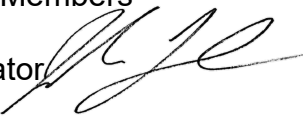


# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## MEMORANDUM

**To:** Mayor Eisenbeisz and Assembly Members  
**From:** John Leach, Municipal Administrator   
**Date:** February 3, 2023  
**Subject:** Sitka Historical Society Utility and Property Tax Exemption

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### **Background**

The City and Borough of Sitka (CBS) entered into a lease agreement with the Sitka Historical Society, Inc. (SHS) effective September 14, 2018 (encl 1).

The 30-year lease provides for space at Harrigan Centennial Hall (HCH) for SHS to operate a museum. No rent is collected from SHS for the space, and there is an option to renew for one additional 30-year term.

### **Analysis**

Per Section 2.1 of the Lease “Beginning in the calendar year 2021 and on the condition that the Assembly approves by ordinance, pursuant to SGC 4.12.025.E, the “community purpose optional property tax exemption under AS 29.45.050(b)(1)(A)” for the preceding time period, Lessee will be responsible to pay any property taxes to Sitka for Lessee’s possessory interest in the building, land, and equipment to the extent taxable as determined by the Sitka Assessor, which is assessed as of January 1 of each calendar year. The Assembly may extend the exemption by ordinance. If the Assembly fails to approve the exemption, Lessee’s responsibility to pay property taxes commences on the effective date of this lease.”

Per SGC 4.12.025.E “The community purpose optional property tax exemption under AS 29.45.050(b)(1)(A) is adopted and incorporated by reference. All or a portion of the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, may be exempted if income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter.”

If the Assembly chooses not to extend this exemption, Lessee is responsible to pay property taxes effective upon commencement of the lease, which was May 1, 2018.

Per Section 5.3 of the Lease “Lessee will pay, or cause to be paid, all proper charges for any of the following, if available: electricity and solid waste; sewer and water; and for all other public or private utility services, which shall be used by or supplied to the Subject

Property at any time during the term of this Lease. In the event that any charge, cost, or expense for any of the above-mentioned services shall not be paid when due and payable, Lessor shall have the right, but shall not be obligated, to pay it, with the understanding that amounts paid by Lessor shall constitute additional charges due and payable under this Lease, and shall be repaid to Lessor by Lessee immediately on rendition of a bill by Lessor. Interest at the highest rate allowable by law shall be added as a charge for unpaid utility bills paid by Lessor on behalf of Lessee. Lessor reserves the right to suspend utility services if Lessee does not pay for utility services. Failure to timely pay utility services may also result in Lessor terminating this Lease. Notwithstanding the foregoing, Lessee shall be exempt from paying for utility services for the first twenty-four months of this Lease. The Assembly may extend this exemption by motion.

The minutes of the July 10, 2018 (encl 2) meeting expressly state the motion approved was for "a waiver of utilities and property taxes for a period of 24 months at which time it would be revisited." Revisitation of this issue fell in the middle of no in-person meetings during the COVID-19 pandemic, and higher priority items prevented this item from being revisited until now.

### **Fiscal Note**

Annual utility costs for SHS spaces are estimated to be \$16,000.00 based on energy consumption data.

Annual property taxes for SHS property are estimated to be \$5,600.40 based on our taxable value of \$933,400.

For FY23, the CBS provided a financial donation of \$97,200.00 to the Sitka Historical Society, and future financial support is being considered for the FY24 budget.

### **Recommendation**

I recommend the Assembly consider the information relating to a community purpose optional property tax exemption and direct the Administrator to prepare an extension ordinance if so desired.

I recommend the Assembly consider the information relating to utility payments and direct the Administrator by motion to extend the utility exemption if so desired.

Encl: Lease between Sitka Historical Society and CBS  
Minutes of July 10, 2018 Assembly Meeting



**LEASE AGREEMENT**

**BETWEEN**

**THE  
CITY AND BOROUGH OF  
SITKA, ALASKA**

**AND**

**SITKA HISTORICAL SOCIETY  
INC.**

**LEASE AGREEMENT  
BETWEEN  
CITY AND BOROUGH OF SITKA, ALASKA,  
AND  
SITKA HISTORICAL SOCIETY, INC.**

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**LEASE AGREEMENT  
BETWEEN  
CITY AND BOROUGH OF SITKA, ALASKA,  
AND  
SITKA HISTORICAL SOCIETY, INC.**

**PREAMBLE**

This Lease agreement (“Lease”) between City and Borough of Sitka, Alaska, and Sitka Historical Society, Inc., is effective upon execution of the Lease by both Parties, City and Borough of Sitka, Alaska, of 100 Lincoln Street, Sitka, Alaska 99835 (“Sitka” “or “Lessor” ) and Sitka Historical Society, Inc., of 330 Harbor Drive, Sitka, Alaska 99835 (“Lessee”). This Lease consists of the Special Provisions, the General Provisions, and the attached Exhibit A, which is a pictorial representation of the area leased.

**SPECIAL PROVISIONS**

**ARTICLE I LEASE, TERM, TERMINATION OF LEASE, OPTION TO RENEW, NO RENT, ETC.**

**Section 1.1 Conveyance of Estate in Lease**

Lessor, for and in consideration of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the “Subject Property” or “Premises” as shown on Exhibit A. The Subject Property is approximately 3,843 square feet of Harrigan Centennial Hall (“HCH”) located at 330 Harbor Drive, Sitka Alaska, consisting of Room 142 Museum Store (314 square feet), Room 143 Administration (253 square feet), Room 144 Director’s Office (185 square feet), Room 145 Research (194 square feet), Room 146 Curator’s Office (133 square feet), Room 147 Processing (111 square feet), Room 148 Repository (823 square feet), and Room 149 Museum (1830 square feet).

**Section 1.2 Lease Term**

The Lease term is for thirty (30) years and commences on May 1, 2018, and ends on April 30, 2048, unless sooner terminated or extended as provided in this Lease. The Lease term may be extended, based on the Option to Renew in Section 1.3.

**Section 1.3 Option to Renew.**

Provided there does not then exist a continuing material default by Lessee under this Lease at the time of exercise of this right or at commencement of any extended term, Lessee shall have the right to exercise the option for one successive term of thirty (30) years upon the same terms and conditions as this Lease (except Section 1.2). This option is effective only if (a) Lessee makes a written request to exercise such an option not more than one year or less than six months from the end of the immediately preceding term; (b) Lessee is in compliance with all applicable laws; and (c) Lessee is not in default under this Lease. The option to renew must be approved by Lessor Assembly.

