

## **POSSIBLE MOTION**

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**I move to approve Lease Agreements between the City and Borough of Sitka and I Water, LLC for Block 4, Lots 3, 6 & 7 of Sawmill Cove Industrial Park recommended by the Sawmill Cove Industrial Park Board.**

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Thursday, May 01, 2014

## MEMORANDUM

To: Mark Gorman – CBS Administrator  
From: Garry White, SCIP Director  
Subject: I Water LLC Lease and Water Purchase Agreement

### Introduction

I Water, LLC (I Water), a California based limited liability company is requesting to lease property at the SCIP with an option to purchase. I Water plans to construct a water bottling plant on the property. I Water is additionally requesting to acquire a guaranteed water allocation for bottling and export purposes.

The SCIP Board met with an I Water LLC representative at its March 19<sup>th</sup> meeting to discuss I Water's proposals. The SCIP Board met again on April 10<sup>th</sup> to discuss the proposals and finalize terms. The SCIP Board recommends the Assembly approve a land lease with option to purchase and water purchase agreement based on the terms detailed below.

### Property

I Water LLC requests to purchase lots 3, 6, &7 at the SCIP. Total property is estimated to be 107,810 SF with an estimated assessed value of \$431,240.\*

*\*Lots 3 & 6 are currently leased to S&S General Contractors at a rate of \$.36/SF/YR until March 1, 2015.*

### Proposed lease terms

- Lease term of 2 years with an option to purchase property once both the following benchmarks are met:
  - A building is constructed with certified construction costs of at least \$3 million dollars.
  - 500,000 gallons of water in an annual cycle are purchased from the CBS for bottling operations.
- Annual lease rate of \$0.36/SF/YR.
- An appraisal is performed on the property upon execution of the lease. Sales price for purchase option would be set by the appraisal. CBS will select appraiser. I Water will be responsible for cost of appraisal.

- I Water LLC has an option to renew lease for 4 – 5 year lease renewals with concurrence of both parties if they chose not to purchase property.
- If I Water LLC chooses not to renew lease or purchase property, all buildings on the property at the end of lease term become property of the CBS or must be removed from the property.
- I Water LLC will be responsible for all utility connections to buildings, including raw water line and meters.
- All other standard lease terms

### **Water Allocation**

I Water LLC request to acquire a guaranteed water allocation agreement for a 10 year period. They propose to purchase the water for \$0.01/gallon with \$15,000 paid up front to be used as water credits.

### **CBS Water Allocation Background**

The CBS has a total of 29,235 Acre-feet of water annually available for export. The CBS currently has a water purchase agreement with Alaska Bulk Water Inc. (formerly True Alaska Bottling Company) for 27,773 Acre-feet annually.

The CBS currently has 1,462 Acre-feet or 476,394,162 US gallons of water available for export annually. The sale of this water allocation is limited to export in containers of a 20' container van or smaller per current water purchase agreement with Alaska Bulk Water Inc.

### **Proposed water purchase agreement**

- I Water LLC is allocated 200 million gallons of water annually for export in containers less than a 20' container van for a 10 year term at a price of \$0.01/gallon.
  - When 150 million gallons is exported annually, I Water LLC's allocation is increased by an additional 50 million gallons of water annually depending on CBS availability.
  - When 200 million gallons is exported annually, I Water LLC's allocation can increase again, depending on CBS availability.
- I Water LLC must export 500,000 gallons of water within 30 months of lease execution. If I Water LLC fails to export 500,000 gallons by the set benchmark date, the CBS can terminate the water purchase agreement.
- I Water LLC must export at least 500,000 gallons of water between 30 months and 60 months of lease execution. If I Water LLC fails to export 500,000 gallons by the set benchmark date, the CBS can terminate the water purchase agreement.
- I Water LLC must export at least 500,000 gallons of water between 60 months and 84 months of lease execution. If I Water LLC fails to export 500,000 gallons

by the set benchmark date, the CBS can terminate the water purchase agreement.

- I Water LLC must export at least 500,000 gallons of water between 84 months and 108 months of lease execution. If I Water LLC fails to export 500,000 gallons by the set benchmark date, the CBS can terminate the water purchase agreement.
- I Water LLC will pay the CBS a \$15,000 non-refundable fee that can be used as water credits within the 30 months of lease execution.
- CBS's water delivery availability is limited by State of Alaska Regulations, Municipal needs, and Force Majeure.
- All other standard Water purchase agreement terms.

### **Action**

- Assembly approval of land lease agreement with option to purchase and water purchase agreement.



**Sawmill Cove**  
INDUSTRIAL PARK

**LEASE AGREEMENT**

**CITY & BOROUGH  
OF SITKA**

**&**

**I WATER, LLC**  
(BLOCK 4, LOT 7)

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**LEASE AGREEMENT BETWEEN  
CITY AND BOROUGH OF SITKA AND  
I WATER, LLC.**

**PREAMBLE**

This Lease Agreement Between City And Borough of Sitka and I Water, LLC, 1125 W. Olive Street, San Diego, California 92103 ("Lease Agreement") is effective upon execution of the Lease Agreement by both Parties, City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "CBS" or "Lessor" ) and I Water, LLC ("I Water" or "Lessee"). This Lease Agreement consists of the Special Provisions, the General Provisions, and the attached Exhibits A and B. Exhibit A is a pictorial representation of the area leased, consisting of Block 4, Lot 7 of the Sawmill Cove Industrial Park ("SCIP"). Exhibit B is the "Management Requirements at Sawmill Cove Industrial Park, Sitka, Alaska," which summarizes the Prospective Purchasers Agreement, the Management Plan and the Conveyance Agreement regarding Sawmill Cove Industrial Park ("SCIP"). This lease agreement was recommended by SCIP Board of Directors on April 10, 2014, and approved by the Assembly on \_\_\_\_\_, 2014.

**SPECIAL PROVISIONS**

**ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE**

**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, for construction of a water bottling plant on the property. The subject property is Block 4, Lot 7 of the SCIP, consisting of 32,879 square feet. The Term is for two (2) years, commencing upon execution of Lease Agreement as set out in the Preamble. This Lease Agreement may be extended beyond two years, upon mutual consent of the Parties.

**Section 1.2 Option to Purchase.**

Lessee has the option to purchase Subject Property as long as a building is constructed with certified constructions costs of at least \$3 million dollars and additionally, at least 500,000 gallons of water in a 12-month cycle are purchased from Lessor for bottling operations. Purchase price will be set at \$4.00/SF or appraisal cost, whichever is higher. CBS will select appraisal firm and I Water will be responsible for cost of appraisal.

