



LEASE AGREEMENT

**THE
CITY & BOROUGH
OF SITKA**

&

**KOOTZNAHOO
FORTRESS OF THE BEAR**



LEASE SUMMARY

This document is a lease agreement between the **City and Borough of Sitka**, Alaska and **Kootznahoo Fortress of the Bear** of Sitka, Alaska. Kootznahoo is dedicated to providing a safe haven for urbanized bears:

“Our objective is to facilitate the humane acquisition of nuisance bears, to provide an educational experience for local residents and tourists. The site [habitat] will contain a research facility for the continued study of bears. We anticipate providing employment for at least four people in the short term, a veterinarian, contracts for construction, planning, transportation as well as other benefits to the community. The plans include making the facility environmentally “friendly” by using the site [habitat] for composting wastes and utilizing material that would normally pose a dismal problem.”

Kootznahoo Fortress of the Bear; Preliminary Business & Operations Plan; February, 2003

The property to be leased with this contract is 107,220 square feet of space within the area referred to as the former clarifier tanks and includes the primary and secondary clarifier tanks, which will be modified into enclosed bear habitat located at the Sawmill Cove Industrial Park.

In order to earn a permit from the Alaska Game and Fish Department to habitat bears, Kootznahoo must raise another species of animal to prove to the State they can provide adequate care for bears. For the first year of the lease, Kootznahoo will raise hogs to earn their permit.

The terms and conditions contained within this lease are as follows:

Term: Ten year initial lease with an option for two additional five-year lease upon the mutual agreement of both parties.

Lease Rate: The lease rate is 33.7 cents per square foot, which is based upon an annual 10% return on land valued at \$3.37 per square foot. At full rent, the lease will generate \$3,002.16 per month.

Market Rate Adjustment: At the end of the first five years of the lease, the City will have a market appraisal of the property completed and the lease rate thereafter will be established to a rate that is 10% of market value per year but not less than the lease rate described here. The market appraisal will be performed based upon the land value in its as-is condition.

Cost-of-Living Adjustment: Beginning with year four, the yearly lease rate will be adjusted by the average percentage of increase of the Consumer Price Index (CPI) of Seattle and Anchorage over the previous year. In no case will the rate decrease due to a negative CPI.

Cost Recovery: To aid Kootznahoo in recovering a portion of the cost of renovating the leasehold, the lease rate for the first 18 months will be \$100 per month. If at the end of the first 18 months Kootznahoo is indeed progressing with operation, the money will be refunded. The next six months, the rate will ramp in six stages to full rent by the end of month 24. Beginning with month 25, the lease rate will be \$3,002.16 per month or \$36,025.92 per year.

Sub Lease: Kootznahoo may sub-lease a portion of their space to another provided the Sawmill Cove Board approves the sub-lease and the sub-lease meets the other terms and conditions of this lease.

Condition: The space Kootznahoo wishes to lease is in an “as is” condition.

Utility Service: Kootznahoo will extend, at their expense, water, sewer and electrical service. Kootznahoo will also arrange, at their expense, trash and refuse services.

Odor Control: Kootznahoo must make every effort to control odors both from the initial hog farm to the eventual bear habitat. The Sawmill Cove Board of Directors reserves the right to require the removal of the animals.

Zoo Standards: Kootznahoo must meet the State of Alaska standards for raising animals.

Security: Kootznahoo will, at all times, maintain the highest possible security to assure the safety of Park tenants and visitors from the inherent dangers of brown bears. This will include confinement within the tanks and confinement around the leasehold property.

Parking: Kootznahoo will park vehicles and/or buses within the confines of the leasehold or make arrangements with the Alaska Department of Transportation to use a portion of the highway right-of-way.

Insurance: Kootznahoo must maintain at all times insurance at \$1 million per occurrence, \$100,000 to rented property, \$1 million personal injury and \$2 million general aggregate.

Environment Understanding: By signing this lease, Kootznahoo understands that Sawmill Cove is an industrial park and therefore the environment in the Park may not always be a tolerant environment for bears due to noise, dust, traffic or other activities.

Outdoor Signage: Kootznahoo may erect signage on the leasehold with the approval of the City Building department and the Sawmill Cove Board of Directors. The signage style, size and physical location will be determined on a case-by-case basis by the Sawmill Cove Board.

First/Last Payment: Kootznahoo will pay at lease signing \$6,004.32, which is the equivalent of two months lease payment at full value. Of this amount, \$3,002.16 represents the lease payment for month 25 and the remaining \$3,002.16 represents the final month of the lease.

