

# LEASE AGREEMENT

BETWEEN THE  
**CITY AND BOROUGH**  
OF SITKA

&

**NORTHERN SOUTHEAST  
REGIONAL AQUACULTURE  
ASSOCIATION**

**Sawmill Cove**  
INDUSTRIAL PARK

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**LEASE AGREEMENT  
PREAMBLE**

The City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka," "the City," or "Lessor" ) and Northern Southeast Regional Aquaculture Association, 1308 Sawmill Creek Road, Sitka, Alaska 99835, an Alaskan company ("NSRAA," "Tenant," or "Lessee"), individually referred to as "Party and collectively referred to as "Parties," enter into this Lease Agreement Between The City And Borough Of Sitka And Northern Southeast Regional Aquaculture Association ("Lease Agreement" or "Lease"). This Lease Agreement consists of the Special Provisions, the General Provisions, and the attached Exhibits A1, A2, B, C, D and E. The Exhibits include the following:

Exhibit A - Pictorial representation of the area leased at the Sawmill Cove Industrial Park—and the area leased called the "Subject Property";

Exhibit A2 - Pictorial representation of the hatchery wastewater outfall pipe location;

Exhibit B - "Prospective Purchaser Agreement Between the State of Alaska and the City-Borough of Sitka for the Former Alaska Pulp Corporation Pulp Mill Property," dated April 28, 1999 ("Prospective Purchaser Agreement"), including all attachments, which includes "Memorandum of Understanding between the State of Alaska and the City and Borough of Sitka Management Plan for Sawmill Cove Property (Former APC Property)" dated April 28, 1999 ("Management Plan");

Exhibit C - Agreement to Convey between Alaska Pulp Corporation and the City and Borough of Sitka ("Conveyance Agreement");

Exhibit D - Summary of the requirements imposed by the Prospective Purchasers Agreement, the Management Plan, and the Conveyance Agreement;

Exhibit E - Guidelines for use of the Sawmill Cove Pulp Dock.

**SPECIAL PROVISIONS**

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

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

Lessor, for and in consideration of the rents received and of the covenants and agreements made by Lessee, lease to Lessee, and Lessee leases from Lessor, the Subject Property as shown on Exhibit A. The Subject Property consists of approximately 60,180 square feet of uplands adjacent to Sawmill Creek.

The term of the lease is ten (10) years, and commences on the first day of the month immediately after the month in which this Lease Agreement has been executed by both parties (Execution Date), and ends ten years later. This means that if the Execution Date is April 27, 2006, the end of the original 10-year term of the Lease Agreement is May 1, 2016.

### **Section 1.2 Options to Renew.**

The Lessee shall have the option to extend the Lease Agreement for two successive terms of twenty (20) years each upon the same terms and conditions as this Lease Agreement (except Section 1.2) with the lease payments as described in Article II, based upon the following conditions:

- (a) There is no continuing material default by Lessee under this Lease Agreement at the time of exercise of this right or at the commencement of any extended term;
- (b) Sawmill Cove Industrial Park Board of Directors has determined under Subsection 3.5 that NSRAA has adequately controlled its odors during the immediately preceding term of the lease;
- (c) Lessee makes a written request to exercise such option not more than one year or less than six months from the end of the immediately preceding term;
- (d) Lessee is in compliance with law and this Lease Agreement and is not in default under this Lease Agreement; and
- (e) Options to renew must be approved by the Assembly of the City and Borough of Sitka.

### **Section 1.3 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, Lessee shall leave behind at no cost to Lessor 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 fish hatchery operations, fish 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 Subject Property. 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 NSRAA shall repay to Sitka any costs of removing such

improvements or personal property from the Subject Property if Sitka does not exercise such option. Any holes that may be left in walls, ceilings, or floors as a result of removal of improvements shall be repaired by NSRAA in a manner that meets all existing requirements of local, state, and federal law and matches the existing materials of Subject Property. Subject to Subsection 3.1(a) below, NSRAA agrees to leave Subject Property in a neat, clean, and weather-tight condition at the end of the term of the Lease Agreement.

**Section 1.4 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 During the Initial Ten-Year Term of the Lease.**

Lessee shall pay the lease payments for each month in advance upon the first day of each and every month for which rent is due throughout the term of the Lease Agreement without the necessity of any billing by Lessor. Lessee has the option of making annual, lump sum payments in lieu of monthly payments. The following table shows the amount of lease payments due each year during the initial 10-year term of the Lease Agreement and for each of the two, twenty-year extensions.

| Month                            | Rate/Sq. Ft./Year                         | Space          | Total Year |
|----------------------------------|---|----------------|------------|
| Prior to July 1, 2009 (see note) | \$0.00                                    | 60,180 sq. ft. | \$0.00     |
| Initial ten-year term            | \$0.02                                    | 60,180 sq. ft. | \$1,200.00 |
| Each 20-year extension           | 9 % of 60% of appraised value             | 60,180 sq. ft. |            |
| Each July 1 beginning at Year 11 | CPI adjustment according to City Assessor |                |            |

**Note:** Lessor exempts Lessee from making lease payments under this Lease Agreement and pay property taxes until fish reared at the Sawmill Cove Hatchery are sold by Lessee, or until July 1, 2009, whichever comes first.

## **Section 2.2 Cost of Living Adjustment to Lease Rate:**

Beginning on July 1 of the eleventh year of the lease and continuing annually, the lease rate will be adjusted based on an assessment of value of the leasehold as determined by the Assessor for the City and Borough of Sitka.

## **Section 2.3 Calculation and Method of Payment of Rent During Successive Optional Twenty-Year Renewals of the Lease.**

If Lessee decides to exercise the option to renew for a successive twenty-year term under Section 1.2, the Lessee must notify the Lessor of its intent no less than six (6) months before the end of the current term of the lease. Lessor may commission a professional market appraisal of the Subject Property in its "as is" condition. The appraisal will not take into consideration improvements made to the property by Lessee but may take into consideration improvements made by the Lessor. Subject to the provision of the next sentence, the rental rate for each year of the successive twenty-year term shall be equal to nine percent (9%) of sixty percent (60%) of the appraised value as determined by the appraisal described in the this section.

## **Section 2.4 Property Tax Responsibility**

Lessor exempts Lessee from paying property taxes until Lessee's sells fish reared at the Sawmill Cove Hatchery, or until July 1, 2009, whichever comes first. Each calendar year thereafter, the Lessee shall pay property taxes to the City and Borough of Sitka for its possessory interest in the *land* and equipment to the extent taxable as determined by the Assessor for the City and Borough of Sitka.