**Section 1.4 No Rent**

Lessee shall pay no rent for lease of the Subject Area.

**Section 1.5 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement.**

With the exception of the Improvements described in the next sentence, Lessee shall remove from the Subject Property any personal property constructed, installed, or deposited on the Subject Property at the termination of this Lease. Subject to Lessee's obligations under subsection 4.1 below, all Improvements shall remain on and be surrendered with the Subject Property on the termination of the Lease, except as otherwise agreed in writing by the Parties. Any personal property or Improvements not removed after thirty (30) days have passed after termination of this Lease shall be deemed abandoned, and at Lessor's option, shall become property of Lessor. Subject to Sitka's obligations under Subsection 3.1(a) below, Lessee agrees to leave Subject Property in a neat and clean condition at the end of the Term of the Lease.

**Section 1.6 Covenants to Perform.**

This Lease is made upon the above and the following terms and conditions, each of which the Party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each Party agrees to provide the other Party with documents or further assurances as may be required to carry out the expressed intentions.

**ARTICLE II PROPERTY TAX RESPONSIBILITY**

**Section 2.1 Property Tax Responsibility.**

Beginning in the calendar year 2021 and on the condition that the Assembly approves by ordinance, pursuant to SGC 4.12.025.E, the "community purpose optional property tax exemption under AS 29.45.050(b)(1)(A)" for the preceding time period, Lessee will be responsible to pay any property taxes to Sitka for Lessee's possessory interest in the building, land, and equipment to the extent taxable as determined by the Sitka Assessor, which is assessed as of January 1 of each calendar year. The Assembly may extend the exemption by ordinance. If the Assembly fails to approve the exemption, Lessee's responsibility to pay property taxes commences on the effective date of this lease.

**ARTICLE III RESTRICTIONS UPON USE OF SUBJECT PROPERTY**

**Section 3.1 Lessee's Obligations as to Construction, Maintenance, Repair and Safety.**

(a) Except as otherwise provided in this Lease, Lessee acknowledges the leasehold is in an "as is" condition. Lessee shall not make any Improvements to the Subject Property unless it first receives Lessor's written consent. Such consent shall not be unreasonably withheld. All such Improvements consented to shall be made by qualified and licensed professionals in accordance with local, state and Federal laws and regulations. At the sole cost and expense of Lessee and in compliance with all legal requirements, Lessee may repair and/or maintain any improvements, using materials of good quality and matching existing finishes.

Lessor reserves the right to expand or modify the Subject Property. In that event, Lessor and Lessee will work together to complete such expansion or modification in a manner that minimizes disruption to Lessee's use of the Subject Property. Some anticipated disruptions could be operational disturbances from noise, dust and other construction activities.



(b) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval.

(c) Lessee shall also use the Subject Property and any Improvements placed thereon only for lawful uses and as specified in this Lease Agreement.

(d) Lessee shall confine its operation to the Subject Property.

(e) Lessee shall not permit the accumulation of waste or refuse matter on the Subject Property, and Lessee shall not obstruct or permit the obstruction of the streets, sidewalks, access ways, or alleys adjoining the Subject Property except as may be permitted by Lessor or other municipal authorities having jurisdiction. Lessee shall do all things necessary during the Term of this Lease to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee.

(f) Lessor may erect outdoor signage, at its expense, which includes Lessee's use, but is not obligated to do so. If Lessor does so, Lessor shall consult with Lessee, as to style, size, and physical placement location of the sign, and may consider Lessee's recommendations. Lessee may erect outdoor signage, at its expense, with the written consent of Lessor submitted to the HCH Manager and approved by the Municipal Administrator. The style, size, and physical placement location of the sign will be approved on a case-by-case basis.

### **Section 3.2 Lessor's Approval of Certain Alterations or Improvements.**

Lessee shall not make or permit to be made any alteration of, addition to, or change in, structures and improvements, nor demolish all or any part of the structures or improvements without the prior written consent of Lessor submitted to the HCH Manager and approved by the Municipal Administrator, which consent shall not be unreasonably withheld. The phrase "structures and improvements" in the previous sentence includes water and wastewater systems, electrical systems, and HVAC systems. In requesting consent, Lessee shall comply with all applicable laws and ordinances, and shall submit to the HCH Manager of Lessor or his or her written designee detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan of full payment of the costs of the work. Lessor shall notify Lessee of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting, Lessor shall be acting in its proprietary function and not its regulatory function, any such approval in this proprietary function does not relieve Lessee of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Lessee from removing at the termination of this Lease any improvements or personal property as described in Section 1.5.

### **Section 3.3 Rights of Access to Property.**

(a) Lessor reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner, with reasonable prior notice except in the case of an emergency for safety or hazard, for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Subject Property, as well as for the purposes of constructing or installing new public utilities. Lessor also

reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner, with reasonable prior notice, for the purposes of inspection of all work being performed in connection with the construction of Improvements; Lessee shall not charge for any of the access allowed in the situations described in this subsection.

(b) Lessee shall not construct any permanent Improvements over or within the boundary lines of any easement for public utilities without receiving the written prior consent of Lessor and any applicable utility company.

(c) Lessee acknowledges that the Subject Property is or shall be subject to agreements for ingress and egress, utilities, parking, and maintenance of common areas. Lessee agrees that it shall comply with the terms of such agreements, in accordance with the terms of such agreements, those portions of such maintenance expenses that are attributable to the Subject Property, as more fully set forth therein.

(d) Lessee shall notify the HCH Manager in writing of its schedule and at least one week in advance of any changes to its schedule. Lessee shall notify the HCH Manager in writing at least one week in advance of any events scheduled by Lessee on the Subject Property. Lessee shall not conduct any event which uses the common areas of the building, other than for ingress and egress, unless it first receives Lessor's written consent submitted to the HCH Manager.

### **Section 3.4 Additional Conditions of Leasing.**

Lessee recognizes and shall cause all beneficiaries of Lessee and all permitted successors in interest in or to any part of the Subject Property to recognize that:

(a) Lessee will cooperate with Sitka employees and HCH staff and will notify HCH staff of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Lessee will be provided a 24 hour telephone number to notify Lessor of any event that requires immediate response by Lessor.

(b) Lessee covenants and agrees that, as it relates to use of the Subject Property, it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State, or local laws or regulations promulgated thereunder, and Lessee further grants Lessor the right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal, State or local laws and regulations.