LEASE AGREEMENT

PREAMBLE

This lease agreement is made as of July 31st, 2003 between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" or "City" or "Lessor") and Kootznahoo Fortress of the Bear, P.O. Box 2337, Sitka, Alaska 99835 an Alaska company ("Kootznahoo" or "Lessee"). This Lease Agreement consists of the Special Provisions, the General Provisions, and the attached Exhibits A, B, C, D and E.

SPECIAL PROVISIONS

ARTICLE 1: TERM OF LEASE, AND TERMINATION OF LEASE

Section 1.1 Conveyance of Estate in Lease. Lessor, for and in consideration of the rents received and of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the Subject Property as shown on Appendix A. The Subject Property shows a 107,220 square feet parcel of land at the Sawmill Cove Industrial Park. The initial term is ten (10) years and begins on the date both parties execute the contract.

Section 1.2 Options to Renew. Provided there does not then exist a continuing material default by Lessee under this Lease at the time of exercise of this right or at commencement of any extended term, Lessee shall have the right to exercise options for two terms of five (5) years upon the same terms and conditions as this Lease Agreement with the lease payments as described in Article II. Each of these options is effective only if (a) the Sawmill Cove Industrial Park Board of Directors has determined under Subsection 3.5(e) that Kootznahoo has adequately controlled its odors and wild animals during the immediately preceding term of the lease; (b) Kootznahoo makes a written request to exercise such option not more than 30 days from the end of the immediately preceding term; (c) Kootznahoo is not in default; and (d) Kootznahoo has complied with the requirements of section 2.3.

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, Kootznahoo shall leave behind at no cost to Sitka improvements including: tank and building systems and their components such as plumbing, piping, and fixtures; building structural components; non-structural improvements such as walls and ceilings; 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 land in which Subject Property is located. 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 Kootznahoo shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka does not exercise such option. Kootznahoo shall repair any holes that may be left in tanks, walls, ceilings, or floors as a result of removal of improvements in a manner that meets all existing requirements of local, state, and federal law and matches the existing materials of Subject Property. Kootznahoo 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 intention of the parties.

ARTICLE II RENT

Section 2.1 Calculation & Method of Payment of Rent During the Initial Ten-Year Term of the Lease. The First Year of the Lease begins on the date for commencement of this Lease Agreement set out in Article 1. Each successive year of the lease begins on the corresponding anniversary of the lease. Notwithstanding any other provision of this Lease Agreement, on the term start date set out in Article 1, lessee shall pay \$6,004.32. Of this amount, \$3,002.16 shall be the rent payment for the 24th month and \$3,002.16 shall be the rent payment for the 48th month of the initial lease. The \$6,004.32 paid will be refunded and the lease cancelled with no further obligation on the part of either party if within the first 18 months of the lease the site is determined to be unusable for this project because of contamination to the site by previous occupants. Subject to the provision in the previous sentence, 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. The following table shows the amount of lease payments due each month during the initial 10-year term of the Lease Agreement.

Month	Space	Total/Month
1 st thru 18 th	107,220	\$100
19 th month	107,220	\$500.36
20 th month	107,220	\$1000,72
21 st month	107,220	\$1,501.08
22 nd month	107,220	\$2,001.44
23 rd month	107,220	\$2,501.80
24 th month	107,220	\$3,002.16
25 th thru 48 th	107,220	\$3,002.16
49 th thru 120 th	107,220	CPI Adjustment
60 th thru 120 th	107,220	Market Rate

Section 2.2 Cost of Living Adjustment to Lease Rate: Beginning with the 49th month of the lease, the lease rate will be adjusted yearly based on an average of (a) the percentage difference between the "All Items" figure for Anchorage, Alaska in the "Consumer Price Index for All Urban Consumers" as published in the edition published most recently after January 1, 2007 and

the "All Items" figure for Anchorage, Alaska as published in the "Consumer Price Index for All Urban Consumers" published most recently after January 1, 2006 and (b) the percentage difference between the "All Items" figure for Seattle, Washington as published in the "Consumer Price Index for All Urban Consumers" published most recently after January 1, 2007 and the "All Items" figure for Seattle, Washington as published in the "Consumer Price Index for All Urban Consumers" published most recently after January 1, 2006.

Notwithstanding any other provision of this Lease Agreement, no adjustment in the lease payment from one year to the next year in the Fourth Year through the 10 Year shall exceed three and a half percent (3.5%). If the cost of living average is greater than 3.5%, then the remainder will be added to the following year. Notwithstanding any other provision of this Lease Agreement, no adjustment in the lease payment will occur based on cost of living for a year in which the adjustment described in the above table shows no increase in the cost of living or a decrease in the cost of living.