## **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 herein, Lessee acknowledges the leasehold is in an "as is" condition. At the sole cost and expense of Lessee and in compliance with all legal requirements, Lessee shall purchase, construct, develop, repair, and/or maintain any improvements, personal property, fixtures, and other items on the interior Subject Property in a manner using materials of good quality and labor qualified to perform the work. Any drains, waterlines, fences, fish ladders, outfall pipes, wastewater pumps, or wastewater pipelines shall be the responsibility of NSRAA including any water leaks or blockages caused by appurtenances.

(b) Lessee, not Lessor, shall be responsible for removing snow on the Lessee's Subject Property.

(c) Lessee, not Lessor, shall be responsible for damages to Lessor's equipment, piping or other infrastructure due to pressure surges in the potable or raw water piping systems.



(d) Lessor owns an outfall pipeline and the entry point is located near the Wastewater Treatment Plant. Lessor may accept process wastewater from Lessee. Lessor reserves the right to refuse use of the outfall pipeline by the Lessee for any reason, including flow restrictions and permitting restrictions. If use of the outfall pipeline by Lessee is granted by Lessor, the Lessee shall be solely responsible for Lessee's ability to secure discharge permits from State or Federal agencies. Any fees paid to Lessor by Lessee for the use of the outfall pipeline will be negotiated in a separate agreement.

Lessee is responsible for installing its connecting pipeline for discharge of process wastewater from the Subject Property to the Wastewater Treatment Plant, the site of the municipal marine outfall pipe. Lessee shall be solely responsible for obtaining and servicing its wastewater discharge permits including agreements with other fish processors that may be required by regulatory agencies and for any penalties due to violations of said permits. Lessor shall not be responsible for Lessee's ability to secure discharge permits from State or Federal agencies.

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

(f) Lessee shall use the Subject Property and any improvements placed thereon only for operation of a fish hatchery and ancillary uses, and all activities associated with the operation of the fish hatchery and ancillary uses shall be in accordance with this Lease Agreement and all applicable laws.

(g) Lessee shall confine their equipment, storage and operation to the leasehold area.

(h) Lessee shall operate its facility a safe manner consistent with Federal, State and Municipal laws.

(i) Lessee shall not permit the accumulation of waste or refuse matter on the Subject Property.

(j) 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.

(k) Lessee may erect outdoor signage at its expense with the permission of the City Building Official and the Sawmill Cove Board of Directors. The style, size and physical placement location of the sign will be approved on a case-by-case basis by the Sawmill Cove Board of Directors.

(l) Lessee shall be exempt from Sitka Borough sales tax for the Sawmill Cove Industrial Park hatchery project until hatchery construction is complete or until July 1, 2009 whichever date comes first.

(m) Lessee may install a submarine wastewater outfall at the location shown on Exhibit A2, upon approval of the Lessor. Should the Lessor determine, in its sole judgment, that the wastewater outfall location interferes with other necessary activities at the Sawmill Cove Industrial Park, Lessee shall relocate the wastewater outfall to another location acceptable to Lessor at Lessee's expense.

(n) Lessee understands that the existing marine retaining wall located along the south side of the Subject Property is failing and that Lessor is not obligated to repair the retaining wall.

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

Lessee shall not make or permit to be made any alteration of, addition to, or change in, structures and improvements, nor demolish all or any part of the structures or improvements without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. In requesting consent Lessee shall comply with all applicable laws, including ordinances, and shall submit to the Public Works Director of the City and Borough of Sitka or designee written detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan of full payment of the costs of the work. Lessor shall notify Lessee of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting, Lessor shall be acting in its proprietary function and not its regulatory function. Any such approval in this proprietary function does not relieve Lessee of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Lessee from removing at the termination of this Lease Agreement any improvements or personal property as described in Section 1.3.

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

(a) Lessor reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner 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. Lessor also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Lessee shall not charge fees for any of the access allowed in the situations described in this subsection.

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

(c) Lessee acknowledges that the Subject Property is or shall be subject to various easement agreements for ingress and egress, utilities, parking, and maintenance of common areas. Lessee agrees that it shall comply with the terms of said easements and pay, in accordance with the terms of said easement agreements, those portions of such maintenance expenses that are attributable to the Subject Property, as more fully set forth therein. Lessee also agrees that the Subject Property shall include an access easement as shown on Exhibit A1. Lessee shall have regular use of the access easement provided such use by Lessee does not impede use of such access easement by Lessor or other tenants of Lessor. The portion of the Subject Property included in any access easements shown on the plat or alternative drawing of the Subject Property allowed by Lessor shall not be included in the calculations producing the rent payment owed by Lessee.

### **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 shall be responsible to provide a surveyed map of Subject Property attached as Exhibit A1.

(b) Lessee shall provide geotechnical evaluation necessary for its hatchery design.

(c) Lessee shall acquire all permits necessary to construct and operate its facilities.

(d) Lessee shall develop designs that are acceptable to Lessor and that are compatible with other users of the Sawmill Cove Industrial Park.

(e) Lessee shall provide its connections to existing utilities.

(f) Lessee shall insure that its use of untreated, fresh water at the Subject Property shall not adversely affect water pressure for other uses at the Sawmill Cove Industrial Park.

(g) Lessee shall provide Lessor with construction record drawings necessary to identify locations of surface and subsurface features constructed by Lessee.

(h) Lessee shall insure that its contractors provide 50% performance and payment bonds during construction of Lessee's infrastructure.

(i) Lessee shall collect and remit City sales tax on retail sales made on the Subject Property. The types and amounts of retail sales allowed at the Sawmill Cove Industrial Park may be changed by the City and Borough Assembly from time to time. Lessee agrees that as a condition

of this Contract, it will comply with any and all applicable amendments to the Sitka General Code provisions, including any and all applicable amendments applicable to sales tax and zoning, which may impact its allowable retail sales and sales tax rates. Further, Lessee agrees that it will not claim that it is exempt and that it has “grandfather” rights regarding any and all amendments to the Sitka General Code provisions concerning any applicable zoning laws.

(j) The use of the site upon which the Subject Property is located, is subject to Exhibit B, the Prospective Purchaser Agreement. The Prospective Purchaser Agreement and all its attachments—specifically including the Management Plan—are hereby incorporated into this Lease Agreement and attached to it. Lessee shall abide by and fully comply with all requirements of the Prospective Purchaser Agreement and the Management Plan applicable to Lessee's activities, use, and occupancy of the site upon which the Subject Property sits.

(k) Lessee agrees not to increase or exacerbate contamination or pollution at Sawmill Cove Industrial Park.

(l) The use of the site is subject to the terms of the Conveyance Agreement, a copy of which is attached hereto as Exhibit C, including preferential use for T & C Barge Lines, Inc. of the existing utility dock and the existing mooring buoy on the Subject Property in accordance with the Conveyance Agreement. Lessee further acknowledges that a summary of the requirements imposed by the Prospective Purchasers Agreement, the Management Plan, and the Conveyance Agreement is included in Exhibit D. Lessee acknowledges receipt of Exhibits B, C, and D.

