

LEASE AGREEMENT

BETWEEN

**CITY AND BOROUGH OF
SITKA**

AND

McG CONSTRUCTORS, INC.

FOR

GRANITE CREEK LEASE AREAS 2 AND 3

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AND
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Exhibits

- Exhibit 1 – Granite Creek Industrial Site Lease Area Map – to be revised by Lessee with Boundary Survey completed by registered land surveyor and stamped survey to be submitted by Lessee prior to commencing operations; See Section 3.1 (j) for more information
- Exhibit 2 – Cross Sections of Site – To be completed by a registered land surveyor and stamped cross sections to be submitted by Lessee prior to commencing operations and each year thereafter; See Section 2.4(d) for more information
- Exhibit 3 – Mining Plan – To be submitted by Lessee prior to commencing operations; See Section 3.1 (a) for more information
- Exhibit 4 – Storm Water Pollution Prevent Plan (SWPPP) – To be submitted by Lessee prior to commencing operations; See Section 3.1(b)(1) and Section 9.5 for more information

Attachments

- Attachment A – Conditional Use Permit 01-16

**LEASE AGREEMENT
BETWEEN
CITY AND BOROUGH OF SITKA
AND
MCG CONSTRUCTORS, INC.**

PREAMBLE

This Lease Agreement (“Lease”) between City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 (“Sitka,” “CBS” or “Lessor”) and McG Constructors, Inc., PO Box 718, Sitka, Alaska 99835 (“Lessee”), is effective [REDACTED]. This Lease consists of the Special Provisions, the General Provisions, Conditional Use Permit, and the attached Exhibits 1, 2, 3 and 4.

- Exhibit 1 – Granite Creek Industrial Site Lease Area Map – to be revised by Lessee with Boundary Survey completed by registered land surveyor and stamped survey to be submitted by Lessee prior to commencing operations; See Section 3.1 (j) for more information
- Exhibit 2 – Cross Sections of Site – To be completed by a registered land surveyor and stamped cross sections to be submitted by Lessee prior to commencing operations and each year thereafter; See Section 2.4(d) for more information
- Exhibit 3 – Mining Plan – To be submitted by Lessee prior to commencing operations; See Section 3.1 (a) for more information
- Exhibit 4 – Storm Water Pollution Prevent Plan (SWPPP) – To be submitted by Lessee prior to commencing operations; See Section 3.1(b)(1) and Section 9.5 for more information

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 Rents received and of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the “Subject Property” or “Site” as shown on Exhibit 1. Exhibit 1 shows the approximately 12.7-acre combined area Lease Site in the Granite Creek Industrial Area.

Section 1.2 Lease Term.

The Lease term is for five (5) years and commences on [REDACTED], 2022, and ends on [REDACTED], 2027, unless sooner terminated or extended as provided in this Lease. The Lease term may be extended, based on the Option to Renew in Section 1.3.

Section 1.3 Option to Renew.

Provided there is capacity and safe production limits are available, and there does not then exist a continuing material default by Lessee, and under this Lease at the time of exercise of this right or at commencement of any extended term, with written mutual agreement, the Lease may be extended for a maximum of one (1) successive term of five (5) years for a total lease duration of ten (10) years. This option is effective only if (a) Lessee makes a written request to exercise such an option not more than one year or less than six months from the end of the immediately preceding term; (b) Lessee is in compliance with all applicable laws; and (c) Lessee is not in default under this Lease. Successive terms are dependent on remaining quarry capacity, safe production limits, and approval by CBS and at CBS' discretion and may be denied without cause. When requesting the renewal term, Lessee shall update the Mining Plan and provide site drawings with current extraction limits and projected extraction limits within the additional term. Site boundaries and lease and royalty rates may be adjusted upon agreement of both parties. Any successive terms shall be incorporated via amendment signed by Lessee and CBS. The option to renew must be approved by Lessor Assembly.

Section 1.4 Expiration/Termination and Suspension of Lease.

(a) This Lease may be terminated by CBS if the Site is not being utilized for its intended purpose, i.e., material excavation and sale. If the Lease is terminated under this condition, Lessee shall be responsible to vacate the site in accordance with expiration/termination terms of the Lease.

(b) It is not the intent of CBS to allow indeterminate holding of the Site without development. Lessee must begin active mining within three (3) months of execution of this Lease. If active mining ceases for more than six (6) months, the Lease will revert to CBS.

(c) This Lease may be terminated by CBS if Lessee breaches the Lease and fails to correct the breach within thirty (30) days after written notice is served upon Lessee.

(d) Failure of Lessee to take immediate action to correct unwarranted damage to natural resources may be corrected by CBS to prevent additional damage. Any cost incurred by CBS shall be paid by Lessee.

(e) This Lease may be terminated by mutual agreement of both parties on terms and conditions agreed upon in writing by both parties.

(f) At the expiration/termination of the Lease, Lessee shall restore the Site to vacant, pre-Lease conditions at the existing grade and without structures, equipment, materials, stockpiles or other items present. Any improvements or personal property not removed after thirty (30) days have passed after expiration/termination of this Lease shall be deemed abandoned, and at Lessor's option, shall become the property of Lessor. Lessee shall repay to Lessor any costs of removing, disposing of, storing, and any other costs of such improvements or personal property from the Subject Property if Lessor does not exercise such option. Subject to Lessor's obligations under Subsections 3.1 below, Lessee agrees to leave Subject Property in a neat and clean condition, subject to the approval of CBS, at the end of the Lease.

(g) At the expiration/termination of this Lease, Lessee shall notify the Public Works Director, or his or her written designee, so an inspection of the Site can be scheduled. This inspection shall include general clean-up, removal of all Lessee's equipment and any other item CBS determines, in its sole discretion, a responsible element of the final inspection.

(h) All responsibilities and liabilities of Lessee shall remain in effect until this Lease expires/terminates, and all its conditions are met, including cleanup of the Site.

(i) Lessee agrees to submit an itemized transaction summary and payment for material removed or sold within forty-five (45) days of the expiration date or completion, whichever occurs earlier.

(j) If Lessee is forced to end, restrict or curtail its operations due to State or Federal law or regulations or for any other cause over which CBS has no control, CBS shall have no liability, whatsoever for resulting damages and losses by Lessee for such an event(s).

Section 1.5 Covenants to Perform.

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

ARTICLE II RENT

Section 2.1 Calculation and Method of Payment of Rent and Royalty During the Initial Five-Year Term of the Lease.

(a) The first year of the Lease begins on the commencement date of this Lease set out in Article I. Each successive year of the Lease begins on the corresponding anniversary commencement date of the Lease. Notwithstanding any other provision of this Lease, on the term start date set out in Article I, Lessee shall pay Rent each month in advance on the first day of each and every month at a rate of One Thousand Eight Hundred Seventy-Five and 00/100 Dollars (\$1,875.00) per calendar month.

(b) Lessee shall pay royalty fees to CBS on a monthly basis. The royalty rate shall be Three and 55/100 Dollars (\$3.55) per cubic yard of material removed.

The royalty fee for material removed for the Site shall be paid using one of the following methods:

1. Prior to each shot based on in place calculated blast yield quantities. These quantities shall be verified for each 100,000 cubic yards removed from the quarry by field survey cross sections certified by a registered engineer/surveyor; or
2. Monthly based on submitted shot records and verified by field survey cross sections certified by a registered engineer/surveyor for each 100,000 yards of material removed. This method of payment will be guaranteed by a payment bond. The shot records are due with the royalty payment check on the first day of the month for the previous month's work. Failure to submit the payment by the 15th of the month shall result in a penalty of one hundred dollars (\$100) and the option to terminate the lease per Section 1.4(c).

