



# City and Borough of Sitka

PUBLIC WORKS

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**To:** Mayor McConnell and Assembly Members  
Mark Gorman, Municipal Administrator *MG 5 Feb 14*

**From:** Michael Harmon, Public Works Director *MH*  
Gary E. Baugher Jr., Maintenance and Operations Superintendent *GEB*

**cc:** Jay Sweeney, Finance Director *JS 5 Feb 14*

**Date:** 2 February 2014

**Subject:** Nugget Restaurant Airport Lease

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## Background

City and Borough of Sitka owns the Airport Terminal Building ("Terminal Building"), which is built on land leased from the State of Alaska. The Nugget is a restaurant that operates in one of the leased spaces at the terminal building, based on a tenant lease with the City and Borough of Sitka. The owner of the Nugget wishes to renew their lease. The terms of the tenant lease requires Assembly written approval for any assignment, with approval not to be arbitrarily withheld. The State of Alaska "Sublease Guidelines for Tenants" also requires approval by the State of Alaska, Department of Transportation and Public Facilities, of any assignment of the terminal tenant leases. Further, the assignee must obtain and provide proof of the required Insurance coverage in accordance with the tenant Lease Agreement.

## Analysis

The new sublease term is for five (5) years and commences on April 1, 2014 to March 31, 2019, unless terminated or extended as herein provided. Tenant shall have the right to exercise options to renew for two successive terms of three (3) years each upon the same terms and conditions as this sublease agreement.

## Fiscal Note:

The Nugget Restaurant has been paying at a rate of \$1.57 per square foot for over 10 years without an adjustment. That was sent to the assessor's office for evaluation to come up with a new rate per square foot costing. A cost inflator was added into the equation to come up with the new calculated amount below. Also, a CPI was added to the contract as it did not exist in the old contract. A CPI adjustment is made on annually basis each year.

The terminal building sublease rate for the Nugget Restaurant Lease shall be \$4,515.20 per month computed at the rate of \$1.70 per square foot per month, plus the City and Borough of Sitka Sales Tax.

The sublease rate will be adjusted based on the percentage difference between "All Items" figure for Anchorage, Alaska in the "Consumer Price Index for All Urban Consumers", (CPI). The adjustment shall occur annually on March 1, and the tenant is required to make such adjustments on its own each year.

**Recommendation:**

Approve tenant lease agreement with the owner of the Nugget Restaurant contingent on receipt of proof of the required insurance coverage, a reinstated business license, and approval from the State of Alaska, Department of Public Facilities of the assignment.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014-04

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AUTHORIZING RENEWAL OF SUBLEASE OF SPACE BY NUGGET RESTAURANT AT THE SITKA ROCKY GUTIERREZ AIRPORT TERMINAL BUILDING

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

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

3. PURPOSE. State of Alaska owns the Sitka Rocky Gutierrez Airport Terminal Building ("Terminal Building") in Sitka, Alaska. City and Borough of Sitka ("CBS") has a 30-year lease agreement with the State of Alaska, Lease No. ADA-50103, which began on July 1, 1994 and expires on June 30, 2024.

On August 1, 1974, a 10-year lease was entered into between CBS and Nugget Saloon (now known as Nugget Restaurant) ("Nugget") for purposes of operating a restaurant and cocktail lounge at the Terminal Building. After numerous assignments, this Lease was amended on April 9, 1982 and was extended to terminate on June 30, 1994.

On April 7, 1993, the parties entered into a 10-year lease extension beginning July 1, 1994. The lease was in holdover status until March 11, 1996 where a lease was entered into between the parties to expire on March 31, 2014.

Nugget Restaurant wishes to remain in its current location at the Terminal Building. It is willing to pay fair market value for the sublease space, estimated to be \$4,515.20 per month by the Municipal Assessor, as well as sign the new standardized Terminal Building Sublease Agreement.

For consistency and efficiency, this sublease will have the same provisions such as termination dates and options to renew as the other airport terminal subleases currently in effect.

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

- 45  
46 A. The Assembly finds that competitive bidding is inappropriate under  
47 SGC 18.12.010E for Terminal Building space currently subleased by  
48 Nugget Restaurant, that has been subleasing space in the Terminal  
49 Building since 1974, is willing to pay fair market value for the space  
50 as determined by the Municipal Assessor, and will execute the new  
51 standardized Terminal Building Sublease Agreement;  
52  
53 B. Execution of the attached sublease is authorized; and  
54  
55 C. Approval of this sublease agreement is contingent on the State of  
56 Alaska DOT&PF approval and consent to the Sublease Agreement.  
57

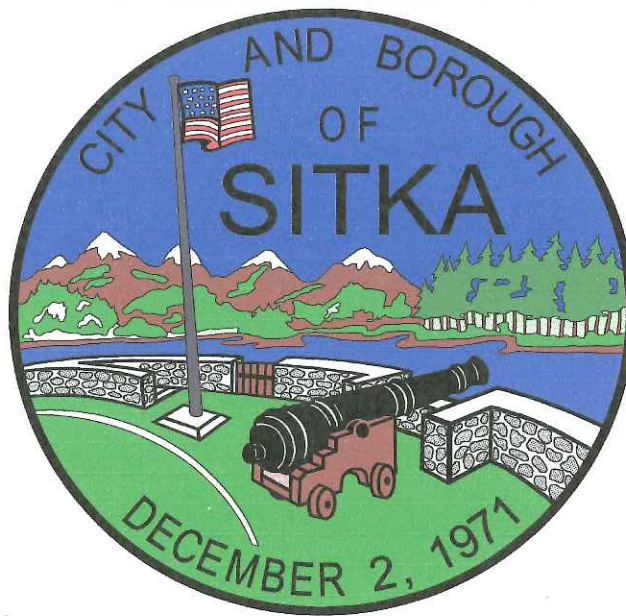
58 5. **EFFECTIVE DATE.** This ordinance shall become effective on the day  
59 after the date of its passage, with the date of the sublease agreement effective April 1,  
60 2014.  
61

62 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and  
63 Borough of Sitka, Alaska this 25<sup>th</sup> day of February, 2014.  
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65  
66

67 \_\_\_\_\_  
Mim McConnell, Mayor

68 ATTEST:

69  
70 \_\_\_\_\_  
71 Colleen Ingman, MMC  
72 Municipal Clerk



# **SUBLEASE AGREEMENT**

**BETWEEN**

**THE  
CITY AND BOROUGH OF SITKA**

**AND**

**NUGGET RESTAURANT**

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Exhibits

- Exhibit A – Diagram of Sublease Area
- Exhibit B - Lease between the State of Alaska Department of Transportation and Public Facilities and City and Borough of Sitka
- Exhibit C – State of Alaska Department of Transportation Consent to Sublease
- Exhibit D – State of Alaska Department of Transportation Sublease Guidelines



## SUBLEASE AGREEMENT

### PREAMBLE

City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("CBS") and Nugget Restaurant, ("Tenant"), P.O. Box 797, Sitka, Alaska 99835, enter into this Sublease Agreement ("Sublease"). This Sublease is subject to all requirements and conditions of CBS's prime lease ADA-50103 with the State of Alaska, Department of Transportation and Public Facilities ("DOT&PF") and consists of the Special Provisions, the General Provisions, and the following attached Exhibits:

- Exhibit A - Pictorial representation of the areas subleased in the Sitka Rocky Gutierrez Airport terminal building, ("Terminal Building"), including sublease area consisting of 2,656 square feet, at 600 Airport Road, Sitka, Alaska 99835 ("Subject Property").
- Exhibit B - Lease between CBS and DOT&PF of the Terminal Building at Lot 3, Block 600.
- Exhibit C - DOT&PF document authorizing CBS to sublease any Terminal Building area.
- Exhibit D - Sublease Guidelines For Tenants, required by DOT&PF.

### SPECIAL PROVISIONS

#### ARTICLE I: SUBLEASE, TERM OF SUBLEASE, AND TERMINATION OF SUBLEASE

##### Section 1.1 Conveyance of Estate in Sublease.

CBS, for and in consideration of the Rents received and of the covenants and agreements made by Tenant, does sublease to Tenant, and Tenant subleases from CBS, the Subject Property as shown on Exhibit A. Exhibit A shows an approximately 2,656 square feet of Terminal Building space for purposes of a restaurant and cocktail lounge.

##### Section 1.2 Sublease Term.

The Sublease commences on April 1, 2014, and ends on February 28, 2018, unless sooner terminated or extended as hereinafter provided. The Sublease Term may be extended, based on the Options to Renew in Section 1.3.

##### Section 1.3 Options to Renew.

Provided there does not then exist a continuing material default by Tenant under this Sublease at the time of exercise of this right or at commencement of any extended term, Tenant shall have the right to exercise options for two successive terms of three (3) years each upon the same terms and conditions as this Sublease (except Section 1.2), with the Sublease payments during the extension terms as described in Article II. Each of these options is effective only if (a) Tenant 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; and (b) Tenant is in compliance with law and

this Sublease and is not in default under this Sublease. Options to renew must be approved by the CBS Assembly and DOT&PF.

