

LEASE AGREEMENT

THIS LEASE is effective as of this _____ day of _____, 20____, between the **CITY OF VALDEZ**, a municipal corporation organized under the laws of the State of Alaska, whose address is P.O. Box 307, Valdez, Alaska 99686, hereinafter referred to as “LESSOR”, and IN Properties, LLC, whose address is 60 East Rio Salado Parkway Ste. 980, Tempe, Arizona 85281 hereinafter referred to as “LESSEE”.

Based upon the foregoing recitals LESSOR and LESSEE agree as follows:

I- PROPERTY

1.01. Lease of Property. LESSOR leases to LESSEE and LESSEE leases from LESSOR the property depicted in Exhibit “A” attached hereto, and more specifically described as follows:

3,720 square foot portion of Lot 2, Block 2, Mineral Creek Subdivision (Barney Meyring Park Strip)

1.02. Quiet Enjoyment, Restrictions, Easements, Etc. LESSOR covenants and agrees that LESSEE, upon paying rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Lease on LESSEE’S part to be kept of performed, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation, subject, however, to the rights and reservations expressed in this Lease, the U.S. Patent to the Property, the State of Alaska Patent to the Property, existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property.

Excepting and reserving therefrom, to LESSOR and its assigns during the term of this Lease, the following specific interests, which shall be in addition to and not in derogation of any general reservations to LESSOR which are required by law and which many be stated elsewhere in this Lease:

- (a) If at any time during the Lease, LESSEE attempts to assign this Lease or transfer control over the Property to another or the Property is devoted to another use, without the consent of LESSOR, this Lease shall automatically terminate.
- (b) The Alaska Constitution guarantees any citizen of the United States or resident of the state the right of access to navigable waters and the land beneath them for navigation, commerce, fishing and other purposes. This tide and submerged land Lease is subject to the principles of the Public Trust Doctrine. LESSOR reserves the right to grant other interests to the Property consistent with the Public Trust Doctrine as long as said interests will not unreasonably interfere with the use of the Property by LESSEE.
- (c) All survey monuments, witness corners, reference monuments and bearing trees shall be protected by LESSEE against damage, destruction, or obliteration. Any damages, destroyed or obliterated markers shall be reestablished by LESSEE at LESSEE’S expense in accordance with accepted survey practices of the State of Alaska Department of Natural Resources.

- (d) All fuel petroleum and other toxic products maintained, stored or used at the Property shall be stored no less than 100 feet away from the nearest surface waterbody, and contained and confined in a manner which prevents any spillage from entering the Property, including without limitation any surface waters. In the event of a fuel or other toxic product spill, LESSEE shall immediately notify the Valdez office of the Department of Environmental Conservation of the same.
- (e) LESSEE must maintain on hand at all times sorbent materials in sufficient quantity to handle operational spills for use in the event of a fuel or other toxic product spill.
- (f) LESSEE is responsible for all aspects of the maintenance and operation of the Property and the leasehold
- (g) LESSEE is responsible for survey and environmental assessment costs as deemed necessary by LESSOR.

1.03. Property Accepted "As Is". LESSEE acknowledges that it has inspected the Property and accepts the same "as is" and without reliance on any representations or warranties of LESSOR, its agents, representatives, or employees, as to the physical condition of the Property, including, but not limited to, subsurface and soil conditions, or as to its fitness or habitability or for any particular purpose, or otherwise.

1.04. No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Property as stated in this Lease. LESSOR makes no warranty or representation, as whether the Property is open or closed to mineral claims or leases under state or federal law.

1.05. Appraisal. LESSEE is responsible for the cost of appraisal for the purposes of determining fair rental value.

II - TERM

2.01. Lease Term. The initial term of this Lease shall be five years commencing on _____ 20__, and ending on the last day of ____ 20 __. The Lease term may be extended by LESSEE in accordance with the provisions of paragraph 2.06 below for five, five-year extension options.

2.02. Preference Rights to Re-Lease. LESSEE shall upon expiration of this Lease, and pursuant to Section 4.08.250 of the Valdez Municipal Code, as may be amended from time-to-time, be allowed a preference right to re-lease the Property, provided the LESSEE is not in breach or default of any of the terms or conditions of the Lease at the time of Lease expiration, unless it shall be determined by LESSOR that the renewal of this Lease is not in the best interests of LESSOR.

2.03. Application to Re-lease. If, at the expiration of this Lease, the LESSEE desires to re-lease the Property, LESSEE shall, not sooner than ninety calendar days and not later than sixty calendar days prior to the expiration, make application to re-lease the Property. The re-lease application shall certify the

character and value of all improvements placed by LESSEE on the Property, the purpose and lengths for which the re-lease is desired, and any other information that LESSOR may require. Applications to re-lease shall be submitted to the same application review as new applications for lease, pursuant to Section 4.08.250 of the Valdez Municipal Code as may be amended from time-to-time.

2.04. Hold-Over. If LESSEE shall holdover after the expiration of the term of this Lease such tenancy shall be from month to month, subject to all the terms, covenants and conditions of this Lease.