(m) The charges and fees paid by Lessee to Lessor must be separated according to the City and Borough of Sitka accounting standards.

(n) Lessor may form a Port Authority or similar entity, in the future and all agreements regarding the Subject Property, including this Lease Agreement, between Lessee and Lessor shall be completely transferable to the Port Authority. A transfer of the property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those hereunder.

(o) Lessor may sell the Sawmill Cove Industrial Park in the future and all agreements regarding the Subject Property, including this Lease Agreement, between Lessor and Lessee shall be completely transferable to said owner. A transfer of the property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those hereunder.

(p) Lessor may, upon at least 30 days prior notice to Lessee, temporarily suspend the supply of water, wastewater service, the supply of electric power, the use of pipelines, the use of waterfront structures or the use of the improvements in order 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.

(q) Lessee shall pay the City and Borough of Sitka Fire Marshal fees and other building permit fees and shall also pay all applicable property taxes and assessments when due.

(r) Lessee shall not store anything on property owned by Lessor outside the boundaries of the Subject Property.

(s) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for their property. Lessor is not responsible for theft or vandalism regarding Lessee's property. Security measures that involve construction of fences, gates, etc. must be approved in advance by the Department of Public Works.

(t) City and Borough of Sitka sales tax will apply to lease payments. Sales taxes on wharfage fees are exempt by municipal code and no sales taxes will apply to the wholesale purchase of raw fish from commercial fishing boats. Sales taxes will also apply to water and sewer services and will be calculated into each monthly billing from the City. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Assembly of the City and Borough of Sitka.

(u) Lessee acknowledges that other tenants and users of the Sawmill Cove Industrial Park may impact water quality through legally permitted discharges. Such users and uses may include requirements for construction in near shore marine waters that may impact water quality.

(v) Lessee shall remit Lessor twenty percent (20%) of the gross receipts received before sales tax from any tour of the Lessee's Sawmill Cove Hatchery.

### **Section 3.5 Control of Emission of Odors from Subject Property.**

(a) Lessee shall take all reasonable measure to control odors on the Subject Property, including keeping the Subject Property clean at all times, maintaining any odor control equipment in working condition and operating properly, and utilizing the best technology reasonably available for such control.

Lessor recognizes that odors from wild salmon spawning activities in Sawmill Creek are beyond Lessee's control. The intent of Section 3.5 is for Lessee to control odors on its lease area.

(b) In the event of persistent odor complaints, the Sawmill Cove Industrial Park Board of Directors may require Lessee to take one or all of the following remedial actions at Lessee's expense:

- (i) Assure that the Subject Property is clean;
- (ii) Provide operation and maintenance records to the Board;
- (iii) Operate only during nights and weekends when no other tenants are likely to be in the Sawmill Cove Industrial Park; and
- (iv) Install odor control equipment.

**Section 3.6 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 Sawmill Cove Industrial Park 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.**

Lessor shall identify the water utility line available to the Lessee. Currently, the Lessor has a sixteen (16) inch utility line available for use by Lessee, in an "as is" condition. Prior to use of the utility line, Lessee shall demonstrate to the satisfaction of the Lessor that flow utilized by Lessee will not adversely impact other systems utilizing the water utility line, including fire suppression systems at the Sawmill Cove Industrial Park. Lessor will provide up to 6.4 million gallons per day of raw water to Lessee at no charge, upon verification that the flow provided to Lessor does not have an adverse impact to other systems. Lessee is responsible for constructing infrastructure necessary to transport water from municipal utility water mains located in the Sawmill Cove Industrial Park road rights of way to the Subject Property. Lessee is responsible for providing water metering equipment acceptable to the Sitka Department of Public Works.

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

Utility rates charged by Lessor for utility services Lessor provides shall be those set forth in the City and Borough of Sitka's Customer Service Policy applicable to Sawmill Cove Industrial Park, and that may be incorporated in the Sitka General Code, and are currently identified in Ordinance 02-1679. The Assembly of the City and Borough may change utility rates from time to time by amending the Customer Service Policies that may be incorporated in the Sitka General Code.

Lessee acknowledges the requirements of Section 9.4 as to utility lines.

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

Lessee shall pay, or cause to be paid, all proper charges: for electricity and solid waste; for sewer and water; for telephone and other communication services; 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 Agreement. In the event that any charge, cost, or expense for any of the above-mentioned utility services or for any of the other above-mentioned services shall not be paid when due and payable, Lessor shall have the right, but shall not be obligated, to pay it, with the understanding that amounts paid by Lessor shall constitute additional rent due and payable under this Lease Agreement and shall be repaid to Lessor by Lessee immediately on rendition of a bill by the Lessor. Interest at the highest rate allowable by law shall be added as a charge for unpaid utility bills paid by Sitka on behalf of Lessee. Sitka reserves the right to suspend municipal utility services if Lessee does not pay for utility services.

#### **Section 4.4 Lessor Not Liable for Failure of Utilities.**

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 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 Subject Property, or leakage of gasoline or gas from pipes, appliances, sewer, or plumbing works, or from any other place, or for sewer or plumbing works, or from any other place. Lessor shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains by an act of God, beyond Lessor'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 Sitka General Code 15.05.400.

All raw, untreated water will be metered as stated in Section 4.1 of this Lease Agreement.

### **ARTICLE V: INDEMNIFICATION**

#### **Section 5.1 General Indemnification of Lessor Without Limitation of Any Other Indemnity Given.**

(a) Lessee agrees to indemnify, defend, and hold harmless Lessor against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of Lessor, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and structures and improvements, including liability arising from products produced on the property. Lessee also agrees to indemnify, defend, and hold Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the term of this Lease Agreement from:

- (i) any condition of the Subject Property or improvements placed on it;
- (ii) 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;
- (iii) any act or negligence of Lessee or any of its agents, contractors, servants, employees or licensees; and
- (iv) any accident, injury, death or damage caused to any person occurring during the Term of this Lease Agreement in or on the Subject Property.

(b) 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 Subsection (a). The agreement to indemnify, defend, and hold harmless Lessor in Subsection (a) is in addition to and not by way of limitation of any other covenants in this Lease Agreement.

### **Section 5.2 Indemnification of Lessee.**

(a) Except to the extent of liabilities arising from Lessee's acts or omissions, including Lessee's failure to comply with the Prospective Purchaser Agreement and the Management Agreement (both of which are attached to this Lease Agreement), 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:

- (i) any condition of the Subject Property or improvements placed on it;
- (ii) 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;
- (iii) any act or negligence of Lessor or any of its agents, contractors, servants, employees, or licensees; and
- (iv) any accident, injury, death, or damage caused to any person occurring during the Term of this Lease Agreement in or on the Subject Property.

