

## **POSSIBLE MOTION**

**I MOVE TO** approve Ordinance 2016-43 on second and final reading.



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

*Coast Guard City, USA*

## MEMORANDUM

**To:** Mark Gorman, Municipal Administrator  
Mayor Hunter and Members of the Assembly

**From:** Maegan Bosak, Planning and Community Development Director  
Samantha Pierson, Planner I

**Subject:** Ordinance for Renewal of Tidelands Lease Adjacent to 4401 Halibut Point Road

**Date:** November 10, 2016

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Kevin McNamee approached the Planning Department with a request to renew a tidelands lease from the City and Borough of Sitka. The Planning Department is processing this request in accordance with existing procedures. Following SGC, an ordinance is required to authorize the Class III tideland lease.

The request is for tidelands adjacent to 4401 Halibut Point Road. McNamee is the upland property owner. The current 30-year lease is for ATS 979, approximately .79 acres. The lease was enacted in 1986, with an annual lease amount of \$2300. The current lease amount is \$2415 per year. McNamee is current on lease payments. The lease expired on September 30, 2016.

McNamee requests to lease two portions of the prior lease tract, but does not wish to lease a third portion. Parcel A is a 22,747 square foot portion which houses an existing float and a shelter. Parcel B is a 5146 square foot portion that contains approximately half of the main house. McNamee requests two separate lease parcels to facilitate a possible future sale of the lodge business while maintaining the ownership of his home and continuing to lease the adjacent tidelands. Lease transfer authority is determined by the lease language. The applicant does not wish to lease the third portion of 6343 square feet, as this portion was used by the original lessee for boatbuilding but is not needed for McNamee's lodge operations. McNamee requests a 50 year lease for Parcel A and Parcel B.

Assessor Wendy Lawrence determined a fee simple assessed value of \$152,900.00. Code assigns an annual lease rate of 4.5%, resulting in an annual lease payment of \$6880.50.

At their October 19, 2016 meeting, the Planning Commission recommended approval 4-0. On November 8, 2016, the Assembly granted preliminary approval 7-0. The proposed lease now requires approval by ordinance.

**RECOMMENDED ACTION:** Pass a motion to approve the lease ordinance.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2016-43

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AUTHORIZING THE LEASE OF 27,893 SQUARE FEET OF ATS 979 TIDELANDS ADJACENT 4401 HALIBUT POINT ROAD

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. **PURPOSE.** The purpose of this ordinance is to facilitate the lease of a 27,893 square foot portion of tidelands adjacent to 4401 Halibut Point Road to Kevin McNamee for the continued operations of a lodge. The lease area will be designated as two parcels. Parcel A is 22,747 square feet and Parcel B is 5146 square feet.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka.

A. The leasing of a 27,893 square foot tract of ATS 979 adjacent 4401 Halibut Point Road is hereby authorized with the following terms:

- 1) The parcel is valued at \$152,900.00.
- 2) The annual lease payments shall be \$6880.50 a year.

B. The Administrator is authorized to execute a lease document consistent with the terms of this ordinance, SGC Title 18 that governs municipal leases, and, existing municipal policies.

C. The City and Borough Assembly finds competitive bidding is inappropriate and unnecessary due to the nature of the property since it can only realistically be used by the adjacent property owner.

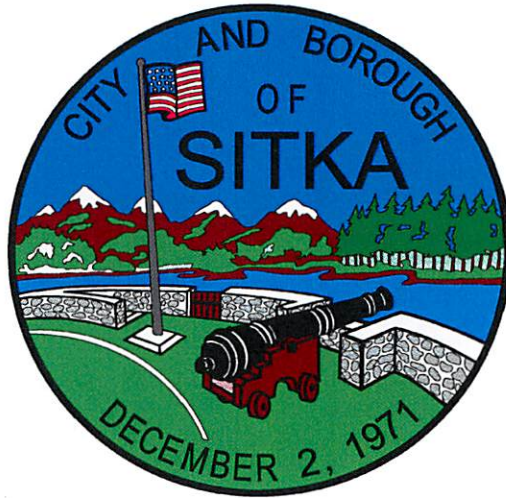
5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 13<sup>th</sup> day of December, 2016.

\_\_\_\_\_  
Matthew Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Sara Peterson, CMC  
Municipal Clerk



# **LEASE AGREEMENT**

**BETWEEN**

**THE  
CITY AND BOROUGH OF SITKA**

**AND**

**KEVIN MCNAMEE  
4401 Halibut Point Road, Sitka, Alaska  
99835**



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**LEASE AGREEMENT BETWEEN  
CITY AND BOROUGH OF SITKA  
AND KEVIN MCNAMEE**

**PREAMBLE**

City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("CBS") and Kevin McNamee, whose mailing address is 4401 Halibut Point Road ("Tenant"), enter into this Lease Agreement Between City And Borough of Sitka and Kevin McNamee ("Lease"). This Lease consists of the Special Provisions, General Provisions, and the following attached Exhibit:

Exhibit A – Description of the area leased

**SPECIAL PROVISIONS**

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

**Section 1.1 Conveyance of Estate in Lease.**

CBS, for and in consideration of the Rents received and of the covenants and agreements made by Tenant, does lease to Tenant, and Tenant leases from CBS, the "Subject Property" as shown on Exhibit A. Exhibit A shows an approximately 22,747 square foot parcel (parcel A) and an approximately 5,146 square foot parcel (parcel B), for a total of 27,893 square foot portion of ATS 979 tidelands adjacent 4401 Halibut Point Road in Sitka.

**Section 1.2 Lease Term.**

The Lease term is for fifty (50) years and commences on September 30, 2016, and ends on September 30, 2066, unless sooner terminated or extended as provided in this Lease.

**Section 1.3 Disposition of Improvements and Tenant's Personal Property Following Term of Lease.**

With the exception of such improvements described in the next sentence, Tenant shall remove from the Subject Property any personal property or improvements constructed, installed, or deposited on the Subject Property at the termination of this Lease or any extension unless Tenant makes a separate written agreement with CBS to do otherwise. Subject to the provisions of the next sentence, Tenant shall leave behind at no cost to CBS improvements including: bollards, ladders, drains and drain lines; toilets; bathroom sinks; building systems and their components such as plumbing, piping, and fixtures; building structural components; non-structural improvements such as walls and ceilings; devices not used for processing or manufacturing such as but not limited to electrical service entrance equipment, electrical distribution panels, electrical cables, feeders, branch circuit wiring, and appurtenances such as light fixtures, switches, and other devices; portable fire extinguishers, smoke detectors, and fire and life safety equipment attached or fastened in ways integral to the building in which Subject Property is located. Any improvements or personal property not removed after thirty (30) days have passed after

termination of this Lease shall be deemed abandoned, and at CBS's option, shall become the property of CBS. Tenant shall repay to CBS any costs of removing such improvements or personal property from the Subject Property if CBS does not exercise such option. Subject to CBS's obligations under Subsection 3.1 below, Tenant agrees to leave Subject Property in a neat, clean, and weather-tight condition at the end of the term of the Lease.

**Section 1.4 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 & Method of Payment of Rent During the Fifty-Year Term of the Lease.**

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, Tenant shall pay Rent each year in advance on the term start date at a rate of \$6880.50/year.

**Section 2.2 Cost of Living Adjustment to Lease Rate.**

Rent as set in Section 2.1 will be adjusted annually based on the percentage difference between the "All Items" figure for Anchorage, Alaska in the "Consumer Price Index for All Urban Consumers," beginning with the edition published the soonest after January 1. The adjustment shall occur annually on the anniversary of the lease, and shall apply to all subsequent month's sublease payments. The adjustment shall be determined by dividing the most recent CPI by the preceding year CPI and multiplying the result times the monthly sublease payment and add the result to current sublease payments. Tenant is required to make such adjustments on its own each year.

**Section 2.3 Property Tax Responsibility.**

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

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

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

(a) Except as otherwise provided in this Lease, Tenant acknowledges the leasehold is in an "as is" condition. At the sole cost and expense of Tenant and in compliance with all legal requirements, Tenant may purchase, construct, develop, repair, transfer to the Lease property, and/or maintain



any improvements, personal property, fixtures, and other items on the interior Subject Property in a first-class manner using materials of good quality.

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

(c) Tenant shall also use the Subject Property and any improvements placed on the Subject Property only for lawful uses and as specified in the Lease.

(d) Tenant shall confine their equipment, storage and operation to the leasehold area.

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

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

Tenant shall not make or permit to be made any alteration of, addition to, or change in, structures and improvements, nor demolish all or any part of the structures or improvements without the prior written consent of CBS, which consent shall not be unreasonably withheld. The phrase "structures and improvements" in the previous sentence includes water and wastewater systems and electrical systems. In requesting consent, Tenant shall comply with all applicable laws and ordinances, and shall submit to the Public Works Director of CBS 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. CBS shall notify Tenant of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting, CBS shall be acting in its proprietary function and not its regulatory function, any such approval in this proprietary function does not relieve Tenant of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Tenant from removing at the termination of this Lease any improvements or personal property as described in Section 1.4.

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

(a) CBS reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of 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. CBS also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease. CBS also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Tenant's business; and (3) placing

"For Sale" or "For Rent" signs on Subject Property. Tenant shall not charge for any of the access allowed in the situations described in this subsection.

(b) Tenant 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 CBS and any applicable utility company.

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

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

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

(a) Tenant will cooperate with CBS equipment and building maintenance contractor and will notify CBS of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Tenant will be provided a 24 hour telephone number to notify CBS of any event that requires immediate response by CBS.

(b) Lease payments will be made in yearly 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 year.

(c) 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% annum.

(d) The charges and fees paid by Tenant to CBS must be separated according to the CBS accounting standards.

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

(f) Tenant covenants and agrees that as it relates to use of the Subject Property, it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal, State or local laws or regulations promulgated under such laws, and Tenant further grants CBS 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.

- (g) CBS may, upon at least 10 days prior written notice to Tenant, temporarily suspend the supply of water, wastewater service, the supply of electric power, the use of pipelines, or the use of the Improvements in order to perform routine maintenance and, in all events, subject to unavoidable delays. Such interruptions shall be of as short duration as necessary to perform such maintenance, and CBS shall not be responsible for any such costs or expenses as a result of suspending such utilities.
- (h) Tenant shall timely pay the CBS Fire Marshal or Building Inspector fees and other building permit fees, and shall also timely file and pay all applicable property taxes and assessments, including sales taxes. These include any Local Improvement District costs that may be assessed.
- (i) Tenant shall be responsible for taking any measures that Tenant deems necessary to provide security for their property. CBS is not responsible for theft or vandalism.
- (j) CBS sales tax applies to Lease payments. Sales tax rates, limits, exemptions, and exclusions are subject to change by the CBS Assembly.
- (k) Tenant shall timely pay all other CBS billings (i.e., electricity, business taxes, etc.).
- (l) Failure of Tenant to file and pay such CBS taxes, and pay utilities, assessment payments, etc. may subject this Lease to be terminated.
- (m) Petro Marine Services shall individually and severally be liable under this Lease to comply with all of its provisions.

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

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

**ARTICLE IV UTILITY SERVICES & RATES**

**Section 4.1 Provision of Utility Services.**

Tenant will pay for utilities, if available.

**Section 4.2 Rates for Utility Services Provided by CBS.**

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

**Section 4.3 Tenant to Pay for Utility Services.**

Tenant 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, CBS shall have the right, but shall not be obligated, to pay it, with the understanding that amounts paid by CBS shall constitute additional rent due and payable under this Lease, and shall be repaid to CBS by Tenant immediately on rendition of a bill by CBS. Interest at the highest rate allowable by law shall be added as a charge for unpaid utility bills paid by CBS on behalf of Tenant. CBS reserves the right to suspend utility services if Tenant does not pay for utility services. Failure to timely pay utility services may also result in CBS terminating this Lease.

**Section 4.4 CBS Not Liable for Failure of Utilities or Building.**

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

**Section 4.5. Requirement Regarding Potable Water Services.**

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

**ARTICLE V LIABILITY**

**Section 5.1 Limits on CBS Liability Limitation.**

Tenant agrees to indemnify, defend, and save harmless CBS against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of CBS, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and structures and improvements, including liability arising from products produced on the property. Tenant also agrees to indemnify, defend, and save CBS harmless against and from any and all claims and damages arising, other than due to acts or omissions of CBS, during the term of this Lease from: (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of Tenant regarding any act or duty to be performed by Tenant pursuant to the terms of this Lease; and (c) any act or negligence of Tenant or any of its agents, contractors, servants, employees or licensees. Tenant agrees to indemnify, defend, and save harmless CBS from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of CBS, 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 CBS. The agreements by Tenant do not apply to any claims of damage arising out of the failure of CBS to perform acts or render services in its municipal capacity.

**Section 5.2 Limits on Tenant Liability.**

Except to the extent of liabilities arising from Tenant's acts or omissions, CBS indemnifies, defends, and holds Tenant 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 CBS's acts or omissions. CBS also agrees to indemnify, defend, and save Tenant harmless against and from any and all claims and damages arising, other than due to acts or omissions of Tenant, during the term of this Lease from (a) any condition of the Subject Property or improvements placed on it by CBS; (b) any breach or default on the part of CBS regarding any act or duty to be performed by CBS pursuant to the terms of the Lease; and (c) any act or negligence of CBS or any of its agents, contractors, servants, employees, or licensees. CBS agrees to indemnify, defend, and save harmless Tenant from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Tenant, 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 Tenant.

**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 CBS'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 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, including fittings, appliances, machinery, garage equipment, heating equipment, lighting equipment, cooling equipment, air conditioning and ventilating equipment, wiring, controls, communications equipment, plumbing, switchboards, antennae, floor coverings, refrigerating equipment, hot water heating and all other appliances and equipment; excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Tenant, 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) "Personal Property" means tangible personal property owned or leased and used by Tenant or any sublessee of Tenant, in connection with and located upon the Subject Property.

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

(f) "Rent" means the lease rate, which is the amount Tenant periodically owes and is obligated to pay CBS as lease payments under this Lease for the use of the Subject Property.

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

(h) "Sublessee" means any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through Tenant; the term "sublease" shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any Person holding by or through Tenant, which has been approved by CBS Assembly.

(i) "Term" means the period of time Tenant rents or leases the Subject Property from CBS.

## **ARTICLE VII INSURANCE**

### **Section 7.1 Insurance**

Tenant shall have and maintain property damage and comprehensive general liability insurance in the amount of one million dollars (\$1,000,000), including leasehold improvements. CBS shall be named as an additional insured. Additionally, Tenant shall have the statutory amount of any Worker's Compensation.

### **Section 7.2 Notification of Claim, Loss, or Adjustment**

Tenant shall advise CBS 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 Tenant Without Power to Assign, Lease, or Encumber Subject Property.**

Tenant has no power without CBS Assembly approval under this Lease to assign the Lease. Tenant has no power under this Lease to transfer the Subject Property. Tenant 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. Any such actions under this section may cause termination of the Lease.

### **Section 8.2 Limitations on Leases.**

Tenant shall not sublease the Subject Property or any portion of it without the prior written approval of CBS Assembly. All subleases entered into demising all or any part of the Improvements or the Subject Property shall be expressly subject and subordinate to this Lease. CBS's consent to a sublease of the Subject Property shall not release Tenant from its obligations under the Lease. CBS's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

## **ARTICLE IX USE AND PROTECTION OF THE SUBJECT PROPERTY**

### **Section 9.1 Property As Is - Repairs.**

Tenant 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 CBS as to their condition or as to the use or occupancy which may be made of them. Tenant assumes the sole responsibility for the condition of the improvements located on the Subject Property. The foregoing shall not be deemed to relieve CBS of its general municipal obligations, or of its obligations under Section 3.1 above or under Subsection 9.1(c) below.

### **Section 9.2 Compliance with Laws.**

Tenant shall throughout any term of this Lease, at Tenant'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 CBS of its general obligations to CBS and Borough of Sitka in its municipal capacity.

**Section 9.3 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination.**

Tenant shall promptly notify the Public Works Director of CBS 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.**

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

**Section 9.5 Permits and Approvals for Activities.**

Tenant shall be responsible for obtaining all necessary permits and approvals including food processing for its activities unless otherwise specifically allowed by CBS. Not less than ten (10) days in advance of applying for permits to any public entity other than CBS, Tenant shall provide copies of all permit applications and associated plans and specifications to CBS Director of Public Works to facilitate review by departments of CBS. CBS is not obligated to comment on the permit applications and plans, and the result of any review by CBS does not affect Tenant's obligation to comply with any applicable laws.

**ARTICLE X CBS'S RIGHT TO PERFORM TENANT'S COVENANTS; REIMBURSEMENT OF CBS FOR AMOUNTS SO EXPENDED**

**Section 10.1 Performance of Tenant's Covenants To Pay Money.**

Tenant covenants that if it shall at any time default resulting as condition of the Lease 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 Tenant, then CBS may, but shall not be obligated so to do, and without further notice to or demand upon Tenant and without releasing Tenant from any obligations of Tenant under this Lease, make any other payment in a manner and extent that CBS may deem desirable.

**Section 10.2 CBS's Right To Cure Tenant's Default.**

If there is a default involving the failure of Tenant 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 CBS shall have the right, but shall not be required, to make good any default of Tenant. CBS shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of or to Tenant by reason of bringing materials, supplies and equipment into or through the building during the course

of the work required to be done to make good such default. The obligations of Tenant under this Lease shall remain unaffected by such work, provided that CBS uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business, or other damage to Tenant.

**Section 10.3 Reimbursement of CBS and Tenant.**

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

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

**ARTICLE XI MECHANIC'S LIENS**

**Section 11.1 Discharge of Mechanics' Liens.**

Tenant shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against Tenant'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 Tenant or anyone having a right to possession of the Subject Property or Improvements as a result of an agreement with or the assent of Tenant. If any mechanics' lien shall be filed against the Subject Property, including the Improvements, Tenant shall cause it to be discharged of record within 30 days after the date that Tenant has knowledge of its filing. Failure to comply may subject the Lease to be terminated.

**ARTICLE XII LIEN FOR RENT AND OTHER CHARGES**

**Section 12.1 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 CBS under the provisions of this Lease, and all costs, attorney's fees and other expenses which may be incurred by CBS in enforcing the provisions of this Lease or on account of any delinquency of Tenant 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 Tenant, except the Subject Property, and may be enforced by law and equitable remedies, including the appointment of a receiver.