(c) Lessor may, upon at least 10 days prior notice to Lessee, temporarily suspend the supply, if provided on the Subject Property, of water, wastewater service, electric power to perform routine maintenance and, in all events, subject to unavoidable delays. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Lessor shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(d) Lessee shall timely pay any applicable Building Inspector fees and other building permit fees and shall also timely file and pay all applicable property taxes and assessments.

(e) Lessee shall be responsible for taking any measures that Lessee deems necessary to provide security for its property. Lessor is not responsible for theft or vandalism.

(f) Any utility costs associated with the Subject Property shall be paid by Lessee, currently excluding Sitka Sales tax. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Sitka Assembly. Lessee shall timely pay all Sitka billings. Failure of Lessee to file and pay Sitka taxes, and pay utilities, may subject his Lease to be terminated.

(g) In accord with commercially reasonable standards and the rules, Lessee shall not store hazardous or explosive materials on the Subject Property.

(h) Janitorial for common areas in the Building is provided by Lessor at its own cost and expense. Lessee will provide all janitorial services and supplies for the Subject Property at Lessee's expense.

(i) Lessor shall have the right to establish and maintain reasonable rules and regulations concerning the maintenance, management, use, and operation of the common areas and the right to make any changes or alterations to the common areas which in Lessor's judgment are necessary and appropriate for the proper functioning of the building. Lessor, at its cost, shall maintain the common areas, including ice and snow removal and lights.

(j) The Subject Property includes no designated parking spaces. All parking is public.

**Section 3.5 Control of Rodents and Other Creatures on Subject Property.**

Lessee shall take reasonable affirmative measures to ensure that its operations do not attract to the Subject Property any of the following creatures: rodents, vermin, insects, eagles, crows, ravens, seagulls, or bears.

**ARTICLE IV POSSESSION and CONSTRUCTION OF IMPROVEMENTS.**

**Section 4.1 Lessee's Construction Obligations.**

Upon approval as required by Section 3.2, and at the sole cost and expense of Lessee and pursuant to building permits and all legal requirements and in compliance with all warranties applicable to the building, Lessee shall purchase, construct and/or develop the appropriate Improvements, personal property, or fixtures, including but not limited to any structures referred to in Section 1.1 or this Lease, and other items on the Subject Property in a first class manner, of good quality and all work shall be performed diligently. The items to be purchased, constructed and/or developed shall be those reasonably necessary to conduct Lessee's intended business operations on Subject Property.

(a) In addition to Section 3.1(a) of this Lease, Lessor, in its proprietary capacity only, agrees to cooperate reasonably with Lessee in its efforts to secure the requisite permits, licenses and approvals to allow the purchase, construction, and/or development of any project by Lessee. Notwithstanding the foregoing, Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license or approval (including a building permit) or to meet any other requirements for development of any project. Nothing in this Lease is intended or shall be construed to require that Lessor exercise its discretionary

authority under its regulatory ordinances to further any project nor binds the Lessor to do so. Lessor will process applications for permits, licenses and approvals as if such application were made without any Lessor participation in such project and shall act in good faith with respect thereto.

(b) Approval by Lessor of any item shall not constitute a representation or warranty by Lessor that such item complies with any legal requirements and Lessor assumes no liability. Lessor has no obligation or duty to design, supervise the design, construct or supervise the construction of the Improvements. Lessor's approval of the construction plans, as provided below, is for the sole purpose of protecting its rights as the owner of the building and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design, or any obligation on Lessor to insure that work or materials are in compliance with the construction plans or any warranties or building requirements imposed by a governmental agency. Lessor is under no obligation or duty, and disclaims any responsibility, to pay for the cost of construction of the Improvements or any other items, the cost of which shall at all times remain the sole liability of Lessee.

(c) For all acts other than the acts of Lessor, its officers, agents, and employees, Lessee covenants to indemnify, defend and hold harmless Lessor and its agents and employees from and against all claims and demands whatsoever for loss or damage including property damage, personal injury and wrongful death arising out of construction of the Improvements, any development or repairs made at any time on the Subject Property, the performance of this Lease by Lessee, its agents, employees, contractors, subcontractors or invitees, any incident, fire or other casualty in respect of the Subject Property, any failure by Lessee to keep the Subject Property, or any improvements on it, in a safe condition, and all other activities occurring on or at the Subject Property.

## **ARTICLE V UTILITY SERVICES and RATES**

### **Section 5.1 Provision of Utility Services.**

Lessor shall provide utility services to or reasonably accessible from the Subject Property.

### **Section 5.2 Rates for Utility Services Provided by Lessor.**

Utility rates charged by Lessor for utility services shall be those set forth in Sitka's Customer Service Policy and/or Sitka General Code. The Sitka Assembly may change utility rates from time to time by amending the Customer Service Policies and/or Sitka General Code.

### **Section 5.3 Lessee to Pay for Utility Services.**

Lessee will pay, or cause to be paid, all proper charges for any of the following, if available: electricity and solid waste; sewer and water; and for all other public or private utility services, which shall be used by or supplied to the Subject Property at any time during the term of this Lease. In the event that any charge, cost, or expense for any of the above-mentioned utility services or for any of the other above-mentioned services shall not be paid when due and payable, Lessor shall have the right, but shall not be obligated, to pay it, with the understanding that amounts paid by Lessor shall constitute additional charges due and payable under this Lease, and shall be repaid to Lessor by Lessee immediately on rendition of a bill by Lessor. Interest at the highest rate allowable by law shall be added as a charge for unpaid utility bills paid by Lessor on behalf of

Lessee. Lessor reserves the right to suspend utility services if Lessee does not pay for utility services. Failure to timely pay utility services may also result in Lessor terminating this Lease. Notwithstanding the foregoing, Lessee shall be exempt from paying for utility services for the first twenty-four months of this Lease. The Assembly may extend this exemption by motion.

**Section 5.4 Lessor Not Liable for Failure of Utilities or Building.**

Except to the extent that any such failure, injury, or other casualty is due to Lessor's negligence or breach of any obligation under this Lease, Lessor shall not be liable for any failure of building roof, water supply, sewer, or electric current, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain, or snows which may leak or flow from the street, sewer, or from any part of the building or the Subject Property, or leakage of gasoline or gas from pipes, appliances, sewer, or plumbing works or from any other place. Lessor shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains by an act of God or Nature, beyond Lessor's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

**Section 5.5. Requirement Regarding Potable Water Services.**

All potable water services will be metered and protected by approved backflow prevention in accordance with Customer Service Policies and/or Sitka General Code.

