

## GROUND LEASE

THIS LEASE ("Lease") is entered into on the date last executed below by and between the **MUNICIPALITY OF ANCHORAGE**, ("Landlord" or "MOA") as lessor, and \_\_\_\_\_, a \_\_\_\_\_ company, having a mailing address of \_\_\_\_\_ ("Tenant") as lessee, to lease Municipal owned property (the "Property") for \_\_\_\_\_ purposes, described below, located on Olive Lane, in the Municipality of Anchorage, State of Alaska. Landlord and Tenant are at times collectively referred to as "Parties" or individually as a "Party."

PREMISES. This Lease is for the permitted use described below at the following Property, as further described hereto:

Lot \_\_\_\_\_, Tract 3, Maui Industrial Park Subdivision, (Plat 77-133)  
Records of the Anchorage Recording District,  
Third Judicial District, State of Alaska

1. Term. The initial term of this Lease shall be \_\_\_\_\_ ( ) years commencing on \_\_\_\_\_, 2016 (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term"). The word "Term" refers to both the Initial Term and Renewal Term (as defined below).
2. Use.
  - A. The Property, which is approximately \_\_\_\_\_ square feet as more particularly described in Exhibit A attached hereto, may be used by Tenant for \_\_\_\_\_ and not for any other purpose. Tenant \_\_\_\_\_ construct any permanent structures. Tenant shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations in connection with the use of (and operations, maintenance, construction and/or installations at) the Property.
  - B. Tenant shall not use, or allow any other person or entity to use, any portion or part of the Property or an unlawful purpose, as a nuisance, as a fire hazard, or for a purpose inconsistent with any grant, lease, permit, patent, deed or bond of the Municipality of Anchorage.
  - C. Tenant is solely responsible for determining the compatibility and adequacy of the proposed Property for Tenant's purposes. Tenant shall have no claim, including damages, against the Landlord, in the event the Property is determined not compatible or adequate for Tenant's purposes.
3. Rent. On or before the Commencement Date, Tenant shall pay Landlord, as rent, \$ \_\_\_\_\_ for the first month of the Initial Term of this Lease, and starting on the first annual anniversary of the Commencement Date, and each annual anniversary thereafter (including during "Renewal Terms", as defined below), increased by three percent (3%) per year (collectively "Rent"). Any Rent not paid within 10 days of the due

date shall be assessed a 5% late fee and shall bear interest at 2% per month or (if less) at the highest rate allowed by law. If this Lease is terminated at a time other than on the last day before the anniversary date, then except as provided below Rent shall be prorated as of the date of termination for any reason (other than a default by Tenant) and all prepaid Rent shall be immediately refunded to Tenant.

4. Renewal. Tenant shall have the option to renew this Lease for \_\_\_\_ ( ) additional \_\_\_\_-year term ("Renewal Term"). The Renewal Term shall be on the same terms and conditions as set forth herein except that Rent will be adjusted 3% for each year of the Renewal Term. This option must be exercised by the giving to Landlord, at least sixty (60) days prior to expiration of the Lease, written notice of the exercise of the option by Tenant, but Tenant shall in no event be entitled to renew the term of this Agreement, even though the notice be timely given, unless Rent is determined and unless Tenant shall have timely performed all of its obligations under this Lease, and shall not be in default in the performance of any such obligations, on the date of the expiration of the initial term of this Lease. Any renewal of this Lease will be subject to all provisions of the Anchorage Municipal Code then in effect, including approval of the Anchorage Assembly, if required. Any holding over by Tenant after the expiration of the Initial Term and any Renewal Term, without the consent of the Landlord, shall be construed to be a tenancy from month to month on the terms and on the conditions set forth herein, except that the Rent under Section 4 and/or Section 5 shall be at twice the amount set forth therein, prorated and paid monthly in advance.

5. Installation of Improvements

- A. Plans and Specifications.

Prior to commencing construction of any improvements, Tenant shall submit to Landlord plans, drawings, and specifications. No improvements shall be constructed on the Property until Landlord approves, in writing, the proposed design and location. Such approval shall not be unreasonably withheld or conditioned. Landlord's approval of the improvements shall be within Landlord's reasonable discretion. Landlord may also request, and Tenant shall provide, all additional information requested by Landlord to evaluate the proposed improvements.