**Section 1.3 Option to Renew.**

Provided there does not exist a continuing material default by Lessee under this Lease and Lessee has chosen not to purchase Subject Property, Lessee shall have the right to exercise the option to renew this Lease Agreement upon the same terms and conditions for up to an additional five (5) years. This option is effective only if (a) Lessee makes a written request to exercise such an option 30 days prior to expiration of the Term; (b) Lessee is in compliance with all applicable laws; and (c) Lessee is not in default under this Lease.

**Section 1.4 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement.**

Lessee shall remove from the Subject Property any personal property or Improvements constructed, installed, or deposited on the Subject Property, including the water bottling plant as noted in Sections 1.1 and 1.2, at the termination of this Lease Agreement or any extension unless Lessee makes a separate written agreement with Sitka to do otherwise. Any Improvements or personal property not removed after thirty (30) days have passed after termination of this Lease Agreement shall be deemed abandoned and at Lessor's option shall become the property of Lessor, and Lessee shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka does not exercise such option. 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 Agreement.

**Section 1.5 Covenants to Perform.**

This Lease Agreement 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: RENT**

**Section 2.1 Calculation & Method of Payment of Rent**

Notwithstanding any other provision of this Lease Agreement, on the Term start date set out in Article I, Lessee shall pay the full month rent payment owed under this Lease Agreement, which shall be prorated if the date this Lease is executed is not the first day of the month. Subject to the provision in the previous sentence, Lessee shall pay the lease payments in advance for the Term of the Lease Agreement without the necessity of any billing by Lessor. Lessee will lease the space as shown in Exhibit A for \$986.37/month payable at a rate of \$0.03/SF/month. Sales tax is to be paid in addition to the stated Rent.

**Section 2.2 Reserved.**

**Section 2.3 Reserved.**

**Section 2.4 Property Tax Responsibility.**

Beginning with the Term, Lessee will be responsible to pay any property taxes to City and Borough of Sitka for its possessory interest in the building, land, and equipment to the extent taxable as determined by the Assessor, which is assessed as of January 1 of each calendar year.

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

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

(a) Except as provided in this Lease Agreement, Lessee acknowledges the leasehold is in an "as is" condition. At the sole cost and expense of Lessee and in compliance with all legal

requirements, Lessee may purchase, construct, develop, 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, the 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 Federal, state or local permit, license, or approval as described in Section 4.1(a).

(c) Lessee shall also use the Subject Property and any Improvements placed thereon only for lawful uses.

(d) Lessee shall confine its operation on the Subject Property to equipment and materials storage, and operation of a water bottling plant.

(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 Agreement to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee.

(f) Lessee may erect outdoor signage at its expense with the permission of the City and Borough of Sitka Building Official, the Planning Director, and the Public Works Director. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

### **Section 3.2 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 the City and Borough of Sitka Public Works Department and will notify this Department 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 the Lessor of any event that requires immediate response by the Lessor.

(b) Lessee will maintain and repair as necessary the storm drain facilities on and adjacent to the Subject Property. This includes, but is not limited to, keeping concrete roadside gutters clean and free of dirt, rock and debris, and periodic clearing/cleaning of filters in the roadside catch basins and drop-inlets. The paved roadways adjacent to the Subject Property shall be cleared of loose soil and rock materials at the end of each shift. Any construction or mining debris (scrap concrete, asphalt, steel, wood; also, plant/organic matter) is to be properly disposed of offsite.

- (c) All vehicles operated on the paved roadways within the SCIP shall be subject to the vehicle weight and load limitation provisions under Sitka General Code 11.17. The primary objective of this clause is to limit the use of off-road haul units and other rubber-tired heavy equipment on the paved streets at SCIP.
- (d) Lessee covenants and agrees that as it relates to use of the facility, it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal or State laws or regulations promulgated thereunder, and Lessee further grants the Lessor the right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.
- (e) 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 and electric power to perform routine maintenance. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Sitka shall not be responsible for any such costs or expenses as a result of suspending such utilities.
- (f) Lessee will pay any applicable City and Borough of Sitka Fire Marshal fees and other building permit fees when due.
- (g) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for their property. Sitka is not responsible for theft or vandalism.
- (h) City and Borough of Sitka sales tax will apply to lease payments. Sales taxes will also apply to any utility services and will be calculated into each monthly billing from the City and Borough of Sitka. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Assembly of the City and Borough of Sitka.
- (i) Lessee shall not store hazardous or explosive materials on the Subject Property or on any property of Sawmill Cove Industrial Park.

### **Section 3.3 Control of Rodents and Other Creatures on Subject Property.**

Lessee shall take reasonable affirmative measures to ensure that its operations do not attract to Subject Property or any portion of the Sawmill Cove Industrial Park 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.**

At the sole cost and expense of the Lessee and pursuant to building permits and in compliance with all legal requirements, the Lessee shall purchase, construct and/or develop the appropriate improvements, personal property, fixtures or buildings, including but not limited to any structures referred to in Sections 1.1 and 1.2 of this Agreement, and other items on 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(b) of this Agreement, 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 the project. Notwithstanding the foregoing, Lessee acknowledges that the 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 the project. Nothing in this Lease Agreement is intended or shall be construed to require that the Lessor exercise its discretionary authority under its regulatory ordinances to further the project nor binds the Lessor to do so. The 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 land on which the leasehold sits 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 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 the Lessor, its officers, agents, and employees, unless Lessee violates the prospective Purchaser Agreement, Management Agreement and related documents or otherwise exacerbates or aggravates existing conditions), Lessee covenants to indemnify, defend and hold harmless the 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 anytime on the Subject Property, the performance of this Lease Agreement by the Lessee, its agents, employees, contractors, subcontractors or invitees, any incident, fire or other casualty in respect of the Subject Property, any failure by the 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.

#### **Section 4.2 Schedule and Milestones.**

This Lease Agreement may be terminated upon 60 days notice by Lessor to Lessee (subject to the right to remove items from Subject Property as provided in Section 1.4 of this Lease Agreement), if the following milestone is not met by Lessee.

(a) Insurance policy binders are due at Sitka Finance Department for approval, upon Lessee occupying Subject Property or within 30 days from the date of this Lease Agreement, whichever occurs first.

**Section 4.3 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 for the purposes of inspecting or maintaining, or constructing public utilities, if any, located on the Subject Property. Lessor also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease Agreement. Lessor also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of Improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. 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 as described on attached Exhibit A. Lessee agrees that it shall comply with the terms of such cooperative 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) The Lessee shall permit the authorized representatives of Lessor to enter the Subject Property or any part of it at all reasonable times during usual business hours, after reasonable notice, under the circumstances prevailing for the purpose of making reasonable inspections.