**ARTICLE VI LIABILITY and INDEMNIFICATION**

**Section 6.1 Liability of Lessee and Indemnification of Lessor.**

Lessee agrees to indemnify, defend, and hold harmless Lessor against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of Lessor or pre-existing conditions, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and structures and Improvements, including liability arising from products produced on the property. Lessee also agrees to indemnify, defend, and hold Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the Term of this Lease from: (a) any condition of the Subject Property or Improvements placed on it by Lessee; (b) any breach or default on the part of Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease; (c) any act or negligence of Lessee or any of its agents, contractors, servants, employees or licensees; and (d) any accident, injury, death or damage caused to any person occurring during the Term of this Lease in or on the Subject Property. Lessee agrees to indemnify, defend, and hold harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease to indemnify Lessor. The agreements of indemnity by Lessee do not apply to any claims of damage arising out of the failure of Lessor to perform acts or render services in its municipal capacity.

**Section 6.2 Liability of Lessor and Indemnification of Lessee.**

Except to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee harmless for liabilities to the extent that they were incurred by reason of conditions existing on the site as of the date of execution of this Lease or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend, and hold Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the Term of this Lease from (a) any condition of the Subject Property or Improvements placed on it by Lessor; (b) any breach or default on the part of the Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease; (c) any act of negligence of Lessor or any of its agents, contractors, servants, employees, or licensees; and (d) any accident, injury, death, or damage caused to any person occurring during the Term of this Lease in or on the Subject Property. Lessor agrees to indemnify, defend, and hold harmless Lessee from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessee, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease to indemnify Lessee.

**Section 6.3 Reimbursement of Costs of Obtaining Possession.**

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute under this Lease for all costs and charges, including but not limited to, full reasonable attorney and legal fees lawfully incurred in enforcing any provision of this Lease including obtaining possession of the Subject Property and establishing the Lessor's title free and clear of this Lease upon expiration or earlier termination of this Lease.

**GENERAL PROVISIONS**

**ARTICLE VII DEFINITIONS**

**Section 7.1 Defined Terms.**

For the purposes of this Lease, the following words shall have the meanings attributed to them in this Section:

- (a) "Event of Default" means the occurrence of any action specified in Section 15.1.
- (b) "Imposition" means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property, any part thereof, any right or interest therein or any rent and income received therefrom as well as sales taxes on rent.
- (c) "Improvements" or "improvements" means all improvements of any nature now or hereafter located upon the Land, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, including any construction fencing or signage, excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Lessee, Sublessees, or others, which can be removed without defacing or materially injuring the Improvements remaining on the Subject Property, from the Subject Property with the portion of the Subject Property from which

such items are removed being returned to a condition at least as good as that existing on the date of this Lease. "Improvements" also includes fill, grading, asphalt, and other non-building land improvements.

(d) "Personal Property" means tangible personal property owned or leased and used by the Lessee or any sublessee of the Lessee, in connection with and located upon the Subject Property.

(e) "Premises" means the "Subject Property."

(f) "Subject Property" is the area leased as shown on Exhibit A or elsewhere in the document.

(g) "Sublessee" and "Sublease" -- any reference to "Sublessee" shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through the Lessee; the term "Sublease" shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any Person holding by or through the Lessee.

(i) "Term" means the period of time Lessee leases the Subject Property from Lessor.

## **ARTICLE VIII INSURANCE**

### **Section 8.1 Insurance.**

Lessee shall obtain and maintain property damage and comprehensive general liability insurance in the amount of One Million Dollars (\$1,000,000), on the Subject Property including Improvements. Lessor shall be named as an additional insured. Additionally, Lessee shall have the statutory amount of any Workers Compensation.

### **Section 8.2 Notification of Claim, Loss, or Adjustment.**

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in Section 8.1.

### **Section 8.3 Waiver of Subrogation.**

The Party insured (or so required) releases the other Party from any liability the other Party may have on account of the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance whenever: (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the Parties to this Lease Agreement, or anyone claiming under it in connection with the Subject Property or Improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Lease to be so insured. In such coverage the Parties hold on or waives any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost. In the case of increased cost, the other Party shall have the right, within thirty (30) days following written notice, to pay the increased cost keeping the release and waiver in full force and effect.

Lessee has no power under this Lease to assign the Lease or transfer the Subject Property, except with the approval of the Sitka Assembly. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan, mortgage, debt or liability.

#### **ARTICLE IX RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY**

##### **Section 9.1 Lessee Without Power to Assign Lease or Transfer or Encumber Subject Property.**

Lessee has no power under this Lease to assign the Lease or transfer the Subject Property, except with the approval of the Sitka Assembly. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan, mortgage, debt or liability.

##### **Section 9.2 Limitations on Subleases.**

Lessee shall not sublease the Subject Property or any portion of it except with the approval of the Sitka Assembly, which approval shall not be unreasonably withheld. All subleases entered into demising all or any part of the Improvements or the Subject Property shall be expressly subject and subordinate to this Lease. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease. Lessor's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

#### **ARTICLE X USE and PROTECTION OF THE SUBJECT PROPERTY**

##### **Section 10.1 Property As Is - Repairs.**

Lessee acknowledges that it has examined the Subject Property and the present improvements including any public improvements presently located there and knows the condition of them and accepts them in their present condition and without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy which may be made of them. Lessee assumes the sole responsibility for the condition of the Improvements located on the Subject Property. The foregoing shall not be deemed to relieve Lessor of its general municipal obligations, or of its obligations under Section 3.1.

##### **Section 10.2 Compliance with Laws.**

Lessee shall throughout the Term of this Lease and any extension, at Lessee's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (whether or not the same require structural repairs or alterations) and all other legal requirements that may be applicable to the use of the Subject Property. Nothing in the foregoing sentence shall be deemed to relieve Lessor of its general obligations in its municipal capacity.

##### **Section 10.3 Permits and Approvals for Activities.**

Lessee shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by Lessor. Contemporaneously with making any application for permits to any public entity other than the Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the of Sitka to facilitate review by



departments of Sitka. Sitka is not obligated to comment on the permit applications and plans, and the result of any review by Sitka does not affect Lessee's obligation to comply with any applicable laws.

## **ARTICLE XI LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED**

### **Section 11.1 Performance of Lessee's Covenants To Pay Money.**

Lessee covenants that if it shall at any time default or shall fail to make any payment due and the failure shall continue for ten (10) days after written notice to Lessee, then Lessor may, but shall not be obligated so to do, and without further notice to or demand upon the Lessee and without releasing Lessee from any obligations of Lessee under this Lease, make any payment in a manner and extent that Lessor may deem desirable.