Section 2.3 Market Appraisal. Sitka may commission a professional market appraisal of the land in its "as is" condition to determine the value of the Subject Property. Subject to the provision of the next sentence, the rental rate for each month of the first five-year option term (also known as the Eleventh through Fifteenth Years) shall be equal to one-twelfth of ten percent (10%) of the appraised value as determined by the appraisal described in the this section. Notwithstanding any other provision of this Lease Agreement, Kootznahoo's lease rate during the Sixth through Tenth Years shall not increase by more than ten percent (10%) per year over what the lease rate was during the Fifth Year if the appraisal described in this section shows that the lease rate for the Sixth through Tenth Years should increase over the lease rate for the Fifth Year.

Section 2.4 Calculation and Method of Payment of Rent During Optional Five-Year Renewal of the Lease. If Lessee decides to exercise the option to renew for five-year term under Section 1.2, the Lessee must notify the City of their intent no less than six (6) months before the end of the first term of the lease. The rent will remain the same except as provided for in Section 2.2 and Section 2.3.

ARTICLE III

RESTRICTIONS UPON USE OF SUBJECT PROPERTY

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

(a) At the sole cost and expense of Kootznahoo and in compliance with all building codes and legal requirements, Kootznahoo shall purchase, construct, develop, repair, and/or maintain any improvements, personal property, fixtures, and other items on the interior Subject Property in a first-class manner using materials of good quality. All improvements to the leasehold must first be approved by the Public Works Department of the City of Sitka.

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

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

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

(e) Lessee may erect outdoor signage at its expense with the permission of the City and Borough Public Works Department 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.

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 and ordinances, and shall submit to the Public Works Director of the City and Borough of Sitka or his or her written designee detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan 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 Kootznahoo of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Kootznahoo 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, 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 and the Alaska Game and Fish Department the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease Agreement. Sitka also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Lessee shall not charge for any of the access allowed in the situations described in this subsection.

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

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) The use of the site upon which the Subject Property is located, is subject to Appendix C, the "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 (hereinafter "the Prospective Purchaser Agreement"), including all attachments, which specifically 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 (hereinafter "the Management Plan"). 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. Kootznahoo agrees not to increase or exacerbate contamination or pollution at Sawmill Cove Industrial Park. Kootznahoo also agrees not violate any restrictions in Appendix C as to human habitation or vessel movement.

(b) The use of the site is subject to the terms of the Agreement to Convey between Alaska Pulp Corporation and the City and Borough of Sitka ("the Conveyance Agreement"), a copy of which is attached hereto as Appendix 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. Kootznahoo further acknowledges that a summary of the requirements imposed by the Prospective Purchasers Agreement, the Management Plan, and the Conveyance Agreement is included in Appendix D. Kootznahoo acknowledges receipt of Appedices C, D, and E.

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

(d) The City and Borough of Sitka 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 said Port Authority. A transfer of the property to any such entity shall not create any restrictions upon use of the Subject Property or the dock in addition to those hereunder.

(e) Kootznahoo shall have the Right-of-First-Refusal to lease land contiguous to the north and south boundary of the leasehold except for that land the City and Borough of Sitka deems it requires for either the operation of the Park or the operation of the City and Borough business.

(f) The City and Borough of Sitka may sell the land in the future and all agreements regarding the Subject Property, including this Lease Agreement, between Lessee and Lessor shall be completely transferable to said owner. In this case, Kootznahoo will have the Right-of-First-Refusal to purchase their leasehold. 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.

(g) Lessor may, upon at least 10 days prior notice to Lessee, temporarily suspend the supply of water, 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.

(h) Lessee will 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.

(i) Kootznahoo may park vehicles on their leasehold in any manner deemed necessary but safe. The Lessee may also make separate arrangements with the Alaska Department of Transportation to park on the DOT highway right of way.

(j) Except as provided for in Subsection 3.4 (h), Kootznahoo shall not store anything on property owned by Sitka outside of the leasehold and must at all times maintain a neat and orderly habitat.

(k) Kootznahoo is responsible for taking any measures that Kootznahoo deems necessary to provide security for Kootznahoo's property. The City and Borough is not responsible for theft or vandalism.

(l) Kootznahoo must follow all applicable laws and regulations of the State of Alaska and the Alaska Department of Game and Fish as it applies to the Policy on Zoos, (Appendix B) as dated August 30, 1988 or as may be amended at a later date by the Alaska Department of Fish and Game.

(m) Kootznahoo recognizes the potential danger to the tenants of the Park and the general public of keeping wild bears and will maintain at all times a safe environment to prevent bear escapes. This may include redundancies in security barriers and/or protection as deemed necessary to safeguard the public. The Sawmill Cove Board of Directors and the City Public Works Department will inspect and approve all safety devices and barriers before the first bear(s) are allowed in the habitat.