**ARTICLE V: UTILITY SERVICES & RATES**

**Section 5.1 Provision of Utility Services.**

Currently, no utility services are provided to the Subject Property. If and when utility services are provided, Lessee shall pay the cost of use of such utility services, to be paid monthly upon billing by the City and Borough of Sitka.

**Section 5.2 Provision of Raw Water Line and Meter.**

Lessee is responsible for installation of raw water line and meter.

**Section 5.3 Reserved.**

**Section 5.4 Lessor Not Limited Liability and Non-Liability.**

In the event utility services are provided, and 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 Agreement, Lessor shall not be liable for any failure of utility services, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, earthquake, 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 Subject Property, or leakage of sewer, or plumbing works therein, 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 through any force majeure.

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

All potable water services will be metered and protected by approved backflow prevention in accordance with the Sitka General Code at Section 15.05.400.

**Section 5.6 Reserved.**

**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, 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 Agreement from: (a) any condition of the Subject Property or Improvements placed on it; (b) any breach or default on the part of the Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease Agreement; (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 Agreement 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 Agreement to indemnify the Lessor. The agreements of indemnity by the Lessee do not apply to any claims of damage arising out of the failure of the 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 Agreement 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 Agreement from (a) any condition of the Subject Property or Improvements placed on it; (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

Agreement; (c) any act or 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 Agreement 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 Agreement to indemnify the Lessee.

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

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

## **GENERAL PROVISIONS**

### **ARTICLE VII: DEFINITIONS**

#### **Section 7.1 Defined Terms.**

For the purposes of this Lease Agreement, 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 14.1.
- (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 Agreement. "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) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease Agreement for the use of the demise.

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

(h) "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 rents or leases the Subject Property from Lessor.

#### **ARTICLE VIII: INSURANCE**

##### **Section 8.1 Insurance.**

Lessee shall maintain property damage and comprehensive general liability insurance in the amount of three million dollars (\$3,000,000), including leasehold improvements. Lessor shall be named as an additional insured.

##### **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 7.1.

##### **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 Agreement 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.

**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 Agreement to assign the Lease Agreement or transfer the Subject Property, except with the approval of the SCIP Board of Directors and 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 SCIP Board of Directors and the Sitka Assembly. 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 Agreement, including Exhibits A and B. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease Agreement. 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 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 Agreement 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 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination.**

Lessee shall promptly notify the Public Works Director of the City and Borough of Sitka within 24 hours if any contaminated soils or other media that require special handling are encountered on the Subject Property.

Lessee shall be responsible for all clean-up costs associated with contamination of soils of Subject Property, adjoining property, and/or buildings caused by or attributed to Lessee though

its operations on the Subject Property. In the event of Lessee's failure to clean-up to applicable regulatory standards or to the satisfaction of the Public Works Director, the Lessor may perform clean-up or contract for clean-up and all charges for such work shall be payable by Lessee.

**Section 10.4 Use of Utility Lines.**

No utility services are currently provided. If Lessee desires utilities, Lessee and Lessor shall negotiate and enter an amendment to this Lease Agreement regarding which utility services to provide, the costs associated with such services, and the rate for such utility service.

If such utility services are requested and granted, Lessee shall connect or otherwise discharge to such utility lines, including electrical, water and/or wastewater lines, as are approved by the appropriate City and Borough of Sitka Department, which may include Department of Public Works and/or Electrical Department, and shall obtain any permits and comply with any conditions specified by the Director of Public Works and/or Electric Department for such connections.

**Section 10.5 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. Not less than ten (10) days in advance of applying for permits to any public entity other than the City and Borough of Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the Director of Public Works of the City and Borough of Sitka to facilitate review by departments of the City and Borough of Sitka. The City and Borough of Sitka is not obligated to comment on the permit applications and plans, and the result of any review by the City and Borough of Sitka does not affect Lessee's obligation to comply 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 other payment (other than rent) due and the failure shall continue for ten (10) days after written notice to the Lessee, then the Lessor may, but shall not be obligated so to do, and without further notice to or demand upon the Lessee and without releasing the Lessee from any obligations of the Lessee under this Lease Agreement, make any other payment in a manner and extent that the Lessor may deem desirable.

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

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

**Section 11.3 Reimbursement of Lessor and Lessee.**

All sums advanced by the 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 the Lessee, in the respective amounts so advanced, to the Lessor. This reimbursement shall be made on demand, or, at the option of the Lessor, may be added to any rent then due or becoming due under this Lease Agreement and the Lessee covenants to pay the sum or sums with interest, and the Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by the Lessee as in the case of default by the Lessee in the payment of any installment of rent. Conversely, the Lessee shall be entitled to receive from the Lessor prompt payment or reimbursement on any sums due and owing from the Lessor to the Lessee, together with interest at the highest rate allowed by law. However, nothing contained in this Lease Agreement shall entitle the Lessee to withhold any rent due to the Lessor or to offset or credit any sums against rent, except with respect to unpaid rental due from the Lessor to the Lessee under any sublease of building space to the Lessor.

**ARTICLE XII: MECHANIC'S LIENS**

**Section 12.1 Discharge of Mechanics' Liens.**

The Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against the 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 the 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 the Lessee. If any mechanics' lien shall at the time be filed against the Subject Property including the Improvements, the Lessee shall cause it to be discharged of record within 30 days after the date that Lessee has knowledge of its filing.

**ARTICLE XIII: LIEN FOR RENT AND OTHER CHARGES**

**Section 13.1 Lien for Rent.**

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

## **ARTICLE XIV: DEFAULT PROVISIONS**

### **Section 14.1 Events of Default.**

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

- (a) The failure of the Lessee to pay any installment of Rent, or any other 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 the Lessor to the Lessee.
- (b) The failure of the Lessee to perform any of the other covenants, conditions and agreements of this Lease Agreement including payment of taxes on the part of the 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 the Lessor contends that the Lessee has failed to perform any of the covenants, conditions and agreements) from the Lessor to the Lessee unless, with respect to any default which cannot be cured within thirty (30) days, the Lessee, or any person holding by, through or under the 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 the Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of the Lessee's interest in this Lease Agreement): (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 the 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 Agreement is taken under a writ of execution.

### **Section 14.2 Assumption or Assignment of Lease to Bankruptcy Trustee.**

In the event that this Lease Agreement 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.*), and the trustee shall cure any default under this Lease Agreement and shall provide adequate assurances of future performance of this Lease Agreement 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 Agreement shall be deemed rejected automatically and the 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 Agreement.

