



LEASE AGREEMENT

**THE
CITY & BOROUGH
OF SITKA**

&

**BARNARD CONSTRUCTION
COMPANY, INC.**

(GROUND LEASE)

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**LEASE AGREEMENT BETWEEN CITY AND BOROUGH OF SITKA
AND BARNARD CONSTRUCTION COMPANY, INC. (GROUND LEASE)**

PREAMBLE

This lease agreement is effective as of the 20th day of November, 2012, between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "or "Lessor") and Barnard Construction Company, Inc, Sitka, Alaska 99835 ("Lessee"), hereafter referred to as "Lease Agreement." This Lease Agreement consists of the Special Provisions, the General Provisions, and the attached Exhibits A and B. Exhibit A is a pictorial representation of the area leased on Block 4, Lots 12, 13 and 15 of the Sawmill Cove Industrial Park ("SCIP"). Exhibit B is the "Management Requirements at Sawmill Cove Industrial Park, Sitka, Alaska," which summarizes the Prospective Purchasers Agreement, the Management Plan and the Conveyance Agreement regarding SCIP. This Lease Agreement was recommended by the SCIP Board of Directors on November 1st, 2012, and approved by the Assembly on November ____, 2012.

SPECIAL PROVISIONS

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

SECTION 1.1 CONVEYANCE OF ESTATE IN LEASE

Lessor, for and in consideration of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the Subject Property or Premises as shown on Exhibit A. The Subject Property is a portion of Block 4, Lots 12, 13, and 15, approximately 255,734 square feet. The Term is for 1 year, and commences on the 20th day of November, 2012. There is an option to extend the Lease Agreement for one year, if mutually agreed to by the Parties.

Lot 12 and 13 are to be used for a concrete batch plant. Lot 15 is to be used for material and equipment storage, and house trailers for housing. This use is all associated with the Lessee's Blue Lake Hydroelectric Expansion Project contract.

SECTION 1.2 RESERVED

SECTION 1.3 RESERVED

SECTION 1.4 DISPOSITION OF IMPROVEMENTS AND LESSEE'S PERSONAL PROPERTY FOLLOWING TERM OF LEASE AGREEMENT

With the exception of such improvements described in the next sentence, Lessee 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 Agreement or any extension thereof unless Lessee makes a separate written agreement with Sitka to do otherwise. Subject to the provisions of the next sentence and subject to agreement by Lessor, Lessee shall leave behind at no cost to Sitka improvements. Any improvements or personal property not removed after

thirty (30) days have passed after termination of this Lease Agreement shall be deemed abandoned and at Lessor's option shall become the property of Lessor, and Lessee shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka does not exercise such option. Subject to Sitka's obligations under Subsection 3.1(a) below, Lessee agrees to leave Subject Property in a neat, clean, and at the end of the term of the Lease Agreement.

SECTION 1.5 COVENANTS TO PERFORM

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

ARTICLE II: RENT

SECTION 2.1 CALCULATION & METHOD OF PAYMENT OF RENT

Notwithstanding any other provision of this Lease Agreement, on the Term start date set out in Article I, Lessee shall pay the full month rent payment owed under this Lease Agreement, which shall be prorated if the date this Lease is executed is not the first day of the month. Subject to the provision in the previous sentence, Lessee shall pay the lease payments in advance for the Term of the Lease Agreement without the necessity of any billing by Lessor. Lessee will lease the space as shown in Exhibit A for \$92,064.24/month payable at a rate of \$0.36/SF/yr. Sales tax is to be paid in addition to the stated Rent.

SECTION 2.2 RESERVED

SECTION 2.3 RESERVED

SECTION 2.4 RESERVED

ARTICLE III: RESTRICTIONS UPON USE OF SUBJECT PROPERTY

SECTION 3.1 LESSEE'S OBLIGATIONS AS TO CONSTRUCTION, MAINTENANCE, REPAIR AND SAFETY

(a) Except as provided in this Lease Agreement, Lessee acknowledges the Subject Property is in an "as is" condition. At the sole cost and expense of Lessee and in compliance with all legal requirements, Lessee may purchase, construct, develop, repair, and/or maintain any improvements, using materials of good quality and matching existing finishes.