### **Section 11.2 Lessor's Right To Cure Lessee's Default.**

If there is a default involving the failure of Lessee to keep the Subject Property in good condition in accordance with the provisions of this Lease, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Lease or to take any other action required by the terms of this Lease, then Lessor shall have the right, but shall not be required, to make good any default of Lessee. Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of or to Lessee by reason of bringing materials, supplies and equipment on the Subject Property during the course of the work required to be done to make good such default, and the obligations of Lessee under this Lease shall remain unaffected by such work, provided that Lessor uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business, or other damage to Lessee.

### **Section 11.3 Reimbursement of Lessor by Lessee.**

All sums advanced by Lessor pursuant to this Article and all necessary and incidental costs, expenses and attorney fees in connection with the performance of any acts, together with interest at the highest rate of interest allowed by law from the date of the making of advancements, shall be promptly payable by Lessee, in the respective amounts so advanced, to Lessor. This reimbursement shall be made on demand, or, at the option of Lessor, may be added to any sum then due or becoming due under this Lease and Lessee covenants to pay the sum or sums with interest, and Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by Lessee.

## **Article XII: DAMAGE OR DESTRUCTION**

### **Section 12.1 Repair and Replacement of Structures and Improvements Following Damage.**

(a) If the Premises, other than those Improvements made by Lessee, shall be destroyed or so injured by any cause as to be unfit, in whole or in part, for occupancy and such destruction or injury could reasonably be repaired within ninety (90) days from the date of such damage or destruction, then Lessee shall not be entitled to surrender possession of the Premises, without the mutual consent of the Parties; in case of any such destruction or injury, Lessor shall repair the

same with all reasonable speed and shall complete such repairs within ninety (90) days from the date of such damage or destruction. If during such period Lessee shall be unable to use all or any portion of the Premises, no allowance shall be made to Lessee.

(b) If such destruction or injury cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, Lessor shall notify Lessee within fifteen (15) days after the determination that restoration cannot be made in 90 days. If Lessor elects not to repair or rebuild, this Lease shall be terminated. If Lessor elects to repair or rebuild, Lessor shall specify the time within which such repairs or reconstruction will be complete, and Lessee shall have the option, to be exercised within thirty (30) days after the receipt of such notice, to elect either to terminate this Lease and further liability hereunder, or to extend the Term of this Lease by a period of time equivalent to the time from the happening of such destruction or injury until the Premises are restored to their former condition. In the event Lessee elects to extend the Term of this Lease, Lessor shall restore the Premises to their former condition within the time specified in the notice.

### **ARTICLE XIII MECHANIC'S LIENS**

#### **Section 13.1 Discharge of Mechanics' Liens.**

Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against Lessee's interest in the property, nor against the Improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone having a right to possession of the Subject Property or Improvements as a result of an agreement with or the assent of Lessee. If any mechanics' lien shall be filed against the Subject Property, including the Improvements, Lessee shall cause it to be discharged of record within thirty (30) days after the date that Lessee has knowledge of its filing.

### **ARTICLE XIV LIEN FOR TAXES and OTHER CHARGES**

#### **Section 14.1 Lien for Taxes and Other Charges.**

The amount of all taxes, assessments, water rates, insurance premiums and other charges and impositions paid by Lessor under the provisions of this Lease, and all costs, attorney's fees and other expenses which may be incurred by Lessor in enforcing the provisions of this Lease or on account of any delinquency of Lessee in carrying out any of the provisions of this Lease, shall be and they are declared to constitute a valid and prior lien upon Lessee and Lessee's Improvements to the Subject Property, and upon Lessee's leasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

### **ARTICLE XV DEFAULT PROVISIONS**

#### **Section 15.1 Events of Default.**

Each of the following events is defined as an "Event of Default":

(a) The failure of the Lessee to pay any payments or deposits of money, or furnish receipts for deposits as required, when due and the continuance of the failure for a period of ten (10) days after notice in writing from Lessor to Lessee.

(b) The failure of Lessee to perform any of the other covenants, conditions and agreements of this Lease including payment of taxes on the part of Lessee to be performed, and the continuance of the failure for a period of thirty (30) days after notice in writing (which notice shall specify the respects in which Lessor contends that Lessee has failed to perform any of the covenants, conditions and agreements) from Lessor to Lessee unless, with respect to any default which cannot be cured within thirty (30) days, Lessee, or any person holding by, through or under Lessee, in good faith, promptly after receipt of written notice, shall have commenced and shall continue diligently and reasonably to prosecute all action necessary to cure the default within an additional sixty (60) days.

(c) The filing of an application by Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of Lessee's interest in this Lease): (i) for a consent to the appointment of a receiver, trustee or liquidator of itself or all its assets; (ii) of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing of its inability to pay its debts as they come due; (iii) of a general assignment for the benefit of creditors; (iv) of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a petition filed against it in any bankruptcy proceeding.

(d) The entry of an order, judgment or decree by any court of competent jurisdiction, adjudicating Lessee a bankrupt, or appointing a receiver, trustee or liquidator of it or of its assets, and this order, judgment or decree continuing unstayed and in effect for any period of sixty (60) consecutive days, or if this Lease is taken under a writ of execution.

### **Section 15.2 Assumption or Assignment of Lease to Bankruptcy Trustee.**

In the event that this Lease is assumed by or assigned to a trustee pursuant to the provisions of the bankruptcy reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 *et seq.*), the trustee shall cure any default under this Lease Agreement and shall provide adequate assurances of future performance of this Lease as are required by the Bankruptcy Code (including but not limited to, the requirement of Code § 365(b)(1)) (referred to as "Adequate Assurances"), and if the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this Lease shall be deemed rejected automatically and Lessor shall have the right immediately to possession of the Subject Property immediately and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach or termination of this Lease.

### **Section 15.3 Remedies in Event of Default.**

Lessor may treat any one or more of the Events of Default as a breach of this Lease Agreement and at its option, by serving written notice on Lessee and each Secured Party and Leasehold Mortgagee of whom Lessor has notice (such notice not to be effective unless served on each such person) of the Event of Default of which Lessor shall have received notice in writing, Lessor shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) Lessor may terminate this Lease and the Term created, in which event Lessor may repossess the entire Subject Property and Improvements, and be entitled to recover as damages a sum of money equal to the value, as of the date of termination of this Lease, of any sum of money and

damages due under the terms of this Lease to Lessor and Lessee. Any personal property not removed after such termination shall be addressed as provided for in Section 1.5 above.