### **Section 14.3 Remedies in Event of Default.**

The 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 the 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 the Lessor shall have received notice in writing, the Lessor shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) The Lessor may terminate this Lease Agreement and the Term created, in which event the 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 Agreement, of the Rent provided to be paid by the Lessee for the balance of the stated term of this Lease Agreement less the fair rental value as of the date of termination of this Lease Agreement of the fee interest in the Subject Property and Improvements for the period, and any other sum of money and damages due under the terms of this Lease Agreement to the Lessor and the Lessee. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) The Lessor may terminate the 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 the Lessee (except as above expressly provided for) and without terminating this Lease Agreement, in which event the 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 the 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, the 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 the Lessor's judgment reasonably exercised; and if the 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 rent accruing from it, to satisfy the rent above provided to be paid, then the Lessee shall pay to the Lessor as damages a sum equal to the amount of the rent reserved in this Lease Agreement for the period or periods as and when payable pursuant to this Lease Agreement, or, if the Subject Property or any part of it has been relet, the Lessee shall satisfy and pay any deficiency upon demand from time to time; and the Lessee acknowledges that the 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 the Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of the Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(c) In the event of any breach or threatened breach by the Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease Agreement, the 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 Agreement.

**(d) Upon the termination of this Lease Agreement and the Term created, or upon the termination of the Lessee's right of possession, whether by lapse of time or at the option of the Lessor, the Lessee will at once surrender possession of the Subject Property and dispose of personal property and Improvements as described in Section 1.4. If possession is not immediately surrendered, the 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, using force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease Agreement 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 the Lessee shall fail to make any payment required to be made provided for in this Lease Agreement or defaults in the performance of any other covenant or agreement which the Lessee is required to perform under this Lease Agreement during the period when work provided for in this Lease Agreement shall be in process or shall be required by the terms of this Lease Agreement to commence, the Lessor may treat the default as a breach of this Lease Agreement and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Agreement, the Lessor shall have the right to carry out or complete the work on behalf of the Lessee without terminating this Lease Agreement.

(f) Lessee shall not pursue any unjust enrichment claim in the event they abandon the water bottling plant referred to in Sections 1.1 and 1.2 of this Agreement.

#### **Section 14.4 Waivers and Surrenders To Be In Writing.**

No covenant or condition of this Lease Agreement shall be deemed to have been waived by the Lessor unless the waiver be in writing, signed by the Lessor or the 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 the Lessee from the obligation, wherever required under this Lease Agreement, to obtain the consent of the Lessor to any other act or matter.

### **ARTICLE XV: LESSOR'S TITLE AND LIEN**

#### **Section 15.1 Lessor's Title and Lien Paramount.**

The Lessor has title to the Land, and the Lessor's lien for Rent and other charges shall be paramount to all other liens.

#### **Section 15.2 Lessee Not To Encumber Lessor's Interest.**

The Lessee shall have no right or power to and shall not in any way encumber the title of the Lessor in and to the Subject Property. The fee-simple estate of the 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 the Lessee, and any claim to the lien or otherwise upon the Subject Property arising from any act or omission of the Lessee shall accrue only against the leasehold estate of the Lessee in the Subject Property and the Lessee's interest in the Improvements, and shall in all respects be subject to the paramount rights of the Lessor in the Subject Property.

#### **ARTICLE XVI: REMEDIES CUMULATIVE**

##### **Section 16.1 Remedies Cumulative.**

No remedy conferred upon or reserved to the 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 Agreement or existing at law or in equity or by statute. Every power and remedy given by this Lease Agreement to the Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the 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 16.2 Waiver of Remedies Not To Be Inferred.**

No waiver of any breach of any of the covenants or conditions of this Lease Agreement 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 16.3 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 Agreement, 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 the Lessor to declare ended the Term granted and to terminate this Lease Agreement because of any event of default.

#### **ARTICLE XVII: SURRENDER AND HOLDING OVER**

##### **Section 17.1 Surrender at End of Term.**

Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to the Lessor at the termination of the Lease Agreement, subject to the provisions of Section 1.4, 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. At the time of the surrender, the Lessee shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from the Lessee to the Lessor. If the Subject Property is not so surrendered, the Lessee shall repay the Lessor for all expenses which the Lessor shall incur by reason of it, and in addition, the Lessee shall indemnify, defend and hold harmless the Lessor from and against all claims made by any succeeding Lessee against the Lessor, founded upon delay occasioned by the failure of the Lessee to surrender the Subject Property.



**Section 17.2 Rights Upon Holding Over.**

At the termination of this Lease Agreement, by lapse of time or otherwise, the Lessee shall yield up immediately possession of the Land to the Lessor and, failing to do so, agrees, at the option of the Lessor, to pay to the Lessor for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times 1/30th of the aggregate of the Rent paid or payable to Lessor during the last month of the Term of the Lease Agreement the day before the termination of the Lease Agreement. The provisions of this Article shall not be held to be a waiver by the 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 the Lessee under this Lease Agreement.

**ARTICLE XIII: MODIFICATION**

**Section 18.1 Modification.**

None of the covenants, terms or conditions of this Lease Agreement to be kept and performed by either Party to this Lease Agreement 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 XIV: INVALIDITY OF PARTICULAR PROVISIONS**

**Section 19.1 Invalidity of Provisions.**

If any provision of this Lease Agreement or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement, 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE XX: APPLICABLE LAW AND VENUE**

**Section 20.1 Applicable Law.**

This Lease Agreement 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 Agreement shall be only in the Superior Court for the State of Alaska at Sitka, Alaska.

**ARTICLE XXI: NOTICES**

**Section 21.1 Manner of Mailing Notices.**

In every case where under any of the provisions of this Lease Agreement or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to the Lessor or the Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, 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 notice of the changed address, to become effective seven days following the giving of notice.

**Section 21.2 Notice to Leasehold Mortgagee and Secured Parties.**

The 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 Agreement. All notices, demands or requests which may be required to be given by the Lessor or the Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to the Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of the Lessor or the Lessee, as the case may be.

**Section 21.3 Sufficiency of Service.**

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

**Section 21.4 When Notice Deemed Given or Received.**

Whenever a notice is required by this Lease Agreement 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 Agreement 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 XXII: MISCELLANEOUS PROVISIONS**

**Section 22.1 Captions.**

The captions of this Lease Agreement 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 Agreement, nor in any way affect this Lease Agreement.

**Section 22.2 Conditions and Covenants.**

All the provisions of this Lease Agreement 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 22.3 Entire Agreement.**

This Lease Agreement 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 22.4 Time of Essence as to Covenants of Lease Agreement.**

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

**ARTICLE XXIII: COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY**

**Section 23.1 Covenants to Run with the Subject Property.**

All covenants, agreements, conditions and undertakings in this Lease Agreement 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 Agreement 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.