### **ARTICLE XIII DEFAULT PROVISIONS**

#### **Section 13.1 Events of Default.**

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

- (a) Failure of Tenant 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 CBS to Tenant.
- (b) Failure of Tenant 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 CBS's notice in writing. The notice shall specify the respects in which CBS contends that Tenant has failed to perform any of the covenants, conditions and agreements. With respect to any default which cannot be cured within thirty (30) days, Tenant, or any person holding by, through or under Tenant, 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 60 days.
- (c) The filing of an application by Tenant (the term, for this purpose, to include any approved transferee other than a sublessee of Tenant'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 Tenant 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 60 consecutive days, or if this Lease is taken under a writ of execution.

#### **Section 13.2 Assumption or Assignment of Lease to Bankruptcy Trustee.**

In the event that this Lease is assumed by or assigned to a trustee pursuant to the provisions of the Bankruptcy Reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 et seq.), 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 CBS 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 13.3 Remedies in Event of Default.**

CBS 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 Tenant and each Secured Party and Leasehold Mortgagee of whom CBS has notice (such notice not to be effective unless served on each such person) of the Event of Default, CBS shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) CBS may terminate this Lease. In such an event, CBS 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 Tenant 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 CBS. Any personal property not removed after such termination shall be addressed as provided for in Section 1.3 above.

(b) CBS may terminate Tenant'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 Tenant (except as above expressly provided for) and without terminating this Lease. In such event, CBS 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 CBS (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, CBS may make any repairs, changes, alterations or additions in or to the Subject Property and Improvements that may be reasonably necessary or convenient in CBS's judgment reasonably exercised. If CBS shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property and building are 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 Tenant shall pay to CBS 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, Tenant shall satisfy and pay any deficiency upon demand from time to time. Tenant acknowledges that CBS 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 Tenant shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of CBS. Any personal property not removed after such termination shall be addressed as provided for in Section 1.3 above.

(c) In the event of any breach or threatened breach by Tenant of any of the terms, covenants, agreements, provisions or conditions in this Lease, CBS 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 Tenant's right of possession, whether by lapse of time or at the option of CBS, Tenant will at once surrender possession of the Subject Property and dispose of personal property and Improvements as described in Section 1.3. If possession is not immediately surrendered, CBS may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, using force as may be necessary, without being deemed guilty of any manner of trespass or forcible entry or detainer. CBS may at its option seek expedited consideration to obtain possession if CBS determines that the Lease has terminated as described in the first sentence of this paragraph, and Tenant agrees not to oppose such expedited consideration.

(e) In the event that Tenant 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 Tenant 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, CBS 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, CBS shall have the right to carry out or complete the work on behalf of Tenant without terminating this Lease.

#### **Section 13.4 Waivers and Surrenders To Be In Writing.**

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

### **ARTICLE XIV CBS'S TITLE AND LIEN**

#### **Section 14.1 CBS's Title and Lien Paramount.**

CBS will hold title to the Subject Property.

#### **Section 14.2 Tenant Not To Encumber CBS's Interest.**

Tenant shall have no right or power to and shall not in any way encumber the title of CBS regarding the Subject Property. The fee-simple estate of CBS 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 Tenant. Tenant's interest in the Improvements shall in all respects be subject to the paramount rights of CBS in the Subject Property.

### **ARTICLE XV REMEDIES CUMULATIVE**

#### **Section 15.1 Remedies Cumulative.**

No remedy conferred upon or reserved to CBS 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 CBS may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by CBS. No delay or omission of CBS 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 15.2 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 15.3 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 CBS to declare ended the term granted and to terminate this Lease because of any event of default.

**ARTICLE XVI SURRENDER AND HOLDING OVER**

**Section 16.1 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, Tenant shall peaceably and quietly leave, surrender and deliver the entire Subject Property to CBS, subject to the provisions of Section 1.3, 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, Tenant shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from Tenant to CBS. If the Subject Property is not so surrendered, Tenant shall repay CBS for all expenses which CBS shall incur by reason of it, and in addition, Tenant shall indemnify, defend and hold harmless CBS from and against all claims made by any succeeding Tenant against CBS, founded upon delay occasioned by the failure of Tenant to surrender the Subject Property.

**Section 16.2 Rights Upon Holding Over.**

At the termination of this Lease, by lapse of time or otherwise, Tenant shall yield up immediately possession of the Subject Property to CBS and failing to do so agrees at the option of CBS, to pay to CBS for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times  $1/365^{\text{th}}$  of the aggregate of the Rent paid or payable to CBS during the last year of the term of the Lease. The provisions of this Article shall not be held to be a waiver by CBS 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 Tenant under this Lease.

## **ARTICLE XVII MODIFICATION**

### **Section 17.1 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 CBS and Tenant.

## **ARTICLE XIII INVALIDITY OF PARTICULAR PROVISIONS**

### **Section 18.1 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 XIX APPLICABLE LAW AND VENUE**

### **Section 19.1 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 XX NOTICES**

### **Section 20.1 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 CBS or Tenant, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed: If to CBS at: Municipal Administrator, City and Borough of Sitka, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Tenant, at: the address set out in the Preamble. Each party from time to time may change its address for purposes of receiving declarations or notices by giving notice of the changed address, to become effective seven days following the giving of notice.

### **Section 20.2 Notice to Leasehold Mortgagee and Secured Parties.**

CBS shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from CBS to Tenant 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 CBS or Tenant to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid,

addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to CBS and Tenant.

**Section 20.3 Sufficiency of Service.**

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

**Section 20.4 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 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 XXI MISCELLANEOUS PROVISIONS**

**Section 21.1 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 21.2 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 21.3 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 21.4 Time of Essence as to Covenants of Lease.**

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

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

**Section 22.1 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 XXIII ADDITIONAL GENERAL PROVISIONS**

### **Section 23.1 Absence of Personal Liability.**

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

### **Section 23.2 Lease Only Effective As Against CBS Upon Assembly Approval.**

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

### **Section 23.3 Binding Effects and Attorneys 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 23.4 Duplicate Originals.**

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

### **Section 23.5 Declaration of Termination.**

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

### **Section 23.6 Authority.**

CBS and Tenant 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 23.7 Recordation.**

The parties agree that the Lease will 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 may 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.

\_\_\_\_\_  
Kevin McNamee

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2016, personally appeared before me \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who by signing this agreement, swears or affirms that he is Kevin McNamee and individually and as registered agent, is authorized to sign this document on and does so freely and voluntarily.

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

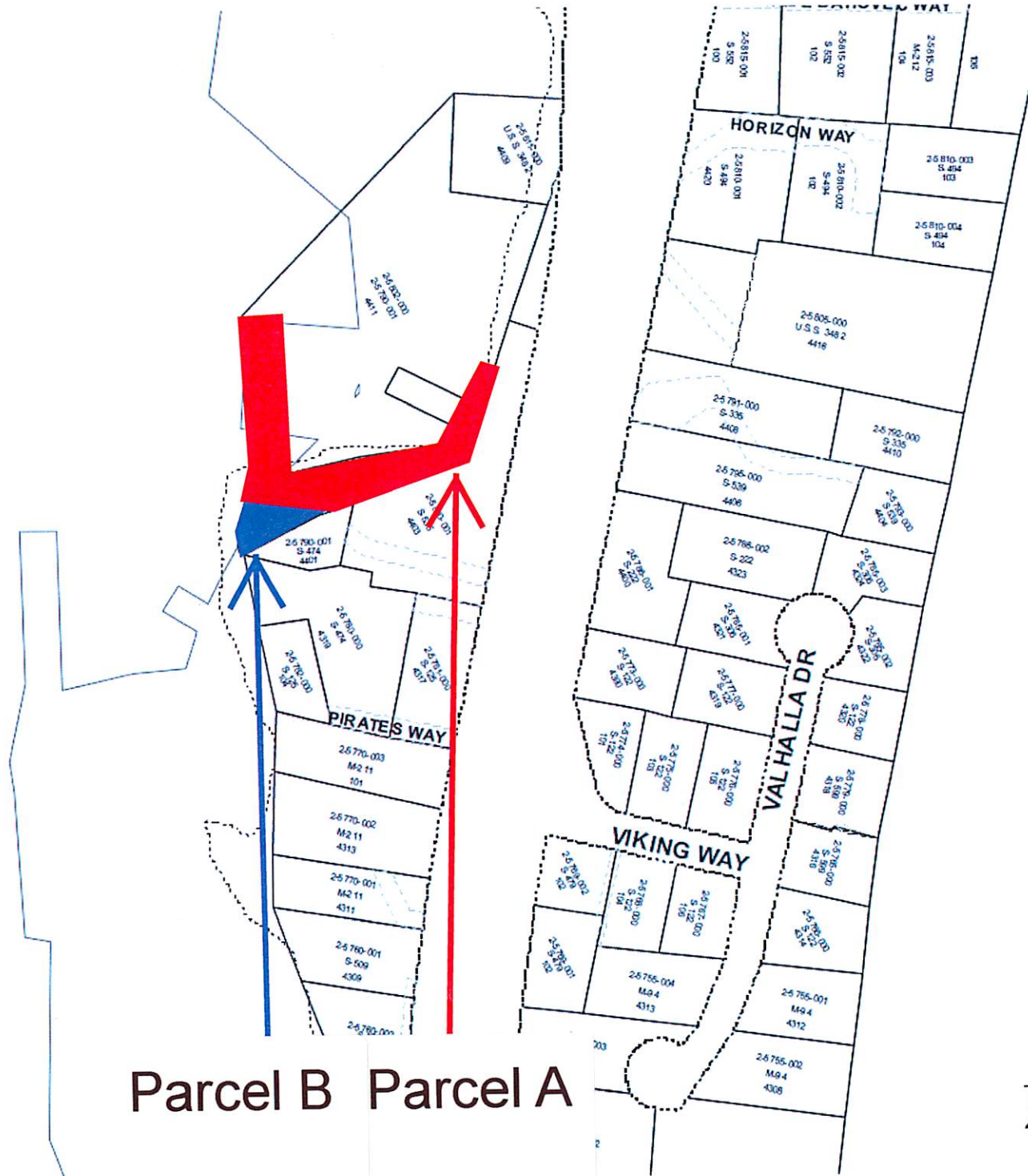
**CITY AND BOROUGH OF SITKA**

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

STATE OF ALASKA            )  
  ) ss.  
FIRST JUDICIAL DISTRICT    )

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public in and for the State of Alaska, personally appeared MARK GORMAN, who is the Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, that he has been authorized by to execute the foregoing document, and does so freely and voluntarily.

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



Parcel B Parcel A

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

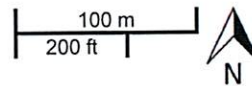




City & Borough of Sitka, Alaska

Selected Parcel: 4401 HALIBUT POINT ID: 25790001

Printed on 8/18/2016 from <http://www.mainstreetmaps3.com/ak/sitka/internal.asp>



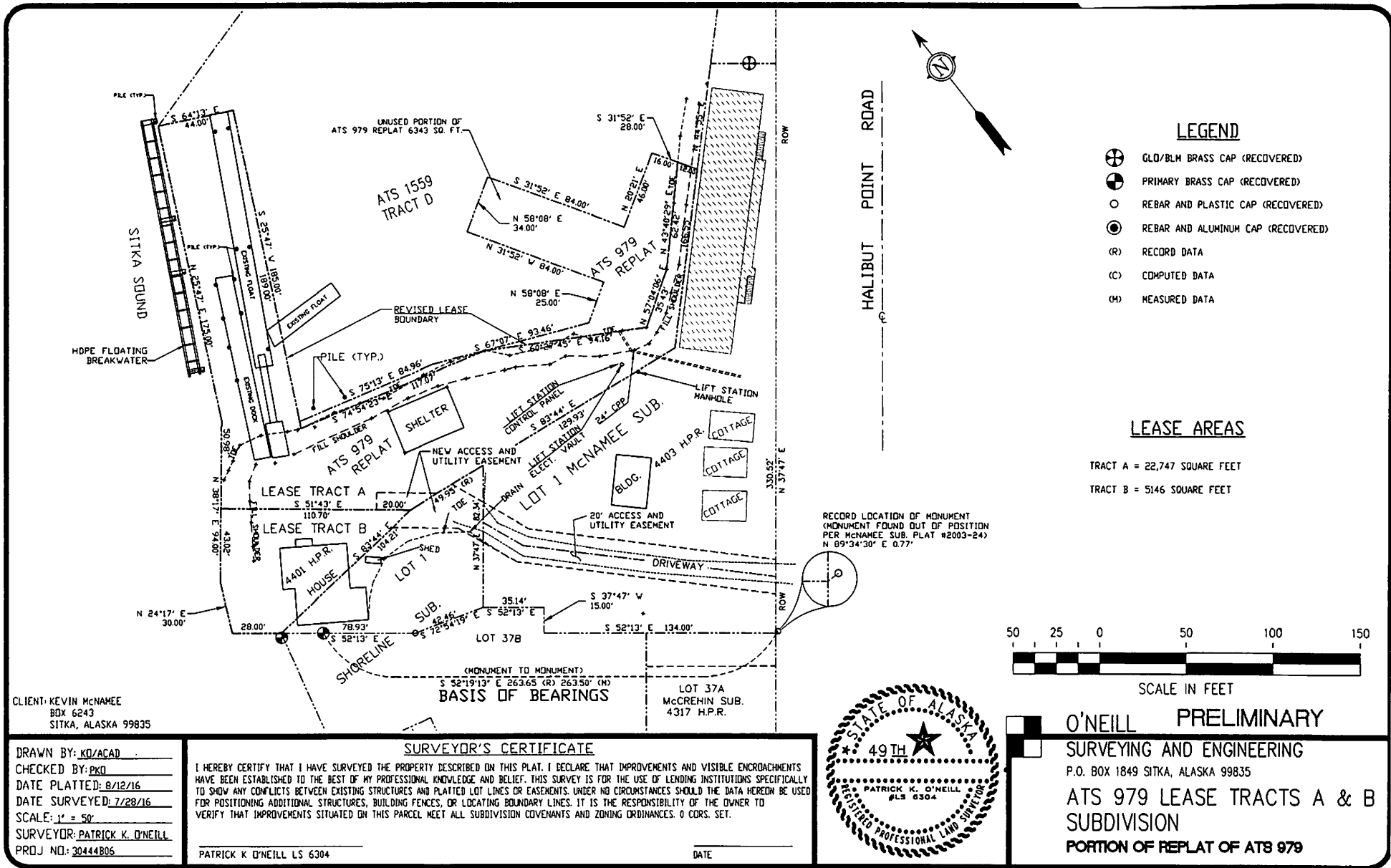
This map is for informational purposes only. It is not for appraisal, description of, or conveyance of land. The City & Borough of Sitka, Alaska and MainStreetGIS, LLC assume no legal responsibility for the information contained herein.

Parcel B

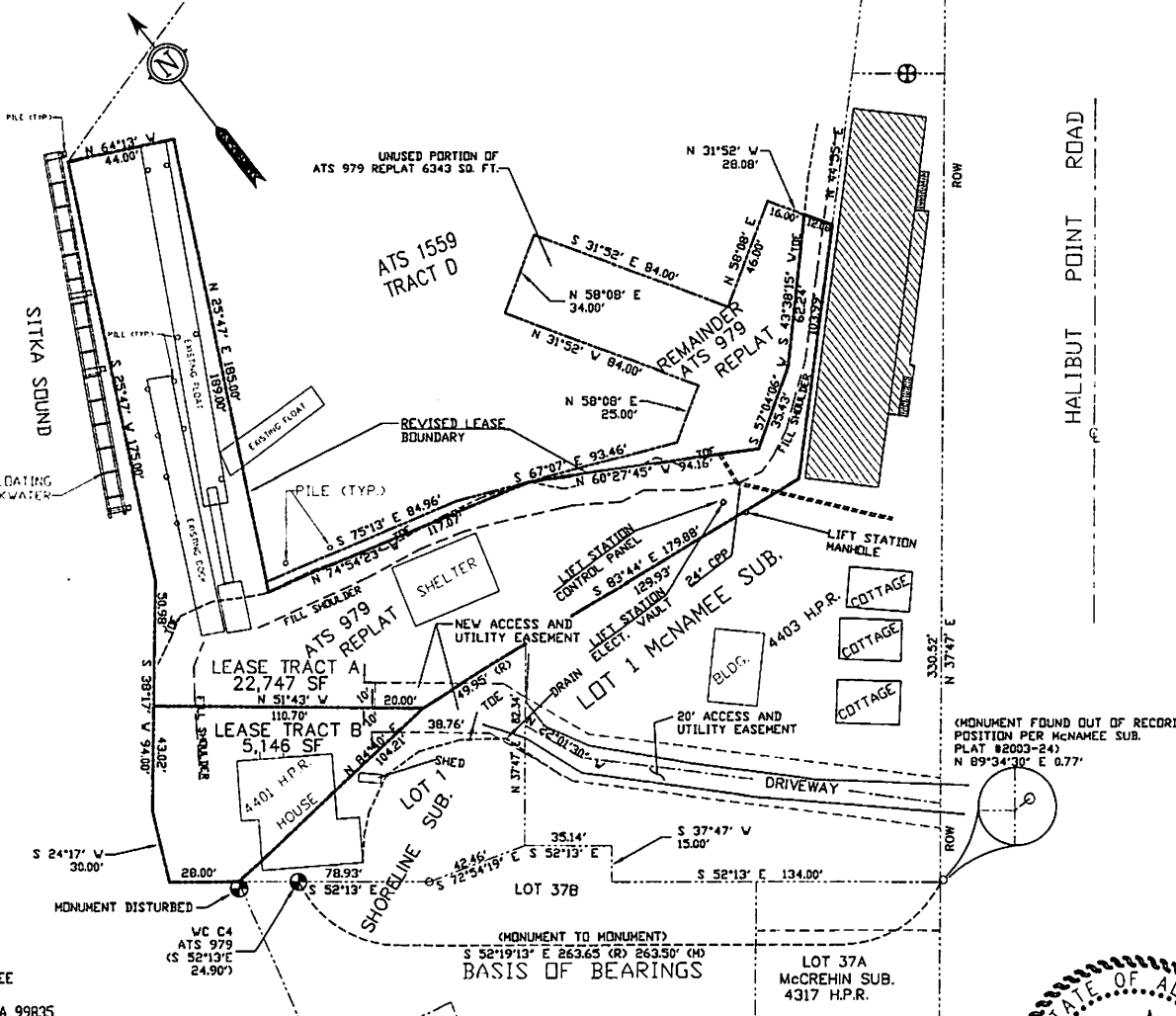
Parcel A

McNamee  
Tideland Lease Request  
4401 Halibut Point Road





**O'NEILL PRELIMINARY**  
SURVEYING AND ENGINEERING  
P.O. BOX 1849 SITKA, ALASKA 99835  
**ATS 979 LEASE TRACTS A & B**  
SUBDIVISION  
PORTION OF REPLAT OF ATS 979