#### **Section 1.4 Disposition of Improvements and Tenant's Personal Property Following Term of Sublease.**

With the exception of such improvements described in the next sentence, Tenant shall remove from the Subject Property any personal property or improvements constructed, installed, or deposited on the Subject Property at the termination of this Sublease or any extension unless Tenant makes a separate written agreement with CBS to do otherwise. Subject to the provisions of the next sentence, Tenant shall leave behind at no cost to CBS improvements including: bollards, ladders, drains and drain lines; toilets; bathroom sinks; building systems and their components such as plumbing, piping, and fixtures; building structural components; non-structural improvements such as walls and ceilings; devices not used for processing or manufacturing such as but not limited to electrical service entrance equipment, electrical distribution panels, electrical cables, feeders, branch circuit wiring, and appurtenances such as light fixtures, switches, and other devices; portable fire extinguishers, smoke detectors, and fire and life safety equipment attached or fastened in ways integral to the building in which Subject Property is located. Any improvements or personal property not removed after thirty (30) days have passed after termination of this Sublease shall be deemed abandoned and at CBS's option shall become the property of CBS, and Tenant shall repay to CBS any costs of removing such improvements or personal property from the Subject Property if CBS does not exercise such option. Any holes that may be left in walls, ceilings, or floors as a result of removal of improvements shall be repaired by Tenant in a manner that meets all existing requirements of local, state, and federal law and matches the existing materials of Subject Property. Subject to CBS's obligations under Subsection 3.1 below, Tenant agrees to leave Subject Property in a neat, clean, and weather-tight condition at the end of the term of the Sublease.

#### **Section 1.5 Covenants to Perform.**

This Sublease 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 Term of the Sublease.**

The first year of the Sublease begins on the commencement date of this Sublease set out in Article I. Each successive year of the Sublease begins on the corresponding anniversary commencement date of the Sublease. Subject to the provision in the previous sentence, Tenant shall pay the Sublease payments for subsequent years each month in advance on the first day of each and every month for which Rent is due throughout the term of the Sublease without the necessity of any billing by CBS. Tenant will sublease the space as shown in Exhibit A for \$54,182.40/year payable at a rate of \$4,515.20/month plus applicable cost of living adjustments referred to in Section 2.2 and extension option adjustments in Section 2.3.

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

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

**Section 2.3 Calculation and Method of Payment of Rent During Successive Optional Three-Year Renewal Periods of the Sublease.**

If Tenant decides to exercise the option to renew for successive three-year terms under Section 1.3, Tenant must notify CBS of their intent no less than six (6) months before the end of the current term of the Sublease. CBS 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 Tenant but may take into consideration improvements made by CBS.

**Section 2.4 Property Tax Responsibility.**

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

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

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

(a) Except as provided in this Section, Tenant acknowledges the Subleasehold is in an "as is" condition and includes the building, fixtures, appurtenances and municipal-provided equipment. At the sole cost and expense of Tenant and in compliance with all legal requirements, Tenant may 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. Any protrusions, extensions, doors, drains through the roof, walls or floor of the building for the purpose of drains, access, venting equipment or space within Tenant Subleasehold shall be the responsibility of Tenant including any water leaks or blockages caused by those protrusions, extensions or drains.

(b) CBS shall repair and maintain the subject property and CBS-provided equipment. Tenant shall repair and maintain its areas of use at its sole expense including interior improvements, fixtures appendages and facilities constructed by the Tenant in its use area. This shall include but is not limited to such items as counters, painting, floor coverings and decorations. CBS reserves the right to expand or modify the facility. In that event, the CBS and Tenant will work together to complete such expansion or modification in a manner that minimizes disruption to Tenant's use of the facility. Some anticipated disruptions could be the use of space for construction activities, the interruption in facility utilities (i.e., power, water and sewer and operational disturbances from noise, dust and other construction activities).

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

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

(e) Tenant shall confine its equipment, storage and operation to the Subleasehold area. An exception to this is the use of common spaces. Tenant will cooperate with other Subleaseholders in the facility with regards to use of common spaces in the building and grounds. CBS Facilities Manager will act as arbitrator between Subleaseholders on questions on cooperative use.

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

(g) Tenant may erect outdoor signage at its expense with the permission of the CBS Public Works Director and which is in compliance with applicable zoning laws. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

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

Tenant shall not make or permit to be made any alteration of, addition to, or change in, structures and improvements, nor demolish all or any part of the structures or improvements without the prior written consent of CBS, which consent shall not be unreasonably withheld. The phrase "structures and improvements" in the previous sentence includes water and wastewater systems and electrical systems. In requesting consent Tenant shall comply with all applicable laws and ordinances, and shall submit to the CBS Public Works Director or his or her written designee detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan of full payment of the costs of the work. CBS shall notify Tenant of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting CBS shall be acting in its proprietary function and not its regulatory function. Any such approval in this proprietary function does not relieve Tenant of any obligation to obey the law, including obtaining any required building permits. Nothing in this Section shall be interpreted to prevent Tenant from removing at the termination of this Sublease any improvements or personal property as described in Section 1.4.

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

(a) CBS reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Subject Property, as well as for the purposes of constructing or installing new public utilities. CBS also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of

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

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

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

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

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

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

(b) Sublease payments will be made in monthly installments in advance in cash or by check, bank draft or money order made available to the City and Borough of Sitka. Installments to be delivered or mailed to 100 Lincoln Street, Sitka, Alaska 99835, by or on the first day of each calendar month.

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

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

(e) CBS at their option can terminate the Sublease for Tenant's failure to make payment, and in accordance with this Sublease.

(f) Tenant covenants and agrees that as it relates to use of the Subject Property, it will not, on the grounds of race, color or national origin, sex, religion, age, physical handicap, marital status, pregnancy or parenthood, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal or State laws and Tenant further grants CBS the

right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.

(g) CBS may sell the Terminal Building in the future and all agreements regarding the Subject Property, including this Sublease between CBS and Tenant, shall be completely transferable to the new owner. A transfer of the Terminal Building to any such entity shall not create any restrictions upon use of the Subject Property in addition to those stated in this Sublease.

(h) CBS may, upon at least 10 days prior written notice to Tenant, temporarily suspend the supply of water, wastewater service, the supply of electric power, the use of pipelines, or the use of the Improvements in order to perform routine maintenance and, in all events, subject to unavoidable delays, as provided in Section 4.2. Such interruptions shall be of as short duration as necessary to perform such maintenance, and CBS shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(i) Tenant shall pay the CBS Fire Marshal or Building Inspector fees and other building permit fees, and shall also pay all applicable property taxes and assessments when due. These include any Local Improvement District costs that may be assessed.

(j) Tenant shall be responsible for taking any measures that Tenant deems necessary to provide security for their property. CBS is not responsible for theft or vandalism.

(k) CBS sales tax applies to Sublease payments. Sales tax rates, limits, exemptions, and exclusions are subject to change by the CBS Assembly.

(l) CBS shall have the authority to allow vending machines to be placed in the Terminal Building. All commissions from vending machines shall be deposited by CBS in the Terminal Building account. Any vending machines proposed to be placed in an area under sublease to the Tenant shall be with the concurrence of the Tenant.

(m) CBS acknowledges that the Nugget Restaurant shall have a right of first refusal with regard to any other limited food or drink sales operations proposed within the Terminal Building and that no other restaurant or lounge business shall be allowed in the Terminal Building. This provision is based on the current sublease with Nugget Restaurant, which expires on March 31, 2014, unless terminated or extended sooner.

(n) Tenant agrees not to install any radio transmitting equipment without the written approval of CBS Facilities Manager and to discontinue upon request of CBS Facilities Manager use of any machinery or installation causing interference to City, State, or Federal government radio receiving or transmitting equipment until the cause of such interference has been eliminated.

(o) Tenant agrees that CBS may modify this Sublease to meet revised requirements for Federal or State grants, regulations or laws, or to conform to the requirements of any CBS revenue bond requirements. However, this agreement to modify the Sublease to conform to the requirements of any revenue bond requirements shall not reduce the rights or privileges granted the Tenant by this Sublease, nor cause the Tenant financial loss in its Sublease options.

(p) FAA requires CBS to file an annual concessionaires' report with the FAA, including a list of individual concessionaires' gross revenues. Tenant grants permission to CBS Finance Director to release this information from sales tax returns in order to comply with FAA reporting requirements.

(q) Tenant agrees that the first priority use of the Terminal Building is to accommodate aircraft for passenger use. Tenant agrees to relocate to comparable space within the Terminal Building or expanded Terminal Building, if required to accommodate this priority at no cost to CBS.

(r) Tenant shall submit a non-refundable \$55 processing fee payable to the State of Alaska upon execution of this Sublease.

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

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

**ARTICLE IV UTILITY SERVICES & RATES.**

**Section 4.1 Provision of Utility Services.**

Tenant is responsible to pay utility bills which Tenant may become liable to pay. Water and sewer services will be provided by CBS in other sections of the Terminal Building.

**Section 4.2 CBS Not Liable for Failure of Utilities or Building.**

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

**Section 4.3 Janitorial**

Janitorial for common areas in the Terminal Building is provided by CBS. Tenant will provide janitorial for its Subject Property.

## **ARTICLE V INDEMNIFICATION**

### **Section 5.1 Liability of and Indemnification by Tenant.**

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

### **Section 5.2 Liability of and Indemnification by CBS.**

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

### **Section 5.3 Reimbursement of Costs of Obtaining Possession.**

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute under this Sublease against all costs and charges, including full reasonable counsel and legal fees lawfully



and reasonably incurred in enforcing any provision of this Sublease including obtaining possession of the Subject Property and establishing CBS's title free and clear of this Sublease upon expiration or earlier termination of this Sublease.

## **GENERAL PROVISIONS**

### **ARTICLE VI DEFINITIONS**

#### **Section 6.1 Defined Terms.**

For the purposes of this Sublease, 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 on any part of the Subject Property, any right or interest regarding the Subject Property, or any Rent and income received from the Subject Property, including sales taxes on Rent.
- (c) "Improvements" means all buildings, structures and improvements of any nature now or hereafter located upon the Subject Property by Tenant, as well as all of the Tenant's apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, including fittings, appliances, machinery, garage equipment, heating equipment, lighting equipment, cooling equipment, air conditioning and ventilating equipment, wiring, controls, communications equipment, plumbing, switchboards, antennae, floor coverings, refrigerating equipment, hot water heating and all other appliances and equipment; excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Tenant, sublessees, or others, which can be removed without defacing or materially injuring the improvements remaining on the Subject Property, 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 Sublease. "Improvements" also includes fill, grading, asphalt, and other non-building land improvements.
- (d) "Personal Property" means tangible personal property owned or leased and used by Tenant or any subtenant, in connection with and located upon the Subject Property.
- (e) "Premises" means the "Subject Property."
- (f) "Rent" means the Sublease rate, which is the amount Tenant periodically owes and is obligated to pay CBS as Sublease payments under this Sublease for the use of the Subject Property.
- (g) "Subject Property" is the area Subleased as shown on Exhibit A.
- (h) "Subtenant" shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through Tenant.

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

## **ARTICLE VII INSURANCE**

### **Section 7.1 Insurance.**

Tenant shall maintain property damage and comprehensive general liability insurance in the amount of one million dollars (\$1,000,000), including for Subleasehold improvements. CBS shall be named as an additional insured. Tenant shall maintain Workmen's Compensation insurance as required by state and federal regulations. CBS shall maintain for the Terminal Building a policy of standard fire and extended coverage insurance.

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

Tenant shall advise CBS of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in Section 7.1.

### **Section 7.3 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 Sublease, 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 Sublease 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 Tenant Without Power to Assign Sublease or Transfer or Encumber Subject Property.**

Tenant has no power under this Sublease to assign the Sublease, except with approval of the CBS Assembly and DOT&PF. Tenant has no power under this Sublease to transfer the Subject Property, except with approval of the CBS Assembly and DOT&PF. Tenant 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.**

Tenant shall not sublease the Subject Property or any portion of it without the prior written approval of the CBS Assembly and DOT&PF. All subleases entered into demising all or any part of the Improvements or the Subject Property shall expressly state that it is subject to and subordinate to this Sublease. CBS's and DOT&PF's consent to a sublease of the Subject

Property shall not release Tenant from its obligations under this Sublease. CBS's and DOT&PF'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 Subject Property As Is - Repairs.**

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

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

Tenant shall throughout any term of this Sublease, at Tenant's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (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 CBS of its general obligations required in its municipal capacity.

### **Section 9.3 Notification of CBS Public Works Director of Discovery of Contamination.**

Tenant shall promptly notify the CBS Public Works Director within 24 hours if any contaminated soils or other media that require special handling are encountered during construction activities or at any other time.

Tenant shall be responsible for all clean-up costs associated with contamination of soils of subject property, adjoining property, and/or buildings. In the event of Tenant's failure to clean-up to applicable regulatory standards or to the satisfaction of the CBS Public Works Director, CBS may perform clean-up or contract for clean-up, and all charges for such work shall be payable by Tenant.

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

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

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

Tenant shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by CBS. Not less than ten (10) days in advance of applying for permits to any public entity other than the CBS, Tenant shall provide copies of all permit applications and associated plans and specifications to the CBS Public Works Director to

facilitate review by departments of the CBS. CBS is not obligated to comment on the permit applications and plans, and the result of any review by the CBS does not affect Tenant's obligation to comply with any applicable laws.

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

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

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

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

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

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

All sums advanced by CBS pursuant to this Article and all necessary and incidental costs, expenses and attorney 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 Tenant, in the respective amounts so advanced, to CBS. This reimbursement shall be made on demand, or, at the option of CBS, may be added to any Rent then due or becoming due under this Sublease and Tenant covenants to pay the sum or sums with interest, and CBS shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by Tenant as in the case of default by Tenant in the payment of any installment of Rent. Conversely, Tenant shall be entitled to receive from CBS prompt payment or reimbursement on any sums due and owing from CBS to Tenant, together with interest at the highest rate allowed by law. However, nothing contained in this Sublease shall entitle Tenant to withhold any Rent due to CBS or to offset or credit any sums against Rent, except with respect to unpaid Rental due from CBS to Tenant under any Sublease of Terminal Building space to CBS.

## **ARTICLE XI DAMAGE OR DESTRUCTION**

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

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

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

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

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

## **ARTICLE XII LIENS**

### **Section 12.1 Discharge of Mechanics' and Other Liens.**

Tenant shall not permit any mechanics' liens or other liens to be filed against the title to the Subject Property against Tenant's interest in the property, or against the improvements by reason of work, labor, services or materials supplied to Tenant or anyone having a right to possession of the Subject Property or improvements as a result of an agreement with Tenant. If any mechanics' lien or other liens are filed against the Subject Property, including the Improvements, Tenant shall discharge lien within 30 days after the date that Tenant has knowledge of its filing, or take action sufficient to the satisfaction of the CBS.

## **ARTICLE XIII LIEN FOR RENT AND OTHER CHARGES**

### **Section 13.1 Lien for Rent.**

The contents of this entire leasehold contract shall be declared to constitute a valid and prior lien upon the Subject Property and the Improvements, and upon Tenant's Subleasehold 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 Tenant to pay any Rent, or any other payments or deposits of money, or furnish receipts for deposits as required, when due and the continuance of the failure for a period of ten (10) days after notice in writing from CBS to Tenant.

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

(c) The filing of an application by Tenant (the term, for this purpose, to include any approved transferee other than a CBS of Tenant's interest in this Sublease): (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 Tenant a bankrupt, or appointing a receiver, trustee or liquidator of it or of its assets, and this order, judgment or decree continuing unstayed and in effect for any period of 60 consecutive days, or if this Sublease is taken under a writ of execution.

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

In the event that this Sublease 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 Sublease and shall provide adequate assurances of future performance of this Sublease as are required by the Bankruptcy Code (including 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 Sublease shall be deemed rejected automatically and CBS shall have the right 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 Sublease.

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

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

(a) CBS may terminate this Sublease and the Term created, in which event CBS 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 Sublease, of the Rent provided to be paid by Tenant for the balance of the stated term of this Sublease less the fair rental value as of the date of termination of this Sublease 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 Sublease to CBS and Tenant. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

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

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

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

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

#### **Section 14.4 Waivers and Surrenders To Be In Writing.**

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

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

#### **Section 15.1 CBS's Title and Lien Paramount.**

CBS has title to the Terminal Building, and CBS's lien for Rent of the Terminal Building and other CBS charges shall be paramount to all other liens on the Subject Property.

#### **Section 15.2 Tenant Not To Encumber CBS's Interest.**

Tenant shall have no right or power to and shall not in any way encumber the title of CBS in and to the land and building of the Subject Property. The leasehold estate of CBS in the Land and its ownership of the Terminal Building in which the Subject Property is sublet shall not be in any way subject to any claim by way of lien or otherwise, whether claimed by operation of law or by virtue of any express or implied lease or contract or other instrument made by Tenant, and any claim to the lien or otherwise upon the Land arising from any act or omission of Tenant shall



accrue only against the Subleasehold estate of Tenant in the Subject Property and Tenant's interest in the Improvements, and shall in all respects be subject to the paramount rights of CBS in the Land.

## **ARTICLE XVI REMEDIES CUMULATIVE**

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

No remedy conferred upon or reserved to CBS shall be considered exclusive of any other remedy, but shall be cumulative to every other remedy given under this Sublease, existing law, equity or by statute. Every power and remedy given by this Sublease to CBS may be exercised as may be deemed necessary by CBS. No delay or omission of CBS to exercise any right or power shall be construed to be a waiver of any default or any agreement 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 Sublease shall be construed to be a waiver of any other breach or to be a waiver of, agreement 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 Sublease, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of CBS to declare ended the term granted and to terminate this Sublease 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 Sublease year of the original term, or on the earlier termination of the Sublease term, Tenant shall peaceably and quietly leave, surrender and deliver the entire Subject Property to CBS, subject to the provisions of Section 1.4, in good repair, order, and condition, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. At the time of the surrender, Tenant shall also surrender any and all security deposits and Rent advances of sublessees to the extent of any amounts owing from Tenant to CBS. If the Subject Property is not so surrendered, Tenant shall repay CBS for all expenses which CBS shall incur by reason of it, and in addition, Tenant shall indemnify, defend and hold harmless CBS from and against all claims made by any succeeding Tenant against CBS, founded upon delay occasioned by the failure of Tenant to surrender the Subject Property.

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

At the termination of this Sublease, by lapse of time or otherwise, Tenant shall yield up immediately possession of the Subject Property to CBS and, failing to do so, agrees, at the option of CBS, to pay to CBS for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times 1/30th of the aggregate of the Rent paid or payable to CBS during the last month of the term of the Sublease the day before the termination of the Sublease. The provisions of this Article shall not be held to be a waiver by CBS of any

right or reentry as set forth in this Sublease, 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 Sublease and the Term granted for the period still unexpired for any breach of Tenant under this Sublease.

#### **ARTICLE XVIII MODIFICATION**

##### **Section 18.1 Modification.**

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

#### **ARTICLE XIX INVALIDITY OF PARTICULAR PROVISIONS**

##### **Section 19.1 Invalidity of Provisions.**

If any provision of this Sublease or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Sublease, 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 Sublease 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 Sublease 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 Sublease 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 it shall or may become necessary to give notice of any kind to CBS or Tenant, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed:

Mark Gorman, Municipal Administrator  
City and Borough of Sitka  
100 Lincoln Street  
Sitka, Alaska 99835  
Phone: (907) 747-1808  
Fax: (907) 747-7403  
Email: [markgorman@cityofsitka.com](mailto:markgorman@cityofsitka.com)

\_\_\_\_\_  
Nugget Restaurant  
P.O. Box 797  
Sitka, Alaska 99835  
Phone: (907) 966-2480  
Fax: (907) \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to: Municipal Clerk at address listed above. Each Party shall give timely notice of change of address.

**Section 21.2 Notice to Subleasehold Mortgagee and Secured Parties.**

CBS shall provide each Subleasehold Mortgagee and Secured Party, who has so requested, copies of all notices from CBS to Tenant relating to existing or potential default under, or other noncompliance with the terms of, this Sublease. All notices, demands or requests which may be required to be given by CBS or Tenant to any Subleasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Subleasehold Mortgagee at a place as the Subleasehold Mortgagee may from time to time designate in a written notice to CBS and Tenant. Copies of all notices shall simultaneously be sent to the other of CBS or Tenant, 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 Sublease to be given by any Party to the other Party or by any Party to a Subleasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is mailed and shall be deemed received on the third business day after proof of mailing.

**ARTICLE XXII MISCELLANEOUS PROVISIONS**

**Section 22.1 Captions.**

The captions of this Sublease 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 Sublease, nor in any way affect this Sublease.

**Section 22.2 Conditions and Covenants.**

All the provisions of this Sublease 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 Sublease 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 Sublease.**

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

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

**Section 23.1 Covenants to Run with the Subject Property.**

All covenants, agreements, conditions and undertakings in this Sublease shall be binding upon the successors and assigns of each of the Parties and they shall be construed as covenants running with the Subject Property. Wherever in this Sublease reference is made to any of the

Parties, it shall be held to include and apply to, wherever applicable, also the officers, directors, successors and assigns of each Party, the same as if in each and every case so expressed.

**Section 23.2 Interest in Deposits Automatically Transferred.**

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

**ARTICLE XXIV ADDITIONAL GENERAL PROVISIONS**

**Section 24.1 Absence of Personal Liability.**

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

**Section 24.2 Sublease Only Effective As Against CBS Upon Approval of Assembly and DOT&PF.**

This Sublease and any renewals are effective against CBS only upon the approval of such Sublease and any renewals by the CBS Assembly and DOT&PF.

**Section 24.3 Binding Effects and Attorneys Fees.**

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

**Section 24.4 Duplicate Originals.**

Three signed and notarized originals of this Sublease shall be executed. The warranties, representations, agreements and undertakings shall not be deemed to have been made for the benefit of any person or entity, other than the Parties.

**Section 24.5 Declaration of Termination.**

With respect to CBS's rights to obtain possession of the Subject Property or to revest title in itself with respect to the Subleasehold estate of Tenant in the Subject Property, CBS shall have the right to institute such actions or proceedings as it may deem desirable to effectuate its rights including, without limitation, the right to execute and record or file with the Recorder of Sitka

Recording District, a written declaration of the termination of all rights and title of Tenant in the Subject Property, and the reversioning of any title in CBS as specifically provided in this Sublease.

**Section 24.6 Authority.**

CBS and Tenant represent to each other that each have exercised the required corporate power and authority and have complied with all applicable legal requirements necessary to adopt, execute and deliver this Sublease and perform its obligations. Both Parties also represent that this Sublease 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.

**NUGGET RESTAURANT**

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Its \_\_\_\_\_ (Title)

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared before me \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who by signing this agreement, swears or affirms that he/she is the \_\_\_\_\_ of Nugget Restaurant and is authorized to sign this document on behalf of the Tenant, and does so freely and voluntarily.

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

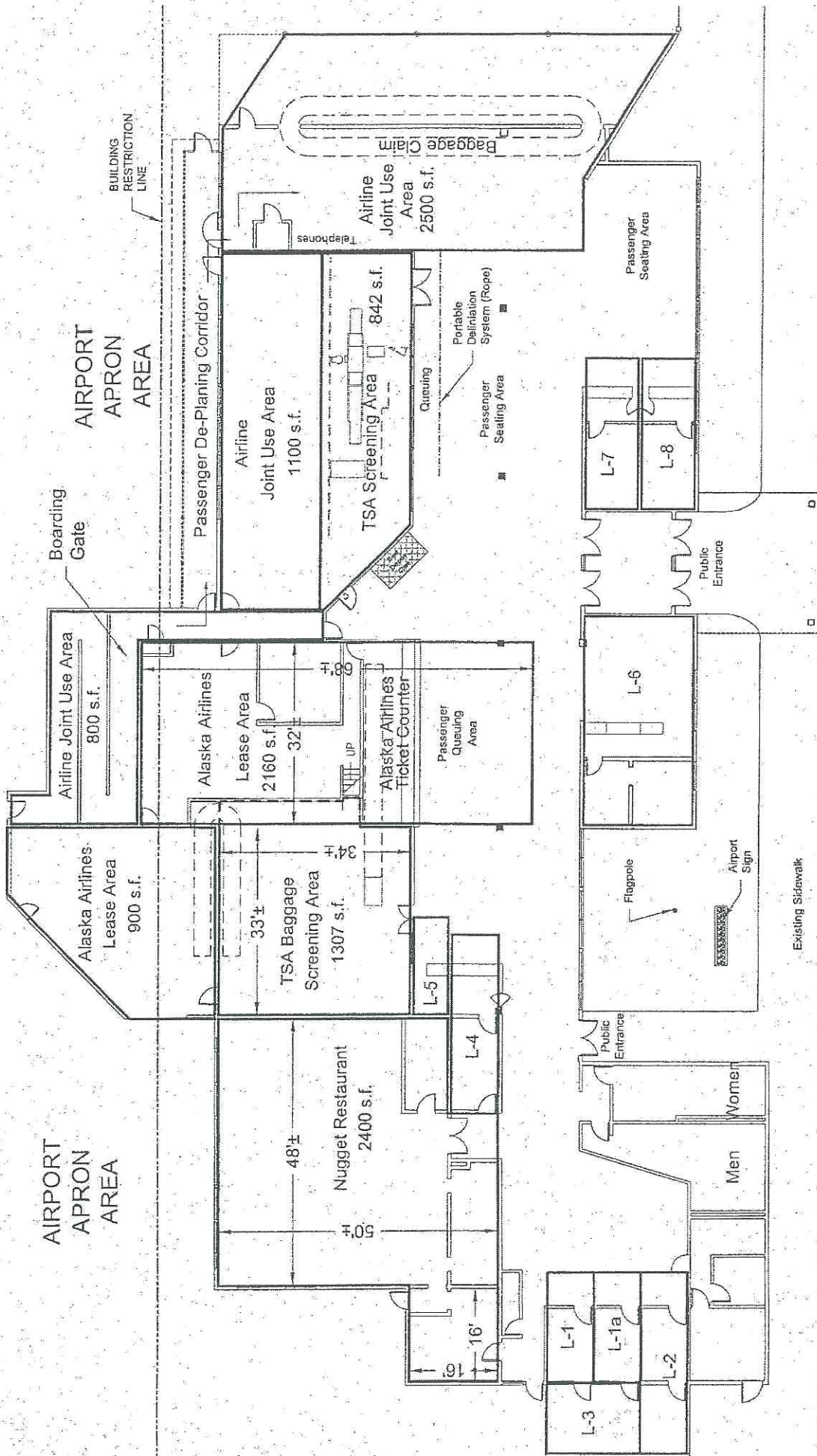
**CITY AND BOROUGH OF SITKA**

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

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a Notary Public in and for the State of Alaska, personally appeared Mark Gorman, who is the Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, that he has been authorized by to execute the foregoing document, and does so freely and voluntarily.

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



- L-1 Counter & Office Space 214 s.f.
- L-1a Counter & Office Space 214 s.f.
- L-2 Counter, Office & Outside Storage Space 260 s.f.
- L-3 Outside Storage Space 194 s.f.
- L-4 Counter & Office Space 255 s.f.
- L-5 Counter Space 114 s.f.
- L-6 Counter, Office & Storage Space 798 s.f.
- L-7 Counter & Office Space 243 s.f.
- L-8 Counter & Office Space 249 s.f.



City and Borough of Sitka  
 DEPARTMENT OF PUBLIC WORKS  
 100 LINCOLN STREET • SITKA, ALASKA 99835  
 TEL (907) 747-1804 FAX (907) 747-3158

SITKA-R.G. AIRPORT  
 SUBLESSEE  
 USE AREAS

DRAWN: PAR/TAD SCALE: N.T.S.  
 CHECKED: RAR DATE: 10Feb05  
 DRAWING NAME: Leases Feb 05  
 SHEET NO. 1 / 1

EXH. A

*Airport*

*Exhibit E*

*Paula*

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

SITKA AIRPORT

LEASE NO. ADA-50103

LEASE AGREEMENT

THIS lease is made and entered into this 1st day of June, 1997, between the STATE OF ALASKA, acting through the DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, whose address is 6860 Glacier Highway, Juneau, Alaska 99801-7999, ("LESSOR"), and the CITY AND BOROUGH OF SITKA, ALASKA, whose address is 100 Lincoln Street, Sitka, Alaska 99835 ("LESSEE").

*\$ 7461 2005*

RECITALS

- (1) LESSOR owns the Sitka Airport ("Airport") at Sitka, Alaska;
- (2) LESSOR has constructed the runway and related facilities for the airport at Sitka, Alaska;
- (3) Lessor and Lessee entered into Lease Agreement ADA-01571, dated July 1, 1967, under which Lessee operated the Airport;
- (4) Under Lease Agreement ADA-01571, LESSEE constructed, expanded, and operated an airport terminal ("Terminal") building on the Airport;
- (5) July 1, 1994 Lessee terminated Lease Agreement ADA-01571. On October 11, 1995, Lessor and Lessee executed a Settlement Agreement setting out the conditions for resolution of financial disputes and other matters that resulted from Lessee's termination of Lease ADA-01571. Under the terms of the Settlement Agreement, the Lessor and Lessee agreed to enter into a lease of the Terminal site to permit the Lessee to continue operating the Terminal; and
- (6) LESSEE has operated the Terminal continuously since July 1, 1994;

THEREFORE, for and in consideration of the terms and conditions, set forth below, the parties agree as follows:

1. Leased Premises

LESSOR hereby leases to LESSEE, and LESSEE hereby leases from the LESSOR, the following real property located on Japonski Island, Sitka Recording District, First Judicial District, Alaska, described as follows ("Premises"):

Lot 3A, Block 600, Sitka Airport consisting of 65,445 square feet as described on attached Exhibit A.

2. Term

In consideration of Lessee's construction, maintenance, operation, and ownership of the Terminal, the term of this lease is 30 years beginning on July 1, 1994, and expiring on June 30, 2024.

**EXH. B**

3. Authorized Uses

Lessee is authorized to use the premises for operation of a public airline terminal building and for purposes commonly associated with a public airline terminal at airports in the United States, including aircraft parking, loading, servicing, and unloading; baggage and cargo processing; passenger ticketing, screening, and waiting; and concession services.

4. Rent

- (a) Beginning on July 1, 1995, the annual rental for the Premises is \$6,806.28 (65,445 square feet @ \$.104 per square foot). Rent for the period of July 1, 1995 to June 30, 1997 (\$13,612.56) is due upon execution of this lease by the Lessor and Lessee. After June 30, 1997, the rent shall be payable in advance of the first day of each year of the term specified in Covenant No. 3. The rent shall be prorated for any partial year in the term. All payments required by this lease must be made in U.S. currency.
- (b) Checks, bank drafts, or postal money orders are to be made payable to the State of Alaska and delivered to Accounting Section, Department of Transportation and Public Facilities, 6860 Glacier Highway, Juneau, Alaska 99801-7999, or any other address which the Lessor may designate in writing.
- (c) Any payment due from the Lessee and not received by the Lessor accrues interest from the due date until paid in full at the highest allowable lawful contract rate in Alaska, as defined AS 45.45.010 or as amended. Interest on disputed amounts will not be charged to the Lessee if the dispute is resolved in the Lessee's favor.
- (d) Any rent, charge, fee or other consideration which is due and unpaid at the expiration, termination, or cancellation of this lease will be a charge against Lessee and Lessee's property, real or personal.
- (e) Lessor may increase or decrease the rents or fees payable under this lease. During the first five years of the term stated in Covenant No. 2 of this lease, Lessor may neither increase nor decrease the rent fees payable under this lease. At any time after the end of the fifth year of the lease term, Lessor may, in its sole discretion, increase or decrease the rents or fees, provided that Lessor may neither increase nor decrease the rents or fees more than once in any 12 months period. Any change in rent is effective upon written notice to the Lessee.

Any rent increase or decrease must be consistent with applicable statutes or regulations, including AS 02.15.090 and 17 AAC 40.340(a), and any amendments. It is Lessor's intent that any rent established under this basic provision not exceed fair market rental as determined by a qualified real estate appraiser in an appraisal approved by Lessor. However, Lessor is under no obligation to appraise the Premises under any circumstances.

- (f) If Lessee believes that a change under (e) of this Covenant No. 4 rent exceeds the fair market rent for the Premises, Lessee may appeal to Lessor according to the following procedures:
  - (i) Lessee must pay the changed rent beginning on the effective date stated in Lessor's rent change notice and continue paying the changed rent throughout the appeal process.



- (ii) Within 30 days after the date of Lessor's written notice of the rent increase or decrease, Lessee must submit a written appeal to Lessor. The appeal must include the name, address, telephone number and professional qualifications of the real estate appraiser Lessee intends to retain to perform a fair market rent appraisal of the Premises.
- (iii) Lessor will review the appraiser's qualifications and approve or disapprove the appraiser in writing to Lessee. If Lessor disapproves the appraiser, Lessee will have 30 days from the date of Lessor's written disapproval to continue the appeal by submitting the name, address, phone number, and professional qualifications of another appraiser.
- (iv) If Lessor approves Lessee's appraiser, Lessee shall, at Lessee's sole expense, cause the Premises to be appraised according to appraisal instructions furnished by Lessor. The written appraisal must be received by Lessor within 90 days following the date of Lessor's written approval of Lessee's appraiser.
- (v) Lessor will review the appraisal for conformance with the appraisal instructions and issue a written approval or rejection to Lessee. Upon approval of the appraisal, the fair market rent determined by the appraisal will be the rent for the Premises, retroactive to the effective date of Lessor's rent change notice issued under (e) of this Covenant No. 4. Rejection of the appraisal by Lessor will constitute a denial of Lessee's appeal.

**5. Operation As A Public Air Terminal**

LESSEE agrees to operate the Terminal for the use and benefit of the public. Lessee shall make available, the Terminal and related facilities and services to the public, subject to reasonable fees and needs, on fair and reasonable terms and conditions and without discrimination. Lessee agrees to provide space in the terminal, to all qualified persons, firms, and corporations desiring to conduct airline operations in the Terminal. Nothing in this lease grants or authorizes the Lessee to grant any exclusive right prohibited by AS 02.15.210 or Section 308 of the Federal Aviation Act.

**6. Economic Non-Discrimination**

Each air carrier using the Terminal (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to nondiscriminatory and substantially comparable rates, fees, rentals, and charges with respect to facilities directly or substantially relating to providing air transportation and other nondiscriminatory and substantially comparable rules, regulations and conditions as are applicable to all such air carriers which make similar use of the Terminal.

**7. Inspection of Lessee Records**

During Lessee's normal business hours, Lessor shall have the right to inspect and copy the Lessee's files, books, and records related to this lease, the Premises, or the Terminal.

8. Continuous Operations

Except as provided in Covenant No. 13 of this lease, Lessee agrees to continuously operate an airline terminal building on the premises for use by the public throughout the term of this lease.

9. Existing Improvements

- (a) Lessor and Lessee acknowledge the presence on the Premises of the Terminal, sidewalks, and landscaped areas owned by Lessee, and security fencing and paved surface aircraft parking apron owned by Lessor. As of the date on which this lease is executed, Lessor and Lessee find the condition of these improvements to be acceptable for the purposes contemplated in this lease.
- (b) By no later than September 1, 1997, Lessee shall furnish to Lessor one complete set of as-built drawings showing the dimensions and construction of the Terminal.

10. Survey

Lessee agrees to cause the Premises to be surveyed by a land surveyor registered in the State of Alaska. The survey must be conducted at no expense to the Lessor and must establish the boundaries of the Premises, placing permanent markers at the corners. Lessee agrees to submit a plat of the survey, signed and stamped by the surveyor, to the Lessor on or before September 1, 1997. The survey plat must conform to the Lessor's reasonable requirements, must use the centerline of the airport runway as the basis of bearings and must show survey monuments recovered, survey monuments set, and bearings and distances between monuments. Following approval of the plat by the Lessor, the Lessor and Lessee will execute a supplement to this lease which will modify the Premises description as necessary to conform to the survey.

11. Construction

- (a) Before placing fill material or beginning construction of any improvements or additions on the Premises, Lessee must first obtain the written approval of Lessor in the form of an approved building permit. Detailed drawings of the proposed improvements or additions on the Premises must be submitted to Lessor. If a building or building addition is contemplated, Lessee must also submit comprehensive structural drawings showing front and side elevation views and floor plan, materials to be used, dimensions, elevations, the location of all proposed utility lines, and any additional data requested by Lessor. Lessor will review and approve or disapprove the proposed construction. Approval will not be withheld except where proposed construction does not comply with valid engineering principles, fire or building codes, generally recognized principles of sound airport development, or the proposed construction is inconsistent with the purposes of this lease. Lessee shall submit to Lessor evidence of Lessee's compliance with the Federal Aviation Regulations, 14 CFR Part 77, and all other municipal, state, or federal regulations governing construction of improvements on the airport.
- (b) Lessee, within thirty (30) days after completion of construction or placement of improvements upon the Premises, shall deliver to Lessor an as-built drawing showing the location and dimensions of the location and

dimensions of the improvements, giving bearings and distances to an established survey point. Furthermore, if Lessee constructs underground improvements, Lessee shall appropriately mark the surface of the land with adequate surface markers.

## 12. Maintenance

- (a) Lessee shall keep the Premises and all improvements neat and presentable at Lessee's own expense. Lessee shall not strip, waste, or remove any material from the Premises without the prior written permission of Lessor.
- (b) At no cost to Lessor, Lessee shall provide for all utilities, services, and maintenance, including snow removal, as is necessary to facilitate Lessee's use of the Premises.
- (c) The disposal on the airport of waste materials generated by Lessee, including slash, overburden, and construction waste, is prohibited, unless authorized in writing by Lessor.
- (d) Lessee agrees to coordinate the Lessee's snow removal and maintenance activities on the Airport with Lessor's Airport personnel. Lessee further agrees to comply with all reasonable decisions and directions of Lessor's airport management personnel regarding snow removal, maintenance, and general use of the airport by Lessee.

## 13. Damage or Destruction of the Terminal

- (a) Except as provided in (b) of this Covenant No. 13, if the Terminal is damaged or destroyed by fire, explosion, wind, or other events, Lessee shall cause the Terminal to be repaired or rebuilt, and restored to normal function as promptly as possible.
- (b) If the Terminal is damaged to the extent that more than 50% of the space in the Terminal is unusable and the damage occurs within five years of the expiration of the term of this lease, Lessee may terminate this lease, remove the damaged Terminal, and restore the Premises.

## 14. Lessor Obligations

- (a) Subject to the appropriation of sufficient funds, Lessor agrees to operate and maintain the Airport for the use and benefit of the public. Lessor's operation and maintenance of the Airport include:
  - (i) Maintenance of the runway and taxiway systems;
  - (ii) Maintenance of the road systems within the airport boundaries;
  - (iii) Maintenance of the public parking lot on the Airport; and
  - (iv) Comply with Federal Aviation Administration requirements for an airport served by commercial air carriers.
- (b) Lessor is responsible for the maintenance, operation, and management of the security lock system controlling points of access from the Terminal to the aircraft parking apron on the Premises. Lessee shall obtain Lessor's prior approval for any proposed change in the points of access. If Lessee installs additional points of access in the Terminal, the devices securing

the access shall be compatible with Lessor's system, installed at the Lessee's sole expense, and maintained and operated by Lessor.

**15. Hazardous Substances**

- (a) If fuel or any other hazardous substances are handled by Lessee on the Premises, Lessee agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling fuel or hazardous substances in accordance with 13 AAC 50 and other applicable federal, state, and local laws.
- (b) In the event of a hazardous substance spill on the Premises, Lessee shall immediately notify Lessor and act promptly to contain the spill, repair any damage, absorb and clean up the spill area, and restore the Premises to a condition satisfactory to Lessor and otherwise comply with the applicable portions of Title 17 and Title 18 of the Alaska Administrative Code.
- (c) Unless otherwise stipulated by this lease or amendment thereto, all bulk fuel on the Premises must be stored in fuel storage tanks installed and plumbed in accordance with 13 AAC 50 and other applicable federal, state, and local laws.

**16. Environmental Indemnification by Lessee.**

- (a) Except for environmental contamination demonstrated to have been caused by Lessor, or by third party prior to July 1, 1994, or to have originated before July 1, 1967, Lessee will be liable for any contamination on the Premises or for the presence of any hazardous substance on the Premises. To that extent only, Lessee shall defend and save harmless Lessor from all suits, claims, damages, judgments, penalties, fines, costs, and liabilities, including sums paid in settlement of claims, attorney's fees, and consultant fees, which arise as a result of contamination of the Premises by a hazardous substance, or of adjacent property if the contamination is demonstrated to have migrated from the Premises.
- (b) Nothing in this Covenant No. 16 shall bar or prevent Lessor or Lessee from seeking and obtaining cleanup efforts, costs, or damages from potentially responsible parties for contamination of the Premises or of adjacent properties.
- (c) Upon the cancellation, termination or expiration of this lease, Lessor will, in its discretion, require Lessee to perform an Environmental Site Assessment of the Premises. Lessee assumes financial responsibility to Lessor for any contamination or presence of hazardous substance in, on, and under the surface of the Premises, or adjacent property if the contamination migrated from the Premises, except for contamination or present of hazardous substance that is determined to have been caused by Lessor, or by third party prior to July 1, 1994, or to have originated before July 1, 1967. This is without prejudice to Lessee's right to seek contribution or indemnity either from prior occupant's properties adjacent to the Premises or other potentially responsible parties except Lessor.

**17. Environmental Definition**

- (a) For the purposes of this lease the following terms are defined:

- (i) Environmental Site Assessment - An assessment of property, consistent with generally accepted professional practices, that determines the environmental condition and is supported by reports and tests which determine the environmental condition and the present, type, concentration, and extent of hazardous substances in, on, and under the surface of the property.
- (ii) Hazardous Substance - Any substance designated pursuant to section 311(b) (2) (A) of the Clean Water Act; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; and hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Clean Water Act; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to section 7 of the Toxic Substance Control Act.

18. Fuel Sales Prohibited

Unless specifically authorized by this lease or amendment thereto, the sale of aviation fuel or lubricating oil by Lessee or a sublessee on the Premises is prohibited.

19. Liability

Except for Lessor's own negligence, the Lessee shall indemnify, defend, and hold the Lessor harmless from any liability, action, claim, suit, loss property damage or personal injury of whatever kind resulting from or arising out of any act of commission or omission by the Lessee, or Lessee's agents, employees, sublessees or customers, or arising from or connected with the Lessee's use and occupation of the Premises, or the exercise of the rights and privileges granted by this lease.

20. Insurance

- (a) At no expense to Lessor, Lessee shall secure and keep in force during the term of this lease adequate insurance to protect both Lessor and Lessee against comprehensive public liability and property damage in no less than the following amounts:
  - (i) property damage arising from one occurrence in the amount of not less than \$1,000,000; and
  - (ii) personal injury or death in an amount of not less than \$1,000,000.
- (b) Lessee shall provide Lessor with proof of insurance coverage in the form of an insurance policy or a certificate of insurance. All insurance required by this covenant must:
  - (i) name Lessor as an additional assured;
  - (ii) provide that Lessor be notified at least thirty (30) days prior to any termination, cancellation, or material change in the insurance coverage; and

- (iii) include a waiver of subrogation by which the insurer waives all rights of subrogation against Lessor for payments made under the policy.
- (c) The requirement of insurance coverage does not relieve Lessee of any other obligations under this agreement.
- (d) With thirty (30) days advance written notice to Lessee, Lessor may increase or decrease the coverage limits for the insurance required by this Covenant No. 20 when Lessor reasonably determines that the increase or decrease is justified by changes in the potential risks involved in the use of the Premises by Lessee or the users of the Terminal.

## 21. Cancellation

- (a) Lessor may cancel this lease and recover possession of the Premises by giving Lessee 30 days prior written notice upon the happening of any of the events listed below, unless the breach is cured within the 30-day notice period:
  - (i) Lessee's failure to pay when due the rents or fees specified in this lease, including any increases made pursuant to this lease;
  - (ii) the return for insufficient funds of checks for payment of rents or fees;
  - (iii) the use of the Premises by Lessee for any purpose not authorized by this lease;
  - (iv) the filing of a petition in bankruptcy by or against Lessee;
  - (v) the entry by any court of a judgment of insolvency against Lessee;
  - (vi) the appointment of a trustee or receiver for Lessee's assets in a proceeding brought by or against Lessee;
  - (vii) the failure of Lessee to perform any provision or covenant in this lease.
- (b) If Lessee disputes Lessor's stated reasons for a cancellation, Lessee may appeal to Lessor for reconsideration if Lessee submits a written appeal to Lessor before the end of the 30-day notice period in (a) of this Covenant No. 21. Upon Lessor's timely receipt of an appeal, Lessor will suspend action on the cancellation until a decision is made on Lessee's appeal. If the appeal is successful, Lessor's notice of cancellation will be void. If the appeal is denied, the cancellation will be effective 30 days after the date of Lessor's written denial issued to Lessee.

## 22. Survival of Lessee Obligations

If this lease is terminated or cancelled by Lessor pursuant to this lease, or if Lessor reenters, regains or resumes possession of the Premises pursuant to this Lease, all of Lessee's obligations under this Lease except those obligations involving liability which evolves to an occupant based upon maintenance, hazardous conditions and hazardous waste occurring during the Lessor's possession of the premises, shall survive and shall remain in full force and effect for the full term of this Lease. Subject to the Lessor's obligation to mitigate

damages, the amount of the rents, fees, and charges shall become due and payable to Lessor to the same extent, at the same time, and in the same manner as if no termination, cancellation, reentry, regaining, or resumption of possession had taken place. Without limiting the foregoing, Lessee's duties, obligations, and responsibilities under this Lease shall survive the cancellation, termination, or expiration of this lease.

**23. Disposition of Improvements and Personal Property**

- (a) Within sixty (60) days following the effective date of the expiration, termination, or cancellation of this lease, improvements or personal property or other property, real or personal, owned by Lessee on the Premises must either:
  - (i) be removed by Lessee if required by Lessor or desired by Lessee and if Lessor determines that removal will not cause injury or damage to the Premises; or
  - (ii) with Lessor's consent, be sold to the succeeding Lessee.
- (b) Lessor may grant additional time for the removal of improvements if hardship is established by Lessee.
- (c) If Lessee fails to timely remove or sell the improvements or personal property under (a) or (b) of this covenant, title to the improvements or personal property vests in Lessor, and Lessor will, in its discretion, sell, lease, demolish, dispose, remove, or retain for its own use the improvements or personal property. Lessee shall reimburse Lessor for all costs incurred by the department, including legal costs, in the selling, leasing, demolishing, disposing, removing, or retaining of unremoved improvements or personal property.

**24. Holding Over**

If Lessee holds over and remains in possession of the Premises after the expiration of this agreement without a written renewal, the holding over will not operate as a renewal or extension of the term of this agreement but only creates a tenancy from month to month, regardless of any rent payments accepted by Lessor. Lessee's obligations for performance under this lease will continue until the month-to-month tenancy is terminated by Lessor. Lessor may terminate the tenancy at any time by giving the Lessee at least ten (10) days prior written notice.

**25. Assignment or Sublease by Lessee**

- (a) Except as provided in (b) of this Covenant No. 25, Lessee may not assign or sublet, either by grant or implication, the whole or any part of the Premises or the whole or any part of the Terminal without the written consent of Lessor. Any proposed assignment, lease, or sublease must be submitted to Lessor for approval in five (5), each bearing the original notarized signature of all parties.
- (b) Lessee may sublet portions of the Premises or space in the Terminal without Lessor's written consent, if the sublease term, including options, renewals, or extensions, does not exceed one year and the purpose of the sublease is consistent with the authorized uses in Covenant No. 3 of

this lease. Lessee shall deliver to Lessor a copy of the sublease within 30 days of the date on which the sublease is signed by Lessee.

- (c) Except as provided in (b) of this Covenant No. 24, an assignment or sublease is void without Lessor's written consent.
- (d) All covenants and provisions in this agreement extend to and bind the legal representatives, successors, and assigns of the parties in any assignment or sublease.
- (e) By no later than September 1, 1996, Lessee shall deliver to Lessor one copy of each sublease of space on the Premises that is in force on July 1, 1996.

**26. Assignment By Lessor**

Without the consent of Lessee, the Lessor may assign the Lessor's interest in this lease to any government agency, company, or person to whom the Lessor conveys, leases, or sells the Airport. No such assignment will operate to increase Lessee's obligations, or reduce Lessee's rights, under this lease.

**27. Condemnation**

If the Premises are condemned by any proper authority, the term of this lease will end on the date Lessee is required to surrender possession of the Premises. Lessor is entitled to all the condemnation proceeds except Lessee will be paid the portion of the proceeds attributable to the fair market value of any improvements placed on the Premises by Lessee according to the provisions of 17 AAC 40.330, amended. Rent will also be adjusted according to the provisions of 17 AAC 40.330, as amended.

**28. Vacation**

At the expiration, cancellation or termination of this lease, Lessee must peaceably and quietly vacate the Premises and return possession to Lessor. The Premises must be left in a clean, neat, and presentable condition to the satisfaction of Lessor.

**29. Easements**

Lessor reserves the right to make grants to third parties or reserve to Lessor easements or rights-of-way through, on, or above the Premises, provided that no such easements or rights-of-way may be granted or reserved which unreasonably interferes with Lessee's use of the Premises.

**30. Quiet Enjoyment**

Lessor covenants that upon Lessee's payment of the rent and performing and observing all of Lessee's other obligations under this lease, Lessee may peaceably and quietly have, hold, and enjoy the Premises for the lease term, subject and subordinate to all provisions of this lease.



31. Warranties and Title Representations

The interests transferred or conveyed by this lease are subject to any and all of the covenants, terms, and conditions that are contained in the instruments conveying title or other interests or improvements to Lessor or contained in the public records recorded in the District Recorder's Office, Sitka, Alaska.

The Lessor makes no specific warranties, express or implied, concerning the title or condition of the property, including survey, access, or suitability for any use, including those uses authorized by this lease.

32. Reservation of Rights

Rights and privileges granted to Lessee in this lease are the only rights and privileges granted to Lessee by this lease. Lessee has no easements, rights or privileges, express or implied, other than those specifically granted by this lease.

33. Discrimination

Lessee covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age, or sex will not be permitted against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. Lessee recognizes the right of Lessor to take any action necessary to enforce this covenant, including actions required pursuant to any federal or state law.

34. Affirmative Action

Lessee agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person will be excluded from participating in any employment activities covered by 14 CFR Part 152, Subpart E on the grounds of race, creed, color, national origin, or sex. Lessee hereby agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E.

35. Radio Interference

At Lessor's request, Lessee shall discontinue the use of any transmitter, machine, or device which may interfere with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

36. Laws and Taxes

- (a) This lease is issued subject to all requirements of the laws and regulations of the State of Alaska relating to the leasing of lands and facilities and the granting of privileges at State airports.
- (b) At no expense to Lessor, Lessee will conduct all activities or business authorized by this lease in compliance with all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force which apply to the activities or business authorized by this lease or to the use, care, operation, maintenance, and protection of the Airport, including but not limited to matters of health, safety, sanitation, and pollution. Lessee

must obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Premises, and pay any other fees and charges assessed under applicable public statutes or ordinances.

- (c) Lessee shall abide by the rules and procedures, applicable to the operation and use of the Terminal, in the Federal Aviation Administration approved airport security program and airport certification manual adopted for the Airport by Lessor to comply with 14 C.F.R. Parts 107 and 139. If the Federal Aviation Administration assesses a fine against Lessor for a breach by Lessee of the airport security program or the airport certification manual, Lessee shall reimburse Lessor for the amount of the fine and legal costs upon receipt of a written demand for reimbursement issued by Lessor.
- (d) In any dispute between the parties, the laws of the State of Alaska will govern and any lawsuit must be brought in the courts of the State of Alaska. The Lessee agrees to notify Lessor of any claim, demand, or lawsuit arising out of Lessee's occupation or use of the Premises. Upon the Lessor's request Lessee will cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit affecting the Premises.

#### 37. Liens

Lessee shall keep the Premises free of all liens, pay all costs for labor and materials arising out of any construction or improvements by Lessee on the Premises, and hold Lessor harmless from liability for any liens, including costs and attorney fees. By this provision, Lessor does not recognize that it is in any way liable for any liens on the Premises.

#### 38. No Waiver

Failure of Lessor to insist in any one or more instances upon the strict performance by Lessee of any provision or covenant in this lease may not be considered as a waiver or relinquishment for the future, but the provision or covenant will continue in full force. A waiver by Lessor of any provision or covenant in this lease cannot be enforced or relied upon unless the waiver is in writing signed on behalf of Lessor.

#### 39. Modification

Lessor may modify this lease to meet the revised requirements of federal or state grants or to conform to the requirements of any revenue bond covenant to which the State of Alaska is a party, provided that a modification may not act to reduce the rights or privileges granted Lessee by this lease nor act to cause Lessee financial loss.