2.05. Surrender of Possession. Upon expiration of the term of this Lease, whether by lapse of time or otherwise, LESSEE shall promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in Article XVII of this Lease, and LESSEE shall execute, acknowledge and deliver to LESSOR a proper instrument in writing, releasing and quitclaiming to LESSOR all right, title and interest of LESSEE in and to the Property and all such improvements thereon.

2.06. LESSEE'S Option to Extend Lease Term. Provided that this Lease has not been terminated and LESSEE is not in default of LESSEE's obligations under this Lease at the time of exercise, LESSEE shall have the right to extend the term of this Lease for five (5) additional periods (each period being an "Option") of five (5) years each (each being an "Extension Period"). To exercise of the Option not less than ninety (90) days prior to the end of the then expiring Lease term. Rent and the adjustment thereof for any Extension Period for which an Option has been exercised shall be as set forth in Article III below.

III - RENT, TAXES, ASSESSMENTS AND UTILITIES

3.01. Rent. The LESSEE shall pay to LESSOR an annual rent of ten percent (10%) of the fair market appraised value of the Property, which value, subject to the adjustment provisions set forth below, is determined to be _____. An annual payment of rent shall be made in advance not later than the first day of June of each year of the Lease. Rent for any partial year shall be prorated at the rate of 1/12th of the annual rent per month or portion thereof. Rent shall be payable at the office of the City of Valdez, P.O. Box 307, Valdez, Alaska 99686, or at such other place as LESSOR may designate in writing. Delinquent rent shall bear interest at the maximum rate of interest allowed per annum.

3.02. Adjustment of Rent. The Property will be reappraised and the annual rent accordingly adjusted every five (5) years thereafter during the term of this Lease. Such appraisal will be based on the value of the Property and shall not include the value of buildings or improvements placed on the Property by LESSEE. The appraised value of the Property for the purposes of determining the annual rental amount shall be by an appraisal done by a State of Alaska license appraiser of LESSOR'S selection. In no event, however, shall the annual rent be less than the original annual rent set forth in paragraph 3.01. Nothing in this paragraph shall prevent the annual reassessment of the leased premises for tax purposes to determine its true value as provided by law.

3.03. LESSEE to Pay Taxes. LESSEE shall pay prior to delinquency and directly to the taxing authorities in which the Property is located all real property taxes on the Property and all personal property taxes levied on personal property situated on the Property and placed thereon by LESSEE, its agents, authorized representatives, or employees. LESSEE shall further pay prior to delinquency any other taxes for which it

may be liable. LESSEE shall, within thirty (30) days after such tax, assessment or other charge, whether or not constituting a lien on the Property, shall become due and payable, produce and exhibit to LESSOR satisfactory evidence or payment thereof.

3.04. LESSEE to Pay Assessments. LESSEE during the term of this Lease shall pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or all of the costs of any public work or improvement assessed according to benefit found by levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, LESSEE may elect to pay the same in installments, and in such case LESSEE shall be liable only for such installments as shall accrue during the term of this Lease. LESSOR warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by LESSOR.

3.05. Proration of Taxes and Assessments. If LESSEE'S obligation to pay taxes or assessment commences or ends during a tax year, such obligation shall be prorated between LESSOR and LESSEE.

3.06. Contest. LESSEE shall have the right to contest any taxes or assessments, which LESSEE is obligated to pay under paragraphs 3.03 or 3.04 of this Lease. Such proceedings shall, if instituted, be conducted promptly at LESSEE's own expense and free from all expense to LESSOR. Before instituting any such proceedings, LESSEE shall pay under protest any such taxes or assessments, or shall furnish to LESSOR a surety bond written by a company acceptable to LESSOR or other security acceptable to LESSOR, sufficient to cover the amount of such taxes or assessments, with interest for the period which such proceedings may reasonably be expected to take, and costs, securing the payment of such taxes or assessments, interest and costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, LESSEE shall pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part thereof, might be forfeited. The proceedings referred to in this paragraph 3.06 shall include appropriate appeals from any order or judgements therein, but all such proceedings shall be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and shall be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge, LESSEE shall pay the amount that shall be finally levied or assessed against the Property or adjudicated to be due and payable, and, if there shall be any refund payable by the governmental authority with respect thereto, LESSEE shall be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.05 of this Lease. LESSOR, at LESSOR's option and expense, may, but shall not be obligated to, contest any such taxes or assessments. In such event, LESSOR shall be entitled to receive and retain any refund payable by any governmental authority with respect thereof.

3.07. LESSEE to Pay Utility Charges. LESSEE shall pay or cause to be paid all charges for gas, oil, electricity, water, sewer, heat, snow removal refuse removal and any and all other utilities or services used upon the Property throughout the term of this Lease, including any connection fees.

3.08. Additional Rent and LESSOR's Right to Cure LESSEE's Default. All costs and expenses which LESSEE assumes or agrees to pay pursuant to this Lease shall, at LESSOR's election, be treated as additional rent, and, in the event of nonpayment, LESSOR shall have all rights and remedies provided in

this Lease in the case of nonpayment of rent or of a breach of condition, at LESSOR's election. If LESSEE shall default in making any payment required to be made by LESSEE or shall default in performance of any term, covenant or condition of this Lease on the part of LESSEE to be kept, performed or observed which shall involve the expenditure of money by LESSEE, LESSOR at LESSOR's option may, but shall not be obligated perform or observe such term, covenant or condition, and any and all sums to expended by LESSOR, with interest thereon at the maximum allowable rate of interest per year from the date of such expenditure until repaid, shall be, and shall be deemed to be, additional rent and shall be repaid by LESSEE to LESSOR, on demand, provided, however, that no such payment or expenditure by LESSOR shall be deemed a waiver of LESSEE's default, nor shall it affect any remedy of LESSOR by reason of such default.