**LEGEND**

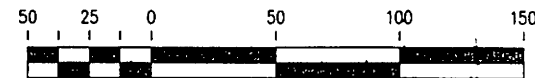
- ⊕ GLD/BLM BRASS CAP (RECOVERED)
- ⊙ PRIMARY BRASS CAP (RECOVERED)
- REBAR AND PLASTIC CAP (RECOVERED)
- ⊗ REBAR AND ALUMINUM CAP (RECOVERED)
- (R) RECORD DATA
- (C) COMPUTED DATA
- (M) MEASURED DATA

**METES AND BOUNDS DESCRIPTIONS**  
**LEASE TRACTS A & B, REPLAT OF ATS 979**

Lease Tracts A & B constitute portions of the Replat of ATS 979, filed March 13, 1986 as Plat #86-6, Sitka Recording District, Alaska, more particularly described as follows:

**LEASE TRACT A**  
 Commencing at the most Southerly corner of Lease Tract B, a point coincident with the most Westerly corner of Lot 1, Shoreline Subdivision (filed as Plat #98-24 in the Sitka Recording District, Oct. 7, 1998), from whence a Brass Cap monument stamped "W.C. ATS 979 C4" bears S 52°13' E 24.90 feet; thence proceeding along the Tract B boundary N 84°40' E 104.21 feet to the corner common with Lease Tract A and the True Point of Beginning of this description; thence along the Tract A boundary S 83°44' E 179.88 feet; thence N 44°55' E 103.99 feet; thence N 31°52' W 12.08 feet; thence S 43°38'15" W 62.24 feet; thence S 57°04'06" W 35.43 feet; thence N 60°27'45" W 94.16 feet; thence N 74°54'23" W 117.07 feet; thence N 25°47' E 189.00 feet; thence N 64°13' W 44.00 feet; thence S 25°47' W 175.00 feet; thence S 38°17' W 50.98 feet; thence S 51°43' E 110.70 feet to the True Point of Beginning, containing 22,747 square feet.

**LEASE TRACT B**  
 Beginning at the most Southerly corner of Lease Tract B, a point coincident with the most Westerly corner of Lot 1, Shoreline Subdivision (filed as Plat #98-24 in the Sitka Recording District, Oct. 7, 1998), the True Point of Beginning of this description, from whence a Brass Cap monument stamped "W.C. ATS 979 C4" bears S 52°13' E 24.90 feet; thence proceeding along the Tract B boundary N 84°40' E 104.21 feet; thence N 51°43' W 110.70 feet; thence S 38°17' W 43.02 feet; thence S 24°17' W 30.00 feet; thence S 52°13' E 28.00 feet to the true point of beginning, containing 5,146 square feet.



SCALE IN FEET

**O'NEILL PRELIMINARY**

**SURVEYING AND ENGINEERING**

P.O. BOX 1849 SITKA, ALASKA 99835

**REPLAT OF ATS 979  
 LEASE TRACTS A & B  
 EXHIBIT DRAWING**



**SURVEYOR'S CERTIFICATE**

I HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY DESCRIBED ON THIS PLAT. I DECLARE THAT IMPROVEMENTS AND VISIBLE ENCROACHMENTS HAVE BEEN ESTABLISHED TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF. THIS SURVEY IS FOR THE USE OF LENDING INSTITUTIONS SPECIFICALLY TO SHOW ANY CONFLICTS BETWEEN EXISTING STRUCTURES AND PLATTED LOT LINES OR EASEMENTS. UNDER NO CIRCUMSTANCES SHOULD THE DATA HEREIN BE USED FOR POSITIONING ADDITIONAL STRUCTURES, BUILDING FENCES, OR LOCATING BOUNDARY LINES. IT IS THE RESPONSIBILITY OF THE OWNER TO VERIFY THAT IMPROVEMENTS SITUATED ON THIS PARCEL MEET ALL SUBDIVISION COVENANTS AND ZONING ORDINANCES, 0 CORRS. SET.

PATRICK K O'NEILL LS 6304

DATE

CLIENT: KEVIN McNAMEE  
 BOX 6243  
 SITKA, ALASKA 99835

DRAWN BY: KO/ACAD  
 CHECKED BY: PKO  
 DATE PLATTED: 11/14/16  
 DATE SURVEYED: 7/28/16  
 SCALE: 1" = 50'  
 SURVEYOR: PATRICK K. O'NEILL  
 PRDJ NO.: 30444B06

30444B06

11/14/16

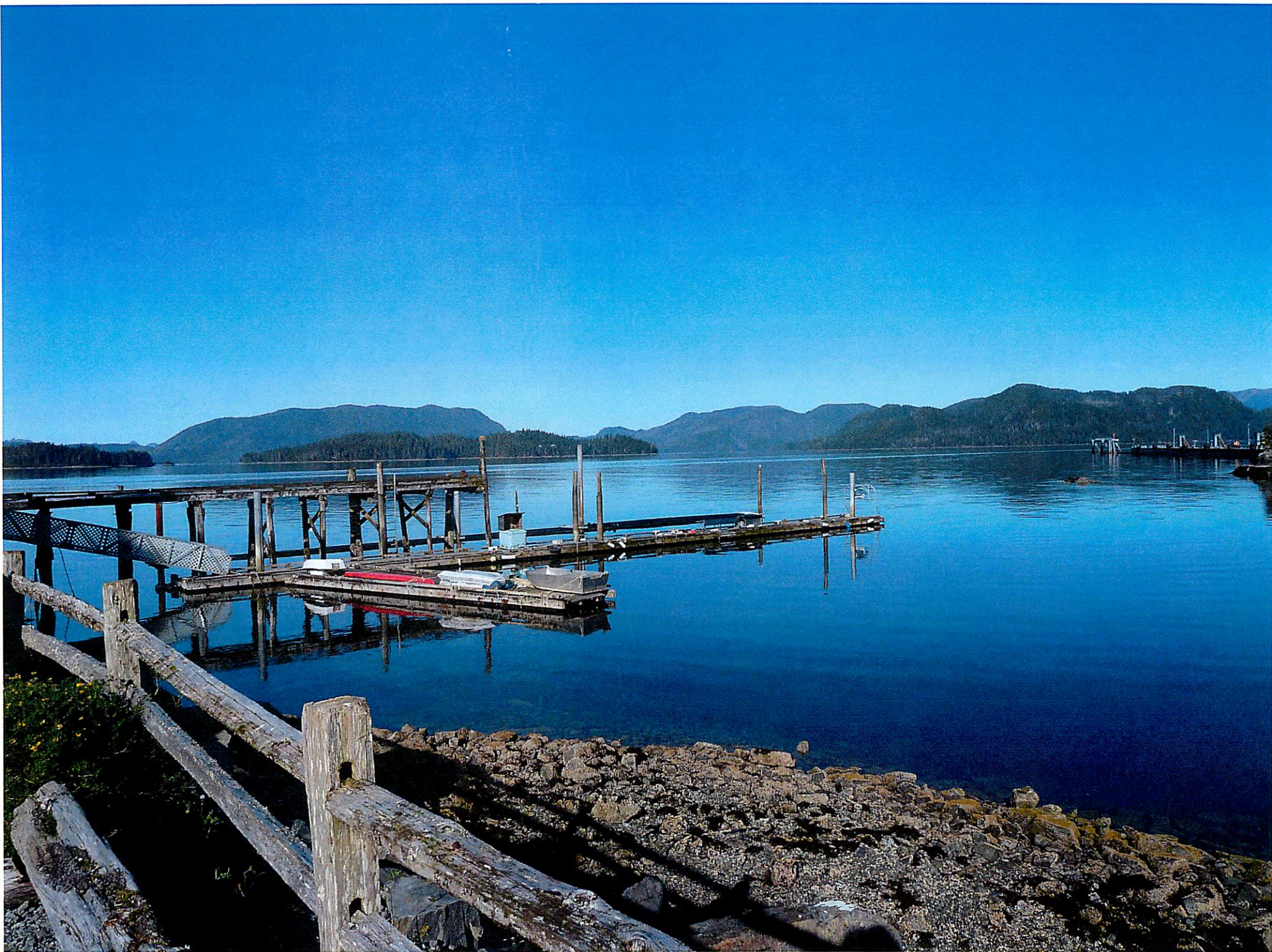
















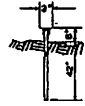






**OWNERSHIP CERTIFICATE**

I, THE UNDERSIGNED, HEREBY CERTIFY THAT I AM THE DIRECTOR, DIVISION OF TECHNICAL SERVICES, AND THAT THE STATE OF ALASKA IS OWNER OF A.T.S. NO. 979. I HEREBY APPROVE THIS SURVEY AND PLAT FOR THE STATE OF ALASKA.  
DATE: 3/7/80  
Director  
DIVISION OF TECHNICAL SERVICES

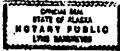


**TYPICAL PRIMARY MONUMENT**

MONUMENTS SET THIS SURVEY CONSISTED OF A 1" DIA. DIAMETER METAL PIPE 20" LONG WITH A 4" FLANGE ON THE BOTTOM. A 3" DIA. METAL MONUMENT CAP WAS PLACED ON TOP.

**NOTARY'S ACKNOWLEDGMENT**

DESCRIBED AND SHOWN BEFORE ME THIS 7th DAY of March for James H. Anderson



James H. Anderson  
NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES 11/1/81

**CERTIFICATE OF APPROVAL BY THE BOARD**

I HEREBY CERTIFY THAT THE REPLAT SHOWN HEREON HAS BEEN FOUND TO CONFORM WITH THE SUBSIDIARY REGULATIONS OF THE CITY AND BOROUGH OF SITKA PLATTING BOARD, AND THAT SAID REPLAT HAS BEEN APPROVED BY THE BOARD OF PLAT RECORDATION, NO. 1007, DATED JANUARY 17, 1980, AND THAT THE PLAT SHOWN HEREON HAS BEEN APPROVED FOR RECORDATION IN THE OFFICE OF THE DISTRICT COURT, EX OFFICIO RECORDOR, SITKA, ALASKA.

ATTEST:  
Clayton O. Johnson  
SECRETARY

**LESSEE CERTIFICATE**

I, THE UNDERSIGNED, HEREBY CERTIFY THAT I AM THE LESSEE AS SHOWN HEREON. I HEREBY APPROVE THIS SURVEY AND PLAT.

DATE: 12/19 1981

WITNESSED BY:  
Monte J. Mamed  
WITNESS

**NOTARY'S ACKNOWLEDGMENT**

DESCRIBED AND SHOWN BEFORE ME THIS 19 DAY of December 1981 for GARY H. EHR

Gary H. Ehr  
NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES 11-6-86

**BEARING OBJECTS**

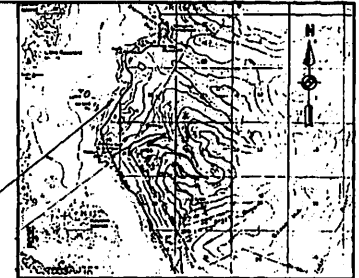
EAST CORNER OF BOAT SHOP BEARS S 10° 01' E, 40.30' FROM MON. 3  
NORTH CORNER OF BOAT SHOP BEARS N 60° 36' W, 23.45' FROM MON. 3  
EAST CORNER OF BOAT SHOP BEARS S 04° 10' W, 30.78' FROM MON. 4  
NORTH CORNER OF BOAT SHOP BEARS S 02° 36' W, 30.35' FROM MON. 4



**BLEVEYER'S CERTIFICATE**

I HEREBY CERTIFY THAT I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION AND THE INSTRUMENTS SHOWN HEREON ACTUALLY USED IN CONNECTION WITH THIS SURVEY AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT.

DATE: 3/24 1981  
Valley  
REGISTERED LAND SURVEYOR



**VICINITY MAP**

USGS QUAD SITKA A-5 & A-4, 1951  
1" = 1 MILE

THIS REPLAT

SOURCE - N.T.S.A. CHART C&O S. 6231  
DATE - 1979

**BASIS OF BEARING**

THE BASIS OF BEARING FOR THIS SURVEY IS THE TRUE LINE BETWEEN CORNER 2, LOT 42 AND N.T.S. LOT 41, U.S.S. 3482, OFFICIALLY REPORTED AS N 82° 15' W.

**NOTES:**

- 1. ALL BEARINGS SHOWN ARE TRUE BEARINGS AS ORIENTED TO THE BASIS OF BEARING.
- 2. ALL DISTANCES SHOWN ARE REDUCED TO HORIZONTAL FIELD DISTANCES.

**LEGEND**

- ⊙ GLO-BLM MONUMENT RECOVERED
- ⊙ PRIMARY BRASS CAP MONUMENT RECOVERED
- ⊙ PRIMARY MONUMENT SET THIS SURVEY

SCALE: 1" = 40'



RECORDED - FILED IN  
SITKA  
DATE: 3/18/81  
BY: AS/DNR-D  
Name: G. H. EHR

DATE OF SURVEY MARCH 18, 1981	NAME OF BLEVEYER STANLEY BLEVEYER, REGISTERED SITKA, ALASKA
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF TECHNICAL SERVICES SITKA, ALASKA	

**REPLAT OF A.T.S. NO. 979**

LOCATED WITHIN PROTRACTED SECTION 8, T 50 S, R 23 E, C. R. N.

DRAWN BY: GED	APPROVAL RECORDED
DATE: 3/28/81	DATE: 3/28/81
SCALE: 1" = 40'	BY: GARY H. EHR

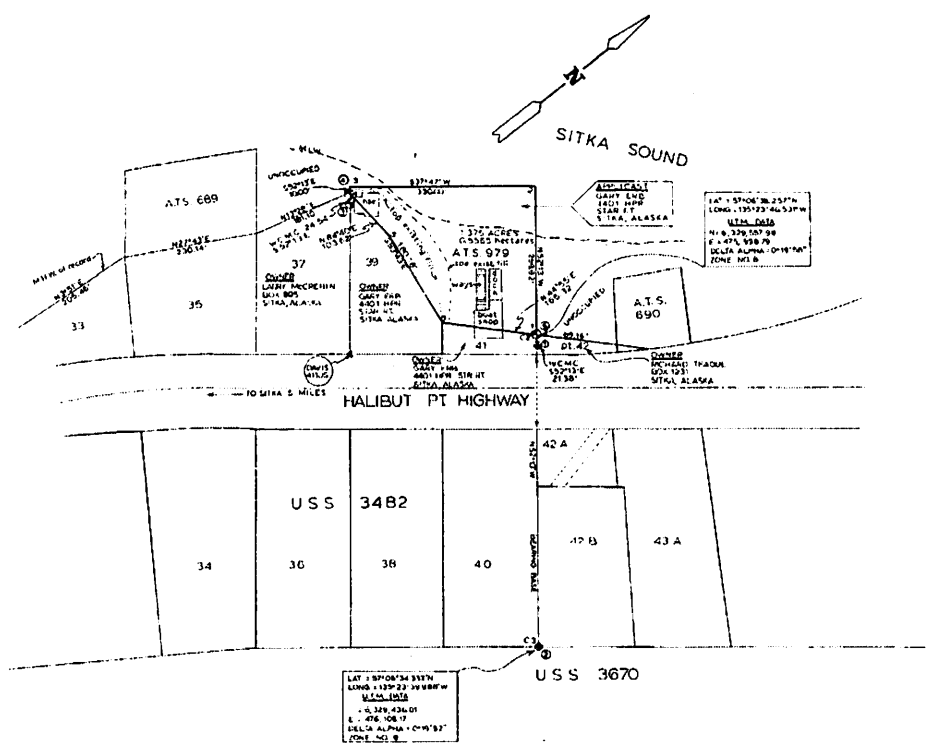
**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

PLAT 86-6

**NOTES**

THE UTM AND METRIC DATA IS BEING SHOWN HEREON FOR INFORMATION PURPOSES ONLY.

TRACT IS SUBJECT TO A 50 FOOT LINEAR PEDESTAL ACCESS EASEMENT 1/4 FEET ALONG THE SEAWARD S.O.D. OF THE LINE OF INDIAN HIGH WATER, AT LESSEE'S OPTION, AND WITH CONCURRENCE OF LESSOR, ALTERNATE REASONABLE ACCESS MAY BE DELINEATED AND PROVIDED FOR ON UPLANDS.



**BASIS OF BEARING**

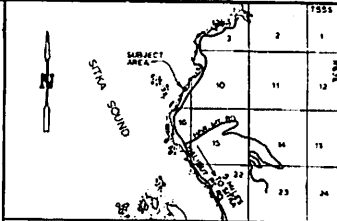
THE BASIS OF BEARING FOR THIS SURVEY IS THE TRUE LINE BETWEEN CORNER NO. 3, LOT 40 AND W.C.M.C. NO. 2, LOT 41, U.S.S. 3482, OFFICIALLY REPORTED AS 452°13'W.

