

LAND LEASE

THIS AGREEMENT is made on the date last below signed between the Petersburg Borough, a municipal corporation organized and existing under the laws of the State of Alaska, whose mailing address is P. O. Box 329, Petersburg, Alaska 99833, hereinafter referred to as the "Lessor" or "Borough", and Alaska Yacht and Vessel Services, an Alaska company whose mailing address is P.O. Box 1875, Petersburg, Alaska 99833, hereinafter referred to as the "Lessee(s)."

RECITALS

WHEREAS, the real property subject to this lease lies within the boundaries of the Petersburg Borough, Alaska, First Judicial District, Petersburg Recording District; and

WHEREAS, Lessor holds title to such real property; and

WHEREAS, the particular tract subject to this lease has been nominated for lease by an application of Lessee(s)' demonstrating: (1) the proposed use of the nominated parcel is a beneficial use in terms of highest and best use; and (2) it is in the Borough's interests to lease the nominated parcel; and

WHEREAS, Lessee(s) has submitted an application showing: (1) the purpose of the proposed lease; and (2) whether the intended use complies with the zoning ordinance and the comprehensive plan of the Borough; and

WHEREAS, this lease contains restrictions and reservations as are necessary to protect the public interest; and

WHEREAS, Lessee(s) desires to lease the parcel described herein for the purpose of: a commercial marine vessel services area for boat repair and refinishing.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

ARTICLE 1 – Demise and Description of Premises

Section 1.1: Demise and Description. Lessor hereby leases to Lessee(s) the premises, ("demised premises,") 3000 s.f. of useable land of the Turnaround Subdivision, located in the Petersburg Recording District more particularly described as Lease Lot 2SB on the attached Exhibit A, entitled Steve Berry Lease Plat., Petersburg, Alaska.

ARTICLE 2 – Term of Lease

Section 2.1: Term. The term of this lease shall be for a period of five (5) years, commencing on August 1, 2014 and ending at midnight on July 31, 2019.

Section 2.2: Renewal. This lease may not be renewed at the option of Lessee(s), but at the written mutual consent of both lessee and lessor on agreed upon new terms.

ARTICLE 3 – Rent

Section 3.1: Rent. Lessee(s) shall pay to Lessor rent for the demised premises at the annual rate of \$1,290.00 during the term of this lease. Rent owed for the first year of this lease shall be paid in a single payment upon execution of this agreement. Rental payments shall be due and owing, without the submittal of an invoice by the Borough, on the anniversary date each year of the execution of this agreement.

Section 3.2: No Rent Adjustment. The annual rental rate payable pursuant to this lease shall not be subject to adjustment by the Assembly on every fifth anniversary of the lease. The annual rent shall remain at the current assessed value of the demised premises and any improvements owned by the Borough (Twelve Thousand Nine Hundred Dollars), adjusted by the rental rate percentage of ten percent (10%).

ARTICLE 4 – Use of Premises

Section 4.1: Tenant Must Use Best Management Practices. It is the Petersburg Borough's goal to ensure that use of this facility is done in an environmentally responsible manner. **IN THE EVENT THE LESSOR DETERMINES THAT THE BMPs (Best Management Practices) ARE NOT BEING FOLLOWED, THE PROJECT IN QUESTION WILL BE SHUT DOWN UNTIL IT IS DETERMINED THAT THE PROJECT IS IN COMPLIANCE WITH THE BMPs.**

Best Management Practices that will be a factor in this lease are described in subsections 1 through 5 immediately below:

1. General Practice BMP's

- a) Lessee and Lessee's patrons are responsible for the work area around their boat or leased work areas, and for the actions of anyone assisting. Work areas are to remain clean, safe and orderly.
- b) Vessels entering yard must be placed on a tarp. The tarp under the vessel is to catch all debris and dust from such activities as sanding, grinding, scraping, painting, wood planing, or any other activity which may contaminate the soil.
- c) All items from projects must be kept on the tarp. Piling debris off of tarp will not be allowed. Oily or greasy items (for example, but not limited to, engines) must be on pallets, and totally covered by a tarp to keep the rain off.
- d) Tarps must be swept and the debris deposited into the dumpster. Alternatively, dispose of the whole tarp after careful folding to contain all dust and debris. To avoid windblown debris and dust, sweep more often. It is recommended to sweep and dispose of debris at the end of each day.
- e) All used sandpaper, cans, brushes, etc. must be cleaned up and deposited in the dumpster on a daily basis.
- f) All spray painting, sandblasting, and sanding shall be controlled with structures or drapes to the maximum extent to minimize the spreading of windblown materials.
- g) Windy conditions will require some activities to be delayed until containment can be effective.
- h) Airborne pollution is not permitted from any maintenance activity.

