

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Lease**") is made effective as of January 1, 2023 (the "**Effective Date**"), by and between the City of Saxman, Alaska, an Alaska municipal corporation ("**Landlord**"), and Three Bears Alaska Inc., an Alaska corporation ("**Tenant**").

RECITALS

- A. Landlord is the owner of the real property described in Exhibit A-1 attached hereto and depicted in Exhibit A-2 attached hereto, both of which Exhibits are made a part of this Lease ("**Leased Premises**").
- B. An approximately 31,860 square foot warehouse is located on the Premises (the "**Warehouse**").
- C. Tenant desires to lease the Leased Premises and construct a retail complex using the existing structure of the Warehouse, along with constructing an addition or an adjacent structure to the Warehouse to initially be used as a hardware store ("**Hardware Store**") and such other structures as may be constructed by Tenant for Tenant's use on the Leased Premises (whether constructed by Tenant or another party (collectively, the "**Facilities**").
- D. The Leased Premises surrounds an area that is currently leased to another party for use as the site for an antenna tower ("**Tower Parcel**"), over which the Landlord will retain control.
- E. Landlord is willing to lease the Leased Premises and to permit the construction and operation of the Facilities under the terms of this Lease because the Facilities will provide increases tax revenue to the City and provide employment opportunity to the residents of the City. Landlord and Tenant entered into an Early Access License Agreement ("**Access Agreement**") effective June 17, 2022 as a preliminary agreement to this Lease. Under the Access Agreement, the Tenant paid Landlord a rent prepayment of \$100,000.

1. LEASED PREMISES AND TERM

1.01 Leased Premises. Landlord, for and in consideration of the rents, covenants, and conditions hereinafter specified to be paid, performed and observed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises. Tenant accepts the Premises in its current condition, without any representation or warranty by Landlord as to the condition, use, or operation thereof or as to the suitability thereof for any purpose. The Leased Premises shall consist of the areas described below, but excluding the Tower Parcel as described below, as follows:

- A. **Leased Premises** consists of the real property legally described as:

(a) Tract A-1 of the Plat Alteration of Tract C-1 and a portion of U.S. Survey No. 1666 according to Plat No. 2002-46, records of the Ketchikan Recording District, First Judicial District, State of Alaska.

(b) The entire portion of Tract C, Alaska Tideland Survey No. 1465, according to Plat No. 98-9, Ketchikan Recording District, First Judicial District, State of Alaska.

B. **Tower Parcel** consists of the real property legally described as:

(a) **Exclusive Easement:** That parcel leased to Vertical Bridge under the lease identified in the Memorandum of Lease recorded September 23, 2019, as document 2019-002492-0 in the Ketchikan Recording District, First Judicial District, State of Alaska, and described as a 1,944 square foot exclusive easement, located entirely within Tract A-1 of the Plat Alteration of Tract C-1 and a portion of U.S. Survey No. 1666 according to Plat No. 2002-46, records of the Ketchikan Recording District, First Judicial District, State of Alaska, being more thoroughly described as follows:

Commencing at a monument on the northwesterly boundary of said Tract A-1, then S 00°01'45" W along said westerly boundary of Tract A-1, a distance of 142.52 feet to a point, thence S 72°22'50" W a distance of 242.27 feet to a point, the true point of beginning:

thence S 04°40'50" W a distance of 39.29 feet to a point,
thence N 88°58'22" W a distance of 48.89 feet to a point,
thence N 04°50'22" E a distance of 38.90 feet to a point,
thence S 89°25'16" E a distance of 49.81 feet to a point, the true point of beginning.

Containing 1,944 square feet, more or less (0.04 acres)

Non-Exclusive Access & Utility Easement: As described in Memorandum of Lease recorded September 23, 2019, as document 2019-002492-0 in the Ketchikan Recording District, First Judicial District, State of Alaska..

1.02 Lease Term. This term of the Lease shall be for eleven (11) years, unless extended or earlier terminated as provided in this Lease. This Lease may be extended at Tenant's option for up to eight (8) additional terms of eleven (11) years each ("**Option Period**"), but only if (a) Tenant gives written notice to Landlord, not less than 90 days nor more than 1 year before expiration of the then-current term, of Tenant's exercise of the option to extend the Lease for such additional eleven (11) year term, and (b) Tenant is not in default under the Lease at the time of such notice.

1.03 Title to Improvements by Tenant. The Warehouse, and improvements to the Facilities or any fixtures placed on the Leased Premises by Tenant during the terms of this Lease (the Facilities and all other improvements being hereinafter collectively and severally referred to as “**Improvements**”) are the property of the Tenant during the Terms of the term of this Lease and any Option Period, except the shell of the Warehouse as it existed prior to any construction or improvements by Tenant. The Improvements shall become the property of the Landlord upon expiration or earlier termination of the Lease, and Tenant shall execute any and all instruments or other documents as may be requested by Landlord to transfer ownership of the Improvements to, or to evidence ownership of the Improvements by, Landlord under this paragraph. Landlord shall have the right to deny acceptance of any Improvements and require Tenant to remove such Improvements upon expiration of the Lease.

1.04 Duty to Operate. No later than June 30, 2024, Tenant shall operate a retail grocery store on the Leased Premises and shall not cease such operations for a period of longer than thirty (30) consecutive days, except in case of fire, natural casualty, organized labor activity, epidemic, pandemic, or public health condition requiring the closure of the store.

1.05 Reserved Rights of the Landlord and Prohibited Uses by Tenant. Attached as **Exhibit C** is a list of the rights reserved by the Landlord and prohibited uses of the Leased Premises by the Tenant.

2. RENTS.

2.01 Base Rent. For the term of the Lease, including any extensions, Tenant shall pay to Landlord, without deduction and without notice or demand (“**Base Rent**”) as:

A. A one time payment of \$500,000 due on the Effective Date (Tenant made a rent prepayment of \$100,000 under the Access Agreement which payment is credited against the \$500,000 payment resulting in a total of \$400,000 remaining due on the Effective Date.), and

B. A payment of \$100 a year in advance beginning July 1, 2024.

2.02 Additional Rent. In addition to the Base Rent, Tenant shall pay “Additional Rent” as follows:

(a) Beginning July 1, 2024, if during any fiscal year (July 1 to June 30) subsequent to June 30, 2024, the sales tax revenues to the City from Tenant’s operations fall below \$375,000 (“**Revenue Floor**”), Tenant shall make an Additional Rent payment in the amount required for the revenues to the City to equal the Revenue Floor.

(b) On the date of the beginning of each Option Period, the Revenue Floor will increase by ten percent over the Revenue Floor for the prior term or Option Period (as applicable) of the Lease.

(c) Additional Rent shall not be due if the reduction in sales tax revenues to the City to a level below the Revenue Floor is a result of the City’s action suspending or eliminating sales tax or reducing the rate of

sales tax or as a result of Tenant's operations being closed or limited do to natural disaster or public health emergency or orders. If a reduction in revenues to the City to a level below the Revenue Floor is the result of actions beyond the City's control the Additional Rent shall remain unaffected, except as stated in the prior sentence.

(d) Additional Rent shall not be due as a result of sales tax revenues to the City falling below the Revenue Floor in any fiscal year ending prior to July 1, 2024.

(e) If Additional Rent must be paid, the City shall notify Tenant of the amount of Additional Rent by September 1 of the fiscal year following the fiscal year in which the sales tax revenues from Tenant's operations fall below the Revenue Floor, and the amount due for Additional Rent shall be paid quarterly in four equal installments beginning October 1 of the fiscal year following the fiscal year in which the sales tax revenues fall below the Revenue Floor.

Base Rent and Additional Rent are referred to as "Rent".

2.03 Due Date for Rent. The first Rent payment is due on the effective date of this Lease. Rent Commencement.

2.04 Payment of Rent. Payments due under this Lease shall be made by check, bank draft, or postal money order payable to the City of Saxman and delivered to the Landlord in person or by courier at Route 2, Box 1 – Saxman, Ketchikan, Alaska 99901 or by US Postal Service at the same address, or any other address the Landlord may designate in writing. Beginning the day payment of Annual Rent is due, all unpaid rents, charges, and fees required under the Lease will accrue interest at the rate of 10.5% per annum, or a lesser amount that will not exceed the usury laws of Alaska. Interest on disputed amounts will not be charged to the Tenant if the dispute is resolved in Tenant's favor. Any rent, charge, fee, or other consideration which is due and unpaid at the expiration, termination, or cancellation of this Lease will be a lien against the Tenant's property, real or personal.

3. QUIET ENJOYMENT

3.01 Upon timely payment by Tenant of all of such rents and other payments required to be paid by Tenant under this Lease, and upon full and faithful observance and performance by Tenant of all of its covenants contained in this Lease, and so long as such observance and performance continues, Tenant shall peaceably hold and enjoy the Leased Premises during the term of the Lease without hindrance or interruption by Landlord, any agent, representative, employee, or assignee of Landlord, or anyone lawfully claiming by, through, or under Landlord. Tenant acknowledges that this Lease is subject to that (1) certain Land Lease Agreement between Vertical Bridge S3 Assets, LLC, a Delaware limited liability company ("**Vertical Bridge**") and Landlord dated April 24, 2009 ("**Tower Parcel Lease**") as well as its amendments thereto, (2) easement granted to the City of Ketchikan recorded February 7, 1963, and (3) easement granted to the State of Alaska recorded August 31, 1993. Tenant acknowledges that Landlord makes no

warranties or representations to Tenant as to the fitness of the Leased Premises for Tenant's intended use.

4. TENANT'S AND LANDLORD'S COVENANTS.

4.01 Use. Tenant specifically agrees that for the term of this Lease, it shall use the Leased Premises for retail operations (as detailed below) and related uses. The use of the Facilities is for a retail store or stores similar to other stores operated by Tenant or a retail store of the nature of a supermarket, warehouse store (membership or non-membership) that sells products and services typical for such types of stores (now or in the future), which may include, but is not limited to, delicatessen, pharmacy, prepared foods, fresh meat and produce, groceries, hardware, automotive supplies, office supplies, small appliances, liquor, tobacco, sporting goods including guns, ammunition, fishing, camping, hunting products, vehicle fuel sales, electric vehicle charging sales, marine fuel sales, car wash, pharmacy (prescription and over the counter), clothing and in-store banking.

4.02 Use of Leased Premises for Access. Tenant specifically agrees that any area of the Leased Premises which is used for vehicle parking, circulation, and access is available for circulation and access to the waterfront for other tenants and users of Saxman Seaport. For the purposes of this section, "*Saxman Seaport*" includes the small boat harbor, the Leased Premises, and other improved and unimproved areas within the boundaries of the City of Saxman. The City and Tenant agree to make no improvements to the Leased Premises that would restrict access to the waterfront within A.T.S. 1465 Tract B-2 as shown on Concept No. 1 Facility Summary and Concept No. 2 Facility Summary of the Saxman Seaport Development Concept Options dated December 2022 prepared by PND Engineers, Inc. without the written consent of the other party.

4.03 Taxes, Assessments and Charges.

A. Tenant shall pay, not less than ten (10) days before they become delinquent, all real property taxes, assessments, special assessments or other charges of every description for which the Leased Premises, or any Improvement thereon or any use thereof, are now or during the term of the Lease may be assessed or become liable, whether made by governmental authority or by any public utility or community service company, subject to Tenant's option to pay in installments hereinafter provided.

B. If at any time during the term of the Lease any new or additional taxes (other than federal, state or local net income taxes or any other taxes existing on the effective date hereof) are assessed against the Leased Premises, or any improvement thereon, or any rents payable to Landlord under this Lease, or against Landlord with respect thereto, Tenant shall pay to the taxing authority or Landlord, not less than ten (10) days before they become delinquent and as additional rents, all of such new taxes.

C. Nothing contained in this Lease shall prevent Tenant from contesting in good faith the validity or the amount of such real property taxes or assessments by appropriate proceedings commenced before such real property taxes or assessments become delinquent; provided, however, that (1) Tenant shall not commence such proceedings without first giving written notice to Landlord of Tenant's intention to do so not less than ten (10) days before such

real property taxes or assessments become delinquent; (2) concurrently with such written notice, Tenant shall provide and continue to provide Landlord with security approved by Landlord as to quality and quantity to assure full payment of all of such real property taxes or assessments and all interest and penalties which may accrue or be assessed thereon or with respect to such taxes; and (3) Landlord, as long as Tenant so provides Landlord with such security, shall not be entitled to pay such real property taxes or assessments for the account and at the expense of Tenant. Tenant shall not be deemed in default under this Lease because of its failure to pay any property taxes or assessments subject to a pending appeal of such taxes or assessments.

D. If there is an option given to pay assessments or special assessments in installments, Tenant may elect to pay for such installments as shall accrue during the term of this Lease and during any extended term. As to permitted installment payments for which the first installment falls due before the Effective Date, Tenant shall pay all installments falling due during the term of the Lease, regardless of which installment plan is selected.

E. Tenant shall pay for any and all additional expenses related to obtaining required Federal, State and Municipal permits necessary for the construction, operation, maintenance, and repair of the Facilities. Landlord shall not unreasonably withhold, delay, or condition its consent to permit applications, if required, necessary for the construction, operation, maintenance, and repair of the Facilities.

4.04 Duty of Landlord. Prior to Tenant beginning construction of the Improvements the Landlord shall, at its sole expense:

A. Clear the Warehouse of all tenants, including the Landlord itself, within thirty (30) days after this Lease is signed by both Parties.

B. Execute an amendment to the lease for the Tower Parcel to move the Tower access and utility easement from its present location to a location acceptable to Tenant and obtain execution signatures by all other parties to the lease for the Tower Parcel.

C. Within thirty (30) days of this Lease being executed, clear the buildings and items listed in **Exhibit D** from the Leased Premises.

4.05 Improvements

A. During the term of the Lease, Tenant at Tenant's own cost and expense shall make, build, maintain and repair all fences, sewers, drains, roads, road widenings, driveways, sidewalks, water, underground and overhead electric and telephone lines, curbs, gutters and other installations which may be required by law to be made, built, maintained, or repaired upon, or adjoining and in connection with, or for use of the Leased Premises or any part of it, and regardless of whether any of the same were originally erected by Landlord or were in existence at the inception of this Lease.

B. If Tenant fails to make, build, maintain or repair such installations as required by this Lease, Landlord may, in its sole discretion and after giving written notice and opportunity to cure as provided in Article 9: (1) terminate the Lease; (2) make, build, maintain or repair such installations for the account and at the expense of Tenant, but continue this Lease in

force, in which case Tenant shall reimburse Landlord upon demand for the costs of such undertaking plus 15% to cover Landlord's overhead, as additional rent; or (3) continue this Lease in force and bring an appropriate action against Tenant for recovery of the sum paid. The foregoing remedies are not in derogation of, and do not limit, any other rights or remedies Landlord may have under this Lease or applicable law. Nothing in this paragraph requires Landlord to make, build, maintain, or repair such installations for which Tenant is responsible.

4.06 Construction or Removal of Improvements, Additions and Alterations.

A. As used in this Section 4.06, "**Significant Work**" means (1) construction of the Facilities and (2) construction on the Leased Premises of, or bringing onto the Leased Premises, any other Improvement costing more than \$50,000.00 (indexed to the percentage increase applied to rent increases per Section 2.01(B) above), which involves (a) the excavation, filling, or other alteration of the grade or drainage of the Leased Premises; or (b) involves the construction, demolition, or removal on or from the Leased Premises of any improvement, any addition or alteration, or (c) if the fees or other charges therefor are not timely paid, will subject the Leased Premises or the interest of Landlord or Tenant therein to any lien or other encumbrance. Significant Work does not include removal of railroad tracks and excavation and fill required for removal of railroad tracks. Significant Work does not include the relocation of utility and cable lines to the Tower Parcel.

B. Tenant shall not begin any Significant Work on the Leased Premises without first providing preliminary construction plans for such work. Upon completion, Tenant will provide final construction plans for such work and a survey if Tenant obtains a survey. Landlord acknowledges receipt of preliminary construction plans for 2868 S. Tongass Hwy dated August 26, 2022.

C. Tenant shall construct the following improvements which are Significant Work: remodel of the warehouse on the Leased Premises for commercial retail space and construction of an approximately 8,000 square foot addition or adjacent building to the warehouse on the Leased Premises and construction and design of a pedestrian access way extending from South Tongass Highway to the retail store structure to promote pedestrian safety by accommodating separation of pedestrian and vehicle traffic.

4.07 Repair and Maintenance. Tenant shall, at Tenant's expense and without notice from Landlord at all times during the term of the Lease, keep all Improvements now or hereafter built on the Leased Premises (including but not limited to exterior building walls, windows, doors, fences, signs, landscaping and yard areas, refuse disposal equipment and facilities, pavement, curbs, gutters, exterior lighting, and drainage facilities), in good order, condition, maintenance, operability, and repair and of a neat, clean, and pleasing appearance satisfactory to Landlord in its reasonable discretion.

4.08 Observance of Laws. Tenant, at all times during the term of the Lease, at its own expense, and with all reasonable due diligence, shall observe and comply with all laws, ordinances, rules, and regulations which are now in effect or may later be adopted by any governmental authority and which may be (1) applicable to the Leased Premises or any improvement on it or any use of it and (2) material to the conduct of Tenant's business on the Leased Premises.

4.09 Standard of Work. All Improvements shall be constructed in a good and workmanlike fashion. All materials and fixtures incorporated into the Improvements shall be new or fully-reconditioned and of good quality.

4.10 Liens. Tenant has no authority to subject Landlord's interest in the Leased Premises to any lien of any kind whatsoever. Without limiting the foregoing sentence, Tenant will not permit any mechanics', laborers' or materialmen's liens to stand against the Leased Premises for any labor or materials furnished to Tenant or claimed to have been furnished to Tenant or to Tenant's agents, contractors, or subtenants, in connection with work of any character performed or claimed to have been performed on said Premises or Improvements by or at the direction or sufferance of Tenant; unless such lien is subject to a good faith dispute by the Tenant. In the event of a judgment in favor of the lien claimant, Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense. Nothing in this Section 4.10 modifies other provisions of this Lease concerning liens for labor or materials furnished to the Leased Premises. Without limitation of other rights, Landlord reserves its right to post notices of non-responsibility under AS § 34.35.065; and Tenant shall give Landlord no less than ten (10) days advance written notice of its intent to undertake work on the Leased Premises to allow Landlord to post notices of non-responsibility.

4.11 Environmental Provisions.

A. Environmental Compliance. In furtherance and not in limitation of Section 4.08 above, Tenant must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders that are material to the conduct of Tenant's business and that relate to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Leased Premises during the term of the Lease or any holdover thereafter, Tenant shall immediately notify Landlord and shall, at Tenant's own expense, clean and restore the Leased Premises to the reasonable satisfaction of Landlord and any governmental body or court having jurisdiction of the matter.

B. Definition of Hazardous Substance. As used herein, "**Hazardous Substance**" means any hazardous, dangerous, or toxic substance, material or waste, including but not limited to any substance, material or waste which is (a) petroleum; (b) asbestos; (c) polychlorinated biphenyls (PCBs); (d) toxic or hazardous substances as defined in AS § 18.60.105, and associated regulations; (e) designated as a "Hazardous Substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; (f) designated as a "**Hazardous Waste**" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; (g) designated as a "Hazardous Substance" under the Clean Water Act, 33 U.S.C. § 1321, or listed pursuant to 33 U.S.C. § 1317; (h) listed by the U.S. Department of Transportation at 49 C.F.R. 172.101 or by the U.S. Environmental Protection Agency under 40 C.F.R. Part 302; and (i) any other substance, waste or material which is defined, designated, or regulated as hazardous, dangerous, or toxic by any federal, state or local agency or under any federal, state and local laws, regulations or ordinances in effect during the term of this Lease.

C. Hazardous Substance(s) on Leased Premises. Tenant shall not cause or permit any Hazardous Substance to be brought upon, kept, or used in or about the Leased Premises by Tenant, its agents, employees, contractors, or invitees without the prior written consent of Landlord, which Landlord shall not unreasonably withhold, delay, or condition as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Substance is necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance(s) so brought upon or used or kept in or about the Leased Premises. Landlord acknowledges that the fuel sales referred to in Section 4.12(E) are permitted, notwithstanding any provision of this Section 4.12(C) to the contrary.

D. Disclosure. Without limiting any other provision of this Lease, on the first day of the Lease and on each anniversary thereof, and thirty (30) days after expiration or other termination of the Lease, Tenant shall disclose to Landlord the names and amounts of all Hazardous Substance(s) or any combination thereof which were stored, used or disposed of on the Leased Premises, or which Tenant intends to store, use or dispose of on the Leased Premises.

E. Fuel Dispensing. So long as Tenant is engaged in the retail or wholesale sale of fuels or other regulated Hazardous Substances from underground storage tanks ("*UST*") on the Leased Premises, Tenant shall comply with all requirements imposed by the State of Alaska Department of Environmental Conservation ("*ADEC*") for the construction and operation of the UST's and dispensing operations and above ground storage tanks and dispensing operations. Without limitation of Tenant's obligations to conduct its operations in accordance with all applicable law, Tenant shall timely make and copy Landlord with the following filings with the ADEC: (i) certificate of financial responsibility; and (ii) cathodic protection test results. Such notice shall not relieve Tenant from its responsibility to operate the Facilities in full compliance with all applicable governmental laws and regulations that are material to the conduct of Tenant's business.

4.12 Responsibility for Contamination.

A. Tenant's Environmental Indemnity. Tenant agrees to indemnify, hold harmless, and defend Landlord against all liability, cost and expense (including, without limitation, any fines, penalties, diminution in value of the Leased Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against Landlord as a result of Tenant's breach of Section 4.12 or as a result of any discharge, leakage, spillage, emission or pollution on or from the Leased Premises, without regard to whether such liability, cost, or expense arises during or after the term of the Lease; provided, however, that Tenant shall not be required to indemnify Landlord under this paragraph if the related contamination or presence of Hazardous Substances is described in an Environmental Baseline established under the provisions of this Section 4.12. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

B. Establishing an Environmental Baseline for the Leased Premises. The Tenant has the sole responsibility under this Lease to ascertain the environmental condition and presence of Hazardous Substance(s) existing in, on, and under the surface of the Premises.

1. If the Tenant desires to establish an Environmental Baseline for all or any portion of the Premises, the Tenant shall, at its own expense, provide the Landlord with an Environmental Site Assessment for that portion of the Premises before the earlier of (a) sixty days after the commencement of the Lease, or (b) commencement of any construction or operations on, or other use of, the Leased Premises. As used herein, an “*Environmental Site Assessment*” is an assessment of property, consistent with generally accepted professional practices, which determines the environmental condition and is supported by reports and tests that describe the environmental condition and the presence, type, concentration, and extent of Hazardous Substance(s) in, on, and under the surface of the property; and an “*Environmental Baseline*” is a document based on the Environmental Site Assessment(s) that identifies any contamination and the presence of Hazardous Substance(s) in, on, or under the surface of the Leased Premises that was not caused by the Tenant or its operations.

2. If the Tenant discovers contamination or the presence of any Hazardous Substance(s) in, on, or under the surface of the Premises, then, subject to Section 4.11(B)(3), such contamination or presence of Hazardous Substance(s) shall be included in the Environmental Baseline, unless it appears that the contamination or presence of Hazardous Substance(s) was caused or materially contributed to by the Tenant. Contamination or the presence of any Hazardous Substance will be deemed to have been materially contributed to by Tenant if Tenant released a reportable quantity of such Hazardous Substance as defined by any federal, state, or local agency with such authority and jurisdiction.

3. When the Landlord receives the Tenant’s Environmental Site Assessment to establish an Environmental Baseline, the Landlord, in its sole discretion, will do one of the following:

(a) Accept the findings of the Tenant’s Environmental Site Assessment as the Environmental Baseline for that portion of the Premises being assessed.

(b) Require the Tenant to perform additional environmental testing(s) if the Landlord gives notice in writing to Tenant that the findings of the Environmental Site Assessment are inadequate to develop an Environmental Baseline for that portion of the Premises being assessed. The Landlord’s written rejection of the Tenant’s submittal(s) will be based on generally accepted professional practices necessary to determine the environmental condition and presence of Hazardous Substance(s) in, on, or under the surface of the Premises or failure to demonstrate the portion of the contamination not attributed to the Tenant or its operations.

(c) Without limiting the preceding Section 4.13(B)(3)(b), Landlord may at Landlord’s expense perform additional environmental testing to verify the environmental condition of that portion of the Premises being assessed. If the results of the Landlord’s tests conflict with the Tenant’s Environmental Site Assessment, the Tenant and Landlord may negotiate in good faith an Environmental Baseline for that portion of the Premises being assessed.

4. If Tenant chooses not to establish an Environmental Baseline, then any contamination and the presence of any Hazardous Substance thereafter found in, on, or under

the surface of the Leased Premises shall be conclusively deemed to have been caused by Tenant or Tenant's operations.

5. The Landlord may, in its discretion and at its own expense, perform an Environmental Site Assessment of the Premises upon the cancellation, termination, or expiration of this Lease (a "***Post-Lease Assessment***"). Regardless of whether Landlord performs a Post-Lease Assessment, the Tenant assumes financial responsibility to the Landlord for any contamination or presence of Hazardous Substance(s) in, on, and under the Premises and any Affected Property, except for contamination or presence of Hazardous Substance(s) that is identified in an Environmental Baseline. In addition, if Landlord performs a Post-Lease Assessment and such Post-Lease Assessment reveals new contamination, Tenant shall reimburse Landlord for the expense of the Post-Lease Assessment. The provisions of this subparagraph are in addition to any other rights Landlord may have under this Lease or the law. As used herein, "***Affected Property***" means any properties damaged by the Tenant or its operations or identified to be contaminated or having Hazardous Substance(s) in, on, or under the surface that was caused or materially contributed to by the Tenant or its operations.

C. Release of Tenant. The Landlord releases the Tenant from liability to the Landlord for contamination and the presence of Hazardous Substance(s) identified by the Environmental Baseline that was not caused or materially contributed to by the Tenant.

D. Required Remediation. The Landlord is under no obligation to remediate contamination identified in an Environmental Site Assessment except as follows: the Landlord agrees to remediate, or have responsible parties remediate, the contamination identified in the Environmental Baseline if the Tenant or Landlord is required to remediate by an agency with such authority. In the event of such required remediation, the Landlord will make a reasonable effort to coordinate the remediation with the Tenant to minimize disruption of the Tenant's operations and damage to the Tenant's Improvements and property. The Tenant releases and holds the Landlord harmless for all costs associated with the damage to, relocation and removal of, and the repair of Tenant's Improvements and property that result from this remediation.

E. Action Against Potentially Responsible Parties. This Section 4.13 does not restrict the Landlord or the Tenant from seeking and obtaining cleanup efforts, costs, or damages from potentially responsible parties for contamination identified in the Environmental Baseline.

4.13 Waste and Wrongful Use. Tenant shall not commit or suffer any strip or waste of the Leased Premises or any unlawful, unsafe, improper, or offensive use thereof or any public or private nuisance thereon.

4.14 Setback. Tenant shall observe all setback lines applicable to the Leased Premises and shall not construct or maintain any building or other structure whatever between any street boundary of the Leased Premises and any setback along such boundary, except for fences or walls approved by Landlord, which approval will not be unreasonably withheld, delayed or conditioned.

4.15 Liens. Without limiting Section 4.11, Tenant shall not commit or suffer any act or neglect whereby the Leased Premises or the interest of Landlord or Tenant therein at any time during the term of the Lease may become subject to any attachment, execution, lien, charge, or

other encumbrance, other than a statutory lien for non-delinquent real property taxes or assessments or a mortgage approved by Landlord, and shall indemnify and hold Landlord harmless against all losses, costs, and expenses, including reasonable attorneys' fees, paid or incurred by Landlord in connection therewith. Tenant shall not incur any cost or expense with respect to the Leased Premises that, if not timely paid, may subject the Leased Premises or the interest of Landlord or Tenant therein to any lien or other encumbrance.

4.16 Indemnification.

A. Tenant shall defend, indemnify and hold Landlord, its elected and unelected officials, employees, agents, administrators, sureties, insurers, successors in interest, assigns and receivers, and each of them, past, present and future harmless from and against any and all claims arising from (1) Tenant's use of the Leased Premises, or from the conduct of Tenant's business, or from any activity, work or things done, permitted or suffered by Tenant in or about the Leased Premises or elsewhere; (2) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (3) any act or omission of Tenant, or any of Tenant's agents, employees, or any person claiming by, through or under Tenant, in, on, or about the Leased Premises or in connection with this Lease; and (4) any accident on or in connection with the Leased Premises, or any fire thereon, or any nuisance made or suffered thereon. Tenant shall further indemnify and hold Landlord harmless from and against all costs, attorneys' fees, expenses, and liabilities incurred in the defense of any proceeding brought against Landlord by reason of any such claim. Tenant, upon notice from Landlord, shall defend any of the above-described claims at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon, or about the Leased Premises, arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord. The provisions of this Section 4.17(A) shall not apply if the parties agree or a court of competent jurisdiction determines that such claims or liabilities are caused by the sole negligence of Landlord, or caused in part by the Landlord, for that portion of the claim or damages caused in part by the Landlord.

B. Tenant acknowledges that, before entering this Lease, it has fully inspected or been provided with an opportunity to fully inspect the Leased Premises and all documents in the possession of Landlord relating to the condition of the Leased Premises, and to test or examine all conditions of or on the Leased Premises. Tenant further acknowledges that, at the time this Lease is entered into and on the basis of the foregoing inspection or opportunity to inspect, Tenant is as knowledgeable about the physical condition of the Leased Premises as Landlord and, on that basis, assumes all risks relating to the condition of the Leased Premises, including but not limited to latent defects that may be unknown both to Tenant and Landlord at the time this Lease is entered into. Landlord represents and warrants that it has provided Tenant with an opportunity to inspect all documentation maintained by Landlord in its records concerning the condition of the Leased Premises.

4.17 Holdover. If Tenant remains in possession of the Leased Premises after expiration or other termination of the Lease, and in such a manner as to create a valid holdover tenancy, Tenant shall be deemed to occupy the Leased Premises only as a tenant at will from month-to-month, upon and subject to all of the provisions of this Lease which may be applicable to a month-to-month tenancy, excepting only that the rent payable during the holdover tenancy shall be

monthly in the amount 150% of 1/12 of the Base Rent plus Additional Rent in effect immediately prior to expiration or termination of the Lease prorated on a monthly basis.

4.18 Permits from Corps of Engineers and Others.

A. If required by applicable law, Tenant shall obtain all necessary permits from the Corps of Engineers and any other governmental entity with authority over the occupancy or construction of improvements on or adjacent to navigable waters and tidelands or wetlands. Tenant shall give Landlord notice of its proposed application for any such permit thirty (30) days before submission of the application to the governmental entity and obtain Landlord's approval of the proposed work as provided in Section 4.05 of this Lease, which approval shall not be unreasonably withheld, delayed, or conditioned. If Landlord fails to respond to the notice of proposed application given by Tenant within the thirty (30) day period, it shall be deemed to have approved the proposed work.

4.19 Responsibility upon Damage to or Destruction of Property. In the event any Improvement is destroyed or damaged by fire or other casualty, Tenant shall repair, rebuild, or otherwise reinstate the Improvement(s) in a good and substantial manner and in substantially the same form as it previously existed, and the Lease shall continue in full force and effect without abatement of rental. Such repair, rebuilding, or other reinstatement must commence within sixty (60) days of such destruction or damage, and must be completed within a reasonable time. Tenant may repair, rebuild, or otherwise reinstate the damaged Improvement(s) in a manner and style different from the previously existing Improvement, so long as the plans therefor are approved in advance by Landlord if required under Section 4.05 of this Lease; provided, that this sentence shall not relieve Tenant of its obligation to construct and operate the Facilities. Any approval required to be granted by Landlord under this Section 4.19 shall not be unreasonably withheld, delayed, or conditioned.

4.20 Use of Saxman Seaport. Access to the Saxman Seaport and the use of the Saxman Seaport to sell fuel and supplies at the waterfront to people using water transportation is a fundamental part of the inducement by the Landlord to the Tenant to enter into this Lease. Landlord will take no action to interfere with direct access between the Leased Premises and the Saxman Seaport for either the Tenant or those traveling by water to the Facilities, including, but not limited to, access to Tract D, A.T.S. 1465 and Tract B-2 A.T.S. 1465. The Landlord will consult with the Tenant on any plans or consent for construction by any party on Tract D, A.T.S. 1465 and Tract B-2, A.T.S. 1465 so that the Landlord can insure that construction and use does not interfere with operations at the Facility and Tenant providing sales of fuel and supplies at the waterfront. If Tenant is conducting fuel sales at the waterfront from the Leased Premises the Landlord shall not allow use of portions of Tract D, A.T.S. 1465 and Tract B-2 A.T.S. 1465 for fuel sales by others. If Tenant is not conducting fuel sales on the Leased Premises and the Landlord determines to allow fuel sales from Landlord's property at the Saxman Seaport the Landlord will identify space to be made available for that purpose and, after consultation with Tenant, may prescribe standard lease terms upon which the identified space may be used for that purpose. Tenant shall have a first right of refusal to lease the area designated for fuel sales and to sell fuel and supplies from that location at the waterfront for water transportation. The right of first refusal and any resulting lease for fuel sales may not be assigned or sublet by Tenant. Should Tenant fail to exercise the first right of refusal within 90 days of notice by the City offering the lease, the first

right of refusal shall expire and the City may offer the fuel lease to another party on the same or less favorable terms. Additionally, Tenant and Landlord will consult on a mutually acceptable traffic flow pattern in the event that the Leased Premises is necessary for use for loading and unloading a State of Alaska ferry.

5. INSURANCE.

5.01 Workers' Compensation. Tenant shall ensure that, with respect to all personnel performing work on the Leased Premises, Tenant maintains in effect at all times during the term of this Lease, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance. Tenant shall ensure that any contractors or subcontractors engaged to perform work on the Leased Premises maintain workers compensation coverage to the extent required by law.

5.02 Liability Insurance. During the entire term of the Lease, and during any holdover thereafter, whether or not authorized by Landlord, Tenant shall keep in full force and effect a policy or policies of general liability insurance which includes bodily injury, property damage, and personal injury reasonably acceptable to Landlord with respect to the Leased Premises and the business operated by Tenant in which the limits for each shall be not less than Two Million (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) aggregate.

5.03 Property Insurance. During the term of the Lease and any holdover thereafter, whether or not authorized by Landlord, Tenant shall keep all Improvements now or hereafter erected or placed on the Leased Premises insured against loss or damage on special cause loss of coverage form basis in an amount equal to the full replacement cost of all such Improvements and shall pay all premiums thereon at the time and place the same are payable. Every such policy shall name both Landlord and Tenant as loss payees and shall be made payable in case of loss or damage to the Tenant and Landlord jointly and shall be distributed according to their interests in the Improvements unless otherwise specified by this paragraph. All compensation, indemnity, or other monies paid on account of any loss or damage, other than rental value insurance, shall with all convenient speed be paid out in rebuilding, repairing, or otherwise reinstating the same Improvements.

5.04 Pollution Liability Insurance. Tenant shall maintain Pollution Liability Insurance on the Leased Premises if and so long as fuel dispensing equipment and storage tanks exist on the Premises and until a Phase 2 inspection is undertaken following the removal of the fuel dispensing equipment and storage tanks and piping for the site. Such policy shall have coverage of at least Two Million Dollars (\$2,000,000.00) per occurrence and any other public liability or environmental impairment coverage required by federal, state or local regulatory authorities, including Underground Storage Tank Financial Responsibility Insurance. . Landlord shall be named an "additional insured" under the policy.

5.05 Automobile Liability Insurance. During the term of the Lease and any holdover thereafter, whether or not authorized by Landlord, Tenant shall keep insurance for owned, non-owned, hired and all other vehicles used by Tenant with limits of not less than Two Million Dollars (\$2,000,000.00) per claim.

5.06 Policy Provisions. Each policy of comprehensive general liability or property insurance described in Sections 5.02, 5.03, 5.04, and 5.05 of this Lease shall:

A. Provide that the liability of the insurer thereunder shall be primary and not be affected by, and that the insurer shall not claim, any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for Landlord, Tenant, or any person claiming by, through, or under any of them;

B. Provide that such policy requires thirty (30) days' notice to Landlord of any proposed cancellation, expiration, or change in material terms thereof and that such policy may not be canceled, whether or not requested by Tenant, unless the insurer first gives not less than thirty (30) days' prior written notice thereof to Landlord;

C. Contain a waiver by the insurer of any right of subrogation to proceed against Landlord or against any person claiming by, through, or under Landlord; and

D. Name Landlord as additional insureds in each of the Tenant's policies, except for Worker's Compensation Insurance.

5.07 Proof of Insurance. Tenant shall deliver to Landlord certificates of insurance on or before the effective date of this Lease or at such other date as agreed to in writing by Landlord. Additionally, Tenant shall deliver to Landlord photocopies of the policy or policies of insurance, certificates of insurance, or copies of endorsements as reasonably requested by the Landlord from time to time.

5.08 Review and Adjustment of Policy Requirements. During the term of this Lease, specific types of insurance policies and coverages may not be available or may be available only with commercially unreasonable premiums. Tenant may substitute a different type of insurance policy for any insurance policy listed in this Lease, provided that Tenant can show that the substitute coverage is commercially reasonable insurance carried by owners of properties in the State of Alaska similar in nature and occupancy to the Leased Premises. During the term of this Lease, Landlord may require an increase in the policy limited for the coverages described in Section 5.02, 5.04 and 5.05, provided that Landlord can show that the increased policy limits are commercially reasonable limits as carried by owners of properties in the State of Alaska similar in nature and occupancy to the Leased Premises.

6. EMINENT DOMAIN.

6.01 Effect of Eminent Domain on Lease.

A. The terms "taking" and "to take" (in any of its forms) as used in this Article 6 refer to any competent authority's acquisition by the power of eminent domain, including inverse condemnation, of all or any part of the Leased Premises or an interest therein, at any time during the term of the Lease. The transfer of title affecting the taking may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation in avoidance of an exercise of eminent domain, made before or while condemnation proceedings are pending. The time of taking shall be determined by application of the law of the State of Alaska.

B. In the event of a taking of all or substantially all of the Leased Premises, this Lease shall terminate on the earlier of vesting of title in, or the taking of possession by, the condemner.

C. Subject to the exception set out in Section 6.01(D) below, if less than substantially all of the Leased Premises are taken (herein called a “*partial taking*”), then, at Landlord’s sole option, (1) Landlord may terminate this Lease upon sixty days’ notice to Tenant and any Qualified Mortgagor, and in such case the rent and other charges under this Lease shall be apportioned as of the date of termination; or (2) this Lease shall continue in effect except as to the portion so taken or condemned, but the rent to be paid by Tenant shall thereafter be reduced by the same ratio as the value of the portion of the Leased Premises so taken bears to the value of the Leased Premises before taking. If the portion thereof so taken is subterranean or aerial and does not interfere with the use of the surface, then Tenant shall not be entitled to any adjustment of rent hereunder. If Landlord and Tenant disagree as to whether a taking is a partial taking, or as to the amount, if any, by which the rent should be reduced, either of them may submit the matter to arbitration under Section 8.

D. If a partial taking renders the remaining Leased Premises unsuitable for the purposes for which Tenant’s Improvements were designed or occurs during the last five (5) years of the term of this Lease or any extension thereof, then Tenant, upon sixty days’ written notice to Landlord and compliance with Section 11 of this Lease, and subject to the rights of any Qualified Mortgagee, may terminate this Lease after vesting of title in the condemnor or taking of possession by the condemner. If Tenant does so, the rent and other charges under this Lease shall be apportioned as of the date of termination.

6.02 Disposition of Proceeds.

A. Total Taking. In the event of a total taking, the rights of Landlord and Tenant to share in the net proceeds of any and all awards for land, Improvements, and damages shall be in the following order of priority:

1. To Landlord, a sum equal to the fair market value of the fee simple interest in the Leased Premises unencumbered by this Lease or any sublease, but less the unamortized cost of Tenant’s Improvements or the unpaid balance of any Leasehold Mortgage consented to by Tenant on Tenant’s Improvements, whichever is greater. For purposes of this Section 6.02, “*cost*” means the capital cost as determined in accordance with General Accepted Accounting Principles. In computing unamortized cost, the cost of the Facilities shall be amortized over the term of any outstanding indebtedness Tenant has outstanding secured by the Improvements, or if none, then 39 years.

2. To Tenant, a sum representing the unamortized cost of Tenant’s Improvements as set forth in Section 6.02(A)(1) or the unpaid balance of any Leasehold Mortgage consented to by Tenant on Tenant’s Improvements, whichever is greater. In no event shall Tenant be entitled to any claim for its leasehold interest in the value of the unencumbered fee in the land.

3. To Landlord, the balance of the award, excluding interest. Interest shall be allocated between the parties in proportion to their respective shares of the total award

provided above. If the value of such respective interests of Landlord and Tenant have been separately determined in such condemnation proceeding, the values so determined shall be conclusive upon Landlord and Tenant. If such values have not been so determined, they may be fixed by agreement between Landlord and Tenant, or if the parties cannot agree, then by arbitration under Article 8 of this Lease.

4. The allocation of just compensation awards as set forth in this section shall not infer or give rise to any obligation on part of Landlord for any indebtedness of Tenant as evidenced by the Leasehold Mortgage or otherwise.

B. Partial Taking. In the event of a partial taking, the net proceeds of the award shall be divided between Landlord and Tenant as follows:

1. To Landlord, a sum representing the fair market value of the fee simple interest of the part or parts of the Leased Premises so taken, unencumbered by this Lease, and then the fair market value of Tenant's Improvements so taken, but less the unamortized cost of such Improvements (as defined in Section 6.02(A)(1)); plus an amount representing consequential damages to the part or parts of the Leased Premises remaining after such taking, considered as improved.

2. To Tenant, the balance of the award, which shall be applied by Tenant first to restoration of Tenant's Improvements as nearly as reasonably possible to their condition before such taking, unless Tenant terminates this Lease as provided in Section 6.01(D) above.

C. Rights on Termination. Notwithstanding anything in this Lease to the contrary, if Tenant exercises its right to terminate the Lease under Section 6.01(D), above, the award balance attributable to Tenant's Improvements other than the principal balance, if any, and other proper charges of a Qualified Mortgagee shall belong to Landlord free of any claim of Tenant. In no event shall Tenant be entitled to any compensation for its Improvements if the taking occurs after expiration or termination of this Lease.

6.03 Temporary Taking. If the whole or any part of the Leased Premises, or of Tenant's interest under this Lease, is taken by any competent authority for its temporary use or occupancy, this Lease shall not terminate by reason thereof and Tenant shall continue to pay all rental payments and other charges payable by Tenant hereunder, and to perform all other terms, covenants, and conditions contained herein, except to the extent Tenant is prevented from so doing by the terms of the order of the taking authority. In the event of a temporary taking, Tenant shall be entitled to receive the entire amount of the award and shall be obligated, at its sole expense, to restore the Leased Premises as nearly as may be reasonably possible to the condition in which they existed immediately prior to such taking; provided, however, that if the period of temporary use or occupancy extends beyond the expiration or termination of the Lease, the award shall be apportioned between Landlord and Tenant as of said date of expiration or termination, after Landlord shall have received the entire portion of the award attributable to physical damage to the Leased Premises (including Tenant's Improvements) and to the restoration thereof to the condition existing immediately prior to the taking or condemnation.

7. ASSIGNMENTS, MORTGAGES, SUBLEASES AND SUBDIVISION.

7.01 Limitations on Assignment. Except as provided in Sections 7.02 and 7.03, Tenant shall not voluntarily or by operation of law assign, sublet, or otherwise transfer, or mortgage or encumber all or any part of Tenant's interest in this Lease or in the Leased Premises without the consent of the Landlord, which consent shall not be unreasonably withheld, delayed or denied, except that Tenant may assign or sublet all or any part of Tenant's interest in this Lease or in the Leased Premises to a parent or subsidiary of the Tenant. Any attempted assignment, subletting, transfer, mortgage, or encumbrance in violation of the preceding sentence shall be void.

7.02 Mortgage of Leasehold Interest Tenant shall have the right at any time, and from time to time, to subject the leasehold estate and any or all of Tenant's Improvements situated on the Leased Premises to one or more mortgages or assignments as security for a loan or loans or other obligation of Tenant (each of which instruments is herein called a "***Leasehold Mortgage***"), provided that:

A. Subordinate to Landlord's Fee Interest. The Leasehold Mortgage and all rights acquired under it shall be subject to and subordinate to the Landlord's rights under this Lease and shall not encumber Landlord's fee interest in the Leased Premises.

B. Notice to Landlord. Tenant shall give Landlord prior notice of any such Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Landlord's written consent to the Leasehold Mortgage (which consent shall not be unreasonably withheld, delayed, or conditioned) and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified Mortgagee as that term is used in this Lease.

C. Possession by Mortgagee. A Qualified Mortgagee may take possession of the Leased Premises and vest in the interest of Tenant in the Lease upon the performance of the following conditions:

1. The payment to Landlord of any and all sums due to Landlord under the Lease, including but not limited to accrued unpaid rent.

2. The sending of a written notice to Landlord and Tenant of the Qualified Mortgagee's intent to take possession of the Leased Premises and assume the Lease.

3. The curing of all defaults not remediable by the payment of money within an additional thirty (30) days of the date upon which such default was required to be cured by the Tenant under the terms of this Lease.

D. No Liability of Mortgagee without Possession. A Qualified Mortgagee shall have no liability or obligation under the Lease unless and until it sends to Landlord the written notice described in Section 7.02(B)(2) above. Nothing in this Lease nor in the taking of possession of the Leased Premises and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Tenant of any duty or liability to Landlord under the Lease.

E. In the event the Qualified Mortgagee forecloses the Leasehold Mortgage, any subsequent assignee or transferee of the leasehold estate proposed by the Qualified Mortgagee must be approved by Landlord, which approval shall not be unreasonably withheld, delayed, or conditioned.

7.03 Right to Sublet. Tenant shall have the right during the term of the Lease to sublet all or any part or parts of the Leased Premises or the Improvements, or both, and to assign, encumber, extend, or renew any sublease, providing Tenant complies with the following provisions:

A. Each sublease shall contain a provision requiring the subTenant to attorn to Landlord if Tenant defaults under this Lease and if the subTenant is notified of Tenant's default and is instructed to make subTenant's rental payments to Landlord.

B. Prior to execution of each sublease, Tenant shall notify Landlord of the name and mailing addresses of the proposed subTenant and provide Landlord with photocopies of the proposed sublease. Promptly after execution, Tenant shall provide Landlord with a photocopy of the executed sublease.

C. Tenant shall not accept, directly or indirectly, more than two (2) months' prepaid rent from any subTenant.

D. A "*Qualified Subtenant*" is a subtenant in possession under an existing sublease as to which the foregoing conditions have been met. No sublease shall relieve Tenant of any of its covenants or obligations under this Lease, including the Tenant's obligation to pay Additional Rent where required by section 2.02, and any provision of a sublease purporting to do so shall be deemed a nullity as between Landlord and Tenant notwithstanding Landlord's failure to object to the sublease.

7.04 Subdivision of Leased Premises. Tenant shall not subdivide the Leased Premises or any part thereof.

7.05 Easements. Landlord grants Tenant the authority to enter into easement agreements or grant easements for utilities across the Leased Premises to encumber the Landlord's and Tenant's interest in the Leased Premises, without first obtaining the consent of the Landlord, provided that Tenant is not receiving any monetary compensation for the easement agreement or easement grant. . Tenant will provide Landlord with copies of the easement agreements or grant of easement within three days of execution by all parties. Upon request by Tenant, Landlord will also execute an easement agreement or grant of easement for utilities across the Leased Premises.

8. ARBITRATION AND APPRAISAL PROCESS.

8.01 Appointment of Arbitrators and Conduct of Arbitration. If Landlord and Tenant fail to agree upon the value of the respective interests of Landlord and Tenant in a condemnation action under Section 6; the matter of disagreement, upon the election of either of them, shall be submitted to and determined by a single arbitrator, mutually appointed by them, whose decision and award shall be final, conclusive, and binding upon both of them. If Landlord and Tenant fail to mutually appoint a single arbitrator, the matter shall be submitted to and determined by three

(3) arbitrators, in which event either Landlord or Tenant may give to the other written notice of election to have the matter of disagreement so arbitrated and shall appoint therein one of the arbitrators. The other party shall, within twenty (20) days after the receipt of such written notice, appoint a second arbitrator. If he fails to do so, the party who has already appointed an arbitrator may have the second arbitrator appointed by any judge of the Superior Court of Alaska resident in the district where the Leased Premises are situated. The two arbitrators so appointed in either manner shall appoint the third arbitrator, and if the first two arbitrators fail to appoint a third arbitrator within twenty (20) days after the appointment of the second arbitrator, either Landlord or Tenant may have the third arbitrator appointed by any judge of the Superior Court of Alaska resident in the district where the Leased Premises are situated. The three arbitrators so appointed shall thereupon proceed to arbitrate the matter of disagreement, upon such rules of procedure as they may adopt, and shall render a written decision containing their findings and conclusions. The Landlord and Tenant shall share equally the costs associated with the arbitration.

8.02 Special Qualifications of Arbitrators. Each arbitrator appointed pursuant to Section 8.01 shall be a person who (1) has not less than five (5) years appraisal experience in the State of Alaska prior to his appointment; (2) has appraised similar classes of property throughout the State of Alaska; and (3) is a member (MAI [but not RM]) of the American Institute of Real Estate Appraisers, a Senior Real Estate Analyst (SREA), or a Senior Real Property Appraiser (SRPA) of the Society of Real Estate Appraisers. It is understood and agreed that if any of such institutes or societies is merged or otherwise consolidated with another duly qualified appraisal or counseling organization, and thereby loses its name or designation, the arbitrator may be appointed from among the members of such other organization.

8.03 Judicial Review of Arbitration Decision. The decision of the arbitrator or arbitrators shall be final and unreviewable by any court, except to the extent authorized by AS §§ 09.43.110, .120 and .130 or any successor statutes thereto. If the court determines that the arbitration decision should be set aside on one of the grounds enumerated in such statutes, it may proceed to decide the merits of the matter at the instance of either party to the Lease and neither party shall be required to submit to re-arbitration of the matter.

8.04 Limit of Arbitration. The right of arbitration shall apply only to those disputes within this Lease that are specifically referred to arbitration or to those disputes that the parties agree in writing should be referred to arbitration.

9. DEFAULT AND DEFEASANCE.

9.01 Events of Default. Tenant shall be deemed to be in default upon the happening of any one or more of the following events (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency, or other proceedings, in law, equity or before any administrative tribunal, which have or might have the effect of preventing Tenant from complying with the terms of this Lease):

A. Tenant's failure to make payment when due of rent, taxes, or any other sums herein specified to be paid by Tenant; or

B. Tenant's failure to perform or observe any other covenants or conditions under the Lease; or

C. Tenant's abandonment or surrender of the Leased Premises or of the leasehold estate,

D. The filing by or against Tenant of a petition or other case or proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or any future law of the United States having the same general purpose; or (ii) be adjudicated as bankrupt or insolvent; or (iii) have a receiver appointed for all or substantially all of its business or assets on the ground of insolvency; or (iv) make a general assignment for the benefit of its creditors; or

9.02 Notice and Right to Cure. As a precondition to pursuing any remedy for a default by Tenant, Landlord shall, before pursuing any remedy, give notice of default to Tenant as provided in this Section 9.02.

A. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Tenant as provided in Sections 2 and 4 or elsewhere in this Lease directed to be paid as rent, Tenant shall have ten (10) days after the notice is given to cure the default.

B. If, in the reasonable opinion of Landlord, the alleged default substantially endangers either the person or property of Landlord or a third party, or human health or the environment, Tenant shall commence curing the default immediately upon notice and complete the cure within such shorter time period as is reasonably imposed by Landlord or any governmental body having jurisdiction in the matter.

C. For the cure of any other default, Tenant shall promptly and diligently after the notice commence curing the default and shall have thirty (30) days after notice is given to complete the cure, or if the default cannot be reasonably cured in thirty (30) days, then Tenant shall diligently commence the cure within such thirty (30) day period and diligently prosecute the cure until its completion.

9.03 Nonwaiver. Acceptance by Landlord or its agents of any rents or other sums shall not be deemed to be a waiver by it of any breach by Tenant of any of its covenants contained in this Lease or of any rights or remedies of Landlord for any such breach. Waiver by Landlord of any breach by Tenant shall not operate to extinguish the covenant the breach of which is so waived, nor be deemed to be a waiver of any rights or remedies of Landlord for any other breach thereof or of any other covenant.

9.04 Right of Landlord to Protect Against Default. If Tenant fails to observe or perform any of its covenants contained herein, Landlord, at any time thereafter and without notice, shall have the right but not the obligation to observe or perform such covenant for the account and at the expense of Tenant, and shall not be liable to Tenant or anyone claiming by, through, or under it for any loss or damage by reason thereof to the occupancy, business, or property of any of them. All costs and expenses paid or incurred by Landlord in observing or performing such covenant shall constitute additional rents, which Tenant shall forthwith pay to Landlord upon statements therefor.

9.05 Landlord's Remedies. If any default by Tenant shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default under Section 9.02 of this Lease, Landlord has the following remedies in addition to all other rights and remedies provided by law or equity or other provisions of this Lease, to which Landlord may resort cumulatively or in the alternative.

A. Termination. Landlord may terminate this Lease by giving Tenant notice of termination in accordance with the procedures specified in Section 9.02 of this Lease. On the giving of the notice, all Tenants' rights in the Leased Premises and in all Improvements thereon shall terminate, except with respect to those specified Improvements which Landlord expressly and in writing requires Tenant to remove in accordance with Section 11 (in which event Tenant's rights shall continue in the Improvements required to be removed). Promptly after notice of termination, Tenant shall surrender and vacate the Leased Premises and all Improvements not required to be removed in a broom-clean condition, and Landlord may reenter and take possession of the Leased Premises and all remaining Improvements and eject all parties in possession, or eject some and not others, or eject none. Termination under this Section 9.05(A) shall not relieve Tenant, or any of its guarantors, insurers, or sureties, from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Re-entry without Termination. Landlord may reenter the Leased Premises and, without terminating this Lease, at any time and from time to time relet the Leased Premises and Improvements, or any part or parts of them, for the account and in the name of Tenant or otherwise. Landlord may, at Landlord's election, eject all persons or eject some and not others or eject none. Any reletting may be for the remainder of the term of the Lease or for a longer or shorter term. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, or occupancy of the Leased Premises or Improvements or both. Landlord shall apply all rents from reletting as provided in Section 9.07 of this Lease. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease, the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses, less the proceeds of any reletting. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant notice of termination.

C. Recovery of Rent. Landlord shall be entitled, at Landlord's election, to each installment of rent or to any combination of installments for any period before termination, plus interest at the highest contract rate of interest then permitted by statute, from the due date of each installment. If Landlord elects to relet the Leased Premises without terminating this Lease, the proceeds of such reletting shall be applied, when received, as provided in Section 9.07 of this Lease.

D. Tenant's Personal Property. Landlord may, at Landlord's election, use Tenant's personal property and trade fixtures on the Leased Premises, or any of such property and fixtures, without compensation and without liability for use or damage, or store them for the account and at the cost of Tenant.

E. Damages. Landlord shall also be entitled, at Landlord's election, to damages in the following sums: (1) all amounts that would have fallen due as rent between the

time of termination and the time the property is relet; provided that Landlord shall exert reasonable efforts to relet the property at prevailing market value; and (2) the amount, if any, by which the Rent under this Lease exceeds the rents under any subsequent lease upon reletting calculated over the term of the Lease; and (3) all administrative, marketing, brokerage, repair, cleaning and similar costs incurred by Landlord and necessary or useful to reletting the Leased Premises or placing it in good and marketable condition.

9.06 Assignment of Subrents. Tenant assigns to Landlord all subrents and other sums falling due from subtenants, licensees and concessionaires (referred to as “*Subtenants*” in this Section 9.06) during any period in which Landlord has the right under this Lease, whether exercised or not, to reenter the Leased Premises for Tenant’s default, and Tenant shall not have any right to such sums during that period. Landlord may at Landlord’s election reenter the Leased Premises and Improvements with or without process of law, without terminating this Lease, and either, or both, collect these sums or bring action for the recovery of the sums directly from Subtenants. Landlord shall apply all such collected subrents as provided in Section 9.07. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord’s expenses, less the proceeds of the sums assigned and actually collected under this Section 9.06. Landlord may proceed to collect either the assigned sums or Tenant’s balances, or both, or any installment or installments of them, either before or after expiration of the term of the Lease, but the period of limitations shall not begin to run on any of Tenant’s payments until the due date of the final installment to which Landlord is entitled under this Lease, nor shall it begin to run on any of the sums assigned under this Section 9.06 until the due date of the final installment due from the respective Subtenants.

9.07 Application of Sums Collected by Landlord. Landlord shall apply all subrents and proceeds of reletting as follows: first, to the payment of reasonable expenses (including attorneys’ fees and brokers’ commissions or both) paid or incurred by or on behalf of Landlord in recovering possession, placing the Leased Premises and Improvements in good condition, and preparing or altering the Leased Premises or Improvements for reletting; second, to the reasonable expense of securing new Tenants; and, third, to the fulfillment of Tenant’s covenants to the end of the term of the Lease. Any excess remaining after the foregoing application shall be returned to Tenant.

9.08 Litigation to Determine Default. In the event of litigation which involves the resolution of the issue of whether the Tenant is in default in the performance of its obligations under this Lease, upon a final non appealable judgment finding that the Tenant is in default in the performance of its obligations under this Lease, the Tenant has 30 days to cure any default in the performance of its obligations under this Lease contained in the final non appealable judgment, if the default in the performance of its obligations cannot be reasonably cured in thirty (30) days, then Tenant shall diligently commence the cure within such thirty (30) day period and diligently prosecute the cure until its completion.

10. GENERAL PROVISIONS.

10.01 Landlord’s Right to Entry, Inspection, and Repair. Landlord or its authorized agents may enter and inspect the Leased Premises at any time during regular business hours, with or without the presence of Tenant or its authorized representative, after giving twenty-four (24) hours’ advance notice to Tenant of such inspection. Such inspections may include, but not be

limited to, conducting tests for environmental contamination. All inspections will be conducted in a manner that does not unreasonably interfere with the operation of Tenant's business. In the event of an emergency, Landlord may enter and inspect the Leased Premises on reasonable notice (including no notice to Tenant if the circumstances warrant) and make such repairs or institute such measures, on the account and at the expense of Tenant, as may be necessary to avert or terminate the emergency. An emergency is any action, event, or condition, either extant or imminent, that threatens significant damage to property or injury to persons on or near the Leased Premises, and includes but is not limited to flood, fire, explosion, avalanche, earthquake, uncontrolled or dangerous discharge or release of water or other fluids, unauthorized or illegal placement of Hazardous Substances on the Leased Premises, and shifting, settling or loss of earth or support on the Leased Premises.

10.02 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses or at such other addresses as given by a Party in writing:

If to the Landlord: City of Saxman
2841 South Tongass Highway
Route 2 Box 1 – Saxman
Ketchikan, Alaska 99901
Facsimile: 907-225-6450
E-mail: cityclerksaxman@kpunet.net

If to Tenant: Three Bears Alaska Inc.
Attn: President
7362 W. Parks Highway
Box 814
Wasilla, Alaska 99623
Facsimile: 907-357-4312
E-mail: legalnotices@threebears.store

with a copy to: Dorsey & Whitney LLP
Attn: Bonnie Paskvan
1031 W 4th Ave
Anchorage, Alaska 99501
Fax: 907 257 7833
E-mail: paskvan.bonnie@dorsey.com

10.03 Time of the Essence. Every provision in this Lease that imposes an obligation upon Tenant or invests an option, power, or right in Landlord shall be deemed to be a covenant of Tenant in favor of Landlord, and the time of observance and performance by Tenant of each such covenant shall be of the essence.

10.04 Landlord's Liability. Anything in this Lease to the contrary notwithstanding, covenants made on the part of Landlord in this Lease are not made or intended as personal covenants for the purpose of binding Landlord personally or the assets of Landlord except Landlord's interest in the Leased Premises, but are made and intended for the purpose of binding only Landlord's interest in the Leased Premises. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, Landlord or its directors, officers, employees, agents, parent and subsidiary and affiliated corporations, trustees, administrators, sureties, insurers, attorneys, successors and predecessors in interest, assigns and receivers, or any of them, past, present or future, on account of any covenant contained in this Lease.

10.05 Integration and Amendments. This Lease constitutes the entire sole understanding of the parties with respect to the subject matter herein and supersedes any prior oral or written representations or agreements concerning the same. Tenant warrants that it is not relying on any representations other than those contained in this Lease. No implied covenant or shall be held to vary the provisions of this Lease, any law or custom to the contrary notwithstanding. No amendment or other modification of this Lease shall be effective unless incorporated in a written instrument signed by Landlord and Tenant.

10.06 Survival and Severability. All indemnity obligations of Tenant shall survive the expiration or earlier termination of this Lease. In addition, any terms, conditions, and warranties contained in this Lease that by their sense and context are intended to survive the performance, expiration, or termination of the Lease shall so survive. If any term of this Lease is to any extent held invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of the Lease shall not be impaired or affected thereby, and each remaining term, provision, and part shall continue in full force and effect, and shall be interpreted in a manner consistent with the intent of the parties.

10.07 Binding Effect. Without limiting Section 7, this Lease shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns. The designations "Landlord" and "Tenant" include their respective successors and assigns and shall be so construed that the use of the singular number includes the plural number, and vice versa, and the use of any gender includes the other genders. If at any time during the term of the Lease Tenant is more than one person or entity, including persons who are partners and operate Tenant as a partnership, their liability hereunder shall be joint and several.

10.08 Landlord's Authority to Assign Rights or Convey Fee Title. Landlord retains the absolute and unconditional right to assign rights to revenue under the lease, whether in support of a revenue bond or otherwise; to assign the Landlord's rights under the Lease, or to convey fee title in the Leased Premises, or an interest or estate therein, subject to this Lease and the interest of any

Qualified Mortgagee or Subtenant under this Lease. Should the Landlord desire to convey the Leased Premises, the Landlord shall first offer the Leased Premises to the Tenant at the Appraised Value of the Leased Premises. *Appraised Value* is defined as determination of value by an appraiser or appraisers as described in this Section 10.08. Upon Landlord delivering a written notice of intent to sell the leased Premises to Tenant ("*Notice of Intent*") Landlord and Tenant will agree upon a commercial appraiser, licensed in Alaska who shall appraise the Leased Premises, without taking in account in the value any improvements paid for by the Tenant in accordance with the fair market value of comparable space. If the Landlord and Tenant cannot agree upon an appraiser, then each party may have its own appraiser appraise the Leased Premises, at the cost of the party choosing the appraiser, using the factors affecting value as described in this Section 10.08. If the two results are within ten (10) percent of each other than the Appraised Value shall be the average of the two results. . If the two results are beyond ten (10) percent of each other, then the two appraisers will select a third appraiser who will review the appraisals and pick the appraisal that in his or her judgment is closest to fair market value. The Landlord shall send written notice of the Appraised Value to the Tenant ("*Notice of Value*"). Tenant has 120 days from the date of the Notice of Value to accept the offer by delivering a written notice of acceptance ("*Acceptance*") to the Landlord. Tenant shall have 45 days from the date of Acceptance to complete the purchase of the Leased Premises. If Tenant fails to complete the purchase of the Leased Premises, the Landlord may convey the Leased Premises to another party within 225 days of the Notice of Value. If the Landlord does not convey the Leased Premises within 165 days of Tenant's failure to close, then Landlord must follow the process to determine Appraised Value as set out in this Section 10.08 to convey the Leased Premises to other than the Tenant.

10.09 Captions. The captions of the articles and paragraphs hereof are for convenience only, are not an operative part hereof, and neither limit nor amplify in any way the provisions hereof.

10.10 Brokerage Fees. Landlord and Tenant represent and warrant that no brokerage firm was involved in the negotiation of this Lease.

10.11 Dispute Resolution. In the event of litigation related to this Lease, the prevailing party is entitled to full reasonably attorney's fees from the other party.

11. DUTIES UPON TERMINATION OR EXPIRATION.

11.01 Surrender of Leased Premises and Improvements. Upon expiration or early termination of this Lease, Tenant shall surrender to Landlord the possession of the Leased Premises, the Facilities and, except as provided in paragraph 11.02, all other Improvements. Tenant shall leave the Leased Premises and surrendered Improvements in a broom-clean and leasable condition, which shall include removal of all personal property, trash, vehicles, and equipment. Any excavations done by Tenant during the term of the Lease (including any excavations done to remove certain Improvements under paragraph 11.02) shall be filled and compacted with material reasonably approved by Landlord, Landlord's approval of suitable fill material and compaction standards shall not be unreasonably withheld, delayed, or conditioned. If Tenant fails to surrender the Leased Premises or Improvements at expiration or termination,

Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including but not limited to claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender. In the event of failure or refusal of Tenant to surrender possession of the Leased Premises or Improvements, Landlord shall have the right to reenter the Leased Premises and remove therefrom Tenant or any entity in possession and to obtain damages from Tenant.

11.02 Removal of Certain Improvements.

A. Except as provided in this Section 11.02, the Facilities and all other Improvements shall remain on the Leased Premises and shall become the property of Landlord upon expiration or termination of this Lease.

B. Tenant shall remove all storage tanks, fuel dispensing equipment, and piping from the Leased Premises at the termination of the Lease and shall undertake a Phase 2 inspection for possible contamination by Hazardous Substances. Otherwise, Landlord may, at its option, require Tenant to remove any Improvements including the Facilities, which removal shall include removal of any foundations and footings to such Improvements. Such removal must be completed prior to expiration of the Lease or, in the event of an earlier termination, within thirty days from such termination, and in the latter event Landlord will grant Tenant reasonable access to accomplish such removal. Ownership of Improvements required to be removed under this paragraph shall remain with Tenant. Any excavation to remove such Improvements shall be filled and compacted with qualified fill material reasonably approved by Landlord, Landlord's approval of the storage tank excavation and fill material and compaction standards shall not be unreasonably withheld, delayed, or conditioned.

11.03 Abandonment of Tenant's Personal Property. All personal property that Tenant leaves on the Leased Premises shall, on the twentieth (20th) day following expiration or termination, be conclusively deemed abandoned. Abandoned property shall, at the election of Landlord, become the property of Landlord or be disposed of by Landlord as it sees fit.

11.04 Liability for Cleanup Expenses. In addition to Tenant's other obligations and liabilities under the Lease, Tenant shall be liable for all costs and expenses incurred by Landlord to remove or destroy any Improvements required to be removed under Section 11.02; to dispose of any personal property abandoned under Section 11.03; and, if Tenant fails to leave the Premises and surrendered Improvements in broom-clean condition, to put the Premises and Improvements in that condition.

12. EXECUTION AND MEMORANDUM OF LEASE.

12.01 Execution and Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

12.02 Recordation of Memorandum of Lease. This Lease may not be recorded by Tenant, but may be recorded by Landlord. If Landlord chooses not to record the Lease, then either party may request that the parties execute and record a memorandum of this Lease ("*Memorandum of Lease*") in form acceptable to Landlord.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Lease, or caused this Lease to be executed, effective as of the date first written above.

CITY OF SAXMAN

Dated: _____

By: _____

[NAME]

[POSITION]

THREE BEARS ALASKA INC.

Dated: _____

By: _____

[NAME]

Vice President

EXHIBIT A-1
LEGAL DESCRIPTION OF PREMISES

Tract A-1, according to Plat No. 2002-46, Ketchikan Recording District and Tract C, Alaska
Tidelands Survey No. 1465 According to Plat No. 98-9 Ketchikan Recording District

EXHIBIT A-2
PREMISES SURVEY

EXHIBIT C
RESERVED RIGHTS OF LANDLORD AND PROHIBITED USES

A. Consistent with Saxman Municipal Code section 16.20.090, the City reserves the right to make grants to third parties or reserve to the City easements or rights of way through, on, or above the Leased Premises, after 30 days notice to the Tenant. The City will not grant or reserve any easement or right of way that unreasonably interferes with the Tenant's authorized uses of the Premises.

B. Consistent with Saxman Municipal Code 16.20.080, the City reserves the right of ingress to and egress from the Leased Premises and the right to enter any part of the Leased Premises, including buildings, for the purpose of inspection or environmental testing at any reasonable time. Except in the case of an emergency, all inspections and environmental testing will be coordinated with the Tenant and will not unreasonably interfere with the Tenant's authorized uses of the Leased Premises.

C. The City specifically reserves the right of access for the City, its invitees and tenants, through and across the Leased Premises for utility purposes and for access to the following facilities: the small boat harbor and breakwater, the Tower Lease area, parking for boat launch ramp use, parking lanes for Alaska Marine Highway or other ferry loading, and the pump house located adjacent to the boat launch ramp.

PROHIBITED USES

D. The establishment or maintenance of any kind of living quarters or residence on the Premises.

E. The outside storage on the Leased Premises of junk, trash, solid waste, debris, salvage materials or vehicle parts, nonoperational support equipment, or unused or damaged equipment or material.

F. The disposal of waste materials generated by the Tenant, including Hazardous Substance, overburden and construction waste.

G. The stripping, wasting, or removing from the Leased Premises of any soil, gravel, trees, or other material except to the extent required for construction and improvement of the Premises.

H. Activity which is not de minimus which does not generate sales tax from retail sales.

I. Construction or use of structures over 40 feet in height unless approved by the City.

EXHIBIT D
BUILDINGS, FIXTURES, AND OBJECTS TO BE REMOVED FROM LEASED PREMISES

- (a) The building in Area B of the Premises[refine]
- (b) The SUE10 building
- (c) The Old ANTHC tin garage
- (d) The blue wood building at entrance
- (e) The elevated wood building towards the water
- (f) The Outdoor renters and items on the Leased Premises