of November 19, it seemed apparent that you had chosen to abandon the negotiation process and pursue another path. The City, rather than terminating negotiations, decided to simply wait and see if you provided a substantive response to the November 19<sup>th</sup> e-mail. There has been no direct contact from you regarding lease discussions since November.

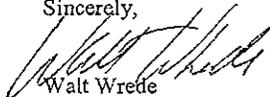
Given this set of circumstances, I was surprised to learn from the Lease Committee that you had submitted a proposal for Lots 9A and 10A with the caveat that the proposal could be dismissed if negotiations for Lot 12 C are successful. It is not clear to us if you think we are still negotiating or if that statement was part of some alternative strategy. Since we still have not received a substantive response to our correspondence of November 19, we would respectfully suggest that might be an appropriate place to start if you wish to move forward on Lot 12 C.

The City of Homer remains willing to enter into a lease agreement with Harbor Leasing LLC under the following circumstances:

1. That you provide answers and a serious response to the November 19 correspondence.
2. That we return to the base ground lease as the foundation for all discussion. All future edits and amended versions of the lease will be produced by the City. Proposed amendments can be provided on a separate piece of paper.
3. Negotiated amendments to the base ground lease will be limited to items the City has already agreed to including the proposed improvements and development schedule, the survey (fire lane), collateral for fish tax, insurance, and ownership of improvements.

Please let me know at your earliest convenience if you wish to proceed under the conditions outlined above.

Sincerely,



Walt Wrede

c.  
Lease Committee

**LEASE NEGOTIATION REPORT**

**LOT 12 C / FISH DOCK ROAD**

**DATE:** February 15, 2008  
**TO:** Mayor Hornaday / Homer City Council  
**FROM:** Walt Wrede  
**SUBJECT:** Lease Negotiations with Harbor Leasing LLC (Kevin Hogan)

Several meetings ago, Council Member Mike Heimbuch asked if I could prepare a summary of what the sticking points were in the on-going lease negotiations with Harbor Leasing LLC. This memo contains a summary of the substantive issues only. It does not address the negotiation process itself.

In my view, there are five primary reasons why the City and Harbor Leasing LLC have been unable to reach an agreement. Those reasons are:

1. Mr. Hogan contends that the entire base ground lease is open to discussion and negotiation, paragraph by paragraph, right down to the formatting. This is inconsistent with the City's efforts to standardize lease documents and basic lease terms.
2. Mr. Hogan wishes to negotiate lease terms that are not consistent with the RFP, the City Code, and the adopted Lease Policies. Neither the City Manager nor the Lease Committee have the authority to do that.
3. Mr. Hogan wants to negotiate lease terms that were not in his original proposal and if they were, would have caused the proposal to be rejected as non-responsive.
4. Mr. Hogan wishes to negotiate lease terms that are not in the financial or long-term interest of the City.
5. Mr. Hogan wants to negotiate terms that would give him competitive advantages over other fish dock tenants and harbor businesses.

Following is an abbreviated sample of negotiation points Mr. Hogan has insisted upon during various phases of the discussions. He has:

- Requested a large subsidy on crane and ice rates
- Requested an adjustment of appraisal dates, appraisal methodology, and the appraiser and to have the rent based upon an appraisal performed by his own lending institution after construction is complete.
- Requested that annual CPI rent adjustments not begin until 2012.

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- Requested a rental adjustment / credit of 10% of new fish tax revenues associated with his business activities
- Proposed to eliminate provisions for additional rent paid to City if the land itself is subleased.
- Requested to be immune from Local Improvement District Assessments and proposed that a yes vote by the tenants be required before LIDs can be approved at the Fish Dock.
- Proposed elimination of City's rights and options to remedy tenant defaults on the terms of lease
- Proposed elimination of City's rights to terminate the lease if he stops using the land for approved uses.
- Insisted that all uses permitted by the zoning code as it may be amended during the entire 30 year term of the lease be permitted uses on the leased land (Fish Dock is a restricted use area).
- Requested exemption from requirements to provide environmental insurance.
- Insisted that he should not have to provide and pay for his own garbage collection. Wants to use City dumpsters.
- Insisted that the appraised value of the proposed improvements after construction should not be linked in any way to the estimate he provided in his proposal.
- Insisted that review of his construction plans by an engineer or architect to determine constructability and estimated value be deleted from lease requirements.
- Proposed to eliminate the City's ability to void business transactions and find the lease to be in default if there is an assignment, encumbrance, or sublease without the City's consent.
- Proposed to eliminate indemnities and hold harmless clauses that would protect the City from damages caused by activities on the leased land.
- Proposed to eliminate provisions that state the City must approve all changes of ownership in the company (if the lease is to be maintained) through the voluntary assignment process.
- Proposed to eliminate some insurance requirements that protect the City including waivers of subrogation rights.

The City has worked very hard to try and accommodate Mr. Hogan. For example, it has patiently attempted to work through negotiations that have lasted almost a year. We have spent ample amounts of time and resources on this. We made a number of significant concessions (like allowing him to use his improvements as collateral for defaults on fish tax payments). We have proposed amendments to the lease policies (that Council adopted) based in large part on Mr. Hogan's complaints about barriers to investors. Finally, we allowed him to store his equipment and construction materials on several City lots rent free for the entire spring and summer while negotiations took place. We did all of this in good faith and in the interest of trying to make a lease happen.

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In the end, it is my job to protect the interests of the City and its residents; the owners of the property at the fish dock. These lots are limited in number and size and are very valuable assets for the shareholders of the municipal corporation. *Their value will only increase over time. While there is a natural tendency to want to put these parcels to productive use, there is no reason to panic simply because they are currently vacant. The fact that these lots are vacant may say more about the current state of affairs in the fishing industry than it does the City's lease policies. Temporary fish buying stations and not large permanent improvements may be all the market can support at this time.*

Try to imagine what might happen if the City removed the restricted use status on land adjacent to the Fish Dock. Does anyone think there would be no demand for this land? What do you think it might be appraised at if the City allowed all uses permitted by the zoning code? The City should resist calls to lease these lots at any cost simply because they are vacant. That could be very short sighted from a long-term policy perspective and the City might suffer the consequences for many years to come.

Some of the incentives to encourage fish processors that Mr. Hogan requests might be good ideas; especially if the Council wants to promote, enhance, and maintain Homer as a thriving commercial fishing port. Council has in the past engaged in brief discussions about providing incentives to stimulate this sector of the economy but nothing substantive has occurred. In my view, these types of economic incentives and stimulus packages are policy decisions that should be made by the governing body and offered across the board to all those who actually process fish in Homer. I do not think it is appropriate to unilaterally negotiate incentives into a single lease in the absence of adopted policy.

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**Walt Wrede**

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To: kevin.auctionblock@xyz.net  
Subject: RE: info

Kevin: I don't seem to have an attachment. Could you try sending again?

Walt

-----Original Message-----

From: kevin.auctionblock@xyz.net [mailto:kevin.auctionblock@xyz.net]  
Sent: Wednesday, March 05, 2008 10:20 PM  
To: WWrede@ci.homer.ak.us  
Subject: info

walt

see attachment

also on the fish pump what we are looking at is the same as the provisions in the fish factory and icicle leases. fish factory has never followed through, icicle has a fish pump mounted on a float under the dock more to follow kh

CC

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Recording Dist: 309 - Homer  
2/19/2009 3:19 PM Pages: 1 of 50



**GROUND LEASE AND SECURITY AGREEMENT**

**BETWEEN**

**CITY OF HOMER, ALASKA**

**AND**

**HARBOR LEASING LLC**

March 26, 2008

Return to:

City Clerk's Office  
City of Homer  
491 E. Pioneer Ave.  
Homer, AK 99603



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**GROUND LEASE AND SECURITY AGREEMENT**

THIS GROUND LEASE AND SECURITY AGREEMENT ("Lease") is made as of this 26 day of MARCH, 2008, between the CITY OF HOMER, 491 East Pioneer Avenue, Homer, Alaska 99603, a municipal corporation organized under the laws of the State of Alaska, hereinafter referred to as "Landlord" and HARBOR LEASING LLC, a LIMITED LIABILITY CORPORATION organized under the laws of the state of Alaska, whose address is P.O. Box 2228, Homer, AK. 99603 ("Tenant").

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

Landlord and Tenant agree as follows:

**1. PROPERTY**

**1.01. Property**

Subject to the terms, covenants, conditions, rights and obligations set forth in this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property:

Lot 12 (c) Port Industrial Subdivision No. 4, Plat 99-43, Homer  
Recording District, State of Alaska, as depicted on Exhibit H.

Also known as Kenai Peninsula Borough Tax Parcel No. 181-034-52.

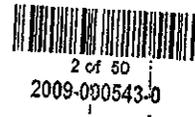
The described parcel contains approximately 34,413 square feet, more or less, and is referred to herein as the "Property."

**1.02. Quiet Enjoyment, Restrictions, Easements, Etc.**

Landlord covenants and agrees that Tenant, upon paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Lease on Tenant's part to be kept or performed, will lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation, subject, however, to the rights and reservations expressed in the U.S. or State patent to the Property, the existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property.

**1.03. Property Accepted "As Is"**

Tenant acknowledges that it has inspected the Property and accepts the same "as is" and without reliance on any representations or warranties of Landlord, its agents, servants, or employees as to the physical condition of the Property, including, but not limited to, subsur-



HOMER000764

face and soil conditions, the presence of any hazardous waste as defined in paragraph 16.03, or as to the habitability or fitness of the Property for any particular purpose.

**1.04. No Subsurface Rights**

This Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Property as stated in this Lease. Landlord makes no warranty or representation as to whether the Property is open or closed to mineral claims or leases under state or federal law. Notwithstanding this paragraph, Landlord permits Tenant to drill, install, and operate a saltwater well.

**2. TERM**

**2.01. Lease Term**

The term of this Lease is TWENTY years, commencing on the first day of April, 2008 and ending on the last day of March, 2028 (the "Term").

**2.02. Hold-Over**

If Tenant holds over after the expiration of the term of this Lease and Landlord accepts payment of rent, Tenant's occupancy will be deemed a tenancy from month to month, terminable upon 30 days written notice given by either party at any time, subject to all the terms, covenants and conditions of this Lease, and will not operate as a renewal or extension of this Lease. Landlord is not required to accept Tenant's tender of rent or to agree to any extended tenancy.

**2.03. Surrender of Possession**

Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant must promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in paragraph 6.01. Tenant agrees to execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all right, title and interest of Tenant in and to the Property and all such buildings and improvements thereon under paragraph 6.01. Tenant and Landlord agree that Tenant shall retain ownership of buildings and improvements, provided that Tenant provides Landlord with notice of intent to retain ownership one year prior to termination along with a building and improvement removal, a performance bond, and property restoration plan. The plan must be approved by the Landlord however, approval will not be unreasonably withheld.

**2.04. Renewal Options**

Tenant will have the right to renew this Lease for TWO additional, consecutive FIVE year periods ("Renewal Terms"), provided:

- (a) that Tenant must exercise its option to renew not more than one year and not less than 120 days prior to the last day of the Term or current Renewal Term, as the case may be;



3 of 60  
2009-000543-0

HOMER000765

(b) that Tenant is not at that time materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease;

(c) that Tenant must exercise its option to renew only by sending written notice thereof in accordance with the provisions of paragraph 17.17 of this Lease;

(d) that Tenant may exercise only one renewal option per Term or Renewal Term, as the case may be, i.e., Tenant will not be entitled to exercise more than one renewal option during each period of time described in subparagraph (a); and

(e) that at the time of exercise of the option the Tenant is still using the Property as required or permitted under this Lease.

(f) If Tenant is interested in entering into a new lease agreement, Tenant must indicate so in writing to the City Manager at least 12 months prior to the expiration of the lease and submit a formal lease application/ proposal for evaluation by the Lease Committee. The City will review the application but is under no obligation to enter into a new lease. If the Council chooses to proceed with a competitive RFP process, the Tenant shall be given the opportunity to match the highest offer presented provided that that the proposed uses and benefits to the City are similar and that the Tenant has been in full compliance with the terms and conditions of the expired lease. If the Council chooses to approve a new lease without a competitive process, it must approve such new lease by resolution within six months that includes a finding that it is in the public interest to do so, after consideration of relevant facts including, but not limited to, the following:

1. The Tenant's past capital investment and binding commitment to future capital investment
2. The Tenant's financial condition and prior lease history
3. The number of persons employed and the prospects for future employment
4. Tax revenues and other financial benefits to the City of Homer anticipated in the future if the lease is renewed.
5. Consistency of the past use and intended future use with all applicable land use codes and regulations, the Comprehensive Plan, and Economic Development Plan
6. Other opportunities for use of the property that may provide greater benefits to the City of Homer.
7. Other social, policy, and economic considerations as determined by the Council.



4 of 50

2009-000543-0

HOMER000766

### 3. RENT, TAXES, ASSESSMENTS AND UTILITIES

#### 3.01. Rent

(a) **Initial Base Rent.** Tenant agrees to pay to Landlord an initial annual rent of \$19,834.00 (the "Base Rent"), payable monthly in advance in equal installments of \$1,652.00, plus tax. The first monthly payment is due on the first day of April 1, 2008, and subsequent monthly payments are due on the first day of each calendar month thereafter. Rent must be paid at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended.

(b) **Periodic Appraised Adjustment of Rent.** The Base Rent will be adjusted on January 1, 2010 and on January 1 every five years thereafter (each such January 1 is a "Five Year Rent Adjustment Date") to equal the then current fair market rental value of the Property, determined by appraisal as set forth in paragraph 3.01(d) not more than six months before the Five Year Rent Adjustment Date. After such Five Year Rent Adjustment Date, the adjusted rent will thereafter be referred to as the Base Rent.

(c) **Annual Rent Adjustment.** In addition to the five year rent adjustments provided in paragraph 3.01(b), the Base Rent will also be adjusted annually (the "Annual Rent Adjustment") on the first day of January 2009, and on the first day of January every year thereafter, excluding each of the years of the five year rent adjustment, (each such day being an "Annual Rent Adjustment Date") throughout the Term and all Renewal Terms as follows:

(i) The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI-U), Anchorage, Alaska, for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). For the first five years of the Term, the Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". Thereafter, the Index published for the second half of the calendar year immediately preceding the year of the most recent Five Year Rent Adjustment Date is the "Beginning Index." The Index published for the second half of the calendar year nearest, but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be adjusted to equal the Base Rent determined according to paragraph 3.01(a) or 3.01(b), as the case may be, increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date.

(ii) If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(d) **Appraisal of Property.** For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the



5 of 50

2009-000543-0

HOMER000767

Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.

### 3.02. Tenant to Pay Taxes

Tenant agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located a applicable real property taxes levied or assessed upon or against the Property and all buildings and improvements thereon during the term of this Lease. Tenant further agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all applicable personal property taxes on personal property situated on the Property and placed thereon by Tenant, its agents, servants, or employees. Tenant further agrees to pay prior to delinquency any other taxes for which it may be liable. Tenant must, within thirty (30) days after any such tax, assessment or other charge, whether or not constituting a lien on the Property, becomes due and payable, produce and exhibit to Landlord satisfactory evidence of payment thereof.

Tenant acknowledges that it is subject to and will pay applicable municipal taxes, including property tax on Tenant's leasehold interest in the Property.

### 3.03. Tenant to Pay Assessments

Tenant during the term of this Lease agrees to pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or all of the costs of any public work or improvement assessed according to benefit found by the levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, Tenant may elect to pay the same in installments, and in such case Tenant will be liable only for such installments as may become due during the term of this Lease. Landlord warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by Landlord, except as follows: none.

### 3.04. Proration of Taxes and Assessments

If Tenant's obligation to pay taxes or assessments commences or ends during a tax year by reason of commencement or termination of this Lease, such taxes or assessments will be prorated between Landlord and Tenant.

### 3.05. Contest

Tenant has the right to contest any taxes or assessments that Tenant is obligated to pay under paragraphs 3.02 or 3.03 of this Lease. Such proceedings must, if instituted, be conducted promptly at Tenant's own expense and free from all expense to Landlord. Before instituting any such proceedings, Tenant must pay under protest any such taxes or assessments, or must furnish to Landlord a surety bond written by a company acceptable to Landlord or other security acceptable to Landlord, sufficient to cover the amount of such taxes or assessments, with interest for the period that such proceedings may reasonably be expected to take, and costs, securing the payment of such taxes or assessments, interest and



6 of 50

2009-000543-0

HOMER000768

costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, Tenant must pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part thereof, might be forfeited. The proceedings referred to in this paragraph 3.05 may include appropriate appeals from any order or judgments therein, but all such proceedings must be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and must be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge, Tenant must pay the amount that is finally levied or assessed against the Property or adjudicated to be due and payable, and if there is any refund payable by the governmental authority with respect thereto, Tenant will be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.04 of this Lease. Landlord, at Landlord's option, may, but is not obligated to, at Landlord's own expense contest any such taxes or assessments that are not contested by Tenant as set forth above, and, unless Tenant promptly joins with Landlord therein, Landlord will be entitled to receive and retain any refund payable by any governmental authority with respect thereof.

**3.06. Tenant to Pay Utility Charges**

Tenant must pay or cause to be paid all charges for gas, oil, electricity, water, sewer, heat, snow removal, refuse removal and any and all other utilities or services used upon the Property throughout the term of this Lease, including any connection fees.

**3.07. Tenant to Pay for City Services Related to the Property or to Tenant's Operations**

(a) Tenant must pay for all services provided by the City of Homer that are related to the Property or to Tenant's operations, including but not limited to Port and Harbor services, whether incurred by Tenant, or any business entity owned in whole or in part by Tenant or by one or more partners of Tenant.

(b) Tenant must pay for wharfage, crane use, ice, and other Port and Harbor services at the rates published in the Port and Harbor of Homer Terminal Tariff, which is subject to change from time to time. In the event the City of Homer changes the method of establishing or publishing any or all such rates, then Tenant must pay for such services at the rates so established by such changed method. Tenant further agrees to provide the City of Homer with the necessary information to determine wharfage, crane use, ice and other Port and Harbor service charges, to keep written records of such information for not less than six years after such charges are due, and, upon request, to make such records available to the City of Homer for audit.

**3.08. Additional Rent and Landlord's Right to Cure Tenant's Default**

All costs and expenses that Tenant assumes or agrees to pay pursuant to this Lease will, at Landlord's election, be treated as additional rent, and in the event of nonpayment, Landlord will have all rights and remedies provided in this Lease in the case of nonpayment of rent or of a breach of condition, at Landlord's election. If Tenant defaults in making any payment required to be made by Tenant or defaults in performance of any term, covenant or condition of this Lease on the part of Tenant to be kept, performed or observed that involves the expenditure of money by Tenant, Landlord at Landlord's option may, but is not obligated to, make such payment, or, on behalf of Tenant, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended



7 of 60

2009-000543-0

HOMER000769

by Landlord, with interest thereon at the legal rate of interest from the date of such expenditure until repaid, will be, and will be deemed to be, additional rent and must be repaid by Tenant to Landlord, on demand, provided, however, that no such payment or expenditure by Landlord will be deemed a waiver of Tenant's default, nor will it affect any remedy of Landlord by reason of such default.

### 3.09 Security Deposit

Upon execution of this Lease, Tenant must deposit with Landlord 10% of the Base Rent (i.e., the sum of \$ 1,983.00) as security for the performance of Tenant's obligations under this Lease. Landlord will invest the security deposit in an interest bearing account in Landlord's name, subject to Tenant's approval, which will not be unreasonably withheld. If Tenant is in default with respect to any covenant or condition of this Lease, including but not limited to the payment of rent, Landlord may apply all or any portion of the security deposit, including interest earned thereon, to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of Tenant's default. Tenant must upon demand deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term of this Lease. If Tenant has fully complied with all of the covenants or conditions of the Lease, the Landlord will remit to the Tenant the security deposit, including any interest on deposit, within thirty days after the expiration or termination of this Lease. On each Annual Rent Adjustment Date and each Five Year Rent Adjustment Date, the principal amount of the security deposit will be adjusted to equal ten percent of the annual rent, after making the required adjustment under paragraph 3.01. Within 30 days of notification of the adjustment of the annual rent, Tenant must deposit with Landlord the amount of the increase in the security deposit.

## 4. GRANT OF SECURITY INTEREST

To secure Tenant's obligation for payment of rent and all other sums agreed to be paid by Tenant under this Lease, Tenant hereby grants to Landlord a lien and security interest in the following collateral: (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies afforded a secured party under the UCC. Tenant must execute, as debtor, such financing statement or statements as Landlord may now or hereafter reasonably request further evidencing said security interest.

## 5. USE AND CARE OF THE PROPERTY

### 5.01. Use

Tenant warrants that it has not entered into this Lease for purposes of speculation or for reserve for future uses, but rather to immediately and fully use and develop the Property.



8 of 50

2009-000543-0

HOMER000770

Except as otherwise provided herein, Tenant must use the Property for the following purposes:

FISH BUYING FACILITY AND ASSOCIATED OFFICE, WAREHOUSE, COLD STORAGE, STAGING, AND OPERATIONAL AND LOGISTICAL SUPPORT FOR DOCK OPERATIONS. PRIMARY AND SECONDARY COMMERCIAL AND SPORT SEAFOOD PROCESSING, RETAIL SEAFOOD SALES, MAINTENANCE AND GENERAL FISHERMAN'S SUPPORT FACILITIES.

Tenant must use the Property for no other purposes without the Landlord's written consent, which consent will not be unreasonably withheld. Tenant's use must comply with the zoning code. Tenant must not use the Property for any unlawful purpose and must comply with all applicable statutes, laws and ordinances during the entire term of the lease and any extension or renewal thereof. If Tenant ceases to use the Property for the approved purposes, Landlord may, as one of its remedies, terminate this Lease upon thirty days written notice.

#### 5.02. Care of the Property

Tenant at its own cost and expense must keep the Property and all buildings and improvements that at any time may be situated thereon in good condition and repair during the term of this Lease, ordinary wear and tear excepted. The Property must always be kept by Tenant neat, clean and free of litter.

#### 5.03. Restoration or Removal of Damaged Buildings and Improvements

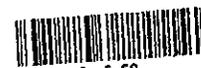
Except as provided in paragraph 6.02, in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant must at Tenant's expense restore the same to good and tenantable condition or must remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed twenty four (24) months nor may the period of removal exceed forty-five (45) days.

#### 5.04. Property Returned to Previous Condition

At the termination of this Lease, Tenant must remove all debris and return the Property clean and in as good order and condition as when the Tenant took possession, failing which Landlord may restore the Property to such condition and Tenant must pay the cost thereof on demand. This paragraph does not require the removal of buildings, improvements, or fixtures upon termination of the Lease, which are governed by other provisions of this Lease.

#### 5.05. Access Rights of Landlord

Landlord, its agents, servants, or employees, have the right to enter into and upon the Property and all buildings or improvements situated thereon upon reasonable notice (generally 24 hours) to Tenant and during normal business hours (defined as 9 a.m. to 5 p.m. Monday through Friday, except for holidays as defined in paragraphs 17.06 of this Lease) for the purpose of inspecting the Property and all buildings and improvements situated thereon for compliance with the terms of this Lease.



9 of 60

2009-000543-0

HOMER000771

#### 5.06. Nuisances Prohibited

Tenant must immediately remove from the Property any abandoned or junk vehicles, buildings, improvements, equipment, machinery or fixtures. Tenant must not permit any nuisance or public nuisance to exist or to be created or maintained on the Property. Tenant agrees that any nuisance or public nuisance, under the common law, statute, or as defined by the Homer City Code, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Homer, may, after fifteen (15) days written notice to Tenant, or after four (4) hours notice in writing, by telephone, facsimile, or in person to Tenant if Landlord makes a written finding that such nuisance or public nuisance constitutes a threat of imminent harm to public health, safety or welfare, be removed or abated by Landlord without Tenant's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefor. All the costs of such removal must be paid by Tenant to Landlord as additional rent under the terms of this Lease. This paragraph may not be construed as any limitation on any other legal rights or remedies available to the City of Homer to abate any nuisance or to prosecute any violation of the Homer City Code.

#### 5.07. Compliance with Laws

Tenant must comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting Tenant's activities on the Property or any buildings or other improvements that may be situated thereon.

#### 5.08. Radio Interference

At Landlord's request, the Tenant must discontinue the use of any machine or device that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

#### 5.09. Signs

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

#### 5.10 Garbage Disposal

Tenant is responsible for removing all garbage generated by Tenant's business to a Kenai Peninsula Borough solid waste facility or transfer station. Tenant must not use the Landlord's Homer Spit garbage disposal facilities.

#### 5.11 Outfall Line Connection Agreement

Tenant must connect to the City of Homer fish processor outfall line unless the level of waste produced is below a certain threshold level, as determined by the Port and Harbor Director. It is understood that Tenant will begin operations by using the City Fish Grinder and paying the appropriate fees for disposal and may choose to operate zero waste stream facility in accordance with DEC regulations. On or before the commencement of the Term of this Lease, Tenant must enter into Fish Processor Outfall Line Connection Agreement with Landlord. Tenant must maintain such an agreement in force for so long as the City of Homer



10 of 50

2009-000543-0

HOMER000772

continues to maintain the outfall line. Tenant must at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement.

#### 5.12 Fish Dock Use Permit

Before using the City of Homer Fish Dock, Tenant must obtain from the Landlord a Fish Dock Use Permit. Tenant must continue to have a current Fish Dock Use Permit in force for so long as Tenant intends to use the Fish Dock.

### 6. IMPROVEMENTS

#### 6.01. Ownership of Buildings and Improvements

(a) Any and all buildings, fixtures, and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Renewal Terms and may be removed or replaced by Tenant, subject, however, to the obligations concerning the Required Improvements set forth in paragraph 6.02. Tenant shall retain ownership of buildings and improvements subject to the provisions of Section 2.03 herein.

(b) Subject to the provisions of 2.03 and 6.02 herein: Upon the expiration or termination of the Lease, all buildings, improvements, and fixtures must remain upon the Property and must be surrendered with the Property to Landlord, unless Landlord elects to require the removal of any or all of such property. If Landlord requires that buildings, improvements, and fixtures, or any part of them, be removed, Tenant must remove the same at its expense and repair or pay Landlord the cost of repairing any damage resulting from such removal. Approximately 60 days prior to the Tenant's scheduled vacation of the Property, Landlord and Tenant will meet and Landlord will advise Tenant what items must be removed and what items must remain.

#### 6.02. Required Improvements

(a) Tenant must, at Tenant's sole expense, construct certain Required improvements on the Property. Tenant must at all times during the Term and any Renewal Term keep and maintain the Required Improvements, or their equivalent of equal or greater value, as the minimum development on the Property. The Required Improvements are:

Approximately 6,400 square feet in structural development, including a 40' by 100' by 18' metal building to house processing and office space; an attached 15' by 61' by 13' covered staging area; a refrigerator unit; a 700 square foot detached maintenance facility; pavement and drainage improvements; all other improvements included in Tenant's development proposal; and all site improvements required by municipal code.

Tenant's proposed site plan and floor plans for the Required Improvements are attached as Exhibit C and Exhibit D. Tenant must commence construction of the Required Improvements within one year of the date of commencement of the Term and Complete construction within one additional year. When Completed, the Required Improvements must have an appraised value of not less than \$ 560,000.



11 of 50

2009-000543-0

HOMER000773

(b) Tenant warrants that it has not entered into this Lease for the purpose of speculation, but in order to fully develop the Property with such Required Improvements and to actually use the Property for Tenant's proposed operations. Tenant's promise to timely construct the Required Improvements and operate on the Property is a major and material consideration to Landlord in granting this Lease.

(c) In the event the Required Improvements are damaged or destroyed by fire, earthquake, tsunami or other casualty, Tenant must, at Tenant's expense, restore or replace the same to good and tenable condition as soon as is reasonably possible, but in no event may the period of restoration or replacement exceed 24 months. Modifications to the Required Improvements will be allowed only if approved by Landlord, whose approval will not be unreasonably withheld. If any damage or casualty to the Required Improvements occurs within three years of the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

### 6.03. Construction Prerequisites

(a) No construction on the Property, including but not limited to the Required Improvements, may be commenced unless the following events have occurred:

(i) Not less than 30 days prior to the intended start of construction, Tenant must submit to Landlord for its approval preliminary plans and specifications and an application for a City of Homer zoning permit. The preliminary plans and specifications must show the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plan, and any other information required for the zoning permit or other required permits. Tenant must also provide an engineer's or architect's estimate that, when constructed according to the preliminary plans and specifications, the Required Improvements will satisfy the minimum value requirement of paragraph 6.02. Landlord will not unreasonably disapprove preliminary plans and specifications. Approval or disapproval must be communicated in the manner provided for notices, and disapproval must be accompanied by specification of the grounds for disapproval.

(ii) Tenant must prepare final working plans and specifications substantially conforming to preliminary plans previously approved by Landlord, submit them to the appropriate governmental agencies for approval, and deliver to Landlord one complete set as approved by the governmental agencies. Changes from the preliminary plans will be considered to be within the scope of the preliminary plans if they are not substantial or if they are made to comply with suggestions, requests, or requirements of a governmental agency or official in connection with the application for permit or approval.

(iii) Not less than five days prior to the commencement of any construction, Tenant must give written notice of intent to commence construction and furnish to Landlord proof that all applicable federal, state, and local permits have been obtained or applications therefor have been submitted to the appropriate governmental agency.

(iv) Not less than five days prior to the commencement of any construction, Tenant must furnish to Landlord current certificates of insurance in the amounts and for the purposes specified in paragraphs 11.01 through 11.04 of this Lease.



12 of 50

HOMER000774 2009-000543-0

(v) Not less than five days prior to the commencement of any construction, Tenant must deliver to Landlord satisfactory proof that workers' compensation insurance has been procured to cover all persons employed in connection with the construction. Upon notice to Tenant of any deficiency in workers' compensation coverage, such deficiency must be cured immediately, and no work will be performed on the project until Tenant has provided Landlord satisfactory proof that proper workers' compensation insurance is in place.

(b) On Completion of the improvements, Tenant must give Landlord notice of all changes in plans or specifications made during the course of the work. Landlord acknowledges that it is common practice in the construction industry to make numerous changes during the course of construction on substantial projects. Changes that do not substantially alter plans and specifications previously approved by Landlord do not constitute a breach of Tenant's obligations, but Tenant must nevertheless give Landlord notice of such changes.