2. Sandblasting

- a) Projects being sandblasted will be controlled with structures or tarps to the maximum extent practical.
- b) Sandblasting site must be cleaned daily.
- c) Sandblasting material must be swept or vacuumed. No water will be allowed to clean up sandblasting debris.
- d) All sandblasting material, new and used must be kept contained off of the ground and covered from rain to prevent being introduced to the environment.

- e) All sandblasting debris must be disposed of according to State and Federal Regulations.

3. Paint Management

- a) The use of paints and solvents shall be carried out in such a manner so as to prevent these products from entering the soil or water if accidentally spilled.
- b) Drip pans, drop cloths, tarpaulins or other protective devices shall be required for all paint mixing and solvent use operations.
- c) Paint cans shall be kept in drip pans with drop cloths or tarps underneath the drip pan.
- d) Paint and solvent spills shall be treated as oil spills and shall be prevented from reaching the ground, in order to avoid the spills reaching the storm drains and subsequently discharge into the water.
- e) Anti-fouling paints containing tributyltin (TBT) are prohibited from use on any vessel. Exception per Alaska Statute is as follows: slow-leaching TBT-based marine antifouling paint may be imported into and sold in the state. A slow-leaching TBT-based marine antifouling paint may be applied in the state only to aluminum vessel hulls and lower outboard drive units.
- f) Empty cans must be allowed to dry, and then thrown into dumpster.
- g) Projects being spray painted will be controlled with structures or tarps to the maximum extent practical.

4. Toxic Materials Storage

- a) Solid chemicals, chemical solutions, paints, oils, solvents, acids, caustic solutions and waste materials, including used batteries and their contents shall be stored in a manner which will prevent inadvertent entry of these materials into the water or onto the ground. Storage shall be in a manner which will prevent spillage by overfilling, tipping, or rupture.
- b) Keep all hazardous materials in the original container. Make sure the container labels remains in place. Keep the containers in areas where they will not get knocked over. Keep the containers in areas that have good ventilation.
- c) Keep all containers out of the reach of children.

- d) Incompatible or reactive materials shall be segregated and securely stored in separate areas that prevent mixing of chemicals.
- e) Waste liquids and excess chemical products shall be stored under cover such as tarps or roofed structures. When ready for disposal these hazardous materials shall be taken to the Household Hazardous Waste facility. These materials shall not be disposed of in the dumpsters or sewer or water.

5. Bilge Water and Waste Oil

- a) Bilge pumps must be turned off prior to being hauled out of the water.
- b) In the event of an accidental discharge of oil into waters or onto land, the Harbor Department staff should be notified immediately.
- c) Cleanup efforts shall commence immediately and be completed as soon as possible, taking precedence over normal work, and shall include proper disposal of any spilled material and used cleanup materials.
- d) Drip pans or other protective device shall be required for all petroleum product transfer operations to catch incidental spillage and drips from hoses, drums, or portable containers.
- e) Leaking connections, valves, pipes, hoses and equipment shall be repaired or replaced immediately. Hydraulic hoses and connections to deck gear seem especially vulnerable to accidental discharges.

Section 4.2: Use of Premises. The demised premises are to be used only for: a commercial marine vessel services area for boat repair and refinishing. All services provided at or from the leased premises must be in accord with the "Best Management Practices" as outlined in subsection 4.1 of this lease.

Section 4.3: Compliance with Law. Lessee(s) shall comply with and abide by all federal, state, municipal and other governmental statutes, laws, ordinances, rules and regulations affecting the demised premises, the improvements thereon or any activity or condition on such premises.

Section 4.4: Uses Prohibited. This lease grants to Lessee(s) only the surface use of the demised premises. Lessee(s) shall not use, or permit the demised premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which the demised premises are hereby leased; and no use shall be made or permitted to be made of the demised premises, or acts done, which may be considered ultra-hazardous on account of fire or otherwise. Any use not authorized by this lease shall constitute a trespass against the Lessor. No fuel storage shall be allowed on the demised premises other than in

approved fuel tanks. Power washing of any vessel or vehicle is prohibited, unless appropriate containment and treatment facilities are compliant with Alaska Department of Environmental Conservation regulations.