**Section 23.2 Interest in Deposits Automatically Transferred.**

The sale, conveyance or assignment of the interest of the Lessee (pursuant to the terms of this Lease Agreement) or of the Lessor in and to this Lease Agreement shall act automatically as a transfer to the assignee of the Lessor or of the Lessee, as the case may be, of its respective interest in any funds on deposit with and held by any Construction Lender and the Lessor, and every subsequent sale, conveyance or assignment by any assignee of the Lessor or of the Lessee also shall act automatically as a transfer of their respective rights to the deposits with such Construction Lender and the Lessor to the subsequent assignee.

**ARTICLE XXIV: ADDITIONAL GENERAL PROVISIONS**

**Section 24.1 Absence of Personal Liability.**

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

**Section 24.2 Lease Agreement Only Effective As Against Lessor Upon Approval.**

This Lease Agreement is effective as against Lessor only upon the approval of this Lease Agreement by the Sawmill Cove Industrial Park Board of Directors, in accordance with the Sitka General Code at Chapter 2.38, and signed by the Municipal Administrator.

**Section 24.3 Binding Effects and Attorneys Fees.**

This Lease Agreement 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 attorneys' fees.

**Section 24.4 Duplicate Originals.**

This Lease Agreement may be executed in any number of copies, each of which shall constitute an original of this Lease Agreement. 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 24.5 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 the Lessee in the Subject Property, the 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 the Lessor as specifically provided in this Lease Agreement.

**Section 24.6 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 Agreement and perform its obligations. Both Parties also represent that this Lease Agreement 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.

**I WATER, LLC**

**CITY AND BOROUGH OF SITKA**

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

\_\_\_\_\_  
Mark Gorman, Municipal Administrator

**STATE OF ALASKA**                    )  
  ) ss.  
**FIRST JUDICIAL DISTRICT**        )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Lease Agreement on behalf of I Water, LLC and affirms by signing this document to be authorized to sign on behalf of the I Water, LLC and does so freely and voluntarily.

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

**STATE OF ALASKA**                    )  
  ) ss.  
**FIRST JUDICIAL DISTRICT**        )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, MARK GORMAN, MUNICIPAL ADMINISTRATOR of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease Agreement on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

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



**LEASE AGREEMENT**

**CITY & BOROUGH  
OF SITKA**

**&**

**I WATER, LLC**  
(BLOCK 4, LOTS 3 AND 6)

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**LEASE AGREEMENT BETWEEN  
CITY AND BOROUGH OF SITKA AND  
I WATER, LLC.**

**PREAMBLE**

This Lease Agreement Between City And Borough of Sitka and I Water, LLC, 1125 W. Olive Street, San Diego, California 92103 ("Lease Agreement") is effective upon execution of the Lease Agreement by both Parties, City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "CBS" or "Lessor" ) and I Water, LLC ("I Water" or "Lessee"). This Lease Agreement consists of the Special Provisions, the General Provisions, and the attached Exhibits A and B. Exhibit A is a pictorial representation of the area leased, consisting of Block 4, Lots 3 and 6 of the Sawmill Cove Industrial Park ("SCIP"). Exhibit B is the "Management Requirements at Sawmill Cove Industrial Park, Sitka, Alaska," which summarizes the Prospective Purchasers Agreement, the Management Plan and the Conveyance Agreement regarding Sawmill Cove Industrial Park ("SCIP). This lease agreement was recommended by SCIP Board of Directors on April 10, 2014, and approved by the Assembly on \_\_\_\_\_, 2014. The CBS has an active lease agreement for lots 3 and 6 until March 1, 2015. I Water's lease will begin March 1<sup>st</sup>, 2015 or sooner if the CBS agrees to terminate the current lease agreement:

**SPECIAL PROVISIONS**

**ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE**

**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, for construction of a water bottling plant on the property. The subject property is Block 4, Lots 3 and 6 of the SCIP, consisting of 74,931 square feet. The Term is for two (2) years, commencing upon execution of Lease Agreement as set out in the Preamble. This Lease Agreement may be extended beyond two years, upon mutual consent of the Parties.

**Section 1.2 Option to Purchase.**

Lessee has the option to purchase Subject Property as long as a building is constructed with certified constructions costs of at least \$3 million dollars and additionally, at least 500,000 gallons of water in a 12-month cycle are purchased from Lessor for bottling operations. Purchase price will be set at \$4.00/SF or appraisal cost, whichever is higher. CBS will select appraisal firm and I Water will be responsible for cost of appraisal.

**Section 1.3 Option to Renew.**

Provided there does not exist a continuing material default by Lessee under this Lease and Lessee has chosen not to purchase Subject Property, Lessee shall have the right to exercise the option to renew this Lease Agreement upon the same terms and conditions for up to an additional five (5) years. This option is effective only if (a) Lessee makes a written request to exercise such

an option 30 days prior to expiration of the Term; (b) Lessee is in compliance with all applicable laws; and (c) Lessee is not in default under this Lease.

**Section 1.4 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement.**

Lessee shall remove from the Subject Property any personal property or Improvements constructed, installed, or deposited on the Subject Property, including the water bottling plant as noted in Sections 1.1 and 1.2, at the termination of this Lease Agreement or any extension unless Lessee makes a separate written agreement with Sitka to do otherwise. Any Improvements or personal property not removed after thirty (30) days have passed after termination of this Lease Agreement shall be deemed abandoned and at Lessor's option shall become the property of Lessor, and Lessee shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka does not exercise such option. 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 Agreement.

**Section 1.5 Covenants to Perform.**

This Lease Agreement 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: RENT**

**Section 2.1 Calculation & Method of Payment of Rent**

Notwithstanding any other provision of this Lease Agreement, on the Term start date set out in Article I, Lessee shall pay the full month rent payment owed under this Lease Agreement, which shall be prorated if the date this Lease is executed is not the first day of the month. Subject to the provision in the previous sentence, Lessee shall pay the lease payments in advance for the Term of the Lease Agreement without the necessity of any billing by Lessor. Lessee will lease the space as shown in Exhibit A for \$2,247.93 /month payable at a rate of \$0.03/SF/month. Sales tax is to be paid in addition to the stated Rent.

**Section 2.2 Reserved.**

**Section 2.3 Reserved.**

**Section 2.4 Property Tax Responsibility.**

Beginning with the Term, Lessee will be responsible to pay any property taxes to City and Borough of Sitka for its possessory interest in the building, land, and equipment to the extent taxable as determined by the Assessor, which is assessed as of January 1 of each calendar year.

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

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

(a) Except as provided in this Lease Agreement, Lessee acknowledges the leasehold is in an "as is" condition. At the sole cost and expense of Lessee and in compliance with all legal

requirements, Lessee may purchase, construct, develop, 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, the 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 Federal, state or local permit, license, or approval as described in Section 4.1(a).