(b) 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 Subsection 9(a) above. The agreement to indemnify, defend, and hold harmless Lessee 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 arising under this Lease Agreement 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, as well as 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 or any part of the Subject Property, any right or interest or any rent and income received under this Lease Agreement, as well as sales taxes on rent.
- (c) "Improvements" or "improvements" means all buildings, structures and improvements of any nature now or hereafter 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, elevators, escalators, 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 Lessee, sublessees, or others, which can be removed without defacing or materially injuring the improvements remaining on the property, from the property with the portion of the property from which such items are removed being returned to a condition at least as good as that existing on the Execution Date of this Lease Agreement.
- (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 Subject Property.
- (g) "Sawmill Cove Industrial Park" is the real estate composed of approximately 84 acres of uplands and 146 acres of tidelands located within the City and Borough of Sitka that is owned by the City and Borough of Sitka and was for a period longer than 30 years in the 1960s, 1970s, and 1980s, and 1990s, was used for operation of a pulp mill by Alaska Pulp Corporation.
- (h) "Subject Property" is the area leased as shown on Exhibit A1.

(i) "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.

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

## **ARTICLE VII: INSURANCE**

### **Section 7.1 Insurance.**

Before occupying the Subject Property, Lessee shall, at Lessee's sole cost and expense but for the mutual benefit of the Lessor and the Lessee, maintain the following insurance described in this Article and deliver copies evidencing insurance coverage to Lessor. Any and all policies providing any of the following insurance shall name Lessor as an additional insured party and shall be held by and be payable jointly to Lessor and Lessee with the proceeds to be distributed in accordance with this Lease Agreement.

(a) Fire and extended coverage insurance on all improvements on the Subject Property in an amount no less than 100 percent of the replacement cost of the improvements as of the most recent anniversary of the first day of the month immediately following the Execution Date, without deduction for depreciation, with a maximum deductible of \$5,000.00 protecting against loss or damage by: (i) fire and lightning; (ii) the risks commonly included within the term "extended coverage" (including but not limited to windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke); and (iii) vandalism and malicious mischief, all as these terms are used in insurance policies from time to time issued by insurance companies licensed to do business by the State of Alaska. Such replacement cost shall be determined yearly by the insurance broker for Lessee. In lieu of the above insurance coverage, Lessee may obtain "Special Form" coverage, provided only that this coverage is at least as large in amount and as broad in coverage as the foregoing and that the form of the coverage is first approved in writing by Lessor.

(b) During any construction, excavation, destruction, alteration, razing, or restoration performed on the Subject Property or on any of the improvements on the Subject Property, Lessee shall require its contractors to provide 50% performance and payment bonds to insure completion of the work and payment of workers. Lessor shall under no circumstances be held liable for payment of Lessee's insurance related to Lessee's construction costs.

(c) Comprehensive general public liability and property damage insurance, and contractual liability insurance, protecting and indemnifying Lessor, Lessee, and others designated by Lessor against any and all claims arising from any and all acts or omissions of Lessee (including all costs and expenses of defending against same) for bodily injury, sickness, disease, or death or for damage or injury to or destruction of property (including loss of use) arising out of ownership,

maintenance, or use of the improvements and the Subject Property including any products sold by Lessee. The limits of such insurance shall be not less than \$1,000,000.00 in respect of bodily injury, sickness, disease, or death of any one person resulting from any occurrence and \$1,000,000.00 in respect of damage or injury to or destruction of property from any one occurrence.

(d) Workers' compensation insurance, automobile liability insurance, and employer's liability insurance as required by law.

(e) In the event that any other type of legislation may be enacted imposing special liability upon the owner of property by virtue of its use for any special purposes, before the Lessee shall so use the improvements or any part of it, Lessee shall provide insurance in form and substance and with insurers and limits satisfactory to Lessor indemnifying Lessor, Lessee, and other persons Lessor may designate against any and all liability.

### **Section 7.2 Delivery of Insurance Policies.**

(a) Copies of these policies of insurance and insurance company certificates evidencing the existence of all of these policies of insurance shall be delivered to Lessor not less than 30 days after the Execution Date of this Lease Agreement. All policies of insurance required to be provided and obtained shall provide that they shall not be amended or canceled on less than 30 days' prior written notice to Lessor and all insureds and beneficiaries of the policies. Lessor shall have no obligation to pay premiums or make contributions to the insuring company or any other person.

(b) Not less than 30 days prior to the expiration date of any policy required to be carried pursuant to this Article, the Lessee shall deliver to Lessor the applicable respective policies or insurance company certificates evidencing all policies of insurance and renewals required to be furnished.

### **Section 7.3 Notification of Claim, Loss, or Adjustment.**

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

### **Section 7.4 Insurer To Be Approved and Provision of Premium Receipts.**

All policies of insurance of the character described in Section 8.1 shall be written with companies of recognized responsibility reasonably acceptable to Lessor. Upon written request by Lessor, Lessee shall provide photocopies of receipts showing the payment of premiums for all insurance policies required to be maintained by this Lease Agreement.

**Section 7.5 Waiver of Subrogation.**

(a) The insured Party, or the Party required to be insured, 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 and waives any right of subrogation which might otherwise exist in or accrue to any person on account of it, 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.

(b) 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 (provided that, 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. Lessee has no power under this Lease Agreement to transfer the Subject Property. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan or mortgage.

**Section 8.2 Limitations on Subleases.**

Lessee shall not sublease the Subject Property or any portion of it without the prior written approval of the Assembly of the City and Borough of Sitka. All Subleases entered into demising all or any part of the improvements or the Subject Property shall be expressly subject and subordinate to this Lease Agreement, including the Exhibits. 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.**

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

(b) Lessee acknowledges that the Subject Property is adjacent to other property rented by other tenants of Sawmill Cove Industrial Park. Lessee further acknowledges that noise and other types of interference with the use of the Subject Property may be caused by activities within or related to the Park. Lessee further acknowledges that construction occurring in Sawmill Cove Industrial Park may also create noise and other sources of interference with Lessee's operations including disturbance of nearshore marine waters or from activities associated from construction or operation of facilities such as large vessel docks.

(c) Any use by Lessee of existing docks shall be approved in advance by the Director of Public Works. Lessee acknowledges the structural limitations of the pulp dock. Tenant's use of the dock shall conform to the dock use guidelines attached to this Lease Agreement as Exhibit E.

(d) Lessee and other tenants of the Sawmill Cove Industrial Park shall coordinate activities to minimize conflicts.