(b) Lessor may terminate Lessee's right of possession and may repossess the entire Subject Property and Improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to Lessee (except as above expressly provided for) and without terminating this Lease, in which event Lessor may, but shall be under no obligation to do so, relet all or any part of the Subject Property for rent and upon terms as shall be satisfactory in the judgment reasonably exercised by Lessor (including the right to relet the Subject Property for a term greater or lesser than that remaining under the stated Term of this Lease Agreement and the right to relet the Subject Property as a part of a larger area and the right to change the use made of the Subject Property). For the purpose of reletting, Lessor may make any repairs, changes, alterations or additions in or to the Subject Property and Improvements that may be reasonably necessary or convenient in Lessor's judgment reasonably exercised; and if Lessor shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property is relet and a sufficient sum shall not be realized from reletting after paying all of the costs and expenses of repairs, change, alterations and additions and the expense of reletting and the collection of the charges accruing from it, to satisfy the charges above provided to be paid, then Lessee shall pay to Lessor as damages a sum equal to the amount of the charges reserved in this Lease for the period or periods as and when payable pursuant to this Lease, or, if the Subject Property or any part of it has been relet, Lessee shall satisfy and pay any deficiency upon demand from time to time; and Lessee acknowledges that Lessor may file suit to recover any sums falling due under the terms of this Section from time to time and that any suit or recovery of any portion due Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.5 above.

(c) In the event of any breach or threatened breach by Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease, Lessor shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as through reentry, summary proceedings, and other remedies were not provided for in this Lease.

(d) Upon the termination of this Lease and the Term created, or upon the termination of Lessee's right of possession, whether by lapse of time or at the option of Lessor, Lessee will at once surrender possession of the Subject Property and dispose of personal property and Improvements as described in Section 1.5. If possession is not immediately surrendered, Lessor may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, if such can be done without using force. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

(e) In the event that Lessee shall fail to make any payment required to be made provided for in this Lease or defaults in the performance of any other covenant or agreement which Lessee is required to perform under this Lease during the period when work provided for in this Lease shall be in process or shall be required by the terms of this Lease to commence, Lessor may treat the

default as a breach of this Lease and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Lease, Lessor shall have the right to carry out or complete the work on behalf of Lessee without terminating this Lease.

**Section 15.4 Waivers and Surrenders To Be In Writing.**

No covenant or condition of this Lease shall be deemed to have been waived by Lessor unless the waiver be in writing, signed by Lessor or Lessor's agent duly authorized in writing and shall apply only with respect to the particular act or matter to which the consent is given and shall not relieve Lessee from the obligation, wherever required under this Lease, to obtain the consent of Lessor to any other act or matter.

**ARTICLE XVI LESSOR'S TITLE And LIEN**

**Section 16.1 Lessor's Title and Lien Paramount.**

Lessor has title to the Subject Property, and Lessor's lien for taxes and other charges shall be paramount to all other liens.

**Section 16.2 Lessee Not To Encumber Lessor's Interest.**

Lessee shall have no right or power to and shall not in any way encumber the title of Lessor in and to the Subject Property. The fee-simple estate of Lessor in the Subject Property shall not be in any way subject to any claim by way of lien or otherwise, whether claimed by operation of law or by virtue of any express or implied lease or contract or other instrument made by Lessee, and any claim to the lien or otherwise upon the Subject Property arising from any act or omission of Lessee shall accrue only against the leasehold estate of Lessee in the Subject Property and Lessee's interest in the Improvements, and shall in all respects be subject to the paramount rights of Lessor in the Subject Property.

**ARTICLE XVII REMEDIES CUMULATIVE**

**Section 17.1 Remedies Cumulative.**

No remedy conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute. Every power and remedy given by this Lease to Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Lessor. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

**Section 17.2 Waiver of Remedies Not To Be Inferred.**

No waiver of any breach of any of the covenants or conditions of this Lease shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of it or similar covenant or condition.

**Section 17.3 Right to Terminate Not Waived.**

Neither the rights given to receive, sue for or distrain from any rent, moneys or other payments, or to enforce any of the terms of this Lease, or to prevent the breach or nonobservance of it, nor the

exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of Lessor to declare ended the Term granted and to terminate this Lease because of any event of default.

## **ARTICLE XVIII SURRENDER and HOLDING OVER**

### **Section 18.1 Surrender at End of Term.**

On the last day of the original term, or on the earliest termination of the term, Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to Lessor at the termination of the Lease, subject to the provisions of Section 1.5, in good repair, order, and condition, environmentally clean and free of contaminants, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. If the Subject Property is not so surrendered, Lessee shall repay Lessor for all expenses which Lessor shall incur by reason of it, and in addition, Lessee shall indemnify, defend and hold harmless Lessor from and against all claims made by any succeeding Lessee against Lessor, founded upon delay occasioned by the failure of Lessee to surrender the Subject Property.

### **Section 18.2 Rights Upon Holding Over.**

At the termination of this Lease, by lapse of time or otherwise, Lessee shall yield up immediately possession of the Subject Property to Lessor and, failing to do so, agrees, at the option of Lessor, to pay to Lessor for the whole time such possession is withheld, a sum per day equal to \$100.00. The provisions of this Article shall not be held to be a waiver by Lessor of any right or reentry as set forth in this Lease Agreement, nor shall the receipt of a sum, or any other act in apparent affirmance of the tenancy, operate as a waiver of the right to terminate this Lease Agreement and the Term granted for the period still unexpired for any breach of Lessee under this Lease Agreement.

## **ARTICLE XIX MODIFICATION**

### **Section 19.1 Modification.**

None of the covenants, terms or conditions of this Lease to be kept and performed by either Party to this Lease shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged, and delivered by both Lessor and Lessee.

## **ARTICLE XX INVALIDITY OF PARTICULAR PROVISIONS**

### **Section 20.1 Invalidity of Provisions.**

If any provision of this Lease or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## **ARTICLE XXI APPLICABLE LAW and VENUE**

**Section 21.1 Applicable Law.**

This Lease shall be construed and enforced in accordance with the laws of the State of Alaska. The forum and venue for any action seeking to interpret, construe, or enforce this Lease shall be only in the Superior Court for the State of Alaska, First Judicial District, at Sitka, Alaska.

**ARTICLE XXII NOTICES**

**Section 22.1 Manner of Mailing Notices.**

In every case where under any of the provisions of this Lease or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to Lessor or Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States Post Office registered or certified mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, Alaska, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each Party from time to time may change its address for purposes of receiving declarations or notices by giving written notice of the changed address, to become effective seven (7) days following the giving of written notice.