**LEGAL DESCRIPTION OF A.T.S. 979**

A PARCEL OF LAND WITHIN THE FIRST JUDICIAL DISTRICT STATE OF ALASKA, WITHIN PROTRACTED SECTION 9, T55S, R83E; COPPER RIVER MEADAN, AT CORNER NO. 1 LAT. 51°00'30.837"W, LONG. 129°22'46.531"W MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT BRASS CAP MON. (W.C.M.C. NO. 2 OF LOT 41, U.S. SURVEY 3482) THENCE N52°13'W A DISTANCE OF 238 FEET TO THE TRUE POINT OF BEGINNING AND COR. NO. 1 OF THIS DESCRIPTION, THENCE N53°15'W A DISTANCE OF 208.8 FEET TO COR. NO. 2, THENCE 83°47'W A DISTANCE OF 330.00 FEET TO COR. NO. 3, THENCE 53°21'E A DISTANCE OF 1000 FEET TO COR. NO. 4 AND ALSO BEING COR. NO. 1 OF LOT 38 OF THE APPEALED SURVEY, THENCE N84°06' E A DISTANCE OF 102.82 FEET TO COR. NO. 5, THENCE S84°52'E A DISTANCE OF 180.18 FEET TO COR. NO. 6, THENCE N45°52'E A DISTANCE OF 166.32 FEET TO COR. NO. 1 AND THE TRUE POINT OF BEGINNING OF THIS SURVEY. THE ABOVE DESCRIBED TRACT OF TIDELANDS APPLIED FOR CONTAINS 137.5 ACRES (10,556.5 HECTARES).

1 U.S. ACRE = 0.4047 HECTARE



**VICINITY MAP**

U.S.G.S. QUAD, SITKA 1A-51

SCALE 1" = 1 MILE

**LESSEE CERTIFICATE**

I, THE UNDERSIGNED HEREBY CERTIFY THAT I AM THE LESSEE AS SHOWN HEREON. I HEREBY APPROVE THIS SURVEY AND PLAT.

DATE: 7-12-81  
 WITNESSES: Deanna Rogers, James C. Ent  
 Deanna Rogers, Dawn C. Ent

**OWNERSHIP CERTIFICATE**

I, THE UNDERSIGNED, HEREBY CERTIFY THAT I AM THE DIRECTOR, ALASKA DIVISION OF TECHNICAL SERVICES, AND THAT THE STATE OF ALASKA IS OWNER OF ALL RIGHTS AS SHOWN HEREON. I HEREBY APPROVE THIS SURVEY AND PLAT FOR THE STATE OF ALASKA.  
 DATE: 10-28-81  
 James R. Johnson  
 DIRECTOR DIVISION OF TECHNICAL SERVICES

**NOTARY'S ACKNOWLEDGEMENT**

SUBSCRIBED AND SWORN TO BEFORE ME THIS 22<sup>nd</sup> DAY OF OCTOBER, 1981.  
 NOTARY FOR ALASKA  
 MY COMMISSION EXPIRES 12-10-84

**NOTARY'S ACKNOWLEDGEMENT**

I HEREBY CERTIFY THAT I AM REGISTERED TO PRACTICE LAND SURVEYING IN ALASKA AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION AND THE MONUMENTS SHOWN THEREON ACTUALLY EXIST AS LOCATED AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT.

**SURVEYOR'S CERTIFICATE**

DATE: 8-11-81  
 REGISTRAR, P.C. 411D-5  
 REGISTERED LAND SURVEYOR  
 DAVIS & ASSOC. INC.

**LEGEND**

- OLD AND/OR BLM MON RECOVERED
- PRIMARY BRASS CAP WITH SET THIS SURVEY
- ▲ REDDAR & PLASTIC (IF USED)
- ① MONUMENT IDENTIFICATION NUMBER

**MONUMENT ACCESSORIES**

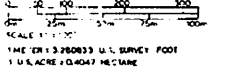
- MON. NO. 1  
S.W. COR. OF HOUSE BEARS N32°05'W A DIST. OF 138 FEET  
S.E. COR. OF HOUSE BEARS S80°06'E A DIST. OF 135 FEET
- MON. NO. 2  
N.E. COR. BOAT SHOP BEARS S70°16'W A DIST. OF 96.9 FEET  
NORTH COR. BOAT SHOP BEARS S49°05'W A DIST. OF 93.8 FEET  
W.E. COR. BOAT SHOP BEARS S66°08'W A DIST. OF 102.6 FEET



81-2031  
 RECEIVED - FILED  
 11/3/81  
 State of Alaska  
 Department of Natural Resources  
 Division of Technical Services  
 Office: Anchorage, Alaska

Plat # 81-42

**BAR SCALE**



ADL NO 65550

PLAT PREPARED: JANUARY 31, 1981	
DATE OF SURVEY: 2 MARCH 1981	NAME OF SURVEYOR: DAVIS & ASSOC INC
BY: J. F. BUCKLE, 1181	DATE: 18 49
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF TECHNICAL SERVICES ANCHORAGE, ALASKA	

ALASKA TIDELANDS SURVEY NO. 979  
 WITHIN PROTRACTED SEC. 9, T55S, R83E, CR.M.

CREATED BY: J.D.	APPROVED: [Signature]
DATE: 21 JAN 1981	DATE: 10/16/81
SCALE: 1" = 100'	FILE NO: ATS-979

**McNamee**  
 Tideland Lease Request  
 4401 Halibut Point Road







# Memorandum

**TO:** Maegan Bosak, Planning and Community Development Director

**FROM:** Wendy Lawrence, Assessing Director *Wendy Lawrence*

**SUBJECT:** City and Borough of Sitka Tidelands Lease Application – ATS 979 (which is adjacent and ancillary to:  
PID: 2-5790-001 – 4401 HPR (6,000sf owned filled tidelands)  
PID: 2-5800-001 – 4403 HPR (31,681 sf owned filled tidelands)

**DATE:** September 7, 2016

The real property described below was inspected on November 30, 2015, for the tideland lease application noted above. The City and Borough of Sitka owns 34,412sf of ATS 979 consisting of a combination of filled and submerged city-owned tidelands addressed as 4401 HPR. This parcel is located due north and directly adjacent to two other filled tideland lots owned by the lease applicants which are noted as 4401 HPR (PID 2-5790-001) and 4403 HPR (PID 2-5800-001 aka Island View Lodge). Island View Lodge is owned and operated by the lease applicants, and this leased parcel is necessary and ancillary to this business. This leased parcel contains floating docks and rock fill area which is used for guest parking and dock access.

The applicant is requesting a lease renewal of 27,893 square feet of ATS 979 outlined as Parcels A & B within the lease application. Parcel A has been classified to consist of approximately 12,322sf of filled tidelands, 3,525sf of sloping tidelands, and 6,900sf of submerged tidelands. Parcel B consists of 5,146sf of tidelands classified as filled for this valuation.

Tidelands within the City and Borough of Sitka are valued according to their classification and upland land modeling, with value ranges for uplands at \$7.70-\$25.85/sf. Upland and filled tidelands are valued according to the regular land modeling of the area, sloping tidelands are valued at thirty percent of the upland rate, and submerged tidelands are valued at fifteen percent of the upland rate. This standard of valuation is used throughout assessment departments in Alaska, with price variances according to upland land values. This property falls within the lower end of this range with the following per square foot prices: \$7.82/sf per upland/filled, \$2.35/sloping, and \$1.17/submerged.

**Recommended conclusion of value is as follows: land modeling for the Halibut Point Rd-North area yields an assessed valuation of \$152,900 for this parcel, on which the annual lease rate shall be determined according to CBS code.**

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road



## Samantha Pierson

---

**From:** Lindsey Vilandre  
**Sent:** Thursday, August 18, 2016 2:11 PM  
**To:** Samantha Pierson  
**Subject:** Re: McNamee Tideland Lease

**Good Afternoon,**

**The current payment is \$2,415.00 per year. Yes he paid in 2015 for a year. Next billing is in October of this year.**

**Thank you  
Have a great day  
Lindsey ☺**

---

**From:** Samantha Pierson  
**Sent:** Thursday, August 18, 2016 9:36:12 AM  
**To:** Lindsey Vilandre  
**Subject:** McNamee Tideland Lease

Lindsey,

Could you tell me the current payment amount for Kevin McNamee's tideland lease at 4403 Halibut Point Road, and if he is current on his payments?

*Sam*

Samantha Pierson  
Planner I  
City and Borough of Sitka  
100 Lincoln Street  
Sitka, AK 99835  
(907) 747-1814

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

in significant additional rain runoff on the adjacent property;  
c. The granting of the variance furthers an appropriate use of the property, specifically, by creating safe access for a single-family home.

Motion PASSED 4-0.

Hughey/Windsor moved to APPROVE a variance request for 109 Darrin Drive. The variance is for the reduction of the front setback from 20 feet to 5 feet and the side setback from 8 feet to 2 feet for the construction of stairs and rails. The property is also known as Lot 5 Darrin Subdivision. The request is filed by Cory and Brenna Picotte. The owner of record is Cory and Brenna Picotte.

Motion PASSED 4-0.

G

Public hearing and consideration of a tideland lease renewal application filed by Kevin McNamee for tidelands adjacent 4401 Halibut Point Road. The property is also known as a portion of ATS 979. The request is filed by Kevin McNamee. The owner of record is the City and Borough of Sitka.

Scarcelli reviewed the request for tideland lease renewal. The requested term is for 50 years. The lease payment would approximately triple from the current payment, according to a valuation provided by the municipal assessor. The lease renewal would allow a currently operating business to continue these operations.

Pohlman asked about the lease portion that is not being renewed. Pohlman stated concern that the unleased portion be protected and not polluted. Scarcelli stated that it would be unlikely that the unleased portion would be leased by another party, without the addition of an easement. Hughey stated that public access to the unleased portion would be limited. Scarcelli stated that a condition of approval could be the inclusion of a clause preserving public access to the tidelands. Pohlman stated that the land use and comprehensive plan process have addressed not disposing of land in a manner that leaves small unusable parcels left. Scarcelli stated that this is the process prescribed by code. While staff is working on a future policy and code process, absent a moratorium, this is the current process in effect. Hughey stated that the parcel should remain in one piece, and it is not logical to exclude the third portion.

Kevin McNamee pointed to the concept plan and explained the request. The portion that he requests to not rent was used by the prior owner to launch boats that he built. McNamee stated that he wanted to separate the residence from the business so that he could possibly sell the business in the future. McNamee stated that the surveyor followed the toe line.

Scott Saline stated that this request is similar to the Petro Marine lease. Petro is only leasing what their float sets on, and it could be argued that Petro's lease portion will block access to some municipal tidelands.

Hughey stated that he better understands the request. Pohlman asked if others along Halibut Point Road could stop paying for leases and still use the waterfront as a public access. Hughey stated that he doesn't believe there is useable land on the unleased portion, and does not see a need to ensure public access to that portion. Pohlman stated that environmental effects could still arise from the U-shaped lease. Pohlman stated that humans tend to take

better care of things that they buy or lease than when they do not have any vested interest. Spivey stated that boat owners are responsible for cleaning up spills they cause regardless of where the spills result.

Hughey/Windsor moved to **RECOMMEND** preliminary approval of the proposed tideland lease adjacent to 4401 Halibut Point Road by Kevin McNamee.

Motion **PASSED 4-0**.

**H**

Public hearing and consideration of a variance request for 424 Katlian Avenue. The request is for the reduction of the side setbacks from 8 feet to 0 feet, the reduction of the front setback adjacent Kogwanton Street from 20 feet to 8 feet, the reduction of the front setback adjacent Katlian Street from 20 feet to 18 feet, substandard parking, substandard lot size, and substandard lot width for the construction of a new house and ice shop. The property is also known as Lot 50 Block 2 US Survey 2542 A&B. The request is filed by Scott Saline. The owner of record is Scott Saline.

Scarcelli stated that the applicant received a variance approximately one year ago; however, substantial construction did not occur within one year and the site plan and gross square footage of the structure changed, requiring a new variance approval. The lot is zoned Waterfront but is surrounded on 3 sides by R-1 residential lots. Pierson stated that Historic Preservation Commission heard the item at last week's meeting and voted 4-0 to recommend the project. Scarcelli stated that the parking variance is a judgement call for the commission to make. Scarcelli read a letter of objection by Allen Bell, Sitka Tribe of Alaska's attorney, on behalf of a tribal citizen who owns a restricted deed property. Scarcelli stated that Bell did not identify any detrimental effects, but said that closer setbacks could result in impacts to noise, fire, and traffic. Scarcelli stated that building requirements are more strenuous when building within 5 feet of the property line. Scarcelli stated that staff recommend approval.

Scott Saline stated that he intends to have 19 feet along Katlian but he's requesting 18 feet in case of error when the foundation is poured. Hughey asked about the appearance of the building, and Saline stated that he intends to make it fit in with the neighborhood. Windsor asked about the height of the proposed structure. Scarcelli stated that it is 35 feet high, has a footprint of 28 feet by 18 feet, and results in a 33% building lot coverage on an approximately 1500 square foot lot.

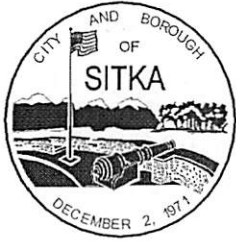
Windsor stated that the proposed structure would be an improvement on the lot.

Windsor/Pohlman moved to **APPROVE** and adopt findings as discussed in the staff report.

**Required Findings for Variances Involving Major Structures or Expansions.**

**Before any variance is granted, it shall be shown:**

- a) That there are special circumstances to the intended use that do not apply generally to the other properties, specifically, that the lot is one-quarter of the minimum lot size in the zone;
- b) The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel, specifically, the ability to economically develop a



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

*Coast Guard City, USA*

## Planning and Community Development Department

Date: September 14, 2016

From: PCDD Staff

To: Planning Commission

Re: McNamee Tideland Lease Renewal Request

---

### GENERAL INFORMATION

Applicant: Kevin McNamee

Property Owner: City and Borough of Sitka

Property Address: Adjacent 4401 Halibut Point Road

Legal Description: 27,893 of ATS 979

Parcel ID Number: Adjacent to 2-5790-001 & 2-5800-001

Size of Existing Lot: 34,412 square feet

Zoning: C-2 General Commercial

Existing Land Use: Commercial

Utilities: City utilities

Access: Halibut Point Road and by water

Surrounding Land Use: Commercial and residential

### MEETING FLOW

- Report from Staff
- Applicant comes forward
- Applicant identifies him/herself – provides comments
- Commissioners ask applicant questions
- Staff asks applicant any questions
- Floor opened up for Public Comment
- Applicant has opportunity to clarify or provide additional information
- Comment period closed - brought back to the board
- Findings
- Motion of recommendation

## **ATTACHMENTS**

Attachment A: Vicinity Map  
Attachment B: Aerial Vicinity Map  
Attachment C: Zoning Map  
Attachment D: Survey  
Attachment E: Parcel Pictures  
Attachment F: Application  
Attachment G: Current Lease  
Attachment H: Mailing List  
Attachment I: Proof of Ownership  
Attachment J: Proof of Payment

## **PROJECT DESCRIPTION**

Kevin McNamee approached the Planning and Community Development Department with a request to renew a lease of tidelands adjacent 4401 Halibut Point Road for 50 years. The request includes 27,893 square feet of ATS 979, divided into two tracts, for the purpose of continuing operations at Island View Lodge.

Following the Planning Commission meeting, the request will be presented to the Assembly for preliminary approval. After the Assembly grants preliminary approval, the proposal will return to Planning Commission for a final recommendation of approval. A final lease ordinance will be authorized by the Assembly.

## **BACKGROUND**

In 1986, the State of Alaska leased ATS 979, approximately 0.79 acres of tidelands, to Gary Erb for \$2300 per year. In 1997, the State of Alaska transferred the tidelands to the City and Borough of Sitka, so CBS became Erb's landlord. In 2003, Erb sold the upland property, 4401 Halibut Point Road, to Kevin and Tina McNamee. At this time, Erb also transferred the tideland lease to Mr. and Mrs. McNamee. The current lease amount is \$2415 per year. McNamee is current on lease payments. The current lease expires September 30, 2016.

McNamee requests to lease two portions of the prior lease tract, and does not wish to lease a third portion. Parcel A is a 27,893 square foot portion which houses an existing float and a shelter. Parcel B is a 5146 square foot portion that contains approximately half of the main house. The applicant does not wish to lease a third portion of 6343 square feet. McNamee requests a 50 year lease for Parcel A and Parcel B.

McNamee has informally requested to purchase the tidelands; however, due to the details of the tidelands conveyance, CBS is not permitted to sell ATS 979 tidelands.

A competitive bid process will not be required, as McNamee is the upland property owner.

No city staff have expressed concern about the proposed tideland lease.

## **ANALYSIS**

**Project / Site:** The proposed tidelands are immediately adjacent 4401 Halibut Point Road. It is approximately 27,893 square feet of occupied submerged tidelands that are next to the current Island View Lodge.

**Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses:** Same amount of vehicular traffic as currently observed. No increase is expected.

**Amount of noise to be generated and its impacts on surrounding land use:** As the proposed lease is a renewal, noise would be similar to present use.

**Odors to be generated by the use and their impacts:** Odors from gas and boat exhaust should be anticipated. No increase expected.

**Hours of operation:** A lodge is a 24 hour operation.

**Effects of vehicular and pedestrian safety:** No concerns.

**Ability of the police, fire and EMS personnel to respond to emergency calls on the site:** Same as present.

**Effects of signage on nearby uses:** No change to signage.

**Conformity with Comprehensive Plan:** Conforms to Comprehensive Plan Section 2.6.2(K), which supports facilities to accommodate visitors that do not impact surrounding residential neighborhoods any more than typical residential uses, by facilitating the continued operation of a long-standing lodge.

## **RECOMMENDATION**

It is recommended that the Planning Commission adopt staff's analysis and move to recommend preliminary approval of the tideland lease adjacent 4401 Halibut Point Road.

If the Planning Commission recommends preliminary approval of the proposed tideland lease renewal the process would be: 1) preliminary Assembly approval, 2) recommendation of Planning Commission approval, 3) land lease ordinance by Assembly.

### **Recommended Motions:**

- 1) I move to recommend preliminary approval of the proposed tideland lease adjacent to 4401 Halibut Point Road by Kevin McNamee.



# CITY AND BOROUGH OF SITKA

PLANNING AND COMMUNITY DEVELOPMENT DEPAR  
LAND MANAGEMENT APPLICATION FORM

Attachment F

1. Request projects at least FOURTEEN (14) days in advance of next meeting date.
2. Review guidelines and procedural information.
3. Fill form out completely. No request will be considered without a completed form.
4. Submit all supporting documents and proof of payment.