IV - USE

4.01. Use. LESSEE shall use the Property for additional parking for the Willow Park Apartment Building and for no other purposes. LESSEE shall not conduct any illegal activities on the Property or maintain any nuisances on the Property.

4.02 Radio Interference. At the LESSOR'S request, the LESSEE shall discontinue the use of any machine or device which interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated provided that such a request is based upon a reasonable belief that LESSEE's machine or device is the source of the interference.

V - IMPROVEMENTS

5.01. Notice of Construction. No improvements may be made to the Property without first obtaining LESSOR'S written consent and required permit(s) from the Alaska Corps of Engineers and any other permits required by other city, state and/or federal agencies. After obtaining the appropriate permits, LESSEE shall give LESSOR no less than five (5) days written notice prior to the commencement of any construction, alteration or repair of any improvements constructed or made by LESSEE on the Property so that LESSOR may, if it so elects, give notice of nonresponsibility pursuant to Alaska Statute 34.35, as may be amended from time-to-time.

5.02. Development Requirements. LESSEE shall develop the area by installing the necessary improvements for the maintenance of a fifteen space parking area including the following:

1. Parking area must be one lane deep with a 12' access aisle. 15 spaces are required in the parking area.
2. Spaces must be clearly marked with additional flagging during the winter months.
3. Spaces must be assigned to tenants and clearly marked as private parking.
4. Parking spaces must be north of the light pole and dumpster to allow for snow removal into park strip.
5. LESSEE is responsible for snow removal within the leased area.
6. Barriers shall be installed at the west and north end of the parking spaces to prevent vehicles from driving onto the park strip or through the park strip to the next cul-de-sac.

7. Parking spaces shall be used for parking operational and licensed vehicles only. No snow machines, 4-wheelers, boats, campers, non-running or unlicensed vehicles or storage containers shall be parked on the lease area.

8. The parking area is required to be graded for proper drainage at the cost of the LESSEE.

5.03. LESSEE's Ownership of Buildings and Improvements. It is expressly understood and agreed that any and all buildings and improvements of any nature whatsoever constructed or maintained on the Property by LESSEE shall be and retain the property of LESSEE and may be removed or replaced by LESSEE at any time during the term of this Lease, subject, however, to paragraph 17.01 of this Lease.

5.04. Construction Prerequisites. No construction shall be commenced unless the following events have occurred:

- (a) LESSEE shall furnish to LESSOR certificates of insurance in the amounts and for the purposes specified in Article X.
- (b) LESSEE shall from time to time deliver to LESSOR satisfactory proof that worker's compensation insurance has been procured to cover all persons employed in connection with the construction. Notice of any deficiency in this area to LESSEE will be cured immediately and no work will be performed on the project until the LESSOR has satisfactory proof that proper worker's compensation insurance is in place.
- (c) LESSEE shall obtain all necessary city, state, federal or other required building permits.

5.05. LESSEE to Use the Port of Valdez. LESSEE agrees that LESSEE will use all reasonable efforts to have all materials and equipment which LESSEE or LESSEE's contractors ship by water from points of origin outside of the State of Alaska, and which are incorporated into or used in the construction or operations on the Property, shipped by water directly to Valdez and unloaded in the Port of Valdez.

5.06 Landscaping. LESSEE shall landscape the areas surrounding any buildings or improvements constructed or maintained on the Property in a pleasing and aesthetic manner consistent with the scenic nature and natural vegetation of the Property and the surrounding land, and shall maintain such landscaping in good condition.

VI - TRADE FIXTURES

6.01. LESSEE's Ownership of Trade Fixtures, Machinery and Equipment. It is expressly understood and agreed that any and all trade fixtures (including electrical fixtures), machinery, equipment or any nature whatsoever and other personal property of LESSEE at any time placed or maintained upon the Property by LESSEE shall be and remain property of the LESSEE and may be removed or replaced at any time during the term of this Lease.

VII - ASSIGNMENT AND SUBLETTING

7.01. Assignment/Encumbrances/Subletting. LESSEE shall not voluntarily assign or encumber its interest in this Lease or in the Property, or sublet all or any part of the Property, or allow any other person or entity (except LESSEE's authorized representatives) to occupy or use all or any part of the Property without first obtaining LESSOR's consent. Any assignment, encumbrance or sublease without LESSOR's consent shall be voidable and, at LESSOR's election, shall constitute default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph. If LESSEE is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, of any partner or partners owning fifty percent (50%) or more of the partnership, or the dissolution of the partnership, shall be deemed a voluntary assignment. If LESSEE is a corporation, any dissolution, merger, consolidation or other reorganization of LESSEE, or the sale or other transfer of a controlling percentage of the capital stock of LESSEE, or the sale of fifty-one percent (51%) of the value of the assets of LESSEE, shall be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of LESSEE's capital stock issued, outstanding and entitled to vote for the election of directors. As to a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such LESSEE's corporation will not be deemed to be a voluntary assignment. Any assignment affected pursuant to this paragraph 7.01 shall require the assignee to assume the LESSEE's obligations hereunder. LESSEE shall promptly deliver to LESSOR a copy of any assignment instrument. Any assignment shall not release the LESSEE from liability hereunder.