(c) At any time and from time to time, Tenant may, but is not obligated to, construct or otherwise make new improvements on any part or all of the Property and to demolish, remove, replace, alter, relocate, reconstruct, or add to existing improvements in whole or in part; provided that Tenant is not then in default under any condition or provision of this Lease and provided further the Required Improvements, or their equivalent of equal or greater value, are always maintained on the Property. All salvage will belong to Tenant. Once any work is begun, Tenant must with reasonable diligence prosecute to completion all construction of improvements, additions, alterations, or other work.

#### 6.04. As-Built Survey

Within thirty (30) days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant must provide Landlord with three (3) copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines, and pre-existing improvements.

#### 6.05 Definitions

As used in this Article 6 of this Lease, the following terms and phrases will have the meanings given here, unless the context requires otherwise:

"Complete" and "Completion" mean that construction is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including, but not limited to, the receipt of any applicable certificate of occupancy and other applicable permits, licenses, certificates, or inspection reports necessary to the improvement's legally authorized use. The existence of a contractor's punch list of items to be performed to finish the project will not prevent the construction from being Complete if the improvement otherwise meets the requirements of this definition.

"Excusable Delay" means delay due to strikes, act of God, inability to obtain labor or materials, governmental requirements, such as laws and requirements of any



13 of 50  
2009-000543-0

HOMER000775

governmental authority having jurisdiction over the improvements or over any permits or licenses needed for Tenant's proposed operations, removal of Hazardous Materials discovered at any time after the Commencement Date, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

#### **6.06 Extensions of Time for Completion of Required Improvements**

An extension of the time to Complete the Required Improvements will be granted for the period of time of any Excusable Delay (as defined in paragraph 6.05); provided Tenant has commenced construction in a timely manner and is proceeding diligently to complete construction.

#### **7. RESERVED**

#### **8. RESTRICTIONS ON TRANSFER**

##### **8.01. Assignment or Sublease Without Consent Generally Prohibited**

Tenant must not voluntarily assign, encumber or sublease its interest in this Lease or in the Property without first obtaining Landlord's consent. Any assignment, encumbrance or sublease without Landlord's consent will be voidable and, at Landlord's election, will constitute a default. Any request for Landlord's consent must be made to Landlord in writing at least thirty (30) days prior to the proposed effective date of the assignment, encumbrance or sublease. No consent to any assignment, encumbrance or sublease will constitute a further waiver of the provisions of this paragraph. Any assignment effected pursuant to this paragraph 8.01 must require the assignee to assume the Tenant's obligations hereunder. An assignment will not release the Tenant from liability hereunder unless specifically so provided in writing and approved by Landlord. Tenant must promptly deliver to Landlord a copy of any instrument or must promptly notify Landlord of any unwritten agreement, that assigns, encumbers or subleases the Property. Landlord's consent to assign, encumber or sublease the Property will not be withheld unreasonably.

##### **8.02. Change of Ownership**

If Tenant is a partnership or limited liability company a withdrawal or change, voluntary, involuntary or by operation of law, of any partner(s) or member(s) owning twenty-five percent (25%) or more of the entity, or the dissolution of the entity, will be deemed a voluntary assignment under paragraph 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of twenty-five percent (25%) of the value of the assets of Tenant, will be deemed a voluntary assignment under paragraph 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors. As to a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such a Tenant corporation will not be deemed to be a voluntary assignment.



14 of 50  
2009-000543-0

HOMER000776

**8.03. Costs of Landlord's Consent to be Borne by Tenant**

Tenant must pay Landlord's reasonable costs, including attorney's fees, and the expenses of due diligence inquiries, incurred by Landlord in connection with any request by Tenant for Landlord to consent to any assignment or subletting by Tenant.

**8.04. Additional Rent For Sublease.**

If Landlord gives its written consent, Tenant may sublet all or a portion of the Property (the land only). If any rent accrues to Tenant as the result of such sublease that exceeds the pro rata share of rent then being paid by Tenant for the portion of the Property being sublet, then 25% of such excess rent must be paid by Tenant to Landlord as additional rent. Tenant may sublease the building (s) only with prior written approval of the Landlord. Landlord expressly permits the Auction Block Company, a closely held company, to sublease the building and improvements without any additional rent requirement to Tenant.

**9. PROHIBITION OF LIENS**

Tenant must not suffer or permit any liens, including without limitation, mechanic's or materialmen's liens, to be recorded against the Property. If any such liens are recorded against the Property, Tenant must cause the same to be removed, or, in the alternative, if Tenant in good faith desires to contest the same, Tenant will be privileged to do so, but in such case Tenant hereby agrees to indemnify and save Landlord harmless from all liability for damages occasioned thereby and must, in the event of a judgment or foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this Lease may be construed to be a waiver of the provisions of AS 09.38.015(c), as may be amended from time to time. Tenant shall be permitted to pledge leasehold improvements as security for Alaska Fisheries Business License.

**10. INDEMNITY**

**10.01. Indemnity Generally**

Tenant agrees to protect, indemnify and hold Landlord harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on the Property during the Term or during Tenant's possession of the Property, or arising out of or relating to the Tenant's use of the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorneys fees, incidental to the defense of and by Landlord therefrom, excepting only liability arising from the sole negligence of Landlord. If any action or proceeding is brought against Landlord by reason of any such occurrences, Landlord will promptly notify Tenant in writing of such action or proceeding.

**10.02. Indemnity For Emergency Service Costs**

Without limiting the generality of paragraph 10.01, in the event of a major fire or other emergency, Tenant must reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant or the Property, or elsewhere if the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this paragraph, a major fire or other emergency is one that requires more than five hours of effort by the Homer Department of Public Safety or its successors.



15 of 60

2009-000543-0

HOMER000777

## 11. INSURANCE

### 11.01. Liability Insurance

(a) Tenant must procure and at all times maintain, at its expense, public liability insurance covering Tenant's operations and the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence to protect against liability for bodily injury, death or property damage that might arise from the construction, occupancy or use of the Property and the operations conducted on, from, or related to it. Such insurance must include coverage for comprehensive general liability; bodily injury and property damage liability; premises and operations liability, including underground, products and completed operations; broad form property damage liability; blanket contractual liability; personal injury liability; and comprehensive automobile liability including without limitation bodily injury and property damage and all owned, hired, and non-owned automobiles. Such insurance policy or policies must be additionally endorsed to provide sudden and accidental pollution coverage for claims or losses arising out of activities or events taking place on the Property or arising out of Tenant's operations, wherever conducted in the City of Homer.

(b) Tenant must procure and at all times maintain, at its expense, environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and gradual pollution coverage. Such coverage must also include clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. Tenant must maintain limits of liability of ONE MILLION DOLLARS (\$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must extend to loss arising as a result of: (i) liability of others assumed by Tenant under contract or agreement; (ii) clean-up operations; (iii) activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which Tenant performs actions; and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease. Tenant certifies that he will store no more than 300 gallons of fuel on site, that no fueling of vehicles will occur, and that no hazardous materials other than ammonia will be present on the property. Tenant may be exempt from the provisions of this section if he can demonstrate to the City Manager that his general commercial liability insurance will cover all expenses related to clean-up and remediation. Tenant agrees further to notify the City if the presence of additional hazardous materials are anticipated. The environmental insurance described in this paragraph may be required at a later date if conditions change.

### 11.02. Worker's Compensation and Employer's Liability Insurance

Tenant must procure and at all times during the term of this Lease maintain, at its expense, Worker's Compensation Insurance as required by statute and Employer's Liability Insurance.

### 11.03. Named Insured, Notice to Landlord, and Waiver of Subrogation

All insurance policies required to be maintained by Tenant under paragraph 11.01 must name Landlord, and its officers, employees and agents, as additional insured, but they must not contain any exclusion from coverage for Tenant's liability for damages or loss incurred by Landlord because of Landlord's status as an additional insured. All policies issued under paragraph 11.01 must contain a waiver of any subrogation rights any insurer



16 of 50

HOMER000778

2009-000543-0

might have against Landlord. All policies issued under paragraphs 11.01 or 11.02 must contain an agreement by the insurers to provide at least thirty (30) days prior written notice to Landlord of cancellation, expiration or substantial changes in policy conditions and coverage. Tenant must furnish insurance certificates and copies of all such insurance policies to Landlord promptly after the issuance thereof.

#### **11.04. Fire and Extended Coverage Insurance; Builder's Risk Insurance**

(a) Except as provided in subparagraphs 11.04(b) and (c), Tenant may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover buildings, equipment, inventory, fixtures, personal property and improvements made to the Property by Tenant subsequent to Tenant's taking possession of the Property under this Lease.

(b) Tenant must procure and at all times maintain, in its own name and at its expense, physical property damage insurance covering the Required Improvements described in paragraph 6.02 in an amount not less than 90% of the replacement cost of the Required Improvements. Such insurance must afford coverage for damages resulting from, at a minimum (i) fire, (ii) perils covered by extended coverage insurance, and (iii) explosion of steam and pressure boilers and similar apparatus located on the Property.

(c) During construction of the Required Improvements and during any subsequent restorations, alterations, or changes in the Required Improvements at a cost in excess of \$250,000 per job, Tenant must procure and maintain builder's all risk insurance in an amount reasonably satisfactory to Landlord.

#### **11.05 Required Endorsements and Authorization**

In addition to, and without limiting the requirements of paragraphs 11.01 through 11.04, Tenant must at all times maintain and give to the Landlord, for Landlord's benefit, current insurance endorsements substantially in the form of Exhibit E and Exhibit F. Tenant must also grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord an authorization substantially form of Exhibit G. Tenant must, from time to time, execute and deliver to Landlord such additional authorizations (Exhibit G) that Landlord may request.

## **12. CONDEMNATION**

### **12.01. Condemnation**

In the event the Property, or any part thereof or interest therein, is taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article 12.

### **12.02. Total Taking**

If all of the Property is taken or so transferred, this Lease and all the right title and interest thereunder of Tenant will cease on the date title to the Property vests in the condemning authority.



17 of 50

HOMER000779

2009-000543-0

### 12.03. Partial Taking - Termination of Lease

In the event the taking or transfer of part of the Property leaves the remainder of the Property in such location, or in such form, shape or reduced size, or so inaccessible as to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, then this Lease and all of the right, title and interest thereunder of Tenant will cease on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession.

### 12.04. Partial Taking - Continuation of Lease

In the event the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively and practicably usable in the opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease will terminate and end as to the portion of the Property so taken or transferred as of the date title to such portion vests in the condemning authority and the condemning authority enters into possession, but will continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease will abate for the portion of the Property taken in the proportion that such portion bears to all of the Property.

### 12.05. Compensation

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

## 13. DEFAULT

### 13.01. Default

Each of the following events will be deemed an event of default by the Tenant under this Lease and a breach of the terms, covenants and conditions of this Lease:

(a) A default in the payment of the rent and additional sums due under this Lease, or any part thereof, for a period of ten (10) days from the due date for the payment of such rent or additional sums.

(b) A default in the performance of any other term, covenant or condition on the part of the Tenant to be kept, performed or observed for a period of fifteen (15) days after Landlord gives to Tenant a written notice specifying the particular default or defaults; provided, however, that any default on the part of Tenant in the performance of work or acts required to be done, or conditions to be modified, will be deemed to be cured if steps are



18 of 50

2009-000543-0

HOMER000780

taken promptly (and in no event later than thirty (30) days after such notice has been given) by Tenant to rectify the same and are prosecuted to completion with diligence and continuity.

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

(d) The abandonment of the Property by Tenant. If the Property is deserted or Tenant does not use the Property for the purposes stated in paragraph 5.01 for 12 months or more, it will be deemed abandoned, even if Tenant continues to pay rent.

(e) Tenant making an assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver, or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the filing of any such petition or application, or the commencing of any such proceeding against it, in which an order for relief is entered or that remains undismissed for a period of 30 days or more; or Tenant by any act or omission indicating its consent to, approval of, or acquiescence in any such petition, application, or proceeding or order for relief or the appointment of a custodian, receiver, or any trustee for it or any substantial part of any of its properties, or the suffering of any such custodianship, receivership, or trusteeship to continue undischarged for a period of 30 days or more.

(f) Tenant being generally unable to pay its debts as such debts become due.

(g) Tenant having concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay, or defraud its creditors or any of them, or making or suffering a transfer of any of its property that may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint that is not vacated within 30 days from the date thereof.

#### 13.02. Landlord's Remedies

In the event of any default by Tenant as recited in paragraph 13.01 of this Lease, Landlord will have all of the below-enumerated rights and remedies, all in addition to any rights and remedies that Landlord may be given by statute, common law or otherwise. All rights of Landlord are cumulative, and none will exclude any other right or remedy. Landlord's rights and remedies include the following:

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



19 of 50

2009-000543-0

HOMER000781

(b) Landlord may by written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. Upon such termination of Tenant's right to possession, Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are enumerated in paragraph 13.02 (a).

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

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

(e) Landlord may recover, whether this Lease be terminated or not, from Tenant, damages provided for below consisting of items (i), and (ii), or, at Landlord's election in lieu of (ii), item (iii):

(i) actual attorney's fees and other expenses incurred by Landlord by reason of the breach or default by Tenant; and

(ii) an amount equal to the amount of all rent and additional sums reserved under this Lease, less the net rent, if any, collected by Landlord on reletting the Property, that shall be due and payable by Tenant to Landlord on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days Tenant must pay to Landlord the amount of deficiency then existing. Such net rent collected on reletting by Landlord will be computed by deducting from the gross rent collected all expenses incurred by Landlord in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of renovating or remodeling the Property or the buildings or improvements thereon, provided, however, Landlord must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of Tenant under this Lease or else Landlord will not have access to the remedy set out in this subparagraph 13.02(c)(ii); or

(iii) an amount to be due immediately on breach, equal to the difference between the rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable will be discounted to the date of such breach at the rate of eight percent (8%) per year.

(f) Reentry or reletting of the Property, or any part thereof, will not be deemed a termination of this Lease, unless expressly declared to be so by Landlord.

(g) If this Lease is deemed terminated, Tenant's liabilities will survive and Tenant will be liable for damages as provided in this paragraph 13.02.

### 13.03. Assignment of Rents to Landlord

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under the Lease, all rent from any subletting of all or a part of the Property as permitted by this Lease, and Landlord, as assignee and attorney-in-fact for Tenant or a



20 of 50  
2009-000543-0

HOMER000782

receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligation under this Lease, except that, until the occurrence of an act of default by Tenant, Tenant will have the right to collect such rent.

#### 14. LEASEHOLD MORTGAGES

##### 14.01. Definitions

As used in this article 14, the following capitalized terms will have the meanings set forth below:

"**Indebtedness**" means the amount that is outstanding at any given time under a Permitted Mortgage.

"**Landlord's Estate**" means all of Landlord's right, title and interest in its fee estate in the Property, its reversionary interest in improvements under this Lease, and all other rental and benefits due Landlord hereunder.

"**Mortgagee**" means the holder or beneficiary of any Permitted Mortgage.

"**Permitted Mortgage**" means collectively any deed(s) of trust, mortgage(s), and other collateral security instruments serving as security for a construction loan or permanent loans, or both, (otherwise permitted to be incurred hereunder) that encumber Tenant's Estate, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) of any Permitted Mortgage; provided, however in no event may any such Permitted Mortgage encumber Landlord's Estate.

"**Tenant's Estate**" means all of Tenant's right, title and interest in its leasehold estate in the Property, its fee estate in the improvements, and its interest under this Lease.

##### 14.02. Encumbrance of Tenant's Estate

Tenant will have the right at any time and from time to time to encumber all or any portion of Tenant's Estate pursuant to one or more Permitted Mortgages, provided Tenant must:

(a) promptly following its receipt of any notice of default or other notice of the acceleration of the maturity of a Permitted Mortgage from a Mortgagee, deliver a true and correct copy thereof to Landlord; and

(b) refrain from encumbering or purporting to encumber, by means of a Permitted Mortgage or otherwise, Landlord's Estate.

##### 14.03. Conditions For Mortgagee Protections

Provided that any Mortgagee first provides Landlord with a conformed copy of a Permitted Mortgage that contains the name and address of such Mortgagee, and provided such Permitted Mortgage was executed in compliance with the terms hereof, Landlord hereby covenants and agrees to faithfully perform and comply with the provisions of paragraph 14.04 below with respect to such Permitted Mortgage.



21 of 50  
2009-000543-0

HOMER000783

#### 14.04. Mortgagee Protections

Subject to compliance with the provisions of paragraphs 14.01 through 14.03 above, Landlord agrees as follows:

(a) **No Termination.** No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of article 14 of this Lease will be binding upon a Mortgagee without its prior written consent.

(b) **Notices.** If Landlord gives any notice, demand, election or other communication that may adversely affect the security for a Permitted Mortgage, including without limitation a notice of an event of default hereunder (hereinafter collectively "Notices"), to Tenant, Landlord must give a copy of each such Notice to the Mortgagee at the address previously designated by it. Such copies of Notices will be sent by Landlord and deemed received as described in article 17 of this Lease. No Notice given by Landlord to Tenant will be binding upon or affect said Mortgagee unless a copy of said Notice is given to it pursuant to this article. In the case of an assignment of such Permitted Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent. Landlord will not be bound to recognize any assignment of such Permitted Mortgage unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee will be deemed to be the Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Landlord to give Notices or copies thereof to said Mortgagee will be binding upon Landlord unless and until all of said holders designate in writing one of their number to receive all such Notices and copies thereof and have given to Landlord an original executed counterpart of such designation. Notice given to the one so designated is effective as notice to all them.

(c) **Performance of Covenants.** The Mortgagee may perform any term, covenant or condition and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord will accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Mortgagee will not thereby be subrogated to the rights of Landlord.

(d) **Delegation to Mortgagee.** Tenant may delegate irrevocably to the Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be binding upon Landlord unless and until either Tenant or the Mortgagee gives Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon Landlord of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this article, together with written notice specifying the provisions therein that delegate such authority to said Mortgagee, will be sufficient to give Landlord notice of such delegation.

(e) **Default by Tenant.** In the event of an event of default by Tenant in the payment of any monetary obligation hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such event of default to any Mortgagee and such Mortgagee fails to cure such event of default within ten (10) business days following the expiration of any grace or cure periods granted Tenant herein. In the event of an event of default by Tenant in the performance or observance of any non-monetary term,



22 of 60

2009-000543-0

HOMER000784

covenant, or condition to be performed by it hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such event of default to any Mortgagee and such Mortgagee fails to cure such event of default within thirty (30) business days following the expiration of any grace or cure periods granted Tenant herein; provided, however, if such event or default cannot practicably be cured by the Mortgagee without taking possession of the Property, or if such event of default is not susceptible to being cured by the Mortgagee, then Landlord will not terminate this Lease if and as long as:

(i) In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, the Mortgagee has delivered to Landlord, prior to the date on which Landlord is entitled to give notice of lease termination, a written instrument wherein the Mortgagee unconditionally agrees that it will cure such an event of default, and that if this Lease thereafter is terminated prior to the curing of such default, said Mortgagee must pay to Landlord the cost of curing such an event of default;

(ii) In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, said Mortgagee must proceed diligently to obtain possession of the Property as Mortgagee (including possession by receiver), and, upon obtaining such possession, must proceed diligently to cure such event of default in accordance with the guarantee delivered pursuant to subsection (i) above; and

(iii) In the case of an event of default that is not susceptible to being cured by the Mortgagee, the Mortgagee must institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it acquires Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).

The Mortgagee will not be required to obtain possession or to continue in possession as Mortgagee of the property pursuant to subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant to subsection (iii) above, if and when such event of default is cured. Nothing herein will preclude Landlord from exercising any of its rights or remedies with respect to any other event of default by Tenant during any period of such forbearance, but in such event the Mortgagee will have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, acquires title to Tenant's Estate and cures all events of default that are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior events of default that are not susceptible to being cured by the Mortgagee or by said purchaser will no longer be deemed events of default hereunder.

(f) **New Lease.** If any Mortgagee acquires Tenant's Estate as a result of a judicial or non-judicial foreclosure under any Permitted Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee will thereafter have the right to assign or transfer Tenant's Estate to an assignee upon obtaining Landlord's consent with respect thereto, which consent will not be unreasonably withheld or delayed, and subject to all of the other provisions of article 8 above. Upon such acquisition of Tenant's Estate as described in the preceding sentence by the Mortgagee, or the assignee of Mortgagee, Landlord will execute and deliver a new ground lease of the Property to such Mortgagee or such assignee of Mortgagee given not later than one hundred twenty (120) days after such party's acquisition of the Tenant's Estate. Said new ground lease will be identical in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with



23 of 50  
2009-000543-0

HOMER000785

the remaining term hereof), and the elimination of any requirements that have been fulfilled by Tenant prior thereto, and said new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of such new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Property.

(g) **Further Amendments.** Landlord and Tenant hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Lease and allowing such Mortgagee reasonable means to protect or preserve the lien of the Permitted Mortgage on the occurrence of an event of default hereunder. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment must not in any way affect the term or rental under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(h) **Financial.** Landlord hereby agrees to cooperate reasonably with Tenant or any third party, or both, at Tenant's sole expense, in connection with Tenant's efforts to obtain financing for, or in connection with, the Property.

#### **15. REMOVAL OF TRADE FIXTURES, EQUIPMENT, AND MACHINERY UPON EXPIRATION OR TERMINATION OF LEASE**

##### **15.01. Removal Upon Expiration**

Trade fixtures, machinery, equipment, and other items of personal property owned by Tenant will be considered Tenant's property at all times during this Lease and must be removed by Tenant at its own expense from the Property upon the expiration of the Term or Renewal Term of this Lease, unless Landlord gives written consent to allow such property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. In the event Tenant, without Landlord's written consent, fails to remove such property on or before the expiration of this Lease, the Landlord may, at its election, immediately (i) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (ii) to the extent Landlord does not elect to declare it abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

##### **15.02. Removal After Early Termination**

In the event this Lease terminates for any reason before the scheduled expiration of the Term or Renewal Term, as applicable, Tenant must within one month after such early termination date remove Tenant's trade fixtures, machinery, equipment and other items of personal property, unless Landlord gives written consent to allow such personal property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings



24 of 50  
2009-000543-0

HOMER000786

or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. On or before the end of such one month period, Tenant may extend the time for removal of such personal property for an additional one month upon written notice to Landlord accompanied by payment of compensation for the entire two month period following the early termination date at a rate equal to 125% of the monthly rental rate in effect on the early termination date (i.e., monthly rental rate x 125% x 2 months). Acceptance of such compensation will not extend the term of the Lease nor create a month-to-month tenancy. In the event Tenant fails to remove such property within one month after the early termination of this Lease, or within two months if Tenant elects to extend by giving timely notice and paying compensation, the Landlord may, at its election, immediately (a) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (b) to the extent Landlord does not elect to declare abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

## 16. HAZARDOUS MATERIALS

### 16.01. Use of Hazardous Materials on the Property

(a) Tenant must not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by Tenant or its authorized representatives, customers, invitees or sublessees, except for such Hazardous Material as is necessary or useful to Tenant's lawful use of the Property.

(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, must be handled, used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material. Such Hazardous Material must be handled only by properly trained personnel.

(c) Tenant must not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the Landlord, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (i) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (ii) the condition, use or enjoyment of the Property or any other real or personal property.

(d) If any discharge, leak, spill, emission, or pollution of any type occurs upon or from the Property during the Lease term or any holdover, Tenant will immediately notify Landlord and all appropriate federal, state, and local authorities, and will act immediately to contain the spill, repair any damage, absorb and clean up the spill area and restore the Property to comply with the applicable portions of any federal, state, or local law or regulation then in effect.

(e) Tenant hereby agrees that it will be fully liable for all costs and expenses related to the handling, use, storage, and disposal of Hazardous Material brought or kept on the Property by the Tenant, its authorized representatives, customers, invitees and sublessees, and the Tenant must give immediate notice to the Landlord of any violation or potential violation of the provisions of subparagraphs 16.01 (a), (b), (c) and (d).



25 of 50  
2009-000543-0

HOMER000787

#### 16.02. Indemnification of Landlord

Any other provisions of the Lease to the contrary notwithstanding, Tenant must defend, indemnify and hold harmless Landlord and its authorized representatives, from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind of nature, known or unknown, contingent or otherwise, arising out of or in any way related to: (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the Property, soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; and/or (d) any violation of any laws applicable thereto. However, this paragraph will apply only if the acts or omissions giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses: (i) occur in whole or in part during the Term of this Lease or during any time of Tenant's possession or occupancy of the Property prior to or after the term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors. The provisions of this paragraph will be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and will survive the termination of this Lease.

#### 16.03. Hazardous Material Defined

"Hazardous Material" is any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Alaska, or the United States government. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" also includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.

### 17. GENERAL PROVISIONS

#### 17.01. Estoppel Certificates

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



26 of 50  
2009-000543-0

HOMER000788

#### 17.02. Conditions and Covenants

All the provisions of this Lease will be deemed as running with the land, and will be construed to be "conditions" as well as "covenants," as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

#### 17.03. No Waiver of Breach

No failure by either Landlord or Tenant to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, will constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach will affect or alter this Lease, but each and every term, covenant and condition of this Lease will continue in full force and effect with respect to any other then existing or subsequent breach.

#### 17.04. Attorney's Fees

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

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

#### 17.05. Time of Essence

Time is of the essence of the Lease and of each provision.

#### 17.06. Computation of Time

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

#### 17.07. Successors in Interest

Each and all of the terms, covenants and conditions in this Lease will inure to the benefit of and will be binding upon the successors in interest of Landlord and Tenant.

#### 17.08. Entire Agreement

This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement of promise made by any party that is not contained in the Lease will be binding or valid.



27 of 60  
2009-000543-0

HOMER000789

**17.09. Governing Law and Venue**

This Lease will be governed by, construed and enforced in accordance with the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, must be brought in the Third Judicial District of the State of Alaska.

**17.10. Partial Invalidity**

If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired or invalidated, unless such provisions are considered by Tenant to be integral to Tenant's use of the Property for the purposes stated herein in which case Tenant will have the authority to terminate this Lease upon thirty (30) days written notice to Landlord.

**17.11. Relationship of Parties**

Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

**17.12. Interpretation**

The language in all parts of this Lease must in all cases be simply construed according to its fair meaning and not for or against Landlord or Tenant as both Landlord and Tenant have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.

**17.13. Number and Gender**

In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.

**17.14. Mandatory and Permissive**

"Shall," "must," "will," and "agrees" are mandatory; "may" is permissive.

**17.15. Captions**

Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

**17.16. Amendment**

This Lease is not subject to amendment except in writing executed by all parties hereto.



28 of 50  
2009-000543-0

HOMER000790

**17.17. Delivery of Notices - Method and Time**

All notices, demands or requests from one party to another must be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, or (ii) facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the addresses stated in paragraph 17.18 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

**17.18. Notices**

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

City Manager  
City of Homer  
491 East Pioneer Avenue  
Homer, Alaska 99603  
Facsimile: (907) 235-3148

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

Harbor Leasing LLC  
PO Box 2228  
Homer, AK. 99603  
Facsimile: 907-235-4833

**17.19. Change of Address or Agent**

Each party may, from time to time, to designate a different address or different agent for service of process by notice given in conformity with paragraph 17.17.

**17.20. Multi-Party Tenant**

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

**17.21 Dispute Resolution**

Notwithstanding any other provisions of this lease, or applicable law, the Landlord and Tenant agree that it is their intent to resolve disputes through administrative procedures and if necessary, through mediation, prior to seeking remedies that might be available to either party through the courts.



29 of 50

2009-000543-0

HOMER000791

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates hereinbelow set forth.

Landlord:

CITY OF HOMER

Date: 3/25/08

By: [Signature]  
Walt Wrede  
City Manager

Tenant:

HARBOR LEASING LLC

Date: 3/25/08

By: [Signature]  
Kevin Hodak (name)  
MANAGING MEMBER (title)

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

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

ACKNOWLEDGMENTS

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

The foregoing instrument was acknowledged before me on March 26, 2008, by Walt Wrede, City Manager of the City of Homer, on behalf of the City of Homer.

[Signature]  
Jo Johnson, CMC,  
Homer City Clerk  
My Term Expires: with office

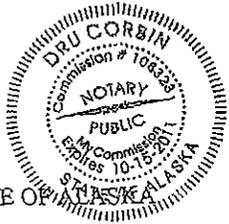


30 of 60  
2009-000543-0

HOMER000792

STATE OF ALASKA }  
THIRD JUDICIAL DISTRICT } ss.

The foregoing instrument was acknowledged before me on March 26, 2008, by Kevin Hoyer, as Managing Member (title) of Harbor Leasing LLC, a state of Alaska limited liability company, on behalf of Harbor Leasing LLC.



[Signature]  
Notary Public in and for Alaska  
My Commission Expires: 10-15-2011

STATE OF ALASKA }  
THIRD JUDICIAL DISTRICT } ss.

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2008, by \_\_\_\_\_, as \_\_\_\_\_ (title) of Harbor Leasing LLC, a state of Alaska limited liability company, on behalf of Harbor Leasing LLC.

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



31 of 60  
2009-000543-0

HOMER000793

**EXHIBIT A**

**SCHEDULE OF ORGANIZATION, OWNERS, PERCENTAGE OF OWNERSHIP**

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

The Members and their percentage of ownership are as follows:

Name: \_\_Bronwyn E. Kennedy                      51%

Address: 4735 Tamara St

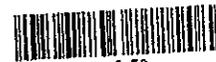
Homer AK 99603

Name: Kevin Hogan                                      49%

Address: 4735 Tamara St

Homer AK 99603

TOTAL 100 %



32 of 50  
2009-000543-0

HOMER000794

# Alaska Corporations, Business and Professional Licensing

- Search
- By Entity Name
- By AK Entity #
- By Officer Name
- By Registered Agent
- Verify
- Verify Certification Biennial Report
- File Online
- Initial Biennial Report LLC
- File Online Business Corporation
- File Online Online Orders
- Register for Online Orders
- Order Good Standing Name Registration
- Register a Business Name Online
- Renew a Business Name

Date: 3/20/2008

**Filed Documents**

(Click above to view filed documents that are available.)

**Print Blank Biennial Report**

(To view the report, you must have Acrobat Reader installed.)

