

THIS LEASE IS IN DRAFT FORM FOR CITY REVIEW AND DISCUSSION. IT HAS NOT BEEN REVIEWED OR APPROVED BY THE WHITTIER CITY COUNCIL.

**SUBLEASE TEMPLATE (MASTER LEASE LANDS)
FOR WHITTIER _____, LOT _____, AREA _____**

THIS SUBLEASE AGREEMENT (“Lease”) is made this ____ day of _____, 20__ (the “Commencement Date”), by and between the **CITY OF WHITTIER**, P.O. Box 608, Whittier, Alaska 99693, hereinafter called “**Lessor**” and **[Name of Lessee]**, d/b/a “**[Name of Business]**”, **[Business Entity Mailing Address]**, hereinafter called “**Lessee**”, hereinafter collectively called “the Parties”.

WHEREAS, certain lands that are subject to a ground lease and management agreement dated November 13, 1998 (the “Master Lease”), between the Alaska Railroad Corporation (“ARRC”), which has an expiration date of November 12, 2033;

WHEREAS, the Master Lease provides the Lessor with authority of the lands covered by the Master Lease, and requires use to be consistent with the Management Plan as that term is defined by the Master Lease; and

WHEREAS, the City and Lessee desire to enter into a sublease for the Leased Premises subject to the terms and conditions of the Master Lease, and the requirements of the Management Plan.

NOW THEREFORE, in consideration of the mutual promises contained herein, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SUBORDINATION TO MASTER LEASE. The Parties agree that this Lease shall be subject and subordinate to the terms of the Master Lease, a copy of which is annexed hereto and incorporated herein as **Exhibit A**. In the event of any inconsistency with this Lease and the Master Lease, the Master Lease shall control. Lessee acknowledges and agrees that it has received a copy of the Master Lease, is familiar with its terms, and agrees to be bound by the same to the extent they apply to the Leased Premises. In the event this Lease requires prior consent from ARRC, the master landlord, it shall not be effective unless and until ARRC consents to the terms of the Lease in writing.

2. PREMISES.

A. Lessor, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Lessee, does hereby let, lease, and demise to Lessee that certain real property hereinafter called

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“Leased Premises” or “Premises” situated at [REDACTED], Whittier, Alaska, and legally described as follows:

[Property Description]

This Lease is for land only and not for any improvements situated thereon, which improvements shall remain the property of Lessees.

B. By taking possession of the Premises at the commencement of the Term, Lessee shall be deemed to have (i) accepted the Premises in its “AS-IS” and “WHERE IS” condition, with all faults, without representation or warranty of any kind, express or implied; and (ii) acknowledged and agreed that the Leased Premises is suitable for Lessee’s intended purposes, in satisfactory condition and repair, and that any improvements made on or after the Commencement Date shall be at the sole cost and expense of the Lessee and subject to Lessor’s prior written approval.

3. ENCUMBRANCES. The above-described Leased Premises is leased subject to the Master Lease, the Management Plan, as well as any existing deed restrictions, easements and rights-of-way, or other recorded liens or other encumbrances of record affecting the Premises as of the Effective Date, if any, as well as any zoning and building restrictions and government regulations now in effect or hereinafter adopted by any governmental authority.

4. TERM. The term of this Lease shall commence on the Commencement Date, and shall expire at midnight on [MM/DD/YYYY] (hereinafter “Lease Term” or “Term”) unless earlier terminated as provided herein. Notwithstanding anything to the contrary in this Lease, should the Master Lease terminate prior to the expiration date of the initial Term, or prior to the expiration of any renewal Term, this Lease shall automatically expire and terminate as of the expiration or termination date of the Master Lease, unless otherwise agreed in writing by ARRC or its successor (including, without limitation, Lessor). At the expiration of the initial Lease Term, and subject to the Master Lease and the requirements of the Whittier Municipal Code (“WMC”) Section 3.38.460, entitled “Options to Renew”, as that section may be amended, renumbered or renamed from time to time, Lessee shall have the right to extend and renew the Lease for [insert number of options] (___) successive [insert duration of each option period] (___)-year option periods (each an “option period”) provided that:

A. Lessee must not be in default under the Lease and must give Landlord written notice of its election to extend the Lease, which shall be received by Lessor not less than one hundred eighty (180) days prior to the beginning of each such

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option period; otherwise, such option, and any successive option(s), if any, shall terminate and be null and void. For purposes of clarity, and avoidance of doubt, Lessee's notice of its exercise of an option to extend this Lease shall not be effective until Landlord actually receives the notice;

B. The City Manager determines in writing that the Lessee is in full compliance with the terms of the Lease at the time of renewal;

C. The City Council, at the time the option is exercised, approves the renewal by resolution or ordinance; and

D. The Master Lease shall not have expired or terminated prior to the commencement of the renewal term, and ARRC (or its successor) consents to the renewal.

The Lessor reserves the right to renegotiate Lease terms at the end of the original initial Lease Term. Renewals shall be subject to review and approval as provided in the WMC.

5. INITIAL RENTAL RATE. Commencing on the Commencement Date of this Lease, and until the first Rent Adjustment Date, the annual base rental rate (hereinafter "Rent") for the Leased Premises shall be set at \$____ (\$____/month). Thereafter, Lessee agrees to pay base Rent based on a fixed monthly lease fee of 1/12 of a rate established by professional appraisal of ten percent (10%) of fair market value (hereinafter "FMV"). Rent shall be payable in advance on the first day of each calendar month without notice on demand. In the event any payment of Rent shall not be paid on, or before, five (5) days following the due date as provided in this Section, the delinquent amount shall be due together with interest on the delinquent amount accruing at the rate of ten and a half percent (10 1/2%) per diem, or the maximum legal rate of interest permitted by law if less, from the due date until the date of the payment. Rent shall not be withheld in whole or in part because of an offset or counterclaim by the Lessee.