(n) Kootznahoo acknowledges and accepts the nature of the Sawmill Cove Industrial Park as industrial and may be noisy, dusty or congested and may not at all times be a tolerant environment for the keeping of bears or other wild or domestic animals.

(o) Kootznahoo may from time to time invite the general public and/or tourists to visit the habitat and will provide the necessary comforts afforded the general public without depending on facilities in buildings within the Park. Outhouses may be used only on a temporary basis until permanent facilities are constructed.

(p) Kootznahoo will have in force at all times \$2 million general aggregate insurance or \$1 million per occurrence insurance and include the City and Borough of Sitka as an additional insured with all rights of subrogation waived against the City and Borough as respects to lease of the habitat development site.

(q) Kootznahoo will receive a refund in the 19th month of the lease for the rent paid for the first 18 months of the lease (\$1,800) provided Kootznahoo is still in operation and progressing as planned.

Section 3.5 Control of Emission of Odors from Subject Property.

(a) Kootznahoo will strive to control odors at all times, assure odor control equipment is working properly, and utilize the best available technology for odor control.

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

(i) Assure that the odor control equipment is in proper working order;

(ii) Provide operation and maintenance records to the Board;

(iii) If the odors can't be abated, the Sawmill Cove Board of Directors reserves the right to require the removal of animals.

(c) Sitka retains the right to move, at Sitka's expense, Kootznahoo's operation from the Subject Property to another location within the Sawmill Cove Industrial Park if such other location provides a facility of equal or better quality and size.

Section 3.6 Control of Rodents and Other Creatures on Subject Property. Lessee shall take 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 wild bears outside the confines of the habitat.

ARTICLE IV UTILITY SERVICES & RATES

Section 4.1 Provision of Utility Services. Kootznahoo will pay for and cause electrical, water and sewer services to be extended and installed to the leasehold.

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.

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

Section 4.4 Lessor Not Liable for Failure of Utilities or Building. 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 therein, or from any other place, or for sewer or plumbing works therein, or from any other place.

ARTICLE V INDEMNIFICATION

Section 5.1 General Indemnification of Lessor Without Limitation of Any Other Indemnity Given. Lessee agrees to indemnify, defend, and save 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 save Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the term of this Lease Agreement from: (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of the Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease Agreement; (c) any act or negligence of Lessee or any of its agents, volunteers, contractors, servants, employees or licensees; and (d) any accident, injury, death or damage whatsoever caused to any person occurring during the Term of this Lease Agreement in or on the Subject Property. Lessee agrees to indemnify, defend, and save harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease Agreement to indemnify the Lessor. The agreements of indemnity by the Lessee do not apply to any claims of damage arising out of the failure of the Lessor to perform acts or render services in its municipal capacity.

Section 5.2 Indemnification of Lessee. 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 incurred solely by reason of conditions existing on the site as of the date of execution of this Lease Agreement.

Section 5.3 Reimbursement of Costs of Obtaining Possession. Each Party agrees to pay and to indemnify the other party prevailing in any dispute hereunder against, all costs and charges, including but not limited to, full reasonable counsel and legal fees lawfully and reasonably incurred in enforcing any provision of this Lease Agreement including obtaining possession of the Subject Property and establishing the Lessor's title free and clear of this Lease Agreement upon expiration or earlier termination of this Lease Agreement.

GENERAL PROVISIONS

ARTICLE VI DEFINITIONS

Section 6.1 Defined Terms. For the purposes of this Lease Agreement, the following words shall have the meanings attributed to them in this Section:

- (a) "Event of Default" means the occurrence of any action specified in Section 15.1.
- (b) "Imposition" means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property, any part thereof, any right or interest therein or any rent and income received therefrom as well as sales taxes on rent.
- (c) "Improvements" or "improvements" means all buildings, structures and improvements of any nature now or hereafter located upon the Land, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, including 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 date of this lease.
- (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) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease Agreement for the use of the demise.
- (f) "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 a pulp mill operated by Alaska Pulp Corporation.
- (g) "Subject Property" means the Land.
- (h) "Land" means the lease hold area within the Sawmill Cove Industrial Park.
- (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 same 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 (when improvements are made) 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 date set out in the Preamble, 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 Kootznahoo. 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. During any construction, excavation, destruction, alteration, razing, or restoration performed on the Subject Property or on any of the Improvements on the Subject Property, Kootznahoo shall maintain in an escrow account funds equal to the full estimated cost of any such work and shall report on the amount in such account monthly to both Sitka's Finance Director and Public Works Director.