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

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

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

(d) Lessee shall confine its equipment, storage and operation to the Subject Property.

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

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

SECTION 3.2 LESSOR'S APPROVAL OF CERTAIN ALTERATIONS OR IMPROVEMENTS

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

SECTION 3.3 RIGHTS OF ACCESS TO SUBJECT PROPERTY

(a) Lessor reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Subject Property, as well as for the purposes of constructing or installing new public utilities. Lessor also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease Agreement. Sitka also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the

construction of improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Lessee shall not charge for any of the access allowed in the situations described in this subsection.

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

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

SECTION 3.4 ADDITIONAL CONDITIONS OF LEASING

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

(a) Lessee will cooperate with the City and Borough of Sitka Public Works Department and will notify this Department of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Lessee will be provided a 24 hour telephone number to notify the Lessor of any event that requires immediate response by the Lessor.

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

(c) Lessor may sell the Subject Property in the future and all agreements regarding the Subject Property, including this Lease Agreement, between Lessor and Lessee shall be completely transferable to the new owner. A transfer of the Subject Property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those set forth in this Lease Agreement.

(d) Lessor may, upon at least 10 days prior notice to Lessee, temporarily suspend the supply, if provided on the Subject Property, of water, wastewater service, electric power to perform routine maintenance and, in all events, subject to unavoidable delays, as provided in Section 4.4. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Sitka shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(e) Lessee will pay any applicable City and Borough of Sitka Fire Marshal fees and other building permit fees when due.

(f) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for their property. Sitka is not responsible for theft or vandalism.

SECTION 3.5 CONTROL OF RODENTS AND OTHER CREATURES ON SUBJECT PROPERTY

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

ARTICLE IV: UTILITY SERVICES & RATES

SECTION 4.1 PROVISION OF UTILITY SERVICES

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

SECTION 4.2 RESERVED

SECTION 4.3 RESERVED

SECTION 4.4 LESSOR LIMITED LIABILITY AND NON-LIABILITY

In the event utility services are provided, and except to the extent that any such failure, injury, or other casualty is due to Lessor's negligence or breach of any obligation under this Lease Agreement, Lessor shall not be liable for any failure of utility services, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, earthquake, hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain, or snows which may leak or flow from the street, sewer, or from any part of the Subject Property, or leakage of sewer, or plumbing works therein, or from any other place, or for sewer or plumbing works therein, or from any other place. Lessor shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains by an act of God, beyond Lessor's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

SECTION 4.5 RESERVED

SECTION 4.6 RESERVED

ARTICLE V. LIABILITY

SECTION 5.1 LIABILITY OF LESSEE AND INDEMNIFICATION OF LESSOR.

Lessee agrees to indemnify, defend, and hold harmless Lessor against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of Lessor, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and structures and improvements. This includes any claim arising from products produced on the property. Lessee also agrees to indemnify, defend, and

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

SECTION 5.2 LIABILITY OF LESSOR AND INDEMNIFICATION OF LESSEE.

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

SECTION 5.3 REIMBURSEMENT OF COSTS OF OBTAINING POSSESSION.

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute hereunder 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 Agreement including obtaining possession of the Subject Property and establishing the Lessor's title free and clear of this Lease Agreement upon expiration or earlier termination of this Lease Agreement.