7.02. Assignment of Rents to LESSOR. LESSEE immediately and irrevocably assigns to LESSOR, as security for LESSEE's obligations under this Lease, all rent from any subletting of all or part of the Property as permitted by this Lease, and LESSOR, as assignee and attorney-in-fact for LESSEE or a receiver for LESSEE appointed on LESSOR's application, may collect such rent and apply it toward LESSEE's obligations under this Lease, except that, until the occurrence of an act of default by LESSEE, LESSEE shall have the right to collect such rent.

7.03. Costs of LESSOR'S Consent to Be Borne by LESSEE. LESSEE shall pay to LESSOR, on demand, reasonable costs, including attorney's fees, incurred by LESSOR in connection with any request by LESSEE for LESSOR to consent to any assignment subletting by LESSEE.

VIII - LIENS

8.01. Prohibition of Liens. LESSEE shall not suffer or permit any liens, including without limitation, mechanic's or materialman's liens, to be recorded against the Property. If any such liens shall be recorded against the Property, LESSEE shall cause the same to be removed, or, in the alternative, if LESSEE in good faith desires to contest the same, LESSEE shall be privileged to do so, but in such case LESSEE shall indemnify and hold LESSOR harmless from all liability for damages occasioned thereby and shall, in the event of a judgement of foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgement. Nothing contained in this Lease shall be construed to be a waiver of the provisions of AS 09.38.015(c), as may be amended from time to time.

IX - INDEMNITY

9.01. Indemnity. Except for claims arising solely out of acts or omissions of LESSOR, its agents, authorized representatives, employees or contractors, LESSEE agrees to protect, defend, indemnify and hold LESSOR, its agents, authorized representatives and employees (collectively "LESSOR's Indemnities") harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on or relating to the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorney's fees, incident to the defense of and by LESSOR's Indemnities therefrom. If any action or proceeding is brought against LESSOR's Indemnities by reason of any such occurrences, LESSOR's Indemnities shall promptly notify LESSEE in writing of such action or proceeding.

X - INSURANCE

10.01. Liability Insurance. LESSEE, during the term of this Lease, shall carry at its expense comprehensive general liability insurance covering the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit to protect against liability for personal injury, death or property damage, which might arise from the construction occupancy or use of the Property and the operations conducted on it. Said insurance shall insure the performance by LESSEE of the indemnity provisions of paragraph 9.01. LESSOR may increase the amount of insurance required at five (5) year intervals. LESSOR agrees that any such increase shall be reasonable.

10.02. Named Insured, Notice to LESSOR, and Waiver of Subrogation. All insurance policies required to be maintained by LESSEE under paragraph 10.01 shall name LESSOR, and its officers, employees and agents, as additional insured. All policies issued under paragraph 10.01 shall contain an agreement by the insurers that such policies shall not be cancelled without at least twenty (20) days prior written notice to LESSOR, and certificates or copies of all such insurance policies shall be furnished to LESSOR promptly upon LESSOR's request therefor. All policies issued under paragraph 10.01 shall contain a waiver of any subrogation rights any insurer might have against LESSOR.

10.03. Fire and Extended Coverage Insurance. LESSEE may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover improvements, equipment, inventory, fixtures, personal property and improvements made to the Property by LESSEE subsequent to LESSEE's taking possession of the Property under this Lease.

XI - CARE OF PROPERTY

11.01. Care of the Property. LESSEE at its own cost and expense shall keep the Property and all buildings and improvements, which at any time may be situated thereon, in good condition and repair during the term of this Lease, ordinary wear and tear expected. The Property shall always be kept by LESSEE neat, clean, and free of litter. Vehicles, equipment, supplies, materials or other items or personal property shall be stored on the Property in a neat, orderly, and safe manner. LESSOR reserves the right to cause LESSEE to change the manner of storage if potential for hazard or public nuisance is found. Nothing in this paragraph shall prevent the temporary placement of building materials and equipment necessary for the construction of the

structures permitted under this Lease in the areas where the structures are to be constructed, nor shall this section be applicable to general parking for guests and employees.

11.02. Restoration or Removal of Damaged Buildings and Improvements. In the event any buildings or improvements situated on the Property by LESSEE are damaged or destroyed by fire or other casualty, LESSEE shall at LESSEE's expense restore the same to good and tenantable conditions or shall, at LESSOR's option remove the same as soon as is reasonably possible, but in no event shall the period of restoration exceed eighteen (18) months nor shall the period of removal exceed forty-five (45) days.

11.03. Access Rights of LESSOR. LESSOR, its agents, authorized representatives or employees, shall have the right to enter into and upon the Property and all buildings or improvements situated thereon upon 24 hour notice to LESSEE and during normal business hours (defined as 9:00 a.m. to 5:00 p.m. Monday through Friday except for holidays as defined in paragraph 15.05 of this Lease) for the purpose of inspecting the Property and all buildings or improvements situated thereon for compliance with the terms of this Lease.