Section 4.5: Waste and Nuisance Prohibited. Lessee(s) shall not commit, or suffer to be committed any waste on the demised premises, or any nuisance. Lessee(s) shall not use or occupy the premises for any unlawful purpose.

Section 4.6: Environmental and Water Quality Protection. The Borough shall have the lease area tested, at the Borough's expense and to the Borough's specifications, to determine if any ground contamination exists, or to what degree contamination may already exist, prior to lessee using the land. These initial test results will be the basis used for determining any future change in environmental and water quality.

(a) If the Borough has cause to believe that environmental or water quality damage has occurred or is threatened, above the levels determined in the base test results, the Borough may give 24 hours notice of such damage or threatened damage after which time, unless the Borough and Lessee(s) mutually agree otherwise, the Borough shall have the right to require the Lessee(s), or its employees, representatives and agents to cease operations immediately and require Lessee(s) to take immediate action, pursuant to its oil spill contingency plan, if applicable, to correct or eliminate said damage or threat thereof. Failure of Lessee(s) to comply with such requests will be treated as a material breach of this agreement, entitling the Borough to terminate this agreement as provided. The Borough's rights under this provision shall not be construed as creating an obligation on the Borough's part to provide for any inspection as to environmental practices, it being agreed that compliance is the sole responsibility of Lessee(s).

(b) Liability for any environmental or water quality damage that is caused by Lessee(s) or its employees, agents and representatives shall be borne by and at the sole expense of Lessee(s). If Lessee(s) fails or refuses to correct or repair said damage pursuant to the Borough's oil spill contingency plan, or other state or federal cleanup regulation that may apply, within a reasonable time, then after reasonable notice to Lessee(s), the Borough shall have the right to contract with any party to correct said condition and collect payment from Lessee(s) for all actual costs of said correction or repair.

(c) In addition to the Borough's right to indemnification as stated herein, Lessee(s) shall indemnify and hold the Borough harmless for any and all civil or criminal liabilities or penalties, including costs of defense, resulting from Lessee's acts or omissions which cause, threaten or are alleged to cause or threaten, environmental or water quality damage, or sanctions to be incurred because of environmental or water quality damages.

Section 4.7: Utilities. Lessee(s) shall fully and promptly pay all costs associated with public services used by Lessee(s), for example, power and any

other utilities of any kind furnished to the demised premises throughout the term hereof, and all other similar costs and expenses of any kind whatsoever, arising from the use, operation and maintenance of the premises and all activities conducted thereon.

ARTICLE 5 – Improvements

Section 5.1: Required Improvements. No improvements are required as a condition of this lease. However, any improvements made by the Lessee(s) shall comply with all federal, state, municipal and other governmental statutes, laws, ordinances, rules and regulations.

Section 5.2: Proper Placement of Improvements. Lessee(s) shall bear all responsibility for the proper placement of improvements on the demised premises, so as to avoid any encroachment on other lands of the Lessor or on lands owned or leased by another.

Section 5.3: Maintenance of Improvements. Lessee(s) shall, throughout the term of this lease, at their/his own cost, and without any expense to Lessor, keep and maintain the premises, including all improvements of any kind which may be or become a part thereof, in good, neat, clean and sanitary order, condition and repair. Lessor shall not be obligated to make any repairs or replacements of any kind, nature or description, whatsoever, to the demised premises or to any improvements thereon.

Section 5.4: Avoidance of Pollution. Lessee(s) shall not pollute the waters or real property that is the subject of this lease. Any pollution by Lessee (s) shall be considered a material breach of this lease.

Section 5.5: Damage to and Destruction of Improvements. The damage, destruction, or partial destruction of any improvement on the demised premises shall not release Lessee(s) from any obligation hereunder, except as hereinafter expressly provided. In the event the improvements on the demised premises are destroyed to such an extent as to be rendered untenable by fire, storm, earthquake, or other casualty, Lessee(s) may elect to terminate this lease by providing Lessor with written notice within thirty (30) days of the destruction of the improvements. Should Lessee(s) elect to so terminate this lease, such termination shall be effective thirty (30) days after such notice.