6. FAIR MARKET VALUE (FMV) ADJUSTMENT. The annual base Rent payment shall be adjusted on [XX/XX/XXXX] and on the same date every five (5) years thereafter (hereinafter each "Rental Adjustment Date"); provided, however in no case shall the adjusted annual base Rent be less than the rental rate in effect on the day prior to the Rent Adjustment Date. The adjusted annual base Rent payment to be paid under the terms of this Lease shall be the appraised FMV of the leased land at the highest and best use of the Leased Premises. The highest and best use of the Leased Premises shall

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be determined without regard to Lessee's intended or actual use of the Leased Premises unless that use is coincidentally the highest and best use of the Leased Premises.

Lessor shall complete such appraisal by [Month DD] of the year prior to the Rental Adjustment Date and deliver a copy of the appraisal report to Lessee not less than ninety (90) days before each Rental Adjustment Date. Within thirty (30) days after receipt of the Lessor's appraisal, Lessee(s) shall notify Lessor that they either accept or reject the appraisal. If accepted, the adjusted Rent will be calculated effective January 1st. If rejected, the Objection Procedure in Section 7 will be followed.

7. PROCEDURE FOR FMV ADJUSTMENTS; OBJECTIONS.

A. Adjustment Procedure. To adjust the base Rent on any Rental Adjustment Date, the Lessor shall, at its own expense, retain an independent State of Alaska certified Member Appraisal Institute (hereinafter "MAI") appraiser, who shall determine the FMV of the Leased Premises, exclusive of improvements placed thereon by Lessee at any time but inclusive of all improvements made by the Lessor (including those made by the Lessor before or subsequent to this Lease). The appraiser's report shall be delivered to Lessee not less than ninety (90) days before the Rental Adjustment Date. Within thirty (30) days after receipt of the Lessor's appraisal, Lessee(s) shall notify Lessor that they either accept or reject the appraisal. If accepted, the adjusted Rent will be calculated effective [Month Date]. If Lessee timely rejects or objects to the appraisal, the objection procedure in Section 7(B) shall be followed. If Lessee fails to timely reject or object to the appraisal, the appraiser's determination of Fair Market Rental Value of the Leased Premises shall constitute a final binding determination of the Fair Market Rental Value and the adjusted annual Rent rate until the next Rental Adjustment Date.

B. Objection Procedure. If the Lessee objects to the Lessor's appraiser's determination of the Fair Market Rental Value, Lessee shall give written notice to the Lessor of Lessee's objection not less than thirty (30) days after receipt of the appraiser's report, and Lessee shall then engage an independent State of Alaska certified MAI appraiser at Lessee's expense to make an appraisal of the Fair Market Rental Value.

If Lessee's appraisal determines a Fair Market Rental Value that varies from that determined by the Lessor's appraisal by no more than twenty percent (20%), then the adjusted Rent rate shall be the average of the rental rates determined by the two appraisals. If Lessee's appraisal determines a Fair Market Rental Value that varies from the Lessor's appraisal by more than twenty percent (20%), then, unless the Lessor and Lessee agree on a rate themselves, the adjusted annual Rent rate of the Leased

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Premises shall be determined in accordance with the Arbitration Clause contained in this Lease.

Notwithstanding the above, the exercise by either the Lessor or the Lessee of the Objection Procedure relating to the Rent adjustment described in this Section shall not postpone Lessee's obligation to pay Rent at the rate established by the Lessor. Lessee shall pay the amount of Rent established or adjusted by the Lessor until the question of objection to the adjusted Rent rate is finally resolved. At such time the objection to the adjusted Rent rate is resolved, an appropriate credit or adjustment shall be made retroactive to the date of the adjusted Rent rate was established by the Lessor or in cases where the Lessor failed to obtain an appraisal or deliver the appraisal report to the Lessee, to the Rental Adjustment Date.

If, for any reason, the Lessor does not complete the appraisal or deliver a copy of the appraisal report to Lessee at least ninety (90) days before the Rental Adjustment Date, the Lessor may proceed to complete the appraisal or deliver a copy of the appraisal report to the Lessee at any time thereafter. However, any such adjusted annual Rent rate shall not be effective until the quarterly payment due date immediately following the date of the Lessor delivers the appraisal report to Lessee.

8. CONSUMER PRICE INDEX (CPI) ADJUSTMENT. For each year, the annual Rent payment shall be increased beginning January 1st in an amount that reflects the increase, if any, in the cost of living for the previous full year as stated in the Consumer Price Index, All Urban Consumers, Anchorage, Alaska Area, All Items 1967=100 (hereinafter "CPI"), as published by the United States Department of Labor, Bureau of Labor Statistics for the most recent period. In no event shall the Rent be less than the Rent in effect for the previous year. If the CPI is revised or ceases to be published, the Lessor shall instead use such revised or other index as most nearly approximates the CPI for the relevant period and make whatever adjustment in its application as may be necessary, in the Lessor's sole discretion, to accomplish as nearly the same result as if the CPI had not been revised or ceased to be published.

9. USE OF PREMISES AND PERFORMANCE REQUIREMENTS.

A. Permitted Use. Lessee's use of the premises shall be for [use of premises]. Lessee covenants the Leased Premises will be used only for the purposes directly related to the use stated above and related activities thereto and no other use whatsoever shall be made of the Leased Premises. If Lessee desires to change the nature of its business on a going-forward basis, the Lessee must give the Lessor written

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notice to allow the Lessor to set a time in which to meet with Lessee to renegotiate the terms of this Lease.

B. No Nuisance. The Lessee further covenants Lessee will neither cause, nor maintain nor permit any public or private nuisance to exist on the Leased Premises, nor will Lessee fail to maintain the land in an orderly, neat, and clean condition, free of hazard and nuisance. Trash, debris, unusable machinery, etc., will be disposed of as soon as practical. Building materials and supplies will be neatly stacked and/or stored. Lessee shall not permit storage of any equipment or material on the Leased Premises not directly related to the business of Lessee.