**APPLICATION FOR:**

TIDELAND

LEASE

LAND

PURCHASE

**BRIEF DESCRIPTION OF REQUEST:** Applying to renew tideland ~~use~~ lease for another 50 years. Requesting to separate the portion that falls under the house (4401 HPR) and the parking/dock section. See drawing attached for detail on lease tract A & B.

**PROPERTY INFORMATION:**

CURRENT ZONING: C-2 ARE YOU THE UPLAND PROPERTY OWNER? Yes

CURRENT LAND USE(S): Residential/Commercial PROPOSED LAND USES (if changing): Same

**APPLICANT INFORMATION:**

PROPERTY OWNER: Kevin McNamee

PROPERTY OWNER ADDRESS: 4403 HPR Cabin "D" 99835

STREET ADDRESS OF PROPERTY: 4401/4403/4405 HPR SITKA, AK. 99835

APPLICANT'S NAME: Kevin McNamee

MAILING ADDRESS: Box 6243 SITKA, AK. 99835

EMAIL ADDRESS: Kevin-mcnamer@yahoo.com DAYTIME PHONE: (907) 738-6541

**PROPERTY LEGAL DESCRIPTION:**

TAX ID: 2-5800-001 LOT: \_\_\_\_\_ BLOCK: \_\_\_\_\_ TRACT: \_\_\_\_\_

SUBDIVISION: \_\_\_\_\_ US SURVEY: ATS 979

**OFFICE USE ONLY**

COMPLETED APPLICATION		SITE PLAN	
NARRATIVE		CURRENT PLAT	
FEE		OWNERSHIP	



**REQUIRED SUPPLEMENTAL INFORMATION:**

- Completed application form
- Narrative
- Site Plan showing all existing and proposed structures with dimensions and location of utilities (See Plat).
- Proof of filing fee payment (See S.P.)
- Proof of ownership (If claiming upland preference)
- Copy of current plat

**CERTIFICATION:**

I hereby certify that I desire a planning action in conformance with Sitka General Code and hereby state that all of the above statements are true. I certify that this application meets SCG requirements to the best of my knowledge, belief, and professional ability. I acknowledge that payment of the review fee is non-refundable, is to cover costs associated with the processing of this application, and does not ensure approval of the request. I understand that public notice will be mailed to neighboring property owners and published in the Daily Sitka Sentinel. I further authorize municipal staff to access the property to conduct site visits as necessary.



Applicant



Date

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road



Consent to Assignment

The City and Borough of Sitka, a municipal corporation of 100 Lincoln Street, Sitka, Alaska 99835 as Successor Lessor, pursuant to a transfer to the Successor Lessor from the State of Alaska DNR, hereby consents to the assignment by Assignor above to Assignee above of the right, title and interest of Gary H. Erb in said lease (ADL No. 6550) recorded April 6, 1987 in Book 77 at Page 718, the following parcel of land described as follows:

Alaska Tidelands Survey 979, located within protracted Section 9, township 55 South, Range 63 East, Copper River Meridian, according to Plat No. 86-6, Sitka Recording District, First Judicial District, State of Alaska.

Dated this 6<sup>th</sup> day of August, 2003

*All terms of original lease apply to McNamee.*

CITY AND BOROUGH OF SITKA



HUGH BEVAN  
ITS:

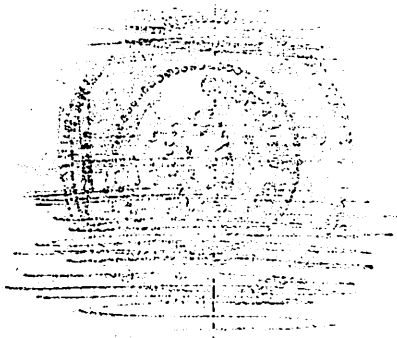
On this day personally appeared before me THE CITY AND BOROUGH OF SITKA, by and through it's City Administrator, ~~Gary Paxton~~ <sup>HUGH BEVAN</sup>, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed as in his official capacity as the duly authorized agent of, and as the free and voluntary act and deed of the City and Borough of Sitka, for the uses and purposes therein mentioned.

Given under my hand and official seal this 6<sup>th</sup> day of August, 2003.



Notary Public in and for Alaska

My Commission expires: 4-15-07



**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

**Assignment of Lease**

This assignment is made this \_\_\_\_ day of \_\_\_\_\_, 2003 by and between Gary H. Erb and Ann C. Erb of 3820 Q Avenue, Anacortes, WA 98221 and Kevin McNamee and Tina McNamee of P.O. Box 6243, Sitka, Alaska 99835

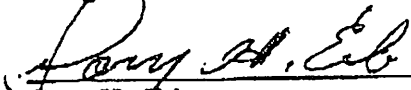
In consideration of the sum of Ten dollars (\$10.00) and other valuable consideration, receipt of which is hereby acknowledged, the Assignor hereby assigns to the Assignee all rights, title and interest, held by Assignor in a certain Tidelands Lease Agreement, being ADL No. 65550, dated October 1, 1986, wherein Gary H. Erb is the lease holder and the City and Borough of Sitka is the Lessor, covering the following property:

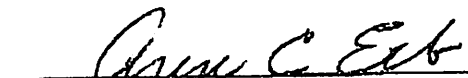
Alaska Tidelands Survey 979, located within protracted Section 9, Township 55 South, Range 63 East, Copper River Meridian and contains .79 acres more or less, according to the survey plat filed in the Sitka Recording District, on March 13, 1986 as Plat 86-6, First Judicial District, State of Alaska.

The parties agree that this assignment is made for the purpose of allowing Assignees, their heirs and assigns for the remainder of the above mentioned term, to have and enjoy all rights of possession and use, and to undertake all responsibilities and obligations, which might otherwise flow to or be incumbent upon the Assignor under said lease, subject to the rents, covenants, conditions and provisions therein stated.

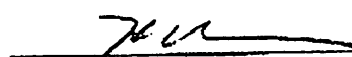
If at any time a default shall be made by the Assignees in payment of any sum due hereunder upon that Deed of Trust for security purposes between the parties of even date, it shall be lawful for the Assignor to foreclose thereunder as permitted by law. The Assignor may maintain such other remedies as the law and this instrument may afford.

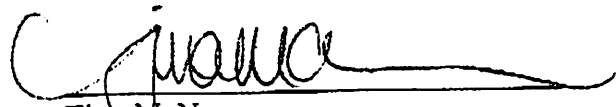
Assignor:

  
\_\_\_\_\_  
Gary H. Erb

  
\_\_\_\_\_  
Ann C. Erb

Assignee:

  
\_\_\_\_\_  
Kevin McNamee

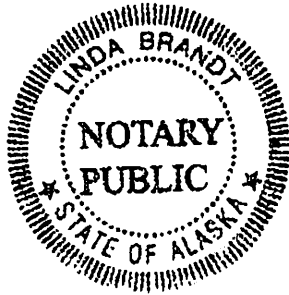
  
\_\_\_\_\_  
Tina McNamee

**McNamee**  
Tidelands Lease Request  
4401 Halibut Point Road

STATE OF ALASKA )  
 ) ss,  
First \_\_\_\_\_ Judicial District )

THIS IS TO CERTIFY that on this 7th day of April, 2003, before me the undersigned Notary Public, personally appeared Kevin McNamee and Tina McNamee known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and they acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein set forth.

WITNESS my hand and official seal.

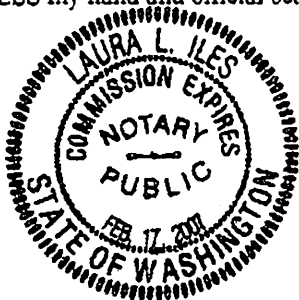


Linda Brandt  
Notary Public in and for Alaska  
My commission expires: 6/07/2006

STATE OF WASHINGTON )  
 ) ss:  
County of Skagit )

THIS IS TO CERTIFY that on this 31st day of March, 2003, before me the undersigned Notary Public, personally appeared Gary H. Erb and Ann C. Erb, individually known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and they acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein set forth.

WITNESS my hand and official seal.



Laura L. Iles  
Notary Public in and for Washington  
My commission expires: 2-17-07

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

ATS 979

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**

SOUTHEAST REGIONAL OFFICE  
DIVISION OF LAND

400 WILLOUGHBY AVENUE, SUITE 400  
JUNEAU, ALASKA 99801  
PHONE: (907) 465-3400  
FAX: (907) 586-2954

August 20, 1997

Gary Erb  
3820 Q. Ave.  
Anacortes, WA 98221

Re.: Transfer of Tideland Lease **ADL 65550** to the City and Borough of Sitka


Dear Lessee:

This is to inform you that the above identified tideland lease has been transferred to the City and Borough of Sitka. This makes the City and Borough of Sitka your new landlord and all responsibilities and obligations for your lease are now due to the City and Borough of Sitka.

You will no longer receive a State courtesy billing notice and timeliness of payment will have to be observed by you. We thank you for your business with the State of Alaska and wish you a successful partnership with the new landowner.

Sincerely,

Andrew W. Pekovich,  
Southeast Regional Manager

by:   
Elizaveta H.C. Shadura  
Natural Resource Manager

cc: City and Borough of Sitka

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

STATE OF ALASKA Sitka Recording District  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND AND WATER MANAGEMENT  
Pouch 7-005  
Anchorage, Alaska 99510

ADL No. 65550

**LEASE AGREEMENT**

This Lease Agreement is made and entered into this 1st day of October, 1986, between the State of Alaska, by and through the Director of the Division of Land and Water Management with the consent and concurrence of the Commissioner of Natural Resources (hereinafter referred to as "the Lessor"), and Gary H. Erb

whose address is 4401 Halibut Point Road, Sitka, Alaska 99835

(hereinafter referred to as "the Lessee").

**WITNESSETH:**

WHEREAS, the Lessor has undertaken the necessary administrative actions under applicable laws and regulations to fully authorize and enable the lease of the Parcel described herein, which is acknowledged by the Lessee by his signature hereto;

WHEREAS, the Lessee is aware of the provisions of Title 38, Alaska Statutes, Title 11, Alaska Administrative Code, and other applicable laws, regulations, and ordinances, and fully understands the duties and obligations of the Lessee under this Lease, and the rights and remedies of the Lessor,

NOW THEREFORE, the Lessor and the Lessee, in consideration of the mutual covenants and conditions stated in this Lease, agree as follows:

The Lessor agrees to lease to the Lessee the following parcel of land (hereinafter referred to as "the Parcel") which is situated in the State of Alaska and is described as follows:

Alaska Tidelands Survey 979, located within protracted Section 9, Township 55 South, Range 63 East, Copper River Meridian and contains .79 acre more or less, according to the survey plat filed in the Sitka Recording District on March 13, 1986 as plat 86-6.

EXCEPTING AND RESERVING THEREFROM, to the Lessor and its assigns during the term of this Lease, the following specific interests, which shall be in addition to and not in derogation of any general reservations to the Lessor which are required by law and which may be stated elsewhere in this Lease:

Subject to all platted easements and reservations and further subject to the Special Stipulations noted on Attachment A and made a part of this lease agreement.

TO HAVE AND TO HOLD the said demised premises for a term of thirty ( 30 ) years commencing on the 1st day of October, 19 86 and ending at 12 o'clock midnight on the 30th day of September, ~~XX~~ 2016, unless sooner terminated as hereinafter provided.

The Lessee shall pay to the Lessor rental as follows: Equal annual payments, in advance, on or before the \_\_\_\_\_ day of \_\_\_\_\_ of every year during said term at the rate of two thousand three hundred dollars (\$ 2,300.00 ) per annum, such annual rental payments to be subject to adjustment following expiration of the initial 25-year period of this lease and at each 10-year period thereafter pursuant to AS 38.05 as enacted, or as may be hereafter amended.

It is agreed that the covenants, terms and agreements herein contained shall be binding upon the successors and assigns of the respective parties hereto.

THE LESSOR AND THE LESSEE FURTHER COVENANT AND AGREE AS FOLLOWS:

1. Use of Parcel. The Lessee shall use and occupy the Parcel in compliance with all applicable laws, regulations, ordinances, and orders which a public authority has promulgated or may promulgate, including those of a building or zoning authority and those relating to pollution and sanitation control. The Lessee shall not permit any unlawful occupation, business, or trade to be conducted on the Parcel. The Lessee shall properly locate himself and his improvements on the Parcel, and shall not commit waste of the Parcel, whether ameliorated or otherwise. Notwithstanding such laws, regulations, ordinances, and orders, the Lessee shall maintain the Parcel in a reasonably neat and clean condition, and take all prudent precautions to prevent or suppress pollution of the ground, surface water, air, or land, and to prevent or suppress grass, brush, or forest fires, and to prevent erosion or destruction of the land.

2. Permanent Improvements. The Lessee must within 90 days of completion of any site improvements including, but not limited to, structural improvements, clearing, leveling, excavation, and backfill, file with the Lessor adequate and reasonable documentation of such improvements, setting forth all applicable costs and quantities. Failure to provide such documentation will result in loss of credit for such improvements in determination of the original condition of the Parcel for reappraisal purposes.

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

3. Encumbrance of Parcel. The Lessee, during the term of this Lease, shall not encumber or cloud the Lessor's title to the Parcel, or any portion thereof, nor enter into any lease, easement, or other obligation of the Lessor's title without the prior written consent of the Lessor; and any such act or omission, without the prior written consent of the Lessor, shall be void against the Lessor.

4. Assignment of Parcel. The Lessee may not assign or sublet the Parcel, without the prior written approval of the Lessor. The Lessor may approve such assignment or subletting if the Lessor finds it to be in the best interest of the State. No assignment or subletting of the Parcel shall be approved until the assignee agrees to be subject to and governed by the provisions of this Lease in the same manner as the original Lessee. No such assignment or subletting will be effective until approved by the Lessor in writing. No assignment or subletting of the Parcel, or any portion thereof, by the Lessee shall annul the Lessee's obligation to pay the rent herein required for the full term of this lease. Except as provided in this lease, no subdivision of the leasehold interest, including any exposed airspace thereon, shall occur.

5. Denial of Warranty Regarding Conditions. The Lessor makes no warranty, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the Parcel, to include, without limitation, the soil conditions, water drainage, natural or artificial hazards which may exist, or the profitability or fitness of the Parcel for any use.

6. Agreement to Terms of Lease Documents. (a) The Lessor and the Lessee agree and recognize that each of the covenants and conditions in this Lease and any attachments thereto are merged and incorporated into this agreement and shall be binding upon themselves and upon their respective successors and assigns and shall inure to their benefit. The Lessor and the Lessee further agree and recognize that this Lease shall be conditioned upon satisfactory performance by the Lessor and the Lessee of all covenants contained herein.

(b) If all or part of said Parcel has been tentatively approved, but not yet patented, by the United States to the Lessor, then this Lease shall be conditioned upon receipt by the Lessor of such patent. If for any reason the Lessor does not receive patent, any rental payments made to the Lessor under this Lease will not be refunded. Any prepaid lease rentals on lands to which patent is denied the Lessor shall be refunded to the Lessee of record and any properly recorded lienholder, if any, jointly. The money refunded shall, however, be limited to the prorata portion of the unexpired term. The Lessor shall have no further liability to the Lessee for the termination of the Lease.

7. Payment of Taxes and Assessments. The Lessee shall pay all taxes and assessments accruing against the Parcel during the term of the Lease.

8. Right-of-Way for Public Highways and Utilities. In the event that the Parcel borders or includes one or more section lines, the Lessor hereby expressly reserves unto itself and its successors and assigns a right-of-way 100 feet wide and centered on such section line or lines.

9. Navigable and Public Waters. The Lessor reserves an easement 50 feet wide for public access along the mean high water line or ordinary high water mark of all water bodies listed in this Lease which are bordering on or included within the Parcel. Public easements to and along listed water bodies are reserved for all of those uses and purposes normally associated with or incident to an easement for access to the public resources of the water body to and along which the easement has been reserved. No public access easement may be obstructed or otherwise rendered by the Lessee incapable of reasonable use by the public for the purposes for which it was reserved. No public access easement may be vacated, abandoned, or extinguished without approval of the Lessor.

10. Reservation of Easements. The Lessor expressly reserves the right to take for the use of the State of Alaska and the right to grant to third parties, easements or rights-of-way of unlimited size across the Parcel herein leased if it is determined to be in the best interests of the State to do so, even though the creation of the easement or right-of-way terminates the entire leasehold estate; provided, however, that the Lessee shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of such easement or right-of-way.

11. Condemnation of Leasehold or Improvements. With the exception of the taking of easements or rights-of-way which is governed by paragraph 10 above, if the whole or any part of the Parcel is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

(a) Taking of the entire premises. If all of the premises are taken by condemnation, the terms of the Lease and all rights of the Lessee will immediately terminate, and the rent must be adjusted so that it is due only until the date the Lessee is required to surrender possession of the premises. The Lessor is entitled to all the condemnation proceeds, except that the Lessee will be paid the portion of the proceeds attributable to the fair market value of the buildings or improvements placed on the condemned premises by the Lessee.

(b) Taking of substantial part of premises. If the taking is of a substantial part of premises, the following rules apply:

(1) If the taking by condemnation reduces the ground area of the Parcel by at least 30 percent or materially affects the use being made by the Lessee of the Parcel, the Lessee has the right to elect to terminate or not to terminate the Lease by written notice to the Lessor not later than 180 days after the date of taking.

(2) If the Lessee elects to terminate, the provisions in (a) of this subsection govern the condemned portion of the Parcel and the terms of the Lease govern disposal of the remainder of any buildings or improvements made by the Lessee.

(3) If the Lessee elects not to terminate, the Lease continues and the Lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value of the buildings or improvements placed on the condemned portion of the premises by the Lessee. Rent at the existing rate will terminate on the date of taking. Except as it may be adjusted from time to time under the terms of the Lease and applicable statutes, rent for the balance of the term will be adjusted by the Lessor to reflect the taking.

(c) Taking of insubstantial part of premises. If the taking by condemnation reduces the ground area of the Parcel by less than 30 percent and the Lessor determines that the taking is of such an insubstantial portion that the Lessee's use of the Parcel is not materially affected, the provisions of (b)(3) of this subsection will govern.

12. Access. The Lessor makes no representations or warranty that it will construct or maintain access to the Parcel.

13. Valid Existing Rights. This Lease is entered into and made subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land in existence on the date of execution of this Lease.