Section 5.6: Removal or Reversion of Improvements Upon Termination. At the election of the Lessor, upon termination of this lease, improvements and/or personal property located on the demised premises and owned by Lessee(s) may revert to and absolute title shall vest in, Lessor, or within sixty (60) calendar days after termination of this lease, may be removed by Lessee(s), provided, that the Assembly may extend the time for removing improvements in cases where hardship is proven. The retiring Lessee(s) may, with the consent of the

Assembly, sell their improvements to any succeeding Lessee(s). All periods of time granted Lessee(s) to remove improvements and/or personal property are subject to Lessee's payment to the Lessor of pro rata lease rentals for said periods. If any improvements and/or personal property are not removed within the time allowed, such improvements and/or personal property shall either remain the property and responsibility of Lessee(s) or shall revert to, and absolute title shall vest in, Lessor, at the election of Lessor. Should Lessor elect to treat said improvements and/or personal property as continuing within the ownership and control of Lessee(s), said improvements may be removed at the expense of Lessee(s) and under the direction of Lessor after reasonable notice from Lessor to Lessee(s). Should Lessor elect that said improvements and/or personal property revert to Lessor, Lessor shall provide reasonable notice to Lessee(s) of said election.

Section 5.7: Repair of Premises. If Lessee(s) removes any improvements and/or personal property from the demised premises upon termination of this lease, Lessee(s) shall, at their/his own expense, repair any injury to the premises resulting from such removal.

ARTICLE 6 – Encumbrances

Section 6.1: Lessee(s) to Keep Premises Free of Liens. Lessee(s) shall keep the demised premises and every part thereof and all improvements at any time located thereon free and clear of any and all mechanics, material men's and other liens arising out of or in connection with work or labor done, services performed, or repairs or additions which Lessee(s) may make or permit or cause to be made, or any work or construction, by, for, or permitted by Lessee(s) on or about the premises, or any obligations of any kind incurred by Lessee(s). Lessee(s) agrees, at all times promptly and fully to pay and discharge any and all claims on which any such lien may or could be based. By this provision the parties do not in any way recognize or acknowledge the authority or right of any person to impose any such lien.

Section 6.2: Contesting Liens. If Lessee(s) desires to contest any such lien, Lessee(s) shall notify Lessor of intention to do so within fifteen (15) days after the filing of such lien. In such case, and provided that Lessee(s) shall on demand protect Lessor by a good and sufficient surety bond against any such liens and any cost, liability or damage arising out of such contest, Lessee(s) shall not be in default hereunder until thirty (30) days after the final determination of the validity thereof, within which time Lessee(s) shall satisfy and discharge such lien to the extent held valid; but the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered thereon, and such delay shall be a default of Lessee(s) hereunder.

Section 6.3: Encumbrance of Lessee's Leasehold Interest. Lessee(s) may not encumber Lessee(s) leasehold interest in the demised premises, without the

written consent of the Lessor. Any encumbrance, or a foreclosure or other conveyance arising from an encumbrance, shall not relieve Lessee(s) from its liability hereunder.

Section 6.4: Right to Notice to Mortgagee or Lien holder. If Lessee(s) shall encumber its leasehold interest in the demised premises, and in the event of cancellation or forfeiture of this lease for cause, the holder of a properly recorded mortgage of the improvements on the land and every sub lessee thereof shall be given a duplicate copy of any notice of default in the same manner as notices given to Lessee(s), provided however that such mortgagee or sub-lessee has given the Borough Clerk written notice of such mortgage or sublease. Such mortgagee or sub lessee may, at its option, at any time before the rights of Lessee(s) shall be terminated as provided herein, pay any of the rents due hereunder, or pay any taxes and assessments, or do any other act or thing that may be necessary and proper to be done in the observance of the covenants and conditions hereof, or to prevent the termination hereof. All payments so made, and all things so done and performed shall be as effective to prevent a termination of the rights of Lessee(s) hereunder as the same would have been if done and performed by Lessee(s).

ARTICLE 7 - Reservation of Rights

Section 7.1: Mineral Reservations. Lessor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself its successors, assigns and other lessees, forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon the lands subject to this lease, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils. Lessor also hereby expressly saves and reserves out of the grant hereby made, unto itself its successors, assigns and other lessees, forever, the right by itself, or its or their agents or other representatives, to enter upon the lands subject to this lease, or any part thereof, at any and all times, for the purpose of making beneficial use of these reserved rights and to remain and to occupy as much of said lands as may be necessary or convenient for such purpose, hereby expressly reserving to itself, its lessees, successors and assigns, as aforesaid, generally all rights reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Section 7.2: Surface Reservations. All deposits of stone, earth or gravel valuable for extraction or utilization are reserved by Lessor and shall not be removed from the land. Lessee(s) shall not sell or remove for use elsewhere any of the surface resources of the demised premises, for example, stone, sand, gravel or any other material valuable for building or commercial purposes;

provided, however, that material required for the development of the leasehold may be used if its use is first approved by the Assembly.