(c) Lessee shall also use the Subject Property and any Improvements placed thereon only for lawful uses.

(d) Lessee shall confine its operation on the Subject Property to equipment and materials storage, and operation of a water bottling plant.

(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 Agreement to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee.

(f) Lessee may erect outdoor signage at its expense with the permission of the City and Borough of Sitka Building Official, the Planning Director, and the Public Works Director. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

### **Section 3.2 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 the City and Borough of Sitka Public Works Department and will notify this Department 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 the Lessor of any event that requires immediate response by the Lessor.

(b) Lessee will maintain and repair as necessary the storm drain facilities on and adjacent to the Subject Property. This includes, but is not limited to, keeping concrete roadside gutters clean and free of dirt, rock and debris, and periodic clearing/cleaning of filters in the roadside catch basins and drop-inlets. The paved roadways adjacent to the Subject Property shall be cleared of loose soil and rock materials at the end of each shift. Any construction or mining debris (scrap concrete, asphalt, steel, wood; also, plant/organic matter) is to be properly disposed of offsite.

- (c) All vehicles operated on the paved roadways within the SCIP shall be subject to the vehicle weight and load limitation provisions under Sitka General Code 11.17. The primary objective of this clause is to limit the use of off-road haul units and other rubber-tired heavy equipment on the paved streets at SCIP.
- (d) Lessee covenants and agrees that as it relates to use of the facility, it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal or State laws or regulations promulgated thereunder, and Lessee further grants the Lessor the right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.
- (e) 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 and electric power to perform routine maintenance. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Sitka shall not be responsible for any such costs or expenses as a result of suspending such utilities.
- (f) Lessee will pay any applicable City and Borough of Sitka Fire Marshal fees and other building permit fees when due.
- (g) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for their property. Sitka is not responsible for theft or vandalism.
- (h) City and Borough of Sitka sales tax will apply to lease payments. Sales taxes will also apply to any utility services and will be calculated into each monthly billing from the City and Borough of Sitka. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Assembly of the City and Borough of Sitka.
- (i) Lessee shall not store hazardous or explosive materials on the Subject Property or on any property of Sawmill Cove Industrial Park.

**Section 3.3 Control of Rodents and Other Creatures on Subject Property.**

Lessee shall take reasonable affirmative measures to ensure that its operations do not attract to Subject Property or any portion of the Sawmill Cove Industrial Park 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.**

At the sole cost and expense of the Lessee and pursuant to building permits and in compliance with all legal requirements, the Lessee shall purchase, construct and/or develop the appropriate improvements, personal property, fixtures or buildings, including but not limited to any structures referred to in Sections 1.1 and 1.2 of this Agreement, and other items on 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(b) of this Agreement, 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 the project. Notwithstanding the foregoing, Lessee acknowledges that the 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 the project. Nothing in this Lease Agreement is intended or shall be construed to require that the Lessor exercise its discretionary authority under its regulatory ordinances to further the project nor binds the Lessor to do so. The 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 land on which the leasehold sits 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 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 the Lessor, its officers, agents, and employees, unless Lessee violates the prospective Purchaser Agreement, Management Agreement and related documents or otherwise exacerbates or aggravates existing conditions), Lessee covenants to indemnify, defend and hold harmless the 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 anytime on the Subject Property, the performance of this Lease Agreement by the Lessee, its agents, employees, contractors, subcontractors or invitees, any incident, fire or other casualty in respect of the Subject Property, any failure by the 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.

#### **Section 4.2 Schedule and Milestones.**

This Lease Agreement may be terminated upon 60 days notice by Lessor to Lessee (subject to the right to remove items from Subject Property as provided in Section 1.4 of this Lease Agreement), if the following milestone is not met by Lessee.

(a) Insurance policy binders are due at Sitka Finance Department for approval, upon Lessee occupying Subject Property or within 30 days from the date of this Lease Agreement, whichever occurs first.

**Section 4.3 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 for the purposes of inspecting or maintaining, or constructing public utilities, if any, located on the Subject Property. Lessor also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease Agreement. Lessor also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of Improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. 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 as described on attached Exhibit A. Lessee agrees that it shall comply with the terms of such cooperative 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) The Lessee shall permit the authorized representatives of Lessor to enter the Subject Property or any part of it at all reasonable times during usual business hours, after reasonable notice, under the circumstances prevailing for the purpose of making reasonable inspections.

**ARTICLE V: UTILITY SERVICES & RATES**

**Section 5.1 Provision of Utility Services.**

Currently, no utility services are provided to the Subject Property. If and when utility services are provided, Lessee shall pay the cost of use of such utility services, to be paid monthly upon billing by the City and Borough of Sitka.

**Section 5.2 Provision of Raw Water Line and Meter.**

Lessee is responsible for installation of raw water line and meter.

**Section 5.3 Reserved.**

**Section 5.4 Lessor Not Limited Liability and Non-Liability.**

In the event utility services are provided, and 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 Agreement, Lessor shall not be liable for any failure of utility services, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, earthquake, 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 Subject Property, or leakage of sewer, or plumbing works therein, 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 through any force majeure.

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

All potable water services will be metered and protected by approved backflow prevention in accordance with the Sitka General Code at Section 15.05.400.

**Section 5.6 Reserved.**

**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, 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 Agreement from: (a) any condition of the Subject Property or Improvements placed on it; (b) any breach or default on the part of the Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease Agreement; (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 Agreement 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 Agreement to indemnify the Lessor. The agreements of indemnity by the Lessee do not apply to any claims of damage arising out of the failure of the 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 Agreement 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 Agreement from (a) any condition of the Subject Property or Improvements placed on it; (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

Agreement; (c) any act or 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 Agreement 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 Agreement to indemnify the Lessee.

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

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

**GENERAL PROVISIONS**

**ARTICLE VII: DEFINITIONS**

**Section 7.1 Defined Terms.**

For the purposes of this Lease Agreement, 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 14.1.
- (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 Agreement. "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) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease Agreement for the use of the demise.

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

(h) "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 rents or leases the Subject Property from Lessor.

#### **ARTICLE VIII: INSURANCE**

##### **Section 8.1 Insurance.**

Lessee shall maintain property damage and comprehensive general liability insurance in the amount of three million dollars (\$3,000,000), including leasehold improvements. Lessor shall be named as an additional insured.

##### **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 7.1.

##### **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 Agreement 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.