- B. MOA Planning Approval.

Where applicable, Tenant shall submit improvement plans and specifications to MOA Planning Department (and any related municipal Board or Commission) for review, approval and permitting.

- C. Licenses, Permits, and Fees.

Tenant shall be responsible for obtaining and paying for all the appropriate approvals, permits, and licenses prior to construction, location, and operation of the use and improvements.

- D. Construction of Improvements.

Tenant shall construct and/or install the improvements in accordance with the approved plans, specifications, requirements, and conditions of approvals of the Municipality of Anchorage and Landlord. Tenant shall ensure all construction is in accordance with applicable federal, state, and municipal laws and regulations. Tenant shall ensure all construction is performed in a good and workmanlike manner.

F. Independent Contractor.

Tenant is an independent contractor with respect to performance of all work under this Lease, and neither Tenant nor any party employed by Tenant shall be deemed for any purpose to be an employee, agent, servant, or representative of Landlord. Unless otherwise specified herein, Tenant shall provide all labor, materials, equipment, tools, machinery, transportation, and other facilities and services necessary for the proper execution and completion of all work.

G. Liens.

Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against the Premises or Property as a result of acts or omissions of Tenant or Tenant's employees, agents or contractors, Tenant shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Landlord within thirty (30) days after Tenant receives written notice that the lien has been filed.

H. Maintenance.

Tenant shall, at its own expense, maintain the Property and all of Tenant's improvements, equipment and other personal property on the Property in good working order, condition and repair. Tenant shall keep the Property free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.

8. Tenant's Access and Landlord's Right of Entry. Tenant shall have 24-hours-a-day, 7-days-a-week access to the Property at all times during the Initial Term of this Lease and the Renewal Term. Landlord and its agents shall have the right to enter the Property at reasonable times to examine and inspect the Property; however, Landlord, its employees or agents shall not impede or deny access to Tenant, its employees or agents. Landlord agrees not to interfere with Tenant's use and enjoyment of the Property. Landlord shall contact Tenant to make arrangements to access the Property.

9. Assignments or Sub-leasing.

A. Tenant shall not assign, with the exception of Tenant's principal, affiliates, subsidiaries of its principal, or to any entity without the prior written consent of Landlord. Any violation of this covenant shall constitute a default.

B. Tenant shall furnish Landlord with a copy of any proposed assignment or sublease for prior review and approval, such approval not to be unreasonably withheld or conditioned. If an assignment or sublease is approved, Tenant shall furnish within ten (10) days, without demand or request, a fully executed copy of the assignment

or sublease to Landlord.

- C. Any assignment, sublease, or occupancy permitted by Landlord's prior written consent shall not relieve Tenant of any obligations herein. Tenant shall hold Landlord harmless from any loss, including loss caused by nonpayment of rents, taxes, assessments or other charges by any assignee and/or sublessee.

12. Utilities.

Tenant shall, at its sole expense, apply for, pay and maintain utility connections and charges for Tenant's use of the Property.

13. Taxes and Assessments.

Tenant shall pay, when due and before delinquency, all taxes, assessments and charges imposed against Tenant's improvements on the Property during the term of this Lease. Tenant shall have the right to protest an assessment of taxes or other assessments or charges provided, prior to such protest, Tenant shall deposit with Landlord any sum in dispute, to insure payment in the event such contest is not successful.

14. Default and Right to Cure.

A. Tenant Default.

The Tenant shall be in default in the event:

- (i) Tenant's use of the Property is not in compliance with municipal, state or federal statutes, ordinances, rules and regulations; or
- (ii) Tenant's use is not within the purpose provided to Landlord; or  
Any other breach of a covenant or provision of this Lease if not timely cured after 15 day's notice of monetary breach or 30 day's written notice of any other breach. Tenant shall have an extended period beyond the thirty (30) day period to cure a breach if the parties agree that the nature of the cure is such that it reasonably requires more than thirty (30) days and the parties agree to a timeline for cure.

- B. Landlord Default. In the event there is a breach by Landlord with respect to any of the provisions of this Lease, Tenant shall give Landlord written notice of such breach. After receipt of such written notice, Landlord shall have thirty (30) days to cure any such breach. Landlord shall have an extended period beyond the thirty (30) day period to cure a breach if the parties agree that the nature of the cure is such that it reasonably requires more than thirty (30) days and the Parties agree to a timeline for cure.