Section 7.3: Lessor's Right of Entry. Lessee(s) shall permit Lessor, its agents, employees and other representatives, to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the demised premises and improvements thereon.

ARTICLE 8 – Eminent Domain

Section 8.1: Effect of Condemnation. If the whole or any part of the demised premises is taken by any authorized body vested with the power of eminent domain, the following provisions control:

Section 8.1.1: Taking of the Entire Premises. If the entire premises are taken by condemnation, the terms of this lease and all rights of Lessee(s) will terminate at the time of the taking; i.e., at the time title finally vests in the governmental agency exercising the power of eminent domain. Lessor is entitled to all condemnation proceeds, except that Lessee(s) shall be paid the portion of the proceeds attributable to the fair market value of the improvements placed on the condemned premises and owned by Lessee(s).

Section 8.1.2: Taking of Substantial Part of Premises. If the taking is of a substantial part of the premises, the following shall apply:

- (a) If the taking by condemnation reduces the ground area of the demised premises by at least 30% or materially affects the use being made by Lessee(s) of the parcel, Lessee(s) may elect to terminate the lease by written notice to Lessor not later than ninety (90) days after the date of taking.
- (b) If Lessee(s) elects to terminate, the provisions in Section 8.1.1 shall govern the condemned portion of the demised premises and the terms of the lease govern disposal of the remainder of any improvements made by Lessee(s).
- (c) If Lessees elect not to terminate, this lease continues and Lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value of the improvements placed on the condemned portion of the premises and owned by Lessee(s). Rent for the balance of the lease will be adjusted by Lessor to reflect the taking.

Section 8.1.3: Taking of Insubstantial Part of Premises. If the taking by condemnation reduces the ground area of the demised premises by less than 30% and Lessor determines that the taking is of such an insubstantial portion that Lessee's use of the demised premises is not materially affected, an election

to terminate by Lessee(s) is not allowed and the provisions of Section 8.1.2(c) will govern.

Section 8.2: Authority. By this Article, the parties do not in any way recognize or acknowledge the authority or right of any governmental entity to exercise a power of eminent domain over the demised premises or any interest created by this lease.

ARTICLE 9 – Assignment and Subletting

Section 9.1: Assignment. Lessee(s) may assign this lease, provided that the proposed assignment shall be first approved by formal action of the Assembly. The assignee shall be subject to all the provisions of the lease and Lessee(s)-assignor(s) shall not be relieved of its obligations hereunder. However, the council may, in its discretion, approve an assignment made solely as security for a loan, whereby the lender/assignee shall not be liable for the obligations of the Lessee(s) unless the lender/assignee is or becomes in possession of the leased property. Lessee(s) shall not transfer, convey or otherwise dispose of this lease or the rights hereunder without the prior written consent of Lessor. Lessor may accept rent from the assignee or other transferee, but no such collection of rent shall be deemed a waiver of any term or condition of this lease, nor an acceptance of the assignee or other transferee as Lessee(s).

Section 9.2: Subletting. Lessee(s) may sublease the demised premises or any part thereof leased to it under this agreement, provided that Lessee(s) first obtain the approval by formal action of the Borough Assembly to such sublease. All subleases shall be in writing and shall include all the terms and conditions of this original lease. Lessee(s) shall continue to be liable hereunder in accordance with the terms and conditions of this lease. Lessor may collect rent from the sub lessee, but such collection shall not be deemed a waiver of any term or condition of this agreement nor an acceptance of the sub lessee as Lessee(s). A copy of the sublease shall be filed with Borough Clerk.

ARTICLE 10 – Warranties

Section 10.1: Title and Quiet Possession. Lessor covenants that Lessor is seized of the demised premises in fee simple and that Lessee(s) shall have quiet and peaceable possession of the demised premises during the term hereof. Prior to entering into this lease, if Lessee(s) so requests, Lessor shall provide, at Lessee's expense, title evidence sufficient to satisfy Lessee(s) that Lessor has title to the land and can guarantee Lessee's peaceable possession.

Section 10.2: Authority of Agents. Each party to this agreement warrants that the individual signing this lease has written authority to enter into this agreement from the parties sought to be bound.