**Entity Name History**

Name	Name Type
HARBOR LEASING, LLC	Legal

**Limited Liability Company Information**

AK Entity #: 72185D  
 Status: Active - Good Standing  
 Entity Effective Date: 01/29/2001  
 Primary NAICS Code:  
 Home State: AK  
 Principal Office Address: 4735 Tamara St  
 Homer AK 99603  
 Expiration Date: Perpetual  
 Last Biennial Report Filed Date: 11/24/2006  
 Last Biennial Report Filed: 2007

**Registered Agent**

Agent Name: KEVIN H HOGAN  
 Office Address: P O BOX 2228  
 HOMER AK 99603  
 Mailing Address:  
 Principal Office Address: 4735 Tamara St  
 Homer AK 99603

**Organizers**

Name: Bronwyn E. Kennedy  
 Address: 4735 Tamara St  
 Homer AK 99603  
 Title: Member  
 Owner Pct: 51  
 Name: Kevin Hogan  
 Address: 4735 Tamara St



33 of 50  
 2009-000543-0

HOMER000795



Title:  
Owner Pot:

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Officers & Directors

Webmaster Contact the Division

Homer AK 99603  
Member  
49



34 of 50  
2009-000543-0

HOMER000796

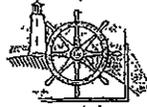
**EXHIBIT B**

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



35 of 50  
2009-000543-0

HOMER000797



## HARBOR LEASING LLC

PO Box 2228  
Homer AK 99603  
Ph. 907-399-8090  
FAX 907-235-4833

Meeting on March 19, 2008 the members of Harbor Leasing LLC met and approved the Following Resolutions

08-1

That Harbor Leasing LLC shall be authorized to enter into a Long term ground Lease with the City of Homer for Lot 12-C Port Industrial Sub. And the Managing Member shall be authorized to execute the required documents.

08-02

Harbor Leasing LLC shall enter into a Long Term Lease as Landlord with The Auction Block Co. as Tenant, for improvements constructed on Lot 12-C, Port Industrial Sub. And the Managing Member shall be authorized to execute the required documents.

08-03

Harbor Leasing LLC, shall engage the services of The Auction Block Co. as general contractor for the Location of Temporary buildings on Lot 12 C Port Industrial Sub. and shall require The Auction Block Co. to name Harbor Leasing LLC as additional insured on it's liability insurance.

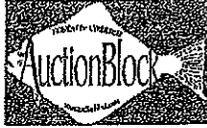
  
Managing Member

3/19/08



36 of 50  
2009-000543-0

HOMER000798



**The Auction Block Co.**

P.O. Box 2228 @770 Fish Dock Road #7 Homer Alaska 99603

E-mail: [fishbid@xyz.net](mailto:fishbid@xyz.net) Web Site: [www.auctionblock-ak.com](http://www.auctionblock-ak.com)

03/18/2008

Corporate Resolution,

Meeting personally, the Directors of The Auction Block Co. hereby resolve to enter into a long term lease with Harbor Leasing LLC for building improvements and facilities for the Homer location. Signed and agreed to by the Board of Directors.

Kevin Hogan President

Jessica Yeoman Secretary



37 of 50  
2009-000543-0

HOMER000799

EXHIBIT C  
SITE PLANS



38 of 50  
2009-000543-0

HOMER000800

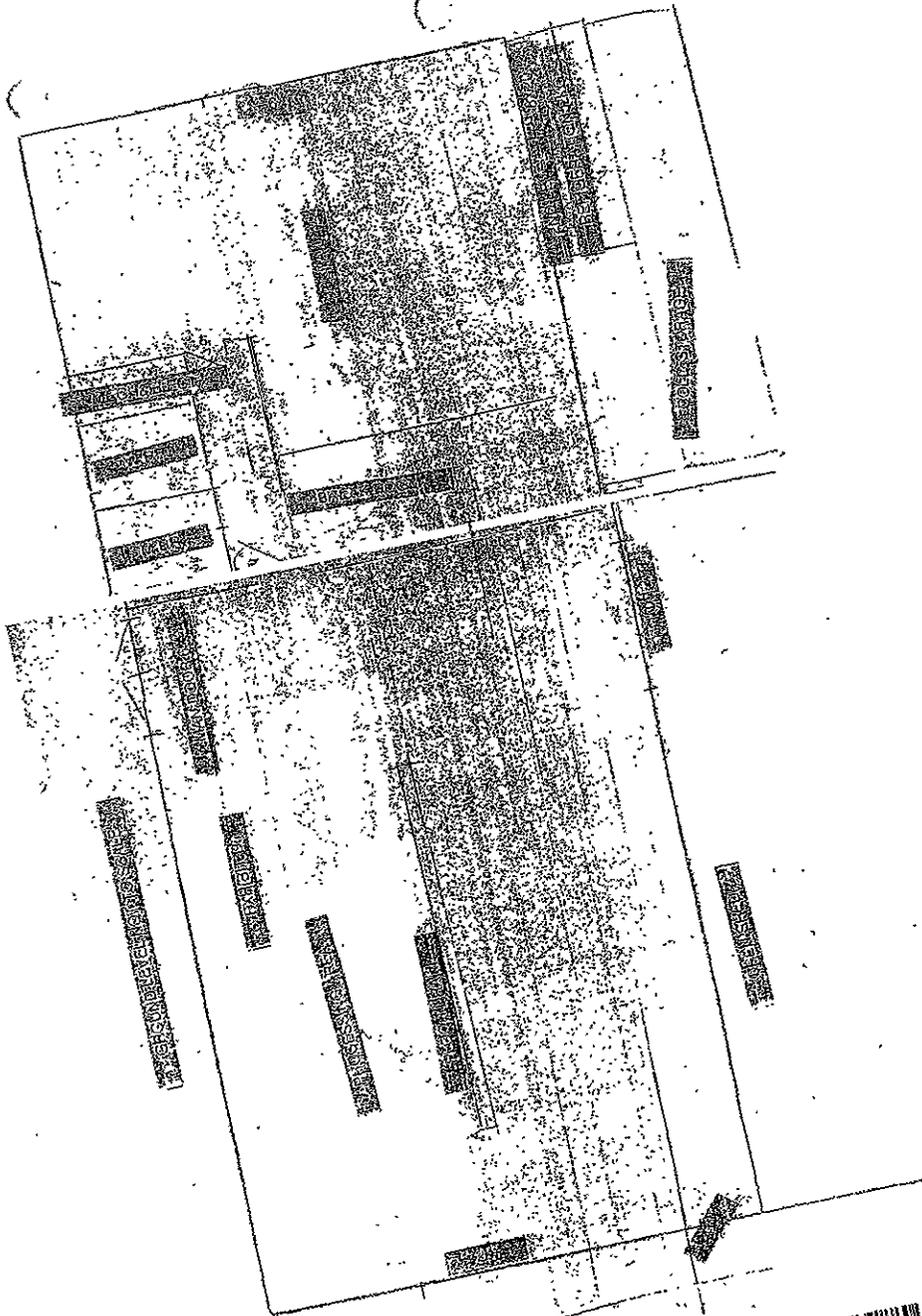


EXHIBIT D  
FLOOR PLANS



40 of 50  
2009-000543-0

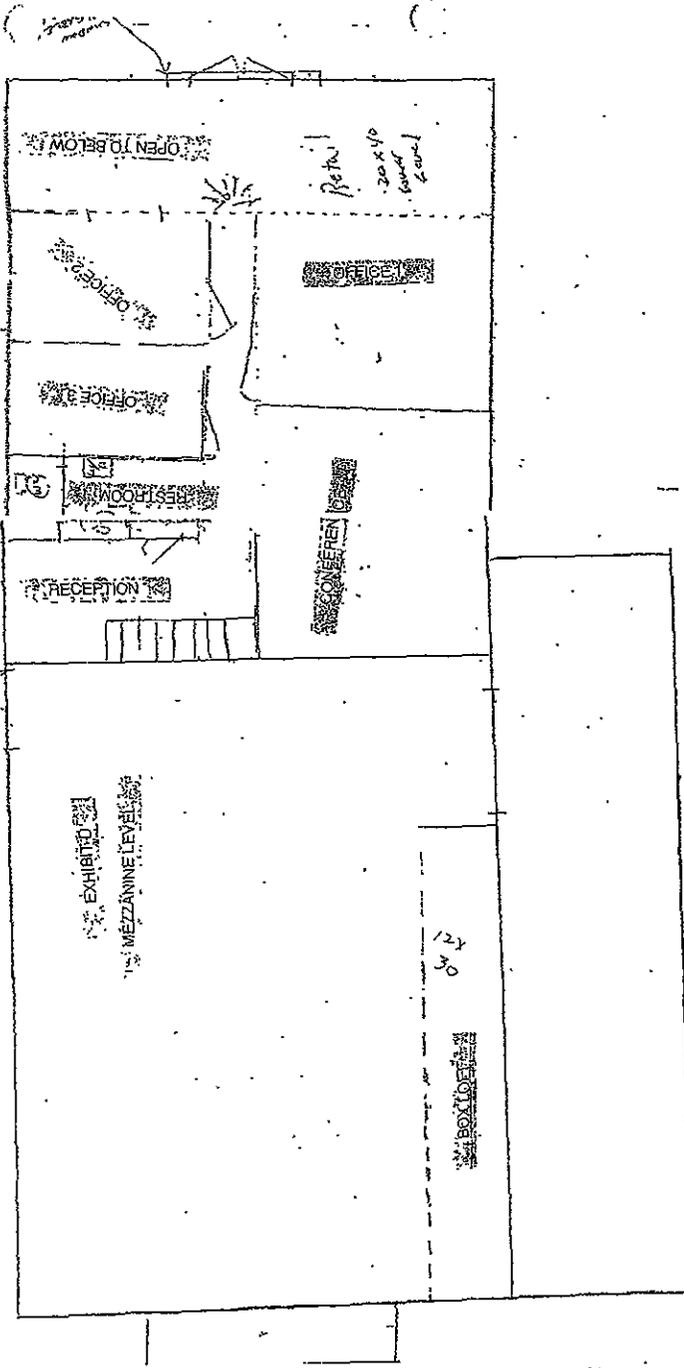
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42 of 50  
2009-000543-0

HOMER000803

EXHIBIT



41 of 50  
2009-000543-0

HOMER000804

EXHIBIT E

GENERAL LIABILITY INSURANCE ENDORSEMENT

City of Homer ("City")  
491 East Pioneer Ave.  
Homer, Alaska 99603-7624

Attn.: City Manager

A. POLICY INFORMATION

1. Insurance company \_\_\_\_\_; Policy no. \_\_\_\_\_
2. Policy term (from) \_\_\_\_\_ to \_\_\_\_\_  
Endorsement effective date: \_\_\_\_\_
3. Named insured \_\_\_\_\_
4. Address of named insured \_\_\_\_\_
5. Policy is: \_\_\_\_\_ claims made \_\_\_\_\_ occurrence
6. If claims made: Retroactive date: \_\_\_\_\_ Is tail coverage afforded? \_\_\_\_\_
7. Limit of liability any one occurrence: \$ \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_
8. Deductible or self-insured retention (nil unless otherwise specified):  
\$ \_\_\_\_\_

B. POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. **INSURED.** The City, its elected or appointed officials, employees and volunteers are included as insured with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the named insured; (b) products and completed operations of the named insured; or (c) premises owned, leased or used by named insured.

2. **CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its elected or appointed officials, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its elected or appointed officials, employees or volunteers shall be excess of this insurance and shall not contribute with it.



43 of 50

2009-000543-0

HOMER000805

3. SCOPE OF COVERAGE. The policy: (a) if primary, affords coverage at least as broad as forms currently in use as approved by the State of Alaska Division of Insurance; and (b) if excess, affords coverage which is at least as broad as the primary insurance forms reference in the preceding subpart (a).

4. SEVERABILITY OF INTEREST. The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.

5. PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its elected or appointed officials, employees or volunteers.

6. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE:

I, \_\_\_\_\_ (print/type name), \_\_\_\_\_ (title) warrant that I have authority to bind the below-named insurance company and, by my signature hereon, do so bind this company.

Signature: \_\_\_\_\_  
(original signature required on endorsement furnished to the City)

Company \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_



44 of 50  
2009-000543-0

HOMER000806

EXHIBIT F

WORKERS' COMPENSATION/EMPLOYERS LIABILITY ENDORSEMENT

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

A. POLICY INFORMATION

- 1. Insurance company: \_\_\_\_\_ ("Company");
Policy No. \_\_\_\_\_
2. Effective date of this endorsement: \_\_\_\_\_
3. Named insured: \_\_\_\_\_
4. Employer's liability limit (Coverage B): \_\_\_\_\_

B. POLICY AMENDMENTS

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

- 1. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Such notice shall be sent to the address given in the heading of this endorsement.
2. WAIVER OF SUBROGATION. The Company agrees to waive all rights of the subrogation against the City, its elected or appointed officials, agents and employees for losses paid under the terms of this policy which arise from work performed by the named insured for the City.

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE

I, \_\_\_\_\_ (print/type name), \_\_\_\_\_ (title) warrant that I have authority to bind the below-named insurance company and, by my signature hereon, do so bind this company.

Signature: \_\_\_\_\_
(original signature required on endorsement furnished to the City)

Company \_\_\_\_\_
Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_



45 of 50
2009-000543-0

HOMER000807



EXHIBIT E&F

MAC K3226-010  
4014 Lake Street, Suite 101  
Homer, AK 99603  
907.235.8105 Voice  
907.235.7074 Fax  
800.478.7708 In-State Toll-Free

Wells Fargo  
Insurance Services  
of Alaska, Inc.

March 21, 2008

City of Homer  
491 E Pioneer Ave.  
Homer AK 99603

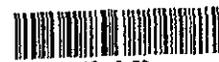
Re: Harbor Leasing, LLC

To Whom It May Concern:

Please be advised that we are in the process of securing insurance coverages for Harbor Leasing, LLC and anticipate an effective date on or before 4/1/08.

Sincerely,

  
Bonnie Mastolier, CIC  
Account Executive



HOMER000808

48 of 50  
2009-000543-0

EXHIBIT G

PERMISSION TO OBTAIN INSURANCE POLICIES

The City of Homer is hereby granted permission to request and obtain copies of HARBOR LEASING LLC ("Tenant") insurance policies from Tenant's broker and/or insurer, WELLS FARGO INSURANCE SUB, INC.. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

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

Date: 3/20/08

TENANT NAME

By: Kevin Hogan  
[Signature] (printed name)  
MANAGING MEMBER (title)

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

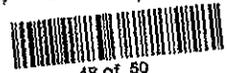
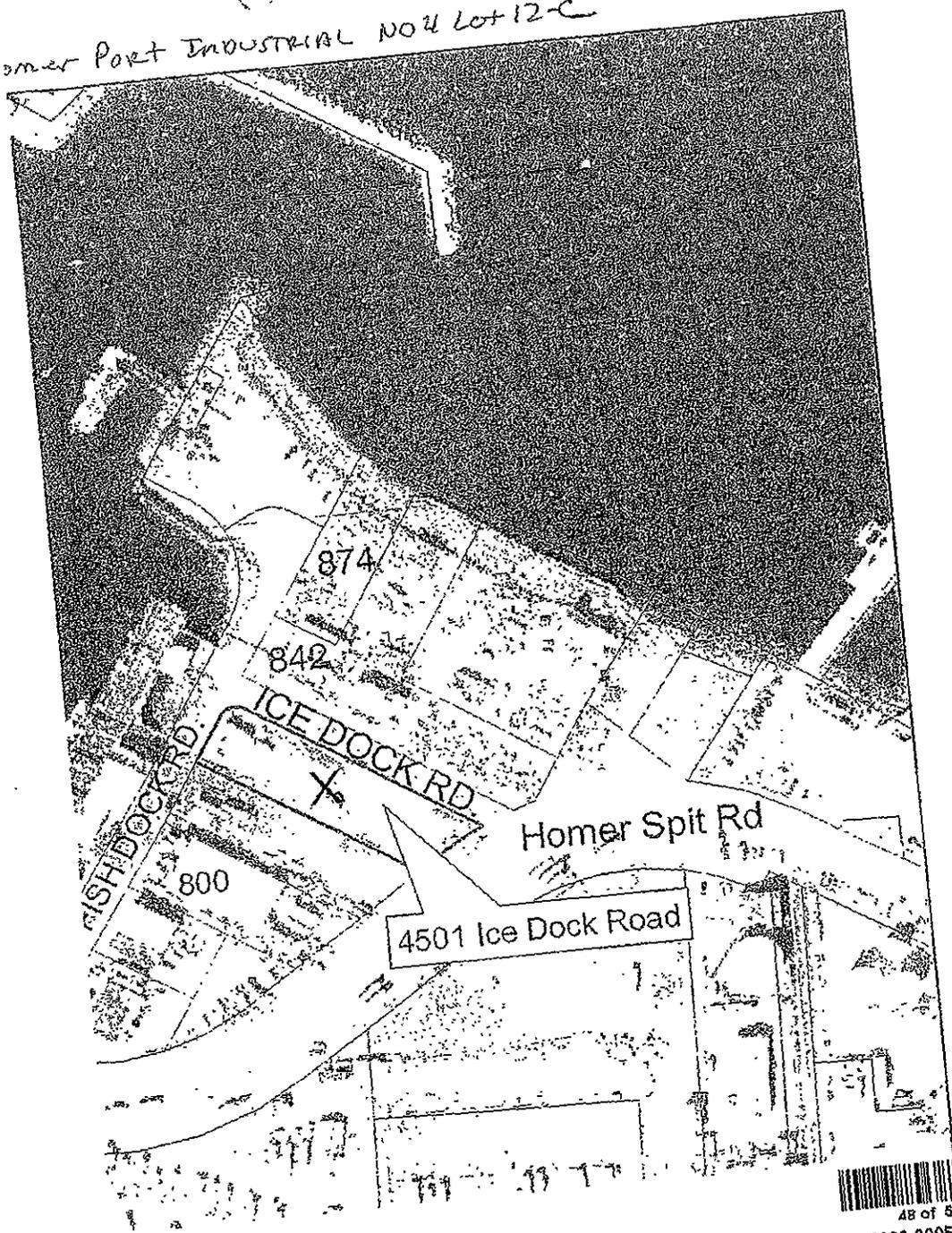


47 of 50  
2009-000543-0

HOMER000809

Homer Port Industrial NO 4 Lot 12-C

Exhibit H



48 of 50  
2009-000543-0

HOMER000810

**FIRST AMENDMENT TO GROUND LEASE AND SECURITY AGREEMENT**

THIS FIRST AMENDMENT TO GROUND LEASE AND SECURITY AGREEMENT (this "Amendment") is entered into as of February 18, 2009, by and between the CITY OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East Pioneer Avenue Homer, Alaska 99603, and HARBOR LEASING, LLC, an Alaska limited liability company ("Tenant"), whose address is P.O. Box 2228, Homer, Alaska 99603.

WHEREAS, the parties entered into a Ground Lease and Security Agreement dated as of March 26, 2008, (the "Lease"), with respect to real property described as:

Lot 12(c) Port Industrial Subdivision No. 4, Plat 99-43, Homer Recording District, State of Alaska; and,

WHEREAS, the parties desire to clarify certain provisions of the Lease concerning liens and encumbrances on "Tenant's Estate," as that term is defined in Section 14.01 of the Lease.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Amendment of Section 8.01.** The following sentence is added at the end of Section 8.01 of the Lease:

This section does not apply to a "Permitted Mortgage" as that term is defined in Section 14.01.

2. **Amendment of Section 9.01.** The following sentence is added at the end of Section 9.01 of the Lease:

This section does not apply to a "Permitted Mortgage" as that term is defined in Section 14.01.

3. **Amendment of Section 14.01.** The definition of "Permitted Mortgage" in Section 14.01 of the Lease is amended to read as follows:

"Permitted Mortgage" means collectively any deed(s) of trust, mortgage(s), and other collateral security instruments serving as security for a construction loan or permanent loans, or both; to finance the cost of the Required Improvements described in Section 6.02, that encumber Tenant's Estate, together with any modification, substitution, amendment, extension, increase,



49 of 50  
2009-000543-0

HOMER000811

refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) of any Permitted Mortgage; provided, however in no event may any such Permitted Mortgage encumber Landlord's Estate.

4. **Affirmation of Lease.** Except as expressly amended herein, all terms and conditions of the Lease as originally executed shall remain in full force and effect.

LANDLORD: CITY OF HOMER

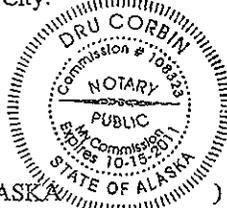
By [Signature]  
Walt Wrede, City Manager

TENANT: HARBOR LEASING, LLC

By [Signature]  
Kevin Hogan, Managing Member

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this 18 day of February 2009, by WALT WREDE, City Manager of the CITY OF HOMER, an Alaska municipal corporation, on behalf of the City.



[Signature]  
Notary Public in and for Alaska  
My commission expires: 10-15-2011

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this 18 day of February 2009, by KEVIN HOGAN, Managing Member of HARBOR LEASING, LLC, an Alaska limited liability company, on behalf of the limited liability company.



[Signature]  
Notary Public in and for Alaska  
My commission expires: 10-15-2011



50 of 50  
2009-000543-0

HOMER000812

**City of Homer**  
Homer, Alaska  
Mayor's Certificate of Recognition  
Greetings  
Be It Known That

***Kevin Hogan***

is hereby recognized for his years of service  
as

*"Commissioner"*

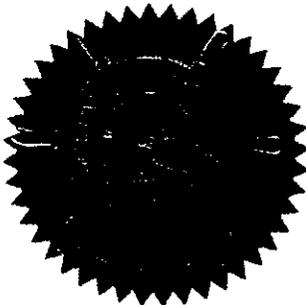
on the

*Port and Harbor Advisory Commission*

*April 9, 2007 to October 20, 2009*

*Recognition of your dedication to the cause of good government, your  
contributions to your community and your willingness to serve your fellow man.*

*In Witness whereof I hereunto set my hand  
This 1<sup>st</sup> day of December, 2009.*



*James C. Hornaday*  
James C. Hornaday, Mayor

Attest:

*Jo Johnson*  
Jo Johnson, CMC, City Clerk

# City of Homer

Homer, Alaska

Mayor's Certificate of Recognition

Greetings

Be It Known That

## *Kevin Hogan*

is hereby recognized for his years of service

as

*"Commissioner"*

on the

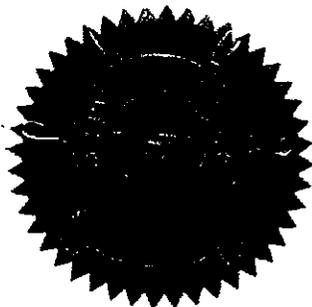
*Economic Development Advisory Commission*

*November 13, 2007 to October 20, 2009*

*Recognition of your dedication to the cause of good government, your contributions to your community and your willingness to serve your fellow man.*

*In Witness whereof I hereunto set my hand*

*This 1<sup>st</sup> day of December, 2009.*



  
James C. Hornaday, Mayor

Attest:

  
Jo Johnson, CMC, City Clerk

*Personal Memo*

*From*

Kevin Hogan  
4735 Tamara St.  
Homer AK 99603

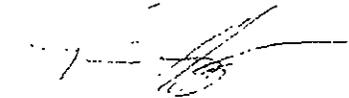
To: Honorable Mayor Jim Hornaday  
Cc: City Clerk Jo Johnson

Rc: Commission Resignations

Dear Mayor

Please note my resignation from the Commissions of Port and Harbor and Economic Development effective 6PM, October 20, 2009.,. I appreciate the opportunity to serve and your confidence in me, I look forward to working with you on the Council.

Best Regards



Kevin Hogan

HOMER CITY COUNCIL  
REGULAR MEETING MINUTES  
APRIL 25, 2011

Session 11-15 a Regular Meeting of the Homer City Council was called to order on April 25, 2011 at 6:01 p.m. by Mayor James C. Hornaday at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

**PRESENT:** COUNCILMEMBERS: HOGAN, HOWARD, LEWIS, ROBERTS,  
WYTHE, ZAK

**STAFF:** CITY CLERK JOHNSON  
CITY MANAGER WREDE  
FINANCE DIRECTOR MAURAS  
PORT AND HARBOR DIRECTOR HAWKINS  
PUBLIC WORKS DIRECTOR MEYER

Council met for a Worksession from 4:00 p.m. to 4:59 to discuss Water/Sewer Rates. Council met as a Committee of the Whole from 5:05 p.m. to 5:56 p.m. to hear a report on the Permanent Fund earnings from Clarence Hughes and Rod Castelda of U.S. Bank and for discussion on Regular Meeting Agenda items.

Department Heads may be called upon from time to time to participate via teleconference.

#### **AGENDA APPROVAL**

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

The agenda was approved by consensus of the Council with the following changes:

**ANNOUNCEMENTS/PRESENTATIONS:** Letter from Homer Chamber of Commerce;  
**PUBLIC HEARINGS:** Kachemak Drive Phase Two Water and Sewer Improvement/Assessment District, written comments.

#### **PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA**

Brad Faulkner, city resident, commented on the parity study and its lack of comparison to the private sector. He voiced support for Resolution 11-041, with the exception of charges for subleases and the insurance requirement. He suggested the City charge a percentage for subleases to make it fair.

Jan Needham, city resident, voiced opposition to Resolution 11-044, citing \$31,000 for a Ford Escape Hybrid 2011 as an unnecessary expenditure.

#### **RECONSIDERATION**

#### **CONSENT AGENDA**

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Councilmember.)

- A. Homer City Council unapproved Regular Meeting minutes of April 11, 2011. City Clerk. Recommend adoption.
- B. **Memorandum 11-056**, from Deputy City Clerk, Re: New Liquor License for Two Sisters Bakery.
- C. **Memorandum 11-057**, from Mayor, Re: Appointments of Monica Cogger, Tamara Fletcher, and Kenneth Schroeder to the Library Advisory Board and Reappointment of Steve Smith to the Transportation Advisory Committee.

Mayor Hornaday called for a motion for the adoption of the recommendations of the consent agenda as read.

LEWIS/ZAK - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

#### VISITORS

A. **Clarence Hughes and Rod Castelda, U.S. Bank**

Rod Castelda and Clarence Hughes, U.S. Bank, provided an overview of the Permanent Fund investment account they have managed for ten months. There are two portfolios, fixed income (bonds/bond funds) and growth (equity/stock/commodity). Fixed income is predominantly in individual bonds, 50% in U.S. corporate bonds and 50% in U.S. government agencies and treasuries. The average credit quality is AA-, average coupon is 2.41%, average maturity is 4.1%. The annual income is \$13,352; over the last 10 months the account is off 1.22% in principle due to fluctuations in the fixed income environment. U.S. Bank bought individual bonds as they would mature at par value, shielding the portfolio principle from loss.

The growth portfolio is predominantly invested in common stock funds with \$28,000 in cash, \$102,000 in commodity funds and the remaining \$900,000 is in equity mutual funds. Growth portfolio investments include:

- 66% invested in U.S. domestic companies with the remainder invested in Europe, Asia, and Latin America.
- 25% invested in large cap stocks, with the remainder in mid cap, small cap, and international companies.

Over the past 10 months the Permanent Fund has generated a 22.84% rate of return. Throughout 2011 and 2012 inflation may kick up. There is some volatility with the U.S. Federal Reserves and consumer expenditures. As a precaution for the growth portfolio, U.S. Bank has diversified holdings in mutual funds. They expect the fixed income will stay relatively short to minimize interest hikes and principle erosion. As bonds mature they will look to invest in the most advantageous part of the yield curb.

**ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS**

**A. Mayor's Proclamation - Municipal Clerks Week – May 1 – 7, 2011**

Mayor Hornaday read the proclamation.

**B. Mayor's Proclamation – Peace Officers Memorial Day May 15 and National Police Week May 15 – 21, 2011**

Mayor Hornaday read the proclamation.

**C. Thank you letters from Cook Inletkeeper and Center for Alaskan Coastal Studies**

**D. Letter from Homer Chamber of Commerce, re: *Ultimate Fishing Town USA***

Mayor Hornaday read the letter from the Chamber of Commerce.

**E. Borough Report**

Bill Smith, Kenai Peninsula Borough Assemblyman, reported the Assembly's last meeting was in Seward. The assistant to the city manager is intent on making Seward the *Ultimate Fishing Town USA*. If Homer wants to prevail they need to keep voting. The Assembly will be presented the budget at next week's meeting. There are sentiments of the Assembly to both fund and not fund the Kenai Peninsula Tourism Marketing Council (KPTMC). For the last two years the Borough has allocated \$300,000 to the KPTMC. They are now floating a proposal for a 1% sales tax on visitor industry related business. The tax change would cost the Borough \$85,000 to implement and would be confusing for businesses to follow. It may not pass muster with the State of Alaska. The KPTMC wants to see dedicated funding. The counter idea is to approach voters with a .10% sales tax dedicated to business support throughout the borough. It would include the Economic Development District, KPTMC, and other enterprises.

As to the gas line, Assemblyman Smith received a call from Representative Seaton on the energy numbers he put together. He is trying to get a forecast on all public facilities from what they are paying now for fuel oil as to what they would pay with natural gas. So far the savings are over \$1M for public facilities in Homer. Now is the time to write to Governor Parnell and Lieutenant Governor Treadwell to support the gas line to Homer. It is a good investment for the State with less than a 10-year payback.

There is an effort in the borough from various folks to help Japan through the Borough's Sister City Akita. Funds will be used to help the east coast residents of Japan. Contributions may be sent to Bridges, P.O. Box 1612, Soldotna, AK 99669, payable to Akita Sister City Earthquake. For more information call Bill Smith at 235-8932.

Councilmember Zak asked about funding for the borough landfill and what Council can do to help. Assemblyman Smith answered Representative Chenault has reassured the Borough he is looking out for the building of the solid waste handling facility in Soldotna.

F. Commissions/Board Reports:

1. Library Advisory Board
2. Homer Advisory Planning Commission

Sharon Minsch, Planning Commission Chair, reminded Council and the large listening audience of the vacancy on the Planning Commission. The commission did not have opportunity to provide written input on Resolution 11-042. She asked that stronger language to do no harm to Homer be included in the resolution.

3. Economic Development Advisory Commission
4. Parks and Recreation Advisory Commission
5. Port and Harbor Advisory Commission

Bob Hartley, Port and Harbor Advisory Commissioner, reported the passage of Resolutions 11-036(A) and 11-040 is of vital importance to allow the Harbormaster to implement the permits and signage. It will allow for advertising and installation of signage that should take place before Memorial Day weekend. Resolution 11-041 standardizes ground leases. Each lease will be different, but the document allows for a starting point. It too is time sensitive as there are leases waiting to be issued.