**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 Agreement to assign the Lease Agreement or transfer the Subject Property, except with the approval of the SCIP Board of Directors and 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 SCIP Board of Directors and the Sitka Assembly. 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 Agreement, including Exhibits A and B. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease Agreement. 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 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 Agreement 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 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination.**

Lessee shall promptly notify the Public Works Director of the City and Borough of Sitka within 24 hours if any contaminated soils or other media that require special handling are encountered on the Subject Property.

Lessee shall be responsible for all clean-up costs associated with contamination of soils of Subject Property, adjoining property, and/or buildings caused by or attributed to Lessee though

its operations on the Subject Property. In the event of Lessee's failure to clean-up to applicable regulatory standards or to the satisfaction of the Public Works Director, the Lessor may perform clean-up or contract for clean-up and all charges for such work shall be payable by Lessee.

**Section 10.4 Use of Utility Lines.**

No utility services are currently provided. If Lessee desires utilities, Lessee and Lessor shall negotiate and enter an amendment to this Lease Agreement regarding which utility services to provide, the costs associated with such services, and the rate for such utility service.

If such utility services are requested and granted, Lessee shall connect or otherwise discharge to such utility lines, including electrical, water and/or wastewater lines, as are approved by the appropriate City and Borough of Sitka Department, which may include Department of Public Works and/or Electrical Department, and shall obtain any permits and comply with any conditions specified by the Director of Public Works and/or Electric Department for such connections.

**Section 10.5 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. Not less than ten (10) days in advance of applying for permits to any public entity other than the City and Borough of Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the Director of Public Works of the City and Borough of Sitka to facilitate review by departments of the City and Borough of Sitka. The City and Borough of Sitka is not obligated to comment on the permit applications and plans, and the result of any review by the City and Borough of Sitka does not affect Lessee's obligation to comply 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 other payment (other than rent) due and the failure shall continue for ten (10) days after written notice to the Lessee, then the Lessor may, but shall not be obligated so to do, and without further notice to or demand upon the Lessee and without releasing the Lessee from any obligations of the Lessee under this Lease Agreement, make any other payment in a manner and extent that the Lessor may deem desirable.

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

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

**Section 11.3 Reimbursement of Lessor and Lessee.**

All sums advanced by the 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 the Lessee, in the respective amounts so advanced, to the Lessor. This reimbursement shall be made on demand, or, at the option of the Lessor, may be added to any rent then due or becoming due under this Lease Agreement and the Lessee covenants to pay the sum or sums with interest, and the Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by the Lessee as in the case of default by the Lessee in the payment of any installment of rent. Conversely, the Lessee shall be entitled to receive from the Lessor prompt payment or reimbursement on any sums due and owing from the Lessor to the Lessee, together with interest at the highest rate allowed by law. However, nothing contained in this Lease Agreement shall entitle the Lessee to withhold any rent due to the Lessor or to offset or credit any sums against rent, except with respect to unpaid rental due from the Lessor to the Lessee under any sublease of building space to the Lessor.

**ARTICLE XII: MECHANIC'S LIENS**

**Section 12.1 Discharge of Mechanics' Liens.**

The Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against the 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 the 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 the Lessee. If any mechanics' lien shall at the time be filed against the Subject Property including the Improvements, the Lessee shall cause it to be discharged of record within 30 days after the date that Lessee has knowledge of its filing.

**ARTICLE XIII: LIEN FOR RENT AND OTHER CHARGES**

**Section 13.1 Lien for Rent.**

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

## **ARTICLE XIV: DEFAULT PROVISIONS**

### **Section 14.1 Events of Default.**

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

- (a) The failure of the Lessee to pay any installment of Rent, or any other 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 the Lessor to the Lessee.
- (b) The failure of the Lessee to perform any of the other covenants, conditions and agreements of this Lease Agreement including payment of taxes on the part of the 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 the Lessor contends that the Lessee has failed to perform any of the covenants, conditions and agreements) from the Lessor to the Lessee unless, with respect to any default which cannot be cured within thirty (30) days, the Lessee, or any person holding by, through or under the 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 the Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of the Lessee's interest in this Lease Agreement): (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 the 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 Agreement is taken under a writ of execution.

### **Section 14.2 Assumption or Assignment of Lease to Bankruptcy Trustee.**

In the event that this Lease Agreement 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.*), and the trustee shall cure any default under this Lease Agreement and shall provide adequate assurances of future performance of this Lease Agreement 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 Agreement shall be deemed rejected automatically and the 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 Agreement.

### **Section 14.3 Remedies in Event of Default.**

The 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 the 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 the Lessor shall have received notice in writing, the Lessor shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) The Lessor may terminate this Lease Agreement and the Term created, in which event the 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 Agreement, of the Rent provided to be paid by the Lessee for the balance of the stated term of this Lease Agreement less the fair rental value as of the date of termination of this Lease Agreement of the fee interest in the Subject Property and Improvements for the period, and any other sum of money and damages due under the terms of this Lease Agreement to the Lessor and the Lessee. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) The Lessor may terminate the 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 the Lessee (except as above expressly provided for) and without terminating this Lease Agreement, in which event the 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 the 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, the 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 the Lessor's judgment reasonably exercised; and if the 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 rent accruing from it, to satisfy the rent above provided to be paid, then the Lessee shall pay to the Lessor as damages a sum equal to the amount of the rent reserved in this Lease Agreement for the period or periods as and when payable pursuant to this Lease Agreement, or, if the Subject Property or any part of it has been relet, the Lessee shall satisfy and pay any deficiency upon demand from time to time; and the Lessee acknowledges that the 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 the Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of the Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(c) In the event of any breach or threatened breach by the Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease Agreement, the 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 Agreement.

**(d) Upon the termination of this Lease Agreement and the Term created, or upon the termination of the Lessee's right of possession, whether by lapse of time or at the option of the Lessor, the Lessee will at once surrender possession of the Subject Property and dispose of personal property and Improvements as described in Section 1.4. If possession is not immediately surrendered, the 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, using force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease Agreement 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 the Lessee shall fail to make any payment required to be made provided for in this Lease Agreement or defaults in the performance of any other covenant or agreement which the Lessee is required to perform under this Lease Agreement during the period when work provided for in this Lease Agreement shall be in process or shall be required by the terms of this Lease Agreement to commence, the Lessor may treat the default as a breach of this Lease Agreement and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Agreement, the Lessor shall have the right to carry out or complete the work on behalf of the Lessee without terminating this Lease Agreement.

(f) Lessee shall not pursue any unjust enrichment claim in the event they abandon the water bottling plant referred to in Sections 1.1 and 1.2 of this Agreement.

#### **Section 14.4 Waivers and Surrenders To Be In Writing.**

No covenant or condition of this Lease Agreement shall be deemed to have been waived by the Lessor unless the waiver be in writing, signed by the Lessor or the 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 the Lessee from the obligation, wherever required under this Lease Agreement, to obtain the consent of the Lessor to any other act or matter.