(b) 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 \$2,000,000 in general aggregate coverage and \$1,000,000 each occurrence in respect of bodily injury, sickness, disease, or death of any one person resulting from any occurrence and \$1,000,000 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 and delivery 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. 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, then the party so insured (or so required) releases the other party from any liability the other party may have on account of the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance and waives any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost (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 Sawmill Cove Board of Directors. All Subleases entered into demising all or any part of the Improvements or the Subject Property shall be expressly subject and subordinate to this Lease Agreement, including Exhibits B and C. Lessor's consent to a sublease of the Subject Property shall not release Kootznahoo 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 - No 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.

(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 Industrial Park may also create noise and other sources of interference with Lessee's operations.

Section 9.2 Compliance with Laws. Lessee shall throughout any term of this Lease Agreement, at Lessee's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (whether or not the same require structural repairs or alterations) and all other legal requirements that may be applicable to the use of the Subject Property. Nothing in the foregoing sentence shall be deemed to relieve Lessor of its general obligations 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 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 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 and the Lessee covenants to pay the sum or sums with interest, and the Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by the Lessee as in the case of default by the Lessee in the payment of any installment of rent. Conversely, the Lessee shall be entitled to receive from the Lessor prompt payment or reimbursement on any sums due and owing from the Lessor to the Lessee, together with interest at the highest rate allowed by law. However, nothing contained in this Lease Agreement shall entitle the Lessee to withhold any Rent due to the Lessor or to offset or credit any sums against rent, except with respect to unpaid rental due from the Lessor to the Lessee under any sublease of building space to the Lessor.

ARTICLE XI DAMAGE OR DESTRUCTION

Section 11.1 Repair and Replacement of Structures and Improvements Following Damage. In the event of damage by earthquake, wind, fire, tidal wave, tsunami, or otherwise to Subject Property, the Lessee shall within six (6) months after the damage and as soon as is reasonably possible at the Lessee's sole expense (but using, along with the Lessee's own funds, insurance proceeds available for that purpose) shall do either (a) repair and restore the Improvements as completely as possible to the condition such Improvements were in immediately prior to the damage or (b) replace the Improvements (including all the machinery, fixtures, and equipment situated there) with Improvements of the same general size and character as the damaged improvements. The choice between (a) and (b) in the previous sentence is to be made by Lessee.

Section 11.2 Payment for Construction After Damage or Destruction. All insurance proceeds recovered by any party on account of damage or destruction to the Improvements, less the actual costs, if any, to the applicable party relating to recovery shall be applied by the parties to the payment of the cost of the work to restore the Improvements and for other purposes.

Section 12.3 Unused Insurance Proceeds and Deposits. In the event any proceeds of insurance or sums deposited with the Lessor by the Lessee in connection with any restoration or rebuilding of the building shall remain in the hands of the Lessor after completion of restoration or rebuilding, and if the Lessee shall not be in default under this Lease Agreement in respect of any matter or thing of which notice of default has been served on the Lessee, then the remaining funds shall be paid, first on any unpaid or accrued rent and other sums due the Lessor, and second to the Lessee.

ARTICLE XII MECHANIC'S LIENS

Section 12.1 Discharge of Mechanics' Liens. The Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against the Lessee's interest in the property, nor against the improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to the Lessee or anyone having a right to possession of the Subject Property or improvements as a result of an agreement with or the assent of the Lessee. If any mechanics' lien shall at the time be filed against the Subject Property including the Improvements, the Lessee shall cause it to be discharged of record within 30 days after the date that Lessee has knowledge of its filing.

ARTICLE XIII LIEN FOR RENT AND OTHER CHARGES

Section 13.1 Lien for Rent. The whole amount of the Rent and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and impositions paid by the Lessor under the provisions of this Lease Agreement, and all costs, attorney's fees and other expenses which may be incurred by the Lessor in enforcing the provisions of this Lease Agreement or on account of any delinquency of the Lessee in carrying out any of the provisions of this Lease Agreement, shall be and they are declared to constitute a valid and prior lien upon the Subject Property and the Improvements, and upon the Lessee's leasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

ARTICLE XIV DEFAULT PROVISIONS

Section 14.1 Events of Default. Each of the following events is defined as an "Event of Default":

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

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

Section 14.2 Assumption or Assignment of Lease to Bankruptcy Trustee. In the event that this Lease Agreement is assumed by or assigned to a trustee pursuant to the provisions of the bankruptcy reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 et seq.), and the trustee shall cure any default under this Lease Agreement and shall provide adequate assurances of future performance of this Lease Agreement as are required by the Bankruptcy Code (including but not limited to, the requirement of Code § 365(b)(1)) (referred to as "Adequate Assurances"), and if the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this Lease Agreement shall be deemed rejected automatically and the Lessor shall have the right immediately to possession of the Subject Property immediately and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach or termination of this Lease Agreement.

