

RECORDING REQUESTED BY:

BANK OF AMERICA, N.A.

AND WHEN RECORDED MAIL TO:

Norton Rose Fulbright US LLP  
2200 Ross Avenue, Suite 3600  
Dallas, Texas 75201  
Attn: Will Walker, Esq.  
Re: CPD Alaska LLC

Space above this line for recorder's use only

**SUBORDINATION AND CONSENT BY REAL PROPERTY OWNER(S)**  
("Subordination and Consent")

This SUBORDINATION AND CONSENT is made this \_\_\_ day of November, 2016 between **BANK OF AMERICA, N.A.**, a national banking association having an address at 300 Galleria Parkway, Atlanta, Georgia 30339-3153, as administrative agent for the below-defined Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), and the **CITY OF VALDEZ** ("Owner") having an address at P.O. Box 307, Valdez, Alaska 99686, and affects that real property in the City or Town of Valdez, Alaska, Valdez Recording District 318, Third Judicial District, State of **Alaska**, fully described on Exhibit "A" attached hereto and made a part hereof by this reference, and more commonly known as North Fuel Dock, Valdez, Alaska 99686 (hereinafter referred to as the "Premises").

**WHEREAS**, this Subordination and Consent is executed to induce Agent and the Lenders (as defined below) to enter into that certain Loan and Security Agreement dated as of September 20, 2016 (as amended, restated, supplemented, or otherwise modified from time to time, the "Credit Agreement") by and among the lenders from time to time party thereto (such lenders, together with their respective successors and permitted assigns, in such capacity, each, individually a "Lender" and collectively, the "Lenders"), Agent, **CROWLEY PETROLEUM DISTRIBUTION, INC.**, an Alaska corporation ("CPD") as guarantor (the "Guarantor"), **PETROLEUM DISTRIBUTION LLC**, a Delaware limited liability company ("PD") and **CPD ALASKA LLC**, a Delaware limited liability company ("CPD Alaska"; CPD Alaska together with PD, are referred to hereinafter each individually as a "Borrower", and individually and collectively, jointly and severally, as the "Borrowers"), and other agreements related thereto (hereinafter collectively referred to as the "Agreements"), among the Lenders, Agent, the Guarantor, the Borrowers, and certain affiliates of the Borrowers (such affiliates together with Borrowers and the Guarantor, are referred to hereinafter each individually as an "Obligor", and individually and collectively, jointly and severally, as the "Obligors"), which Agreements, among other things, were given by the Obligors to Agent for the purpose of securing the repayment of all

obligations and the performance of all duties now or hereafter owing by the Obligors to the Lenders, of every kind and description. This Subordination and Consent does not amend any of the terms of the Agreements and reference thereto is made for further particulars;

WHEREAS, subsequent to the execution of the Credit Agreement, CPD Alaska changed its name to Crowley Fuels LLC;

WHEREAS, by the Agreements, Agent and/or the other Lenders have loaned or have agreed to loan monies and/or extend other financial accommodations against the security of, among other collateral, certain of the Obligors' personal property, including without limitation all of the Obligors' inventory, accounts receivable and other receivables, books and records, certain deposit accounts and other related assets, together with all additions, substitutions, replacements, and improvements to the same (hereinafter referred to as the "Goods"), which Goods are or are to be located on and may be affixed to the Premises or be improvements thereon; provided however that the Goods do not include the Premises;

WHEREAS, the City of Valdez entered into a certain Tidelands Lease and Assignment dated 20 August 2001 of approximately 7,430 square feet, a Portion of USS 495, with Westmark Hotel, Inc. in 2001 for twenty one (21) years, commencing on August 6, 2001 and ending the last day of July, 2022 with an additional six, five-year renewal options;

WHEREAS, a Memorandum of Tidelands Lease for recordation was executed on August 13, 2001 in anticipation of the sale of the Westmark Valdez being sold to Jack Johnson of Kodiak, Alaska and recorded in the Valdez Recording District, Third Judicial District, in Book 146 at page 67;

WHEREAS, an Assignment and Assumption Agreement, dated August 7, 2001 was executed and recorded to reflect the Real Estate Purchase and Sale Agreement between Westmark Hotels, Inc. (Seller) and John R. Johnson (Buyer) and recorded in said Recording and Judicial District in Book 146 at page 73;