Mayor Hornaday read the letter from the Chamber of Commerce on the search for the *Ultimate Fishing Town USA*. The Mayor encouraged everyone to vote for Homer by visiting the website at: [www.homer.alaska.org](http://www.homer.alaska.org) or from Facebook page at [www.facebook.com/VisitHomer](http://www.facebook.com/VisitHomer).

**PUBLIC HEARING(S)**

A. Kachemak Drive Phase Two Water and Sewer Improvement/Assessment District

Mayor Hornaday opened the public hearing.

Jan Needham, city resident, reflected on the history of the City paying the larger portion and property owners paying the smaller amount. Kachemak Drive is a major arterial between the Spit and developments on East End Road and water/sewer improvements should be funded by the

State. She asked that her lot within the district that sits back from the street be excluded from the improvement district.

Lars Spurkland objects to the water and sewer improvement due to costs. With the flat assessment per lot, smaller lots are subsidizing larger lots and commercial lots are assessed the same. He has two low lots and will not receive financial benefit.

Jean Mack supports the LID, citing it is important that the City extend water and sewer wherever it can.

Jan Spurkland opposes the LID for economic reasons. He owns multiple lots with minimum development potential and the costs outweigh the potential. One lot is bordered on two sides by easements and the water/sewer would add another easement, making one lot unbuildable. If he had to pay for only one hookup he would be supportive.

Beverly Kaiser expressed support for the LID citing the benefit of the 1.5% interest rate over a 20 year period. She hopes bids come in at a reasonable rate so both sides can make profit.

Mayor Hornaday closed the public hearing.

- B. **Ordinance 11-13(A)**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$15,000 from the Port and Harbor Reserve Account for the Purpose of Implementing the Long Term Parking Permit Plan and for New Signage at the Approach Ramps. City Manager. Introduction April 11, 2011, Public Hearing and Second Reading April 25, 2011.

Mayor Hornaday opened the public hearing. In the absence of public testimony, Mayor Hornaday closed the public hearing.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-13(A) by reading of title only for second and final reading.

HOWARD/LEWIS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Resolution 11-040**, A Resolution of the City Council of Homer, Alaska, Amending the Port of Homer Terminal Tariff No. 600 to Provide for Parking Fees. City Manager/Port and Harbor Director.

Mayor Hornaday opened the public hearing. In the absence of public testimony, Mayor Hornaday closed the public hearing.

**ORDINANCE(S)**

- A. **Ordinance 11-14**, An Ordinance of the City Council of Homer, Alaska, Accepting and Appropriating a Rasmuson Foundation Grant of \$15,000 for Collection Development for the Homer Public Library and Authorizing the City Manager to Execute the Appropriate Documents. City Manager. Recommended dates: Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-14 for introduction and first reading by reading of title only.

WYTHE/HOWARD - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. **Ordinance 11-15**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 10.04.100, Vehicles and Other Wheeled Conveyances; and Homer City Code 10.04.110, Violation--Penalty; Regarding the Regulation of Parking in the Harbor Area. City Manager/Port and Harbor Director. Recommended dates: Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-15 for introduction and first reading by reading of title only.

HOWARD/WYTHE - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Ordinance 11-16**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the Fund Balance of the General Fund to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate. City Manager/Public Works Director. Recommended dates: Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-16 for introduction and first reading by reading of title only.

HOWARD/WYTHE - SO MOVED.

WYTHE/LEWIS – MOVED TO AMEND THE TITLE AND OTHER LOCATIONS THROUGHOUT TO READ FOR THESE FUNDS TO COME FROM THE WATER AND SEWER RESERVE FUND AS OPPOSED TO THE GENERAL FUND.

There was no discussion.

VOTE: (amendment) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **CITY MANAGER'S REPORT**

#### **A. City Manager's Report**

#### UPDATES / FOLLOW-UP

For this meeting, the Manager's Report consists entirely of the Parity Study recently completed by Personnel Director Sheri Hobbs. Please take the time to look it over. My hope is that we can discuss this a little at the Committee of the Whole. At that time we can give you an overview and answer questions. We will be looking for some direction as to how the Council may want to proceed from here. A workshop dedicated to this topic scheduled at a future meeting might be a good idea, to start with.

City Manager Wrede passed out emails from Representative Seaton and maps from the Alaska Redistricting Board for Option 1 – District 35 and Option 2 – District 36. In addition to the two options from the Alaska Redistricting Board, there are private options from the Bush Caucus, City of Valdez, and Bristol Bay Borough. Those maps significantly change House District 35 and Senate District R. There are web links in emails received from Representative Seaton for good information. The big difference for Homer is we are no longer linked with Seward. Instead of Seward we go further up the road towards Clam Gulch and Ninilchik. If Council wants to get involved they are looking for input. There is a public hearing on May 3 11:30 – 1:30 p.m. in Cowles Council Chambers.

Mayor Hornaday commented there may be many lawsuits in Alaska. Administration should ask Senator Stevens and Representative Seaton to give specific recommendations and then follow up on it. Redistricting comes up every 10 years and it is a terrible fight. Southeast Alaska and the bush areas are losing. It may have something to do with the budget in Juneau.

City Manager Wrede informed Council there is no report from the lobbyist, as there is nothing new to report. The lobbyists will be here on May 9<sup>th</sup>.

Mayor Carey is inviting participation in a borough-wide conference on healthcare. Mayor Hornaday would like to see staff there to represent the City.

City Manager Wrede paid tribute to Sheri Hobbs, Personnel Director, and Helen Hill, Library Director, who are leaving their employment with the City. It has been a joy to work with them. They are both professionals and have done an outstanding job for the City of Homer. The long awaited parity study is in the packet and Council will decide how they wish to proceed.

Mayor Hornaday commented Mr. Faulkner made reference to the comparison of government packages with private employer packages. The Mayor comes from both sides, as a Tier One retired employee and he also ran five businesses. City Manager Wrede clarified the focus was not to compare the city's employees with the private sector. Personnel policies say the parity study compares the City to other cities, since other municipalities are the competitors.

Councilmember Howard added the South Peninsula Hospital is a private facility; none of the operating funds are tax supported. They are a non profit and are unionized. Citizens pay tax money for capital improvements, but do not pay for the operations.

Councilmember Lewis asked for the breakdown of costs per each job description with benefits and salary combined.

Councilmember Hogan asked why it is taking so long to get the streets swept. City Manager Wrede answered Public Works crews have been really busy. They have been working on the streets with a front end loader. Until recently the weather has been mixed, making for plowing, sanding, and thawing culverts.

Mayor Hornaday referenced Mayor Carey's letter regarding the FCC narrow band mandate. City Manager Wrede will present a resolution in support at the next meeting.

B. Bid Report

**CITY ATTORNEY REPORT**

**COMMITTEE REPORT**

- A. Public Arts Committee
- B. Transportation Advisory Committee
- C. Permanent Fund Committee
- D. Lease Committee
- E. City Hall Renovation and Expansion Task Force

**PENDING BUSINESS**

- A. **Resolution 11-036(A)**, A Resolution of the City Council of Homer, Alaska, Amending the Fee Schedule to Provide for Long Term Parking Permit Fees. City Manager.

Memorandum 11-059 from Port and Harbor Director as backup.

Motion on the floor from April 11: MOTION FOR THE ADOPTION OF RESOLUTION 11-036(A) BY READING OF TITLE ONLY.

Councilmember Wythe expressed opposition to charging people that pay for a slip additional money to park a car.

Bob Hartley, Port and Harbor Advisory Commissioner, reported a person with a slip who will not be parked for more than 7 days will not have to pay for parking. If parked for longer than 7 days the permit is a way to avoid impoundment and fees.

Councilmember Hogan asked if there was discussion on a discount for marine trades on Ramps 1-4. Mr. Hartley answered there was not.

Councilmember Howard commented it is not appropriate to use public land to a store trailer. It is moving in on the storage companies in town that depend on those customers.

WYTHE/ROBERTS - MOVED TO SUBSTITUTE THE CURRENT RESOLUTION 11-036(A) ON PAGE 213 WITH THE AMENDED RESOLUTION 11-036(A) ON PAGE 217.

There was no discussion.

VOTE: (amendment) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) YES. ROBERTS, WYTHE, ZAK, HOWARD, HOGAN, LEWIS

Motion carried.

**NEW BUSINESS**

**RESOLUTIONS**

- A. **Resolution 11-040**, A Resolution of the City Council of Homer, Alaska, Amending the Port of Homer Terminal Tariff No. 600 to Provide for Parking Fees. City Manager/Port and Harbor Director.

Memorandum 11-062 from City Clerk as backup.

Mayor Hornaday called for a motion for the adoption of Resolution 11-040 by reading of title only.

HOWARD/LEWIS – SO MOVED.

WYTHE/LEWIS MOVED FOR THE AMENDMENT OF RESOLUTION 11-040 TO FOLLOW THE AMENDMENTS MADE IN RESOLUTION 11-036(A) AS PRESENTED ON PAGE 217.

There was no discussion.

VOTE: (amendment) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. **Resolution 11-041**, A Resolution of the City Council of Homer, Alaska, Approving and Adopting a New, Amended Standard Ground Lease Document, and Authorizing the Amendment of the City of Homer Property Management Policy and Procedures Manual to Conform to the Amended Standard Ground Lease Document. City Manager/Lease Committee.

Memorandum 11-060 from Lease Committee Staff as backup.

Memorandum 11-058 from City Manager to Lease Committee as backup.

Mayor Hornaday called for a motion for the adoption of Resolution 11-041 by reading of title only.

WYTHE/ROBERTS – SO MOVED.

HOGAN - MOVED TO REFER THIS TO THE ECONOMIC DEVELOPMENT COMMITTEE FOR THEIR COMMENTS.

Motion died for lack of a second.

Councilmember Lewis requested a set rate for subleasing in Section 8.01 as suggested by Brad Faulkner instead of the rate being set at the whim of the Council. Additionally, he asked if automotive insurance requirements could be amended.

City Manager Wrede agreed the percentage for subleases was a good suggestion and should be included in city code. As to insurance requirements, Attorney Klinkner and Terry Felde, Administrative Assistant, worked with the insurance broker for the language. It was written with

the intent to cover any vehicles a lessee might have, including employees. If there were an accident it could come back on the City.

Councilmember Howard asked if insurance requirements would be satisfied with the City named as additional insured.

City Manager Wrede answered the insurance requirements have been a point of contention with a lot of lessees. The old boilerplate lease had insurance policies required that are no longer available today. A general insurance requirement could be listed on the ground lease and provisions added during lease negotiations.

Councilmember Howard asked that the resolution be delayed to work out both the sublease percentage and the required insurance as to the standard of business. Councilmember Wythe asked that auto liability coverage be delineated to show the appropriate need.

Mayor Hornaday suggested the attorney and insurance carrier both be involved. City Manager Wrede answered the City Attorney and insurance company worked out that question.

WYTHE/LEWIS - MOVED TO POSTPONE APPROVAL OF RESOLUTION 11-041 TO THE SECOND MEETING IN MAY AND SCHEDULE A WORKSESSION REGARDING THE INSURANCE AND PERCENTAGE SECTION FOR THE FIRST MEETING IN MAY.

Brief discussion ensued on the need for a worksession.

VOTE: (POSTPONEMENT) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Resolution 11-042**, A Resolution of the City Council of Homer, Alaska, Expressing Opposition to Kenai Peninsula Borough Ordinance 2011-07 Which Reduces the Number of Borough Planning Commission Members from Thirteen to Eleven and Combines the Designated Homer and Seldovia Seats into One. City Manager.

Mayor Hornaday called for a motion for the adoption of Resolution 11-042 by reading of title only.

LEWIS/ROBERTS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- D. **Resolution 11-043**, A Resolution of the City Council of Homer, Alaska, Authorizing the City Manager to Prepare and Issue a Set of Requests for Proposals for Five Year Term Contracts for Engineering Services. City Manager/Public Works Director. Page 315

Mayor Hornaday called for a motion for the adoption of Resolution 11-043 by reading of title only.

WYTHE/HOWARD - SO MOVED.

City Manager Wredc noted the contract is expiring for the first time. Term contracts provide for an engineer to be readily available when needed without spending time requesting proposals and making individual decisions.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- E. **Resolution 11-044**, A Resolution of the City Council of Homer, Alaska, Awarding the Contract for a 2011 Ford Escape Hybrid in the Amount of \$30,722.00 to Kendall Ford of Wasilla, Alaska, and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk.

Memorandum 11-061 from Port and Harbor Director as backup.

Mayor Hornaday called for a motion for the adoption of Resolution 11-044 by reading of title only.

WYTHE/HOWARD - SO MOVED.

The current vehicle operated by the Port and Harbor Director is 16 years old with 140,000 miles. The new hybrid has a gasoline engine to back up the battery power. Hybrid vehicles are in compliance with the Climate Action Plan.

VOTE: YES. LEWIS, ROBERTS, WYTHE, ZAK, HOWARD

VOTE: NO. HOGAN

Motion carried.

- F. **Resolution 11-045**, A Resolution of the City Council of Homer, Alaska, Awarding the Contract for the Deep Water Dock Security Gate and Camera Systems Project to \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ in the Amount of \$ \_\_\_\_\_ and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk.

Mayor Hornaday called for a motion for the adoption of Resolution 11-045 by reading of title only.

WYTHE/ROBERTS - SO MOVED.

Staff recommended the resolution be voted down as there will be a different bid format.

VOTE: NO. HOGAN, LEWIS, ROBERTS, WYTHE, ZAK, HOWARD

Motion failed.

**COMMENTS OF THE AUDIENCE**

Carey Meyer, Public Works Director, commented on the street sweeping, stating 10 days ago we had snow and the sand is frozen in the curbs at night making sweeping difficult. Many of the roads not yet swept are State maintained.

Brad Faulkner, city resident, commented the impasse in Juneau on the budget will greatly affect Homer due to the Governor's relationship with the oil companies. Projects have been tied into one bundle to prevent a veto. He recommended support for Senator Stevens and Representative Seaton in their endeavors with the gas line.

Jan Needham, city resident, commented on the .75% portfolio fee paid to U.S. Bank based on market value instead of cash in hand. She is quite concerned the City is spending tremendous amounts of money at a time when it is difficult for citizens.

Sunrise Sjoberg returned to Homer to find the City's monster brush cutting machine was at her house. She spent several hours cleaning up what was left behind in the ditches. The base of the ditch is getting higher, causing water to run under the road. She would like some attention placed on maintenance and to not see the beautiful alders chewed up by the big machine.

**COMMENTS OF THE CITY ATTORNEY**

City Attorney Klinkner was not present.

**COMMENTS OF THE CITY CLERK**

City Clerk Johnson had no comment.

**COMMENTS OF THE CITY MANAGER**

City Manager Wrede had no comment.

**COMMENTS OF THE MAYOR**

Mayor Hornaday commented he heard the Sandhill Cranes this morning. Spring his here!

**COMMENTS OF THE CITY COUNCIL**

Councilmember Wythe thanked the U.S. Bank folks for coming. She is happy the fund is creating revenue. She appreciates the city clerks and peace officers. The clerks put up with a lot of rhetoric so Council does not have to. She thanked Helen Hill and Sheri Hobbs for their years of service and wished them well. As to the parity study and lack of public participation, Walt stated it was not in the personnel policies that we are looking for non city entities to participate. The City does invite other members of the community to participate in the parity study, although there are not many good fits and not many organizations are interested in sharing information. The City cannot compel people to participate in those surveys.

Councilmember Lewis thanked Sheri and Helen for their years of service.

Mayor Hornaday thanked Sheri and Helen.

Councilmember Zak thanked Assemblyman Smith for the report and coming up with the new numbers of \$1M savings a year with the \$10M request for the gas line. It is good to know Representative Seaton and Senator Stevens have packaging going on to save the veto. On the Borough transfer site, the House Finance Committee is the contact. Being an optimist, Councilmember Zak hopes to see the gas line and transfer site funded as they are both critical to the future. People can get involved and send a letter to Representative Seaton, Senator Stevens, and Governor Parnell.

Councilmembers Hogan and Howard had no comment.

#### ADJOURNMENT

There being no further business to come before the Council, Mayor Hornaday adjourned the meeting at 7:37 p.m. The next Regular Meeting is scheduled for Monday, May 9, 2011 at 6:00 p.m. The next Committee of the Whole is scheduled for Monday, May 9, 2011 at 5:00 p.m. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

\_\_\_\_\_  
JO JOHNSON, CMC, CITY CLERK

Approved: \_\_\_\_\_

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD. HOMER, ALASKA 99603      PHONE:(907) 235-3160	FMC	PAGE NO.	54
	NO.	REVISED PAGE NO.	
TERMINAL TARIFF NO. 600	600		

**RULE: 34.29 - BEACHES**  
(continued)

The harbormaster shall charge fees as established by Resolution of the City Council for landing or parking a vessel on the beaches under City ownership or control. Charges for extended beach use may be adjusted by the harbormaster under appropriate circumstance.

The user of any beach area must repair any damage to the beach and remove all debris. Failure to make such repairs and removal will result in repairs and cleanup by the harbor staff. The costs incurred by the harbor staff will be fully charged to the beach user. Labor rate for the harbor staff will be fifty dollars per hour per person, plus appropriate equipment rental and material costs.

**RULE: 34.30 - FISH DOCK (I)**

EFF: 15SEP1995

**SUBSECTION 275**

The Fish Dock is to be used primarily for the loading and unloading of fish, fish products and fishing gear. Any other use must be approved in advance by the harbormaster. Dock fees shall be those set at Subrule 34.19 Subsection 205.

Every person using a crane on the Fish Dock shall first obtain a license from the City. A private user shall obtain a private license, which shall be the annual access card, and shall pay the annual access card fee set forth in this subsection. A private license shall entitle only the owner if an individual, and the master and crew of a vessel to load and unload the vessel at the Fish Dock. All retail food service establishments (as defined in the Standard Industrial Classification Code #5800, #5812 and #5813) may purchase an annual food service license, fee set forth in this subsection. The purchase of an annual access card would also be required. All other users shall be deemed commercial users and shall obtain an annual commercial license or, in lieu thereof, enter into a fish buying shed license agreement with the City. The terms and fee, or method for establishing the fee, for a fish buying shed license agreement shall be established by resolution of the

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HOMER002329

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603 PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	55
	NO.	REVISED PAGE NO.	
	600		

RULE: 34.30 - FISH DOCK  
(continued)

City Council. The annual fee for a commercial license shall be established by resolution of the City Council, but shall not be less than one thousand dollars. If the licensee chooses to unload fish at one cent per pound, he shall be required to deposit five hundred dollars cash and all fish tickets will be shown to the harbormaster to verify the poundage of fish taken over the dock. In addition to the annual license fee, all users of the Homer Fish Dock shall pay the user fees set forth herein except that the holder of a fish buying shed license agreement shall be exempt from the annual card access fee.

The harbormaster shall designate one or more cranes on the Fish Dock open to public use (both private and commercial users) on a first-come first-served basis. All private and commercial licenses and food services are subject to a two-hour maximum time limit during times when other private, commercial, food service, fish shed licensees are waiting to use the crane. This time shall be the time that the licensees actually occupies the crane berthing space or other has possession on the public use crane. Every other crane at the Fish Dock and the crane on the Main dock may be designated by the harbormaster for preferential use by the holder of a fish buying shed license agreement. Preferential use of a crane shall entitle the holder to the exclusive right to use of the crane for loading and unloading fish and fish products during fish buying periods and to priority use of crane for all other uses; provided however, that a preferential user shall not be entitled to use of the crane until an actual and legal use of the crane by non-preferential user ends. The harbormaster shall promulgate such additional rules as may be necessary to implement this section.

For an approved user blocking access to cranes other than those in use, a fee of one hundred dollars will be assessed for each crane blocked if another vessel is thereby forced to wait.

Failure to obtain prior approval for a use other than loading and unloading fish, fish products or fishing gear will result in the imposition of a surcharge of thirty dollars per hour in addition to the regular fee.

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HOMER002330

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603 PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	56
	NO.	REVISED PAGE NO.	
	600		

**RULE: 34.30 - FISH DOCK**  
(continued)

No person shall use the Fish Dock in violation of this section.

Schedule of rates shall be set by City Council Resolution  
See also Subrule 34.20 Subsection 210 e.

ITEM	Fee
Annual access card(private license)	\$75 per year (annual renewal fee)
Card replacement fee	\$10 per occurrence
Annual food service license	\$50 per year
Cold Storage (Cold storage rate structure is for storage area of eight feet by ten feet)	\$225/month in 1995 \$250/month in 1996 Minimum two months. Inspection \$50/hour
Fish Dock crane	\$37.50/hour in 1995 \$42.50/hour in 1996 Negotiated rate for more than 200 hours. (By City Manager)
Minimum charge per hour for crane	Fifteen minutes
Ice	Augured \$67/T in 1995 \$75/T in 1996 Pneumatic \$72/T in 1995 \$80/T in 1996 Negotiated rate for 100 Ton commitment. (By City Manager)
Seafood wharfage/Fish product.	Setting a tariff of 1% of the value of the product delivered over the dock. No wharfage charge for developing species.

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PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603      PHONE: (907) 235-3160 TERMINAL TARIFF NO. 600	FMC NO. 600	PAGE NO. REVISED PAGE NO.	57
<p>RULE: 34.30 - FISH DOCK (continued)</p> <p>Freight NOS, Non-fish Cargo      \$10.00/T for cargo going over the Fish Dock. Fishing gear is free from wharfage.</p> <p>RULE: 34.31 - CONDITIONS OF BERTHING (I)</p> <p>EFF: 15SEP1995</p> <p>SUBSECTION 310</p> <p>All applications for vessel berthing shall be made in the form specified by the harbor master and may require the timely filing of the financial responsibility information called for by Supplement to Vessel Berthing Application, completed in accordance with, and otherwise governed by, the terms and conditions set forth below:</p> <ol style="list-style-type: none"> <li>(1) Unless waived pursuant to paragraph 2 below, terms of payment for all applicable terminal charges shall be cash in advance. A cash deposit or acceptable security in an amount equal to 125% of the estimated applicable charges will be required to be posted with the harbor master six days prior to the vessel's scheduled arrival, or at such time as may be authorized or directed by the harbor master, but in all cases in advance of actual services rendered. When a cash deposit has been posted, any excess thereof after satisfaction of all applicable port charges, shall be promptly refunded by the terminal to the party posting same.</li> <li>(2) The harbor master may waive the requirement of cash in advance as to all or any category or categories of its anticipated port charges when the party responsible for such charges has been identified by berthing agent to the satisfaction of the harbor master, and:</li> </ol>			
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HOMER002332

CITY OF HOMER  
HOMER, ALASKA

P/H Rate Committee  
City Council  
P/H Commission  
City Clerk

RESOLUTION 99-118 (A)

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA REVISING THE PORT AND HARBOR OF HOMER TERMINAL TARIFF NO. 600

WHEREAS, the Port and Harbor of Homer Terminal Tariff No. 600 was adopted by City Council on August 28, 1995; and

WHEREAS, revision of Resolution 99-101 is scheduled for action on 11/22/99, and those revisions regarding Fish Dock Use Permits are not included in this resolution; and

WHEREAS, the current rate structure does not meet the operational and maintenance requirements of the port and harbor; and

WHEREAS, the implementation of the proposed rate model will be phased in over a one year period except for ice and harbor moorage rates which will be phased in over a two year period; and

WHEREAS, the portions of the tariff not affected by the rate model will be adjusted annually in conjunction with the budget process using the CPI (Consumer Price Index),

NOW, THEREFORE, BE IT RESOLVED by the City Council of Homer, Alaska that the Port and Harbor of Homer Terminal Tariff No. 600, is hereby revised as follows:

Section 1 RULE: 34.2(e),(f),(p) - ABBREVIATIONS, SYMBOLS, DEFINITIONS (I) is hereby revised to read as follows:

(e) FLOAT; FLOAT SYSTEM:

Those portions of the city docks located within the Homer Port that rise and fall with the tide including the pilings, ramps, ladders, and utility connections. Some of these are owned by the State of Alaska but all are operated by the City of Homer.

(f) HOLIDAYS:

Whenever in this Tariff reference is made to holidays the following are included:

New Year's Day	Washington's Birthday
Seward's Day	Memorial Day
Independence Day	Labor Day
Alaska Day	Veterans' Day
Thanksgiving Day	Christmas Day
<u>Day After Thanksgiving</u>	

(p) TERMINAL FACILITIES:

Terminal Facilities include the two (2) city docks which are the Deep Water Dock and the Main (Ferry) Dock, the Fish Dock within the Small Boat Harbor and associated equipment, offices, warehouses, storage space, roads, paved areas, water banks, beaches and shorelines under the management and control of the City of Homer.

Section 2 RULE: 34.4(a) - APPLICATION OF TARIFF (I) is hereby revised to read as follows:

(a) GENERAL APPLICATION OF TARIFF: Rates, charges, rules and regulations provided in this Tariff will

HOMER002333

1 apply to persons and vessels using certain terminal facilities under jurisdictional control of the City of Homer and  
2 located within the harbor bounded by the City of Homer with the Small Boat Harbor entrance located at  
3 latitude 59 36'15" N and longitude 151 24'48" W and specifically to docks, appurtenant structures thereto, and  
4 waterways under the management of the City of Homer. Special terms and conditions exist for the dock  
5 operations by the State of Alaska, Alaska Marine Highway System, for operations of the State Ferry System on the  
6 Main Dock and for the dock operations by ~~CIRCLE DE PACIFIC~~ for a contractor engaging in chip storage and  
7 loading operations on or in the vicinity of the Deep Water Dock.

8  
9 Section 3 RULE: 34.5 - APPLICATION OF RATES (I) is hereby revised to read as follows:

10  
11 Except as otherwise provided herein, rates apply per short ton which is 2,000 lbs., or per 40 cu. ft. as rated by  
12 ocean carriers, or per 1,000 feet board measure, or 42 gallons per barrel of bulk petroleum products corrected to  
13 60 F. net, or 376 lbs. per barrel of bulk cement, or per bone dry wood chips as rated by ocean carrier.

14  
15 Rates provided for commodities herein are specific and may not be applied by analogy. If rates are not provided  
16 for specific commodities, rates to be applied are those established for "Freight NOS."

17  
18 In the Process of writing the City's budget, the Port and Harbor Fees not affected by the rate model will  
19 be reviewed and adjusted using the CPL. The base for computing yearly adjustment of the Port and Harbor  
20 Tariff 600 is the Consumer Price Index for All Urban Consumers for Anchorage, Alaska, for All Items (1982-  
21 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). The  
22 Index published for the month nearest, but preceding, the date of the commencement of the city's budget,  
23 shall be the "Beginning Index". The Index published nearest, but preceding, the Port and Harbor Tariff 600  
24 Adjustment Date shall be the "Extension Index". The Port and Harbor Tariff rates for the following year  
25 (until the next rate adjustment) shall be set by multiplying the Port and Harbor Tariff Rates for the  
26 preceding year by a fraction, the numerator of which is the Extension Index and the denominator of which  
27 is the Beginning Index. In no case shall the Port and Harbor Tariff Rates be less than the previous year.

28 If the Index is changed so the base year differs from that used as of the commencement of the Port and  
29 Harbor Tariff Revisions, the Index shall be converted in accordance with the conversion factor published by  
30 the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised  
31 during the term, such other government index or computation with which it is replaced shall be used in order  
32 to obtain substantially the same result as would be obtained if the Index had not been discontinued or  
33 revised.

34  
35 All rates contained in this Tariff except daily and seasonal load and launch ramp fees will have combined  
36 Borough and City sales tax applied. The resulting figure will be rounded to the nearest half dollar for billing  
37 purposes. The load and launch ramp daily and seasonal fees are both inclusive of Borough and City sales  
38 taxes for ease of collection at the Iron Ranger and toll booth at the load and launch ramp.

39  
40 Section 4 RULE: 34.7(b.)- RESPONSIBILITY FOR COLLECTION AND GUARANTEE OF CHARGES  
41 (I) is hereby revised to read as follows:

42  
43 (b) PREPAYMENT, TIME OF PREPAYMENT, ACCEPTABLE SECURITY:

44 All charges for services rendered by the Port or for the use of terminal, dock, and harbor facilities are due and  
45 payable in United States currency as they accrue upon completion of such services or uses. Failure to pay an invoice  
46 when due shall render the account delinquent and subject to legal collection efforts. In his sole discretion, the

HOMER002334

1 harbormaster may require payment in advance of any or all charges prior to rendering services or granting use of  
2 terminal, dock or harbor service.

3  
4 Section 5 RULE: 34.9 (a),(b),(d)-(i), (j), - RIGHTS OF THE CITY OF HOMER (I) is hereby  
5 revised to read as follows:

6  
7  
8 Without in any way limiting the general authority of the City of Homer, the City shall have the following powers:

9  
10 (a) ACCESS TO HARBOR OR PORT FACILITIES:

11 The City shall at all times have the right to refuse the use of any city dock, or terminal, or harbor facility by any  
12 person, equipment materials or vessel or to remove any vessel or, person or cargo at any time from any city dock,  
13 or terminal, or harbor facility. This right shall be reserved at all times to the City without responsibility for  
14 demurrage, loss or damage when:

- 15  
16 (1) previous arrangements for berthing, space, receiving or unloading have not been  
17 made with the harbormaster; or  
18  
19 (2) the vessel is unsafe or hazardous and may pose risk to life or property; or  
20  
21 (3) the value of the vessel, in the opinion of the harbormaster is less than the probable service charges and  
22 other charges to its use of the city dock or terminal, or harbor facility; or  
23  
24 (4) during periods of congestion, or in cases of emergency, when, in the judgement of the  
25 harbormaster, the circumstances then prevailing or likely to occur will prevent the city docks, or terminal,  
26 or harbor facilities, or any portion of them from providing customary services to the public.