This method shall be verified by field survey cross sections for each 100,000 yards certified by a registered engineer/surveyor, unless the quarry has produced no rock for the preceding quarter. However, the initial quarry cross section, yearly anniversary quarry cross section, and the final quarry cross sections, are also required; or

3. Monthly based on quantities measured by certified scale. The scale tickets will be used to determine the weight of material removed from the quarry. If a certified scale method of measurement is used, quarterly quantity based on cross section of the quarry is not required. However, the initial quarry cross section, yearly anniversary quarry cross sections, and the final quarry cross sections are required. This method of payments shall be guaranteed by payment bond. The certified scale records are due with the royalty payment check on the first of the month for the previous month's work. Failure to submit the payment by the 15th of the month shall result in a penalty of one hundred dollars (\$100) and the option to terminate the lease per Section 1.4 (c).

In addition, Lessee will collect Sales Tax on all transactions at the Site and remit said tax along with CBS Payment. Lessee shall provide a quarterly report of volumes removed from the Site.

Lessee shall reimburse CBS on a monthly basis for all material removed and for topsoil sold or removed (if applicable) from the Site according to the following formula:

Payment to CBS = Rent + (monthly extracted volume of rock in CY X \$3.55) + (quarterly exported volume of topsoil in CY X 10% of sale price) + Sales Tax

All final royalty payments will be adjusted based on survey cross sections quantities.

(c) Lessee shall be required to pay minimum royalty payments for material removed of \$5,000 per year during the term of this Lease. The minimum royalty payment shall be made on a monthly basis. The Lessee shall make a minimum monthly payment of \$416.67.

(d) Lease payments will be made in monthly installments in advance in cash or by check, bank draft or money order made available to the City and Borough of Sitka. Installments to be delivered or mailed to 100 Lincoln Street, Sitka, Alaska 99835, by or on the first day of each calendar month with the option to pay in advance either monthly, yearly, or for the full term of the lease.

(e) Lease payments shall become delinquent if not paid within ten (10) days after the due date. Delinquent payments are subject to a late charge of \$25 and interest accrued from the due date at 12% per annum.

(f) The charges and fees paid by Lessee to Lessor must be separated according to Lessor's accounting standards.

(g) Lessor will only invoice if Lease payments are delinquent. Lessor will only invoice if failure to make Lease payment within thirty (30) days of due date. Lessor, at its option, can terminate the Lease for Lessee's failure to make payment, in accordance with this Lease.

Section 2.2 Adjustment to Lease Rate Upon Exercise of Lease Renewal.

If the option to renew is exercised and approved by Lessor Assembly, monthly Rent and Royalty as set in Section 2.1 shall be adjusted during the second (2nd) and all subsequent years of the lease or extension period, based on the Consumer Price Index, at a time when any adjustment would be made effective July 1st of the year applied. The adjustment shall be based on the previous year's annual percent change for Anchorage, Alaska (also referred to as Urban Alaska) for All Urban Consumers (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistics. The first adjustment date shall be July 1, 2027.

Section 2.3 Property Tax Responsibility.

Beginning with the Term of this Lease and each calendar year after, Lessee will be responsible to pay Lessor property taxes for its possessory interest in the land to the extent taxable as determined by the Municipal Assessor.

Section 2.4 Record Keeping Responsibility.

Lessee is responsible for record keeping including but not limited to:

- (a) Maintaining records of material leaving the Site by certified scale and/or shot records.
- (b) Preparing and submitting quarterly reports to CBS, as defined below.
- (c) Lessee shall provide a quarterly report to CBS summarizing activities, permit compliance or violations, shot summary, topsoil transactions (if applicable), and payment summary.
- (d) Cross sections of the Site shall be surveyed annually on the Lease anniversary date, and at the beginning and end of the term of the Lease, by a professional land surveyor registered to practice in the State of Alaska. Cross sections shall be stamped by the surveyor and provided to CBS. Cross sections shall be provided to CBS in a pdf format, to be printable in a 11"x17" format and an electronic AutoCad file. Surveyed volume will be compared to royalty yardage paid as a method of accounting control.
- (e) Alternatively, the Lessee may have the material taken from the quarry measured by either the following methods:
 1. Certified scale. The scale tickets will be used to determine the weight of material removed from the quarry and must be submitted to CBS. If certified scale method of measurement is used, quantity cross sections of the quarry are not required. However, the initial quarry cross sections, yearly anniversary quarry cross sections, and the final quarry cross sections are required; or
 2. Shot records. The shot records will be used to determine the volume of material removed from the quarry and must be submitted to CBS. If shot records are used, quantity cross sections are required every 100,000 cubic yards. In addition to the intermediate cross sections, initial quarry cross sections, yearly anniversary quarry cross sections, and the final quarry cross sections are required.

All final royalty payments will be adjusted based on survey cross section quantities.

ARTICLE III RESTRICTIONS UPON USE OF SUBJECT PROPERTY

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

(a) Mining Plan – Lessee shall conduct all operations in accordance with industry standards and regulations, and a CBS approved Mining Plan. This plan shall be prepared by Lessee and approved by CBS before work begins on the Site. Subjects to be addressed in the plan include but are not limited to:

1. Mining operations within the Site shall not compromise or otherwise impact areas outside the Site or the Shared Access Road or Staging Area. Limits and boundaries shall be clearly illustrated;
2. Lessee shall provide an estimated rate of disturbance and an estimated life expectancy for the Site; and
3. Reclamation and continuation plan applicable to termination of Lease or closure of the Site.
4. Adherence to Mine Safety and Health Administration (MSHA) Part 46 requirements and regulations including but not limited to obtaining and maintaining a MSHA ID#, an approved training plan (to be included in Mining Plan), commencement notices, and MSHA quarterly reports.
5. Operations shall also be in accordance with the following:
 - i. Warning signs shall be placed every 50 feet along the top of all rock cuts over 20 feet in height. The metal signs shall be 12” x 12” in size with the legend “Warning, Steep Embankment” clearly displayed. They shall be installed on metal sign posts. Signs shall be painted safety orange in color;
 - ii. Slopes of back walls of rock cuts and benching shall be as determined by MSHA requirements;
 - iii. Upon completion of a rock cut the back wall shall be scaled back of all loose rock rubble; and
 - iv. Storage and handling of explosives shall be performed under the direction of persons holding proper certifications for such work.

(b) Lessee shall monitor and maintain the existing overburden waste disposal area. Efforts include but are not limited to:

1. This area shall be included in Lessee’s Storm Water Pollution Prevention Plan (SWPPP) for the Site. Lessee shall maintain the Site in compliance with the approved SWPPP at all times.
2. Slope failures shall be repaired by Lessee at no cost to CBS.
3. Lessee is responsible for providing material for berm construction as well as any required cover material at no cost to CBS.
4. Lessee is responsible for controlling run-on water and surface ponding to minimize infiltration into the waste area mass.
5. Lessee is responsible for maintaining all ditches and drainages within the landfill perimeter, including drainages around the toe of the waste area, to preclude turbid water

from exiting the Site. This work may include the construction and maintenance of sedimentation ponds, silt fences, etc.

6. Lessee's maintenance and monitoring methods shall be directed towards containment of saturated soils, reduction of soil moisture content through drainage, and long-term consolidations with associated gains in soil strength and stability.
7. Lessee shall utilize stumps and logs to reinforce the down slope face of the landfill. Log and stump berms shall be constructed in advance of waste disposal to contain saturated materials.