ARTICLE 11 – Taxes

Section 11.1: Taxes. Lessee(s) shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, charges, fees, of every kind which may be levied, assessed or charged, or which may become a lien or charge on or against the land hereby demised, or any part thereof, the leasehold of Lessee(s) herein, the premises described herein, or any improvements now or hereafter thereon or on or against Lessor by reason of its ownership of the fee underlying this lease, during the entire term hereof.

Section 11.2: Contesting Taxes. If Lessee(s) shall in good faith desire to contest the validity or amount of any tax, assessment or other governmental charge herein agreed to be paid by Lessee(s), shall be permitted to do so and to defer payment of such tax or charge, the validity or amount of which Lessee(s) is so contesting, until final determination of the contest, after giving to Lessor written notice thereof prior to the commencement of any such contest, which shall be at least thirty (30) days prior to delinquency and on protection of Lessor on demand by a good and sufficient surety bond against any such tax, levy, assessment or other governmental charge, and from any costs, liabilities or damage arising out of any such contest.

ARTICLE 12 – Insurance

Section 12.1: Insurance. Lessee(s) shall, for any claims that may occur or be made during the term of this lease, at its own expense, keep in force by advance payment of premiums, the following-described insurance for protection against the claims of employees or other persons, insuring both Lessee(s) and Lessor against any liability that may accrue against them or either of them arising from or in any way connected with the acts or omissions of Lessee(s), its agents, sub lessees or other representatives under this Lease:

- (a) Should any individual be an employer in connection with this lease or the use of the demised premises, insurance in at least the required statutory amounts covering claims under workers' compensation disability benefits and other similar employee benefit act;
- (b) Comprehensive business liability insurance satisfactory to the Lessor with a combined single claim limit of not less than \$1,000,000.00; and
- (c) Motor vehicle liability insurance (for individuals engaged in boom truck and forklift activities.

Section 12.2: Insurance Certificate. The insurance shall be placed with an insurance carrier or carriers satisfactory to Lessor and shall not be subject to cancellation or any material change except after thirty (30) days written actual

notice to Lessor. Lessor shall be specifically named as an additional insured on policies required by Section 12.1, Paragraph (b), above. A certificate of insurance reflecting full compliance with these requirements shall, at all times during this lease, be kept on deposit at the general offices of Lessor. If Lessee(s) fails to comply with these insurance requirements, Lessor may terminate this agreement on ten (10) days written notice to Lessee(s), or may, but shall not have any duty to, obtain and pay for such insurance and keep the same in force and effect, and Lessee(s) shall pay Lessor on demand for the premium costs thereof.

Section 12.3: Maintenance of Coverage. All general liability and other casualty policies shall be written as primary policies; they shall not be contributing with, or in excess of, any insurance coverage that Lessor may otherwise carry. In order to maintain the same level of coverage that will exist at the commencement of this lease, the amounts and types of coverage called for herein shall be subject to review at the end of each year period from the commencement date of this lease, and, if appropriate, the insurance requirement shall be increased or extended at the request of Lessor to provide the amounts and types of coverage that are at least equal to the amounts and types of coverage then carried by prudent owners of similar property. The insurance required by this Agreement shall cover all claims arising from or in any way connected with the acts or omissions of Lessee(s) under this Agreement, whether or not such claim is asserted during the term of this Agreement or the applicable insurance policy and even though judicial proceedings may not be commenced until after the expiration of this Agreement or the applicable insurance policy. On policies as to which the Borough is an additional insured, all coverages must apply to claims between insureds on the policy. Lessee(s) shall maintain insurance written on an occurrence basis such that any loss does not deplete the policy limit; Lessee(s) shall maintain insurance policies whereby at least the above-described available amounts of insurance shall be in effect throughout the time during which such insurance is required under this Agreement, even if successful claims are asserted against any such policies during their term(s).

ARTICLE 13 – Default and Remedies

Section 13.1: Default/Breach. Each of the following shall be deemed a default by Lessee(s) and a breach of this lease:

- (a) Lessee(s) shall fail to pay any installment of rent or perform any other obligation hereunder involving the payment of money on the date the same is due.
- (b) Lessee(s) shall fail to comply with any term, provision or covenant of this lease.

- (c) Lessee(s) shall desert or vacate or shall commence to desert or vacate the demised premises or any substantial portion thereof or shall remove or attempt to remove, without the prior, written consent of Lessor, all or a substantial portion of Lessee's improvements on the demised premises.