GENERAL PROVISIONS

ARTICLE VI: DEFINITIONS

SECTION 6.1 DEFINED TERMS

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

- (a) "Event of Default" means the occurrence of any action specified in Section 14.1.
- (b) "Imposition" means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property, any part thereof, any right or interest therein or any rent and income received therefrom as well as sales taxes on rent.
- (c) "Improvements" or "improvements" means all improvements of any nature now or hereafter located upon the Land, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, including any constructed fence or signage; excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Lessee, Sublessees, or others, which can be removed without defacing or materially injuring the improvements remaining on the Subject Property, from the Subject Property with the portion of the Subject Property from which such items are removed being returned to a condition at least as good as that existing on the date of this Lease Agreement. "Improvements" also includes fill, grading, asphalt, and other non-building land improvements.
- (d) "Personal Property" means tangible personal property owned or leased and used by the Lessee or any sublessee of the Lessee, in connection with and located upon the Subject Property.
- (e) "Premises" means the "Subject Property."
- (f) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease Agreement for the use of the demise.
- (g) "Subject Property" is the area leased as shown on Exhibit A or elsewhere in the document.
- (h) "Sublessee" and "Sublease" -- any reference to "sublessee" shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through the Lessee; the term "sublease" shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any Person holding by or through the Lessee.
- (i) "Term" means the period of time Lessee rents or leases the Subject Property from Lessor.

ARTICLE VII: INSURANCE

SECTION 7.1 INSURANCE

Lessee shall maintain property damage and comprehensive general liability insurance in the amount of one million dollars (\$1,000,000), including leasehold improvements. Lessor shall be named as an additional insured.

SECTION 7.2 NOTIFICATION OF CLAIM, LOSS, OR ADJUSTMENT

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss 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 the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance whenever: (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the Parties to this Lease Agreement, or anyone claiming under it in connection with the Subject Property or improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Lease Agreement to be so insured.

In such circumstances, the Parties also hold on or waive any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost. In the case of increased cost, the other Party shall have the right, within thirty (30) days following written notice, to pay the increased cost keeping the release and waiver in full force and effect.

ARTICLE VIII: RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY

SECTION 8.1 LESSEE WITHOUT POWER TO ASSIGN LEASE OR TRANSFER OR ENCUMBER SUBJECT PROPERTY

Lessee has no power under this Lease Agreement to assign the Lease Agreement or transfer the Subject Property, except with the recommendation of the SCIP Board of Directors, and approval of the Assembly for the Administrator to execute any assignment or transfer documents. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan or mortgage.

SECTION 8.2 LIMITATIONS ON SUBLEASES

Lessee shall not sublease the Subject Property or any portion of it except with approval of the SCIP Board of Directors, and the approval of the Assembly for the Administrator to execute a consent to a sublease agreement. All Subleases entered into involving all or any part of the improvements or the Subject Property shall be expressly subject and subordinate to this Lease Agreement, including Exhibits A and B, and including all or any improvements or additions. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease Agreement. Lessor's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

ARTICLE IX: USE AND PROTECTION OF THE SUBJECT PROPERTY

SECTION 9.1 PROPERTY AS IS -- REPAIRS

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

SECTION 9.2 COMPLIANCE WITH LAWS

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

SECTION 9.3 NOTIFICATION OF CITY AND BOROUGH OF SITKA'S PUBLIC WORKS DIRECTOR OF DISCOVERY

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

Lessee shall be responsible for all clean-up costs associated with contamination of soils of Subject Property, adjoining property, and/or buildings caused by or attributed to Lessee through its operations on the Subject Property. In the event of Lessee's failure to clean-up to applicable regulatory standards or to the satisfaction of the Public Works Director, the Lessor may perform clean-up or contract for clean-up and all charges for such work shall be payable by Lessee.

SECTION 9.4 USE OF UTILITY LINES

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

If such utility services are requested and granted, Lessee shall connect or otherwise discharge to such utility lines, including electric, water and/or wastewater lines, as are approved by the appropriate City and Borough of Sitka Department, which may include the Department 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 the Electric Department Director for such connections.

SECTION 9.5 PERMITS AND APPROVALS FOR ACTIVITIES

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

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

SECTION 10.1 PERFORMANCE OF LESSEE'S COVENANTS TO PAY MONEY

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

SECTION 10.2 LESSOR'S RIGHT TO CURE LESSEE'S DEFAULT

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

SECTION 10.3 REIMBURSEMENT OF LESSOR AND LESSEE

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

entitled to receive from the Lessor prompt payment or reimbursement on any sums due and owing from the Lessor to the Lessee, together with interest at the highest rate allowed by law.