### **ARTICLE XV: LESSOR'S TITLE AND LIEN**

#### **Section 15.1 Lessor's Title and Lien Paramount.**

The Lessor has title to the Land, and the Lessor's lien for Rent and other charges shall be paramount to all other liens.

#### **Section 15.2 Lessee Not To Encumber Lessor's Interest.**

The Lessee shall have no right or power to and shall not in any way encumber the title of the Lessor in and to the Subject Property. The fee-simple estate of the 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 the Lessee, and any claim to the lien or otherwise upon the Subject Property arising from any act or omission of the Lessee shall accrue only against the leasehold estate of the Lessee in the Subject Property and the Lessee's interest in the Improvements, and shall in all respects be subject to the paramount rights of the Lessor in the Subject Property.

## **ARTICLE XVI: REMEDIES CUMULATIVE**

### **Section 16.1 Remedies Cumulative.**

No remedy conferred upon or reserved to the 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 Agreement or existing at law or in equity or by statute. Every power and remedy given by this Lease Agreement to the Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the 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 16.2 Waiver of Remedies Not To Be Inferred.**

No waiver of any breach of any of the covenants or conditions of this Lease Agreement 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 16.3 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 Agreement, 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 the Lessor to declare ended the Term granted and to terminate this Lease Agreement because of any event of default.

## **ARTICLE XVII: SURRENDER AND HOLDING OVER**

### **Section 17.1 Surrender at End of Term.**

Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to the Lessor at the termination of the Lease Agreement, subject to the provisions of Section 1.4, 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. At the time of the surrender, the Lessee shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from the Lessee to the Lessor. If the Subject Property is not so surrendered, the Lessee shall repay the Lessor for all expenses which the Lessor shall incur by reason of it, and in addition, the Lessee shall indemnify, defend and hold harmless the Lessor from and against all claims made by any succeeding Lessee against the Lessor, founded upon delay occasioned by the failure of the Lessee to surrender the Subject Property.

**Section 17.2 Rights Upon Holding Over.**

At the termination of this Lease Agreement, by lapse of time or otherwise, the Lessee shall yield up immediately possession of the Land to the Lessor and, failing to do so, agrees, at the option of the Lessor, to pay to the Lessor for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times 1/30th of the aggregate of the Rent paid or payable to Lessor during the last month of the Term of the Lease Agreement the day before the termination of the Lease Agreement. The provisions of this Article shall not be held to be a waiver by the 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 the Lessee under this Lease Agreement.

**ARTICLE XIII: MODIFICATION**

**Section 18.1 Modification.**

None of the covenants, terms or conditions of this Lease Agreement to be kept and performed by either Party to this Lease Agreement 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 XIV: INVALIDITY OF PARTICULAR PROVISIONS**

**Section 19.1 Invalidity of Provisions.**

If any provision of this Lease Agreement or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement, 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE XX: APPLICABLE LAW AND VENUE**

**Section 20.1 Applicable Law.**

This Lease Agreement 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 Agreement shall be only in the Superior Court for the State of Alaska at Sitka, Alaska.

**ARTICLE XXI: NOTICES**

**Section 21.1 Manner of Mailing Notices.**

In every case where under any of the provisions of this Lease Agreement or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to the Lessor or the Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, 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 notice of the changed address, to become effective seven days following the giving of notice.

**Section 21.2 Notice to Leasehold Mortgagee and Secured Parties.**

The 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 Agreement. All notices, demands or requests which may be required to be given by the Lessor or the Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to the Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of the Lessor or the Lessee, as the case may be.

**Section 21.3 Sufficiency of Service.**

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

**Section 21.4 When Notice Deemed Given or Received.**

Whenever a notice is required by this Lease Agreement 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 Agreement 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 XXII: MISCELLANEOUS PROVISIONS**

**Section 22.1 Captions.**

The captions of this Lease Agreement 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 Agreement, nor in any way affect this Lease Agreement.

**Section 22.2 Conditions and Covenants.**

All the provisions of this Lease Agreement 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 22.3 Entire Agreement.**

This Lease Agreement 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 22.4 Time of Essence as to Covenants of Lease Agreement.**

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

**ARTICLE XXIII: COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY**

**Section 23.1 Covenants to Run with the Subject Property.**

All covenants, agreements, conditions and undertakings in this Lease Agreement 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 Agreement 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.

**Section 23.2 Interest in Deposits Automatically Transferred.**

The sale, conveyance or assignment of the interest of the Lessee (pursuant to the terms of this Lease Agreement) or of the Lessor in and to this Lease Agreement shall act automatically as a transfer to the assignee of the Lessor or of the Lessee, as the case may be, of its respective interest in any funds on deposit with and held by any Construction Lender and the Lessor, and every subsequent sale, conveyance or assignment by any assignee of the Lessor or of the Lessee also shall act automatically as a transfer of their respective rights to the deposits with such Construction Lender and the Lessor to the subsequent assignee.

**ARTICLE XXIV: ADDITIONAL GENERAL PROVISIONS**

**Section 24.1 Absence of Personal Liability.**

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

**Section 24.2 Lease Agreement Only Effective As Against Lessor Upon Approval.**

This Lease Agreement is effective as against Lessor only upon the approval of this Lease Agreement by the Sawmill Cove Industrial Park Board of Directors, in accordance with the Sitka General Code at Chapter 2.38, and signed by the Municipal Administrator.

**Section 24.3 Binding Effects and Attorneys Fees.**

This Lease Agreement 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 attorneys' fees.

**Section 24.4 Duplicate Originals.**

This Lease Agreement may be executed in any number of copies, each of which shall constitute an original of this Lease Agreement. 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 24.5 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 the Lessee in the Subject Property, the 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 the Lessor as specifically provided in this Lease Agreement.

**Section 24.6 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 Agreement and perform its obligations. Both Parties also represent that this Lease Agreement 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.

**I WATER, LLC**

**CITY AND BOROUGH OF SITKA**

\_\_\_\_\_

\_\_\_\_\_  
Mark Gorman, Municipal Administrator

**STATE OF ALASKA** )  
 ) ss.  
**FIRST JUDICIAL DISTRICT** )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Lease Agreement on behalf of I Water, LLC and affirms by signing this document to be authorized to sign on behalf of the I Water, LLC and does so freely and voluntarily.

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

**STATE OF ALASKA** )  
 ) ss.  
**FIRST JUDICIAL DISTRICT** )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, MARK GORMAN, MUNICIPAL ADMINISTRATOR of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease Agreement on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

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