C. Continuous Operation; Landlord's Recapture Right. If, at any time during the term of the Lease, Lessee fails to satisfy the Operating Condition (defined below), for reasons other than Excused Closure (defined below), and such failure continues for six (6) consecutive months or more during a calendar year, then upon notice from Lessor to Lessee at any time thereafter (provided that the Operating Condition remains unsatisfied), Lessor shall have the right to terminate the Lease and to recapture the Leased Premises, without payment to Lessee, effective upon the date set forth in Lessor's termination notice (but not sooner than 30 days after the date of the termination notice).

The term "Operating Condition" shall mean and require that the entire Leased Premises is being continuously operated and regularly open for business to the general public as **[INSERT PERMITTED USE]** in accordance with the Lease, **at least on [such days and at such times that similarly situated businesses are open and operating]**.

The term "Excused Closure" shall mean (i) periods of construction, alterations, renovation, remodeling and repair of the Premises undertaken in accordance with this Lease (including repairs and restoration following damage or destruction due to fire or other casualty) provided that Lessee (A) prosecutes such work to completion with reasonable diligence, and (B) exercises its reasonable efforts to minimize the length of time of such closure; (ii) periods when Lessee cannot practicably operate its business in the Premises as a consequence of force majeure; and (iii) additional periods, not to exceed four (4) days in any Lease Year, when Lessee in its sole discretion elects not to operate its business in the Leased Premises.

10. LESSOR COSTS. Lessee will be assessed and shall pay, as additional rent, any attorney fees, survey and platting fees, and all other costs incurred by the Lessor in connection with negotiating and entering into the Lease, and in connection with any renewal(s) of the Lease or amendments. The Lessor will pro-rate and include these costs

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in the Lease rate for the first twenty-four (24) months of the first five-year period of the Lease (or during the first twenty-four (24) months of any five-year renewal period). In connection with an amendment(s), Lessee shall pay such costs within thirty (30) days of a written demand from Lessor.

11. LOCAL MANAGEMENT. Lessee agrees that the business of Lessee within or upon the Leased Premises shall have local management, and a manager or agent named by the Lessee who shall be responsible for the operations of the facility, and authorized by Lessee to make all appropriate business and management decisions insofar as those decisions relate to or bear upon Lessee's relationship with Lessor. On or before Lessee's execution hereof, Lessee shall furnish to Lessor, in writing, the name, address, and phone number of its local agent, and shall notify Lessor thirty (30) days in advance, in writing, of any change in that information.

12. CARE OF PREMISES. Lessee shall, at its own cost and expense, keep the Leased Premises and all improvements which, at any time during the term of this Lease, may be situated thereon, in good condition and repair during the entire term of this Lease, including any renewal term. In addition, Lessee shall promptly repair, in a good and workmanlike manner, any damage to the Premises or any improvements. If Lessee fails to do so or reasonably commence to do within fifteen (15) days' written notice, Lessor shall have the right to repair any such damage and Lessee shall pay to Lessor, as additional Rent, the cost of all such repairs, which shall be paid within ten (10) days of the date of any invoice from Lessor for such repair costs.

13. COMPLIANCE WITH LAWS; ENVIRONMENTAL PROVISIONS.

A. General Compliance.

i. Lessee shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter enacted in any manner affecting the Premises or the sidewalks, alleys, streets and rights-of-way adjacent thereto or any buildings, structures, fixtures and improvements or the use thereof, whether or not any such laws, ordinances or regulations, which may be hereafter enacted, involve a change of policy on the part of the governmental body enacting the same.

ii. Lessee agrees to defend, indemnify and hold Lessor harmless (a) for the consequences of any violation of such laws, ordinances and/or regulations and (b) from and against all claims for damages on account of injuries, death or property damage resulting from such violation. Lessee further agrees that they will not permit any unlawful occupation, business or trade to be conducted on said Premises or

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any use to be made thereof contrary to any law, ordinance or regulation as aforesaid with respect thereto.

B. Environmental Provisions.

i. Definitions: For purposes of this Section:

(a) “Environmental Requirement” shall mean any law, regulation, or legal requirement relating to health, safety, or the environment, now in effect or hereinafter enacted, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Toxic Substances Control Act (TSCA), the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA) and the Clean Water Act (CWA), the Occupational Safety and Health Act (OSHA) and all similar state and local laws, rules, regulations, and guidance, now in existence or hereinafter enacted, as each such law, rule, or regulation may be amended, modified or renamed from time to time.

(b) “Environmental Hazard” shall mean Hazardous Materials (as defined hereinafter), or the storage, handling, production, disposal, treatment, or release thereof.

(c) “Hazardous Material” shall mean

(i) any hazardous waste, any extremely hazardous waste, or any restricted hazardous waste, or words of similar import, as defined in the Resource Conservation and Recovery Act (42 USC §6901 *et seq.*

(ii) any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §9601 *et seq.*)

(iii) any toxic substances as defined in the Toxic Substances Control Act (15 USC §2601 *et seq.* any pollutant as defined in the Clean Water Act (33 USC §1251 *et seq.*)

(iv) gasoline, petroleum, or other hydrocarbon products or by-products

(v) asbestos

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(vi) any other materials, substances, or wastes subject to environmental regulation under any applicable federal, state, or local law, regulation, or ordinance now or hereafter in effect

(d) “Environmental Liabilities” shall mean any liability, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgments, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable attorneys' fees, reasonable consultant fees, and reasonable expert fees), arising from or based on environmental contamination or the threat of environmental contamination, or noncompliance, or violation of, any Environmental Requirement and shall include, but not be limited to, liability arising from:

(i) any governmental action, order, directive, administrative proceeding, or ruling;

(ii) personal or bodily injuries (including death) or damages to any property (including loss of use) or natural resources;

(iii) any Environmental Release; or

(iv) clean-up, remediation, investigation, monitoring, or other response action.