(c) Lessee may produce and stockpile topsoil from the wasted overburden from the existing overburden waste disposal area provided stability of the area is not compromised. Production and sale of topsoil shall be requested in writing by Lessee for review and approval by CBS prior to beginning production and sale of topsoil. Lessee shall submit engineering plans depicting slope stabilization measures to CBS for review and approval with the request. The plans shall be sealed and signed by a registered engineer, properly licensed to practice in the State of Alaska. The request shall include proposed rate of sale per cubic yard. Lessee agrees to pay royalty fees of 10% per cubic yard rate agreed to and shall maintain records of all material leaving the Site for inclusion in quarterly reporting. Any agreement for production and sale of topsoil shall be incorporated via amendment signed by Lessee and CBS and shall be fully permitted prior to execution. Lessee shall obtain and maintain all necessary permits, including applications, payment, inspection, and reporting.

(d) The intent is for this Site to be developed as a service to the public, and no one will be turned away from the Site without concurrence by CBS.

(e) Lessee shall sell the extracted material, and topsoil if produced, at a uniform cost to all purchasers.

(f) Sound engineering practices and procedures shall be adhered to at all times during removal operations. Engineering plans for roads, drainage, and other components of the project shall be submitted for review. The plans shall be sealed and signed by a registered engineer, properly licensed to practice in the State of Alaska.

(g) Lessee shall obtain and maintain all necessary permits, including applications, payment, inspection, and reporting.

(h) Lessee shall also use the Subject Property and any improvements placed on the Subject Property only for lawful uses and as specified in the Lease and only for permitted and approved conditional uses subject to the Sitka General Code, Title 22 and the Conditional Use Permit 01-16, attached as Attachment A.

(i) Operations shall be performed in a manner designed to leave the Site in a condition conducive to additional mining after termination of this Lease.

(j) Boundary Lines and Survey Monuments – Prior to the commencing operations, Lessee shall have the Site surveyed and control monuments placed by a registered land surveyor to fully

identify the property boundaries, easements, Shared Access Road, existing contours, and existing improvements (attached as Exhibit 1 revision). Boundaries established shall match approximate boundaries provided in attached Exhibits. Lessee to consult with CBS as needed to confirm boundary details. All operations of the Site shall be contained within the boundaries as set forth in the Boundary Survey. A copy of the survey shall be provided to CBS in a pdf format, to be printable in a 11"x17" format and an electronic AutoCad file.

No boundary mark of the Site or any survey lines or witness tree to any survey corner or monument, shall be severed or removed, nor shall any survey corner or monument be damaged or destroyed. Any violation of this subsection will require Lessee to pay for reestablishing the lines, corners, or monuments by a registered land surveyor.

(k) Lessee shall confine its equipment, storage and operation to the Subject Property and shall be responsible for the accurate location of operations under this Lease, including any survey that may be necessary for such location unless otherwise specified in this Lease. Storage of materials or equipment not associated with operation/maintenance of the Subject Property shall not be allowed.

(l) Lessee may use the Subject Property for the processing and storage of materials for operations and for the temporary location and operation of rock extraction and processing, scales, crushers, and other such equipment necessary to produce marketable materials products. Other material incidental to the production of rock may be stored on the Site, as needed. A temporary small one bay equipment maintenance shop may also be allowed specifically for equipment used at the Site.

Granite Creek is, in fact, a long term source of gravel and other mineral products. As such, it is not the Contractor's storage yard area. Permanent or long term improvements such as garages and shops or other type buildings and uses shall NOT be allowed. Further, storage of materials or equipment not associated with operation/maintenance of the Site shall NOT be allowed.

(m) Erosion Control and Protection of Waters – Operations in connection with this Site shall be conducted to avoid damage to streams, lakes or other water areas and lands adjacent thereto. Vegetation and materials shall NOT be deposited into any stream or other lease area. Locations and/or improvements such as road crossings over streams shall be approved, in advance, by CBS.

All roads or other areas to be abandoned or an area to cease being an active portion of the Lessee's operation shall be treated with such measures to prevent erosion. Any damages resulting from any failure to perform to these requirements shall be repaired by the Lessee to the satisfaction of CBS. This includes, but is not limited, to waters defined in Title 5 – Fish and Game Title 6 – Protection to Anadromous Fish; State of Alaska

Should CBS determine that the operations cause silting or pollution of Granite Creek to a degree unacceptable to the Alaska Department of Environmental Conservation and/or the U.S. Fish and Wildlife Service after all reasonable attempts have been made to have Lessee correct the problems, this Lease shall be void upon notification to Lessee by CBS. Lessee shall indemnify and hold CBS harmless from any litigation whatsoever which may result from this action.

Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during significant rains as defined by the National Weather Service, and Lessee will, at its own expense, provide all proper drainage and routine settlement ponds for permanent uses.

Construction equipment, stockpiles, etc., shall be stored no closer than 25 feet, or as dictated by the approved SWPPP, to Granite Creek, whichever is greater.

Lessee shall maintain the existing stream side vegetated buffers along Granite Creek. No earth disturbing activities including clearing and grubbing shall be done within 25 feet of Granite Creek.

(n) All surfaces will be graded to drain. Ponding of water on the surface will not be acceptable. Lessee shall grade completed sections of the Site in a manner acceptable to CBS.

(o) All operations shall be performed in accordance with an approved SWPPP and adhere to the Granite Creek Total Maximum Daily Load (TMDL). This plan shall be prepared by Lessee and approved by CBS and the State of Alaska Department of Environmental Conservation (ADEC) before work begins on the Site. The SWPPP may require the installation and maintenance of siltation control structures at the Lessee's expense.

(p) Lessee shall adhere to all State, local regulations, and permitting regarding the storage and handling of explosives.

(q) No earth disturbing activities including clearing, and grubbing shall be done outside the approved Mining Plan or without prior written approval from CBS.

(r) Trees, stumps, overburden, and any other debris shall be disposed of by burning (subject to ADEC approval), burying in an authorized location and in a manner considered suitable by CBS, or at the overburden disposal site in Granite Creek Industrial Area.

(s) In working the land to the effect the removal of the Lessee's entitlement under this Lease, Lessee agrees to so manage that upon completion of the removal, a reasonable degree of level land is maintained, per the Mining Plan, from which material has been taken, and no holes-of-water are formed.

(t) Site Supervision – Lessee shall maintain adequate supervision at all times when operations, including blasting and existing overburden site maintenance, are in progress to ensure that the terms and conditions of this Lease and all applicable Federal, State and local laws, rules and regulations governing such operations are enforced. At all times, when operations are in progress, Lessee or a person authorized by Lessee to assume the responsibilities imposed by this Lease, shall be present on the Site. Lessee shall have a representative readily available at the Site, who shall be authorized to receive on behalf of Lessee, any notices and instructions given by authorized CBS personnel in regard to the performance under this Lease, and to take such action as is required by the terms of this Lease.

(u) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval. Site operation shall not commence until all Permits are in place and CBS provides written Notice to Proceed.

Lessee shall obtain and maintain all necessary permits, including applications, payment, inspection, compliance, and reporting. Lessee shall copy CBS on all permit or regulatory correspondence, including reporting, with respect to the Site. The CBS point of contact shall be:

Public Works Director
907-747-1804
publicworks@cityofsitka.org

(v) Fire Protection – Lessee shall take all necessary precautions for the prevention of wild fires and shall be responsible for the suppression and bear the suppression costs of any and all destructive or uncontrolled fires occurring within or without the Site, resulting from any and all operations involved under the provisions of this Lease. Lessee shall comply with all laws, regulations and rules promulgated by the agency responsible for fire protection in the area

(w) Roads – Before constructing any haul road, secondary or spur roads across CBS property, Lessee shall obtain written approval of the location and construction standards of such roads from CBS.

Maintenance of access, including the Shared Access Road, drainage ditches, culverts and other such improvements shall be maintained by Lessee at no expense to CBS. The responsibility for maintenance of the Shared Access Road shall be solely the Lessee's up and until the adjacent quarry area(s) is leased and a Shared Maintenance Agreement has been signed by all Lessees and approved by CBS roads within the Site as well as ponding and drainage to limit leachates, sediment load and turbidity entering Granite Creek shall be maintained by the Lessee at no expense to CBS.