Section 13.2: Default Remedies. If Lessee(s) defaults in performance or observance of any of the lease terms, covenants or stipulations, or the terms of any ordinances of the Borough Code or other legal requirements, and the default continues for thirty (30) calendar days after service of written notice by Lessor, without remedy of the default, Lessor shall take such action as is necessary to protect its rights and best interests, including the exercise of any and all rights after default permitted by this lease. No improvements may be removed by Lessee(s) or any other person during any time Lessee(s) is in default under this lease.

Section 13.3: Rights upon Default after Notice. After notice has been given and the default remains uncorrected for a period of thirty (30) days, Lessor, in addition to any rights and remedies that Lessor may otherwise be given by statute, common law or otherwise, may:

- (a) Reenter the demised premises and take possession of and remove all property from the same, without liability for any damage therefore, remove all persons and property therefrom, either by summary proceedings, suitable action at law, or other legal means, provided that any entry or reentry, possession, repossession or dispossession by Lessor, whether taken by summary proceedings or otherwise, shall not be deemed to absolve, relieve, release, or discharge Lessee(s), either in whole or in part for the monetary liability under this lease;
- (b) Declare the lease canceled and the term ended;
- (c) Re-let the demised premises in whole or in part for any period equal to or greater or less than the remainder of the original term of this lease, for any sum which may be reasonable;
- (d) Collect any and all rents due or to become due from sub-lessees or other occupants of the demised premises;
- (e) Recover from Lessee(s) the following items of damage:
 - (1) Actual attorney's fees and other expenses reasonably incurred by reason of the breach or default by Lessee(s),
 - (2) The cost of performing any covenant on the Lessees' part to be performed,
 - (3) Interest at the maximum allowable rate on all amounts owing to Lessor from the date due until payment thereof in full, and

- (4) An amount equal to all rents due for the remainder of the term without reduction for anything other than the amount in fact received on releasing of the demised premises;
- (5) Obtain specific performance of this lease.

Section 13.4: Remedies Cumulative. The remedies of Lessor hereunder shall be deemed cumulative and not exclusive of each other.

ARTICLE 14 – Termination and Holding Over

Section 14.1: Redelivery of Premises. Lessee(s) shall, at the expiration or sooner termination of this lease, peaceably and quietly quit and surrender to Lessor the demised premises in as good a state and condition as the premises were at the commencement of the term.

Section 14.2: Cancellation by Agreement Due to Unlawful Purpose or Upon Notice. Leases in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by Lessee(s) and the Borough Assembly, or by the Borough Assembly acting alone if the subject premises are used for any unlawful purpose or upon 90 days written notice from the Borough to the Lessee(s) that the leased area is needed for a public purpose.

Section 14.3: Reentry by Lessor. In the event the lease is terminated, or in the event that the demised premises, or any part thereof, are abandoned by Lessee(s) during the term of this lease, Lessor or its agents, servants or representatives, may, immediately or at any time thereafter, re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom, either by summary proceedings, a suitable action or proceeding at law or other legal means, without being liable for any damages therefore. No reentry by Lessor shall be deemed an acceptance of a surrender of lease.

Section 14.4: Disposal Upon Termination. In the event that this lease is terminated, the Borough Assembly may offer the demised premises for lease or other appropriate disposal pursuant to the provisions of the Borough Code.

Section 14.5: Forfeiture of Rental Upon Termination. In the event that this lease shall be terminated because of any breach of Lessee(s), the annual rental payment last made by Lessee(s) shall be retained by Lessor.

Section 14.6: Holding Over. Upon failure of Lessee(s) to surrender possession of the demised premises at the termination of this lease, Lessee's possession of the demised premises shall continue on a month-to-month tenancy at the yearly rental rate charged in the last year of the last term of the agreement, on a monthly pro rata basis. Lessee(s) shall acquire no additional rights to, or interest in, the demised premises by holding-over after termination of

this lease, and shall be subject to legal action by Lessor to require the surrender of the demised premises. All terms of this Agreement shall apply during the hold-over period. The receipt by Lessor of any rent or any other sum of money after the termination in any manner of the term demised, or after the giving by Lessor of any notice hereunder to effect such termination, shall not reinstate, continue or extend the resultant term herein demised, or in any manner impair the efficacy of, any such notice or termination as may have been given hereunder by Lessor to Lessee(s) prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by Lessor.

ARTICLE 15 – General Provisions

Section 15.1: Disclaimer. Lessor's consent to Lessee's use of the demised premises shall not be construed as approving or endorsing the use of the demised premises for the purposes proposed by Lessee(s) and the Borough disclaims any such express or implied approval or warranty.