### **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, including 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 to the City 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.**

Lessee shall promptly notify the Public Works Director of the City and Borough of Sitka within twenty-four (24) hours if any contaminated soils or other media that require special handling are encountered during construction activities.

#### **Section 9.4 Use of Utility Lines.**

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

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

Lessee shall be responsible for obtaining all necessary permits and approvals including food processing/purveying 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 for consistency with the Management Plan and other plans for and uses of Sawmill Cove Industrial Park. 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 with the Management Plan and 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 (other than Rent) due and the failure shall continue for ten (10) days after written notice to the Lessee, then the Lessor may, but shall not be obligated so to do, and without further notice to or demand upon the Lessee and without releasing the Lessee from any obligations of the Lessee under this Lease Agreement, make any other payment in a manner and extent that the Lessor may deem desirable.

#### **Section 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 into or through the building 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. Lessee covenants to pay the sum or sums with interest. Lessor shall have, in addition to any other right or remedy, the same rights and remedies in the event of the nonpayment by the Lessee as in the case of default by the Lessee in the payment of any installment of rent. Conversely, the Lessee shall be entitled to receive from the Lessor prompt payment or reimbursement on any sums due and owing from the Lessor to the Lessee, together with interest at the highest rate allowed by law. However, nothing contained in this Lease Agreement shall entitle the Lessee to withhold any Rent due to the Lessor or to offset or credit any sums against rent, except with respect to unpaid rental due from the Lessor to the Lessee under any sublease of building space to the Lessor.

## **ARTICLE XI: DAMAGE OR DESTRUCTION**

### **Section 11.1 Repair and Replacement of Structures and Improvements Following Damage.**

(a) If the Premises shall be destroyed or so injured by any cause as to be unfit for occupancy, in whole or in part, and such destruction or injury could reasonably be repaired within two (2) months 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 Fixed Rent under this Lease Agreement cease, without the mutual consent of the Parties. In case of any such destruction or injury, Lessee shall repair the same with all reasonable speed and shall complete such repairs within two (2) months 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 use.

(b) If such destruction or injury cannot reasonably be repaired within two (2) months from the date of such damage or destruction, Lessee shall notify Lessor within thirty (30) days after the date of such destruction or injury whether or not Lessee will repair or rebuild. If Lessee elects not to repair or rebuild, this Lease Agreement shall be terminated. If Lessee elects to repair or rebuild, Lessee shall specify the time within which such repairs or reconstruction will be complete, and Lessor 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, or to extend the Term of this Lease by a period of time equivalent to the time from the date of such destruction or injury until the Premises are restored to their former condition. In the event City elects to extend the Term of this Lease Agreement, Lessee shall restore the Premises to their former condition within the time specified in the notice, and Lessee shall not be liable to pay Fixed Rent for the period from the time of such destruction or injury until the Premises are so restored to their former condition.

(c) In addition to all rights to cancel or terminate this Lease Agreement set forth in Subsections 11.1(a) and 11.1(b), if the Premises are destroyed or damaged during the last two (2) years of the renewal Term of this Lease Agreement or any extension or renewal to the extent of fifty per cent (50%) or more of the value of the Premises, then Lessee shall have the right to cancel and terminate this Lease Agreement as of the date of such damage or destruction by giving Lessor written notice within ninety (90) days after the date of such damage or destruction.

## **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 Rent.**

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



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

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

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

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

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

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

The Lessor may treat any one or more of the Events of Default as a breach of this Lease Agreement and at its option, by serving written notice on the Lessee and each Secured Party and Leasehold Mortgagee of whom Lessor has notice (such notice not to be effective unless served on each such person) of the Event of Default of which the Lessor shall have received written notice, 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 1.3 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 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 the Lessee shall pay to the Lessor as damages a sum equal to the amount of the rent reserved in this Lease Agreement for the period or periods as and when payable pursuant to this Lease Agreement, or, if the Subject Property or any part of it has been relet, the Lessee shall satisfy and pay any deficiency upon demand from time to time; and the Lessee acknowledges that the Lessor may file suit to recover any sums falling due under the terms of this Section from time to time and that any suit or recovery of any portion due the Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of the Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.3 above.

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

(d) Upon the termination of this Lease Agreement and the Term created, or upon the termination of the Lessee's right of possession, whether by lapse of time or at the option of the Lessor, the Lessee will at once surrender possession of the Subject Property and dispose of

personal property and improvements as described in Section 1.3. 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 by 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. 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 is 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 shall have title to the Subject Property, and the 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 and arising from any act or omission of the Lessee shall accrue only against the leasehold estate of the Lessee in the Subject Property and the Lessee's interest in the improvements, and shall in all respects be subject to the paramount rights of the Lessor in the Subject Property.

## **ARTICLE XVI: REMEDIES CUMULATIVE**

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

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

### **Section 16.2 Waiver of Remedies Not to Be Inferred.**

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

### **Section 16.3 Right to Terminate Not Waived.**

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

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

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

On the last day of the last Lease Year of the original term, or on the earlier termination of the term, the Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to the Lessor, 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, the Lessee shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from the Lessee to the Lessor. If the Subject Property is not so surrendered, the Lessee shall repay the Lessor for all expenses which the Lessor shall incur by reason of it, and in addition, the Lessee shall indemnify, defend and hold harmless the Lessor from and against all claims made by any succeeding Lessee against the Lessor, founded upon delay occasioned by the failure of the Lessee to surrender the Subject Property.

## **Section 17.2 Rights Upon Holding Over.**

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

## **ARTICLE 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 First Judicial District, 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 written 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 (7) days following the giving of notice.

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

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

### **Section 21.3 Sufficiency of Service.**

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

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

Whenever a written notice is required by this Lease Agreement to be given by any Party to the other Party or by any Party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease Agreement of starting any time period after notice, the time period shall be conclusively deemed to have commenced three (3) 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 with its attached exhibits contains the entire agreement between the parties and shall not be modified in any manner except by a written instrument 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: SHORT FORM LEASE AGREEMENT**

### **Section 23.1 Short Form Lease Agreement.**

This Lease Agreement shall not be recorded, but the parties agree, at the request of either of them, to execute and deliver a Memorandum of Lease Agreement for recording, containing the names of the parties, the legal description of the Subject Property, the term of the Lease Agreement and any other pertinent provisions for which notice should be given to third parties. The Lessee agrees to bear the cost of recording the Short Form Lease Agreement.

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

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

All covenants, agreements, conditions and undertakings in this Lease 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 24.2 Interest in Deposits Automatically Transferred.**

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

**ARTICLE XXV: ADDITIONAL GENERAL PROVISIONS**

**Section 25.1 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 25.2 Lease Agreement Only Effective Against Lessor upon Assembly Approval.**

This Lease Agreement is effective against Lessor only upon the approval of such Lease Agreement by the Assembly of the City and Borough of Sitka.