(e) “Environmental Release” shall mean any actual or threatened release, spill, leak, discharge, injection, disposal, or emission of any Hazardous materials into the environment.

ii. At all times during the term of the Lease, Lessee shall conduct its activities at the Premises, and shall ensure that any invitee of Lessee conducts its activities at the Premises in strict compliance with all applicable Environmental Requirements, as well as the requirements of the Master Lease.

iii. Notwithstanding any other provision of this Lease, Lessee agrees to indemnify and hold harmless Lessor, Lessor's successors and assigns, and Lessor's present and future officers, directors, employees, and agents, (collectively "Lessors Indemnitees") from and against any and all Environmental Liabilities, which Lessor or any or all of the Lessors Indemnitees, may hereafter suffer, incur, be responsible for, or disburse as a result of any Environmental Requirement or any Environmental Hazard on, at or from the Premises to the extent caused by or attributable to Lessee or Lessee's activities, or by any invitee of Lessee or by the activities of any invitee of Lessee.

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iv. The provisions of this Section shall survive the expiration or termination of this Lease.

14. TAXES AND UTILITIES. Lessee shall bear sole responsibility for and shall pay all assessments, fees, taxes (including, but not limited to real estate tax, personal property tax, sales tax, or any other tax imposed by the City) and/or charges of every kind and character imposed upon the Leased Premises or as a result of Lessee's operations under this Lease. Lessee shall also pay for all utilities furnished for its use in conjunction with the Premises, if any, including, but no limited to, power, garbage, fuel, heat, water, snow plowing and snow storage and removal and should it become necessary at any time to make installation for the purpose of furnishing said utilities, the costs thereof shall be borne exclusively by Lessee. All payments described in this Section shall be paid in full when due.

All utility use rates as established by ordinance or resolution of the City Council will be borne by the Lessee. This includes the cost of hooking up from the lot line. Electrical meters, stands, and source boxes are Lessee's responsibility.

15. IMPROVEMENTS AND ALTERATIONS. Construction of any improvements shall not be permitted without prior review and approval of construction plans by the City Manager (or other designated City representative), and only after all applicable permits and approvals have been secured and all legal requirements have been met. After the initial construction of any improvements Lessee shall have the right, from time to time, to make all such alterations and improvements to the Leased Premises as shall be reasonably necessary or appropriate in the Lessee's judgment, provided that Lessor determines, in its sole discretion, that the alteration or improvement is consistent with the Master Lease, the Management Plan, the WMC, this Lease and the use(s) permitted under this Lease. Prior to making any alteration, improvement, addition or change of the Leased Premises, the Lessee shall notify the Lessor in writing, and shall not undertake such alterations or improvements without first obtaining the Lessor's prior approval in writing.

16. REMOVAL OF FIXTURES AND IMPROVEMENTS: POTENTIAL HARBOR EXPANSION OR RENOVATION.

A. Upon abandonment, default, termination, revocation, expiration or cancellation of this Lease, the Lessee shall remove, within thirty (30) days, all structures and improvements, except those owned by Lessor, and shall restore the Premises, unless otherwise agreed upon in writing or in this Lease, to the condition which existed on the

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site prior to the Commencement Date of this Lease, at its sole cost and expense. If the Lessee fails to remove any such structures or improvements within thirty (30) days, such structures or improvements shall become the property of the Lessor, at its option, and without any obligation to pay therefore; provided, however, that will not relieve the Lessee of liability for the cost of its removal and restoration of the Premises. If Lessor elects to retain the structures or improvements, Lessee agrees to execute and deliver documents reasonably requested by Lessor to evidence a transfer of title to Lessor. The obligations imposed by this Section survive the expiration, or earlier termination or cancellation of this Lease.

B. In the event Lessor requires use of the Leased Premises for a harbor expansion, and so notifies Lessee in writing of the required relocation of its business and operations conducted pursuant to this Lease at such other reasonable location determined by Lessor, then Lessee shall remove all fixtures and improvements to the new location within ninety (90) days, or such other reasonable time period specified by Lessor. In that event, this lease shall continue in effect at the new premises for its duration, and the lease modified accordingly.

17. INSURANCE. Lessee shall procure and maintain general comprehensive liability insurance coverage in an amount of not less than Two Million Dollars (\$2,000,000.00) to cover any risk which may arise by Lessee's use of the Leased Premises. The coverage shall extend to property damage and bodily injury or death arising out of Lessee's activities under the Lease, including, but not limited to, the occupancy or use of the land and construction, maintenance and operation of the structures, facilities or equipment by Lessee.

[Optional Provisions where applicable - Should Lessee dispense alcoholic beverages on the Leased Premises with a full service beverage dispensary or similar license, as authorized by the appropriate regulatory agencies, Lessee shall obtain comprehensive liability insurance in an amount not less than Three Million Dollars (\$3,000,000.00) covering property damage and bodily injury or death arising out of Lessee's operations, including, but not limited to, the selling or dispensing of said alcoholic beverages from the Leased Premises.]

[Optional Provisions where applicable - Should Lessee dispense alcoholic beverages on the Leased Premises with a restaurant or eating place license, as authorized by the appropriate regulatory agencies, Lessee shall obtain comprehensive liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) covering property damage and bodily injury or death arising out of Lessee's operations, including, but not limited to, the dispensing of said alcoholic beverages from the Leased Premises.]

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[Optional Provision Where Applicable] – Should the Lessor determine that the Lessee engages in activities which could potentially have a significant risk of environmental contamination, a provision should be added requiring that the Lessee shall obtain not less than Two Million Dollars (2,000,000.00) in environmental impact insurance and environmental impact insurance and environmental clean-up policy, or the equivalent, subject to the review and approval by the City Manager of the City of Whittier (the “City Manager”).]