WHEREAS, a Partial Assignment of Lease with Consent of Landlord was executed February 21, 2002 where the Assignor assigned 6,230 square feet portion of USS 495 Tidelands (Fuel Dock) to Valdez Fuel Company and the Assignor retained the lease for a 1,200 square foot portion of USS 495 Tidelands (Ticket Office/Boat House);

WHEREAS, Lease Amendment No. 1 between the Lessor and Crowley Petroleum Distribution, Inc. dated 4 September 2012 reflected that the leasehold on said 6,230 square feet was held by Crowley Petroleum Distribution, Inc. and a Memorandum thereof recorded in said Recording and Judicial District on 2/7/2013, document 2012-000710-0; and

WHEREAS, Assignment and Assumption of Lease Agreement dated 17 January 2013 whereby Crowley Petroleum Distribution, Inc. assigned its leasehold interest to CPD Alaska LLC (now Crowley Fuels LLC) and said assignment assumed its leasehold obligations was recorded in said Recording and Judicial District on 2/7/2013, document 2013-000085-0.

Agent and Owner agree that:

1. Owner represents that (i) the Lease is in full force and effect and constitutes the legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms, (ii) the Lease has not been modified, changed, altered or amended in any respect (except as disclosed to Agent), the Lease is the only lease between Owner and the Tenant, (iii) this Subordination and Consent constitutes the legal, valid and binding obligation of Owner enforceable against the Owner in accordance with its terms, and (iv) Owner is not aware of any existing default under the Lease or any such default which would result from the execution, delivery and performance of the Agreements.

2. Owner hereby consents to the grant by the Tenant to Agent of the lien on and security interest in the Goods and recognizes Agent's security interest in the Goods.

3. The Goods shall not be deemed fixtures or part of the real estate of the Premises and shall be and remain personal property notwithstanding the manner of their annexation to the Premises, their adaptability to the uses and purposes for which the Premises are used, or the intentions of the party making the annexation.

4. Owner hereby subordinates any rights which Owner may claim to have in and to the Goods, no matter how arising, including, without limitation, all rights of levy or distraint or liens for rent or other lease obligations, to the rights of Agent and Lenders in the Goods as described above.

5. Owner consents to the installation of the Goods on the Premises, agrees that Agent may do to and with the Goods any or all of the acts below enumerated, and grants Agent (and its agents, representatives and designees) a right, as set forth below, to enter into possession of the Premises to do any or all of the following (the "Permitted Actions") with respect to the Goods: assemble, have appraised, display, sever, remove, maintain, prepare for sale or lease, advertise, inspect, repair, lease, transfer, and/or sell (at public auction or private sale). Agent (or its agents, designees or representatives) shall have the right and license to enter into and to occupy the Premises, for the purposes described above, for an actual occupancy period of up to 120 days (at Agent's discretion), following the later of (a) Owner placing Agent (or its agents, designees or representatives) in possession of the Premises; and (b) abandonment or surrender of the Premises by Tenant, whether voluntary or involuntary; provided, that if Agent (or its agent, designee or representative) is prohibited by any process or injunction issued by any court, or by reason of any bankruptcy or insolvency proceeding involving Tenant, from enforcing its security interest in the Goods, the 120 day period shall commence upon termination of such prohibition. In consideration of the foregoing, Agent (or its agent, designee or representative) agrees (to the extent not paid by the Tenant) that if Agent (or its agent, designee or representative) occupies the Premises, Agent will pay to Owner, periodically for the use and occupancy of the Premises by Agent (or its agents, designees or representatives) as provided above, a per diem occupancy fee (based upon base rent and the Tenant's pro rata share of operating costs, utilities and taxes payable by the Tenant under the Lease but excluding any supplemental rent or other costs, expenses or amounts or any indemnities payable thereunder, upon default or otherwise) for each day Agent (or its agent, designee or representative) actually uses or occupies the Premises as provided above, equivalent to the monthly rental provided for in the Lease divided by 30 for actual days of occupancy by Agent (or its agents, designees or representatives). Any extensions of the foregoing period shall be with the written consent of Owner and at the same rate. All physical damage to the Premises caused by the removal of the Goods by Agent shall be reimbursed or repaired by Agent at its expense.

6. Owner acknowledges that at any time prior to Owner placing Agent (or its agents, designees or representatives) in possession of the Premises, or abandonment of or surrender of the Premises by Tenant, Agent may take any or all of the Permitted Actions subject only to Agent's Agreements with the Obligors.