11.04. Nuisances Prohibited. LESSEE shall immediately remove from the Property any abandoned or junk vehicles, improvements, equipment, machinery or fixtures. LESSEE shall not permit any nuisance or public nuisance to exist or to be created or maintained on the Property. LESSEE agrees that any nuisance or public nuisance as defined by the Valdez Municipal Code or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Valdez, may, after five (5) days written notice to LESSEE, be removed by LESSOR without LESSEE's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefor, all the costs of such removal to be paid by LESSEE to LESSOR as additional rent under the terms of this Lease. This paragraph shall not be construed as any limitation on any other legal rights or remedies available to the City of Valdez to abate any nuisance or to prosecute any violation of the Valdez Municipal Code.

XII - LAWS

12.01. Compliance with Laws. LESSEE shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or thereafter in any manner affecting LESSEE's activities on the Property or any buildings or other improvements which may be situated thereon, whether or not any such laws, ordinances or regulations which may be thereafter enacted involve a change of policy on the part of the governmental body enacting the same. In the event of a conflict between the provisions of this Lease and the City of Valdez Municipal Code, the latter shall control.

XIII - CONDEMNATION

13.01. Condemnation. In the event the Property, or any part thereof or interest therein, shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of LESSOR and LESSEE in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease shall be as provided in this Article XIII.

13.02. Total Taking. If all of the Property is taken or so transferred, this Lease and all the right, title and interest thereunder of LESSEE shall cease on the date title to the Property vests in the condemning authority, subject to the removal provisions in Article XVII if applicable.

13.03. Partial Taking - Termination of Lease. In the event the taking or transfer of part of the Property leaves the remainder of the Property in such location, or in such form, shape or reduced size, or so inaccessible as to be not effectively and proactively usable in the reasonable opinion of LESSEE for the purpose of operation thereon of LESSEE's business, then this Lease and all of the right, title and interest thereunder of LESSEE shall cease on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession, subject to the removal provisions of Article XVII if applicable.

13.04. Partial Taking - Continuation of Lease. In the event the taking or transfer of part of the Property leaves a portion of the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively and proactively usable in the reasonable opinion of LESSEE for the purpose of operation thereon of LESSEE's business, this Lease shall terminate and end as to the portion of the Property so taken or transferred as of the date title to such portion vests in the condemning authority and the condemning authority enters into possession, but shall continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminal, then the annual rent payable under this Lease shall abate for the portion of the Property taken in the proportion that such portion bears to all of the Property.

13.05. Compensation. Compensation received or payable as a result of eminent domain proceedings or a transfer in lieu thereof shall belong to LESSOR, if such compensation be awarded or paid as compensation for diminution in value for the leasehold or of the fee, and LESSEE shall make no claim against LESSOR for damages for termination of the leasehold or interference with LESSEE's business unless LESSOR is the condemning authority or responsible for condemnation. Compensation received or payable as a result of eminent domain proceedings or a transfer in lieu thereof shall belong to the LESSEE, if such compensation be awarded or paid as compensation for LESSEE's moving expense, for interference with LESSEE's business, and for damages relating to any trade fixtures, machinery or equipment owned by the LESSEE. Upon award each party shall be responsible for pro-rata share of the attorney's fees incurred in direct proportion to the total amount recovered for their respective losses.

XIV - DEFAULT

14.01. Default. Each of the following events shall be deemed an event of default by the LESSEE under this Lease and a breach of the terms, covenants and conditions of this Lease.

- (a) Failure to perform as required and when required any of the development requirements contained in paragraph 5.02 of this Lease.
- (b) A default in the payment of the rent and additional sums due under this Lease, or any part thereof, for a period of sixty (60) days from the due date for the payment of such rent or additional sums.

- (c) A default in the performance of any other term, covenant or condition on the part of the LESSEE to be kept, performed or observed for a period of sixty (60) days after LESSOR gives to LESSEE a written notice specifying the particular default or defaults; provided, however, that any default on the part of the LESSEE in the performance of work or acts required by LESSEE to be done, or conditions to be modified, shall be deemed to be cured if steps have been taken promptly by LESSEE to rectify the same and prosecuted to completion with diligence and continuity.
- (d) The making by LESSEE of an assignment for the benefit of creditors, unless given written consent by LESSOR.
- (e) The appointment of a receiver by a court of competent jurisdiction for LESSEE's business.
- (f) The levy under execution or attachment by process of law of the leasehold interest of LESSEE in the Property if not cured within sixty (60) days.
- (g) The use of the Property or buildings and improvements thereon for purposes other than those enumerated herein, to which LESSOR has not given its written consent.
- (h) The abandonment of the Property by LESSEE.
- (i) The occurrence of any event giving rise to cancellation or forfeiture of this Lease as stated in section 4.08.190 of the Valdez Municipal Code, as may be amended from time-to-time.