Section 14.3 Remedies in Event of Default. The Lessor may treat any one or more of the Events of Default as a breach of this Lease Agreement and at its option, by serving written notice on the Lessee and each Secured Party and Leasehold Mortgagee of whom Lessor has notice

(such notice not to be effective unless served on each such person) of the Event of Default of which the Lessor shall have received notice in writing, the Lessor shall have, in addition to other remedies provided by law, one or more of the following remedies:

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

(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 and building 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 and building 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.

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

Section 14.4 Waivers and Surrenders To Be In Writing. No covenant or condition of this Lease Agreement shall be deemed to have been waived by the Lessor unless the waiver be in writing, signed by the Lessor or the Lessor's agent duly authorized in writing and shall apply only with respect to the particular act or matter to which the consent is given and shall not relieve the Lessee from the obligation, wherever required under this Lease Agreement, to obtain the consent of the Lessor to any other act or matter.

ARTICLE XV LESSOR'S TITLE AND LIEN

Section 15.1 Lessor's Title and Lien Paramount. The Lessor shall have title to the Land and building, 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 Land. The fee-simple estate of the Lessor in the Land 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 Land 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 Land.

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 State of Alaska at Sitka, Alaska.

ARTICLE XXI NOTICES

Section 21.1 Manner of Mailing Notices. In every case where under any of the provisions of this Lease Agreement or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to the Lessor or the Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each party from time to time may change its address for purposes of receiving declarations or notices by giving notice of the changed address, to become effective seven days following the giving of notice.

Section 21.2 Notice to Leasehold Mortgagee and Secured Parties. The Lessor shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from Lessor to Lessee relating to existing or potential default under, or other noncompliance with the terms of, this Lease Agreement. All notices, demands or requests which may be required to be given by the Lessor or the Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to the Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of the Lessor or the Lessee, as the case may be.

Section 21.3 Sufficiency of Service. Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

Section 21.4 When Notice Deemed Given or Received. Whenever a notice is required by this Lease Agreement to be given by any party to the other party or by any party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease Agreement of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

ARTICLE XXII MISCELLANEOUS PROVISIONS

Section 22.1 Captions. The captions of this Lease Agreement and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease Agreement, nor in any way affect this Lease Agreement.

Section 22.2 Conditions and Covenants. All the provisions of this Lease Agreement shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision.

Section 22.3 Entire Agreement. This Lease Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors or assigns in interest.

Section 22.4 Time of Essence as to Covenants of Lease Agreement. Time is of the essence as to the covenants in this Lease Agreement.

ARTICLE XXIII 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 As Against Lessor Upon Assembly Approval. This Lease Agreement is effective as 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 hereto. 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.


Leslie Kinear, President

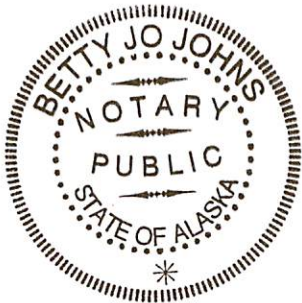

Hugh Bevan, Administrator

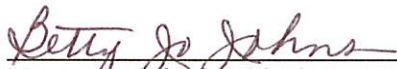
STATE OF ALASKA)

)ss: **CORPORATE ACKNOWLEDGMENT**

FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on this 31st day of July, 2003, personally appeared before me LESLIE KINEAR, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who by me duly sworn, did say that he is the President of KOOTZNAHOO FORTRESS OF THE BEAR and acknowledged that said document was signed by him in behalf of said corporation by authority of its bylaws.




Notary Public for Alaska
My Commission Expires: November 1, 2004
Residing at Sitka, Alaska

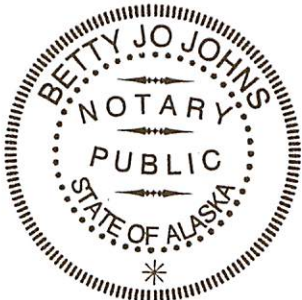
STATE OF ALASKA)