Access over any route not under CBS control is the sole responsibility of Lessee. Lessee agrees that any permanent route, access or right of way obtained over privately owned property shall include a permanent easement to CBS.

Access through the Site to adjacent quarry site(s), scales and/or Phase 2 Staging Area shall be maintained and not restricted without prior written approval from CBS.

(x) Lessee may erect outdoor signage at its expense with the written permission of Lessor Building Official and the Public Works Director, or his or her written designee. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

(y) All operations, whether construction, maintenance, repair or safety related, shall be developed in coordination with a registered engineer, properly licensed to practice in the State of Alaska, to ensure proper and safe site development. At the termination of the Lease, Lessee is responsible for providing CBS a final Site inspection report from a registered engineer verifying that the Site was developed pursuant to approved plans and is stable and safe, while denoting any safety concerns

and remediation measures needed. Lessee will be responsible for any remediation measures needed as identified by the registered engineer at no cost to CBS.

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

Any improvements to transportation facilities including crushers, mixing plants, buildings, bridges, roads, or any other constructed by Lessee in connection with this Lease and within the Site area shall be in accordance with plans approved by CBS. In requesting consent, Lessee shall comply with all applicable laws and ordinances, and shall submit to the Lessors Public Works Director, or his or her written designee, detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan of full payment of the costs of the work. Lessor shall notify Lessee of its approval or objections no later than thirty (30) days after receiving the information described in the previous sentence. In approving or objecting, Lessor shall be acting in its proprietary function and not its regulatory function, any such approval in this proprietary function does not relieve Lessee of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Lessee from removing at the expiration/termination of this Lease any improvements or personal property as described in Section 1.4. Improvement and facility safety (both design and operation) shall be the responsibility of Lessee, and not the responsibility of CBS. Lessee agrees to follow all applicable safety and building codes, regulations, and permits.

Section 3.3 Rights of Access to Property.

(a) Lessor reserves for itself and its officials, employees, and authorized representatives, and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Subject Property, as well as for the purposes of constructing or installing new public utilities. Lessor also reserves for itself and the Alaska Department of Environmental Conservation, the U.S. Fish and Wildlife Service, and/or any other pertinent regulatory agencies 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. Lessor also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner. 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.

Section 3.4 Additional Conditions of Lease.

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) Except for those portions of the operation which are associated with low sound levels, 70 dba or lower as defined by OSHA, such as maintenance of equipment, the Lessees operations shall be confined to the hours of 7:00 A.M. to 7:00 P.M. daily without prior written approval by CBS. CBS reserves the right to restrict operations on weekends and holidays

(b) Lessee shall coordinate its activities insofar as possible with other lessees who now or in the future may hold lease agreements with the Granite Creek Industrial Area. Before interrupting access to any other operations, Lessee shall make arrangements satisfactory to the affected parties for coordinating operations. The affected parties cannot unreasonably withhold such approval if proper alternate arrangements have been made. In the case where the affected parties cannot reach agreement, CBS shall be the sole arbitrator to reach a satisfactory result.

(c) The terms and conditions of this Lease shall apply with equal force upon any agent, employee, representative or sublessee designated by Lessee to perform any or all of the operations of production and sale of rock under this Lease, and Lessee shall be liable for non-compliance caused by any such agent, employee representative or sublessee.

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

Lessee shall state, in all solicitations or advertisements for employees to work on jobs relating to this Lease, that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age disability, sex, marital status, changes in marital status, pregnancy, or parenthood.

Lessee shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Lease. Lessee shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by Lessee to carry out these requirements is a material breach of this Lease which may result in the termination of this Lease or other legally available remedies

(e) Lessee shall be responsible for taking any measures that Lessee deems necessary to provide security for the Site and their personal property on the Site. Lessor is not responsible for theft or vandalism.

(f) Lessee shall timely pay all other Lessor billings (i.e., electricity, business taxes, etc.).

(g) Failure of Lessee to file and pay such Lessor taxes, and pay utilities, assessment payments, and all other Lessor billings, may subject this Lease to be terminated.

Section 3.5 Reservations.

(a) CBS reserves the right to enter into other agreements regarding other sites in the Granite Creek Industrial Area to other parties during the term of this Lease.

(b) CBS reserves the right to permit other compatible users, including storage areas, on the lands near the Site provided CBS determines that such uses will not unduly impair Lessee's operations under this Lease.

(c) CBS reserves the right to permit other compatible users, including material extraction sites, on the lands near the Site provided CBS determines that such uses will not unduly impair Lessee's operations under this Lease.

ARTICLE IV UTILITY SERVICES AND RATES

Section 4.1 Provision of Utility Services.

Lessee will pay for utilities, if available.

Section 4.2 Rates for Utility Services Provided by Lessor.

Utility rates charged by Lessor for utility services shall be those set forth in Sitka's Customer Service Policies and/or Sitka General Code. Lessee acknowledges the requirements of Section 9.4 as to utility lines. The Sitka Assembly may change utility rates from time to time by amending the Customer Service Policies and/or Sitka General Code.

Section 4.3 Lessee to Pay for Utility Services.

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

Section 4.4 Lessor Not Liable for Failure of Utilities or Building.

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

Section 4.5. [RESERVED]

ARTICLE V LIABILITY

Section 5.1 Limits on Lessor Liability.

Lessee agrees to indemnify, defend, and hold harmless Lessor and its officials, employees, and authorized representatives or its successors against and from any and all claims by or on behalf of any person, firm, or entity arising, other than due to acts or omissions of Lessor, arising out of or connected with the exercise, conduct or management of the Lessee's privileges granted and duties required by this Lease, or arising out of any incident whatsoever which may occur on the Site or commonly used facility. This includes but is not limited to damage to power lines, poles and facilities, telephone lines and poles, survey monuments, roads, bridges and culverts, pollution and/or damage to water systems, or personal injury. Lessee also agrees to indemnify, defend, and save Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the term of this Lease from: (a) any condition of the Subject Property, improvements placed on it, or equipment and materials on it; (b) any breach or default on the part of Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease; and (c) any act or negligence of Lessee or any of its agents, contractors, servants, employees or licensees. 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 three sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease to indemnify or compensate Lessor. The agreements of indemnity by Lessee do not apply to any claims of damage arising out of the failure of Lessor to perform acts or render services in its municipal capacity.

Section 5.2 Limits on Lessee Liability.

Except to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee harmless for liabilities to the extent that they were incurred by reason of conditions existing on the Site as of the date of execution of this Lease or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend, and save Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the term of this Lease from (a) any condition of the Subject Property existing on the Site as of the date of execution of this lease, improvements placed on it by Lessor, or equipment and materials placed on it by Lessor; (b) any breach or default on the part of Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease; and (c) any act or negligence of Lessor or any of its agents, contractors, servants, employees, or licensees. Lessor agrees to indemnify, defend, and save 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 are in addition to and not by way of limitation of any other covenants in this Lease to indemnify or compensate Lessee.

Section 5.3 Reimbursement of Costs of Obtaining Possession.

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

GENERAL PROVISIONS

ARTICLE VI DEFINITIONS

Section 6.1 Defined Terms.

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

- (a) "Event of Default" means the occurrence of any action specified in Section 14.1.
- (b) "Imposition" means all of the taxes, assessments, fees, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property; any part of the Subject Property, or any right or interest or any rent, taxes and income received, including sales taxes on rent.
- (c) "Improvements" or "improvements" means all buildings, structures, Lessor approved physical modifications (such as material extraction and site disturbing activities), and improvements of any nature now or in the future located upon the Subject Property, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, 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, 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.
- (d) "Party" means either or both Lessor and Lessee.
- (e) "Personal Property" means tangible personal property owned or leased and used by Lessee or any sublessee of Lessee, in connection with and located upon the Subject Property.
- (f) "Premises" means the "Subject Property."
- (g) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease for the use of the Subject Property.
- (h) "Site" means the "Subject Property."
- (i) "Subject Property" is the area leased as shown on Exhibits 1, 2 and 3.