**Section 22.2 Notice to Leasehold Mortgagee and Secured Parties.**

Lessor shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from Lessor to Lessee relating to existing or potential default under, or other noncompliance with the terms of this Lease. All notices, demands or requests which may be required to be given by Lessor or Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States Post Office registered or certified mail or express mail, postage prepaid, return receipt requested, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of Lessor or Lessee, as the case may be.

**Section 22.3 Sufficiency of Service.**

Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

**Section 22.4 When Notice Deemed Given or Received.**

Whenever a notice is required by this Lease to be given by any Party to the other Party or by any Party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

**ARTICLE XXIII MISCELLANEOUS PROVISIONS**

**Section 23.1 Captions.**

The captions of this Lease and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

**Section 23.2 Conditions and Covenants.**

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

**Section 23.3 Entire Agreement.**

This Lease contains the entire agreement between the Parties and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors or assigns in interest.

**Section 23.4 Time of Essence as to Covenants of Lease Agreement.**

Time is of the essence as to the covenants in this Lease.

**ARTICLE XXIV COVENANTS TO BIND and BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY**

**Section 24.1 Covenants to Run with the Subject Property.**

All covenants, agreements, conditions and undertakings in this Lease shall extend and inure to the benefit of and be binding upon the successors and assigns of each of the Parties, the same as if they were in every case named and expressed, and they shall be construed as covenants running with the Subject Property. Wherever in this Lease reference is made to any of the Parties, it shall be held to include and apply to, wherever applicable, also the officers, directors, successors and assigns of each Party, the same as if in each and every case so expressed.

**ARTICLE XXV ADDITIONAL GENERAL PROVISIONS**

**Section 25.1 Absence of Personal Liability.**

No member, official, or employee of Lessor shall be personally liable to Lessee, its successors and assigns, or anyone claiming by, through or under Lessee or any successor in interest to the Subject Property, in the event of any default or breach by Lessor or for any amount which may become due to Lessee, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease. No member, official, or employee of Lessee shall be personally liable to Lessor, its successors and assigns, or anyone claiming by, through, or under Lessor or any successor in interest to the Subject Property, except as stated herein, in the event of any default or breach by Lessee or for any amount which become due to Lessor, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease.

**Section 25.2 Lease Only Effective as Against Lessor upon Assembly Approval.**

This Lease is effective as against Lessor only upon the approval of the Sitka Assembly.

**Section 25.3 Binding Effects and Attorney's Fees.**

This Lease shall be binding up and inure to the benefit of the respective successors and assigns of the Parties. In the event of litigation over this Lease Agreement, the Parties agree that the prevailing Party shall receive full reasonable attorneys' fees.



**Section 25.4 Duplicate Originals.**

This Lease may be executed in any number of copies, each of which shall constitute an original of this Lease. The warranties, representations, agreements and undertakings shall not be deemed to have been made for the benefit of any person or entity, other than the Parties.

**Section 25.5 Declaration of Termination.**

With respect to Lessor's rights to obtain possession of the Subject Property or to revest title in itself with respect to the leasehold estate of Lessee in the Subject Property, Lessor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate its rights including, without limitation, the right to execute and record or file with the Recorder of Sitka Recording District, a written declaration of the termination of all rights and title of Lessee in the Subject Property, and the revesting of any title in Lessor as specifically provided in this Lease Agreement.

**Section 25.6 Authority.**

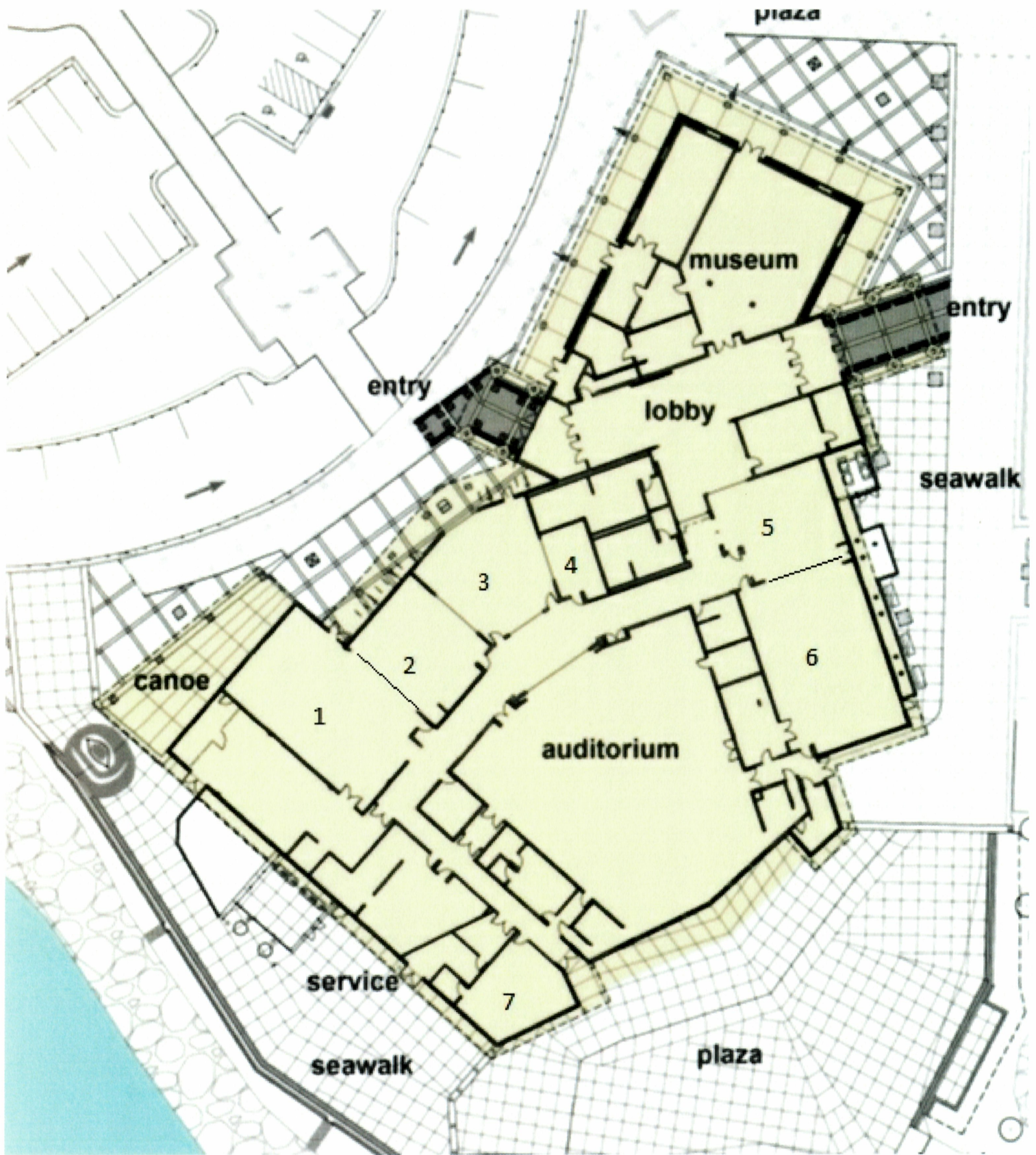
Lessor and Lessee represent to each other that each has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Lease and perform its obligations. Both Parties also represent that this Lease has been duly executed and delivered by each and constitutes a valid and binding obligation of each enforceable in accordance with its terms, conditions, and provisions.