**Section 25.3 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 25.4 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 25.5 Declaration of Termination.**


With respect to Lessor's rights to obtain possession of the Subject Property or to revest title in itself with respect to the leasehold estate of 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 25.6 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.

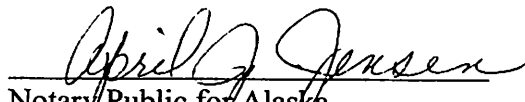
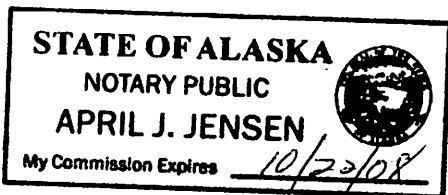
**NORTHERN SOUTHEAST  
REGIONAL AQUACULTURE ASSOC.**

**CITY AND BOROUGH OF SITKA**

  
John C. Stein  
Administrator

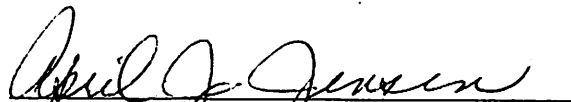
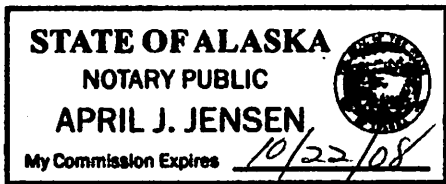
STATE OF ALASKA )  
 )ss: **CORPORATE ACKNOWLEDGMENT**  
FIRST JUDICIAL DISTRICT )

On this 8th day of May, 2006, personally appeared before me Peter A. Esquiro whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states by signing this Lease Agreement that he affirms under oath that he has the authority to sign this Lease Agreement on behalf of Northern Southeast Regional Aquaculture Association and acknowledges that the Lease Agreement is freely and voluntarily signed by him on behalf of Northern Southeast Regional Aquaculture Association .

  
Notary Public for Alaska  
My Commission Expires: 10/22/08

STATE OF ALASKA )  
 )ss: **MUNICIPAL ACKNOWLEDGMENT**  
FIRST JUDICIAL DISTRICT )

THIS CERTIFIES that on this 8th day of May, 2006, personally appeared before me JOHN C. STEIN, and who is known by me, and who states by signing this Lease agreement that he affirms under oath that he has the authority to sign this Lease Agreement on behalf of the City and Borough of Sitka and acknowledges that the Lease Agreement is freely and voluntarily signed by him on behalf of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska.

  
Notary Public for Alaska  
My Commission Expires: 10/22/08



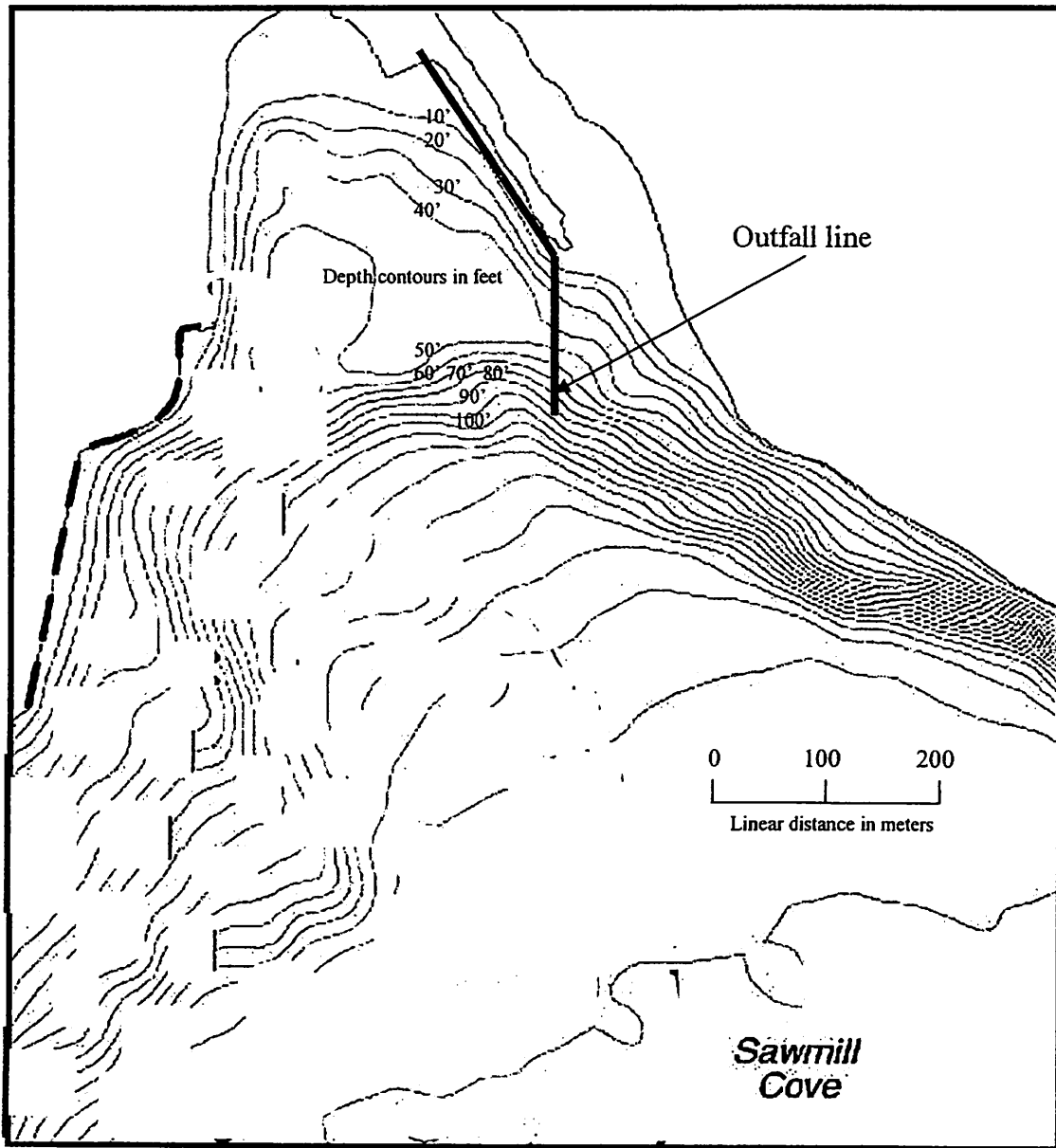


Figure Bathymetric contour map of Sawmill Cove area. Effluent pipeline indicated.  
Exhibit A2 to NSRAA lease with City and Borough of Sitka at Sawmill Cove

**PROSPECTIVE PURCHASER AGREEMENT BETWEEN THE STATE OF ALASKA  
AND THE CITY-BOROUGH OF SITKA FOR THE FORMER ALASKA PULP  
CORPORATION PULP MILL PROPERTY**

**I. PARTIES AND JURISDICTION**

1. This Prospective Purchaser Agreement, together with the Attachments hereto and Exhibits thereto (Agreement) are made, and entered into, by the State of Alaska (State), through its Departments of Environmental Conservation (DEC) and Law, and the City and Borough of Sitka (Sitka), a Unified Home Rule Municipality, through its Mayor and Assembly.