(j) "Sublessee" means any sublessee, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through Lessee; the term "lease" 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 Lessee, which has been approved by Lessor Assembly.

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

(l) "Quarry" means the "Subject Property."

ARTICLE VII INSURANCE

Section 7.1 Insurance and Bonding.

(a) Lessee shall have and maintain property damage and comprehensive general liability insurance in the amount of Two Million Dollars (\$2,000,000), occurrence and aggregate limits. This policy shall in no way limit or exclude significant exclusions of coverage shall be shown on the certificate of insurance.

(b) Lessee shall have the statutory amount of any Worker's Compensation. This policy shall also include coverage of Employers' Liability limits of no less than Five Hundred Thousand Dollars (\$500,000), or the minimum required by State law, whichever is greater. A sole proprietor without employees is not required to carry this insurance; however, they must provide documentation supporting the exception.

(c) Lessee shall carry Business Automobile insurance with limits of One Million Dollars (\$1,000,000). This shall cover all owned, non-owned and hired automobiles that are used in the operations related to this Lease.

(d) Lessee shall carry Excess or Umbrella Liability insurance with limits of no less than Five Million Dollars (\$5,000,000). This insurance shall be in excess to the Commercial General Liability, Business Automobile and Employers' Liability. This insurance requirement is based on current activity. If the activity changes to include higher risk activities the insurance limits may be adjusted upward by CBS to address the higher risk activity.

Lessee shall provide a Certificate of Insurance that evidences the above. This Certificate shall also allow for a 30 day notice of cancellation or material change of coverage.

(e) All insurance policies shall name CBS as an Additional Insured. CBS shall also be granted a full waiver of any rights of subrogation by endorsement under all required policies. These requirements extend to all subcontractors and sublessees.

(f) Two types of bonds will be required during the Term of this Lease: payment and reclamation.

Payment Bond

A Payment Bond in the amount of \$100,000.00 is required. On the yearly anniversary date of the commencement date Lease, CBS shall release in writing the prior year's bond, and accept a new

bond for the next year of operation. The purpose of the bond shall be to pay for unpaid rent or royalties, or other costs owed to CBS, such as anniversary surveys.

Reclamation Bond

A Reclamation Bond in the amount of \$100,000 is required. On the yearly anniversary date of the commencement date Lease, and after the pit cross sections are accomplished and Lessee is inspected for adherence to a continuation plan, CBS shall release in writing the prior year's bond, and accept a new bond for the next year of operation.

The purpose of the bond shall be to correct non-conforming conditions created by Lessee. An example might be to do necessary continuation work left undone or otherwise correct site problems, such as drainage control. The bond may also be used to pay for unpaid royalties or other costs owed to CBS, such as anniversary surveys.

Section 7.2 Notification of Claim, Loss, or Adjustment.

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss on the Subject Property under all policies of the character described in Section 7.1.

Section 7.3 Waiver of Subrogation.

The Party insured (or so required) releases the other Party from any liability the other Party may have on account of loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance and waives any right of subrogation which might otherwise exist in or accrue to any person on account of the following circumstances: (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, or anyone claiming under it in connection with the Subject Property or improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Lease to be insured. 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 VIII RESTRICTIONS REGARDING ASSIGNMENT, LEASES, AND TRANSFERS OF SUBJECT PROPERTY

Section 8.1 Lessee Without Power to Assign, Lease, or Encumber Subject Property.

Lessee has no power without Lessor prior written approval under this Lease to assign the Lease. Lessee has no power under this Lease to transfer the Subject Property. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan or mortgage or allow any liens to be filed against the Subject Property without Lessor prior written approval. Any such actions under this section may cause termination of the Lease.

Section 8.2 Limitations on Subleases.

Lessee shall not sublease the Subject Property or any portion of it without the prior written approval of Lessor. All subleases entered into demising all or any part of the Improvements or the Subject Property shall be expressly subject and subordinate to this Lease. Lessor's consent to a

sublease of the Subject Property shall not release Lessee from its obligations under the Lease. Lessor's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

Lessee shall request any sublease of the site in writing. Prior to the approval of any such assignment, CBS shall be provided with all the terms of the proposed assignment or agreement. This shall include time of assignment and potential use. If such terms are deemed inflationary or of such a type to be considered an abandonment of further interest in the Site by the original party, the assignment may be denied. Any agreement for subleasing shall be incorporated via amendment signed by Lessee and CBS and shall be fully permitted prior to execution. Lessee shall pay CBS 10% of any rent paid to the Lessee by sublessee.

ARTICLE IX USE AND PROTECTION OF THE SUBJECT PROPERTY

Section 9.1 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 without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy which may be made of them. Lessee assumes the sole responsibility for the condition of and 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 above.

Section 9.2 Compliance with Laws.

Lessee shall throughout any term of this Lease, 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 and all other legal requirements that may be applicable to the Subject Property and its use. Nothing in the foregoing sentence shall be deemed to relieve Lessee of its general obligations to Lessor in its municipal capacity.

Section 9.3 Notification of Lessor's Public Works Director of Discovery of Contamination.

Lessee shall promptly notify Lessor's Public Works Director, or his or her written designee, within 24 hours if any contaminated soils or other contaminated materials that require special handling are encountered during construction or other activities.

Section 9.4 Use of Utility Lines.

Lessee shall connect or otherwise discharge to such utility lines as approved by Lessor's Public Works Director and/or Electric Department Director, and shall obtain any permits and comply with any conditions specified by Lessor's Public Works Department Director and/or Electric Department Director for such connections.

Section 9.5 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 Lessor, Lessee shall provide copies of all permit applications and associated plans and specifications to Lessor's Public Works Department

Director, or his or her written designee, to facilitate review by departments of Lessor. Lessor is not obligated to comment on the permit applications and plans, and the result of any review by Lessor does not affect Lessee's obligation to comply with any applicable laws.

Lessee shall prepare and submit a new Storm Water Pollution Prevention Plan (SWPPP). The plan shall be approved by CBS and the ADEC before work begins on the Site. If the Lease Term is renewed, the current SWPPP will be reviewed to determine if modifications are required.

Failure to comply with environmental or permitting requirements and failure to perform corrective actions associated with issues of non-compliance as identified by regulatory agencies or CBS within 30 days of Lessee notification will result in Liquidated Damages of \$2,000/month.

All operations shall be in accordance with the City and Borough of Sitka Conditional Use Permit 01-16, as it now exists or as modified in the future.

Lessee shall obtain and pay for any other permits required as needed to operate at the Site.

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

Section 10.1 Performance of Lessee's Covenants To Pay Money.

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

Section 10.2 Lessor's Right To Cure Lessee's Default.

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

Section 10.3 Reimbursement of Lessor and Lessee.

All sums advanced by Lessor pursuant to this Article and all necessary and incidental costs, expenses and attorney's 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 to Lessor by Lessee in the respective amounts so advanced. This

reimbursement shall be made on demand, or at the option of Lessor, may be added to any Rent then due or becoming due under this Lease. Lessee covenants to pay the sum or sums with interest. Lessor shall have, in addition to any other right or remedies, the same rights and remedies in the event of the nonpayment by Lessee as in the case of default by Lessee in the payment of any installment of Rent.