15. Termination.

A. The Lease may be terminated as follows:

- (i) By mutual consent of the Parties;
- (ii) For cause pursuant to the default provisions as set forth herein;
- (iii) After the Initial Term with ninety days prior written notice to Tenant;
- (iv) If either party is unable to obtain or maintain any license, permit or other governmental authority necessary for the construction and/or operation of

the improvements.

- B. In the event of a Tenant default, Landlord shall have the right, at its option, in addition to and not exclusive of any other remedy Landlord may have by operation of law, without any further demand or notice, to re-enter the Property and eject all persons therefrom, and either:
- (i) Declare this Lease at an end, in which event Tenant shall immediately remove the equipment, repair any damage to the Property, and pay Landlord a sum of money equal to the total of:
    - (a) The amount of the unpaid Rent accrued through the date of termination; and
    - (b) The amount by which the unpaid Rent reserved for the balance of the Term exceeds the amount of such rental loss to Landlord that could be reasonably avoided (net of the costs of such re-letting); and
    - (c) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease.

16. Insurance.

- A. During construction, installation, improvement, alteration, and/or operation of Tenant's improvements, Tenant and any of Tenant's contractor(s) and/or subcontractor(s), shall keep in full force and affect the insurance coverage described herein. Tenant will provide Landlord no less than twenty (20) days notice prior to cancellation of any of the coverage below if not replaced.
- (i) \$500,000 Employer's Liability and statutory Workers' compensation as required by Alaska law; and
  - (ii) Commercial General Liability in the amount of \$1,000,000 per occurrence and in the aggregate including Premises Operations, Products and Completed Operations, Blanket Contractual, Broad Form Property Damage, Independent Contractors, and Personal Injury; and
  - (iii) Commercial automobile liability – with a combined single limit of, \$1,000,000 and to include owned, hired, and non-owned.
- B. The Municipality of Anchorage must be included as an additional insured on all required policies except Professional Liability and Worker's Compensation Policies. Landlord's additional insured status shall:
- (i) Be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors; and
  - (ii) Not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and
  - (iii) Not exceed Tenant's indemnification obligation under this Lease, if any.

- C. All required policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against the Municipality.
- D. Upon request, Tenant shall provide Landlord with a certificate of insurance evidencing the coverage required above and stating the policy numbers and inception and expiration dates of all policies.
- E. All required insurance shall be non assessable and shall contain language to the effect that the policies are primary and non-contributing with any insurance carried by Landlord.
- F. Notwithstanding the forgoing, Tenant may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Lease. In the event Tenant elects to self-insure its obligation under this Lease to include Landlord as an additional insured, the following conditions apply:
  - (i) Landlord shall promptly and no later than thirty (30) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;
  - (ii) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; and
  - (iii) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like.

17. Indemnification.

Tenant shall defend, indemnify, and hold Landlord harmless against any and all liability and/or loss of any type arising out of, or as a result of, negligence, wrongful conduct or work performed, or to be performed, by Tenant, its employees, agents, successors, assigns, contractors, or any subcontractor or agent thereof, in the installation, construction and operation of the Premises, or any additional improvements thereafter, or resulting from any cause or causes whatsoever while in, upon, or in any way connected with the Property during the term of this Lease, or any use or occupancy by Tenant hereunder, including but not limited to reasonable attorneys' fees, costs and expenses incurred by Landlord in negotiating, settling, defending, or otherwise protecting against such claims and obligations on account of or arising out of any such injuries or losses, however occurring, by negligence or otherwise, except to the extent such damage, injury or loss is caused by Landlord or its employees or agents. This section shall survive the expiration or earlier termination of this Lease.

18. Hazardous Materials.

- A. Tenant shall supply Landlord an annual inventory of hazardous materials stored, transported, or used on the Property.
- B. Tenant shall be responsible for compliance of its activities on the Property with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or other policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as such laws may now

or at any time hereafter be in effect.

C. Tenant shall hold Landlord harmless and indemnify Landlord from and assume all duties, responsibility, and liability at its sole cost and expense, for all duties, responsibilities, and liability (including without limitation for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation, or proceeding which is in any way related to:

- (i) Tenant's failure to comply with any environmental and industrial hygiene law, including any regulations, guidelines, standards, or other policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as such laws may now or at any time hereafter be in effect; and
- (ii) Any environmental conditions arising out of or in any way related to Tenant's activities conducted on the Property.

19. Quiet Enjoyment.

If Tenant performs and fulfills all covenants, agreements, conditions, and provisions as set forth in this Lease, Tenant shall have, at all times during the term of this Lease, the peaceable and quiet enjoyment of the Property without any hindrance, interruption, ejection, or molestation by Landlord or by any other person or persons whatsoever.

20. Force Majeure.

Neither Party shall be liable for failure to perform any obligation under this Lease if prevented by a cause beyond reasonable control and by use of due diligence cannot be overcome including, but not limited to, acts of God, natural disaster, civil commotion, quarantine, fire, labor disputes, or any action or non-action of the United States government, including changes in existing legislation affecting the subject matter of this Lease.

21. Non-Waiver.

No provision of this Lease may be waived unless agreed to by the Parties in writing. The failure of either Party at any time to enforce a provision of this Lease shall not constitute a waiver of the provision, or in any way affect the validity of this Lease or any part hereof, or the right of the Parties to thereafter enforce each and every provision.

22. Integration.

This Lease constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both Parties.

23. Severability.

If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

24. Jurisdiction.

This Lease shall be construed in accordance with the laws of the State of Alaska. Any action arising from this Lease shall be brought in the Third Judicial District, State of Alaska at Anchorage.

25. Amendment.

- A. This Lease shall only be amended, modified, or revised by writing, executed by the authorized representatives of the Parties, with the same formality as the execution of this Lease.
- B. For the purposes of any amendment, modification, or revision to the terms and conditions of this Lease, the authorized representatives of the Parties are:

If to TENANT:

With copy to:

If to LANDLORD: Municipality of Anchorage  
Municipal Manager, or authorized designee  
PO Box 196650  
Anchorage, AK 99519-6650

- C. Any attempt to amend, modify or revise this Lease by either an unauthorized representative or unauthorized means shall be void.

26. Notice.

- A. Any notice under this Lease shall be in writing and shall be sent by hand delivery, by reliable overnight courier, or by Certified Mail, return receipt requested to the following addresses:

If to LANDLORD: Real Estate Department  
ATTN: Director  
4700 Elmore Rd, 2<sup>nd</sup> Floor  
Anchorage, Alaska 99507

With a copy to: Municipality of Anchorage  
Department of Law – Civil Division  
632 W. 6th Avenue, Suite. 730  
Anchorage, AK 99519-6650

and:

If to TENANT:

With copy to:

- B. Any written notice, demand, request, or other communication, except payments or other monies required under this Lease, shall be deemed given at the time actually received, refused or deemed unable to deliver, or three (3) business days after deposit, by certified mail, in any U.S. Post Office, or hand-delivered to the party's address set forth above.
  - C. Notwithstanding any other provision in this section, any notices and/or communications affecting the rights, privileges, or responsibilities under this Lease shall be served upon the parties as provided by law.
  - D. Either Party may change their notice addresses set forth herein upon thirty (30) days prior written notice to the other Party.
27. Assembly Approval.  
This lease is subject to approval by the Anchorage Assembly.

**\*\*\*SIGNATURES ON FOLLOWING PAGE\*\*\***

**TENANT**

By: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Print Name:  
Its:

**LANDLORD**

**MUNICIPALITY OF ANCHORAGE**

By: \_\_\_\_\_  
Michael K. Abbott  
Its: Municipal Manager

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, personally appeared Michael K. Abbott, known to me to be the Municipal Manager **of the Municipality of Anchorage**, the person authorized on behalf of the Municipality to execute this Lease as the free act and voluntary act of the Municipality for the uses and purposes therein stated.

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

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission expires: \_\_\_\_\_

**TENANT'S ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the Manager of \_\_\_\_\_, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

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

DRAFT

**EXHIBIT A**

**Legal Description**

**Legal Description of Parcel Owned by Landlord**

**The Property is legally described as follows:**

**Map**

**DRAFT**