14. Inspection. The Lessor shall have reasonable access to the Parcel for purposes of inspection regarding the faithful performance of the covenants and conditions of this Lease and for the performance of other lawful requirements.

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road



15. Mineral Reservations. The Lessor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils. The Lessor also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Provided, however, that no rights reserved hereunder shall be exercised by the Lessor or its subsurface lessees, until provision has been made by the Lessor or its subsurface lessees to pay to the Lessee of the land upon which the rights are herein reserved, full payment for all damages sustained by said Lessee by reason of entering upon said land; and provided that, if said Lessee for any cause whatever refuses or neglects to settle said damages, the Lessor or its subsurface lessees, or any applicant for a subsurface lease, contract or option from the Lessor or its subsurface lessee for the purpose of exploring for or extracting valuable minerals, coal, petroleum, natural gas, or geothermal resources shall have the right, after posting a surety bond with the Lessor issued by a corporation qualified to do business in Alaska and licensed to sell insurance in Alaska, or after posting with the Lessor a sufficient bond executed by one or more individual sureties approved by the Lessor and after due notice and an opportunity to be heard, to exercise rights granted to it for reasonable use of the surface required for the full enjoyment of the reserved subsurface rights which it holds. Each surety bond shall be sufficient in amount and security to secure the affected rights of the surface Lessee, and such Lessee and the Lessor or its subsurface lessee shall have the standing which may be necessary to determine the damages which the surface Lessee of such lands may suffer, and the security appropriate to hold the surface Lessee harmless in relation thereto.

16. Surface Reservations. Unless otherwise stated in this Lease or in an attachment or amendment hereto, the Lessee shall not sell or remove for use elsewhere any of the surface resources of the parcel, e.g., stone, gravel, sand, peat, topsoil, timber, or any other material valuable for building or commercial purposes; provided, however, the Lessee may make reasonable personal use of such materials on the site.

17. Appropriation or Disturbance of Waters. (a) During the term of this Lease, the Lessee shall have the right to apply for an appropriation of ground or surface water on the Parcel in accordance with the Alaska Water Use Act. All water applied for and appropriated during the term of this Lease shall remain appurtenant to the Parcel during said term, and such water and water rights shall not be severed or transferred from the Parcel or any part thereof during said term without the prior consent of the Lessor. The Lessee's rights under any permit or certificate of appropriation shall revert to the Lessor upon termination of the Lease or forfeiture of the Lease for cause.

(b) If the Lessee desires to use the Parcel to construct any form of hydraulic project or employ any equipment or engage in any activity which will use, divert, obstruct, pollute, or change the natural flow or bed of any anadromous fish river, lake or stream, the Lessee shall, prior to the commencement of any such operation, procure the approval of the Commissioner of the Department of Fish and Game.

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

18. Acquisition of Rights or Interests. Any right or interest acquired during the term of this Lease and accruing to the benefit of the Parcel shall remain appurtenant to the Parcel during that term, and shall not be severed or transferred from the Parcel without the prior consent of the Lessor. In the event of termination or forfeiture of this Lease, any such right or interest shall revert to the Lessor along with the Parcel.

19. Land Alterations Due to Natural or Artificial Causes. The Parcel described herein shall constitute the entire Parcel of property to be leased by the Lessor to the Lessee pursuant to this agreement. If, through natural or artificial causes, accretion or reliction of land occurs contiguous to the Parcel, the Lessee shall have no right to occupy or use such accreted land unless a separate lease is entered with the Lessor with respect to such lands. The parties agree and stipulate that the rules of law usually applicable to accretion or reliction of land shall not apply to this Lease, nor to the Parcel leased hereunder, in order that the parties may give effect to the provision agreed upon herein.

20. Waiver or Forebearance. The receipt of rent by the Lessor, with or without knowledge of any breach of the Lease by the Lessee, or of any default on the part of the Lessee in the observance or performance of any of the terms, conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No failure on the part of the Lessor to enforce a condition or covenant of this Lease, nor the waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate the application of such term or covenant; nor shall any forbearance or written waiver affect the right of the Lessor to enforce any term or covenant in the event of any subsequent breach or default. The receipt by the Lessor of rent or any other sum of money, or the termination in any manner of the Lease, or the giving by the Lessor of any notice hereunder to effect such termination, shall not reinstate, continue, or extend this Lease nor destroy or in any manner impair the validity of any such notice of termination which may have been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless the contrary effect shall be expressed in writing and signed by the Lessor.

21. Breach and Remedies. (a) Time is of the essence in the Lease Agreement. If the Lessee shall breach the performance of any of the terms, covenants, conditions or stipulations contained herein or attached hereto, and said breach shall not be remedied within 60 days after written notice of such breach has been served upon the Lessee and the holder of a security interest by the Lessor, the Lessee shall be subject to such legal action as the Lessor shall deem appropriate, including, but not limited to, the termination of this Lease, provided that no improvements now upon the Parcel, or which may be placed thereon during the term of this Lease, may be removed therefrom during any time in which the Lease may be in breach. In the event that this Lease is terminated for breach of any of the covenants or conditions contained herein or attached hereto, all rents paid by the Lessee shall be forfeited to and retained by the Lessor not as a penalty but as liquidated damages. The Lessor shall not be liable for any expenditures made by the Lessee or undertaken by the Lessee under this Lease prior to termination.

(b) If the Lessee fails to cure or remedy a breach of default within the time allowed in (a) of this paragraph, the holder of a security interest who has received notice under (a) of this paragraph may cure or remedy the breach or default if the breach or default can be cured by the payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, covenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this paragraph, or within any additional period which the Lessor may allow for good cause.

(c) In the event that this Lease is terminated, or in the event that the Parcel, or any part thereof is abandoned by the Lessee during the term of this Lease, the Lessor may immediately, or at any time thereafter, enter or re-enter and take possession of said Parcel, or any part thereof, and without liability for any damage therefor, remove all persons and property therefrom either by summary proceedings or by suitable action at law; provided, however, that the words "enter" and "re-enter" as used herein are not restricted to their

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

technical legal meaning. Any entry or re-entry, possession, repossession, or dispossession by the Lessor, whether taken by summary proceedings or otherwise, shall not be deemed to absolve, relieve, release or discharge the Lessee, either in whole or part, for any monetary liability under the Lease.

22. Disposition of Improvements and Chattels After Termination. (a) The Lessee shall, within 60 days after termination of the Lease by the Lessor or by operation of law, remove all improvements and chattels located on the Parcel, provided that the Lessor first determines that such removal will not cause injury or damage to the Parcel or seriously impair its redisposal. Following such removal, the Lessee shall leave the Parcel in a safe and clean condition acceptable to the Lessor. The Lessor may, in its discretion, extend the time for removal of improvements under this subparagraph where undue hardship is demonstrated.

(b) If any improvements or chattels having an appraised value exceeding \$10,000.00, as determined by the Lessor, are not removed from the Parcel within the time allowed, they shall, upon 30 days prior written notice to the Lessee, be sold at public auction under the direction of the Lessor. The proceeds of sale shall inure to the Lessee who placed the improvements or chattels on the land, after deduction for the benefit of the Lessor of all monies due and owing under this Lease and all expenses incurred in administering the termination and conducting the sale. If there are no other bidders at such sale, the Lessor is authorized to bid on such improvements or chattels. In such event, the Lessor shall acquire all rights, both legal and equitable, which any other purchaser could acquire by reason of said sale and purchase.

(c) Any chattels or improvements having a total appraised value of \$10,000.00 or less, as determined by the Lessor, and which are authorized for removal by the Lessor but are not removed within the time allowed, shall become the absolute property of the Lessor upon the expiration of the time allowed.

(d) Authorized improvements of the Lessee which the Lessor determines have become fixtures of the Parcel shall be purchased by the subsequent purchaser or lessee. There will be no compensation to the Lessee for improvements which were not authorized under the Lease.

23. Indemnity to Lessor. During the term of the Lease the Lessee shall indemnify and hold the Lessor harmless from and against all claims and demands for loss or damage, including property damage, personal injury, wrongful death, and wage or employment claims, arising out of or in connection with the use or occupancy of the Parcel by the Lessee or by any other person holding under the Lessee, or at its sufferance or invitation; and from any accident or fire on the Parcel; and from any nuisance made or suffered thereon; and from any failure by the Lessee to keep the Parcel in a safe and lawful condition consistent with applicable laws, regulations, ordinances, or orders; and from any assignment, sublease, or conveyance, attempted or successful, by the Lessee of the Parcel or any part thereof or interest therein contrary to the conditions and covenants of this Lease. The Lessee will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Parcel at the sole risk of the Lessee, and will save the Lessor harmless from any claim of loss or damage thereto by any cause whatsoever.

24. Surrender of Leasehold. Upon the expiration, termination or cancellation of this Lease the Lessee shall quietly and peaceably leave, surrender and yield up unto the Lessor all of the Parcel.

25. Notices. All notices required or permitted under this Lease Agreement shall be made by certified mail, postage prepaid, to the parties at the following addresses:

To the Lessor: Alaska Division of Land and Water Management  
Pouch 7-005  
Anchorage, Alaska 99510

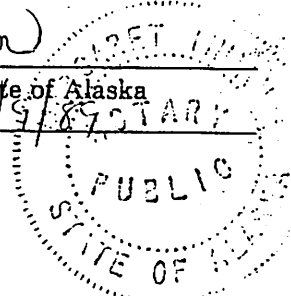
To the Lessee: Gary H. Erb  
4401 Halibut Point Road  
Sitka, Alaska 99835

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road



STATE OF ALASKA )  
First Judicial District ) ss.

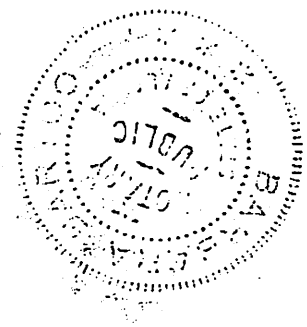
THIS IS TO CERTIFY that on this 17 day of March, 1987,  
before me appeared Gary H. Erb, to me known  
and known to me to be the person named in and who executed the Lease and acknowledged voluntarily signing  
the same.

Margaret Inun  
Notary Public in and for the State of Alaska  
My Commission expires: 4/9/87  


STATE OF ALASKA )  
Third Judicial District ) ss.

THIS IS TO CERTIFY that on this 31<sup>st</sup> day of March, 1987,  
before me personally appeared Paula Burgess of the Division  
of Land and Water Management of the Department of Natural Resources of the State of Alaska, who  
executed the foregoing Lease and acknowledged voluntarily signing the same.

Barbara W. Barto  
Notary Public in and for the State of Alaska  
My Commission expires: June 7, 1988



APPROVED AS TO FORM:

Barbara J. Misaile  
Assistant Attorney General

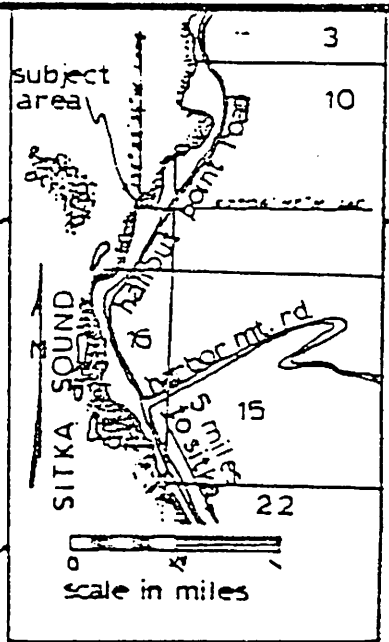
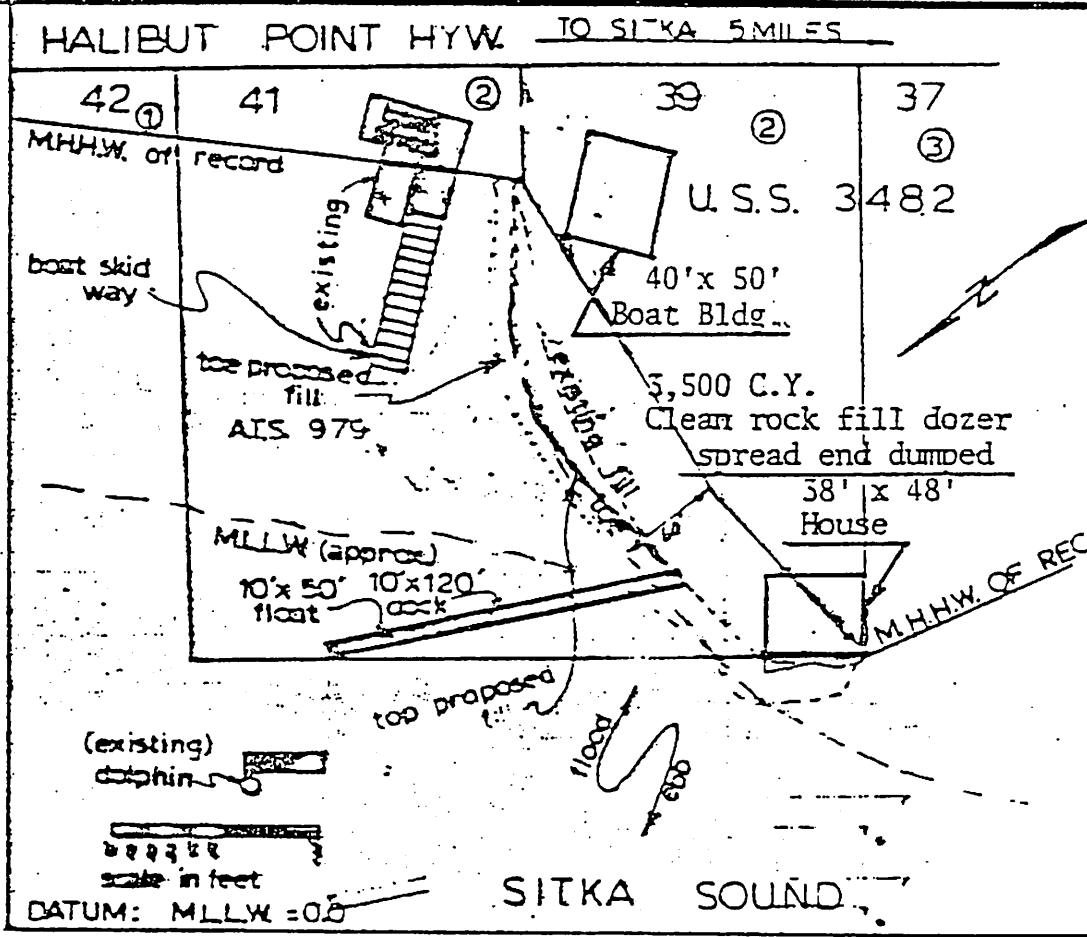
Date: 7/3/80

ATTACHMENT A  
TO  
LEASE AGREEMENT ADL 65550

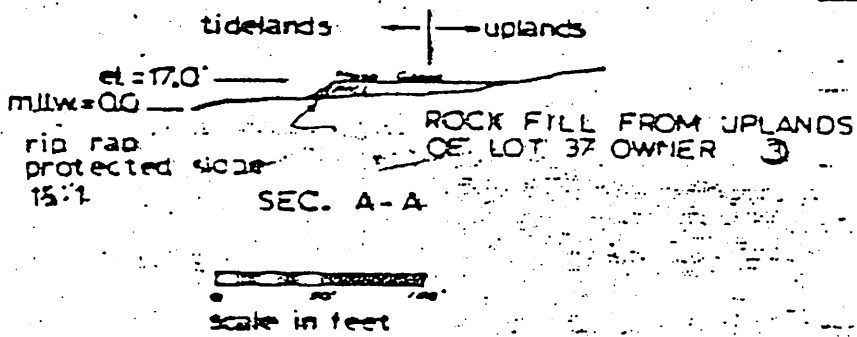
1. For the purpose of this lease, the development plan shall be limited in form and scope to those improvements shown on Attachment B, unless approved in writing by the lessor prior to the installation or construction. Use of the area for purposes other than those specified herein shall constitute a breach of this lease.
2. This lease shall be utilized for the purpose described in the development plan. Failure to make substantial use of the land, consistent with the development plan, within 5 years, shall, in the Director's discretion, constitute grounds for cancellation of this lease agreement. (11 AAC 58.510)
3. Upon issuance of this lease the 10 foot pedestrian access easements along the easterly and westerly boundaries of Lot 41 of USS 3482 will be in effect. These access easements will be in effect until the lease expires or is terminated. (Attachment C)

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

ATTACHMENT B



VICINITY MAP



SITKA SOUND 153

ADJACENT PROPERTY OWNERS

① RICHARD TEAGUE  
 BOX 1231  
 SITKA ALASKA

② GARY ERB  
 STAR ROUTE  
 SITKA ALASKA

**McNamee**  
 Tideland Lease Request  
 4401 Halibut Point Road

PROPOSED FILL, FLOAT & RAMP, AND DOCK

SITKA SOUND  
 SITKA, ALASKA  
 PREPARED BY: GARY ERB  
 STAR ROUTE

BOOK 77 PAGE 729  
Sitka Recording District

For and in consideration of the sum of one dollar (\$1.00) in hand paid and other valuable consideration received, I (We) Ann C Erb and Gary H. and

lawful owners of Lot 41 of U.S.S. 3482, grant to the State of Alaska the temporary right to use of a portion of said Lot 41 for the sole purpose of two (2) pedestrian access ways each being ten feet in width; one located within and along the easterly side boundary of Lot 41, the other located within and along the westerly side boundary of Lot 41 as shown on the attached map made part hereof. The right herein granted shall commence upon date of issue and shall expire upon termination or expiration of that certain tideland lease serialized ADL 65550 and further described as A.T.S. 979.

The State of Alaska by action of issuing the tideland lease agrees that no permanent rights shall vest to the State, public, or individuals, by reason of use made hereunder.

Tom J Hawkins  
State of Alaska  
22 Sept 86  
Date

Ann C Erb  
\* Gary H. Erb  
Owner(s) Signature  
\* July 21, 1976  
Date

UNITED STATES OF AMERICA )  
State of Alaska ) ss.

THIS IS TO CERTIFY that on the 22nd day of September, 1986, before me, the undersigned Notary Public, personally appeared Tom J. Hawkins known to me and known by me to be the Director of the Division of Lands of the Department of Natural Resources, and acknowledged to me that he executed the foregoing lease for and on behalf of said State, freely and voluntarily for the use and purposes therein set forth.