**Section 25.7 Recordation.**

Lessee understands that Lessor may not record this Lease. At the request of Lessor or Lessee the parties shall execute a memorandum of this Lease for recording purposes in lieu of recording this Lease in such form as may be satisfactory to them or their respective attorneys.

**[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]**





H [18-136](#) Approve a lease agreement between the Sitka Historical Society, Inc. and the City and Borough of Sitka for a portion of 330 Harbor Drive

Executive Director of the Sitka History Museum Hal Spackman mentioned the July 26 grand opening date for the museum noting the museum had been in existence since 1957. Spackman told of lease amendments he felt the museum needed and several members of the audience showed their support for the museum by raising hands. Amendments included a sign outside of the museum by approval of the assembly, a waiver of utility fees, a waiver of rental fees for foyer use for special events not to conflict with other activities, and a waiver of property tax.

Municipal Attorney Brian Hanson stated the lease came to the legal department many months ago, that it has been challenging to work through as the previous lease was decades old. Don Kluting, Harrigan Centennial Hall (HCH) Director spoke of concerns with the sign amendments in conjunction to the master plan of the entire HCH campus. He told of utility costs and noted if the fees were waived, the overall HCH budget would need to increase. He mentioned concern with use of the foyer since it was the main entrance, that it would need to be coordinated, and HCH staff would be required to be on duty for events which would add additional costs.

Bean had concerns, but thought all parties could get to a place where everyone agreed, or mentioned to shorten the term. Wein wanted more information regarding the sign amendment. Eisenbeisz had concerns with the unlimited utilities and the need to increase the HCH budget to subsidize utilities. He noted that the amendments were shifting the burden back to the city and therefore the public, and wondered if the museum would offer free access to public. Spackman noted that most museums were ran by the city and felt it was a great service provided at less expense to the city. He stated the museum needed time and monetary relief. Knox voiced that a thirty year term was long, and that the Historical Society provided a benefit. He would like to know the cost of the amendments. Mayor Hunter clarified historically they had been charged, however relayed the funding the city paid to the Historical Society had decreased over the years. He thought it was a reasonable expenditure from the Visitor's Enhancement Fund. He mentioned granting the waivers for a period of time in order to know the costs. Miyasato agreed and voiced a one year waiver. He was in support of a long term lease. Wein was in support of the subsidization. Bean agreed with Hunter and Wein, and offered a 24 month term. Knox wished to go forward with the long term lease but on a short term basis for the utilities and property tax waiver to be revisited in 24 months. Mayor Hunter stated he would like to approve the lease and then make amendments. Eisenbeisz reminded that the sign code needed to be followed, was amendable to the waiver of property tax, but thought utilities should be paid.

**A motion was made by Miyasato to approve a lease agreement between the Sitka Historical Society, Inc. and the City and Borough of Sitka for a portion of 330 Harbor Drive and authorize the Municipal Administrator to execute this document.**

**Yes:** 4 - Miyasato, Hunter, Knox, and Wein

**No:** 2 - Eisenbeisz, and Bean

**Absent:** 1 - Potrzuski

John Stein noted the items were a public trust and the artifacts were irreplaceable.

Eisenbeisz requested a financial review and confirmed with Spackman that the timing of the 24 months coming due in the summer season would not cause concern. Bean

was also in favor of a financial review. Miyasato was in support.

**A motion was made by Knox to direct staff to execute within the terms of the lease with the Sitka Historical Society, Inc., a waiver of utilities and property taxes for a period of 24 months at which time it would be revisited.**

**Yes:** 6 - Miyasato, Eisenbeisz, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Potrzuski

**I**     [18-138](#)

Approve the Extension of Agreement between Seafood Producers Cooperative and the City and Borough of Sitka regarding the Sitka Marine Service Center

Municipal Attorney Brian Hanson felt that lease extensions needed to come forward to the Assembly. Eisenbeisz expressed lease extensions should be processed by staff. Wein had concerns of liability for the city with possible lack of general liability insurance. Chief Finance and Administrative Officer Jay Sweeney explained there was approximately a \$2 million balance in the Marine Service Center Fund and noted that the bulk head was owned by the Harbor Fund. Brady stated the lease had expired June 30th, that this was signed by Administration, however needed the assembly to ratify it. Staff had been working internally to changes in the contract. Hanson recommend postponement in order to look at the risk of insurance.

**A motion was made by Miyasato to POSTPONE this item to the July 24, 2018 Assembly meeting. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Eisenbeisz, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Potrzuski

**J**     [ORD 18-30](#)

Making supplemental appropriations for Fiscal Year 2019 (*E911 Software System Acquisition*)

IT Director Ron Duvall stated this ordinance was moving dedicated E911 funds to MIS funds for the project. He told approval of the contract, not to exceed \$285,000, would be at the next regular meeting. He communicated the reasoning of this ordinance coming prior to the contract was because it took two readings and the second reading of this ordinance and the contract approval would be placed on the agenda for the next meeting together. Duvall noted funds were available, yet no money would be issued until the contract was approved. Bean inquired if the police department would move to a different location that the system could be moved. Duvall confirmed and noted that this system was for both the police department and fire department. Mayor Hunter voiced this was the process that had been done previously, and it was a matter of style yet the effect was the same.

**A motion was made by Miyasato that this ordinance be PASSED ON FIRST READING. The motion PASSED by the following vote.**

**Yes:** 5 - Miyasato, Eisenbeisz, Hunter, Knox, and Bean

**No:** 1 - Wein

**Absent:** 1 - Potrzuski

**K**     [ORD 18-31](#)

Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.09 "Sales Tax" at Section 4.09.100 "Exemptions" by including an exemption for sales tax on groceries and residential utilities and