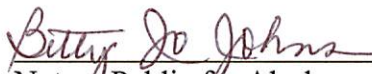
)ss: **MUNICIPAL ACKNOWLEDGMENT**

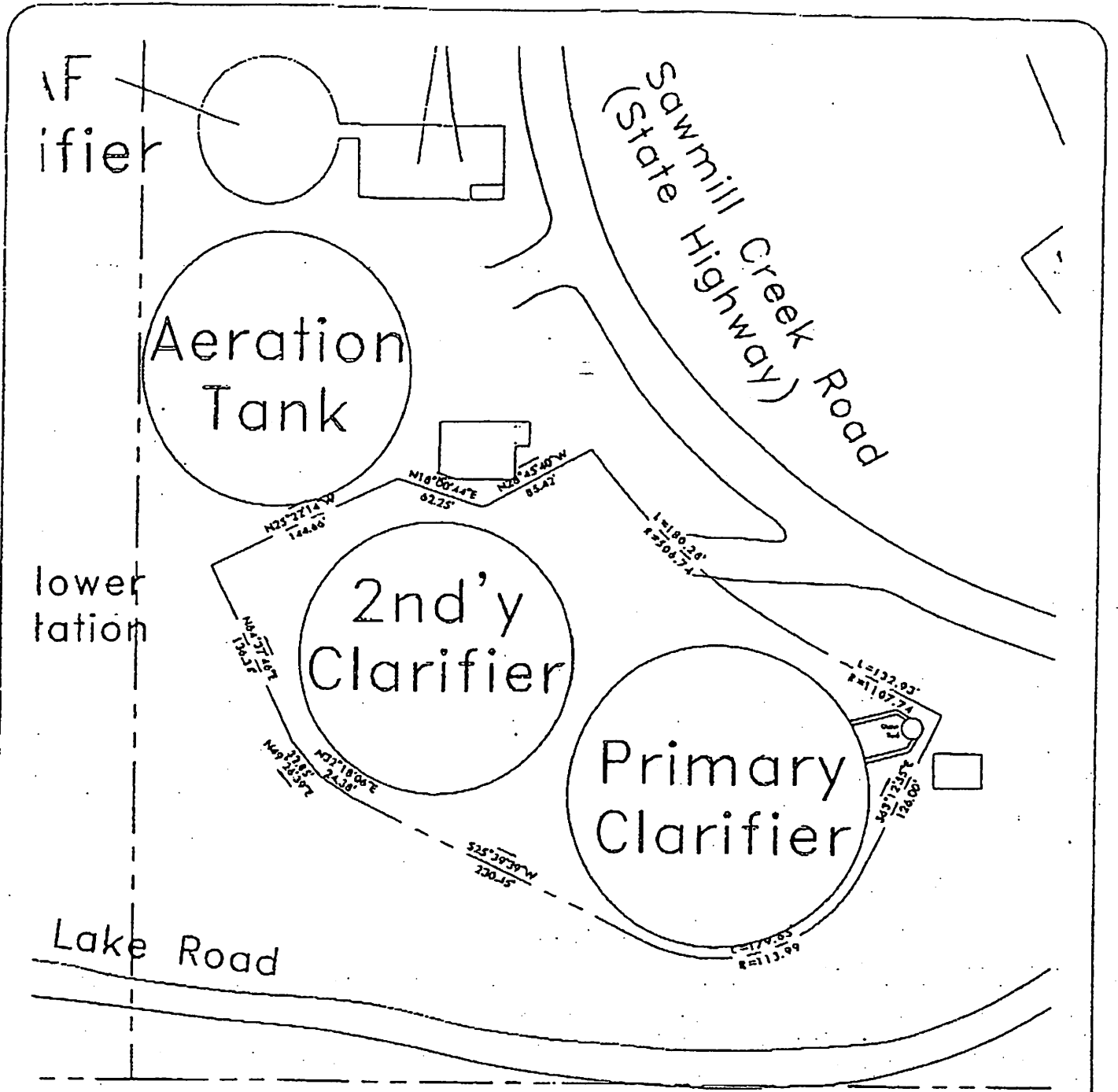
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on this 31st day of July, 2003 before me, a Notary Public in and for the State of Alaska, personally appeared HUGH BEVAN, to me known and known to me to be the person whose name is subscribed to the foregoing LEASE AGREEMENT, and after being first duly sworn according to law, he stated to me under oath that he is the ADMINISTRATOR of the City and Borough of Sitka, Alaska, a corporation organized under the laws of the State of Alaska, that he has been authorized by said corporation to execute the foregoing LEASE AGREEMENT on its behalf and he executed the same freely and voluntarily as the free act and deed of said corporation.