27  
28 For vessels that may be hazardous or become a menace to other vessels, their occupants, or city facilities, the  
29 harbormaster, or the city manager may require an operator or owner of a vessel to furnish evidence that there is  
30 currently in effect liability insurance in an amount satisfactory to the City by filing a certificate of insurance or other  
31 satisfactory evidence signed by an agent or officer of the insurance company and stating the effectiveness and  
32 expiration date thereof. (HCC 10.04.110b)

33  
34 (b) RIGHT TO REFUSE CARGO:

35 In his discretion the harbormaster shall at all times have the right to refuse to accept, receive or unload, or to permit  
36 a vessel to discharge:

- 37  
38 (1) Cargo for which previous arrangements for space, receiving, unloading or handling have not been made  
39 with the harbormaster by shipper, consignee or vessel.  
40  
41 (2) Cargo not suitably packed for safe transportation.  
42  
43 (3) Cargo, deemed by the harbormaster in the reasonable exercise of his discretion, that is offensive,  
44 perishable or hazardous. Hazardous cargo must have been prepared for shipment in accordance with the  
45 applicable Department of Transportation regulations (including 49 C.F.R. Parts 171-179).

46

HOMER002335

1 (4) Cargo, deemed by the harbormaster in the reasonable exercise of his discretion, which may be less in  
2 value than the probable service charges and other charges related to it.

3  
4 (5) Cargo, deemed by the harbormaster in the reasonable exercise of his discretion, which may have  
5 circumstances then prevailing or likely to occur that will prevent the city docks, or terminal, or harbor  
6 facilities, or any portion of them, from providing customary service to the public during a period of  
7 congestion or in cases of emergency.

8  
9 (d) RIGHT TO REMOVE, TRANSFER OR WAREHOUSE CARGO:

10 (1) Hazardous or offensive cargo. In his discretion, the harbormaster shall at all times have the right to  
11 immediately remove all hazardous or offensive cargo, or cargo, which by its nature, is liable to damage other  
12 cargo or city dock, or terminal or harbor facilities. The cargo may either be removed from its present  
13 location to any other location with all expenses and risk of loss or damage to be charged to the account of  
14 the owner, shipper, or consignee.

15  
16 (2) Cargo beyond free time. Any cargo remaining on city dock, or terminal, or harbor facilities after  
17 expiration of any free time, may be removed to public warehouses, with and all expense expenses of removal  
18 and risk of loss or damage shall be charged to the account of the owner, shipper, consignee or vessel as  
19 responsibility may appear on shipping documents, manifests or other sources.

20  
21 (e) RIGHT TO WITHHOLD DELIVERY OF FREIGHT:

22 Right is reserved by the City of Homer to withhold delivery of freight until all accrued charges and/or advances  
23 against said freight have been paid in full. At the harbormaster's discretion, any or all of such freight may be placed  
24 in public or private storage with and all cost costs of removal and subsequent handling and storage shall be charged  
25 to the account of the owner of the freight.

26  
27 (f) RIGHT TO SELL FOR UNPAID CHARGES:

28 Freight on which unpaid terminal, dock or harbor charges have accrued may be sold to satisfy such charges and  
29 costs; provided, such sale has been publicly advertised. Freight of a perishable nature or of a nature liable to damage  
30 other freight may be sold at public or private sale without advertising; provided owner has been given proper notice  
31 to pay charges and to remove said freight and has neglected or failed to do so within a prescribed reasonable time.

32  
33 (g) EXPLOSIVES:

34 The City of Homer shall allow the acceptance, handling or storage of explosives within the confines of the Port  
35 and Homer Small Boat Harbor.

36  
37 (1) Hazardous materials, as established by the Department of Transportation Hazardous Materials  
38 Commodity List, will be charged wharfage at the rate of forty cents per hundred pounds, or fraction thereof,  
39 at locations designated for loading unloading or staging by U.S. Coast Guard permit.

40  
41 (2) Hazardous materials must be handled according to all federal, state and local laws and regulations.

42  
43 (h) RIGHT TO REMOVE, TRANSFER, OR REARRANGE VESSELS:

44 (1) Hazardous vessels or vessels with hazardous cargo. In his discretion, the harbormaster shall at all times  
45 have the right to immediately remove any hazardous or offensive vessel, or any vessel containing hazardous  
46 cargo, or any vessel or one containing cargo, which by its nature, is liable to damage other vessels, or other

1 cargo, or harbor or port facilities.

2  
3 The vessel may ~~either~~ be removed from its present location to any other location with and all expenses and  
4 risk of loss or damage shall be charged to the account of the owner, shipper, vessel or consignee.

5  
6 (2) Vessel beyond free time. Any vessel remaining at city dock, or terminal, or harbor facilities after  
7 expiration of any applicable free time, may be removed to any other public or private facility, with and all  
8 expense ~~expenses~~ or of removal and risk of loss or damage shall be charged to the account of the owner,  
9 shipper, consignee, or vessel.

10  
11 (3) Movements of vessels to reduce congestion, or maximize services. In his discretion, the harbormaster  
12 shall at all times have the right to move or rearrange any vessel from its present location to any other location  
13 in order to reduce congestion within or on the terminal, the docks or the harbor or to prevent disruption  
14 of customary services to the public.

15  
16 (i) RIGHT TO REMOVE MATERIALS OR EQUIPMENT FROM CITY DOCK, OR TERMINAL, OR HARBOR  
17 FACILITIES:

18 Any materials, equipment, trash, or other items left on or about any city dock, or terminal facility or harbor  
19 facilities may be removed by the harbormaster at any time with all ~~expense~~ ~~expenses~~ or of removal and risk of loss  
20 or damage for charged to the account of the vessel that last occupied the facility, or the owner, shipper, consignee  
21 or vessel as responsibility may appear on shipping documents, manifests, or other sources.

22  
23 (j) RIGHT TO IMPOUND AND DISPOSE OF VESSEL:

24 (1) Impoundment of vessels for violations. The harbormaster is authorized to impound any vessel in or on  
25 the Homer Harbor, terminal, or dock facilities whose owner or operator is not aboard and which is not  
26 properly identified by name and/or number; or any vessel in violation of any provisions of this tariff; or any  
27 vessel whose owner or operator has not paid the stall license fee or any other fee or charge due the City for  
28 the vessel by the due date of such fee or charge and such fee or charge is thirty days past due; or any vessel  
29 which is unsafe and whose owner or operator has failed to remove it after notice. The harbormaster may  
30 impound a vessel by immobilizing it or removing or having it removed from the water and placed in City or  
31 commercial storage with all expenses and risk of haul-out and storage to be borne by the owner of such  
32 vessel.

33  
34 (2) The owner or operator of any vessel impounded by the City shall be subject to the liable for storage  
35 charge and shall be subject to and liable for all costs incurred by the City by reason of impounding or removal.

36  
37 (3) The procedure for impoundment, including notice and pre-impoundment hearing are set forth in  
38 10.04.120 of the Homer City Code.

39  
40 Section 6 RULE: 34.11 - DELAYS NO WAIVER OF CHARGES (I) is hereby revised to read as follows:

41  
42 Delays which may be occasioned in loading, unloading, receiving or delivering freight, or the berthing of vessels  
43 as a result of harbor terminal, or dock congestion, equipment failure or breakdown, or of combinations, riots or  
44 strikes of any persons in the employ of the City of Homer or other, or arising from any other cause not reasonably  
45 within the control of the City of Homer, will no excuse the owners, shippers, consignees or carriers of the freight  
46 or vessel from full wharf demurrage, berthing or other terminal, dock, or harbor charges or expenses which may

HOMER002337

1 be incurred under conditions stated herein.

2  
3 Section 7 RULE: 34.12 - MANIFESTS REQUIRED OF VESSELS (I) is hereby revised to read as follows:

4  
5 Masters, owners, agents or operators of vessels are required to furnish the City of Homer with complete copies  
6 of vessel's manifests showing the names of consignees or consignors and the weights or measurements of all freight  
7 loaded or discharged at the docks, or terminal or harbor facilities of the City of Homer. Such manifests must be  
8 certified as correct by an authorized official of the company and must also designate the base weight or measurement  
9 on which ocean freight was assessed. In lieu of manifests, freight bills containing all information as required above  
10 may be accepted.

11  
12 Section 8 RULE: 34.13(a),(b),(c),- MOORAGE IN HARBOR (I) is hereby revised to read as follows:

13  
14 (a) ASSIGNMENT OF MOORAGE: paragraph 2

15 Mooring assignments to particular stalls on the City of Homer float system are made by the harbor master and  
16 subject to charges named in Subrule 34.18 Subsection 200. Mooring assignments are made to a particular  
17 combination vessel and owner/operator, are not assignable by the owner/operator, and automatically expire upon  
18 sale or transfer of the vessel to another owner/operator, unless stall assignee places a newly acquired or  
19 replacement vessel of permitted size in the stall as per approved request made to Harbor master. A mooring  
20 assignment is not a lease or an exclusive right to occupy any particular stall. In order to maximize the public's use  
21 of existing facilities it is common for the Harbor master to temporarily assign vessels to stalls normally used by  
22 another vessel when that vessel is out of the harbor.

23  
24 (b) WAITING LIST FOR RESERVED STALL ASSIGNMENT:

25 Due to the scarcity of stalls on the City of Homer float system, vessels will be assigned a permanent reserved stall  
26 based on seniority position on waiting lists maintained by the harbor master's office. Separate waiting lists shall be  
27 maintained for the following size floats stalls:

28 18 feet  
29 20 feet  
30 24 feet  
31 32 feet  
32 40 feet  
33 50 feet  
34 75 feet

35 The harbor master shall place applicant on the waiting list on a first-come, first serve basis only upon receipt of all  
36 requested information and payment of the annual waiting list fee. The annual waiting list fee will be accepted only  
37 from the individual whose name appears on the waiting list. The fee is neither refundable nor creditable to the berth  
38 lessee. An applicant or existing reserved stall licensee may be placed on one or more of these lists. An applicant  
39 need not own or operate a vessel to be placed on the waiting list.

40  
41 Upon the death of an applicant, the applicant's rank on the waiting list shall be transferred to the surviving spouse,  
42 son or daughter upon written request to the harbor master.

43  
44 An applicant shall notify the harbor master in writing of any change of address or telephone number(s) immediately.  
45 Any individual, partnership, corporation or governmental agency may apply for use of a reserved stall. All applicants,  
46 except government agencies, shall designate a single individual whose name shall appear on the waiting list and who

1 shall be responsible for payment of all fees. Any change in the individual designated may result in the applicant's loss  
2 of priority on the waiting list.

3  
4 There is a fee of \$15.00 per year per listing upon the waiting list(s) for a permanent reserved stall assignment. An  
5 individual may sign up at any time during the year and pay a prorated fee to the May Stall Wait List due date. Non  
6 payment of the fee by the May 1 due date means automatic cancellation from the wait list.

7  
8  
9 (e) NOTICE UPON ARRIVAL:

10 All vessels should notify the harbormaster's office prior to arrival. Those vessels who have received permanently  
11 assigned stalls should notify the harbormaster's office 24 hours prior to expected arrival to allow the harbor staff to  
12 free the stall. If, despite reasonable efforts, the harbormaster is unable to clear a permanently assigned stall due to  
13 congestion, high winds, or safety considerations, a vessel with a permanently assigned stall may be required to  
14 temporarily use a transient moorage space as directed by the harbormaster.

15  
16 Vessels entering the Homer Port and Harbor which have not, for any reason, received a mooring assignment by  
17 radio contact or otherwise, shall be restricted to the following areas:

18  
19 Transient moorage space throughout the Small Boat Harbor, which is designated by a yellow colored bullrail  
20 (approximately 4,000 lineal feet).

21  
22 There are no transient stalls in the Small Boat Harbor. If there is no available transient space available at the  
23 bullrail, a vessel is permitted to "raft" to a vessel(s) already secured to the bullrail.

24  
25 Section 9 RULE: 34.14 - BERTHING AT THE PORT (I) is hereby revised to read as follows:

26  
27 (a) ASSIGNMENT OF BERTHS:

28 The Homer Port Docks require advance scheduling in order to provide maximum public use of available facilities.  
29 All vessels, or their owners or agents, desiring a berth at the docks shall, within a minimum time of twenty-four (24)  
30 hours make advance application for berthing, specifying the date of docking, sailing, and the nature and quantity of  
31 cargo to be handled. Application for berthing is to be made in writing to the Port.

32  
33 Vessels may occupy a berth, subject to charges named in Subrule 34.19 Subsection 205, providing such vessel shall  
34 vacate the berth upon demand by the Port. Vessels refusing to vacate berth upon demand may be moved by tug or  
35 otherwise, and any expense, including damages to other vessels or to the facility during such removal, shall be  
36 charged to the vessel so moved. Vessels at berth engaged in loading or discharging cargo may be required to work  
37 overtime at the discretion of the Port. Overtime differentials shall be added to the account of the vessel's owners,  
38 agents or operators.

39 Subject to Subrule 34.8 (d) herein)

40  
41 Unauthorized anchoring in open area areas in or adjacent to the Homer Port and Harbor is prohibited.

42  
43 (b) PREFERENCE TO RESERVED DOCK USE:

44 At the Deep Water Dock priority is given to dock use reserved in advance with the harbormaster. Reservation of  
45 dock use must specify arrival and departure dates and the nature and quantity of the freight to be loaded or  
46 discharged. Preferential berthing rights are accorded by contract to ~~CIRCLE DE PACIFIC~~ to berth vessels for

HOMER002339

1 wood chip loading up to fifteen (15) times in each calendar year. Preferential berthing rights by contract for  
2 ~~CIRCLE DE PACIFIC~~ vessels at the dock are immediate upon arrival of each vessel during a period of twelve (12)  
3 hours before and twelve (12) hours after the established arrival times recited by a written schedule filed by the  
4 contracted company ~~CIRCLE DE PACIFIC~~ with the harbor master at least thirty (30) days in advance. Other  
5 vessels utilizing the dock will be removed upon the arrival of contracted ~~CIRCLE DE PACIFIC~~ vessels arriving  
6 within the scheduled arrival period at no cost to ~~CIRCLE DE PACIFIC, contractor,~~ with the exception that no  
7 vessel shall be moved from the dock if doing so would, in the opinion of the harbor master, create an emergency  
8 condition for that vessel.

9  
10 On the main face of the Main Dock, preferential privileges to berth Alaska Marine Highway System ferry vessels  
11 in accordance with the published schedule is accorded. Any variance in the schedule will be provided to the  
12 harbor master a minimum of six (6) hours prior to arrival. Other vessels using the dock will be cleared upon arrival  
13 of the ferry. The north face of the Main Dock has preferential mooring privileges accorded to the U.S. Coast Guard  
14 vessel assigned.

15  
16 Section 10 RULE: 34.15(a)-(i),(k),(m.) SAFETY, SANITATION AND HOUSEKEEPING (C) is hereby  
17 revised to read as follows:

18  
19 (a) GENERAL PROVISIONS

20 All users of city docks, ~~and~~ terminal, and harbor facilities shall exercise due care for the protection of life and  
21 property and the public from injury or damage.

22  
23 Additional safety and sanitation rules applicable to docks and terminals should be consulted. Ordinances of the  
24 City of Homer of particular relevance include Chapter 5.06, (Nuclear Free Zone Which Includes Harbor Facilities),  
25 Chapter 5.08 (Garbage and Solid Waste Disposal), Chapter 5.16 (Public Nuisances), Chapter 5.20 (Fire Prevention  
26 and Explosives), and Title 10 (Port and Harbor).

27  
28 All safety and sanitation laws, regulations and policies of the City of Homer, the Kenai Peninsula Borough, the  
29 State of Alaska, and the United States, including those adopted by international treaty, apply to city docks, ~~or~~  
30 terminal, or harbor facilities. All users, including shippers, vessels, and consignees are hereby warned that the party  
31 or parties responsible for infractions of such laws, regulations or policies will be subject to and responsible for any  
32 penalties that may result from their violation of those laws, regulations or policies.

33  
34 (b) HAZARDOUS MATERIAL, NOTICE OF HAZARDOUS CARGO AND PERMIT REQUIREMENT:

35 Hazardous materials, as established by the Department of Transportation Hazardous Materials Commodity List,  
36 will not be permitted without the express consent of the Harbor master and previous arrangement (at least 12 hours  
37 prior to landing) and receipt of all appropriate manifests and U.S. Coast Guard Permits, and only at those locations  
38 designated by U.S. Coast Guard Permit.

39  
40 Temporary storage and/or shipment through the Port of Homer of quantities of hazardous waste in excess of 400  
41 pounds (or 2.2 pounds of acutely hazardous material) requires a minimum 14 day advance request for a permit, in  
42 compliance with the "Interim Policy for the Port and City of Homer concerning notification by hazardous waste  
43 carriers and/or generators, municipal review and public notification."

HOMER002340

1 No person shall throw or otherwise cause to be deposited any gasoline, oil, hazardous waste, petroleum  
2 contaminated refuse or pumping or bilge containing petroleum products onto any part of or into the water of the port  
3 or harbor.

4  
5 Pumping or storing fuel on floats is prohibited.

6  
7 (c) RESPONSIBILITY FOR HOUSEKEEPING:

8 Users of docks and other terminal and harbor facilities will be required to maintain same in an orderly manner as  
9 directed by the harbormaster. It is unlawful for any person to dump or otherwise dispose of refuse, sewage, garbage,  
10 rocks, and/or debris of any kind or type whatever into the water under the jurisdiction of the City of Homer Port and  
11 Harbor.

12  
13 Deposit of fish carcasses, including heads, bones, or viscera from sport fishing activities is authorized only at  
14 designated locations.

15  
16 If user does not properly properly clean property used, the harbormaster shall order the work performed and user  
17 will be billed for the services in accordance with the rates set forth in Subrule 34.25 Subsection 245 of this tariff.

18  
19 No person shall tap, connect, disconnect, or interfere with any water outlet, water pipe, water connection,  
20 telephone equipment, electrical device of any kind on docks or in stalls maintained or operated by the City in the  
21 Homer Port or Small Boat Harbor without first having obtained the permission of the Harbormaster; or to interfere  
22 with or tamper with any wharf, float, gangway, ramp, or any other facility operated by the City.

23  
24 No person shall use or disturb any port or harbor equipment or facilities; except fire extinguishers in a fire  
25 emergency and harbor carts. City provided Carts carts are for use on the floats and may not be removed from  
26 the harbor or used on ramps at any time. Carts should be returned to areas adjacent to ramps after each use.

27  
28 (d) SMOKING PROHIBITED:

29 No smoking shall be allowed on any wharf, pier or in any port or harbor facility, ~~warehouse or transit~~ during  
30 fuel operations or at any time on any fuel station. Persons violating this rule may be barred, at the discretion of the  
31 harbormaster, from the further use of any wharf of facility and, in addition, shall be subject to prosecution under  
32 applicable federal, state and municipal laws.

33  
34 (e) WASTE OIL AND PETROLEUM PRODUCTS:

35 All waste oil and petroleum products must be properly disposed of by the vessel/owner. The City of Homer offers  
36 a limited ability to take small quantities of such products as a convenience to the boating public. Quantities, less than  
37 5 gallons, of waste oil and petroleum products will be accepted by the City in the approved and designated facilities  
38 on shore. There shall be not storage, even of a temporary nature, of waste oil or petroleum products on city docks,  
39 wharves, piers, or finger floats. Any vessel/owner/agent storing or disposing of waste oil in an inappropriate or  
40 illegal manner may be barred from further use of the Homer Port and Harbor and/or penalized according to the  
41 provisions of federal, state and local law. Larger quantities of waste oil may be accepted by the harbormaster upon  
42 prior arrangement by written approval on a case-by-case basis. These larger quantities of waste oil, if accepted,  
43 shall be charged a \$2.00 per gallon handling and disposal fee.

44  
45 (f) TUG REQUIREMENT AND SPEED LIMITATIONS:

HOMER002341

1 (1) Vessels berthing or departing docks subject to this Tariff must use sufficient tugs so vessel can be berthed  
2 or removed in a safe manner. Berthing speed shall not exceed the maximum speed allowable for the tonnage  
3 or displacement of the vessel, by the design of the facility.  
4

5 (2) The Deep Water Dock (DWD) fendering system was designed for a 37,500 displacement ton vessel with  
6 maximum berthing speed of 20 feet per minute. Larger vessels shall have a maximum speed of 16 feet per  
7 minute.  
8

9 (3) All craft shall restrict their speed to two miles per hour, no wake, while inside the ~~small~~ Small Boat  
10 Harbor entering or leaving. It shall be unlawful for any vessel to travel at a speed within any waterway  
11 causing a wake, wash, or wave action which will damage, endanger or cause undue distress to any other boat  
12 or occupant thereof, regardless of established speed limits.  
13

14 (g) TYING TO PILING IS PROHIBITED:

15 All vessels using the Deep Water Dock and Main Dock docks will use bits and bullrails.  
16

17 (h) FIRE EXTINGUISHER REQUIREMENTS:

18 (1) Fire extinguishers in operating condition must be readily available on, or immediately adjacent to all  
19 welding, cutting, or open flame equipment being used on vessels.  
20

21 (2) Fire extinguishers in operating condition must be readily available on all machines, cranes, and welders  
22 used on the docks or within the Terminal.  
23

24 (i) NO POSTING OR DEFACEMENT:

25 No person shall write or post any written or printed matter in any place within or on any Homer Port or Harbor  
26 facilities, except upon bulletin boards constructed for the purpose only after having obtained permission from the  
27 Harbormaster.  
28

29 No person shall disregard, deface, remove, tamper with or damage any sign or notice posted or installed by the  
30 Harbormaster.  
31

32 (k) STOVES, FIRES, EQUIPMENT, FLAMES, ETC.:

33 No person shall leave a stove or other heating equipment in unattended operation on a vessel moored within the  
34 Homer harbor unless such equipment has been certified as safe for such unattended use. No person shall leave any  
35 vessel within the Homer Boat Harbor unattended while fire or open flame is burning thereon. No cutting or welding  
36 or use of open flame shall be allowed on any boat undergoing repairs, on or at any Homer port or harbor facility  
37 except in an area especially designated for such repair. However, at the Harbormaster's discretion, this requirement  
38 may be waived provided adequate fire-fighting equipment is physically located where the welding project is taking  
39 place. No person shall use any fire-fighting equipment located at the Homer harbor for the purpose of pumping fire  
40 suppressant water into boats for any purpose other than extinguishing fires. Any use of City fire extinguishers must  
41 immediately be reported to the harbormaster.  
42

43 (m) ~~PLACE~~ PLACEMENT OF GEAR:  
44

1 The placement of fishing nets in the waters of the Homer Small Boat Harbor is prohibited. The physical limits  
2 of the "Small Boat Harbor" are set forth in Subrule 34.2 (o) Subsection 100 of this Tariff.

3  
4 Section 11 RULE: 34.16 - RESPONSIBILITY FOR PROPERTY DAMAGE (I) is hereby revised to read as  
5 follows:

6  
7 SUBSECTION 165

8 Users damaging city docks, floats, ramps, or other property of the City of Homer will be responsible for cost of  
9 repairs. User will be billed for repairs to damaged property at cost, including overhead.

10  
11 Section 12 RULE: 34.18(a),(b), (d)-(f) - HARBOR MOORAGE RATES (A) is hereby revised to read as  
12 follows:

13  
14 (a) CALCULATION OR MOORAGE RATES:

15 Mooring charges shall commence when a vessel is made fast to a wharf, pier, harbor float or other facility, or  
16 when a vessel is moored to another vessel so berthed (rafting). Charges shall continue until such vessel is completely  
17 free from and has vacated the port and harbor facilities.

18  
19 A vessel moored at any time between 12:01 A.M. and 8:00 A.M. shall be charged a full day's charge. The  
20 harbor master may, in his discretion and with proper and appropriate advance notice, waive a daily rate for a vessel  
21 that will occupy mooring space for a minimum time and, provided, that the harbor master determines use of the public  
22 facilities by others will not be congested or adversely affected.

23  
24 Mooring charges shall be calculated on the length of the vessel, or in the case of a reserved stall, the length of the  
25 float stall assigned, whichever is greater.

26  
27 Length shall be construed to mean the distance expressed in feet from the most forward point at the stem to the  
28 aftermost part of the stern of the vessel, measured parallel to the base line of the vessel. The length shall include all  
29 hull attachments such as bowsprits, dinghies, davits, etc.

30  
31 For billing purposes, when the actual length of the vessel is not immediately available, length of the vessel as  
32 published in "Lloyd's Register of Shipping" may be used. The City of Homer reserves the right to: (1) obtain the  
33 length from the vessel's register, or (2) measure the vessel.

34  
35 (b) ANNUAL MOORAGE FEE:

36 The annual moorage fee for reserved moorage and transient moorage privileges shall be ~~nineteen dollars and eighty~~  
37 ~~cents (\$19.80) per lineal foot~~ twenty four dollars and eighty-two (\$24.82) per lineal foot plus a forty-  
38 nine (\$49.00) Administration charge. Based on the overall length of the vessel (including all hull attachments such  
39 as bowsprits, davits, dinghies, etc.) or for a reserved stall, the length of the float stall assigned, whichever is greater.  
40 Any reduction in the moorage fee due to a substituted or amended moorage agreement is not applied  
41 retroactively and the owner or operator is not entitled to a refund or a pro rata adjustment of the moorage  
42 fees already due or paid. Any moorage agreement that expires will, after five days, automatically be charged  
43 monthly rate retroactive to the expiration date. Unregistered vessels will also, after 5 days, automatically  
44 be charged a monthly rate retroactively to the date the vessel entered the harbor.

45

HOMER002343

1 (1) All reserved stall assignments are on an annual basis beginning October 1 and ending September 30 of  
 2 the following year. Prepayment of a full year's moorage is due on or before October 1 of each year.  
 3 Payment for reserved moorage will only be accepted from the individual assigned the reserved stall.  
 4 The reserved stall payment shall be paid in full at the time the reserved stall/moorage agreement is executed  
 5 to the satisfaction of the harbormaster. Any other arrangements are at the discretion of the harbormaster and  
 6 must be made in advance.

7  
 8 (2) A reserved stall assignment granted after October 1 will be charged a fee based on the number of months  
 9 (including the month in which it is granted regardless of the day of that month) left in the fiscal year ending  
 10 September 30.

11  
 12 (d) The monthly transient rate for the period October through April will be two dollars and seventy five cents (~~\$2.75~~)  
 13 ~~per foot per month and three dollars and eighty five cents (\$3.85) per foot per month 17% of the annual rate.~~ for  
 14 the period May through September. Vessels that are properly registered and pay all moorage fees in advance may  
 15 deduct fifty cents (\$.50) per foot per month.

16  
 17 (e) The daily transient rates are: 3% of the annual rate.

18

19 Length of	Daily Fees	Daily Fees
20 Vessel	October-April	May-September
21 Under 20'	\$ 8.80	\$11.00
23 20'-29'	11.00	16.50
24 30'-40'	13.20	22.00
25 41'-54'	16.50	27.50
26 55'-79'	22.00	33.00
27 80'-110'	27.50	38.50
28 Greater than 110'	38.50	55.00

29  
 30 Vessels that properly register and pay all moorage fees in advance may deduct five dollars per day from the daily  
 31 rate.

32  
 33 (f) FLOAT PLANE FEES:

34 With Proper registration and expressed specific permission from the harbormaster, float planes may arrange for  
 35 short-term moorage in the Small Boat Harbor. This is only allowed when ice and weather conditions prevent float  
 36 planes from landing on Beluga Lake.

37  
 38 A fee in the amount equal to the daily rate for moorage of two (2) 24' vessels shall be assessed on a daily basis for  
 39 float planes mooring within the confines of the Small Boat Harbor.

40  
 41 Section 13 RULE: 34.19 (b.) - DOCKAGE (I) is hereby amended to read as follows:

42  
 43 (b) DOCKAGE CHARGES:

44 Dockage charges will be assessed per twenty-four (24) hour period or portion thereof at the rate of ~~\$1.00~~ \$1.30  
 45 per foot for the length of the vessel. A service charge of \$50 will be assessed to each vessel.

46

1 Cruise Ship dockage charges will be assessed per twenty-four (24) hour period or portion thereof at the rate  
2 of \$1.30 per foot for the length of the vessel. A service charge of \$350.00 will be assessed to each Cruise Ship.  
3  
4

5 Section 14 RULE: 34.20 (a.)(e.) - DEFINITIONS AND CHARGES - WHARFAGE (C) is hereby revised to  
6 read as follows:  
7

8 (a) DEFINITION:

9 Wharfage is the charge assessed against any freight placed in a transit shed or on a wharf, or passing through, over  
10 or under a wharf, or transferred between vessels, or loaded to or unloaded from a vessel at a wharf, regardless of  
11 whether or not a wharf is used. Wharfage is solely the the charge for use of wharf and does not include handling,  
12 sorting, piling of freight or charges for any other services.  
13

14 Log quantities will be reported by manifest to the Port Office for subsequent billing. The basis for measuring 1,000  
15 board feet (M. B. M.) log scale shall be the Scribner Rule or Scribner Dec. C Log Rule. All log scales will be  
16 performed by an independent log scaling bureau. Certified copies of log scale tickets and/or log scale books shall  
17 be provided to the Port for all logs shipped. The basis for the tariff payment to the City will be computed on a net  
18 log scale, with a maximum of a twenty five percent (25%) deduct factor for defects and taper; that is, gross scale  
19 minus 25% total deduct.  
20

21 A Bone Dry Unit (BDU) is defined as 1.2 bone dry tons of wood chips. A bone dry ton is that quantity of wood  
22 chips which would weigh 2,000 lbs. when dry.  
23

24 (e) SCHEDULE OF RATES:

25 Minimum wharfage on any shipment will be ten dollars (\$10). Except as otherwise specifically provided, rates are  
26 in dollars per short ton of 2,000 lbs. or per 40 cu. ft.  
27

28	COMMODITY	WHARFAGE RATE
29	Freight N.O.S.	<del>\$4.00</del> <u>\$5.00/ton</u>
30		
31	Poles, logs, cants or cut	\$2.00/thousand board
32	finished lumber per MBM	feet in 1995
33	(Note: <del>2,000 lbs. shall</del>	\$2.50/thousand board
34	<del>be deemed 1 MBM industry</del>	feet in 1996
35	<u>standard conversion formulas</u>	
36	<u>shall be used in converting</u>	
37	<u>pounds to board feet measure.)</u>	
38		

39 In absence of board feet measure on bill of lading, a loadout will be assessed tariff by converting the weight of logs  
40 to board foot measure, for the average diameter of logs (small end diameter) in accordance with the following table  
41 for white spruce logs:

42	Scaling Diameter of Logs	Weight per Board Feet
43	Inches	Pounds
44	8"	14.5
45	12"	11.5
46	16"	9.5

HOMER002345

1	20"	8.5
2	24"	7.8
3		
4	Kiln dried lumber: Three pounds will equal one board foot measure.	
5		
6	Petroleum products	<del>\$-215</del> \$252/barrel
7	(inbound and outbound)	<del>\$-005</del> \$1.006/gallon
8	Wood Chips (all grades)	<del>\$1.35/BDU</del> <u>As per contract</u>
9		
10	Seafood/fish product	Setting a tariff
11		of \$3.50 per ton of
12		seafood/Fish product
13		across the dock, regardless
14		of species.
15		
16	Livestock: Horses, mules,	\$ 6.00 per head
17	cattle, hogs, sheep, goats,	
18	all other livestock	
19		
20	Fowl: Any kind, crated	\$ 6.00 per crate
21		
22	Boats: Up to and including	\$10.00 each
23	twenty feet L.O.A.	
24		
25	Over twenty feet L.O.A	\$ 1.00 per lineal
26		foot
27	(Fishing boats, pleasure craft,	
28	skiffs, dinghies and other boats	
29	moved over the docks.)	
30		

31

32 Section 15 RULE: 34.22 (e.)- UPLAND STORAGE (I) is hereby revised to read as follows:

33

34 (e) RATES:

35 All general storage is on a month-to-month basis unless otherwise provided. Charges for any particular lot shall

36 begin at the receipt of the first unit of that particular lot in store and shall continue and include the storage month

37 during which the last unit of the particular lot is removed from storage. Charges shall be made on the basis of the

38 square footage of units in any particular lot in store during the storage month. All charges for storage are due on

39 the first day of a storage month.