Such other policies of insurance in such types and amounts as Lessor may reasonably request during the Term.

All such insurance coverage required under this Section shall be issued by insurance companies reasonably acceptable to the Lessor, and shall name Lessor as additional insured and provide for specific coverage of Lessee’s contractually assumed obligation to indemnify the Lessor. All insurance policies shall be written as primary policies and shall not be contributing with or be in excess of any coverage that Lessor may carry. Lessee shall furnish copies of certificates evidencing insurance coverage of the Leased Premises prior to execution of this Lease, and annually thereafter, and upon any change in insurance provider or insurance coverage. The insurance policies required by this Section shall contain a specific provision or rider providing that coverage will not be cancelled or provisions changed or deleted without first providing thirty (30) days’ written notice to the Lessor. The amounts of insurance shall be adjusted and increased periodically by Lessor during the Term of the Lease to account for changing market and economic conditions.

18. LIENS. Lessee will not permit any mechanics, labor or materialman liens to stand against the Leased Premises for any labor or material furnished to Lessee or claimed to have been furnished to Lessee, or to Lessee’s agents, contractors or sublessee, 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 Lessee, provided however, that Lessee shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Lessee shall give to Lessor reasonable security as may be demanded by Lessor to insure payment thereof, and prevent any sale, foreclosure or forfeiture of the Premises or improvements by reason of such non-payment. Lessee will immediately pay a judgment rendered with all proper costs and charges, and shall have such liens released or judgments satisfied at Lessee’s own expense. Landlord shall have the right to enter the Premises and post notices of non-responsibility.

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19. INDEMNIFICATION. Lessee shall defend, indemnify and hold the Lessor and its authorized representatives, agents, officers, and employees harmless from and against any and all actions, suits, claims, demands, penalties, fines, judgments, liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorney's fees, court costs, litigation expenses, and consultant and expert fees) resulting from, arising out of, or related to Lessee's occupation or use of the Premises or the occupation or use of the Premises by Lessee's employees, agents, servants, customers, contractors, subcontractors, permitted sub-lessees or invitees, including but not limited to all claims and demands arising out of any labor performed, materials furnished, or obligations incurred in connection with any improvements, repairs, or alterations constructed or made on the Premises and the cost of defending against such claims, including reasonable attorney fees. In the event that such a lien is recorded against the Premises, Lessee shall, at Lessee's sole expense within ninety (90) days after being served with written notice thereof, protect the Lessor against said lien by filing a lien release bond or causing the release of such lien, and providing the Lessor with proof of the same. The indemnities provided by this Section shall survive termination of this Lease.

20. CONDEMNATION. If the whole or any part of the Leased Premises shall be taken for any public or quasi-public use, under any statute or by right or eminent domain or private purchase in lieu thereof, by public body invested with the power of eminent domain, then, when possession shall be taken thereunder of the Leased Premises, or any part thereof, the following provisions shall be operative.

A. **Taking of all Premises.** The Term herein demised and all rights of Lessee hereunder shall immediately cease and terminate and the rent shall be adjusted as of the time of such termination so that Lessee shall pay rent up to the time of taking only; provided, however, that Lessee shall be entitled to that portion of the award attributable to the value of the buildings or improvements put up by Lessee with its own funds.

B. **Taking of Substantial Part of Premises.** If the taking reduces the ground area of the Leased Premises by at least fifty percent (50%) and materially affects the use being made by the Lessee of the demised premises, Lessee shall have the right, by written notice to Lessor, through certified mail, no later than thirty (30) days after possession shall be taken, to elect to terminate this Lease. If the election to terminate is made, the provision of (a) of this Section relating to the taking of the whole shall govern. If election to terminate is not made or if there is a taking of an insubstantial part of the Premises, the following shall govern: (1) the Lease shall continue; (2) the Lessor shall be entitled to the full condemnation proceeds except the portion thereof attributable to the

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value of the buildings or improvements put up by Lessee; and (3) Rent shall remain the same.

21. ASSUMPTION OF RISK. The Premises is located on or near tidelands owned by the City. Tsunami, rising waters, high winds, earthquakes and other hazards are natural phenomena or acts of god in the area that present risks which the Lessee knowingly and intentionally assumes.

22. SIGNAGE. No signs or advertising devices shall be erected on the area covered by this Lease without prior approval of Lessor, as to location, size, color and message. All signage shall conform with the requirements of the WMC. Erected signs shall be maintained or renewed as necessary to neat and presentable standards and said signs shall relate directly to the business of Lessee.

23. QUIET ENJOYMENT. Provided Lessee is not in default hereunder, Lessor covenants that Lessee shall have peaceful and quiet enjoyment of the Leased Premises without hindrance on the part of the Lessor, and the Lessor will warrant and defend Lessee in the peaceful and quiet enjoyment of the Leased Premises.

24. NOTICES. All notices or other communications required or permitted under this Lease shall be in writing and shall be transmitted: by personal (hand) delivery, with written record of delivery made contemporaneous to the delivery (which may be made by the sender); by electronic mail (e-mail), with electronic confirmation of delivery generated by the receiving computer system; by registered or certified mail, return receipt requested; or by a commercial courier service that maintains a written record of delivery.

Until changed as provided for herein, all such notices shall be sent to the following respective addresses:

Lessor:

City of Whittier
Attn: City Manager
P.O. Box 608
Whittier, AK 99693

Lessee:

[Lessee Name]
Attn: [Business Entity Name]
[Business Entity Mailing Address]
[Business Entity Email Address]

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A notice shall be effective and deemed delivered: (i) if by personal delivery or commercial courier service, on the date of delivery if delivered during normal business hours or on the next business day following delivery if delivered after normal business hours; (ii) if by electronic mail, on the day sent if sent before or during normal business hours, and on the next business day if sent after normal business hours; and (iii) if by mail, three (3) days after mailed.