Conversely, Lessee shall be entitled to receive from Lessor prompt payment or reimbursement on any sums due and owing from Lessor to Lessee, together with interest at the highest rate allowed by law. However, nothing contained in this Lease shall entitle Lessee to withhold any Rent due to Lessor or to offset or credit any sums against rent, except with respect to unpaid Rent due from Lessor to Lessee under any sublease of the Subject Property.

ARTICLE XI [RESERVED]

ARTICLE XII MECHANIC'S LIENS

Section 12.1 Discharge of Mechanics' Liens.

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

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, utility payments, insurance premiums and other charges, fees and impositions paid by Lessor under the provisions of this Lease, and all costs, attorney's fees and other expenses which may be incurred by Lessor in enforcing the provisions of this Lease or on account of any delinquency of Lessee in carrying out any of the provisions of this Lease, shall be and they are declared to constitute a valid and prior lien against property of Lessee, except the Subject Property, and may be enforced by law and 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) Failure of 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 Lessor to Lessee.

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

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

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

Section 14.2 Force Majeure.

Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof. As used in this Lease, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Lease, including without limitation:

(a) Any interruption, suspension, or interference resulting solely from the act of Sitka or neglect of Sitka not otherwise governed by the terms of this Lease.

(b) Strikes or work stoppages.

(c) Any interruption, suspension, or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, pandemics, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.

(d) Order of court, administrative agencies or governmental officers other than Sitka.

Section 14.3 Assumption or Assignment of Lease to Bankruptcy Trustee.

In the event that this Lease is assumed by or assigned to a trustee pursuant to the provisions of the Bankruptcy Reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 et seq.), and the trustee shall cure any default under this Lease and shall provide adequate assurances of future performance of this Lease as are required by the Bankruptcy Code (including but not limited to, the requirement of Code § 365(b)(1)) (referred to as "Adequate Assurances"), and if the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Code

within the applicable time periods provided by the Bankruptcy Code, then this Lease shall be deemed rejected automatically and Lessor shall have the right immediately to possession of the Subject Property immediately and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach or termination of this Lease.

Section 14.4 Remedies in Event of Default.

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

(a) Lessor may terminate this Lease. In such an event, Lessor may repossess the entire Subject Property and Improvements, and be entitled also to recover as damages a sum of money equal to the value as of the date of termination of this Lease, of the Rent due from Lessee for the balance of the stated term of this Lease, and any other sum of money and damages due under the terms of this Lease to Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) Lessor may terminate Lessee's right of possession and may repossess the entire Subject Property and Improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to Lessee (except as above expressly provided for) and without terminating this Lease. In such event, Lessor may, but shall be under no obligation to do so, relet all or any part of the Subject Property for rent and upon terms as shall be satisfactory in the judgment reasonably exercised by Lessor (including the right to relet the Subject Property for a term greater or lesser than that remaining under the stated term of this Lease). For the purpose of reletting, Lessor may make any repairs, changes, alterations or additions in or to the Subject Property and Improvements that may be reasonably necessary or convenient in Lessor's judgment reasonably exercised. If Lessor shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property is relet and a sufficient sum shall not be realized from reletting after paying all of the costs and expenses of repairs, change, alterations and additions and the expense of reletting and the collection of the Rent accruing from it, to satisfy the Rent above provided to be paid, then Lessee shall pay to Lessor as damages a sum equal to the amount of the Rent reserved in this Lease for the period or periods as and when payable pursuant to this Lease. If the Subject Property or any part of it has been relet, Lessee shall satisfy and pay any deficiency upon demand from time to time. Lessee acknowledges that Lessor may file suit to recover any sums falling due under the terms of this section from time to time, and that any suit or recovery of any portion due Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

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

(d) Upon the termination of this Lease, or upon the termination of Lessee's right of possession, whether by lapse of time or at the option of Lessor, Lessee will at once surrender possession of the Subject Property and dispose of personal property and Improvements as described in Section 1.4. If possession is not immediately surrendered, Lessor may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, 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 has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

(e) In the event that Lessee shall fail to make any payment required to be made provided for in this Lease or defaults in the performance of any other covenant or agreement which Lessee is required to perform under this Lease during the period when work provided for in this Lease shall be in process or shall be required by the terms of this Lease to commence, Lessor may treat the default as a breach of this Lease and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Lease, Lessor shall have the right to carry out or complete the work on behalf of Lessee without terminating this Lease.

Section 14.5 Waivers and Surrenders To Be In Writing.

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

ARTICLE XV LESSOR'S TITLE AND LIEN

Section 15.1 Lessor's Title and Lien Paramount.

Lessor will hold title to the Subject Property.

Section 15.2 Lessee Not To Encumber Lessor's Interest.

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

ARTICLE XVI REMEDIES CUMULATIVE

Section 16.1 Remedies Cumulative.

No remedy conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute. Every power and remedy given by this Lease to Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Lessor. No delay or omission of Lessor to exercise any right or power arising

from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

Section 16.2 Waiver of Remedies Not To Be Inferred.

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

Section 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, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of Lessor to declare ended the term granted and to terminate this Lease because of any event of default.

ARTICLE XVII SURRENDER AND HOLDING OVER

Section 17.1 Surrender at End of Term.

On the last day of the last Lease year of the original Term, or on the earlier termination of the Term, Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to Lessor, subject to the provisions of Section 1.4, in good repair, order, and condition, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. At the time of the surrender, Lessee shall also surrender any and all security deposits and rent advances of sublessees to the extent of any amounts owing from Lessee to Lessor. If the Subject Property is not so surrendered, Lessee shall repay Lessor for all expenses which Lessor shall incur by reason of it, and in addition, Lessee shall indemnify, defend and hold harmless Lessor from and against all claims made by any succeeding Lessee against Lessor, founded upon delay occasioned by the failure of Lessee to surrender the Subject Property.

Section 17.2 Rights Upon Holding Over.

At the termination of this Lease, by lapse of time or otherwise, Lessee shall yield up immediately possession of the Subject Property to Lessor and failing to do so agrees at the option of Lessor, to pay to Lessor for the whole time such possession is withheld, a sum per day equal to 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. The provisions of this Article shall not be held to be a waiver by Lessor of any right or reentry as set forth in this Lease, 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 and the Term granted for the period still unexpired for any breach of Lessee under this Lease.

ARTICLE XVIII MODIFICATION

Section 18.1 Modification.

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

ARTICLE XIX INVALIDITY OF PARTICULAR PROVISIONS

Section 19.1 Invalidity of Provisions.

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

ARTICLE XX APPLICABLE LAW AND VENUE

Section 20.1 Applicable Law.

This Lease shall be construed and enforced in accordance with the laws of the State of Alaska. The forum and venue for any action seeking to interpret, construe, or enforce this Lease shall be only in the Superior Court for the State of Alaska 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 or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to Lessor or Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States Postal Service, certified, registered, or express mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, Alaska, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each party from time to time may change its address for purposes of receiving declarations or notices by giving written notice of the changed address, to become effective seven (7) days following the giving of notice.

Section 21.2 Notice to Leasehold Mortgagee and Secured Parties.

Lessor shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from Lessor to Lessee relating to existing or potential default under, or other noncompliance with the terms of this Lease. All notices, demands or requests which may be required to be given by Lessor or Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States Postal Service, 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 Lessor and Lessee.

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 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. It shall be deemed received on the third business day thereafter. For all purposes under this Lease of starting any time period after notice, the time period shall be conclusively deemed to have commenced three (3) business days after the giving of notice, 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 and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

Section 22.2 Conditions and Covenants.

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

Section 22.3 Entire Agreement.

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

Section 22.4 Time of Essence as to Covenants of Lease.

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

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

ARTICLE XXIV ADDITIONAL GENERAL PROVISIONS

Section 24.1 Absence of Personal Liability.

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

Lessee or for any amount which become due to Lessor, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease.