40

41 A storage month shall extend from a date in one calendar month to, but not including, the same date of the next

42 and all succeeding calendar months. Less than one month's storage will be charged for the full month. The

43 harbormaster may negotiate storage contracts for periods of six months or longer.

44

45 The fees for general storage are as follows:

46

1	Impound Area	\$ .20 per square foot
2	Open Areas, fishing gear	.06 per square foot
3	Open Areas, non-fishing gear	.10 per square foot
4	Fenced Storage Yard	.15 per square foot
5		
6	Long-Term Parking Areas:	\$200 per period/vehicle
7	October 1-April 30	First 2 days free if boat
8	May 1-September 30	trailer is properly registered
9		in advance then a non-
10		refundable \$5 per day
11		or \$50 per month
12		
13	Adjacent to Steel Grid	\$100 per month
14		

15 Equipment and materials stored without proper registration and advance payment will be charged the impound  
16 rate, regardless of the area being used.

17  
18  
19 Section 16 RULE: 34.23(a),(b) - TIDAL GRIDS (I) is hereby revised to read as follows:

20  
21 (a) TIDAL GRIDS

22 The City of Homer ~~operated~~ operates two tidal grids. The wooden grid is for vessels of less than 60 feet in length.  
23 The steel grid is ~~only~~ generally for use by vessels of 60 feet or greater in length. Vessels over 60' may not use the  
24 wooden grid without specific approval of the harbormaster. Vessels over 140" may not use the steel grid without  
25 specific approval of the harbormaster. Vessels that remain on either grid after their scheduled tide may be assessed  
26 a 50% surcharge for each unscheduled tide.

27  
28 (b) RATES:

- 29 The rate per foot per tide is \$.50 for vessels 0' - 59'
- 30 The rate per foot per tide is ~~\$1.20~~ \$1.80 for vessels 60' - 80'
- 31 The rate per foot per tide is ~~\$1.50~~ \$2.25 for vessels 81' - 100'
- 32 The rate per foot per tide is ~~\$1.75~~ \$2.65 for vessels 101' - 120'
- 33 The rate per foot per tide is ~~\$2.00~~ \$3.00 for vessels 121' - 140'

34  
35 Section 17 RULE: 34.25 (a),(b),(d) - SERVICE CHARGES (C) is hereby revised to read as follows:

36  
37 (a) SPECIFIC SERVICES:

38 The following rates shall apply for services provided by the City of Homer.

- 39
- 40 (1) Potable water furnished to vessels at the Deep Water Dock and Main Dock:

41  
42 The following charges in dollars will be made for furnishing  
43 water to vessels berthed at docks or terminals subject to this Tariff.

- 44 a. Quantity charge, ~~five ten~~ five dollars per one thousand gallons (minimum five thousand gallons).
- 45
- 46 b. Scheduled deliveries will have a minimum charge of ~~fifty~~ seventy-five dollars for combined

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connection and disconnection.

c. ~~Unscheduled deliveries will have a fifty dollar charge for connection and twenty-five dollars for disconnection.~~ minimum charge of one hundred dollars for combined connection and disconnection.

(2) Electricity (per kilowatt):

(a) Reserved stalls having a meter base at the berth shall be charged a meter availability fee.

1. The meter availability fee will be \$17 per month.
2. There will be an electrical usage charge cost per kilowatt determined by the local public utility.
3. Licensee shall notify the harbormaster of any period when the assigned vessel will not occupy the stall and the harbormaster, upon payment of the \$20 connect/disconnect fee, shall disconnect service to license holder's stall.

(b) Subject to availability, transient vessel may buy electrical power on a metered basis from October 15 to April 15.

1. There will be a \$20 connect/disconnect fee.
2. Metered transient vessels will be charged a meter availability fee of \$20 per month with a one month minimum charge to be applied for shorter connection periods.
3. There will be an electrical usage charge per kilowatt as determined by the local public utility.

(c) Unless other arrangements have been made in writing with the harbormaster, transient vessels shall be charged the following rates (where metered power is unavailable).

	110 volt	220 volt	<u>208 volt three phase</u>
Daily (or part thereof)	<del>\$6.00</del> <u>\$8.00</u>	<del>\$8.00</del> <u>\$16.00</u>	<u>\$36.00</u>
Monthly	<del>80.00</del> <u>120.00</u>	<del>120.00</del> <u>\$240.00</u>	<u>Available meter only</u>

\* Vessels required conversion plugs may purchase them from the harbormaster's office for a nominal fee.

(d) 208 volt/3 phase electrical power is available at System 5 on a first come-first served basis, for which vessels will be charged the following rates:

1. There will be an electrical usage charge per kilowatt hour as determined by the local public utility;
2. Vessels will be charged a meter availability fee of \$20 per ~~month~~ month with a one ~~month~~ month minimum charge to be applied for shorter connection periods.
3. There will be a \$20 connect/disconnect fee.

(3) Towing inside small boat harbor: ~~\$50.00 per hour of harbor personnel time skiff plus 1/2 man hour~~ \$50, Skiff plus 1 man hour \$75.00.

(4) Pumping vessel: \$30 per day or portion thereof for electrical pumps.

1 \$50 per hour or portion thereof for gas pumps  
2 (includes attendant time).  
3

4 (b) LABOR/PERSONNEL:

5 (1) When labor is furnished by the City at the request of a user it is expressly stipulated that the City acts as  
6 agent of user. The City shall charge for labor provided by the City for the following services:

7 (i) all services not specifically described in this Tariff.

8  
9 (ii) Services of loading, unloading, or transferring cargo for which no specific commodity  
10 rates are provided and which cannot be performed at the rates named N.O.S. and cargo in  
11 packages or units of such unusual bulk, size, shape or weight as to preclude performing such  
12 services at rates named under individual items of this Tariff.

13  
14 (iii) services for which no specific commodity rates are provided and any other services for  
15 which specific rates are named in this Tariff because of unusual conditions or requirements  
16 of shippers not normally incidental to such services preclude the performance; and

17  
18 (iv) services of cleaning City docks or terminal facilities of dunnage, stevedore gear, and  
19 other equipment of material when the shipper, vessel owner or consignee fails to promptly  
20 clear the facility as requested by the harbormaster.

21  
22 (2) When a user notifies the harbormaster for labor for a specific time and labor is on the job ready for work  
23 at that time, the use shall be charges from the time the labor is ready for work until the work is concluded  
24 even if the work is delayed through no fault of the City.

25  
26 (3) All labor provided by City personnel shall be charged at ~~\$50.00~~ \$75.00 per hour. (½ hour minimum at  
27 ~~\$25-\$38.00~~) Work requiring call-outs shall be charged at a minimum of two hours.

28  
29 (d) SPECIAL SERVICES:

30 Except where otherwise required by law, the harbormaster has the authority to refuse to provide or to arrange for  
31 the provision of services in addition to those set out in paragraph (a) above. Special services, including waste, bulk  
32 oil, or garbage disposal shall be billed at the City's actual cost (including city labor costs as determined in paragraph  
33 2 above) plus 125% of city costs for services arranged and paid for by the City but provided by others. Waste oil  
34 in quantities greater than 5 gallons, shall be charged a \$2.00 per gallon handling and disposal fee.

35  
36 Special services shall not include the taking or handling of sewage of any kind. Sewage disposal must be  
37 accomplished by the vessel owner or his agent pursuant to federal, state and municipal laws, codes and ordinances.

38  
39 Section 17 RULE: 34.26 - PASSENGER FEES (I) is hereby revised as follows:

40  
41 Vessels with a capacity in excess of eighty passengers shall pay a fee of two dollars for each passenger  
42 disembarking either directly by shuttle or lighter at the Small Boat Harbor Float or launch ramp during the period  
43 May 1 to September 30 of each year. The harbormaster shall provide forms to be used by the vessel operators  
44 in logging passenger traffic off-loading at the harbor floats or ramp, and such completed forms shall be submitted  
45 with the appropriate fee to the harbormaster.

46

HOMER002349

1 Section 18 RULE: 34.27 - SEARCH AND RESCUE FEES (I) is hereby revised to read as follows:

2

3 In addition to other Tariff provisions, when the City utilizes city equipment and personnel to provide search and  
4 rescue assistance to vessels outside of the Homer Port and Harbor, such as towing and rescue, the harbormaster will  
5 charge users of those services ~~\$50.00~~ \$75.00 per hour for the first hour or any part thereof, and any services beyond  
6 the first hour at ~~150%~~ 125% of actual city costs, including city labor costs, as determined in Subrule 34.25 Section  
7 245(b) of this Tariff.

8

9 Section 19 RULE: 34.28 (b.), (c.) - BOAT LAUNCH RAMP FEES (A) is hereby revised to read as follows:

10

11 (b) CHARGES FOR USE OF PUBLIC LAUNCH RAMPS:

12 Vessels shall be charged ~~\$5.50~~ \$10.00 per day from the public launch ramps. (Reserved stall lessees exempt.)

13 Vessel owners or operators may obtain a seasonal permit for ~~\$55.00~~ \$100.00 entitling a specific vessel and owner  
14 to launch from May 1 through September 30. (Reserved stall lessees exempt.)

15

16 (c) RAMP USE:

17 The principal intended use of the launch ramp is the launch and recovery of small/trailerable vessels. An  
18 authorized subsidiary use is the incidental, noncommercial, loading or unloading of goods, supplies or materials.

19

20 The principal intended use of the harbor barge ramp is the commercial loading or unloading of goods, materials,  
21 equipment or personnel. An authorized subsidiary use is the loading or unloading of fishing gear and equipment or  
22 other use approved by the harbormaster.

23

24 At the harbormaster's discretion, reasonable restrictions may be placed on the use of any ramp owned or operated  
25 by the City.

26

27 Section 20 RULE: 34.29 - BEACHES (I) is hereby revised to read as follows:

28

29 The use of beaches under the City ownership or control for commercial barge vessel repair, equipment loading or  
30 similar purposes, must be approved by the harbormaster. A beach use agreement will be filled out and signed by the  
31 user and harbormaster prior to use of the beach.

32

33 The harbormaster shall charge fees as established by Resolution of the City Council a fee of \$1 per foot for vessels  
34 up to 50 feet OAL and a fee of \$2 per foot for vessels over 50 feet OAL for landing or parking a vessel on the  
35 beaches under City ownership or control. Charges for extended beach use may be adjusted by the harbormaster  
36 under appropriate circumstance.

37

38 The user of any beach area must repair any damage to the beach and remove all debris. Failure to make such  
39 repairs and removal will result in repairs and cleanup by the harbor staff. The costs incurred by the harbor staff will  
40 be fully charged to the beach user. Labor rate for the harbor staff will be fifty seventy-five dollars per hour per  
41 person, plus appropriate equipment rental and material costs.

42

43

44 Section 21 RULE: 34.30 - FISH DOCK (c) paragraph 6 is revised to read as follows:

45

46 Failure to obtain prior approval for a use other than loading and unloading fish, fish products or fishing gear will

1 result in the imposition of a surcharge of thirty dollars per hour in addition to addition to the regular fee.

2  
3 No person shall use the Fish Dock in violation of this section.

4  
5 Schedule of rates shall be set by City Council Resolution. See also Subrule 34.20 Subsection 210 e.

6	7 ITEM	8 FEE
9	Annual access	\$75 per year
10	card (private license)	(Annual renewal fee)
11		
12	Card replacement fee	\$10 per occurrence
13		
14	Annual food service license	\$50 per year
15		
16	Cold Storage	<del>\$225/month in 1995</del>
17	(Cold storage rate structure	<del>\$250 \$400/month in 1996</del>
18	is for storage area of eight	Minimum two months.
19	feet by ten feet)	Inspection \$50/hour
20		
21	Ice Plant Bin Storage	\$200/month, minimum
22	(Roofed-over, open-sided	two months
23	storage bins at west end of	
24	of ice plant building sixteen feet	
25	by twelve feet)	
26		
27	Fish Dock crane	<del>\$37.50/hour in 1995</del> <u>\$56.00/hour</u>
28		<del>\$42.50/hour in 1996</del>
29		negotiated rate for more
30		than 200 hours.
31		(By City Manager)
32		
33	Minimum charge per hour	Fifteen minutes
34	for crane	
35		
36	Ice	Augured <del>\$67/T in 1995</del> <u>\$109/ton</u>
37		<del>\$75/T in 1996</del>
38		Pneumatic <del>\$72/T in 1995</del> <u>\$109/ton</u>
39		<del>\$80/T in 1996</del>
40		Negotiated rate for 100 ton
41		commitment. (By City Manager)
42		
43	Seafood wharfage/Fish product	Setting a tariff of \$3.50
44		per ton of seafood/fish
45		product across the docks
46		regardless of species.

HOMER002351

1 Freight NOS, Non-fish Cargo \$10.00/T for cargo  
2 going over the Fish  
3 Dock. Fishing gear is  
4 free from wharfage.  
5  
6

7 Section 22 RULE: 34.31 - CONDITIONS OF BERTHING (I), SUBSECTION 310, Paragraphs 1-3, is hereby  
8 revised to read as follows:  
9

10 SUBSECTION 310

11 All applications for vessel berthing shall be made in the form specified by the harbormaster and may require the  
12 timely filing of the financial responsibility information called for by Supplement to Vessel berthing Application,  
13 completed in accordance with, and otherwise governed by, the terms and conditions set forth below:  
14

15 (1) Unless waived pursuant to paragraph 2 below, terms of payment for all applicable terminal or dockage  
16 charges shall be cash in advance. A cash deposit or acceptable security in an amount equal to 125% of the  
17 estimated applicable charges will be required to be posted with the harbormaster six days prior to the vessel's  
18 scheduled arrival, or at such time as may be authorized or directed by the harbormaster, but in all cases in  
19 advance of actual services rendered. When a cash deposit has been posted, any excess thereof after  
20 satisfaction of all applicable port charges, shall be promptly refunded by the terminal Port and Harbor of  
21 Homer to the party posting same.

22 (2) The harbormaster may waive the requirement of cash in advance as to all or any category or categories  
23 of its anticipated port charges when the party responsible for such charges has been identified by berthing  
24 agent to the satisfaction of the harbormaster, and:  
25

- 26 (i) that party responsible has established credit worthiness acceptable to the harbormaster; or  
27  
28 (ii) adequate security, acceptable to the harbormaster, in ~~and an~~ amount equal to 125% of the  
29 applicable estimated port charges, has been posted; or  
30  
31 (iii) the agent requesting the berth, or another entity, in each case acceptable to the harbormaster as  
32 credit worthy, has personally accepted financial responsibility for the applicable charges.  
33  
34

35 (3) The vessel agent or other person requesting a berth ("berthing agent") shall provide, as part of the  
36 berthing process and to the extent of his knowledge, all information called for by any Supplement to Vessel  
37 Berthing Application respecting the vessel, its estimated arrival and departure, amount(s) and type(s) of  
38 cargo to be loaded or discharged. The vessel agent or other person requesting a berth shall provide an  
39 estimate of the amount of each category of port charges, as enumerated, and the party responsible therefor.  
40 The submission of this form, signed by the berthing agent, shall constitute the berthing agent's information  
41 supplied, based upon and to the extent of information made available to the berthing agent at the time of  
42 submission. The berthing agent shall be held personally liable to the City of Homer for any financial loss  
43 suffered by the City of Homer as a result of the agent's failure to accurately report and above information.  
44

45 Should the berthing agent, subsequent to submission of this form, receive information which materially  
46 differs from the information previously provided, and which information the agent reasonably believes is not

1 equally known to the harbormaster, it shall immediately notify the harbormaster and if requested by the  
2 harbormaster, promptly file an amended Supplement to Vessel Berthing Application with the harbormaster.  
3

4 All estimates of terminal and dockage charges are subject to approval and/or adjustment by the  
5 harbormaster.  
6

7 Section 23 These revisions are effective upon them being filed with the Federal Maritime Commission as an  
8 amendment to the Homer Port and Harbor Tariff.  
9

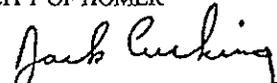
10 Section 24 Adoption of this Resolution constitutes acknowledgment and acceptance of the final report of the  
11 Port & Harbor Rate Committee.  
12

13  
14  
15  
16

17 PASSED AND ADOPTED by the Homer City Council this 13<sup>th</sup> day of December, 1999.

18  
19  
20  
21  
22  
23  
24

CITY OF HOMER

  
\_\_\_\_\_  
JACK CUSHING, Mayor

25 ATTEST:

26   
27 \_\_\_\_\_  
28 MARY C. CALHOUN, CMC/AAE, CITY CLERK  
29  
30  
31  
32  
33  
34  
35

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603      PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC NO. 600	PAGE NO. REVISED PAGE NO.	51 2nd
<p>RULE: 34.30 - FISH DOCK (C)</p> <p>EFF: 15DEC1999</p> <p>SUBSECTION 275</p> <p>The Fish Dock is to be used primarily for the loading and unloading of fish, fish products and fishing gear. Any other use must be approved in advance by the harbormaster. Dock fees shall be those set at Subrule 34.19 Subsection 205.</p> <p>Every person using a crane on the Fish Dock shall first obtain a license from the City. A private user shall obtain a private license, which shall be the annual access card, and shall pay the annual access card fee set forth in this subsection. A private license shall entitle only the owner if an individual, and the master and crew of a vessel to load and unload the vessel at the Fish Dock. All retail food service establishments (as defined in the Standard Industrial Classification Code #5800, #5812 and #5813) may purchase an annual food service license, fee set forth in this subsection. The purchase of an annual access card would also be required. All other users shall be deemed commercial users and shall obtain an annual commercial license or, in lieu thereof, enter into a fish buying shed license agreement with the City. The terms and fee, or method for establishing the fee, for a fish buying shed license agreement shall be established by resolution of the City Council. The annual fee for a commercial license shall be established by resolution of the City Council, but shall not be less than one thousand dollars. If the licensee chooses to unload fish at one cent per pound, he shall be required to deposit five hundred dollars cash and all fish tickets will be shown to the harbormaster to verify the poundage of fish taken over the dock. In addition to the annual license fee, all users of the Homer Fish Dock shall pay the user fees set forth herein except that the holder of a fish buying shed license agreement shall be exempt from the annual card access fee.</p>			
PUBLISHED BY:GLENSERVE COMPANY (856) 939-1231 FAX (856)939-1235			

HOMER002354

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603      PHONE:(907) 235-3160  TERMINAL TARIFF NO. 600	FMC  NO.  600	PAGE NO.  REVISED PAGE NO.	52  2nd						
<p>RULE: 34.30 - FISH DOCK (continued)</p> <p>The harbormaster shall designate one or more cranes on the Fish Dock open to public use (both private and commercial users) on a first-come first-served basis. All private and commercial licenses and food services are subject to a two-hour maximum time limit during times when other private, commercial, food service, fish shed licensees are waiting to use the crane. This time shall be the time that the licensees actually occupies the crane berthing space or other has possession on the public use crane. Every other crane at the Fish Dock and the crane on the Main dock may be designated by the harbormaster for preferential use by the holder of a fish buying shed license agreement. Preferential use of a crane shall entitle the holder to the exclusive right to use of the crane for loading and unloading fish and fish products during fish buying periods and to priority use of crane for all other uses; provided however, that a preferential user shall not be entitled to use of the crane until an actual and legal use of the crane by non-preferential user ends. The harbormaster shall promulgate such additional rules as may be necessary to implement this section.</p> <p>For an approved user blocking access to cranes other than those in use, a fee of one hundred dollars will be assessed for each crane blocked if another vessel is thereby forced to wait.</p> <p>Failure to obtain prior approval for a use other than loading and unloading fish, fish products or fishing gear will result in the imposition of a surcharge of thirty dollars per hour additiona to the regular fee.</p> <p>No person shall use the Fish Dock in violation of this section.</p> <p>Schedule of rates shall be set by City Council Resolution See also Subrule 34.20 Subsection 210 e.</p> <table border="0" data-bbox="422 1440 1112 1564"> <thead> <tr> <th data-bbox="422 1440 495 1460">ITEM</th> <th data-bbox="925 1440 974 1460">Fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="422 1460 673 1512">Annual access card(private license)</td> <td data-bbox="844 1460 1112 1512">\$75 per year (annual renewal fee)</td> </tr> <tr> <td data-bbox="422 1522 673 1554">Card replacement fee</td> <td data-bbox="844 1522 1047 1554">\$10 per occurrence</td> </tr> </tbody> </table>				ITEM	Fee	Annual access card(private license)	\$75 per year (annual renewal fee)	Card replacement fee	\$10 per occurrence
ITEM	Fee								
Annual access card(private license)	\$75 per year (annual renewal fee)								
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PUBLISHED BY:GLEN SERVE COMPANY (856) 939-1231 FAX (856)939-1235									

HOMER002355

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603      PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC NO. 600	PAGE NO. REVISED PAGE NO.	53 2nd																
<p>RULE: 34.30 - FISH DOCK (continued)</p> <table border="0"> <thead> <tr> <th data-bbox="430 590 511 611">ITEM</th> <th data-bbox="933 590 982 611">Fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="430 611 657 652">Annual food service license</td> <td data-bbox="852 631 998 652">\$50 per year</td> </tr> <tr> <td data-bbox="430 673 755 766">Cold Storage (Cold storage rate structure is for storage area of eight feet by ten feet)</td> <td data-bbox="852 673 1071 766">\$400/month Minimum two months. Inspection \$50/hour</td> </tr> <tr> <td data-bbox="430 787 820 901">Ice Plant Bin Storage (roofed-over, open-sided storage bins at west end of ice plant building sixteen feet by twelve feet)</td> <td data-bbox="852 787 1063 828">\$200/month Minimum two months</td> </tr> <tr> <td data-bbox="430 922 698 984">Fish Dock crane Minimum charge per hour for crane</td> <td data-bbox="852 922 1023 984">\$56.00/hour Fifteen minutes</td> </tr> <tr> <td data-bbox="430 1004 462 1025">Ice</td> <td data-bbox="852 1004 1031 1077">Augured \$92/Ton Pneumatic \$92/Ton</td> </tr> <tr> <td data-bbox="430 1098 755 1118">Seafood wharfage/Fish product.</td> <td data-bbox="836 1098 1128 1191">Setting a tariff of \$3.50 per ton of seafood/fish product across the docks regardless of species.</td> </tr> <tr> <td data-bbox="430 1212 738 1232">Freight NOS, Non-fish Cargo</td> <td data-bbox="852 1212 1096 1295">\$10.00/T for cargo going over the Fish Dock. Fishing gear is free from wharfage.</td> </tr> </tbody> </table> <p>RULE: 34.31 - CONDITIONS OF BERTHING (C)</p> <p>EFF: 15DEC1999</p> <p>SUBSECTION 310</p> <p>All applications for vessel berthing shall be made in the form specified by the harbor master and may require the timely filing of the financial responsibility information called for by Supplement to Vessel Berthing Application, completed in accordance with, and otherwise governed by, the terms and conditions set forth below:</p>				ITEM	Fee	Annual food service license	\$50 per year	Cold Storage (Cold storage rate structure is for storage area of eight feet by ten feet)	\$400/month Minimum two months. Inspection \$50/hour	Ice Plant Bin Storage (roofed-over, open-sided storage bins at west end of ice plant building sixteen feet by twelve feet)	\$200/month Minimum two months	Fish Dock crane Minimum charge per hour for crane	\$56.00/hour Fifteen minutes	Ice	Augured \$92/Ton Pneumatic \$92/Ton	Seafood wharfage/Fish product.	Setting a tariff of \$3.50 per ton of seafood/fish product across the docks regardless of species.	Freight NOS, Non-fish Cargo	\$10.00/T for cargo going over the Fish Dock. Fishing gear is free from wharfage.
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PUBLISHED BY: GLENSERVE COMPANY (856) 939-1231 FAX (856) 939-1235																			

HOMER002356

CITY OF HOMER  
HOMER, ALASKA

City Manager  
Port/Harbor

RESOLUTION 00-39

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING  
THE PORT AND HARBOR TARIFF NO. 600, RULE 34.30, FISH DOCK,  
SUBSECTION 275

WHEREAS, the Port and Harbor Tariff No. 600 was adopted by City Council on August 28,  
1995; and

WHEREAS, the Port and Harbor Advisory Commission recommends the following  
amendments to the Tariff

NOW THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, amends  
the Port and Harbor Tariff No. 600, Rule 34.30, Fish Dock, subsection 275:

RULE: 34.30 - FISH DOCK (c)

SUBSECTION 275

The Fish Dock is to be used primarily for the loading and unloading of fish, fish products and fishing  
gear. Any other use must be approved in advance by the harbormaster. Dock fees shall be those set  
at Subrule 34.19 Subsection 205.

Every person using a crane on the Fish Dock shall first obtain a license from the City. A private user  
shall obtain a private license, which shall be the annual access card, and shall pay the annual access  
card fee set forth in this subsection. A private license shall entitle only the owner if an individual, and  
the master and crew of a vessel to load and unload the vessel at the Fish Dock. All retail food service  
establishments (as defined in the Standard Industrial Classification Code #5800, #5812 and #5813)  
may purchase an annual food service license, fee set forth in this subsection. The purchase of an  
annual access card would also be required. ~~All other users shall be deemed commercial users and  
shall obtain an annual commercial license or, in lieu thereof, enter into a fish buying shed license  
agreement with the City. The terms and fee, or method for establishing the fee, for a fish buying shed  
license agreement shall be established by resolution of the City Council. The annual fee for a  
commercial license shall be established by resolution of the City Council, but shall not be less than  
one thousand dollars. If the licensee chooses to unload fish at one cent per pound, he shall be  
required to deposit five hundred dollars cash and all fish tickets will be shown to the harbormaster  
to verify the poundage of fish taken over the dock. In addition to the annual license fee, all users of  
the Homer Fish Dock shall pay the user fees set forth herein, except that the holder of a fish buying  
shed license agreement shall be exempt from the annual card access fee.~~

The harbormaster shall designate one or more cranes on the Fish Dock open to public use (both  
private and commercial users) on a first-come first-served basis. All private and commercial licenses  
and food services are subject to a two-hour maximum time limit during times when other private,  
commercial, or food service, fish shed licensees are waiting to use the crane. This time shall be the  
time that the licensees actually occupies the crane berthing space or otherwise has possession on of

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the public use crane. Every other crane at the Fish Dock and the crane on the Main dock may be designated by the harbor master for preferential use, by the holder of a fish buying shed license agreement. Preferential use of a crane shall entitle the holder to the exclusive right to use of the crane for loading and unloading fish and fish products during fish buying periods and to priority use of crane for all other uses; provided however, that a preferential user shall not be entitled to use of the crane until an actual and legal use of the crane by non-preferential user ends. The harbor master shall promulgate such additional rules as may be necessary to implement this section.

For an approved users' vessel blocking access to cranes other than those in use, a fee of one hundred fifty dollars per hour will be assessed if such vessel is not immediately moved upon request of Harbor staff and for each crane blocked if another vessel is thereby forced to wait.

Vessels are not to be left unattended at Fish Dock. Vessels moored at Fish Dock must have sufficient crew on board to move the vessel upon request or direction of Harbor staff. A fee of one hundred fifty dollars per hour will be assessed against the owner or operator of a vessel left unattended at Fish Dock that obstructs access by other vessels.

PASSED AND ADOPTED by the Homer City Council this 10<sup>th</sup> day of April, 2000.

CITY OF HOMER

  
\_\_\_\_\_  
JACK CUSHING, MAYOR

ATTEST:

  
\_\_\_\_\_  
MARY L. CALHOUN, CMC/A&E, CITY CLERK

Fiscal Note: N/A

HOMER002358

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603      PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	51
	NO.	REVISED PAGE NO.	3rd
	600		

RULE: 34.30 - FISH DOCK (C)

EFF: 22APR2000

SUBSECTION 275

The Fish Dock is to be used primarily for the loading and unloading of fish, fish products and fishing gear. Any other use must be approved in advance by the harbormaster. Dock fees shall be those set at Subrule 34.19 Subsection 205.

Every person using a crane on the Fish Dock shall first obtain a license from the City. A private user shall obtain a private license, which shall be the annual access card, and shall pay the annual access card fee set forth in this subsection. A private license shall entitle only the owner if an individual, and the master and crew of a vessel to load and unload the vessel at the Fish Dock. All retail food service establishments (as defined in the Standard Industrial Classification Code #5800, #5812 and #5813) may purchase an annual food service license, fee set forth in this subsection. The purchase of an annual access card would also be required. In addition to the annual license fee, all users of the Homer Fish Dock shall pay the user fees set forth herein.

The harbormaster shall designate one or more cranes on the Fish Dock open to public use (both private and commercial users) on a first-come first-served basis. All private licenses and food services are subject to a two-hour maximum time limit during times when other private or food service licensees are waiting to use the crane. This time shall be the time that the licensees actually occupies the crane berthing space or otherwise has possession of the public use crane. Every other crane at the Fish Dock and the crane on the Main dock may be designated by the harbormaster for preferential use. Preferential use of a crane shall entitle the holder to the exclusive right to use of the crane for loading and unloading fish and fish products during fish buying periods and to priority use of crane for all other uses; provided however, that a preferential user shall not be entitled to use of the crane until an actual and legal use of the crane by non-preferential user ends. The harbormaster shall promulgate such additional rules as may be necessary to implement this section.