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

Karen J. Wood  
Notary Public in and for the State of Alaska  
My commission expires November 19, 1989

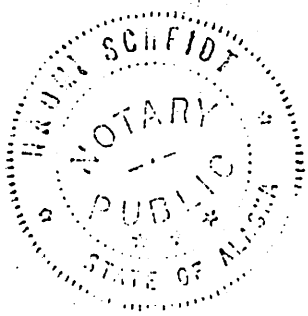


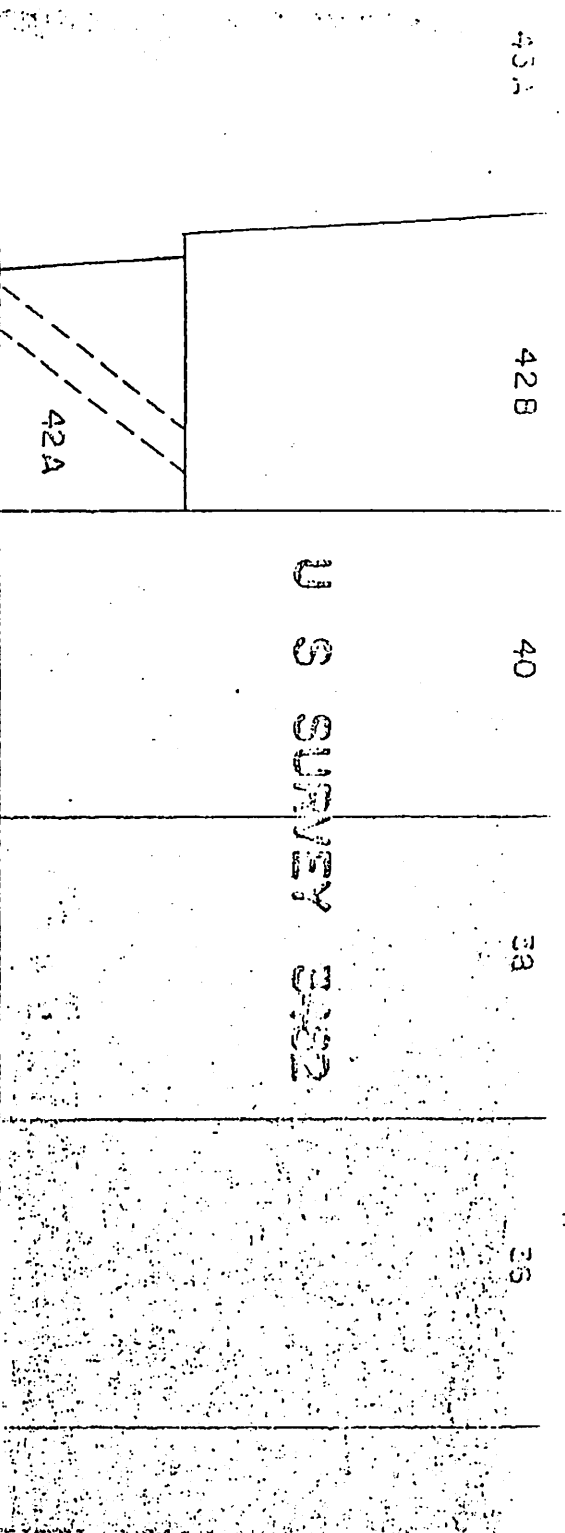
UNITED STATES OF AMERICA     )  
State of Alaska                 ) ss.

THIS IS TO CERTIFY that on this 21<sup>st</sup> day of July, 1976,  
before me, the undersigned, a Notary Public in and for Alaska duly commissioned  
and sworn, personally appeared Ann C. and Gary H. Erb  
to me personally known to be one of the persons described in and who executed the  
within instrument and the said persons  
acknowledged to me that he signed and executed the same freely and voluntarily  
for the uses and purposes therein mentioned.

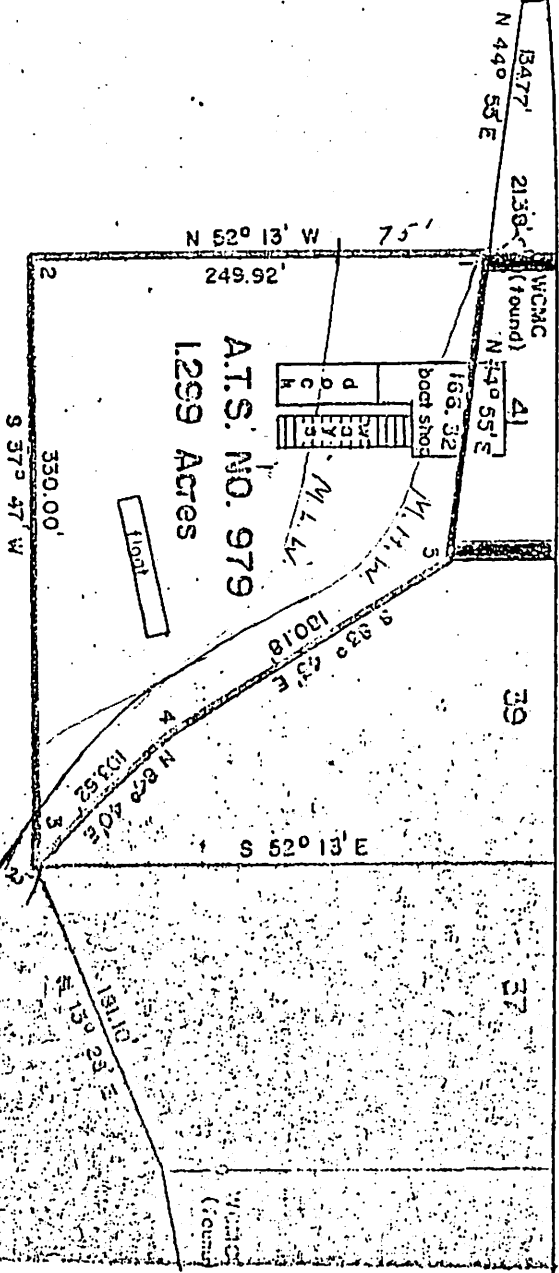
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my  
official seal, the day and year in this certificate first above written.

Noemi Scheidt  
Notary Public in and for the State of Alaska  
My commission expires 11-14-76





HALIBUT POINT STATE HIGHWAY



A.T.S. NO. 979  
1299 Acres

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

**SURVEYOR'S STATEMENT**

I hereby certify that I am

1" = 100'

Return To:

Southeast Regional Office  
Division of Land & Water Management  
400 Willoughby Avenue  
Juneau, Alaska 99801

8 7-0 7 5 1

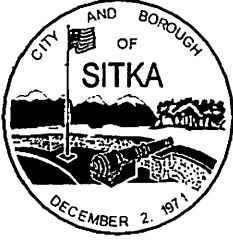
N/C

~~RECORDED-FILED~~  
SITKA REC.  
DISTRICT

APR 6 12 10 PM '87

REQUESTED BY AS/DNR

ADDRESS Jmw



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

---

*Coast Guard City, USA*

## **Notice of Public Hearings**

The Assembly of the City and Borough of Sitka will hold a public hearing during a regular meeting scheduled Tuesday, November 22, 2016 on the following item:

- A. Public hearing and consideration of a tideland lease renewal application filed by Kevin McNamee for tidelands adjacent 4401 Halibut Point Road. The property is also known as a portion of ATS 979. The request is filed by Kevin McNamee. The owner of record is the City and Borough of Sitka.

The Assembly may take action on November 22, 2016. The Assembly meeting will begin at 6:00 pm at Harrigan Centennial Hall at 330 Harbor Drive in Sitka.

Interested residents are encouraged to make comments during the meeting and written comments can be submitted to the Municipal Clerk at 100 Lincoln Street.

Parcel ID: 25755003  
KERRY TOMLINSON  
TOMLINSON, KERRY  
P.O. BOX 672  
SITKA AK 99835-0672

Parcel ID: 25755004  
BRYAN BERTACCHI  
BERTACCHI, BRYAN, J.  
P.O. BOX 1373  
SITKA AK 99835-1373

Parcel ID: 25760001  
MYRON OEN  
OEN, MYRON, J.  
4309 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25760002  
KENNETH/ALICE CAMERON  
CAMERON, KENNETH/ALICE  
4307 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25765000  
BRIAN V. BLANKENSHIP  
BLANKENSHIP, BRIAN, V.  
4316 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25766000  
ROXANNE/MONTE RICHTER/MC  
FARLAND  
RICHTER, ROXANNE & MC FARLAND,  
MONTE  
4314 VALHALLA DR.  
SITKA AK 99835

Parcel ID: 25767000  
PATRICK/CATHARI WEAVER  
WEAVER, PATRICK, L./CATHARINE, L.  
106 VIKING WAY  
SITKA AK 99835

Parcel ID: 25768000  
HARLAN/LAVINA ADAMS  
ADAMS, HARLAN, J./LAVINA, H.  
P.O. BOX 2652  
SITKA AK 99835

Parcel ID: 25769001  
ROBERT/MELINDA PARSONS/MC  
ADAMS  
PARSONS, ROBERT, F./MCADAMS,  
MELINDA, J.  
P.O. BOX 6325  
SITKA AK 99835-6325

Parcel ID: 25769002  
AMYEE OEN  
OEN, AMYEE, M.  
P.O. BOX 938  
ARCATA CA 99518-0938

Parcel ID: 25770001  
RONALD/BARBARA WORKMAN  
C/O O.P.A.  
WORKMAN, RONALD, W./BARBARA  
P.O. BOX 110225  
JUNEAU AK 99811

Parcel ID: 25770002  
RONALD/BARBARA WORKMAN  
C/O O.P.A.  
~~WORKMAN, RONALD, W./BARBARA, E.  
P.O. BOX 110225  
JUNEAU AK 99811~~

Parcel ID: 25770003  
LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895

Parcel ID: 25773000  
DENTON PEARSON  
PEARSON, DENTON  
713-B SAWMILL CREEK RD  
SITKA AK 99835

Parcel ID: 25774000  
JEFFREY KELLY  
KELLY, JEFFREY, D.  
P.O. BOX 2306  
SITKA AK 99835-2306

Parcel ID: 25775000  
GALE KEHRES  
KEHRES, GALE, E.  
103 VIKING WAY  
SITKA AK 99835

Parcel ID: 25776000  
KARIN JOHNSON  
JOHNSON, KARIN, M.  
105 VIKING WAY  
SITKA AK 99835

Parcel ID: 25777000  
GERALD DZUGAN  
DZUGAN, GERALD, W.  
4319 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25778000  
JEANETTE/JAMES BERRY  
BERRY, JEANETTE & JAMES  
307 MARINE ST.  
SITKA AK 99835

Parcel ID: 25779000  
BRIAN/ANNETTE BLANKENSHIP  
BLANKENSHIP, BRIAN/ANNETTE  
2166 HALIBUT POINT RD, #A  
SITKA AK 99835

Parcel ID: 25780000  
~~LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895~~

Parcel ID: 25781000  
~~LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895~~

Parcel ID: 25782000  
~~LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895~~

Parcel ID: 25785001  
JAMES/EILEEN SWIFT/GALLAGHER  
SWIFT, JAMES/GALLAGHER, EILEEN  
P.O. BOX 1193  
SITKA AK 99835-1193

Parcel ID: 25785002  
DEL STENGL  
STENGL, DEL, M.  
4322 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25785003  
~~DEL STENGL  
STENGL, DEL, M.  
4322 VALHALLA DR  
SITKA AK 99835~~

Parcel ID: 25786001  
J & S PROPERTIES, LLC  
J & S PROPERTIES, LLC  
P.O. BOX 936  
SITKA AK 99835-0936

Parcel ID: 25786002  
~~DEL STENGL  
STENGL, DEL  
4322 VALHALLA DR  
SITKA AK 99835~~

Parcel ID: 25790001  
KEVIN/TINA MCNAMEE  
MCNAMEE, KEVIN & TINA  
P.O. BOX 6243  
SITKA AK 99835-6243

Parcel ID: 25791000  
ARTWIN/LINDA SCHMIDT  
SCHMIDT, ARTWIN/LINDA BERGDOLL  
4406 HALIBUT POINT RD  
SITKA AK 99835

# Assembly Mailing

November 10, 2016

Parcel ID: 25845000  
RICHARD/VICTORI BAUDER/VOSBURG  
BAUDER, R. BURGESS/VOSBURG,  
VICTORIA  
1300 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25832000  
DIRK/TRISH WHITE  
117 GRANITE CREEK RD, STE 201  
SITKA AK 99835

Parcel ID: 25825000  
JOHN/JANICE STRALEY  
STRALEY, JOHN & JANICE  
P.O. BOX 273  
SITKA AK 99835-0273

Parcel ID: 25821000  
DCI PROPERTIES, LLC  
DCI PROPERTIES, LLC  
315 SEWARD ST  
SITKA AK 99835

Parcel ID: 25815003  
WAYNE/SIHAUNA UNGER  
UNGER, WAYNE & SIHAUNA  
P.O. BOX 833  
SITKA AK 99835-0833

Parcel ID: 25811000  
BRUCE/MARGARET GIPPLE  
GIPPLE, BRUCE, A./MARGARET, L.  
2210 W. MAIN ST. STE. 107-312  
BATTLE-GROUND WA 98604

Parcel ID: 25810002  
BRUCE/MARGARET GIPPLE  
GIPPLE, BRUCE, A./MARGARET, L.  
2210 W. MAIN ST. STE. 107-312  
BATTLE-GROUND WA 98604

Parcel ID: 25800001  
KEVIN/TINA MCNAMEE  
MCNAMEE, KEVIN & TINA  
P.O. BOX 6243  
SITKA AK 99835-6243

Parcel ID: 25792000  
ARTWIN/LINDA SCHMIDT  
SCHMIDT, ARTWIN, E./LINDA  
4406 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25835000  
THOMAS JACOBSEN  
JACOBSEN, THOMAS, E.  
P.O. BOX 2695  
SITKA AK 99835-2695

Parcel ID: 25826000  
JOHN/JAN STRALEY  
STRALEY, JOHN & JAN  
P.O. BOX 273  
SITKA AK 99835-0273

Parcel ID: 25823000  
KENNETH/NORMA CREAMER  
CREAMER, KENNETH, R./NORMA, L.  
101 SUNSET DR.  
SITKA AK 99835

Parcel ID: 25815004  
CAROL GOULARTTE  
GOULARTTE, CAROL, A.  
106 CLOTHILDE BAHOVEC WAY  
SITKA AK 99835

Parcel ID: 25815001  
S. E. REGION EMS COUNCIL  
SOUTHEAST REGION EMS COUNCIL  
100 CLOTHILDE BAHOVEC WAY  
SITKA AK 99835

Parcel ID: 25810003  
JOSHUA/KATHERINE JOHNSON/GLUTH  
JOHNSON, JOSHUA & GLUTH,  
KATHERINE  
103 HORIZON WAY  
SITKA AK 99835

Parcel ID: 25805000  
ERIC/EANNINE HOLMUND/KIVISTO  
HOLMUND, ERIC/KIVISTO,JEANNINE  
4416 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25793000  
BRIAN SCHMIDT  
SCHMIDT, BRIAN, C.  
4404 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25840000  
GREGORY KAIN  
KAIN, GREGORY  
9113 20TH ST E.  
EDGEWOOD WA 98371

Parcel ID: 25831001  
GREGORY KAIN  
KAIN, GREGORY, A.  
9113 20TH ST E.  
EDGEWOOD WA 98371

Parcel ID: 25824000  
JACK FREDRICKSON  
FREDRICKSON, JACK, W.  
223 SMITH STREET  
SITKA AK 99835

Parcel ID: 25820000  
JUSTIN ALBEE  
ALBEE, JUSTIN, L.  
102 SUNSET DR  
SITKA AK 99835

Parcel ID: 25815002  
HAROLD KALVE REVOCABLE TRUST  
KALVE TRUST, HAROLD  
102 CLOTHILDE BAHOVEC WAY  
SITKA AK 99835

Parcel ID: 25810004  
CHRIS/KASI HEIM  
HEIM, CHRISTOPHER/KASI  
P.O. BOX 6246  
SITKA AK 99835-6246

Parcel ID: 25810001  
BRUCE/MARGARET GIPPLE  
GIPPLE, BRUCE, A./MARGARET, L.  
2210 W. MAIN ST. STE. 107-312  
BATTLE GROUND WA 98604

Parcel ID: 25795000  
ARTWIN/LINDA SCHMIDT/BERGDOLL  
SCHMIDT, ARTWIN/BERGDOLL, LINDA  
4406 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25755003  
KERRY TOMLINSON  
TOMLINSON, KERRY  
P.O. BOX 672  
SITKA AK 99835-0672

Parcel ID: 25755004  
BRYAN BERTACCHI  
BERTACCHI, BRYAN, J.  
P.O. BOX 1373  
SITKA AK 99835-1373

Parcel ID: 25760001  
MYRON OEN  
OEN, MYRON, J.  
4309 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25760002  
KENNETH/ALICE CAMERON  
CAMERON, KENNETH/ALICE  
4307 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25765000  
BRIAN V. BLANKENSHIP  
BLANKENSHIP, BRIAN, V.  
4316 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25766000  
ROXANNE/MONTE RICHTER/MC  
FARLAND  
RICHTER, ROXANNE & MC FARLAND,  
MONTE  
4314 VALHALLA DR.  
SITKA AK 99835

Parcel ID: 25767000  
PATRICK/CATHARI WEAVER  
WEAVER, PATRICK, L./CATHARINE, L.  
106 VIKING WAY  
SITKA AK 99835

Parcel ID: 25768000  
HARLAN/LAVINA ADAMS  
ADAMS, HARLAN, J./LAVINA, H.  
P.O. BOX 2652  
SITKA AK 99835

Parcel ID: 25769001  
ROBERT/MELINDA PARSONS/MC  
ADAMS  
PARSONS, ROBERT, F./MCADAMS,  
MELINDA, J.  
P.O. BOX 6325  
SITKA AK 99835-6325