14.02. LESSOR's Remedies. In the event of any default by LESSEE's recited in paragraph 14.01 of this Lease, LESSOR shall have all of the below enumerated rights and remedies, all in addition to any rights and remedies that LESSOR may be given by statute, common law or otherwise. All rights of LESSOR shall be cumulative, and none shall exclude any other right or remedy. LESSOR's rights and remedies include the following:

- (a) LESSOR may declare the term of this Lease ended by written notice to LESSEE. Upon termination of this Lease, LESSEE shall surrender possession and vacate the Property immediately, and deliver possession thereof to LESSOR, and LESSEE hereby grants to LESSOR full and free license to enter into and upon the Property in such event with or without process of law and to reprocess the Property and to expel or remove any and all property therefrom, using such force as may be necessary, and without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing LESSOR's right to rent or any other right given to LESSOR hereunder or by operation of law.
- (b) LESSOR may by written notice declare LESSEE's right to possession of the Property

terminated without terminating this Lease. Upon such termination of LESSEE's right to possession, LESSOR shall have all the rights to repossess the Property and remove LESSEE and LESSEE's property that are enumerated in paragraph 14.02(a), subject to LESSEE's rights under Article XVII. Should LESSOR elect to terminate LESSEE's right to possession without terminating this Lease, LESSEE shall have the right to re-possession upon cure of the default or upon written waive by the LESSOR of the default claimed.

- (c) LESSOR may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the term of this Lease, for any period equal to or greater or less than the remainder of the term of this Lease, for any sum which LESSOR may deem reasonable, except as provided in subparagraph (e) of this paragraph, subject to the applicable sections of Chapter 4.08 of Valdez Municipal Code and LESSEE's rights under Article XVII. Any sums collected shall be credited to any indebtedness of LESSEE pursuant to the conditions described in paragraph 14.02(e) (ii).
- (d) LESSOR may collect any and all rents due or to become due from subtenants or other occupants of the Property. Any sums collected shall be credited to any indebtedness of LESSEE pursuant to the conditions described in paragraph 14.02(e) (ii) with any excess amounts being paid to LESSEE.
- (e) LESSOR may recover, whether this Lease be terminated or not, from LESSEE, damages provided for below consisting of items (i), and (ii), or, in lieu of (ii), item (iii);
 - (i) Actual attorney's fees and other expenses incurred by LESSOR by reason of the breach or default by LESSEE; and
 - (ii) An amount equal to the amount of all rent and additional sums reserved under this Lease, less the net rent, if any, collected by LESSOR on reletting the Property and less any amounts recovered from the sale of attached personal property or improvements on the Property, which shall be due and payable by LESSEE to LESSOR on the days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days LESSEE shall pay to LESSOR the amount of deficiency then existing. Such net rent collected all expenses incurred by LESSOR in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of removing any improvements made by LESSEE in order to return the property to its pre-rent condition, however, LESSOR must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of LESSEE under this Lease or else LESSOR will not have access to the remedy set out in this paragraph 14.01(e)(ii); or
 - (iii) An amount to be due immediately on the breach, equal to the difference

between the rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable shall be discounted to the date of such breach at the rate of eight percent (8%) per year.

- (f) Reentry or reletting of the Property or any part thereof, shall not be deemed a termination of this Lease, unless expressly declared to be so by LESSOR.
- (g) If this Lease shall be deemed terminated, LESSEE's liabilities shall survive and LESSEE shall be liable for damages as provided in this paragraph 14.02.

XV - GENERAL PROVISIONS

15.01. Estoppel Certificates. Either party shall at any time and from time to time upon not less than thirty (30) days prior written request by the other party, execute, acknowledged and deliver to such party, or to its designee, a statement in writing certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments), that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.

15.02. Conditions and Covenants. All the provisions of this Lease shall be deemed as running with the land, and shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

15.03. No Waiver of Breach. No failure by either LESSOR or LESSEE to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other than existing or subsequent breach.

15.04. Time of Essence. Time is of the essence of this Lease and of each provision.

15.05. Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first (1st) day and including the last, unless the last day is a Saturday, Sunday, or a holiday and then it is also excluded. The term "holiday" shall mean all holidays as defined by the statutes of Alaska.

15.06. Successors in Interest. Each and all of the terms, covenants and conditions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of LESSOR and LESSEE.

15.07. Entire Agreement. This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement or promise made by any party which is not confined in this Lease shall be binding or valid.

15.08. Governing Law/Jurisdiction/Venue. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Alaska. Any litigation arising out of the enforcement of rights or performance of the parties under this Lease, or its interpretation, shall be brought in the courts of the State of Alaska, Third Judicial District at Valdez.

15.09. Partial Validity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such provisions are considered by LESSEE to be integral to LESSEE's use of the Property for the purposes stated therein in which case LESSEE will have the authority to terminate this Lease upon thirty (30) days written notice to LESSOR.

15.10. Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between LESSOR and LESSEE; and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between LESSOR and LESSEE other than the relationship of LESSOR and LESSEE.

15.11. Interpretation. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not for or against LESSOR or LESSEE as both LESSOR and LESSEE have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.