2. The State enters into this Agreement under Alaska Statutes (AS) 46.03.020 (Powers of DEC); AS 44.23.020 (Powers of the Attorney General) and AS 46.09.040 (Authorizing municipal agreements for hazardous substance response actions).

3. Sitka enters into this Agreement under AS 46.09.060 (Municipal authority to enter into response actions), AS 29.06.190, AS 29.35.010 and Sections 9, 10 and 11, art. 10 of the Constitution of Alaska.

4. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska.

**II. STATEMENT OF PURPOSE**

The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained herein, the potential liability of Sitka for the Existing Contamination at the Property which might otherwise accrue when Sitka takes ownership of the Property. In consideration of that resolution, Sitka provides covenants regarding care, maintenance and operation of the Property.

**III. DESCRIPTION OF THE AFFECTED REALTY**

This Agreement pertains, relates and creates obligations appurtenant to certain realty, described and depicted on Attachment 1 as five (5) parcels and expressly including the tidal and submerged lands thereof and overlying territorial seas. Such parcels, lands and seas shall collectively be called "the Property."

## AGREEMENT TO CONVEY

AGREEMENT made this 6<sup>th</sup> day of April, 1999, by and between *Alaska Pulp Corporation* (APC) of Sitka, Alaska, and *the City and Borough of Sitka* of Sitka, Alaska (CBS).

*WHEREAS*, APC is the landowner of certain property in and around Silver Bay in Sitka, Alaska (property), concerning which the Alaska Department of Environmental Conservation (DEC) is completing the site clean up investigation and remediation process (remedial studies) pursuant to a September 1995 Commitment Agreement between APC and the State of Alaska (State), and

*WHEREAS*, APC desires to convey the property, along with certain buildings, docks, equipment, permits, water and other real property rights to the CBS for the benefit of the people of Sitka and to settle natural resource damage claims which the State of Alaska has asserted against APC, and

*WHEREAS*, in April 1998, the Assembly of CBS voted in concept to accept the property subject to staff working out the details of the transaction, assuring the ability to redevelop and use the site, and protecting the CBS from potential liability, and

*WHEREAS*, CBS is reasonably aware of the status of environmental and other issues concerning the property, having conducted its own due diligence review and all reasonable inquiry into existing contamination, which has been on going since April 1998, based on DEC's remedial studies, and

*WHEREAS*, CBS is reasonably aware of the potential operating and maintenance costs associated with the property based upon its own investigation and analysis, and

# Management Requirements at Sawmill Cove Industrial Park

## Sitka, Alaska

This industrial park offers access to a deepwater marine port, a large supply of energy and pure fresh water, and a lovely scenic setting. The Park includes both uplands and tidelands. Several buildings sitting on the uplands testify to the Park's former role as a pulp mill. The City and Borough of Sitka owns and manages this Park, runs a long-term environmental program in the adjoining bay, and requires lessees to follow certain rules.

The rules are set out in full in two documents that memorialize agreements with the State of Alaska under which the City and Borough manages the Park. The agreements are the Memorandum of Understanding's Management Plan and the Prospective Purchaser Agreement. A key purpose of these agreements is to insulate Park tenants from any liability for past uses of the uplands and tidelands. Tenants who follow these rules cannot be held responsible for any cleanup costs from historical uses. Both of those documents are free for the asking from the City and Borough, and both are automatically provided before any tenant leases property at the Park. Both are automatically incorporated into any lease the City and Borough makes with a tenant at the Park.

The following is a summary of these rules for environmental management, navigation, moorage, and dredging. Reading this summary is a useful aid for understanding the Memorandum of Understanding's Management Plan and the Prospective Purchaser Agreement, but is not a substitute for reviewing those documents. (References to those documents appear in parentheses.)

### Summary of Management Requirements

#### Environmental Management

1. The upland portion of the Park can be used for commercial or industrial purposes. (Management Plan, Sec. I.A.)
2. Unless the State of Alaska grants specific approval, the upland portion cannot be used for residential development or any purpose requiring residency by humans around the clock. This restriction on the uplands may last until July 11, 2097. (Management Plan, Sec. I.A.)
3. Part-time residency on board moored vessels is allowed on a short-term basis. (Management Plan, Sec. I.A.1.b.)

4. The State of Alaska has agreed not to take action against those who lease from the City and Borough for any claim for releases of pre-existing contamination at the park as long as the tenant does not aggravate any pre-existing contamination. This protection does not extend automatically to sublessees, who may individually obtain it if they get written approval from the State of Alaska's Department of Environmental Conservation. (Prospective Purchaser Agreement, Secs. VI-VII.)
5. If a tenant or contractor encounters contaminated soils or other media that require special handling, work will cease and the person or entity will immediately contact the City and Borough's Director of Public Works. (Management Plan, Sec. I.C.1.)
6. Properly treated stormwater and relatively clean industrial water may be permitted to be discharged near the Utility Dock. Treated sewage and existing volumes of properly treated stormwater may be permitted to be discharged from an outfall near the Pulp Dock (Outfall 001). Other proposed discharges into impaired areas of Sawmill Cove will likely involve a detailed review of source control, additional treatment, and monitoring so that the discharge will not (a) resuspend contaminated sediments or (b) discharge pollutants that will set back the natural recovery process in impaired areas of Sawmill Cove. (Management Plan, Sec. IV.C; and Prospective Purchaser Agreement; Sec. X, Sec. 7.)
7. Tenants are responsible for securing their own discharge permits and for monitoring and properly reporting their own discharges. Tenants shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise agreed by the City and Borough. Not less than ten (10) days in advance of applying for permits to agencies other than the City and Borough (or such other time as agreed by the Director of Public Works), the tenant shall provide copies of all permit applications and associated plans and specifications to the Director of Public Works to facilitate review by City and Borough departments for consistency with the Management Plan and other plans for and uses of Sawmill Cove Industrial Park. The City and Borough is not obligated to comment on permit applications and plans, and the result of any City and Borough review does not affect the tenant's obligation to comply with the Management Plan and other applicable laws. Tenants are required to provide to the City and Borough of Sitka copies of permit correspondence and reports.
8. Tenants are required to participate in joint use agreements for common use of stormwater, industrial wastewater, sanitary wastewater, potable water, raw water, and outfall systems. The tenant shall connect or otherwise discharge to such utility lines as are approved by the Director of Public Works, and shall obtain any permits and comply with any conditions specified by the Director of Public Works for such connections.
9. The Alaska Department of Environmental Conservation can access parcels in the Park to monitor compliance with the agreements. The Department's staff and each tenant agree to use reasonable efforts to minimize any interference with each other's activities. (Prospective Purchaser Agreement, Sec. XII.)