Parcel ID: 25769002  
AMYEE OEN  
OEN, AMYEE, M.  
P.O. BOX 938  
ARCATA CA 99518-0938

Parcel ID: 25770001  
RONALD/BARBARA WORKMAN  
C/O O.P.A.  
WORKMAN, RONALD, W./BARBARA  
P.O. BOX 110225  
JUNEAU AK 99811

Parcel ID: 25770002  
RONALD/BARBARA WORKMAN  
C/O O.P.A.  
WORKMAN, RONALD, W./BARBARA, E.  
P.O. BOX 110225  
JUNEAU AK 99811

Parcel ID: 25770003  
LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895

Parcel ID: 25773000  
DENTON PEARSON  
PEARSON, DENTON  
713-B SAWMILL CREEK RD  
SITKA AK 99835

Parcel ID: 25774000  
JEFFREY KELLY  
KELLY, JEFFREY, D.  
P.O. BOX 2306  
SITKA AK 99835-2306

Parcel ID: 25775000  
GALE KEHRES  
KEHRES, GALE, E.  
103 VIKING WAY  
SITKA AK 99835

Parcel ID: 25776000  
KARIN JOHNSON  
JOHNSON, KARIN, M.  
105 VIKING WAY  
SITKA AK 99835

Parcel ID: 25777000  
GERALD DZUGAN  
DZUGAN, GERALD, W.  
4319 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25778000  
JEANETTE/JAMES BERRY  
BERRY, JEANETTE & JAMES  
307 MARINE ST.  
SITKA AK 99835

Parcel ID: 25779000  
BRIAN/ANNETTE BLANKENSHIP  
BLANKENSHIP, BRIAN/ANNETTE  
2166 HALIBUT POINT RD, #A  
SITKA AK 99835

Parcel ID: 25780000  
LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895

Parcel ID: 25781000  
LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895

Parcel ID: 25782000  
LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895

Parcel ID: 25785001  
JAMES/EILEEN SWIFT/GALLAGHER  
SWIFT, JAMES/GALLAGHER, EILEEN  
P.O. BOX 1193  
SITKA AK 99835-1193

Parcel ID: 25785002  
DEL STENGL  
STENGL, DEL, M.  
4322 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25785003  
DEL STENGL  
STENGL, DEL, M.  
4322 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25786001  
J & S PROPERTIES, LLC  
J & S PROPERTIES, LLC  
P.O. BOX 936  
SITKA AK 99835-0936

Parcel ID: 25786002  
DEL STENGL  
STENGL, DEL  
4322 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25790001  
KEVIN/TINA MCNAMEE  
MCNAMEE, KEVIN & TINA  
P.O. BOX 6243  
SITKA AK 99835-6243

Parcel ID: 25791000  
ARTWIN/LINDA SCHMIDT  
SCHMIDT, ARTWIN/LINDA BERGDOLL  
4406 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25792000  
ARTWIN/LINDA SCHMIDT  
SCHMIDT, ARTWIN, E./LINDA  
4406 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25800001  
KEVIN/TINA MCNAMEE  
MCNAMEE, KEVIN & TINA  
P.O. BOX 6243  
SITKA AK 99835-6243

Parcel ID: 25810002  
BRUCE/MARGARET GIPPLE  
GIPPLE, BRUCE, A./MARGARET, L.  
2210 W. MAIN ST, STE 107-312  
BATTLE GROUND WA 98604

Parcel ID: 25811000  
BRUCE/MARGARET GIPPLE  
GIPPLE, BRUCE, A./MARGARET, L.  
2210 W. MAIN ST STE, 107-312  
BATTLE GROUND WA 98604

Parcel ID: 25815003  
WAYNE/SHAUNA UNGER  
UNGER, WAYNE & SHAUNA  
P.O. BOX 833  
SITKA AK 99835-0833

Parcel ID: 25821000  
DCI PROPERTIES, LLC  
C/O BARANOF PROPERTIES  
DCI PROPERTIES, LLC  
315 SEWARD ST  
SITKA AK 99835

Parcel ID: 25825000  
JOHN/JANICE STRALEY  
STRALEY, JOHN & JANICE  
P.O. BOX 273  
SITKA AK 99835-0273

Parcel ID: 25832000  
DIRK/TRISH WHITE  
WHITE, DIRK, T./TRISH, D.  
117 GRANITE CREEK RD, STE 201  
SITKA AK 99835

Parcel ID: 25845000  
RICHARD/VICTORI BAUDER/VOSBURG  
BAUDER, R. BURGESS/VOSBURG,  
VICTORIA  
1300 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25793000  
BRIAN SCHMIDT  
SCHMIDT, BRIAN, C.  
4404 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25805000  
ERIC/JEANNINE HOLMLUND/KIVISTO  
HOLMLUND, ERIC/KIVISTO,JEANNINE  
4416 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25810003  
JOSHUA/KATHERIN JOHNSON/GLUTH  
JOHNSON, JOSHUA & GLUTH,  
KATHERINE  
103 HORIZON WAY  
SITKA AK 99835

Parcel ID: 25815001  
S. E. REGION EMS COUNCIL  
SOUTHEAST REGION EMS COUNCIL  
100 CLOTHILDE BAHOVEC WAY  
SITKA AK 99835

Parcel ID: 25815004  
CAROL GOULARTE  
GOULARTE, CAROL, A.  
106 CLOTHILDE BAHOVEC WAY  
SITKA AK 99835

Parcel ID: 25823000  
KENNETH/NORMA CREAMER  
CREAMER, KENNETH, R./NORMA, L.  
101 SUNSET DR.  
SITKA AK 99835

Parcel ID: 25826000  
JOHN/JAN STRALEY  
STRALEY, JOHN & JAN  
P.O. BOX 273  
SITKA AK 99835-0273

Parcel ID: 25835000  
THOMAS JACOBSEN  
JACOBSEN, THOMAS, E.  
P.O. BOX 2695  
SITKA AK 99835-2695

Parcel ID: 25795000  
ARTWIN/LINDA SCHMIDT/BERGDOLL  
SCHMIDT, ARTWIN/BERGDOLL, LINDA  
4406 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25810001  
BRUCE/MARGARET GIPPLE  
GIPPLE, BRUCE, A./MARGARET, L.  
2210 W. MAIN ST, STE 107-312  
BATTLE GROUND WA 98604

Parcel ID: 25810004  
CHRIS/KASI HEIM  
HEIM, CHRISTOPHER/KASI  
P.O. BOX 6246  
SITKA AK 99835-6246

Parcel ID: 25815002  
HAROLD KALVE REVOCABLE TRUST  
KALVE TRUST, HAROLD  
102 CLOTHILDE BAHOVEC WAY  
SITKA AK 99835

Parcel ID: 25820000  
JUSTIN ALBEE  
ALBEE, JUSTIN, L.  
102 SUNSET DR  
SITKA AK 99835

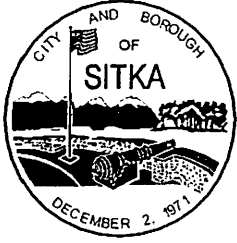
Parcel ID: 25824000  
JACK FREDRICKSON  
FREDRICKSON, JACK, W.  
223 SMITH STREET  
SITKA AK 99835

Parcel ID: 25831001  
GREGORY KAIN  
KAIN, GREGORY, A.  
9113 20TH ST E.  
EDGEWOOD WA 98371

Parcel ID: 25840000  
GREGORY KAIN  
KAIN, GREGORY  
9113 20TH ST E.  
EDGEWOOD WA 98371

Assembly Mailing  
October 28, 2016





# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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*Coast Guard City, USA*

## **Notice of Public Hearings**

The Assembly of the City and Borough of Sitka will hold a public hearing during a regular meeting scheduled Tuesday, November 8, 2016 on the following item:

- A. Public hearing and consideration of a tideland lease renewal application filed by Kevin McNamee for tidelands adjacent 4401 Halibut Point Road. The property is also known as a portion of ATS 979. The request is filed by Kevin McNamee. The owner of record is the City and Borough of Sitka.

The Assembly may take action on November 8, 2016. The Assembly meeting will begin at 6:00 pm at Harrigan Centennial Hall at 330 Harbor Drive in Sitka.

Interested residents are encouraged to make comments during the meeting and written comments can be submitted to the Municipal Clerk at 100 Lincoln Street.

# Attachment H

Parcel ID: 25769002  
AMYEE OEN  
OEN, AMYEE, M.  
P.O. BOX 938  
ARCATA CA 99518-0938

Parcel ID: 25770002  
RONALD/BARBARA WORKMAN  
C/O O.P.A.  
WORKMAN, RONALD, W./BARBARA, E.  
P.O. BOX 110225  
JUNEAU AK 99811

Parcel ID: 25770003  
LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895

Parcel ID: 25773000  
DENTON PEARSON  
PEARSON, DENTON  
713-B SAWMILL CREEK RD  
SITKA AK 99835

Parcel ID: 25774000  
JEFFREY KELLY  
KELLY, JEFFREY, D.  
P.O. BOX 2306  
SITKA AK 99835-2306

Parcel ID: 25775000  
GALE KEHRES  
KEHRES, GALE, E.  
103 VIKING WAY  
SITKA AK 99835

Parcel ID: 25777000  
GERALD DZUGAN  
DZUGAN, GERALD, W.  
4319 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25780000  
~~LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895~~

Parcel ID: 25781000  
~~LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895~~

Parcel ID: 25782000  
~~LARRY/ROBYN MCCREHIN  
MCCREHIN, LARRY, W./ROBYN, J.  
P.O. BOX 895  
SITKA AK 99835-0895~~

Parcel ID: 25785001  
JAMES/EILEEN SWIFT/GALLAGHER  
SWIFT, JAMES/GALLAGHER, EILEEN  
P.O. BOX 1193  
SITKA AK 99835-1193

Parcel ID: 25786001  
J & S PROPERTIES, LLC  
J & S PROPERTIES, LLC  
P.O. BOX 936  
SITKA AK 99835-0936

Parcel ID: 25786002  
DEL STENGL  
STENGL, DEL  
4322 VALHALLA DR  
SITKA AK 99835

Parcel ID: 25790001  
KEVIN/TINA MCNAMEE  
MCNAMEE, KEVIN & TINA  
P.O. BOX 6243  
SITKA AK 99835-6243

Parcel ID: 25791000  
ARTWIN/LINDA SCHMIDT  
SCHMIDT, ARTWIN/LINDA BERGDOLL  
4406 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25795000  
ARTWIN/LINDA SCHMIDT/BERGDOLL  
SCHMIDT, ARTWIN/BERGDOLL, LINDA  
4406 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25800001  
~~KEVIN/TINA MCNAMEE  
MCNAMEE, KEVIN & TINA  
P.O. BOX 6243  
SITKA AK 99835-6243~~

Parcel ID: 25805000  
ERIC/JEANNINE HOLMLUND/KIVISTO  
HOLMLUND, ERIC/KIVISTO, JEANNINE  
4416 HALIBUT POINT RD  
SITKA AK 99835

Parcel ID: 25810001  
BRUCE/MARGARET GIPPLE  
GIPPLE, BRUCE, A./MARGARET, L.  
2210 W. MAIN ST, STE 107-312  
BATTLE GROUND WA 98604

Parcel ID: 25811000  
~~BRUCE/MARGARET GIPPLE  
GIPPLE, BRUCE, A./MARGARET, L.  
2210 W. MAIN ST STE, 107-312  
BATTLE GROUND WA 98604~~

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road

**P&Z Mailing**  
October 7, 2016



# CITY AND BOROUGH OF SITKA

## Meeting Agenda

### Planning Commission

*Chris Spivey, Chair*  
*Darrell Windsor, Vice Chair*  
*Debra Pohlman*  
*Randy Hughey*

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Wednesday, October 19, 2016

7:00 PM

Harrigan Centennial Hall

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I. CALL TO ORDER AND ROLL CALL

II. CONSIDERATION OF THE AGENDA

III. CONSIDERATION OF THE MINUTES

A Approval of the October 5, 2016 meeting minutes.

IV. REPORTS

B Planning Regulations and Procedures.

V. THE EVENING BUSINESS

C Public hearing and consideration of a conditional use permit for a short term rental located on a boat in Crescent Harbor 1-24, 500 Lincoln Street, in the P Public zone. The property is also known as a portion of ATS 15. The application is filed by Bruce and Ann-Marie Parker. The owner of record is the City and Borough of Sitka.

D Public hearing and consideration of a final plat of a minor subdivision on Whale Island, zoned GI General Island. The request would result in 3 lots. The property is also known as Lot 2 Tract A US Survey 3556. The request is filed by David Russell. The owner of record is John W. Williams.

E Public hearing and consideration of a final plat of a minor subdivision on Whale Island, zoned GI General Island. The request would result in 2 lots. The property is also known as Lot 5 Tract A US Survey 3556. The request is filed by Donald and Patricia Lehman and Eric Speck. The owners of record are Donald and Patricia Lehman and Eric Speck.

- F Public hearing and consideration of a variance request for 109 Darrin Drive. The request is for the reduction of the front setback from 20 feet to 5 feet and the side setback from 8 feet to 2 feet for the construction of stairs and rails. The property is also known as Lot 5 Darrin Subdivision. The request is filed by Cory Picotte. The owners of record are Cory and Brenna Picotte.
- G Public hearing and consideration of a tideland lease renewal application filed by Kevin McNamee for tidelands adjacent 4401 Halibut Point Road. The property is also known as a portion of ATS 979. The request is filed by Kevin McNamee. The owner of record is the City and Borough of Sitka.
- H Public hearing and consideration of a variance request for 424 Katlian Avenue. The request is for the reduction of the side setbacks from 8 feet to 0 feet, the reduction of the front setback adjacent Kogwanton Street from 20 feet to 8 feet, the reduction of the front setback adjacent Katlian Street from 20 feet to 18 feet, substandard parking, substandard lot size, and substandard lot width for the construction of a new house and ice shop. The property is also known as Lot 50 Block 2 US Survey 2542 A&B. The request is filed by Scott Saline. The owner of record is Scott Saline.
- I Public hearing and consideration of a minor subdivision request for 1402 Sawmill Creek Road. The subdivision would reconfigure three existing lots into three proposed lots. The property is also known as a portion of US Survey 1947, a portion of US Survey 2365, and ATS 511 Tract A. The request is filed by Thomas and Danine Williamson. The owners of record are Thomas and Danine Williamson.
- J Public hearing and consideration of a conditional use permit request for a short-term rental at 1933 Dodge Circle. The property is also known as Lot 1 of Ocean Heights Subdivision. The request is filed by David and Janelle Lass. The owners of record are David and Janelle Lass.

**VI. PLANNING DIRECTOR'S REPORT**

**VII. PUBLIC BUSINESS FROM THE FLOOR**

**VIII. ADJOURNMENT**

*NOTE: Individuals having concerns or comments on any item are encouraged to provide written comments to the Planning Office or make comments at the Planning Commission meeting. Written comments may be dropped off at the Planning Office in City Hall, emailed to [planning@cityofsitka.org](mailto:planning@cityofsitka.org), or faxed to (907) 747-6138. Those with questions may call (907) 747-1814.*

*Publish: October 10 and 12*





2003

Recording Di  
4/8/2003 10:

Attachment I

A  
L  
A  
S  
K  
A



cc

STATUTORY WARRANTY DEED

203-0092

THE GRANTOR, GARY H. ERB and ANN C. ERB, husband and wife, individually and as Trustees of the GARY H. ERB AND ANN C. ERB LIVING TRUST, of 3820 "Q" Avenue, Anacortes, Washington 98221 for and in consideration of Ten Dollars (\$10.00) and other valuable consideration, in hand paid, conveys and warrants to KEVIN McNAMEE and TINA McNAMEE, husband and wife as tenants by the entirety, of P.O. Box 6243, Sitka, Alaska 99835, the following described real property to-wit:

Lots One (1) and Two (2), Shoreline Subdivision according to Plat 98-24, and Lot Forty-one (41), U. S. Survey 3482, and A leasehold estate in and to Alaska Tidelands Survey 979, according to Plat 86-6,

All in the Sitka Recording District, First Judicial District, State of Alaska.

Commonly referred to as 4401, 4403 and 4405 Halibut Point Road, Sitka, Alaska 99835.

SUBJECT TO:

U. S. Patent reservations, State of Alaska patent reservations, easements, conditions of record, and 2003 City and Borough of Sitka taxes.

DATED this 3~~rd~~ day of March, 2003.

GARY H. ERB and ANN C. ERB LIVING TRUST

By: Gary H. Erb, trustee  
Gary H. Erb, Trustee

By: Ann C. Erb, trustee  
Ann C. Erb, Trustee

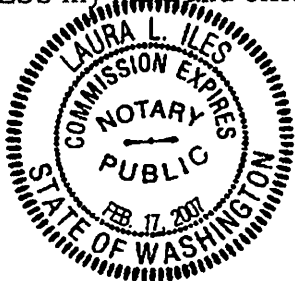
Gary H. Erb  
Gary H. Erb, individually

Ann C. Erb  
Ann C. Erb, individually

STATE OF WASHINGTON )  
 )  
 ) : ss.  
 )  
COUNTY OF Skagit )

THIS IS TO CERTIFY that on this 31st day of March, 2003, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared **GARY H. ERB and ANN C. ERB, individually and as Trustees of the GARY H. ERB AND ANN C. ERB LIVING TRUST**, to me known and known to me to be the persons named in and who executed the within and foregoing instrument, and they individually acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.



Laura L. Iles  
Notary Public, State of Washington  
My commission expires: 2-17-07

After recording return to:

GRANTEE  
Mr. and Mrs. Kevin McNamee  
P.O. Box 6243  
Sitka, AK 99835



2 of 2

2003-000855-0

Attachment J

CITY & BOROUGH OF SITKA  
100 LINCOLN STREET  
SITKA, AK 99857540

Merchant ID: 000000002754987  
Term ID: 04090014  
409200114885

8/10/2016  
-00007177  
t Counter  
N MCNAMEE

Phone Order

VISA	300.00
XXXXXXXXXXXX	18.00
Entry Method: Manual	318.00
Apprvd: Online Batch#: 000965	318.00
08/10/16 09:36:32	318.00
CVV2 Code: M	318.00
Inv #: 000004 Appr Code: 072756	
Total: \$	318.00

Customer Copy

**McNamee**  
Tideland Lease Request  
4401 Halibut Point Road