ARTICLE XI: DAMAGE OR DESTRUCTION

SECTION 11.1 REPAIR AND REPLACEMENT OF IMPROVEMENTS FOLLOWING DAMAGE

(a) If the Subject Property shall be destroyed or damaged by any cause as to be unfit, in whole or in part, for occupancy and such destruction or damage could reasonably be repaired within ninety (90) days from the date of such damage or destruction, then Lessee shall not be entitled to surrender possession of the Premises, nor shall Lessee's liability to pay rent under this Lease Agreement cease, without the mutual consent of the Parties; in case of any such destruction or damage, Lessor shall repair the same with all reasonable speed and shall complete such repairs within ninety (90) days from the date of such damage or destruction. If during such period Lessee shall be unable to use all or any portion of the Premises, a proportionate allowance shall be made to Lessee from the rent corresponding to the time during which and to the portion of the Premises of which Lessee shall be so deprived of the use.

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

The timeframes in this article may be modified by mutual agreement of the Parties.

ARTICLE XII: MECHANIC'S LIENS

SECTION 12.1 DISCHARGE OF MECHANICS' LIENS

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

ARTICLE XIII: LIEN FOR RENT AND OTHER CHARGES

SECTION 13.1 LIEN FOR PAYMENTS

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

ARTICLE XIV: DEFAULT PROVISIONS

SECTION 14.1 EVENTS OF DEFAULT

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

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

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

SECTION 14.2 RESERVED

SECTION 14.3 REMEDIES IN EVENT OF DEFAULT

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

(a) The Lessor may terminate this Lease Agreement and the Term created, in which event the Lessor may repossess the entire Subject Property and improvements, and be entitled to recover as damages a sum of money equal to the value, as of the date of termination of this Lease Agreement, of the rent provided to be paid by the Lessee for the balance of the stated term of this Lease Agreement less the fair rental value as of the date of termination of this Lease Agreement

of the fee interest in the Subject Property and improvements for the period, and any other sum of money and damages due under the terms of this Lease Agreement to the Lessor and the Lessee. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

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

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

(d) Upon the termination of this Lease Agreement and the Term created, or upon the termination of the Lessee's right of possession, whether by lapse of time or at the option of the Lessor, the Lessee will at once surrender possession of the Subject Property and dispose of personal property and improvements as described in Section 1.4. If possession is not immediately surrendered, the Lessor may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, using force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease Agreement has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

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

SECTION 14.4 WAIVERS AND SURRENDERS TO BE IN WRITING

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

ARTICLE XV: LESSOR'S TITLE AND LIEN

SECTION 15.1 LESSOR'S TITLE AND LIEN PARAMOUNT

The Lessor retains title to the Land under this Lease Agreement. Any Lessor's lien for rent and other charges shall be paramount to all other liens on the Subject Property.

SECTION 15.2 LESSEE NOT TO ENCUMBER LESSOR'S INTEREST

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

ARTICLE XVI: REMEDIES CUMULATIVE

SECTION 16.1 REMEDIES CUMULATIVE

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

SECTION 16.2 WAIVER OF REMEDIES NOT TO BE INFERRED

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

SECTION 16.3 RIGHT TO TERMINATE NOT WAIVED

Neither the rights given to receive, sue for or distrain from any rent, moneys or other payments, or to enforce any of the terms of this Lease Agreement, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of the Lessor to declare ended the term granted and to terminate this Lease Agreement because of any event of default.

ARTICLE XVII: SURRENDER AND HOLDING OVER

SECTION 17.1 SURRENDER AT END OF TERM

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

SECTION 17.2 RIGHTS UPON HOLDING OVER

At the termination of this Lease Agreement, the Lessee shall yield up immediately possession of the Land to the Lessor and, failing to do so, agrees, at the option of the Lessor, to pay to the Lessor for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times 1/30th of the aggregate of the rent paid or payable to Lessor during the last month of the term of the Lease Agreement the day before the termination of the Lease Agreement. The provisions of this Article shall not be held to be a waiver by the Lessor of any right or reentry as set forth in this Lease Agreement, nor shall the receipt of a sum, or any other act in apparent affirmance of the tenancy, operate as a waiver of the right to terminate this Lease Agreement for any breach of the Lessee under this Lease Agreement.

ARTICLE XVIII: MODIFICATION

SECTION 18.1 MODIFICATION

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

ARTICLE XIX: INVALIDITY OF PARTICULAR PROVISIONS

SECTION 19.1 INVALIDITY OF PROVISIONS

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

ARTICLE XX: APPLICABLE LAW AND VENUE

SECTION 20.1 APPLICABLE LAW

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

ARTICLE XXI: NOTICES

SECTION 21.1 MANNER OF MAILING NOTICES

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

SECTION 21.2 RESERVED

SECTION 21.3 SUFFICIENCY OF SERVICE

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

SECTION 21.4 WHEN NOTICE DEEMED GIVEN OR RECEIVED

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

ARTICLE XXII: MISCELLANEOUS PROVISIONS

SECTION 22.1 CAPTIONS

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

SECTION 22.2 CONDITIONS AND COVENANTS

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

SECTION 22.3 ENTIRE AGREEMENT

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

SECTION 22.4 TIME OF ESSENCE AS TO COVENANTS OF LEASE AGREEMENT

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

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

SECTION 23.1 COVENANTS TO RUN WITH THE SUBJECT PROPERTY

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

SECTION 23.2 RESERVED

ARTICLE XXIV: ADDITIONAL GENERAL PROVISIONS

SECTION 24.1 ABSENCE OF PERSONAL LIABILITY

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

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

SECTION 24.2 LEASE AGREEMENT ONLY EFFECTIVE AS AGAINST LESSOR UPON APPROVAL

This Lease Agreement is effective only upon the recommendation of this Lease Agreement by the SCIP Board of Directors, and approved by the Assembly for execution by the Municipal Administrator, in accordance with the Sitka General Code at Chapter 2.38, and signed by the Municipal Administrator.

SECTION 24.3 BINDING EFFECTS AND ATTORNEYS FEES

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

SECTION 24.4 DUPLICATE ORIGINALS

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

SECTION 24.5 DECLARATION OF TERMINATION

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

SECTION 24.6 AUTHORITY

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

**BARNARD CONSTRUCTION COMPANY,
INC.**

CITY AND BOROUGH OF SITKA

JAMES DINLEY, Municipal Administrator

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

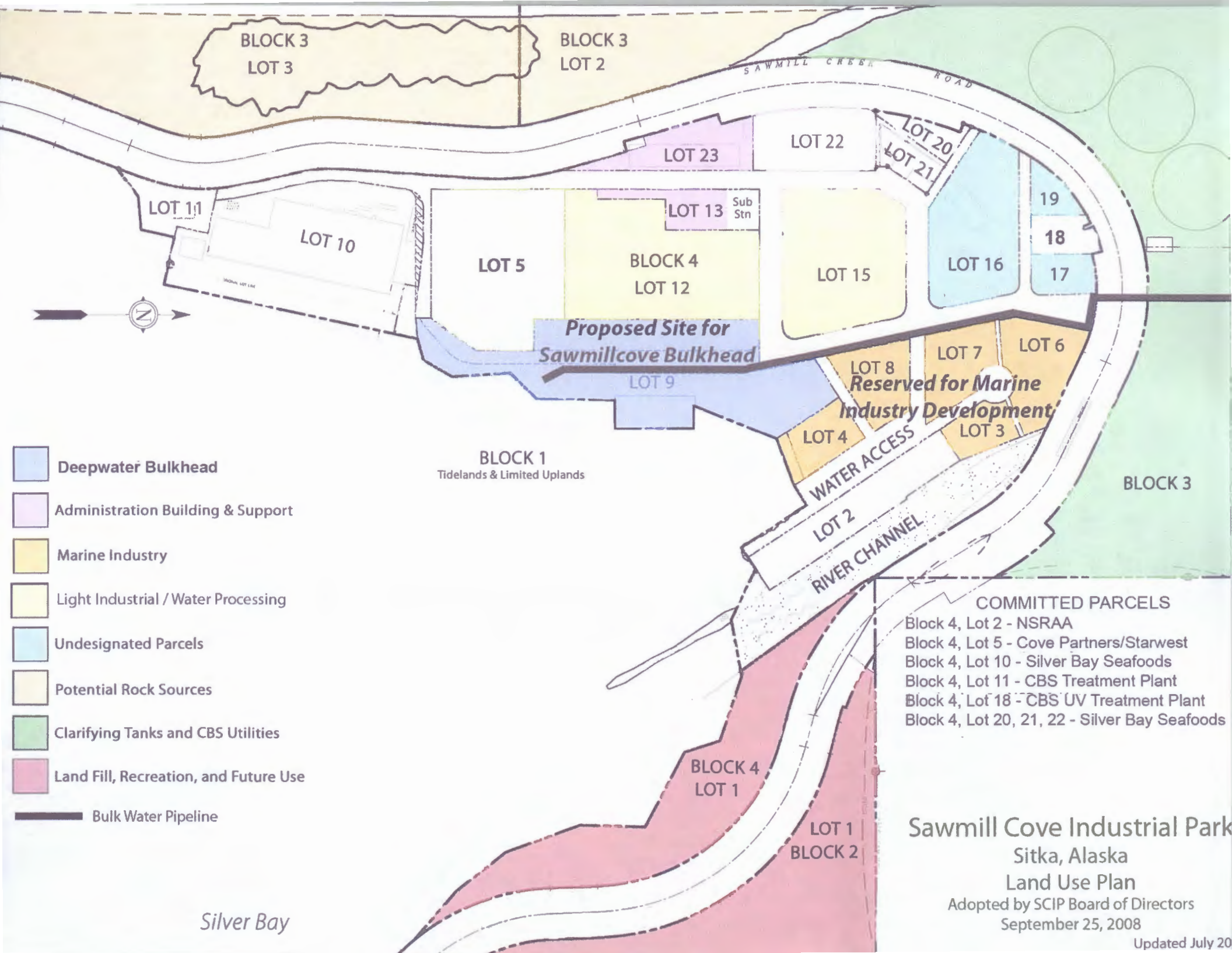
On this ____ day of _____, 2012, _____ of _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Lease Agreement on behalf of _____ and affirms by signing this document to be authorized to sign on behalf of the _____ and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2012, JAMES DINLEY, MUNICIPAL ADMINISTRATOR of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease Agreement on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____



BLOCK 3
LOT 3

BLOCK 3
LOT 2

SAWMILL CREEK ROAD

LOT 23

LOT 22

LOT 20

LOT 21

LOT 11

LOT 10

LOT 13 Sub Stn

LOT 5

BLOCK 4
LOT 12

LOT 15

LOT 16

19

18

17



**Proposed Site for
Sawmillcove Bulkhead**

LOT 9

LOT 8

LOT 7

LOT 6

**Reserved for Marine
Industry Development**

LOT 4

LOT 3

BLOCK 1

Tidelands & Limited Uplands

BLOCK 3

WATER ACCESS
RIVER CHANNEL

LOT 2

COMMITTED PARCELS

- Block 4, Lot 2 - NSRAA
- Block 4, Lot 5 - Cove Partners/Starwest
- Block 4, Lot 10 - Silver Bay Seafoods
- Block 4, Lot 11 - CBS Treatment Plant
- Block 4, Lot 18 - CBS UV Treatment Plant
- Block 4, Lot 20, 21, 22 - Silver Bay Seafoods

BLOCK 4
LOT 1

LOT 1
BLOCK 2

Sawmill Cove Industrial Park
Sitka, Alaska
Land Use Plan

Adopted by SCIP Board of Directors
September 25, 2008

Silver Bay

Updated July 2008

- Deepwater Bulkhead
- Administration Building & Support
- Marine Industry
- Light Industrial / Water Processing
- Undesignated Parcels
- Potential Rock Sources
- Clarifying Tanks and CBS Utilities
- Land Fill, Recreation, and Future Use
- Bulk Water Pipeline