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HOMER002359

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603      PHONE:(907) 235-3160	FMC	PAGE NO.	52												
TERMINAL TARIFF NO. 600	NO.	REVISED PAGE NO.	3rd												
<p>RULE: 34.30 - FISH DOCK (continued)</p> <p>For an approved user's vessel blocking access to cranes other than those in use, a fee of one hundred fifty dollars per hour will be assessed if such vessel is not immediately moved upon request of Harbor staff and if another vessel is thereby forced to wait.</p> <p>Vessels are not to be left unattended at Fish Dock. Vessels moored at Fish Dock must have sufficient crew on board to move the vessel upon request or direction of Harbor staff. A fee of one hundred fifty dollars per hour will be assessed against the owner or operator of a vessel left unattended at Fish Dock that obstructs access by other vessels.</p> <p>Failure to obtain prior approval for a use other than loading and unloading fish, fish products or fishing gear will result in the imposition of a surcharge of thirty dollars per hour in addition to the regular fee.</p> <p>No person shall use the Fish Dock in violation of this section.</p> <p>Schedule of rates shall be set by City Council Resolution See also Subrule 34.20 Subsection 210 e.</p> <table border="0" data-bbox="435 1176 1133 1599"> <thead> <tr> <th data-bbox="461 1176 505 1197">ITEM</th> <th data-bbox="948 1176 987 1197">Fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="435 1197 678 1247">Annual access card(private license)</td> <td data-bbox="867 1197 1133 1247">\$75 per year (annual renewal fee)</td> </tr> <tr> <td data-bbox="435 1268 678 1288">Card replacement fee</td> <td data-bbox="867 1268 1068 1288">\$10 per occurrence</td> </tr> <tr> <td data-bbox="435 1309 662 1350">Annual food service license</td> <td data-bbox="867 1330 1003 1350">\$50 per year</td> </tr> <tr> <td data-bbox="435 1371 766 1466">Cold Storage (Cold storage rate structure is for storage area of eight feet by ten feet)</td> <td data-bbox="867 1371 1084 1466">\$400/month  Minimum two months. Inspection \$50/hour</td> </tr> <tr> <td data-bbox="435 1487 831 1599">Ice Plant Bin Storage (roofed-over, open-sided storage bins at west end of of ice plant building sixteen feet by twelve feet)</td> <td data-bbox="867 1487 1084 1537">\$200/month Minimum two months</td> </tr> </tbody> </table>				ITEM	Fee	Annual access card(private license)	\$75 per year (annual renewal fee)	Card replacement fee	\$10 per occurrence	Annual food service license	\$50 per year	Cold Storage (Cold storage rate structure is for storage area of eight feet by ten feet)	\$400/month  Minimum two months. Inspection \$50/hour	Ice Plant Bin Storage (roofed-over, open-sided storage bins at west end of of ice plant building sixteen feet by twelve feet)	\$200/month Minimum two months
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PUBLISHED BY:GLENERVE COMPANY (856) 939-1231 FAX (856)939-1235															

HOMER002360



CITY OF HOMER  
HOMER, ALASKA

Port/Harbor

Finance

RESOLUTION 00-122

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA REVISING  
THE PORT AND HARBOR OF HOMER TERMINAL TARIFF NO. 600

WHEREAS, these rates correspond with the CY 01 Budget Ordinance and shall be effective January 1, 2001.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Homer, Alaska that the Port and Harbor of Homer Terminal Tariff No.600, is hereby revised as follows:

1 Section 1. RULE: 34.18 - HARBOR MOORAGE RATES, Subsection 200, (a) and (b).  
2

3 (a) CALCULATION OF MOORAGE RATES

4 Mooring charges shall commence when a vessel is made fast to a wharf, pier, harbor float or other  
5 facility, or when a vessel is moored to another vessel so berthed (rafting). Charges shall continue  
6 until such vessel is completely free from and has vacated the port and harbor facilities.  
7

8 A vessel moored at any time between 12:01 a.m. and ~~8:00~~ 10:00 a.m. shall be charged a full day's  
9 charge moorage. The harbor master may, in his discretion and with proper and appropriate advance  
10 notice, waive a daily rate for a vessel that will occupy mooring space for a minimum time and,  
11 provided, that the harbor master determines use of the public facilities by others will not be congested  
12 or adversely affected.  
13

14 Mooring charges shall be calculated on the length of the vessel, or in the case of a reserved stall,  
15 the length of the float stall assigned, whichever is greater.  
16

17 Length shall be construed to mean the distance expressed in feet from the most forward point at  
18 the stem to the aftermost part of the stern of the vessel, measured parallel to the base line of the  
19 vessel. The length shall include all hull attachments such as bowsprits, dinghies, davits, etc.  
20

21 For billing purposes, when the actual length of the vessel is not immediately available, length of  
22 the vessel as published in "Lloyd's Register of Shipping" may be used. The City of Homer reserves  
23 the right to: (1) obtain the length from the vessel's register, or (2) measure the vessel.  
24

25 (b) ANNUAL MOORAGE FEE:

26 The annual moorage fee for reserved moorage and transient moorage privileges shall be ~~twenty~~  
27 ~~one dollars~~ twenty four dollars and eighty-two (\$24.82) per lineal foot based on the overall  
28 length of the vessel (including all hull attachments such as bowsprits, davits, dinghies,  
29 swimsteps, etc.) plus a forty-nine (\$49.00) administration charge; or: ~~Based on the overall length~~  
30 ~~of the vessel (including all hull attachments such as bowsprits, davits, dinghies, etc.)~~ or for a  
31 reserved stall, the length of the finger float stall assigned, or the overall length of the vessel,  
32 whichever is greater, plus a forty-nine dollars (\$49.00) administration charge. Any reduction in the  
33 moorage fee due to a substituted or amended moorage agreement is not applied retroactively and the  
34 owner or operator is not entitled to a refund or a pro rata adjustment of the moorage fees already due  
35 or paid. Any moorage agreement that expires will, after five days, automatically be charged a  
36 monthly rate retroactive to the expiration date. Unregistered vessels will also, after 5 days,  
37 automatically be charged a monthly rate retroactively to the date the vessel entered the harbor.  
38

39 (1) All reserved stall assignments are on an annual basis beginning October 1 and ending  
40 September 30 of the following year. Prepayment of a full year's moorage is due on or before  
41 October 1 of each year. Payment for reserved moorage will only be accepted from the  
42 individual assigned the reserved stall. The reserved stall payment shall be paid in full at the  
43 time the reserved stall/moorage agreement is executed to the satisfaction of the harbor master.  
44 Any other arrangements are at the discretion of the harbor master and must be made in  
45 advance.

HOMER002362

50 (2) A reserved stall assignment granted after October 1 will be charged a fee based on the  
51 number of months (including the month in which it is granted regardless of the day of that  
52 month) left in the fiscal year ending September 30.

53  
54 Section 2. RULE: 34.22 - UPLAND STORAGE (e):  
55

56 (e) RATES:

57 All general storage is on a month-to-month basis unless otherwise provided. Charges for any  
58 particular lot shall begin at the receipt of the first unit of that particular lot in store and shall continue  
59 and include the storage month during which the last unit of the particular lot is removed from  
60 storage. Charges shall be made on the basis of the square footage of units in any particular lot in  
61 storage during the storage month. All charges for storage are due on the first day of a storage month.  
62

63 A storage month shall extend from a date in one calendar month to, but not including, the same date  
64 of the next and all succeeding calendar months. Less than one month's storage will be charged for  
65 the full month. The harbormaster may negotiate storage contracts for periods of six months or  
66 longer.  
67

68 The fees for general storage are as follows:

69 Impound Area	\$ .20 per square foot
70 Open Areas, fishing gear	— .06 .08 per square foot
71 Open Areas, non-fishing gear	— .10 .12 per square foot
72 Fenced Storage Yard	— .15 .17 per square foot

73  
74  
75 The fees for trailer parking area/long term storage (Oct. 1 to June 1 are as follows:

76 up to 30 feet	\$75 per month
77 over 30 feet up to 40 feet	\$100 per month

78  
79  
80 There will be no storage of total length greater than 40 feet and no long term storage available  
81 from June 1 to Oct. 1.  
82

83 Equipment and materials stored without proper registration and advance payment will be charged  
84 the impound rate, regardless of the area being used: according to storage fees above.  
85

86 Section 3. RULE: 34.23 - TIDAL GRIDS subsection 235(a):  
87

88 (a) TIDAL GRIDS

89 The City of Homer operates two tidal grids. The wooden grid is for vessels of less than 60 feet in  
90 length. The steel grid is generally for use by vessels of 60 feet or greater in length. Vessels over 60'  
91 may not use the wooden grid without specific approval of the harbormaster. Vessels over 140" may  
92 not use the steel grid without specific approval of the harbormaster. Vessels that remain on either  
93 grid after their scheduled tide may be assessed a 50% surcharge for each unscheduled tide.  
94 Sandblasting of vessels is not permitted on tidal grids; water blasting of vessels to remove  
95 barnacles or other marine growth is permitted provided that water pressure used does not  
96 result in removal of paints onto the grid work platform or into the water of the harbor.  
97

98 Section 4. RULE: 34.30 - FISH DOCK (c) Schedule of rates.  
99

100 ITEM	FEE
101 Annual access	\$75 76 per year
102 card (private license)	(Annual renewal fee)

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Page Three  
City of Homer  
Resolution 00-122

Card replacement fee	\$10 per occurrence
Annual food service license	\$50 per year
Cold Storage (Cold storage rate structure is for storage area of eight feet by ten feet)	<del>\$400</del> 325/month <u>Minimum two months Month by month</u> <u>Minimum one month rental</u> Inspection \$50/hour
Ice Plant Bin Storage (Roofed-over, open-sided storage bins at west end of of ice plant building sixteen feet by twelve feet)	\$200/month, minimum two months
Fish Dock crane	<del>\$56.00</del> 58/hour
Minimum charge per hour for crane	Fifteen minutes
Ice	Augured <del>\$9299</del> /ton Pneumatic <del>\$9299</del> /ton
Seafood wharfage/Fish product	Setting a tariff of \$3.50 per ton of seafood/fish product across the docks regardless of species.
Freight NOS, Non-fish Cargo	\$10.00/T for cargo going over the Fish Dock. Fishing gear is free from wharfage

Section 5 RULE: 34.19 (b.) - DOCKAGE is hereby amended to read as follows:

(b) DOCKAGE CHARGES:  
Dockage charges will be assessed per twenty-four (24) hour period or portion thereof at the rate of ~~\$1.30~~ \$1.31 per foot for the length of the vessel. A service charge of \$50 will be assessed to each vessel.  
Cruise Ship dockage charges will be assessed per twenty-four (24) hour period or portion thereof at the rate of ~~\$1.30~~ \$1.31 per foot for the length of the vessel. A service charge of ~~\$250.00~~ \$355.00 will be assessed to each Cruise Ship.

Section 6 RULE: 34.20 (portion of e.) - DEFINITIONS AND CHARGES - WHARFAGE (C) is hereby revised to read as follows:

(e) SCHEDULE OF RATES:  
Minimum wharfage on any shipment will be ten dollars (\$10). Except as otherwise specifically provided, rates are in dollars per short ton of 2,000 lbs. or per 40 cu. ft.

COMMODITY	WHARFAGE RATE
Freight N.O.S.	\$5.00/ton

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Page Four  
City of Homer  
Resolution 00-122

Poles, logs, cants or cut finished lumber per MBM — ~~\$2.00~~ \$2.50/thousand board feet in 1995  
(Note: industry standard conversion formulas shall be used in converting pounds to board feet measure.) ~~\$2.50~~ \$2.70/thousand board feet in 1996

Section 7. RULE: 34.23(b.) - TIDAL GRIDS is hereby revised to read as follows:

(b) RATES:  
The rate per foot per tide is \$.50 for vessels 0' - 59'  
The rate per foot per tide is ~~\$1.80~~ \$1.85 for vessels 60' - 80'  
The rate per foot per tide is ~~\$2.25~~ \$2.30 for vessels 81' - 100'  
The rate per foot per tide is ~~\$2.65~~ \$2.70 for vessels 101' - 120'  
The rate per foot per tide is ~~\$3.00~~ \$3.05 for vessels 121' - 140'

Section 8 RULE: 34.25 portions of a. and b. SERVICE CHARGES is hereby revised to read as follows:

(2) Electricity (per kilowatt):  
(c) Unless other arrangements have been made in writing with the harbormaster, transient vessels shall be charged the following rates (where metered power is unavailable).

	110 volt	220 volt	208 volt three phase
Daily (or part thereof)	<del>\$8.00</del> <u>\$8.25</u>	<del>\$16.00</del> <u>\$16.25</u>	<del>\$36.00</del> <u>\$36.50</u>
Monthly	<del>\$20.00</del> <u>\$121.25</u>	<del>\$240.00</del> <u>\$272.25</u>	Available meter only

(3) Towing inside small boat harbor: skiff plus 1/2 man hour ~~\$50~~ \$50.50, Skiff plus 1 man hour ~~\$75.00~~ \$75.75.

(4) Pumping vessel: ~~\$30~~ \$30.50 per day or portion thereof for electrical pumps. ~~\$50~~ \$50.50 per hour or portion thereof for gas pumps (includes attendant time).

(b) LABOR/PERSONNEL:

(3) All labor provided by City personnel shall be charged at ~~\$75.00~~ \$75.75 per hour. (1/2 hour minimum at ~~\$38.00~~ \$38.50) Work requiring call-outs shall be charged at a minimum of two hours.

Section 9 RULE: 34.27 - SEARCH AND RESCUE FEES is hereby revised as follows:

In addition to other Tariff provisions, when the City utilizes city equipment and personnel to provide search and rescue assistance to vessels outside of the Homer Port and Harbor, such as towing and rescue, the harbormaster will charge users of those services ~~\$75.00~~ \$75.75 per hour or any part thereof, and any services beyond the first hour at 125% of actual city costs, including city labor costs, as determined in Subrule 34.25 Section 245(b) of this Tariff.

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Page Five  
City of Homer  
Resolution 00-122

Section 10. Rule 34.5, APPLICATION OF RATES, Subsection 110, third paragraph is revised to read as follows:

All rates in this Tariff except daily and seasonal load and launch ramp fees will have combined Borough and City sales tax applied. The resulting figure will be rounded to the nearest ~~half dollar~~ quarter dollar for billing purposes. The load and launch ramp daily and seasonal fees are both inclusive of Borough and City sales taxes for ease of collection at the Iron Ranger and toll booth at the load and launch ramp.

Section 11 These revisions are effective upon filing with the Federal Maritime Commission as an amendment to the Homer Port and Harbor Tariff.

PASSED AND ADOPTED by the Homer City Council this 18th day of December, 2000.

CITY OF HOMER

  
\_\_\_\_\_  
JACK CUSHING, MAYOR

ATTEST:

  
\_\_\_\_\_  
MARY J. CALHOUN, CMC, CITY CLERK

Fiscal Note: Revenues

HOMER002366

HOMER002367

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603 PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	51
	NO.	REVISED PAGE NO.	4TH
	600		

RULE: 34.30 - FISH DOCK (C)

EFF: 27DEC2000

SUBSECTION 275

The Fish Dock is to be used primarily for the loading and unloading of fish, fish products and fishing gear. Any other use must be approved in advance by the harbormaster. Dock fees shall be those set at Subrule 34.19 Subsection 205.

Every person using a crane on the Fish Dock shall first obtain a license from the City. A private user shall obtain a private license, which shall be the annual access card, and shall pay the annual access card fee set forth in this subsection. A private license shall entitle only the owner if an individual, and the master and crew of a vessel to load and unload the vessel at the Fish Dock. All retail food service establishments (as defined in the Standard Industrial Classification Code #5800, #5812 and #5813) may purchase an annual food service license, fee set forth in this subsection. The purchase of an annual access card would also be required. In addition to the annual license fee, all users of the Homer Fish Dock shall pay the user fees set forth herein.

The harbormaster shall designate one or more cranes on the Fish Dock open to public use (both private and commercial users) on a first-come first-served basis. All private licenses and food services are subject to a two-hour maximum time limit during times when other private or food service licensees are waiting to use the crane. This time shall be the time that the licensees actually occupies the crane berthing space or otherwise has possession of the public use crane. Every other crane at the Fish Dock and the crane on the Main dock may be designated by the harbormaster for preferential use. Preferential use of a crane shall entitle the holder to the exclusive right to use of the crane for loading and unloading fish and fish products during fish buying periods and to priority use of crane for all other uses; provided however, that a preferential user shall not be entitled to use of the crane until an actual and legal use of the crane by non-preferential user ends. The harbormaster shall promulgate such additional rules as may be necessary to implement this section.

PUBLISHED BY: GLENSERVE COMPANY (856) 939-1231 FAX (856)939-1235

HOMER002368

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603 PHONE: (907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	51
	NO.	REVISED PAGE NO.	3rd
	600		

RULE: 34.30 - FISH DOCK (C)

EFF: 22APR2000

SUBSECTION 275

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PUBLISHED BY: GLENSERVE COMPANY (856) 939-1231 FAX (856) 939-1235

HOMER002369

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603 PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	52
	NO. 600	REVISED PAGE NO.	4TH

RULE: 34.30 - FISH DOCK  
(continued)

For an approved user's vessel blocking access to cranes other than those in use, a fee of one hundred fifty dollars per hour will be assessed if such vessel is not immediately moved upon request of Harbor staff and if another vessel is thereby forced to wait.

Vessels are not to be left unattended at Fish Dock. Vessels moored at Fish Dock must have sufficient crew on board to move the vessel upon request or direction of Harbor staff. A fee of one hundred fifty dollars per hour will be assessed against the owner or operator of a vessel left unattended at Fish Dock that obstructs access by other vessels.

Failure to obtain prior approval for a use other than loading and unloading fish, fish products or fishing gear will result in the imposition of a surcharge of thirty dollars per hour in addition to the regular fee.

No person shall use the Fish Dock in violation of this section.

Schedule of rates shall be set by City Council Resolution See also Subrule 34.20 Subsection 210 e.

ITEM	Fee
Annual access card(private license)	\$76 per year (annual renewal fee)
Card replacement fee	\$10 per occurrence
Annual food service license	\$50 per year
Cold Storage (Cold storage rate structure is for storage area of eight feet by ten feet)	\$325/month Month by Month Minimum one month rental Inspection \$50/hour
Ice Plant Bin Storage (roofed-over, open-sided storage bins at west end of of ice plant building sixteen feet by twelve feet)	\$200/month Minimum two months

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HOMER002370

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603      PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC NO. 600	PAGE NO. REVISED PAGE NO.	53 4th												
<p>RULE: 34.30 - FISH DOCK (continued)</p> <table border="0"> <tr> <td>Fish Dock crane</td> <td>\$58.00/hour</td> </tr> <tr> <td>Minimum charge per hour for crane</td> <td>Fifteen minutes</td> </tr> <tr> <td>Ice</td> <td>Augured \$99/Ton</td> </tr> <tr> <td></td> <td>Pneumatic \$99/Ton</td> </tr> <tr> <td>Seafood wharfage/Fish product.</td> <td>Setting a tariff of \$3.50 per ton of seafood/fish product across the docks regardless of species.</td> </tr> <tr> <td>Freight NOS, Non-fish Cargo</td> <td>\$10.00/T for cargo going over the Fish Dock. Fishing gear is free from wharfage.</td> </tr> </table> <p>RULE: 34.31 - CONDITIONS OF BERTHING (C)</p> <p>EFF: 15DEC1999</p> <p>SUBSECTION 310</p> <p>All applications for vessel berthing shall be made in the form specified by the harbormaster and may require the timely filing of the financial responsibility information called for by Supplement to Vessel Berthing Application, completed in accordance with, and otherwise governed by, the terms and conditions set forth below:</p> <p>(1) Unless waived pursuant to paragraph 2 below, terms of payment for all applicable terminal or dockage charges shall be cash in advance. A cash deposit or acceptable security in an amount equal to 125% of the estimated applicable charges will be required to be posted with the harbormaster six days prior to the vessel's scheduled arrival, or at such time as may be authorized or directed by the harbormaster, but in all cases in advance of actual services rendered. When a cash deposit has been posted, any excess thereof after satisfaction of all applicable port charges, shall be promptly refunded by the Port of Homer to the party posting same.</p>				Fish Dock crane	\$58.00/hour	Minimum charge per hour for crane	Fifteen minutes	Ice	Augured \$99/Ton		Pneumatic \$99/Ton	Seafood wharfage/Fish product.	Setting a tariff of \$3.50 per ton of seafood/fish product across the docks regardless of species.	Freight NOS, Non-fish Cargo	\$10.00/T for cargo going over the Fish Dock. Fishing gear is free from wharfage.
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	Pneumatic \$99/Ton														
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PUBLISHED BY:GLENSERVE COMPANY (856) 939-1231 FAX (856)939-1235															

HOMER002371

CITY OF HOMER  
HOMER, ALASKA

City Manager

RESOLUTION 01-84(S)(A)

A RESOLUTION OF THE CITY COUNCIL OF HOMER,  
ALASKA REVISING CERTAIN PORTIONS OF THE PORT AND  
HARBOR OF HOMER TERMINAL TARIFF NO. 600.

1 WHEREAS, these rates correspond with CY02 Budget Ordinance and shall be effective  
2 January 1, 2002. These revisions are effective upon filing with the Federal Maritime Commission  
3 as an amendment to the Homer Port and Harbor Tariff.  
4

5 NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Homer, Alaska  
6 that certain portions of the Port and Harbor of Homer Terminal Tariff No. 600 is hereby revised as  
7 follows and those portions of the Tariff not expressly mentioned shall remain in effect without  
8 revision:  
9

10 RULE: 34.2 - ABBREVIATIONS, SYMBOLS, DEFINITIONS  
11

12  
13 (p) TERMINAL FACILITIES:  
14

15 Terminal Facilities include the two (2) city docks which are the Deep Water Dock and the Main  
16 Pioneer (Ferry) Dock, and associated equipment, offices, warehouses, storage space, roads, paved  
17 areas, water banks, beaches and shorelines under the management and control of the City of Homer.  
18

19  
20 RULE: 34.4 - APPLICATION OF TARIFF (C)  
21

22 SUBSECTION 105  
23

24 (a) GENERAL APPLICATION OF TARIFF:  
25

26 Rates, charges, rules and regulations provided in this Tariff will apply to persons and vessels using  
27 certain terminal facilities under jurisdictional control of the City of Homer and located within the  
28 harbor bounded by the City of Homer with the Small Boat Harbor entrance located at latitude 59°  
29 36'15" N and longitude 151° 24'48" W and specifically to docks, appurtenant structures thereto, and  
30 waterways under the management of the City of Homer. Special terms and conditions exist for the  
31 dock operations by the State of Alaska, Alaska Marine Highway System, for operations of the State  
32 Ferry System on the Main Pioneer Dock and for the dock operations by a contractor engaged in chip  
33 storage and loading operations on or in the vicinity of Deep Water Dock.  
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Page Two  
Resolution 01-84(S)(A)  
City of Homer

RULE: 34.7 - RESPONSIBILITY FOR COLLECTION AND GUARANTEE OF CHARGES

SUBSECTION 120

(c) CHARGES ON DELINQUENT ACCOUNTS:

All invoices, except for damages to City of Homer property will be declared delinquent 45 days after billing date (statement date) and will be charged interest at the rate of 10.5% per annum ~~(.875%~~ 7.5% per month). All accounts delinquent 60 90 days after billing date will be assessed a \$250 administrative fee.

RULE: 34.13 - MOORAGE IN HARBOR (I)

SUBSECTION 150

(a) ASSIGNMENT OF MOORAGE:

The Homer Port and Harbor is often congested and it is the policy of the City of Homer to provide for the maximum public use of available facilities. The harbormaster shall have discretion to implement that policy.

Mooring assignments to particular stalls on the City of Homer float system are made by the harbormaster and subject to charges named in Subrule 34.18 Subsection 200. Mooring assignments are made to a particular combination vessel and owner/operator, are not assignable by the owner/operator, and automatically expire upon sale or transfer of the vessel to another owner/operator unless stall assignee places a newly acquired or replacement vessel of permitted size in the stall as per approved request made to Harbormaster and upon payment of the \$25.00 fee to cover administrative costs of changing the boat in the reserved stall. A mooring assignment is not a lease or an exclusive right to occupy any particular stall. In order to maximize the public's use of existing facilities it is common for the Harbormaster to temporarily assign vessels to stalls normally used by another vessel when that vessel is out of the harbor.

As a condition precedent to securing moorage space, each applicant shall, in writing, agree to the terms and conditions of the moorage agreement provided by the Port and Harbor of the City of Homer. Providing false or misleading information on the moorage agreement is grounds for immediate termination of the moorage agreement.

No long term (more than 3 consecutive months) live-aboard situation is permitted in the harbor without Harbormaster's approval in writing after an evaluation of the sanitary, service and congestion problems that may be a result of such arrangement.

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Page Three  
Resolution 01-84(S)(A)  
City of Homer

No Bed & Breakfasts, lodging businesses, coffee shops or sandwich shops, cafes or similar types businesses are allowed on boats in the harbor due to the potential of increased congestion and/or liabilities to the City and impact on services capability in the harbor.

A stall user who no longer has possession, control or custody of the vessel or loses the vessel to fire, sinking or other casualty may continue to pay moorage fees with respect to the stall and retain reserved use for a period of not more than one year from the date of sale, transfer or loss of possession of the vessel, so long as he has replaced the vessel with another vessel of appropriate size for the stall assigned within such one-year period and paid the \$25.00 administrative fee for changing the boat assigned to this reserved stall. Otherwise, the moorage agreement expires. Failure of the owner or operator to give notice in writing to the harbormaster of the sale, assignment, transfer or loss of use, control and/or possession of a vessel occupying reserved moorage space within fifteen days of the loss or transfer is grounds for immediate termination of the moorage agreement.

There is a fee of ~~\$15.00~~ \$25.00 per year per listing upon the waiting list(s) for a permanent reserved stall assignment. An individual may sign up at any time during the year and pay a prorated fee to the May Stall Wait List due date. Non payment of the fee by the May 1 due date means automatic cancellation from the wait list.

RULE: 34.14 - BERTHING AT THE PORT (I)

SUBSECTION 155

(b) PREFERENCE TO RESERVED DOCK USE:

On the main face of the ~~Main Dock~~, Pioneer Dock preferential privileges to berth Alaska Marine highway System ferry vessels in accordance with the published schedule is accorded. Any variance in the schedule will be provided to the harbormaster a minimum of six (6) hours prior to arrival. Other vessels using the dock will be cleared upon arrival of the ferry. The north face of the ~~Main~~ Pioneer Dock has preferential mooring privileges accorded to the U.S. Coast Guard vessel assigned.

RULE: 34.15 - SAFETY, SANITATION AND HOUSEKEEPING (C)

SUBSECTION 160

(e) WASTE OIL AND PETROLEUM PRODUCTS:

All waste oil and petroleum products must be properly disposed of by the vessel/owner. The City of Homer offers a limited ability to take small quantities of such products as a convenience to the boating public. Quantities, less than 5 gallons, of waste oil and petroleum products will be accepted by the City in the approved and designated facilities on shore. There shall be not storage, even of

128 Page Four  
129 Resolution 01-84(S)(A)  
130 City of Homer  
131

132 a temporary nature, of waste oil or petroleum products on city docks, wharves, piers, or finger floats.  
133 Any vessel/owner/agent storing or disposing of waste oil in an inappropriate or illegal manner may  
134 be barred from further use of the Homer Port and Harbor and/or penalized according to the  
135 provisions of federal, state and local law. Larger quantities of waste oil may be accepted by the  
136 harbormaster upon prior arrangement by written approval on a case-by-case basis. These larger  
137 quantities of waste oil, if accepted shall be charged a \$2.00 \$2.10 per gallon handling and disposal  
138 fee.  
139

140 (f) TUG REQUIREMENT AND SPEED LIMITATIONS:  
141

142 (1) Vessels berthing or departing docks subject to this Tariff must use sufficient tugs so  
143 vessel can be berthed or removed in a safe manner. Berthing speed shall not exceed the  
144 maximum speed allowable by the design of the facility.  
145

146 (2) The Deep Water Dock (DWD) fendering system was designed for a 37,500 displacement  
147 ton vessel with maximum berthing speed of 20 feet per minute then later upgraded with  
148 modified corner fenders, and three breasting dolphins, to accommodate up to 65,000 ton  
149 displacement vessels. Larger Vessels larger than 37,500 displacement tons shall have a  
150 maximum berthing speed of 16 feet per minute.  
151

152 (3) The new Pioneer Dock was designed to accommodate vessels of up to 80,000  
153 displacement tons. Vessels larger than 37,500 displacement tons shall be docked with a  
154 maximum berthing speed of 16 feet per minute.  
155

156 (4) All craft shall restrict their speed to two miles per hour, no wake, while inside the small  
157 Boat Harbor entering or leaving and shall operate at reduced speed within one quarter mile  
158 of the two docks outside the harbor. It shall be unlawful for any vessel to travel at a speed  
159 within any waterway causing a wake, wash, or wave action which will damage, endanger or  
160 cause undue distress to any other boat or occupant thereof, regardless of established speed limits.  
161

162 (g) TYING TO PILING IS PROHIBITED:  
163

164 All vessels using the Deep Water Dock and Main Pioneer Dock will use bits and bullraais.  
165

166 RULE: 34.18 - HARBOR MOORAGE RATES (A)  
167

168 SUBSECTION 200  
169

170 (a) CALCULATION OR MOORING RATES:  
171

172 For billing purposes, when the actual length of the vessel is not immediately available, length of the  
173 vessel as published in "Lloyd's Register of Shipping" may be used. The City of Homer reserves the

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Page Five  
Resolution 01-84(S)(A)  
City of Homer

right to: (1) obtain the length from the vessel's register, or (2) measure the vessel.

All vessels in the harbor are subject to these rates, except properly registered seine skiffs or work skiffs attached to the mother vessel. Work skiff is defined as a boat that is usually carried on the deck or super structure of the mother vessel and is regularly used in the commercial enterprise of the mother vessel.