7. Owner agrees to give Agent notice within 30 days prior to any termination of the Lease or repossession of the Premises by Owner, each said notice to be sent to the following address: Bank of America, N.A., 300 Galleria Parkway, Atlanta, Georgia 30339-3153, Attention: John M. Olsen, Senior Vice President, or such other address as Agent shall designate in a written notice to Owner. Agent shall have the right, without the obligation, to cure any event of default under the Lease within ten days after the receipt of such notice. Any of the foregoing done by Agent shall be effective to cure an event of default as if the same had been done by Tenant and shall not be deemed an assumption of the Lease or any of Tenant's obligations thereunder by Agent. Owner agrees that Agent shall not have any obligations to Owner under the Lease or otherwise or any obligation to assume the Lease or any obligations thereunder.

8. This Subordination and Consent shall continue until such time as all Obligors' obligations to Agent and the other Lenders, and expenses (including, without limitation, attorneys' fees) incurred in connection therewith, have been paid in full and all covenants and conditions as more specifically enumerated in the Agreements have been fully performed.

9. This Subordination and Consent shall inure to the benefit of and be binding upon the successors, heirs, and assigns of Owner and Agent.

10. This Subordination and Consent or a memorandum hereof may be recorded in the real property records of the county in which the Premises are located.

11. This Subordination and Consent may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Subordination and Consent. Delivery of an executed counterpart of this Subordination and Consent by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Subordination and Consent. Any party delivering an executed counterpart of this Subordination and Consent by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Subordination and Consent but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Subordination and Consent.

12. **GOVERNING LAW.**

(a) **THE VALIDITY OF THIS SUBORDINATION AND CONSENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALASKA.**

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS SUBORDINATION AND CONSENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE STATE OF ALASKA; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL LOCATED AT THE PREMISES SHALL BE BROUGHT IN THE COURTS OF VALDEZ, ALASKA. THE PARTIES HERETO WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS SUBORDINATION AND CONSENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). THE PARTIES HERETO REPRESENT THAT EACH HAS REVIEWED THIS SUBORDINATION AND CONSENT, AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS SUBORDINATION AND CONSENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY ACTION OR PROCEEDING BROUGHT UNDER SUBPARAGRAPH 12(b) ABOVE, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EXCEPT AS PROVIDED IN SUBPARAGRAPH 12(b) ABOVE, NOTHING IN THIS SUBORDINATION AND CONSENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SUBORDINATION AND CONSENT AGAINST ANY OBLIGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO, OR AGAINST ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS SUBORDINATION AND CONSENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION HEREWITH, AND EACH PARTY HERETO HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

[Signature pages to follow.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Subordination and Consent to be executed and delivered as of the date first above written.

Dated: November \_\_, 2016

**AGENT:** **BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 300 Galleria Parkway  
Atlanta, Georgia 30339-3153

Attn: John M. Olsen  
Senior Vice President  
Fax No.: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within Subordination and Consent and acknowledged to me that she/he executed the same in her/his authorized capacity, and that by her/his signature on the Subordination and Consent, the entity upon behalf of which the person acted, executed the Subordination and Consent.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)

\_\_\_\_\_  
Name (Typed or Printed)

Dated:

November \_\_, 2016

**OWNER:**

**CITY OF VALDEZ**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:

City of Valdez  
212 Chenega Avenue  
PO Box 307  
Valdez, Alaska 99686

Attn: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Sheri Pierce, MMC, City Clerk

Approved as to form:

Brena, Bell & Clarkson, P.C.  
Valdez City Attorney

By \_\_\_\_\_  
Anthony S. Guerriero



STATE OF ALASKA                    )  
                                                  ) ss.  
THIRD JUDICIAL DISTRICT    )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within Subordination and Consent and acknowledged to me that she/he executed the same in her/his authorized capacity, and that by her/his signature on the Subordination and Consent, \_\_\_\_\_, the entity upon behalf of which the person acted, executed the Subordination and Consent.

WITNESS my hand and official seal.

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

(Seal)

\_\_\_\_\_  
Name (Typed or Printed)

**Exhibit A**

**Description of Premises**

That 6,230 square foot portion of USS 495 Tidelands shown on the drawing marked EXHIBIT A and attached hereto.

# EXHIBIT A