25. DEFAULT.

A. Default Defined. Each of the following events shall be deemed a default by Lessee and a material breach of this Lease:

1. Failure to pay the Rent, Additional Rent, or any other payment provided or required in this Lease, or any part thereof, for a period of ten (10) days after it is due;

2. Failure to provide or maintain in effect insurance in compliance with Section 17 of this Lease;

3. Failure to do, observe, keep, or perform any other term, covenant, condition, agreement, or provision contained in this Lease for a period of thirty (30) days after written notice of such failure is sent by Lessor, or, in the case of a default not reasonably susceptible of being cured within thirty (30) days (which does not include any default which may be cured by the payment of money), failure to commence promptly and proceed diligently and in good faith to cure within a total of sixty (60) days after the sending of the notice; and

4. The abandonment of the Premises by Lessee, the making by Lessee of a general assignment for the benefit of creditors, the filing of a voluntary or involuntary petition by or against Lessee under any provision of the U. S. Bankruptcy Code, or the appointment of a permanent or temporary receiver for Lessee's property, which is not vacated or set aside within thirty (30) days of the sending of written notice of such event by Lessor.

B. Lessor Remedies on Default. In the event of any default by Lessee, Lessor may:

1. Terminate this Lease in accordance with Section 25(C) of this Lease;

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2. Re-enter the Premises without terminating the Lease in accordance with Section 25(D) of this Lease;
3. Perform any act required under this Lease to be performed by the Lessee and recover the cost thereof as provided in Section 25(E) of this Lease,
4. Recover damages in accordance with Section 25(F) of this Lease; and
5. Obtain any other remedy provided at law or in equity, including but not limited to, injunctive relief.

The remedies given to Lessor in this Section 25(B) are cumulative and may be exercised concurrently in any combination without regard to the consistency thereof.

C. Termination. In the event of default by Lessee, Lessor may send a written notice to Lessee stating that Lessor elects to terminate this Lease upon a specified date not less than thirty (30) days after the date of the sending of such notice at which date this Lease shall terminate unless the default is cured within the applicable period provided in the notice of termination. Upon termination, all interest of Lessee in the Premises shall expire and Lessor shall have the right to immediate possession and damages as provided herein.

D. Re-entry. In the event of a default by Lessee, Lessor may send a written notice to Lessee stating that Lessor elects to re-enter the Premises without terminating this Lease upon a specified date not less than thirty (30) days after the date of the sending of the notice. Lessor may on that date or at any time thereafter, re-enter and resume possession of the Premises or any part thereof, and remove all persons and property therefrom, either by a suitable action or proceeding at law, or otherwise, without being liable for any damages therefore. No re-entry by Lessor shall be deemed an acceptance of surrender of this Lease or a liquidation or satisfaction to any extent whatsoever of Lessee's liability to pay Rent or Additional Rent as provided herein. Lessor may in its own name, but as agent for Lessee, relet the whole or any portion of the Premises for any period equal to or greater or less than the remainder of the Term, for any sum which it may deem appropriate, and in connection with any such lease Lessor may make such changes in character of the improvements on the Premises as Lessor may determine to be appropriate or helpful in effecting such lease. However, in no event shall Lessor be under any obligation to relet the Premises for any purpose which Lessor may regard as injurious to the Premises, or to any Lessee which Lessor, in the exercise

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of its sole discretion, shall deem to be objectionable. Lessor may, at any time after re-entry, terminate this Lease in accordance with Section 25(C) of this Lease.

E. Lessor's Right to Perform. In the event of default by Lessee, Lessor, at Lessor's sole discretion, may cure such default on behalf of Lessee for the account and at the expense of Lessee, in which event Lessee shall reimburse Lessor for all sums paid to effect such cure, together with interest at the greater of the rate of ten and a half percent (10.5%) per annum, or the maximum legal interest rate permitted by statute if less, as well as reasonable attorneys' fees arising from Lessee's default. In order to collect such reimbursement, Lessor shall have all the rights and remedies available under this Lease for a default in the payment of Rent and any other Additional Rent.

F. Damages. In the event of default by Lessee, Lessor shall have the right to recover from Lessee at any time:

1. An amount equal to all sums required hereunder to be paid by Lessee under this Lease, including but not limited to sums paid by the Lessor pursuant to this Lease;

2. An amount equal to all expenses, if any, incurred by Lessor in recovering possession of the premises and all costs and charges for the care of the Premises while vacant;

3. In the event of termination of this Lease by Lessor pursuant to Section 25(C) of this Lease, an amount equal to the difference between the value discounted to date of termination of the Rent hereunder for the term of the Lease remaining if Lessor had not terminated, and the value discounted to the date of termination of the net rent which Lessor might reasonably expect to receive from the Premises for the balance of the term remaining if Lessor had not terminated, including but not limited to a reasonable allowance for vacancies, and all actual expenses of Lessor which amount would be due and payable by the Lessee pursuant to this Lease;

4. In the event of re-entry by Lessor pursuant to Section 25(D) of this Lease, either before or without termination thereafter, an amount equal to the amount of all Rent provided by this Lease less the next rent, if any, collected by Lessor on reletting the Premises allowing for all actual expenses of Lessor which amount would be due and payable by the Lessee pursuant to this Lease; and

5. All reasonable attorneys' fees and costs incurred by Lessor in any proceeding to enforce this Lease, exercise any remedy hereunder, or collect on any

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judgment.