15.12. Number and Gender. In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.

15.13. Mandatory and Permissive. "Shall", "will" and "agrees" are mandatory; "may" is permissive.

15.14. Captions. Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

15.15. Amendment. This Lease is not subject to amendment except in writing executed by all parties hereto.

15.16. Delivery of Notices - Method and Time. All notices, demands or request from one party to another shall be delivered in person or be sent by mail, certified or registered, postage prepaid, to the addresses states in paragraph 15.17 and shall be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

15.17. Notices. All notices, demands and requests from LESSEE to LESSOR shall be given to LESSOR at the following address:

City Manager
City of Valdez
P.O. Box 307
Valdez, Alaska
99686

All notices, demands or requests from LESSOR to LESSEE shall be given to LESSEE at the following address:

IN Properties, LLC
Attn: Larry Innes
60 East Rio Salado Parkway Ste. 980
Tempe, Arizona
85281

15.18. Change of Address or Agent. Each party shall have the right, from time to time, to designate a different address or different agent for service of process by notice given in conformity with paragraph 15.16.

15.19. Furnishing of Information. LESSEE shall provide LESSOR with copies of articles of incorporation and bylaws, partnership agreements, joint venture agreements or other documents which shall define the manner of organization and the ownership of any business or activities to be conducted upon the Property, together with all future amendments thereto. LESSEE and LESSEE's assignee or sublessee shall also provide the same information regarding any assignee or sublessee of LESSEE.

15.20. Recordation. This Lease or a memorandum thereof may be recorded by LESSEE at LESSEE's expense with the Valdez Recorder's Office.

XVI - LESSOR'S LIEN

16.01. LESSOR'S Lien and Security Interest. LESSOR shall have a lien on, and LESSEE hereby grants LESSOR a security interest on, improvements, equipment and fixtures, which are or may be put on the premises by LESSEE, to secure the payment of the rent and additional sums reserved under this Lease. If LESSEE shall default in the payment of such rent, LESSOR may, at its option, without notice or demand, take possession of and sell such property in accordance with the Uniform Commercial Code of Alaska or other applicable law. LESSOR shall apply the proceeds of sale as follows:

- (a) To the expense of sale, including all costs, fees and expenses of LESSOR and LESSOR's reasonable attorney's fees in connection with such sale;

- (b) To the payment of such rent; and
- (c) The surplus, if any, to LESSEE.

XVII - OWNERSHIP OF IMPROVEMENTS AND FIXTURES ON TERMINATION

17.01. LESSEE May Remove Improvements, Fixtures, Machinery and Equipment. Improvements, fixtures, machinery and equipment owned by LESSEE may be removed by LESSEE from the Property within sixty (60) days after the expiration or termination of this Lease; provided that such removal will not cause injury or damage to the Property, or if it does, LESSEE shall indemnify LESSOR for the full amount of such damage; and further provided that any improvements, fixtures, machinery or equipment left on the property by LESSEE shall be in good, safe and tenantable or operable condition; and further provided that LESSEE shall not commit, create, leave or allow to exist on the Property any nuisance or public nuisance. The LESSOR may extend the time for such removal in case hardship is shown to LESSOR's satisfaction, provided application for extension has been made in writing and received by LESSOR within said sixty (60) day period.

17.02. Property Not Removed. Any buildings, improvements, fixtures, machinery, equipment or other items of real or personal property, which are not removed from the Property within the time allowed in paragraph 17.01 of this Lease, shall immediately become the property of LESSOR and title hereto shall vest in LESSOR without further action on the part of LESSEE or LESSOR. LESSOR may use, sell, destroy, or otherwise dispose of any such property in any manner that it sees fit, without further obligation to LESSEE.

XVIII - NONDISCRIMINATION

18.01. LESSEE Will Not Discriminate. LESSEE agrees that in its use and occupancy of the Property it will not, on the ground of race, color, religion, national origin, ancestry, marital status, age, disability or sex, discriminate or permit discrimination against any prospective occupant, patron, customer, employee, application for employment or other person or group of persons in any manner prohibited by federal, state or local law or regulations promulgated thereunder.

XIX - HAZARDOUS MATERIALS

19.01. Condition of Property. LESSEE has had full opportunity to visually examine the Property for the presence of any Hazardous Material. LESSOR states that it is unaware of any current or past problems with the Property. LESSEE acknowledges that LESSOR, its agents, authorized representatives or employees have made no representations as to the physical conditions of the Property, including but not limited to the subsurface and soil conditions. LESSEE accepts the Property in an "as is" condition. LESSEE does not accept or assume responsibility or liability for pre-existing subsurface and/or soil conditions, including, but

not limited to Hazardous Materials and/or Environmental contamination that is unknown and/or undisclosed to LESSEE at the time of execution of this Lease.

19.02. Release of LESSOR. Any other provision of this Lease to the contrary notwithstanding, LESSEE releases LESSOR from any and all claims, demands, penalties, fines, judgements, liabilities, settlements, damages, costs or expenses (including, without limitation, a decrease in the value of the Property, damages due to loss or restriction of usable space, and attorney's fees, court costs, litigation expenses, and consultant and expert fees) arising, during or after the term of this Lease, and resulting from LESSEE's use, keeping, storage or disposal of HAZARDOUS MATERIAL on the Property. This release includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or policy subdivision or by law, relating to LESSEE's use, keeping, storage or disposal of Hazardous Materials on the Property.