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




Notary Public for Alaska
My Commission Expires: November 1, 2004
Residing at Sitka, Alaska



Approximate Area of Proposed Lease Lot = 107,220 sq. ft. (2.46 Acres)

Page 1	1" = 100'	Proposed Lease Lot SCIP 4600 Sawmill Creek Road Sitka, AK 99835	Site Layout May 23, 2003	
D.G.JONES/ASSOCIATES <small>ENGINEERING INSPECTION CONSTRUCTION MANAGEMENT</small> Box 2186 Sitka, Alaska 99835 (907)-747-7998 Fax: 907-747-7997 E-mail: dgj@dgtjonesassociates.com			Dsgnd by: DGJ	Drwn by: DJS
		Chckd by: DGJ	Project: 03044	

Alaska Department of Fish and Game
Division of Game

POLICY ON ZOOS

The Alaska Department of Fish and Game has the legal authority and responsibility (AS 16.05.340, AS 16.05.920, 5 AAC 92.029, and 5 AAC 92.033) to issue permits to individuals, institutions, or organizations to retain "game animals" in captivity for scientific, educational, and propagative purposes. Authority for administration of these permits has been delegated from the Commissioner to the Director of the Division of Game.

The department has determined that zoos can serve legitimate educational purposes. However, each zoo must meet certain standards before the department will issue permits to possess and exhibit game animals because:

- (1) the department is concerned about the ethical and humane aspects of keeping wild animals in captivity;
- (2) zoo operation is a highly technical field that requires expertise in animal care and husbandry and a large financial investment in facilities and animal care;
- (3) inadequate or inhumane treatment of captive game animals should not be tolerated, may result in criticism of the department, and may impose a financial burden on the department to rectify such situations;
- (4) the department is concerned about the potential of transmission of parasites and infectious diseases to game animals and the potential impacts on native game animals by exotic species; and
- (5) the department must ensure that transport of game animals to and from other states does not violate federal or state laws.

The department, in its discretion, may issue permits to Alaska zoos to possess and exhibit game animals that are surplus to the sustained yield management of the resource and unnecessary to meet demands of higher priority. Applicants for permits must meet the following criteria:

- (1) (a) zoos must be accredited by the American Association of Zoological Parks and Aquariums; or
 - (b) have demonstrated responsible animal husbandry practices, zookeeping capabilities, and financial stability by having been in operation for at least one year prior to receiving a permit and by displaying animals for which no permit is required--such animals include elk, reindeer, domestic bison, llamas, alpacas,

one-humped camels, ferrets, game birds, or appropriate species listed under 5 AAC 92.029(b);

- (2) possess a valid, current Federal Exhibitor's License to display animals; this annual license is issued by the office of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, following an inspection by the Veterinarian in Charge;
- (3) provide adequate security to control game animals that could endanger public safety if they escaped; facilities must be completed and approved by the department before a permit will be issued to retain bears, wolves, or moose; and
- (4) be open to the public for at least 180 days per year.


The department, in its discretion, may issue permits to zoos outside Alaska to receive and possess game animals that are surplus to the sustained yield management of the resource and unnecessary to meet demands of higher priority. Applicants must meet the following criteria:

- (1) zoos must be accredited by the American Association of Zoological Parks and Aquariums; and
- (2) receive a favorable recommendation from the state agency with authority and responsibility for regulating the exhibition of animals in that state.

Educational permits to exhibit game animals will be issued for the calendar year, unless otherwise specified, and are subject to renewal upon receipt of an annual report listing all specimens held.

Native game animals and their progeny, held in Alaska under authority of educational permits issued by the department, remain the property of the State of Alaska. Neither native nor exotic game animals may be transferred to other zoos, individuals, or institutions without written authorization from the department. Following export, animals that are transferred to zoos outside the State of Alaska become the property and responsibility of the permittee.

For the purposes of this policy, "game animal" means any species of bird, reptile, or mammal, including a feral domestic animal, found or introduced in the state, except those animals listed under 5 AAC 92.029(b) or defined as "domestic" by state statutes.



W. Lewis Pamplin, Jr.
Director
Division of Game



DATE

Alaska Department of Fish and Game
Division of Wildlife Conservation

POLICY ON ZOOS--Amendment

Reason For the Amendment

The policy on zoos was adopted on August 30, 1988. Since then we have learned that some reputable and competent zoos are not accredited by the American Association of Zoological Parks and Aquariums (AAZPA). All zoos, however, must receive an annual federal exhibitor's permit. The lack of accreditation is not necessarily due to rejection by AAZPA, but because the zoos do not choose to comply with some of the nonsubstantive stipulations of accreditation. Therefore, the policy is amended as follows where it pertains to zoos outside Alaska (new wording underlined).

- (1) Zoos must be accredited by the American Association of Zoological Parks and Aquariums or receive a favorable recommendation from competent and knowledgeable individual(s) or organization(s) unaffiliated with the zoo; and
- (2) SAME

W. Lewis Pamplin, Jr.
W. Lewis Pamplin, Jr.
Director
Division of Wildlife Conservation

August 18, 1989
DATE

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

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