26. ARBITRATION CLAUSE. The disputes arising under the terms of this Lease, except for disputes relating to or concerning the payment or non-payment of any Rent, additional rent or other amounts due under the Lease (and/or the enforcement of remedies relating to such payment or non-payment issues) shall be subject to arbitration. Such arbitration ("Arbitration") shall be in accordance with the Arbitration Rules for the promulgated by the American Arbitration Association as then in effect, each party to appoint one arbitrator and those two arbitrators to appoint a third arbitrator. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, subject, however, to the provisions of AS 09.43.010 et seq. (the "Alaska Uniform Arbitration Act") which are not in conflict with said Rules; provided, however, if such Association is not then functioning or such Rules are not then in effect, Arbitration shall be conducted in accordance with the requirements of the Alaska Uniform Arbitration Act, or such other provisions of the statutory laws of the State of Alaska as may be enacted in lieu of the Alaska Uniform Arbitration Act, one arbitrator to be appointed by each of the parties hereto, and those two arbitrators to promptly appoint a third arbitrator. All such arbitration proceedings shall take place in Anchorage, Alaska. In any such arbitration proceeding, each party shall have full access to the books and' records of the other party and the power to call for testimony any employee, agent or officer of any other party and all other rights to discovery afforded under the then applicable Alaska Rules of Civil Procedure or rules or laws applicable to Alaska Superior Court proceedings adopted in lieu thereof, shall be applicable, all of which shall be fully enforceable by the arbitrators or, if they fail to effect such enforcement, by the Superior Court of the State of Alaska at Anchorage, Alaska.

27. COSTS UPON DEFAULT. In the event either party defaults in the performance of any of its obligations under this Lease and an action shall be brought for the enforcement thereof, the defaulting party shall pay to the other all the expenses incurred therefore, including reasonable attorneys' fees.

28. RIGHTS AND REMEDIES. Except insofar as this is inconsistent with or contrary to any provision of this Lease, no right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, as now or hereafter existing at law or in equity or by statute.

29. WAIVER AND FORBEARANCE. Except to the extent that Lessor may have otherwise agreed in writing, no waiver by Lessor of any breach by Lessee of any of its

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obligations or agreements or covenants hereunder, shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation, nor shall any forbearance by Lessor to seek remedy for any breach of Lessee be deemed a waiver by Lessor of its rights and remedies with respect to such breach.

30. INSPECTION. Lessee agrees to permit Lessor and its agents to enter on the Premises or any part thereof, at all reasonable hours, upon twenty-four (24) hours' notice, for purposes of examining or exhibiting same or making such repairs or alterations as may be necessary for safety or preservation thereof.

31. SUCCESSORS IN INTEREST. This Lease shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

32. ASSIGNMENT OR SUBLETTING. Except as set forth in this Section, Lessee may not assign or sublet the Leased Premises, or any part thereof, without the prior written consent of Lessor to such subletting or assignment. Lessee's request to assign or sublease must be in writing and must show the name and address of the proposed assignee or sublessee, as well as the financial history and operating plan of said assignee or sublessee, and are subject to the provisions of Whittier Municipal Code ("WMC") then in effect and approval by the Whittier City Council, including, without limitation WM 3.58.520. Any assignment or subletting without Landlord's written consent shall be absolutely void, not just voidable, and, at Landlord's election, shall constitute a default. If Lessee is not a natural person, the term "assignment" shall include, but not be limited to, any change in the structure of or the ownership of Lessee whereby ownership or control of the affairs of Lessee is transferred to persons other than those exercising such control on the Amendment Date. No assignment shall be approved unless the rental rate is at or above the fair market value for the Leased Premises at the time the assignment is executed.

If Lessee requests a proposed assignment or subletting, Lessor must first consent prior to the conveyance by Lessee to any subsequent assignee or sublessee, and Lessee shall reimburse Landlord, whether or not consent is ultimately given, for any legal fees or other expenses Landlord incurs in connection with such request.

In the event that the Rent due and payable by any permitted sublessee or assignee exceeds the Rent payable under this Lease, then Tenant shall be bound and obligated to pay Landlord, as additional rent hereunder, one-hundred percent (100%) of all such excess Rent within ten (10) days following receipt thereof by Tenant, unless a lesser amount is approved by the Lessor in writing prior to the assignment or subletting. Lessee agrees to provide the City with access to any and all records related to the rent paid by

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any permitted assignee or sublessee and the terms and conditions of any permitted assignment or sublease.

33. HOLDING OVER. If Lessee fails to surrender the Leased Premises at the expiration or earlier termination of this Lease, occupancy of the Leased Premises after the termination or expiration shall be that of a tenancy at sufferance. Lessee's occupancy of the Leased Premises during any holdover shall be subject to all the terms and provisions of this Lease and Lessee shall pay a rent amount (on a per month basis, on the first day of the month, without reduction for partial months during the holdover) equal to 150% of the sum of the base Rent due for the period immediately preceding the holdover. No holdover by Lessee or payment by Lessee after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Lessor from obtaining immediate recovery of possession of the Leased Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Lessor shall have all the rights and remedies provided for by law and this Lease, including the right to recover consequential damages suffered by Lessor as a result of Lessee's holdover.

34. CORPORATE STATUS; PAYMENT OF CITY TAXES; OBTAINING CITY BUSINESS LICENSE. Lessee shall, prior to execution of this Lease, provide to Lessor a copy of its Certificate of Incorporation and evidence that it is in good standing with and licensed to do business in the State of Alaska, and it hereby covenants that it shall at all times remain in good standing with the State during the term of this Lease.

Lessee hereby further acknowledges its obligations under the WMC to obtain and keep current a business license and pay local taxes when due. Failure to comply with such obligations in a timely manner shall be considered a default of this Lease.

35. ANTI-DISCRIMINATION CLAUSE. During the performance of this Lease, the Lessee agrees:

A. In connection with the performance of work under this Lease including construction, maintenance and operation of the facility, the Lessee will not discriminate against any employee or application from employment because of age, race, color, religions, sex or national origin.

B. The Lessee and its employees shall not discriminate, by segregation or otherwise, against any person on the basis of race, color, religion, sex or nationality by curtailing or refusing to furnish accommodations, facilities, services or use privileges offered to the public generally.