19.03. Use of Hazardous Materials on the Property.

- (a) LESSEE shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by LESSEE or its authorized representatives or invitees, except for such Hazardous Material as is necessary or useful to LESSEE's use of the Property.
- (b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material.
- (c) LESSEE shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the LESSOR, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (b) the condition, use or enjoyment of the Property or any other real or personal property.
- (d) LESSEE shall be fully liable for all costs and expenses related to the use, storage and disposal of Hazardous Material kept on the Property by the LESSEE, its authorized representatives and invitees, and the LESSEE shall give immediate notice to the LESSOR of any violation or potential violation of the provisions of subparagraphs 19.03 (a), (b) and (c).

19.04. Indemnification of LESSOR. LESSEE shall forever protect, defend, indemnify and hold harmless LESSOR from and against any and all losses, claims, investigations, assertions, liens, demands and causes of action of every kind and character (including without limitation any assertions or claims made against LESSOR, LESSEE or third parties, by government agencies or third parties, alleging the release or threatened release of hazardous substances or environmental contamination of any kind on or in connection with the Property) and all costs thereof (including without limitation costs of removal action, remedial action other "response costs" as that term is defined under applicable federal and state law, attorney's fees, penalties, damages, interest and administrative/court costs incurred by LESSOR in response to and defense of the same) arising in favor any party, including LESSOR, and arising from or connected with LESSEE's

activities under this Lease or LESSEE's use of or presence on the Property, whether such activities, use or presence are those of LESSEE or LESSEE's agents, subcontractors or other representatives. LESSEE acknowledges that this indemnification clause shall survive termination of this Lease, and that it applies regardless of the basis of liability alleged by or against any party, including strict liability under Alaska Statute 46.03.822 or federal law. LESSEE's obligations under this paragraph may be discharged however, by performance of whatever degree of site investigation for environmental contamination (in LESSOR's sole discretion) is necessary to render the Property suitable for LESSOR to release LESSEE from these obligations, which release must be granted in writing by LESSOR.

19.05. Hazardous Material Defined. Hazardous Material/Substance is any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of Alaska, or the United States government. Hazardous Material includes any and all material or substances which are defined as "hazardous waste", "extremely hazardous waste", "hazardous material" or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" includes but is not restricted to asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.

19.06. Liability for Release/Threatened Releases of Hazardous Materials. LESSEE shall at all times while this Lease is in effect, for purposes of potential liability under Alaska Statute 46.03.822.:

1. LESSEE, not LESSOR, shall be deemed the owner of and person having control over any hazardous substances used by LESSEE or on the Property for business reasons of LESSEE; and
2. LESSEE, not LESSOR, shall be deemed the owner of the possessory interest under this Lease, and the operator of the Property as a facility under Alaska Statute 46.03.822(a)(2); and
3. LESSEE, not LESSOR, shall be deemed the generator, transporter, or both, of any hazardous substances generated or transported by LESSEE in connection with the enjoyment of its right under this Lease.

For purposes of this paragraph 19.06., "LESSEE" shall include LESSEE's agents, employees, subcontractors, subsidiaries, affiliates and representatives or any kind.

19.07. Compliance with Environmental Laws. Lessee covenants full compliance with any applicable federal, state or local environmental statute, regulations or ordinance presently in effect or that may be amended or effective in the future.

19.08. Due Diligence. At LESSOR's recommendation, LESSEE has investigated the Property for potential environmental contamination, which may have occurred before the date of this Lease; LESSEE accept the Property in its current environmental condition. After such investigation, LESSEE agrees that the Property:

- (a) Has not been subject to the use, generation, manufacture, storage, treatment, disposal release or threatened release or hazardous substances.

- (b) Has not been subject to any actual or threatened assertions, claims or litigation of any kind by government agencies or any other persons relating to such matters.

19.09. Access to Property. LESSEE authorizes LESSOR to enter upon the Property to make such inspections and tests as LESSOR may deem appropriate to determine compliance with this Lease; any such investigations or tests shall be for LESSOR's purposes only, and shall not be construed to create any responsibility or liability on LESSOR's part to LESSEE or any person.

19.10. Release from Future Claims. LESSEE hereby releases and freely waives any future claims against LESSOR for contribution or indemnity (whether under AS 46.03.822, other state law, or federal law) in the event LESSEE incurs or becomes liable for response costs, damages or costs of any kind because of the release, threatened release or presence of hazardous substances on or about the Property.

19.11. Report of Events. LESSEE specifically agrees to report all releases, threatened releases, discharges, spills or disposal of hazardous substances in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to LESSOR, and to keep LESSOR fully informed of any communication between LESSEE and any person or agency concerning potential or actual environmental contamination and hazardous substances.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the dates herein below set forth.

LESSOR:
CITY OF VALDEZ

By: _____
Jeremy, O'Neil, Mayor

Date: _____

Attest: _____
Sheri L. Pierce, MMC, City Clerk

Date: _____

LESSEE:

IN Properties, LLC

By: _____
Larry Innes, Partner

APPROVED AS TO FORM:

BRENA, BELL & CLARKSON, P.C.
Attorneys for City of Valdez

By: _____
Jon S. Wakeland

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 **Larry Innes** known to me and to me known to be the individual named in and who executed the foregoing document and executed the foregoing document as free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.

Notary Public in and for Alaska
My Commission Expires:_____