## Navigation, Moorage, and Dredging

1. Dredging, expansion of moorage, and in-water construction are allowed within the area of Sawmill Cove known as "the Area of Concern" if best management practices are employed. Dredging inside the Area of Concern must occur within a specific navigational corridor. Dredging outside the Area of Concern is subject to normal permitting processes. Prospective tenants are advised that certain areas outside the Area of Concern are classified as impaired water bodies and that special permitting and construction techniques may apply. (Management Plan, Sec. III.A-C and Ex. 2; Prospective Purchaser Agreement, Sec. X.4.)
2. Dredging, expansion of moorage, and in-water construction are not allowed within an area inside the Area of Concern known as "the No Disturbance Zone" except for maintenance of existing facilities. (Management Plan, Sec. III.D and Ex. 2.)
3. Vessel movements across the No Disturbance Zone must follow a specific approach/departure path that keeps the vessels within deeper water. (Management Plan, Sec. III.E.)
4. New single-point mooring buoys may be constructed within the Area of Concern as long as such buoys are located outside the No Disturbance Zone. (Management Plan, Sec. III.E.5; Prospective Purchaser Agreement, Sec. X.5.b.)
5. Vessels are not permitted to anchor inside the Area of Concern. (Management Plan, Sec. III.E.2; Prospective Purchaser Agreement, Sec. X.5.)
6. Existing docks may be permitted for use and certain dock expansion plans have already been evaluated. Other berthing options will be evaluated on a case-by-case basis. (Management Plan, Sec. III.B.)

March 28, 2001



Incorporated

CONSULTING  
ENGINEERS

June 30, 2004

PND 042049.01

Jonathan Krebs  
Executive Director  
Sitka Economic Development Association  
329 Harbor Drive, Suite 212  
Sitka, Alaska 99835

Subject: Sawmill Cove Pulp Dock Use Guidelines  
Engineering Report

Dear Jon,

Per your request, PND, Incorporated has investigated the capacity of the Sawmill Cove Pulp Dock and developed guidelines for use. Prospective users and their uses include:

- Freight company shipping pallets of bottled water across the dock to a barge moored at the pierhead,
- Fish processor (modified barge) moored at the dock pierhead, and
- Fishing vessels (limit seiners and smaller) moored at the pierhead transferring fish totes across the dock.

As reported in Sawmill Cove Ocean Docks Evaluation (May 2000), by PND, the Pulp Dock is in poor condition. Many of the piles exhibit damage, significant corrosion and deterioration, many pile caps and beams are extensively cracked, the deck shows delamination and concrete strength is low. The dock must be used carefully or additional deterioration will be experienced. Extensive repairs were recommended in the report and they have not been performed.

The condition of the dock has remained much as what was witnessed during the preparation of the May 2000 report. PND performed a very brief, limited inspection on June 23 and witnessed the same conditions as previously in the May 2000 report.

Based upon our analysis and findings we recommend the following:

- 1) Pile supported areas of the dock should continue to be restricted to light vehicle and pedestrian loads, unless noted below.

- 2) Fender piles should be installed for any moorage. For a barge with a 40 foot high sail height, 16-inch diameter by ½ inch wall steel pipe piles should be installed at 40 feet on-center. The fender piles may be supplemented with camel logs floating seaward of the fender piles. Camel logs should be as long as possible and loosely connected to the fender piles. Multiple logs may be bundled together to obtain a more stable stringer camel log system.

Fender piles should be driven to 15 to 20 feet of penetration and should be connected by bolts and brackets to the existing dock. The fender piles should be galvanized and covered with HDPE sleeves, if a more permanent installation is anticipated. This type of fender pile system should last for many years. The piles can be extracted and re-used if the dock is repaired and reconfigured.

No vessel should be allowed to breast against the bearing piles along the seaward edge of the dock. Camel logs should not be placed against the bearing piles along the seaward face of the dock. Any length of vessel, less than 600 feet, may tie up to the dock, but they should not be allowed to breast against the dock unless fender piles are installed.

- 3) Freight can be transferred across the dock, using small forklifts, where piles are in fair condition and concrete beams, caps and deck are also in fair condition. A 12 foot wide access lane at the second door from the north end of the Pulp Warehouse, seaward side, is suitable for a 5,000 pound capacity fork-lift at maximum capacity. This lane should be restricted by placing barriers on either side to ensure vehicles will not travel outside the lane. Please see attached sketch. Such an access lane is suitable for transporting pallets of bottled water and fish totes, provided that fork lifts and fork lift loads are kept to loads below a 10,000 pound axle load.

Please note that vehicle loads on the slab-on-grade portion of the Pulp Warehouse need not be restricted. Therefore fork lifts and other vehicles should travel from the slab-on-grade to the pierhead directly through the access lane and then back-up from the pierhead to the slab-on-grade. Vehicles should not turn around at the pierhead.

Materials and equipment can be staged or stored on the slab-on-grade portion of the Pulp Warehouse. Large stacks of materials and heavy equipment should not be placed within 10 feet of the face of the retaining wall at the edge of the slab-on-grade.

Note the bullrail on the dock is in poor condition and should be replaced where vehicles are allowed to approach the edge of the dock.

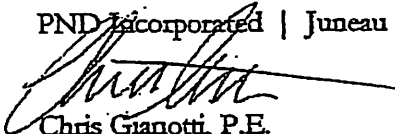
- 4) Cleat anchor bolts should be replaced at cleats to be used by vessels mooring at the dock.
- 5) The City and Borough of Sitka (CBS) should inspect the pile-supported dock before and after freight is transferred and before and after larger vessels temporarily breast against the dock. Piles, pile caps, beams and deck should be photographed at and below the access lane. This inspection and documentation should be performed to determine if the condition of the dock is

deteriorating further and if damage occurs the responsible party can be asked to pay for damages or repair damages.

Hopefully, these guidelines are adequate for your use. If you have questions or need additional questions, please feel free to call me.

Sincerely,

PND Incorporated | Juneau Office



Chris Gianotti, P.E.  
Senior Engineer/Principal

Enc.

cc: Hugh Bevan, City Administrator