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C. The Lessee shall include and require compliance with the above non-discrimination provisions in any subcontract made with respect to the operations under this Lease.

36. VENUE; CONTROLLING LAW. This Lease and the rights and obligations of the Parties shall be interpreted, construed and enforced in accordance with the Laws of the State of Alaska and the Parties hereby irrevocably consent to the jurisdiction of such state with venue in Anchorage, Alaska.

37. SEVERABILITY. If any clause or provision herein contained shall be adjudicated to be invalid, it shall not affect the validity or effect of any other clause or provision of this Lease, nor constitute any cause of action in favor of either party as against the other.

38. COUNTERPARTS. Lessor has delivered a copy of this Lease to Lessee for Lessee's review only, and the delivery of it does not constitute an offer to Lessee nor an option. This Lease shall not be effective against any party if and until an original copy of this Lease has been signed by such party (and with regard to the City, this Lease shall not be effective unless or until approved by the City Council for the City of Whittier). Without limiting the foregoing, 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. Signatures appearing by facsimile, email or other electronic means shall be deemed originals, and enforceable as such.

39. NO THIRD-PARTY BENEFICIARIES. The Parties to this Lease do not intend to create any rights under this Lease that may be enforced by third parties for their own benefit or the benefit of others.

40. SUBORDINATION TO MORTGAGES. Lessee acknowledges and agrees that this Lease, and all rights of Lessee hereunder, are and shall at all times be subject and subordinate to the lien of any mortgage, deed of trust, or other security instrument (collectively, "Mortgage") now or hereafter placed upon the Premises by Lessor, and to all renewals, modifications, consolidations, replacements, and extensions thereof. Lessee shall, upon request by Lessor or any mortgagee of Lessor, execute and deliver any instruments reasonably required to evidence such subordination. In the event of foreclosure or other enforcement of any Mortgage, Lessee agrees to attorn to and recognize the purchaser or successor-in-interest as Lessor under this Lease, provided that such party assumes Lessor's obligations hereunder from and after the date of acquisition.

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41. ESTOPPEL CERTIFICATES. Lessor and Lessee shall each, within ten (10) days after receipt of a written request from the other, execute and deliver an estoppel certificate to those parties as are reasonably requested by the other (including a party's mortgagee or prospective purchaser). The estoppel certificate shall include a statement certifying that this Lease is unmodified (except as identified in the estoppel certificate) and in full force and effect, describing the dates to which Rent and other charges have been paid, representing that, to such Party's actual knowledge, there is no default (or stating the nature of the alleged default) and indicating other matters with respect to the Lease that may reasonably be requested.

42. FORCE MAJEURE. Whenever a time period is prescribed for either Lessor or Lessee to fulfill an obligation, the time period for the obligation will be extended by the number of days that the performance is delayed due to strikes, acts of God, shortage of labor or materials, war, civil disturbances, and other causes beyond the reasonable control of the performing party ("Force Majeure"); provided, however that a Force Majeure event shall not extend any time period for paying Rent, Additional Rent, or other sums payable by either party under this Lease. The party claiming to be affected by Force Majeure shall notify the other party no later than seven (7) days after the occurrence of the Force Majeure event, otherwise the affected party shall be deemed to have waived the claimed Force Majeure and shall be required to perform. The party claiming to be affected by Force Majeure shall also take reasonable steps to minimize the damage caused by the Force Majeure. If the Force Majeure lasts longer than sixty (60) days, and the parties fail to reach a resolution to continue to perform this Agreement, the party to whom performance is owed shall have the right to terminate this Agreement by giving written notice to the other party.

43. INTEGRATION AND MODIFICATION. This document contains the entire agreement of the Parties hereto. All negotiations, statements, or representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this Lease, and the performance of either party hereto, are merged and integrated into the terms of this document. This Lease may not be modified or amended except by writing signed by both parties hereto, and any purported amendment or modification is without effect until reduced to a writing signed by both parties hereto.

44. MEMORANDUM OF LEASE. This Lease shall not be recorded. The Parties shall execute in suitable form for recordation of a memorandum of this Lease ("Memorandum of Lease"), which shall contain the information required by AS 40.17.120 (as the same may be amended), which shall be recorded. The costs of preparing and recording such Memorandum of Lease shall be paid by Lessee. Upon the expiration or earlier termination of this Lease, Lessee shall promptly execute and deliver to Lessor an

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instrument, in recordable form, terminating the Memorandum of Lease, which shall be in a form reasonably agreeable to Lessee and Lessor, and which may be recorded by Lessor at its sole cost and expense, which obligation shall survive the expiration or termination of the Lease. Lessee hereby irrevocably appoints Lessor, and Lessor's duly authorized agents, as Lessee's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge, and deliver on Lessee's behalf any and all documents necessary to evidence the termination, release, or discharge of the Memorandum of Lease recorded in connection with this Lease, following the expiration or earlier termination of the Lease. This power of attorney is coupled with an interest, shall be binding upon Lessee and Lessee's successors and assigns, and shall survive the termination of this Lease for the limited purpose of effecting such termination of record.

(SIGNATURES ON FOLLOWING PAGE)

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IN WITNESS WHEREOF, the Parties hereunder execute this Lease Agreement the day and year first hereinabove written.

LESSOR:
CITY OF WHITTIER

DATED: _____

By: Jackie Wilde
Its: City Manager

LESSEE:
[BUSINESS ENTITY NAME]

DATED: _____

By:
Its:

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared _____, known to me to be the _____ of the CITY OF WHITTIER, and acknowledged that he/she/they executed the foregoing document on behalf of the CITY OF WHITTIER, Alaska pursuant to the authority of the City Council.

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

Notary Public in and For the State of Alaska
My Commission Expires: _____

Notary Public in and For the State of Alaska
My Commission Expires: _____

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EXHIBIT A

(Master Lease)