Section 15.2: Notices. Any notice or demand, which under the terms of this lease or under any statute or Borough Code provision must be given or made by the parties hereto, shall be in writing and shall be given or made by certified mail, return receipt requested, addressed to the other party at the address of record, designated as follows:

(a) The Lessor:

Petersburg Borough
Attention: Manager
P. O. Box 329
Petersburg, Alaska 99833

(b) The Lessee(s):

Alaska Yacht and Vessel Services
P.O. Box 1875
Petersburg, Alaska 99833

Either party may designate in writing another address to which such notice or demand shall hereafter be given. Any notice given under this provision shall be deemed delivered when deposited in a United States general or branch post office enclosed in a certified-mail prepaid wrapper or envelope, addressed as provided in this section.

Section 15.3: Inspection of Premises. Lessee(s) acknowledges that it has been given unlimited opportunity to inspect the demised premises and accept said premises as is, in their present condition.

Section 15.4: Non-Waiver. No failure on the part of Lessor to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by Lessor, unless in writing and signed by the parties sought to be bound, shall discharge or invalidate such covenants or provisions or affect the right of Lessor to enforce the same in the event of any subsequent breach or default. The receipt of rent by Lessor with knowledge of any breach of the lease by Lessee(s) or any default on the part of Lessee(s) in observance or performance of any of the conditions or covenants of this lease shall not be deemed to be a waiver of any provision of this lease.

Section 15.5: Responsibility/Indemnification. Lessee(s) agrees to assume full control and responsibility for all activities connected with this lease. Lessee(s) shall defend, pay on behalf of, indemnify and hold harmless the Petersburg Borough, its elected and appointed officials, employees, volunteers, and other working on behalf of the Borough against any and all claims, demands, lawsuits, liabilities or losses, including costs and attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the Petersburg Borough, its elected and appointed officials, employees, volunteers or others working on behalf of the Borough, by reason of person injury, including bodily injury or death, property damage, including loss of use thereof, and environmental damage or liabilities, which arise out of or is in any way connected or associated with the use of this property of the Borough by the User, its employees, agents or contractors.

Section 15.6: Integration. This lease sets forth all the covenants, terms, conditions and understandings between the parties hereto, and there shall be no covenants, terms, conditions or understandings, either oral or written, between them other than as herein set forth.

Section 15.7: Modification. This lease may not be modified orally or in any manner other than by an agreement in writing signed by all parties in interest or their successors in interest.

Section 15.8: Recording of Lease. Lessee(s) may record this lease at their own expense as soon as possible after its execution by both parties. Directly after recording this lease, Lessee(s) shall provide Lessor with a copy of the lease stamped by the Recorder's Office showing the date and time of recording.

Section 15.9: Attorney's Fees. If Lessor must institute any action to recover any payment due under this lease, or on account of any breach of this lease, or to recover possession of the leased premises, Lessor shall be entitled to recover its actual attorney's fees and all costs and expenses reasonably incurred by it in connection with such action and on any appeal therefrom.

Section 15.10: Severability of Terms. The invalidity or unenforceability of any provisions of this agreement shall not affect or impair any other provisions.

Section 15.12: Effect of Headings. The captions, section headings and numbers, and article headings and numbers in this lease are inserted only as a matter of convenience and in no way define, limit or describe the scope or intent of the sections or articles of this agreement, nor in any way affect the agreement.

IN WITNESS WHEREOF the Petersburg Borough, Alaska as Lessor, acting through its Manager, being duly-authorized, and Alaska Yacht and Vessel Services as Lessee(s), having authority to execute this lease, have hereunto set their respective hands, agreeing to keep, observe and perform all the terms, conditions and provisions herein contained or attached.

DATED this _____ day of _____, 20_____

By:

By: Kathy O'Rear, Clerk

THIS IS TO CERTIFY that on this ____ day of _____, 20____, before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Stephen Giesbrecht and Kathy O'Rear to me known to be the Manager and Clerk of the Petersburg Borough respectively, who executed the above and foregoing instrument, and

WITNESS My Hand and Official Seal the day and year in this certificate first above written.

DATED THIS _____ day of _____, 20__.

Alaska Yacht and Vessel Services

Stephen L. Berry Owner/Agent

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on this ____ day of _____, 20____, before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Stephen L. Berry to me known to be the Owner/Agent of Alaska Yacht and Vessel Services who executed the above and foregoing instrument, and acknowledged to me this instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned.

WITNESS My Hand and Official Seal the day and year in this certificate first above written.

My commission expires: