

Amalga & Huffman Harbors Parking Lot Lease

PART I. PARTIES. This lease is between the City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska, hereafter "City," and, Amalga-Huffman Harbor Community Association, hereafter "Lessee."

PART II. ADMINISTRATION. All communications about this lease shall be directed as follows, any reliance on a communication with a person other than that listed below is at the party's own risk.

City: Attn: Lands and Resources Manager
155 S. Seward Street
Juneau, Alaska 99801
Phone: 907-586-5252
Fax: 907-586-5385

Lessee: Amalga & Huffman Harbors
Community Association
Attn: Robert W. Frampton, President
25120 Amalga Harbor Road
Juneau, Alaska 99801
Phone: 907-790-3360

PART III. DESCRIPTION. This lease agreement is identified as The Amalga & Huffman Harbors Parking Lot Lease. The following appendices are attached and are considered a part of this agreement as well as anything incorporated by reference or attached to those appendices.

Appendix A: Property Description & Additional Lease Provisions
Appendix B: Lease Provisions Required by CBJ 53.20
Appendix C: Standard Provisions

If in conflict, the order of precedence shall be this document, Appendix A, B, and then C.

PART IV. EXECUTION. The City and Lessee agree and sign below. This contract is not effective until signed by the City.

Lessor: CITY & BOROUGH OF JUNEAU

Date: 9/6/05
By: Rod Swope
Rod Swope
City & Borough Manager

Approved as to content, Lands & Resources
Approved as to form, Law Department

**Lessee: AMALGA & HUFFMAN HARBORS
COMMUNITY ASSOCIATION**

Date: 8/27/05
By: Robert W. Frampton
Robert W. Frampton
President

By: Cynthia Johnson Sept. 7, 2005
By: P. Bays 9/2/05

CITY ACKNOWLEDGMENT	LESSEE ACKNOWLEDGMENT
STATE OF ALASKA)) ss: FIRST JUDICIAL DISTRICT)	STATE OF ALASKA)) ss: FIRST JUDICIAL DISTRICT)
<p>THIS IS TO CERTIFY that on the <u>6th</u> day of <u>September</u>, 2005, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared ROD SWOPE to me known to be the identical individual described in and who executed the foregoing instrument as the CITY and BOROUGH MANAGER of the CITY AND BOROUGH OF JUNEAU, ALASKA, a municipal corporation which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.</p>	<p>THIS IS TO CERTIFY that on the <u>27th</u> day of <u>August</u>, 2005, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared ROBERT W. FRAMPTON to me known to be the identical individual described in and who executed the foregoing instrument as the PRESIDENT of the AMALGA & HUFFMAN HARBORS COMMUNITY ASSOCIATION, which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said association; and acknowledged to me that he signed and sealed the same freely and voluntarily for the uses and purposes therein mentioned.</p>
<p>WITNESS my hand and official seal the day and year in the certificate first above written.</p>	<p>WITNESS my hand and official seal the day and year in the certificate first above written.</p>
<p><u>Amy Hall</u> Notary Public for the State of Alaska My Commission Expires: <u>05-01-07</u></p>	<p><u>Alice M. Terman</u> Notary Public for the State of Alaska My Commission Expires: <u>10/26/05</u></p>
<p>(seal)</p>	<p>(seal)</p>
	<div style="border: 1px solid black; padding: 5px; text-align: center;"> Notary Public ALICE M. TERMAN State of Alaska My Commission Expires Oct 26, 2005 </div>

APPENDIX A: PROPERTY DESCRIPTION & ADDITIONAL LEASE PROVISIONS

DESCRIPTION OF PROPERTY

The property subject to this lease, described below, shall generally be referred to as "the Property" or "the Leased Premises." The Leased Premises are:

That portion of U.S. Survey 3760, Juneau Recording District, First Judicial District, State of Alaska, more particularly described as follows:

Commencing at Corner 6, of U.S. Survey 3760; thence along a line between Corner 6 and Corner 5 of U.S. Survey 3760, S 14°55'48" E 180.60 feet to the Point of Beginning being marked with a 5/8" rebar with aluminum cap; thence N 67°29'56"E 125.25 feet more or less to a 5/8" rebar with aluminum cap; thence S 7°06'46" E 115.78 feet more or less to a 5/8" rebar with aluminum cap; thence S 82°42'14"W 109.38 feet more or less to a line between Corner 5 and Corner 6 of U.S. Survey 3760; thence along said line N 14°55'48" W 83.67 feet more or less to the Point of Beginning.

Said parcel contains 0.26 acres, more or less.

AUTHORITY

This lease is entered into pursuant to the authority of the City and Borough of Juneau Code, Chapter 53.20 "Lease of Lands" and CBJ Ordinance 2003-42.

TERM

The effective date of this lease is January 12, 2004. The term of the lease is twenty years, ending on January 11, 2024, unless sooner terminated.

LEASE PAYMENTS

The rent shall be the fair market value, based on the unfilled value of the land, with the initial rent established at \$830.00 per year, subject to adjustments as set forth in Appendix B. Annual Payment to the City is due in advance, not later than January 11th each year except that rent owed for the period January 12, 2005 through January 11, 2006 shall be due not later than May 1, 2005.

AUTHORIZED USE OF PROPERTY

Construction and maintenance of parking lot and parking of operable vehicles.

ADDITIONAL LEASE PROVISIONS

The following provisions apply to this lease:

1. **Termination.** The City may terminate this lease if construction of the parking lot is not substantially complete within one year of the effective date.
2. **Permits.** Lessee shall be responsible for obtaining any pertinent local, state, or federal permits.

3. **Survey.** Lessee shall provide an as-built survey, in accordance with City surveying standards, within ninety (90) days of completing construction of the parking lot.

4. **No Vehicle Maintenance.** No vehicle maintenance or repair work shall be done on the Leased Premises.

5. **No Structures.** No structures may be constructed on the Leased Premises.

6. **Maintenance & Snow Removal.** Lessee shall be responsible for all maintenance of the Leased Premises, including snow removal. In addition to the Hold Harmless provision below, the Lessee expressly agrees to defend, indemnify, and hold harmless the City from any claims related to or arising from the maintenance (or lack of maintenance) of the Leased Premises.

7. **Option to Purchase.** Subject to the following conditions, Ed Huizer, or his successor, as the owner of Lot 7A, U.S. Survey 3288 adjacent to the Leased Premises, shall have the option to purchase the Leased Premises:

- a. The option may only be exercised after construction of the parking lot is complete.
- b. Purchase price shall be at fair market value, based on the unfilled value of the land, established at the time of purchase.
- c. Purchaser shall be responsible for subdividing the City parcel and attaching it to Purchaser's adjoining lot.
- d. Prior to closing, Purchaser shall provide City evidence of a long term leasing arrangement between the Purchaser and the community association for the parking lot.
- e. The purchase option terminates upon expiration of this parking lot lease.

INSURANCE

The lessee shall maintain at all times during this lease general liability insurance in the amount of \$1,000,000 per occurrence/\$1,000,000 general aggregate. The policy shall name City as an additional insured and shall contain a clause that the insurer will not cancel or change the insurance without first giving City thirty-one days prior written notice.

Lessee understands that City carries no fire or other casualty insurance on the Leased Premises or improvements located thereon belonging to Lessee, and that it is Lessee's obligation to obtain adequate insurance for protection of Lessee's buildings, fixtures, or personal property located on the Leased Premises.

APPENDIX B: LEASE PROVISIONS REQUIRED BY CBJ 53.20

Responsibility to Properly Locate on Leased Premises.

As required by CBJ 53.20.160, it shall be the responsibility of the Lessee to properly locate Lessee's improvements on the Leased Premises and failure to so locate shall render the Lessee liable as provided by law.

Approval of Other Authorities.

As required by CBJ 53.20.180, the issuance by the City of leases under the provisions of this title does not relieve the Lessee of responsibility of obtaining licenses or permits as may be required by the City or by duly authorized state or federal agencies.

Terms and Conditions of Leases required by CBJ 53.20.190.

As required by CBJ 53.20.190, the following terms and conditions govern all leases and are incorporated into this lease unless modified by resolution of the assembly for this specific lease. Modifications of the provisions of this appendix applicable to this specific lease, if any, must specifically modify such provisions and be supported by the relevant resolution to be effective.

(1) **Lease Utilization.** The leased lands shall be utilized only for purposes within the scope of the application and the terms of the lease, and in conformity with the provisions of the City and Borough code, and applicable state and federal laws and regulations. Utilization or development for other than the allowed uses shall constitute a violation of the lease and subject the lease to cancellation at any time.

(2) **Adjustment of Rental.** The Lessee agrees to a review and adjustment of the annual rental payment by the City not less often than every fifth year beginning with the rental due after completion of each review period. Any changes or adjustments shall be based primarily upon the values of comparable land in the same or similar areas; such evaluations shall also include all improvements, placed upon or made to the land, to which the City has right or title excluding landfill placed upon the land by the Lessee except that the value of any improvements credited against rentals shall be included in the value. The Lessee may protest the adjustment to City, and if denied wholly or in part, an appeal may be taken to the assembly. The decision of the assembly shall be final.

(3) **Subleasing.** The Lessee may sublease lands or any part thereof leased to it hereunder; provided, that the proposed sublessee first applies to City for a permit therefor; and further provided that the improvements on the leased lands are the substantial reason for the sublease. Leases not having improvements thereon shall not be sublet. Subleases shall be in writing and be subject to the terms and conditions of the original lease; all terms, conditions, and covenants of the underlying lease which may be made to apply to the sublease are hereby incorporated into the sublease.

(4) **Assignments.** Any lessee may assign the lands leased to him; provided, that the proposed assignment shall be first approved by City. The assignee shall be subject to all of the provisions

of the lease. All terms, conditions, and covenants of the underlying lease which may be made applicable to the assignment are hereby incorporated into the assignment.

(5) **Modification.** The lease may be modified only by an agreement in writing signed by all parties in interest or their successor in interest.

(6) **Cancellation and Forfeiture.**

(A) The lease, if in good standing, may be canceled in whole or in part, at any time, upon mutual written agreement by the Lessee and City.

(B) City may cancel the lease if it is used for any unlawful purpose.

(C) If the Lessee shall default in the performance or observance of any of the lease terms, covenants or stipulations thereto, or of the regulations now or hereafter in force, or any of the provisions of the City and Borough code, and should the default continue for thirty calendar days after service of written notice by the City without remedy by the Lessee of the conditions warranting default, the City may subject the Lessee to appropriate legal action including, but not limited to, forfeiture of the lease. No improvements may be removed by the Lessee or other person during any time the Lessee is in default.

(D) Failure to make substantial use of the land, consistent with the proposed use, within one year shall in the discretion of City with the approval of the assembly constitute grounds for cancellation.

(7) **Notice or Demand.** Any notice or demand, which under the terms of a lease or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address of record. However, either party may designate in writing such new or other address to which the notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed delivered when deposited in a United States general or branch post office enclosed in a registered or certified mail prepaid wrapper or envelope addressed as hereinbefore provided.

(8) **Rights of Mortgagee or Lienholder.** In the event of cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage, conditional assignment or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the original lease.

(9) **Entry and Reentry.** In the event that the lease should be terminated as hereinbefore provided, or by summary proceedings or otherwise, or in the event that the demised lands, or any part thereof, should be abandoned by the Lessee during the term, the City or its agents, servants, or representative, may, immediately or any time thereafter, reenter and resume possession of the lands or such thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages therefor. No reentry by the City shall be deemed an acceptance of a surrender of the lease.

(10) **Release.** In the event that the lease should be terminated as herein provided, or by summary proceedings, or otherwise, City may offer the lands for lease or other appropriate disposal pursuant to the provisions of the City and Borough code.

(11) **Forfeiture of Rental.** In the event that the lease should be terminated because of any breach by the Lessee, as herein provided, the annual rental payment last made by the Lessee shall be forfeited and retained by the City as partial or total damages for the breach.

(12) **Written Waiver.** The receipt of rent by the City with knowledge of any breach of the lease by the Lessee or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of the lease shall not be deemed to be a waiver of any provision of the lease. No failure on the part of the City to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the City unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the City to enforce the same in the event of any subsequent breach or default. The receipt, by the City, of any rent or any other sum of money after the termination, in any manner, of the term demised, or after the giving by the City of any notice thereunder to effect such termination, shall not reinstate, continue, or extend the resultant term therein demised, or destroy, or in any manner impair the efficacy of any such notice or termination as may have been given thereunder by the City to the Lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the City.

(13) **Expiration of Lease.** Unless the lease is renewed or sooner terminated as provided herein, the Lessee shall peaceably and quietly leave, surrender and yield up unto the City all of the leased land on the last day of the term of the lease.

(14) **Renewal Preference.** Any renewal preference granted the Lessee is a privilege, and is neither a right nor bargained for consideration. The lease renewal procedure and renewal preference shall be that provided by ordinance in effect on the date the application for renewal is received by the designated official.

(15) **Removal or Reversion of Improvements upon Termination of Lease.** Improvements owned by the Lessee shall within sixty calendar days after the termination of the lease be removed by Lessee; provided, such removal will not cause injury or damage to the lands or improvements demised; and further provided, that City may extend the time for removing such improvements in cases where hardship is proven. Improvements owned by the Lessee may, with the consent of City, be sold to the succeeding lessee. All periods of time granted the Lessee to remove improvements are subject to the Lessee paying to the City pro rata lease rentals for the period.

(A) If any improvements and/or chattels not owned by City and having an appraised value in excess of five thousand dollars as determined by the assessor are not removed within the time allowed, such improvements and/or chattels shall upon due notice to the Lessee, be sold at public sale under the direction of City. The proceeds of the sale shall inure to the Lessee preceding if lessee placed such improvements and/or chattels on the lands, after deducting for the City rents

due and owing and expenses incurred in making such sale. Such rights to the proceeds of the sale shall expire one year from the date of such sale. If no bids acceptable to the city and borough manager are received, title to such improvements and/or chattels shall vest in the City.

(B) If any improvements and/or chattels having an appraised value of five thousand dollars or less, as determined by the assessor, are not removed within the time allowed, such improvements and/or chattels shall revert to, and absolute title shall vest in, the City.

(16) Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the lease during the Lessee's tenure with or without its permission and remaining upon the premises after the termination date of the lease shall entitle the City to charge the Lessee a reasonable rent therefor.

(17) Compliance with Regulations and Code. The Lessee shall comply with all regulations, rules, and the code of the City, and with all state and federal regulations, rules and laws as the code or any such rules, regulations or laws may affect the activity upon or associated with the leased land.

(18) Condition of Premises. The Lessee shall keep the premises of the lease in neat, clean, sanitary and safe condition and shall take all reasonable precautions to prevent, and take all necessary action to suppress destruction or uncontrolled grass, brush or other fire on the leased lands. The Lessee shall not undertake any activity which causes or increases a sloughing off or loss of surface materials of the leased land.

(19) Inspection. The Lessee shall allow an authorized representative of the City to enter the leased land for inspection at any reasonable time.

(20) Use of Material. The Lessee of the surface rights shall not sell or remove for use elsewhere any timber, stone, gravel, peat moss, topsoils, or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used, if its use is first approved by City.

(21) Rights-of-Way. The City expressly reserves the right to grant easements or rights-of-way across leased land if it is determined in the best interest of the City to do so. If the City grants an easement or right-of-way across any of the leased land, the lessee shall be entitled to damages for all lessee-owned improvements or crops destroyed or damaged. Damages shall be limited to improvements and crops only, and loss shall be determined by fair market value. Annual rentals may be adjusted to compensate the Lessee for loss of use.

(22) Warranty. The City does not warrant by its classification or leasing of land that the land is ideally suited for the use authorized under the classification or lease and no guaranty is given or implied that it shall be profitable to employ land to said use.

(23) **Lease Rental Credit.** When authorized in writing by City prior to the commencement of any work, the Lessee may be granted credit against current or future rent; provided, the work accomplished on or off the leased area, results in increased valuation of the leased or other City-owned lands. The authorization may stipulate type of work, standards of construction and the maximum allowable credit for the specific project. Title to improvements or chattels credited against rent under this section shall vest immediately and be in the City and shall not be removed by the Lessee upon termination of the lease.

APPENDIX C: STANDARD PROVISIONS

- (1) **Holding Over.** If Lessee holds over beyond the expiration of the term of this lease and the term has not been extended or renewed in writing, such holding over will be a tenancy from month-to-month only.
- (2) **Interest on Late Payments.** Should any installment of rent or other charges provided for under the terms of this lease not be paid when due, the same shall bear interest at the rate established by ordinance for late payments or at the rate of 12 percent per annum, if no rate has been set by ordinance.
- (3) **Taxes, Assessments, and Liens.** During the term of this lease, Lessee shall pay, in addition to the rents, all taxes, assessments, rates, charges, and utility bills for the Leased Premises and Lessee shall promptly pay or otherwise cause to be discharged, any claim resulting or likely to result in a lien, against the Leased Premises or the improvements placed thereon.
- (4) **Easements.** Lessee shall place no building or structure over any portion of the Leased Premises where the same has been set aside or reserved for easements.
- (5) **Encumbrance of Parcel.** The Lessee shall not encumber or cloud the City's title to the Leased Premises or enter into any lease, easement, or other obligation of the City's title without the prior written consent of the City; and any such act or omission, without the prior written consent of the City, shall be void against the City and may be considered a breach of this lease.
- (6) **Valid Existing Rights.** This lease is entered into and made subject to all existing rights, including easements, rights-of-way, reservations, or other interests in land in existence, on the date of execution of this lease.
- (7) **State Discrimination Laws.** Lessee agrees, in using and operating the Leased Premises, to comply with applicable sections of Alaska law prohibiting discrimination, particularly Title 18 of the Alaska Statutes, Chapter 80, Article 4 (Discriminatory Practices Prohibited.) In the event of Lessee's failure to comply with any of the above non-discrimination covenants, City shall have the right to terminate the lease.
- (8) **Unsafe Use.** The Lessee shall not do anything in or upon the Leased Premises, nor bring or keep anything therein, which will unreasonably increase or tend to increase the risk of fire or cause a safety hazard to persons or obstruct or interfere with the rights of any other tenant(s) or in any way injure or annoy them or which violates or causes violation of any applicable health, fire, environmental or other regulation by any level of government.
- (9) **Hold Harmless.** Lessee agrees to defend, indemnify, and save City, its employees, volunteers, consultants, and insurers, with respect to any action, claim, or lawsuit arising out of the use and occupancy of the Leased Premises by Lessee. This agreement to defend, indemnify, and hold harmless is without limitation as to the amount of fees, and without limitation as to any

damages resulting from settlement, judgment, or verdict, and includes the award of any attorneys fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to the City of any action, claim, or lawsuit. City shall notify Lessee in a timely manner of the need for indemnification, but such notice is not a condition precedent to Lessee's obligations and may be waived where the Lessee has actual notice. This agreement applies, and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against City. Lessee shall not, however, be liable for any condition created or existing on the Leased Premises not caused by the Lessee.

(10) **Successors.** This lease shall be binding on the successors, administrators, executors, heirs, and assigns of the Lessee and City.