Section 24.2 Lease Only Effective As Against Lessor Upon Assembly Approval.

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

Section 24.3 Binding Effects and Attorney's Fees.

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

Section 24.4 Duplicate Originals.

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

In the event there is any difference between an attachment to the original of this Lease on file with CBS Clerk and any attachment to a duplicate original of the Lease, the attachments to the original filed with CBS shall control.

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

Section 24.6 Authority.

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

Section 24.7 Recordation.

The parties agree that the Lease will be not be recorded. At the request of either party, the parties shall execute a memorandum of the Lease for recording purposes in lieu of recording this Lease in such form as many be satisfactory to the parties or their respective attorneys. Each party shall bear their own related expenses, including attorney fees. Lessor shall pay for all recording fees.

CITY AND BOROUGH OF SITKA, ALASKA

Date

By: John Leach
Its: Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, on behalf of the municipality.

Notary Public in and for the State of Alaska
My commission expires: _____

MCG CONSTRUCTORS, INC.

Date




By: Christopher McGraw
Its: Director, Treasurer



STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Christopher McGraw, Director, Treasurer for McG Constructors, Inc. an Alaska corporation, on behalf of the corporation.

Notary Public in and for the State of Alaska
My commission expires: _____

LEGEND

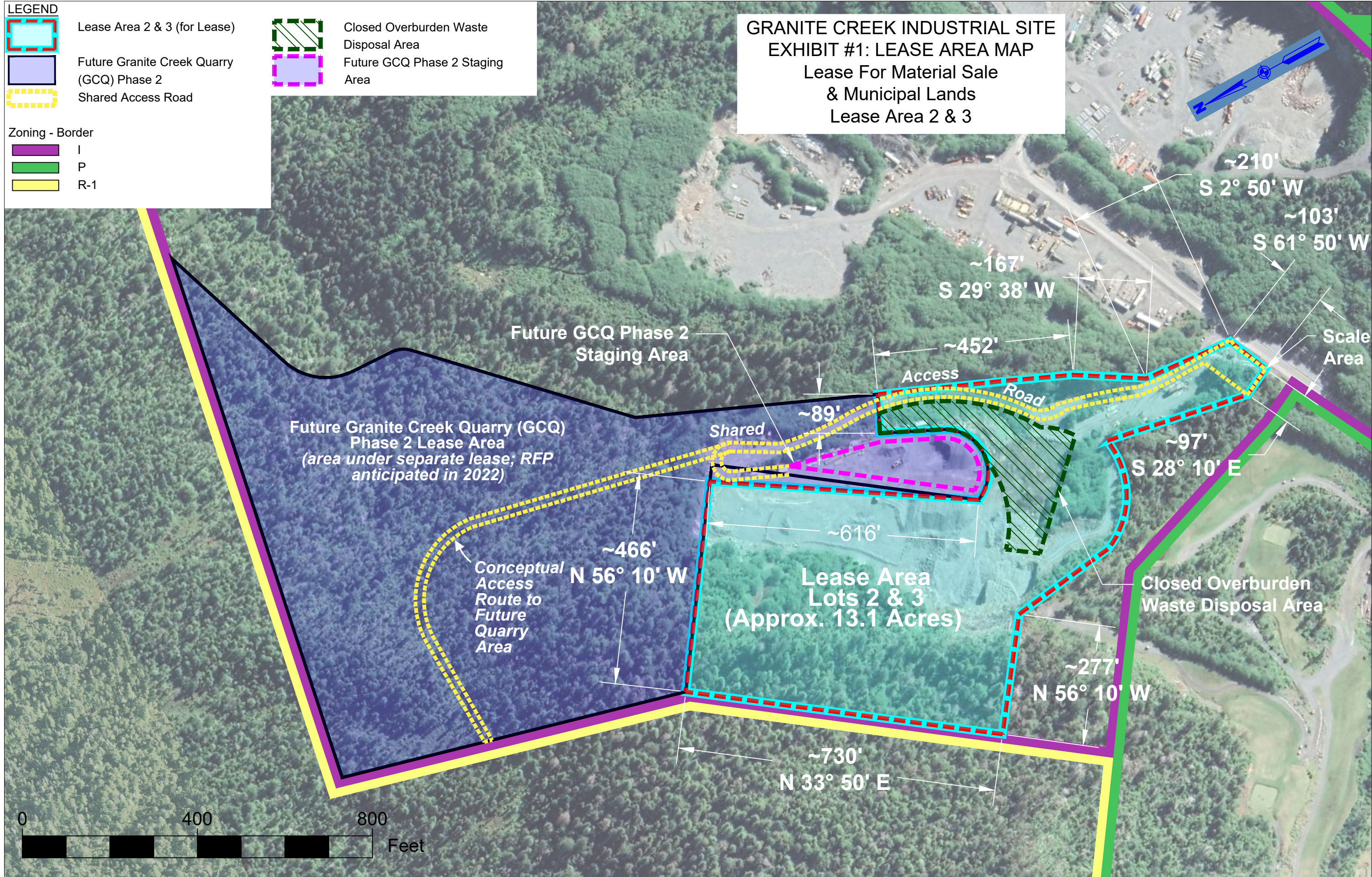
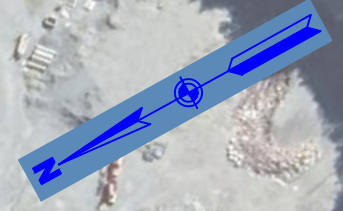
-  Lease Area 2 & 3 (for Lease)
-  Future Granite Creek Quarry (GCQ) Phase 2
-  Shared Access Road

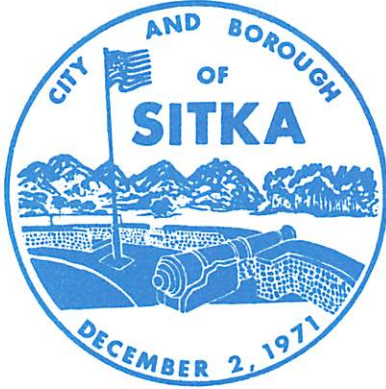
-  Closed Overburden Waste Disposal Area
-  Future GCQ Phase 2 Staging Area

Zoning - Border

-  I
-  P
-  R-1

**GRANITE CREEK INDUSTRIAL SITE
EXHIBIT #1: LEASE AREA MAP
Lease For Material Sale
& Municipal Lands
Lease Area 2 & 3**






City and Borough of Sitka

100 LINCOLN STREET • SITKA, ALASKA 99835

Memorandum

TO: Gary L. Paxton, Municipal Administrator
Mayor Nelson and Members of the Assembly

FROM: Wells Williams, Planning Director 

SUBJECT: Granite Creek Natural Resource Extraction Conditional Use Permit Request
for Lease Tracts 2-3

DATE: August 8, 2001

The Sitka Planning Commission is unanimously recommending approval of a conditional use permit for natural resource extraction at the end of Granite Creek Road in the vicinity of the area that is being worked by McGraw. The board's recommendation was made on July 16th, 2001. Assembly approval is required.

The City and Borough of Sitka filed the conditional use permit for natural resource extraction to allow for a rebidding and expansion of the quarry area that is currently being worked by Dormand McGraw. The quarry is at the end of Granite Creek Road on the left hand side behind the truck scales.

As some Assembly members may recall, there was a request to purchase the property a couple of years ago when Brad Dennison was Public Works Director. The requested sale was poorly received since the Assembly felt that there should be a full master plan of the area before any sales in Granite Creek occurred. The Long Range Planning Commission started that process. Unfortunately, the board has had a number of resignations and has not been able to complete the task.

The strategy for the current request is to simplify the lease tract configurations by combining five tracts into one lease parcel. The large lease parcel and quarry contract will then be rebid in August.

This process is a natural expansion of the Granite Creek area development that allows for the use of this important rock source.

Following the detailed presentation by Hugh Bevan at the Planning Commission meeting, the discussion shifted to concerns about blasting that were raised by Harvey Brandt. He was

Granite Creek Quarry
August 8, 2001
Page 2

present at the meeting and provided the enclosed written comments. Mr. Brandt owns a house near on the town side of Granite Creek along HPR. His primary concerns were the timing of the blasts, their magnitude, and the lack of notice to nearby property owners. The Public Works Director volunteered to send a letter to Granite Creek leaseholders raising the issue. His letter dated July 17th, 2001 is attached. There were not any other comments received on this issue.

RECOMMENDED ACTION:

Hear a presentation from the Public Works Director, consider any comments, and approve the request.

While the Planning Office and the Planning Commission are not suggesting any specific conditions, Assembly members may have some conditions that they consider appropriate.

and marine storage rates. Dapcevich asked what the current need and the potential use of the dock is? Krebs said we have some interest now. These are questions they hope to answer with this plan. At this point they are not sure if the dock can be utilized. Dapcevich wondered if there is enough interest right now to justify the expense? Loiselle pointed out that it is more of an issue of dealing with the dock. It needs to be dealt with whether we have customers or not. He relayed that the board tries very hard not to spend money foolishly and looks out for the best return for Sitka. Dapcevich doesn't see a return on this investment.

Motion CARRIED by a 4-1 roll call vote with Dapcevich voting against.

Item S
Transfer Funding

M/S Pearson/Bailey: moved to approve transferring \$155,359 from the following: \$55,359 from the Hospital Medical Waste Project; \$50,000 Solid Waste Disposal Plan; \$50,000 Granite Creek access road project all to the transfer station project.

Mayor Nelson asked about the dollar amount regarding the contingency. Bevan didn't have that figure available. Dapcevich wondered if it would cost a lot more to put the walls up later. Bevan said he has concerns with high winds.

Motion CARRIED by a 4-1 roll call vote with Nelson voting against.

Board of Adjustment

M/S Bailey/Perkins: moved to convene as the Board of Adjustment.

Motion CARRIED by unanimous consent.

Item T
CUP - CBS

M/S Bailey/Perkins: moved to approve a conditional use permit for natural resource extraction filed by the City and Borough of Sitka for a portion of Lot 1 of US 3670 at the north end of Granite Creek Road. And to include a determination that a site inspection completed by staff on the Planning Commission's behalf on July 11, 2001 found that the proposed use would be in conformance with the comprehensive plan.

Motion CARRIED by a 5-0 roll call vote.

Reconvene

M/S Bailey/Pearson: moved to reconvene as the Assembly in regular session.

Motion CARRIED by unanimous consent.

Item U
Lot 39 Gavan

M/S Pearson/Perkins: moved to authorize the sale of Lot 39 of Gavan Subdivision to Ken Helem and Jeff Helem for the cost of the LIDs (\$40,365.90).

Motion CARRIED by a 5-0 roll call vote.

Convene as BOE

M/S Bailey/Perkins: moved to convene as the Board of Equalization

Motion CARRIED by unanimous consent.

Zoning: I Industrial
Request: Conditional use permit for natural resource extraction

Lease Tract 2-3 Quarry Conditional Use Permit
July 16th, 2001

The City and Borough of Sitka has filed a conditional use permit for natural resource extraction that would allow for a rebidding and expansion of the quarry area that is currently being worked by Dormand McGraw. The quarry is at the end of Granite Creek Road on the left hand side behind the truck scales.

As some of you may recall, there was a request to purchase the property a couple of years ago when Brad Dennison was Public Works Director. The requested sale was poorly received since the Assembly felt that there should be a full master plan of the area before any sales in Granite Creek occurred. The Long Range Planning Commission started that process. Unfortunately, the board has had a number of resignations and has not been able to complete the task.

The strategy for the current request is to simplify the lease tract configurations by combining five tracts into one lease parcel. The large lease parcel and quarry contract will then be rebid in August.

This process is a natural expansion of the Granite Creek area development that allows for the use of this important rock source.

The board is encouraged to pass a motion recommending approval of the request with the determination that a site inspection completed by staff on the Planning Commission's behalf on July 11, 2001 found that the proposed use would be in conformance with the comprehensive plan and will not be injurious to public health, safety, or welfare, or detrimental to other uses or properties in the vicinity. Comprehensive plan policy 2.4.6 applies that encourages adequate land for commercial, industrial, and residential growth. 2.6.2 also applies.

quarry716

**CITY AND BOROUGH OF SITKA
PLANNING AND ZONING COMMISSION
Excerpts of July 16, 2001 Minutes**

PRESENT: Ed Lahmeyer, Bob Goss, Pat Hughes; Assembly Liaison Doris Bailey, Planning Director Wells Williams, Public Works Director Hugh Bevan, Secretary Carol Price Spurling

ABSENT: Mike Reif (E), Kevin Creek (E)

PUBLIC: Tom and Danine Williamson, Harvey Brandt, Dawn Young, Matt Christner, Myron Oen, Nancy Wladyka, Gary Winnop, Sentinel Reporter Jones

Conditional Use Permit Rock Quarry Lease Tract 2-3 Granite Creek Road City & Borough of Sitka	The City & Borough of Sitka has filed for a conditional use permit for natural resource extraction. The quarry is currently worked by Dormand McGraw and is located at the end of Granite Creek Road on the left hand side.
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Staff briefly explained the area's history, noting that four or five years ago the City realized that better plans were needed for the area. The current request is a C.U.P. which would allow for an enlargement of the quarry area. It combines five smaller lease tracts into one large one, which will be rebid.

Hugh Bevan explained recent improvements to Granite Creek area, noting that the city wants there to be a clean open area when they are done taking out rock. A new lot configuration and access in one area has allowed for two old collapsing culverts to be removed and replaced with a new bridge across the creek, which makes the Department of Fish and Game happy. They have several objectives behind this request, which are 1) resource development, 2) orderly development with end result in mind, 3) getting Granite Creek off the impaired water body list, and 4) to standardize lease requirements in the area.

Staff noted that there had been no comments or objections.

Harvey Brandt of 3704 Halibut Point Road noted that they have lived there since 1969. They have been subjected to house shaking blasting from the quarry. He said it was similar to the recent earthquake and believed that over time it may prove detrimental to his property. He wondered if the city was liable to legal action for damage that may occur. Brandt noted that he is not against economic development or the operation itself, but wished that the blasting could be regulated so that it wouldn't be so earth shaking. He would also like to be notified when blasting is to occur. He submitted a letter about his concerns.

Goss asked if blasting is part of their normal operations. Staff said that he and Hugh could get together some information on the issue before it is addressed at the Assembly meeting August 14.

Bevan explained the three elements of blasting, vibration, concussion, and flyrock, and asked Brandt if the problem was house shaking (vibration through the earth) or windows rattling (concussion through the air). Brandt said it was house shaking. Bevan said that he would write a letter to the three main operators in the pit and explain the problem. He would explain that they are actively seeking solutions to the problem and asked the pit operators for their ideas. He feels that the pit operators can solve the problem themselves if given the chance.

MOTION by Lahmeyer to recommend approval of a conditional use permit for natural resource extraction filed by the City and Borough of Sitka for a portion of Lot 1 of USS 3670 at the north end of Granite Creek Road, with the determination that a site inspection completed by staff on the Planning Commission's behalf on July 11, 2000 found that the proposed use would be in conformance with the comprehensive plan and will not be injurious to public health, safety, or welfare, or detrimental to other uses or properties in the vicinity. Comprehensive plan policy 2.4.6 applies that encourages adequate land for commercial, industrial, and residential growth. 2.6.2 also applies.