#### 40. Validity of Parts

If any provision or covenant of this lease is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

**41. Interrelationship Of Provisions**

The provisions, amendments, supplements, and exhibits are essential parts of this lease and are intended to be co-operative, to provide for the use of the Premises, and to describe the respective rights and obligations of the parties to this agreement. In case of a discrepancy, figured dimensions govern over scaled dimensions unless obviously incorrect.

**42. Natural Disasters**

In the event any cause which is not due to the fault or negligence of either Lessee or Lessor renders the Airport or the Premises unusable and makes the performance of this lease impossible, this agreement may be terminated by either party upon written notice to the other party. Causes include acts of God, acts of public enemy, acts of the United States, fires, floods, epidemics, quarantine restrictions.

**43. Notices**

Any written notice required by this agreement must be hand delivered or sent by registered or certified mail to the appropriate party at the address set forth on page one of this lease or to any other address which the parties subsequently designate in writing.

**44. Integration and Merger**

This agreement sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Premises whether oral or written. No modification or amendment of this lease is effective unless in writing and signed by both the parties.

**45. National Emergency**

In case of any national emergency declared by the federal government, Lessee may not hold Lessor liable for any inability to perform any part of this agreement as a result of the national emergency.

**46. Approval By Lessor**

Any approvals required of Lessor by this lease will not be unreasonably withheld.

**47. Lessor Ingress and Egress for Inspection, Repair, and Construction**

- (a) Lessor reserves the right of ingress to and egress from the Premises and the right to enter any part of the Premises, including the Terminal, for the purpose of inspection at any reasonable time. Lessor shall also have the right to enter the Premises, including the terminal, for the purpose of posting public notices required by 14 C.F.R. Parts 107 and 139.
- (b) Lessor reserves the right of ingress to and egress from the aircraft parking apron on the Premises for the purpose of inspecting, repairing,

constructing, or reconstructing the apron surface and related improvements.

- (c) Except in the case of an emergency, Lessor will coordinate all repairs, construction, inspections, and notice posting with Lessee in order to minimize interference with Lessee's activities on the Premises.

**48. Execution by Lessor**


This lease is of no effect until it has been signed by the Commissioner of the Department of Transportation and Public Facilities or his designated representative.

STATE OF ALASKA )  
(SEAL)

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 8 day of September, <sup>1997</sup>~~1995~~, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared JAMES H. Merrill, known to me and to me know to be the Acting Regional Director Department of Transportation and Public Facilities, and he acknowledged to me that he executed the foregoing instrument freely and voluntarily on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes therein set forth and that he is authorized by said State of Alaska so to do.

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

  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: June 24, 2001

WHEREFORE, the parties have entered into this lease the date and year first above written at the City of Sitka, Alaska.

LESSEE:

CITY AND BOROUGH OF SITKA  
ALASKA

By: *Mary L. Paxton*

ATTEST:

*Kathy Hope Erickson*  
Borough Clerk

APPROVED AS TO FORM:

*John K. Hale*  
Municipal Attorney

STATE OF ALASKA            )  
  ) ss:  
FIRST JUDICIAL DISTRICT    )

On this 27<sup>th</sup> day of August, 1997, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Mary L. Paxton, Borough Manager, and Kathy Hope Erickson, Borough Clerk, to me known to be the persons whose names are subscribed to the foregoing Lease as officers of the CITY AND BOROUGH OF SITKA, and acknowledged that they and each of them executed said instrument as their knowing and voluntary act and deed; as the voluntary act and deed of the CITY AND BOROUGH OF SITKA; and that they and each of them were duly authorized to sign said Lease by authority of the Assembly of the CITY AND BOROUGH OF SITKA.

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

STATE OF ALASKA  
NOTARY PUBLIC  
TAMARA J. O'NEILL  
My Commission Expires Nov. 18, 1997

*Tamara J. O'Neill*  
NOTARY PUBLIC FOR ALASKA  
My Commission Expires: 11/18/97

LESSOR:

STATE OF ALASKA, by and through the  
DEPARTMENT OF TRANSPORTATION AND  
PUBLIC FACILITIES

BY: *Tamara J. O'Neill*  
*Notary Regional Clerk*  
9/8/97







## SUBLEASE GUIDELINES FOR TENANTS

17 AAC 45.990(80): "sublease' means a transaction or agreement under which a lessee, permittee or concessionaire leases, rents or otherwise grants occupancy rights to all or a portion of a premises or improvements on a premises to another person; 'sublease' does not include the assignment of a lease, permit or concession"

17 AAC 45.270(a): "...a lessee, permittee, or concessionaire may not sublease all or a portion of a lease, permit or concession premises without the prior written consent of the department under 17 AAC 17.275. A sublease made contrary to the requirements of this section and 17 AAC 45.275 is void."

17 AAC 45.270(d): "A sublessee of a lease, permit or concession may not occupy the premises before the department consents to the sublease in writing."

### **A request for a consent to a sublease must be submitted in writing and must include:**

**A. SUBLEASE.** The following items must be included in all subleases. Failure to provide these items may result in the State/Lessor withholding its consent to a sublease.

17 AAC 45.270(B)

1. The name, address, and telephone contact number (including a fax number) of the proposed sublessee and the existing lessee. The sublease should name DOT&PF as the Lessor, DOT&PF's tenant as the Lessee, and Lessee's tenant as the Sublessee. Appropriate e-mail addresses should be provided.
2. Emergency contact names and telephone numbers (including fax numbers) for both parties; one of these needs to be for a person located at or near the airport where the sublease is located. Also please include e-mail addresses, if available.
3. A description of property to be subleased (e.g.: "portion of Lot 1, Block 1, as shown on Exhibit A attached"). Attach exhibit showing the specific area being subleased (whether a portion of a building, land, or any combination thereof). If areas of the land or in the building are used in common with the Lessee or other Sublessees, the sublease must so state, and the exhibit must clearly show the common use areas.
4. A description of the proposed sublessee's intended use of the premises. Authorized uses must be specific and cannot authorize more than the original lease. If food, beverage, liquor or hotel/lodging sales will occur, the lease must contain related concession fee language or a sublease for these purposes will not receive DOT&PF's consent.
5. The expiration date of the sublease. The term of a sublease cannot extend past the original (prime) lease expiration date. The beginning date of a sublease must also be included. All renewals or extensions of subleases must be submitted for review and approval, and shall be treated the same as new sublease approvals.
6. A statement of the proposed sublease rent to be paid per month of occupancy.
7. A guarantee of indemnification by the Sublessee under which the Sublessee provides to the State the same level of indemnity that the Sublessee would provide to the State if the Sublessee were a direct Lessee under the lease.

8. A statement identifying the party/ies (Lessee or Sublessee) responsible for providing the State with proof of premises liability and/or products insurance coverage ( as applicable per the lease requirements). Depending upon the subleased area, all parties (State, Lessee and Sublessee) may be required to be named as co-insured. Unless a sublease is for the entire premises, including all facilities maintenance, both the Lessee and the Sublessee will be required to maintain the insurance required by the lease, with both naming the State of Alaska as additional insured.

9. A statement acknowledging that the prime State lease governs over the sublease and that the Sublessee agrees to abide by all provisions and covenants of the State lease.

\*Example: Mars Airlines, Inc., Lessee, and John Doe, dba Jupiter Air, Sublessee, enter into this sublease dated \_\_\_\_\_. This sublease is subject to all requirements and conditions of the Lessee's prime lease ADA-\_\_\_\_\_ with the State of Alaska, DOT&PF, Lessor. The Sublessee agrees to abide by all provisions and covenants of the prime lease.

10. A statement acknowledging that Sublessees are prohibited from subleasing without the prior written consent of both the Lessee and the Lessor. Further, a Sublessee may not assign or hypothecate a subleasehold.

11. A provision that no improvements, grading, fill, construction, etc. may take place until the Sublessee and Lessee have obtained the Lessor's approval.

12. Three originals of the executed sublease documents with notarized signatures of the Sublessee and the Sublessor.

13. If either party is a corporation, the corporate seal must be applied to the sublease, or a corporate resolution submitted; also a copy of the Certificate of Incorporation must be submitted. If an LLC, copies of the Certificate of Organization, Articles of Organization and Operating Agreement (if applicable) must be submitted.

**B. INSURANCE.** A binder for, or certificate of, insurance covering the operations and activities of the Sublessee to the same extent that the Sublessee would be required to maintain insurance if the Sublessee were a direct Lessee under the lease.

**C. FEE.** A non-refundable \$55 sublease processing fee, made payable to the State of Alaska.

17 AAC 45.275:

(c) The department will approve or deny a request under this section in writing. If the department denies the request, the department will state the reasons for the denial in writing. The department will make a determination on a request for consent to assignment, assignment for security purposes, or sublease within 60 days after the assignor or sublessor has submitted a complete request.

(d) An applicant may protest a denial of an assignment, assignment for security purposes, or sublease in accordance with 17 AAC 45.910.