(b) ANNUAL MOORAGE FEE:

The annual moorage fee for reserved moorage and transient moorage privileges shall be ~~twenty-four dollars and eighty-two cents (\$24.82)~~ twenty five dollars and forty-four cents (\$25.44) per lineal foot based on the overall length of the vessel (including all hull attachments such as bowsprits, davits, dinghies, etc.) plus a forty-nine (\$49.00) administration charge; or for a reserved stall, the length of the float stall assigned, or the overall length of the vessel, whichever is greater plus a forty-nine (\$49.00) administration charge.

Any reduction in the moorage fee due to a substituted or amended moorage agreement is not applied retroactively and the owner or operator is not entitled to a refund or a pro-rata adjustment of the moorage fees already due or paid. Any moorage agreement that expires, will after five days, automatically be charged a monthly rate retroactive to the expiration date. Unregistered vessels will also, after 5 days, automatically be charged a monthly rate retroactively to the date the vessel entered the harbor.

(f) FLOAT PLANE FEES:

With proper registration and specific permission from the harbormaster, float planes may arrange for short-term moorage in the Small Boat Harbor. *This is only allowed when ice and weather conditions prevent float planes from landing on Beluga Lake.*

A fee in the amount equal to the daily rate for moorage of two (2) 24' vessels shall be assessed on a daily basis for float planes mooring within the confines of the Small Boat Harbor. A monthly rate in the amount equal to the monthly rate for two (2) 24' vessels shall be assessed for float plane moorage for longer periods, and the moorage charge computed for a float plane's stay in the harbor shall be the lowest total charge resulting from the application of either the daily or the monthly rate indicated.

RULE: 34.19 - DOCKAGE (A)

SUBSECTION 205

(a) DEFINITION:

Dockage charges are assessed on the overall length of the vessel.  
Length of the vessel as published in "Lloyds Register of Ships" will be used; however, the Port

HOMER002376

220 Page Six  
221 Resolution 01-84(S)(A)  
222 City of Homer  
223  
224 reserves the right to: (1) obtain the length from the vessel's register, or (2) measure the vessel.  
225  
226 (b) DOCKAGE CHARGES:  
227  
228 Dockage charges will be assessed per twenty-four (24) hour period or portion thereof at the rate of  
229 ~~\$1.31~~ \$1.35 per foot for the length of the vessel. A service charge of \$50 will be assessed to each  
230 vessel. These charges are applicable to the "outer face" and "trestle berth" of Deep Water  
231 Dock and to all berthing locations on Pioneer Dock. The "inside berth" (berth No. 2) of Deep  
232 Water Dock will have a 4-hour minimum dockage charge of 1/6 the daily rate, and a half day  
233 (up to 12 hours) docking charge of 1/2 the daily rate, with no service charge applicable.  
234  
235 Cruise Ship dockage will be assessed per twenty-four (24) hour period or portion thereof at the rate  
236 of ~~\$1.31~~ \$1.35 per foot for the length of the vessel. A service charge of ~~\$355.00~~ \$365.00 will be  
237 assessed to each Cruise Ship.  
238  
239 The crane at the inside berth (berth No. 2) of Deep Water Dock shall be subject to same terms  
240 for charge and usage as for the cranes on Fish Dock (Rule 34.30 page 53.)  
241  
242 RULE: 34.20 - DEFINITIONS AND CHARGES WHARFAGE (A. C)  
243  
244 SECTION II  
245  
246 SUBSECTION 210  
247  
248 (b) APPLICATION:  
249  
250 Wharfage rates named in this Tariff will be charged for all merchandise or cargoes received  
251 inbound or shipped outbound over the city docks (except the Fish Dock for which wharfage  
252 rates are contained in Rule 34.30 Subsection 275), barge ramp; or barge beaching site within  
253 the Homer Port and Harbor and will be in addition to all other charges made under provisions of this  
254 Tariff, EXCEPT:  
255  
256 No wharfage shall be charged to ship's gear, such as strongbacks, lines, hatch covers, walking  
257 boards, etc., placed on wharf during unloading operations. Fuel handled over wharf will not be  
258 considered as ship stores and will be subject to wharfage and other charges that may be incurred.  
259 Logs that are unloaded at Port of Homer barge beaching site will be charged 50% of the  
260 wharfage rate applicable to outbound (export) shipment. However if these cargoes are not  
261 exported over Deep Water Dock with full payment of outbound wharfage within 60 days of  
262 unloading at the barge beaching site, then the additional 50% of wharfage will be owed and  
263 paid for the inbound product.  
264  
265 (c) OVERSIDE:

HOMER002377

266 Page Seven  
 267 Resolution 01-84(S)(A)  
 268 City of Homer

269  
 270 One-half of wharfage named herein will be charged to merchandise or cargoes discharged or loaded  
 271 overside of vessel directly to or from another vessel or to the water when vessel is berthed at wharf.  
 272

273 (e) SCHEDULE OF RATES:  
 274

275 Minimum wharfage on any shipment will be ten dollars (\$10). Except as otherwise specifically  
 276 provided, rates are in dollars per short ton of 2,000 lbs. or per 40 cu. ft.  
 277

278 COMMODITY	279 WHARFAGE RATE
280 Freight N.O.S.	281 <del>\$5.00</del> <u>\$5.25</u>
282 Poles, logs, cants or cut 283 finished lumber per MBM 284 (Note: Industry standard 285 conversion formulas shall 286 be used in converting pounds) 287 to board feet measure.)	288 <del>\$2.50</del> <u>\$2.60</u> / thousand board 289 feet
290 Petroleum products 291 (inbound and outbound)	292 <del>\$ .252</del> <u>\$ .2593</u> / barrel 293 <del>\$ .006</del> <u>\$ .0062</u> / gallon
294 Wood Chips (all grades)	295 \$ as per contract
296 Seafood/fish product	297 Setting a tariff of 298 <del>\$3.50</del> <u>\$3.60</u> per ton of seafood/ 299 fish product across the dock, 300 regardless of species.
301 Livestock: Horses, mules, 302 cattle, hogs, sheep, goats, 303 all other livestock	304 <del>\$ 6.00</del> <u>\$6.20</u> per head
305 Fowl: Any kind, crated	306 <del>\$ 6.00</del> <u>\$6.20</u> per crate
307 Boats: Up to and including 308 twenty feet L.O.A.	309 <del>\$10.00</del> <u>\$10.30</u> each
310 Over twenty feet L.O.A. 311 (Fishing boats, pleasure craft, 312 skiffs, dinghies and other boats 313 moved over the docks.)	314 <del>\$ 1.00</del> <u>\$1.03</u> per lineal foot

310 RULE: 34.21 - DEMURRAGE (I)  
 311

312 Page Eight  
313 Resolution 01-84(S)(A)  
314 City of Homer

315  
316 SUBSECTION 215

317  
318 (c) RATES:

319  
320 Demurrage will be assessed at a rate of five cents (\$.05) per cubic square foot per day, based on  
321 the "foot print" occupied by the cargo in the laydown area or for cargo with overhangs, the  
322 footprint plus the area under the overhang that the overhang renders unusable for other  
323 storage.

324  
325 RULE: 34.22 - UPLAND STORAGE (I)

326  
327 SUBSECTION 230

328  
329 (b) BOAT TRAILER STORAGE:

330  
331 (1) Short term storage of boat trailers not to exceed 7 days will be provided on a space  
332 available basis. Storage is allowed only in designated areas which are posted.

333  
334 (e) RATES:

335  
336 All general storage is on a month-to-month basis unless otherwise provided. Charges for any  
337 particular lot shall begin at the receipt of the first unit of that particular lot in store and shall continue  
338 and include the storage month during which the last unit of the particular lot is removed from  
339 storage. Charges shall be made on the basis of the square footage of units in any particular lot in  
340 store during the storage month. All charges for storage are due on the first day of a storage month.

341  
342 A storage month shall extend from a date in one calendar month to, but not including, the same date  
343 of the next and all succeeding calendar months. *Less than one month's storage will be charged for*  
344 *the full month.* The harbormaster may negotiate storage contracts for periods of six months or  
345 longer.

346  
347 The fees for general storage are as follows:

348 Open Areas, fishing gear	.08 per square foot
349 Open Areas, non-fishing gear	.12 per square foot
350 Fenced Storage Yard	.17 per square foot

351  
352 The fees for trailer parking area/long term storage Oct. 1 to ~~June~~ May 1 are as follows:

353 Up to 30 feet	\$75.00 per month
354 Over 30 feet up to 40 feet	\$100.00 per month

355  
356 There will be no storage of trailers of total length greater than 40 feet and no long term storage  
357 available from June 1 to Oct. 1.

HOMER002379

358 Page Nine  
360 Resolution 01-84(S)(A)  
361 City of Homer

362 Equipment and materials stored without proper registration and advance payment will be charged  
363 the impound rate, regardless of the area being used.

364  
365 RULE: 34.23 - TIDAL GRIDS (I)

366  
367 SUBSECTION 235

368  
369 (a) TIDAL GRIDS

370  
371 The City of Homer operates two tidal grids. The wooden grid is for vessels of less than 60 feet in  
372 length. The steel grid is only for use by vessels of 60 feet or greater in length. Vessels over 60' may  
373 not use the wooden grid without specific approval of the harbormaster. Vessels over 300  
374 displacement tons or over 140' 120' may not use the steel grid without specific approval of the  
375 harbormaster. Vessels that remain on either grid after their scheduled tide may be assessed a 50%  
376 surcharge for each unscheduled tide. Use of the steel grid shall be charged at the minimum rate  
377 applicable for a 60' boat if a boat of less length is allowed to use this grid.

378  
379 (b) RATES:

380  
381 The rate per foot per tide is ~~\$1.50~~ 0.51 for vessels 0' - 59'  
382 The rate per foot per tide is ~~\$1.85~~ 1.90 for vessels 60' - 80'  
383 The rate per foot per tide is ~~\$2.30~~ 2.37 for vessels 81' - 100'  
384 The rate per foot per tide is ~~\$2.70~~ 2.78 for vessels 101' - 120'  
385 The rate per foot per tide is ~~\$3.05~~ 3.14 for vessels 121' - 140'

386  
387 RULE: 34.25 - SERVICE CHARGES (A)

388  
389 SUBSECTION 245

390  
391 A service charge is assessed, in addition to any other charges set forth in this Tariff, for specific  
392 services provided by the City of Homer or its agents. Service charges do not include charges for  
393 dockage, wharfage, wharf demurrage and handling.

394  
395 (a) SPECIFIC SERVICES:

396  
397 The following rates shall apply for services provided by the City of Homer.

398  
399 (1) Potable water furnished to vessels at the Deep Water Dock and Main Dock:

400  
401 The following charges in dollars will be made for furnishing water to vessels berthed at terminals  
402 subject to this Tariff.

403  
13

HOMER002380

404 Page Ten  
 405 Resolution 01-84(S)(A)  
 406 City of Homer

- 407  
 408 a. Quantity charge, ~~ten~~ 10.30 dollars per one thousand gallons (minimum five thousand  
 409 gallons).  
 410  
 411 b. Scheduled deliveries will have a minimum charge of ~~\$75.00~~ 78.00 dollars for  
 412 combined connection and disconnection.  
 413  
 414 c. Unscheduled deliveries will have a minimum charge of one hundred ~~three~~ (103.00)  
 415 dollars for combined connection and disconnection.  
 416

417 (2) Electricity (per kilowatt):  
 418

- 419 (a) Reserved stalls having a meter base at the berth shall be charged a meter availability  
 420 fee.  
 421  
 422 1. The meter availability fee will be ~~\$17~~ 17.50 per month.  
 423  
 424 2. There will be an electrical usage charge cost per kilowatt determined by the  
 425 local public utility.  
 426  
 427 3. Licensee shall notify the harbor master of any period when the assigned vessel  
 428 will not occupy the stall and the harbor master, upon payment of the ~~\$20~~ 21.00 connect/disconnect  
 429 fee, shall disconnect service to license holder's stall.  
 430

431 (b) Subject to availability, transient vessel may buy electrical power on a metered basis  
 432 from October 15 to April 15.  
 433

- 434 1. There will be a ~~\$20~~ 21 connect/disconnect fee.  
 435  
 436 2. Metered transient vessels will be charged a meter availability fee of ~~\$20~~ 21  
 437 per month with a one month minimum charge to be applied for shorter connection periods.  
 438  
 439 3. There will be an electrical usage charge per kilowatt as determined by the  
 440 local public utility.  
 441

442 (c) Unless other arrangements have been made in writing with the harbor master,  
 443 transient vessels shall be charged the following rates (where metered power is unavailable).  
 444

445	110 volt	220 volt	208 volt	
446			three phase	
447	Daily (or part thereof)	\$ 8.25	\$ 16.25	\$36.50
448				
449	Monthly	\$121.25	\$272.25	Available meter only

HOMER002381

450 Page Eleven  
451 Resolution 01-84(S)(A)  
452 City of Homer  
453

454 If a transient vessel consumes more electricity than would be covered by these flat rates, then  
455 such transient vessel shall be charged for the actual consumption. If a transient vessel on the  
456 daily flat rate accrues daily charges that total for a 30 day period more than the monthly flat  
457 rate, then the monthly rate shall be billed.  
458

459 \* Vessels required conversion plugs may purchase them from the harbormaster's office for a  
460 nominal fee.

461  
462 (d) 208 volt/3 phase electrical power is available at System 5 on a first come-first  
463 served basis, for vessels will be charged the following rates:

464  
465 1. There will be an electrical usage charge per kilowatt hour as determined  
466 by the local public utility:

467  
468 2. Vessels will be charged a meter availability fee of ~~\$20~~ 21 per month with  
469 a one month minimum charge to be applied for shorter connection periods.

470  
471 3. There will be a ~~\$20~~ 21 connect/disconnect fee.

472  
473 (3) Towing inside small boat harbor: Skiff plus with operator ½ man hour ~~\$50.50~~ \$52.00.  
474 Skiff plus with operator 1 man hour ~~\$75.75~~ 78.00. Any additional personnel required will be  
475 charged at rate of \$78.00 per hour each.  
476

477 (4) Pumping vessel: ~~\$30.50~~ 31.50 per day or portion thereof for electrical pumps.  
478 ~~\$50.50~~ 52.00 per hour or portion thereof for gas pumps.  
479

480 (b) LABOR/PERSONNEL:

481  
482 (3) All labor provided by City personnel shall be charged at ~~\$75.75~~ 78.00 per hour.  
483 (½ hour minimum at ~~\$38.50~~ 39.75). Work requiring call-outs shall be charged at a minimum  
484 of two hours.

485  
486 (d) SPECIAL SERVICES:

487  
488 Except where otherwise required by law, the harbormaster has the authority to refuse to provide or  
489 to arrange for the provision of services in addition to those set out in paragraph (a) above. Special  
490 services, including waste, bulk oil, or garbage disposal shall be billed at the City's actual cost  
491 (including city labor costs as determined in paragraph 2 above) plus 125% of city costs for services  
492 arranged for by the City but provided by others. Waste oil in quantities greater than 5 gallons, shall  
493 be charged a ~~\$2.00~~ \$2.10 per gallon handling and disposal fee.  
494

495

HOMER002382

496 Page Twelve  
497 Resolution 01-84(S)(A)  
498 City of Homer  
499  
500 RULE: 34.27 - SEARCH AND RESCUE FEES (A)  
501  
502 SUBSECTION 255  
503  
504 In addition to other Tariff provisions, when the City utilizes city equipment and personnel to provide  
505 search and rescue assistance to vessels outside of the Homer Port and Harbor, such as towing and  
506 rescue, the harbormaster will charge users of those services \$75-75 78.00 per hour for skiff and  
507 operator for the first hour or any part thereof, and for additional search and rescue assistance  
508 beyond one hour. Additional personnel will be charged at the rate of \$78.00 per man per hour.  
509 any services beyond the first hour at 125% of actual city costs, including city labor costs, as  
510 determined in Subrule 34.25 Section 245(b) of this Tariff.  
511  
512 RULE: 34.28 - BOAT LAUNCH RAMP FEES (A)  
513  
514 SUBSECTION 260  
515  
516 (b) CHARGES FOR USE OF PUBLIC LAUNCH RAMPS:  
517  
518 Vessels shall be charged \$10.00 per day from the public launch ramps. (Reserved stall lessees  
519 exempt.)  
520  
521 Vessel owners or operators may obtain a seasonal permit for \$100.00 entitling a specific vessel  
522 and owner to launch from May 1 through September 30. (Reserved stall lessees exempt for the  
523 boat assigned to and registered to the reserved stall only, not for other boats owned by the  
524 same individual.)  
525  
526 RULE: 34.29 - BEACHES AND BARGE RAMP (A)  
527  
528 SUBSECTION 270  
529  
530 The use of beaches and barge ramp under the City ownership or control for commercial barge  
531 vessel repair, equipment loading or similar purposes, must be approved by the harbormaster. A  
532 beach use agreement will be filled out and signed by the user and harbormaster prior to use of the  
533 beach.  
534  
535 The harbormaster shall charge a fee of \$~~1~~ 1.05 per foot based on length overall of vessel, for  
536 vessels up to 50 feet OAL and a fee of \$~~2~~ per foot for vessels over 50 feet OAL for landing or  
537 parking a vessel on the beaches under City ownership or control. This same rate shall apply to  
538 vessels using the barge ramp.  
539  
540 Charges for extended beach or barge ramp use may be adjusted by the harbormaster under  
541 appropriate circumstance.

HOMER002383

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Page Thirteen  
Resolution 01-84(S)(A)  
City of Homer

The user of any beach area or the barge ramp must repair any damage to the beach or ramp and remove all debris. Failure to make such repairs and removal will result in repairs and cleanup by the harbor staff. The costs incurred by the harbor staff will be fully charged to the beach user. Labor rate for the harbor staff will be ~~seventy five~~ seventy eight dollars per hour per person, plus appropriate equipment rental and material costs.

Sandblasting of vessel hull is not permitted on City beaches or barge ramp; water blasting using pressures that result in removal of paint is also prohibited. No paint chips or other paint materials are to be put into the water as a result of any maintenance done on the beach or ramp.

RULE: 34.30 - FISH DOCK (C)

SUBSECTION 275

The Fish Dock is to be used primarily for the loading and unloading of fish, fish products and fishing gear. Any other use must be approved in advance by the harbormaster. Dock fees shall be those set at Subrule 34.19 Subsection 205.

Cranes located onboard the vessel moored at Fish Dock may be utilized for loading/unloading the vessel only with prior approval granted by the Harbor Officer on duty. No non-City owned cranes or boom trucks may be brought onto Fish Dock for use in loading/unloading without advance Harbor Officer approval.

Every person using a crane on the Fish Dock shall first obtain a license from the City. A private user shall obtain a private license, which shall be the annual access card, and shall pay the annual access card fee set forth in this subsection. A private license shall entitle only the owner if an individual, and the master and crew of a vessel to load and unload the vessel at the Fish Dock. ~~All retail food service establishments (as defined in the Standard Industrial Classification Code #5800, #5812 and #5813) may purchase an annual food service license, fee set forth in this subsection. The purchase of an annual access card would also be required.~~ In addition to the annual license fee, all users of the Homer Fish Dock shall pay the user fees set forth herein.

For an approved user's vessel blocking access to cranes other than those in use, a fee of one hundred fifty dollars per hour will be assessed if such vessel is not immediately moved upon request of Harbor staff and if another vessel is thereby forced to wait.

Vessels are not to be left unattended at Fish Dock. Vessels moored at Fish Dock must have sufficient crew on board to move the vessel upon request or direction of Harbor staff. A fee of one hundred fifty dollars per hour will be assessed against the owner or operator of a vessel left unattended at Fish Dock that obstructs access by other vessels.



PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603 PHONE: (907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	51
	NO.	REVISED PAGE NO.	5th
	600		

RULE: 34.29 - BEACHES and BARGE RAMP (C)  
 (continued)

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

RULE: 34.30 - FISH DOCK (C)

EFF: 01JAN2002

SUBSECTION 275

The Fish Dock is to be used primarily for the loading and unloading of fish, fish products and fishing gear. Any other use must be approved in advance by the harbormaster. Dock fees shall be those set at Subrule 34.19 Subsection 205;

Cranes located onboard the vessel moored at Fish Dock may be utilized for loading/unloading the vessel only with prior approval granted by the Harbor Officer on duty. No non-City owner cranes or boom trucks may be brought onto Fish Dock for use in loading/unloading without advance Harbor Officer approval.

Every person using a crane on the Fish Dock shall first obtain a license from the City. A private user shall obtain a private license, which shall be the annual access card, and shall pay the annual access card fee set forth in this subsection. A private license shall entitle only the owner if an individual, and the master and crew of a vessel to load and unload the vessel at the Fish Dock. In addition to the annual license fee, all users of the Homer Fish Dock shall pay the user fees set forth herein.

The harbormaster shall designate one or more cranes on the Fish Dock open to public use (both private and commercial users) on a first-come first-served basis. All private licenses and food services are subject to a two-hour maximum time limit during times when other private or food service licensees are waiting to use the crane. This time shall be the time that the licensees actually occupies the crane berthing space or otherwise has possession of the public use crane. Every other crane at the Fish Dock and the crane on the Main dock may be designated by the harbormaster for preferential use. Preferential use of a crane shall entitle the holder to the exclusive right to use of the crane for loading and unloading fish and fish products

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HOMER002386

PORT AND HARBOR OF HOMER 4350 HOMER SPIT ROAD HOMER, ALASKA 99603      PHONE:(907) 235-3160 TERMINAL TARIFF NO. 600	FMC	PAGE NO.	52
	NO.	REVISED PAGE NO.	5th
	600		

RULE: 34.30 - FISH DOCK  
(continued)

during fish buying periods and to priority use of crane for all other uses; provided however, that a preferential user shall not be entitled to use of the crane until an actual and legal use of the crane by non-preferential user ends. The harbormaster shall promulgate such additional rules as may be necessary to implement this section.

For an approved user's vessel blocking access to cranes other than those in use, a fee of one hundred fifty dollars per hour will be assessed if such vessel is not immediately moved upon request of Harbor staff and if another vessel is thereby forced to wait.

Vessels are not to be left unattended at Fish Dock. Vessels moored at Fish Dock must have sufficient crew on board to move the vessel upon request or direction of Harbor staff. A fee of one hundred fifty dollars per hour will be assessed against the owner or operator of a vessel left unattended at Fish Dock that obstructs access by other vessels.

Failure to obtain prior approval for a use other than loading and unloading fish, fish products or fishing gear will result in the imposition of a surcharge of thirty dollars per hour in addition to the regular fee.

No person shall use the Fish Dock in violation of this section.

Schedule of rates shall be set by City Council Resolution See also Subrule 34.20 Subsection 210 e.

ITEM	Fee
Annual access card(private license)	\$45 per year (annual renewal fee)
Card replacement fee	\$10 per occurrence
Cold Storage (Cold storage rate structure is for storage area of eight feet by ten feet)	\$300/month \$275/per month for two consecutive months \$250 per month for three consecutive months Minimum one month rental Inspection \$50/hour

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DEC 17 2002

PORT & HARBOR

CITY OF HOMER  
HOMER, ALASKA

City Manager

RESOLUTION 02-81(A)

A RESOLUTION OF THE CITY COUNCIL OF HOMER,  
ALASKA REVISING CERTAIN PORTIONS OF THE  
PORT AND HARBOR OF HOMER TERMINAL TARIFF  
NO. 600.

WHEREAS, these rates correspond with CY03 Budget Ordinance and shall be effective January 1, 2003. These revisions are effective upon filing with the Federal Maritime Commission as an amendment to the Homer Port and Harbor Tariff.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Homer, Alaska that certain portions of the Port and Harbor of Homer Terminal Tariff No. 600 is hereby revised as follows and those portions of the Tariff not expressly mentioned shall remain in effect without revision:

Rule	2002 Current Tariff Rates	Proposed 2003 Rates
------	---------------------------------	------------------------

34.13 – Moorage in Harbor

Subsection 150

(a) Assignment of Moorage:

The Homer Port and Harbor is often congested and it is the policy of the City of Homer to provide for the maximum public use of available facilities. The harbormaster shall have discretion to implement that policy.

Mooring assignments to particular stalls on the City of Homer float system are made by the harbormaster and subject to charges named in Subrule 34.18 Subsection 200. Mooring assignments are made to a particular combination vessel and owner/operator, are not assignable by the owner/operator, and automatically expire upon sale or transfer of the vessel to another owner/operator, unless stall assignee places a newly acquired or replacement vessel of permitted size in the stall as per approved request made to Harbormaster and upon payment of the \$25.00 fee to cover administrative costs of changing the boat in the reserved stall. A mooring assignment is not a lease or an exclusive right to occupy any particular stall. In order to maximize the public's use of existing facilities it is common for the Harbormaster to temporarily assign vessels to stalls normally used by another vessel when that vessel is out of the harbor.

Individuals who have a reserved stall may request a change in reserved stall assignment by completing the Swap List Request Form and upon payment of the required \$25.00 Swap List Fee. This fee is neither refundable nor creditable to the reserved stall holder or the reserved stall account. The Harbormaster shall place the reserved stall change request on the swap list on a first-come, first-served basis.

HOMER002389

HOMER002390

Page Two  
 Resolution 02- 81(A)  
 City of Homer

Rule	2002 Current Tariff Rates	Proposed 2003 Rates
<b>34.18b</b> Annual Moorage Fee:	25.44	<u>28.28</u> <u>26.40</u>
<b>34.19</b>		
Dockage	-1.35	<u>1.76</u>
Cruse Ship Dockage	-1.35	<u>1.76</u>
Cruse Ship Service Charge	365.00	<u>375.00</u>
<b>34.20</b>		
Freight N.O.S.	5.25	<u>6.83</u>
Poles, Logs, cants or cut	2.60	<u>3.38</u>
Petroleum Products		
Barrel	0.2593	<u>0.2852</u>
Gallon	0.0062	<u>0.0069</u>
Seafood/Fish Products	3.60	<u>3.70</u>
Livestock	6.20	<u>8.06</u>
Fowl, Crated	6.20	<u>8.06</u>
Boats		
Up to 20 Ft each	10.30	<u>13.39</u>
Over 20 Ft per lineal ft	1.03	<u>1.34</u>
<b>34.21</b>		
Demurrage per sq ft	0.05	<u>0.06</u>
<b>34.22</b>		
Uplands Storage		
Open area fishing gear	0.08	<u>0.10</u>
Open area non-fishing gear	0.12	<u>0.14</u>
Fenced Storage Yard	0.17	<u>0.20</u>
<b>34.23</b>		
Tidal Grids		
0 - 59'	0.54	<u>0.68</u>
60 - 80'	1.90	<u>1.95</u>
81 - 100'	2.37	<u>2.44</u>
101 - 120'	2.78	<u>2.86</u>
121 - 140'	3.14	<u>3.23</u>

HOMER002391

HOMER002392

Page Three  
 Resolution 02-81(A)  
 City of Homer

Rule	2002 Current Tariff Rates	Proposed 2003 Rates
<b>34.25</b>		
DWD Potable Water		
Per Thousand Gallon	40.30	<u>30.00</u>
Connect/Disconnect Scheduled	<del>78.00</del>	<u>80.00</u>
Connect/Disconnect Not Scheduled	403.00	<u>106.00</u>
Electricity		
Reserved Stall		
Meter Availability Fee	47.60	<u>18.00</u>
Connect/Disconnect Fee	24.00	<u>21.60</u>
Transient Vessel		
Meter Availability Fee	24.00	<u>21.60</u>
Connect/Disconnect Fee	24.00	<u>21.60</u>
Non-Metered Power		
Daily		
110 Volt	8.25	<u>8.50</u>
220 Volt	46.25	<u>16.75</u>
208 Volt three phase	36.60	<u>37.50</u>
Monthly		
110 Volt	424.25	<u>124.65</u>
220 Volt	272.25	<u>279.90</u>
Towing inside Harbor		
1/2 Hour	52.00	<u>53.50</u>
1 Hour	78.00	<u>80.25</u>
Pumping Vessel		
Elect Pump per day	34.60	<u>32.50</u>
Gas Pump per hour (includes attendant)	52.00	<u>53.50</u>
City Personnel Labor		
per hour	78.00	<u>80.00</u>
per 1/2 hour	39.75	<u>40.00</u>
Waste oil over 5 gal- per gal	2.40	<u>2.16</u>

HOMER002393

HOMER002394

HOMER002395

Page Four  
 Resolution 02-81(A)  
 City of Homer

Rule	2002 Current Tariff Rates	Proposed 2003 Rates
<b>34.27</b>		
Search and Rescue per hour	78.00	<u>80.00</u>
<b>34.28 - BOAT LAUNCH RAMP FEES</b>		
Launch Ramp		
Per day	40.00	<u>11.00</u>
Season pass	400.00	<u>110.00</u>
SUBSECTION 260		
(b) CHARGES FOR USE OF PUBLIC LAUNCH RAMPS:		
Vessels shall be charged <del>\$40.00</del> <u>\$11.00</u> per day from the public launch ramps. (Reserved stall lessees exempt <u>for the boat assigned to and registered to the stall only, not for other boats owned by the same individual</u> ).		
<b>34.29</b>		
Beaches		
vessels upto 50 ft per foot	<del>4.05</del>	<u>1.10</u>
vessels over 50 ft per foot	<del>4.05</del>	<u>1.10</u>
<b>34.30</b>		
Fish Dock		
Vessels blocking cranes per hour	150.00	
Unattended vessels	150.00	
Annual access	45.00	<u>46.00</u>
Card Replacement Fee	10.00	
Cold Storage Fee per month	300.00	
Two consecutive Months	275.00	
Three consecutive Months	250.00	
Ice bid storage	200.00	
Crane usage per hour	<del>60.00</del>	<u>64.00</u>
Ice per ton	90.00	<u>102.00</u>
Seafood wharfage per ton	<del>3.60</del>	<u>3.70</u>
Freight non seafood per ton	40.30	<u>12.40</u>

HOMER002396

Page Five  
Resolution 02-81(A)  
City of Homer

PASSED AND ADOPTED by the Homer City Council this 9th day of December,  
2002.



ATTEST:

CITY OF HOMER  
*Jack Cushing*  
\_\_\_\_\_  
JACK CUSHING, MAYOR

*Mary D. Calhoun*  
\_\_\_\_\_  
MARY CALHOUN, CMC, CITY CLERK

Fiscal Note: included in the CY2003 budget proposal

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