



# MUNICIPALITY OF SKAGWAY

GATEWAY TO THE KLONDIKE  
P.O. BOX 415, SKAGWAY, ALASKA 99840  
(PHONE) (907) 983-2297  
(FAX) (907) 983-2151  
[www.skagway.org](http://www.skagway.org)

## LESSOR'S CONSENT TO ASSIGNMENT OF LEASE – STOWAWAY CAFE

This Lease Amendment, dated January 3, 2019 for the purpose of modifying the existing lease dated and entered into on June 21, 2018, by and between the Municipality of Skagway (hereinafter MUNICIPALITY) a municipal government and Kim Long, Stowaway Cafe (hereinafter LESSEE), a private business, for the purpose of leasing a parcel of land 4,000 square feet located on Congress Way adjacent to the Skagway Small Boat Harbor.

### Amending Lease to Assignment:

The lessee and assignor, Kim Mathews Long/Stowaway Cafe, has assigned this Lease to Nanu LLC, the assignee as written in her letter dated November 13, 2018. (Attachment A). The assignor, Kim Mathews Long/Stowaway Café, is not relieved from his/her obligations under the Lease by this assignment. The assignee, Nanu LLC, shall be subject to all the provision of this Lease, including all amendments and modifications. The assignee shall be responsible for all insurance and liability associated with the lease. All other terms of the existing Lease Agreement shall remain unchanged. Any further modifications for amendments shall be agreed upon by both parties in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Amendment as of the date first written above.

\_\_\_\_\_  
Tim Cochran, Acting Mayor  
For the Municipality of Skagway

Date \_\_\_\_\_

\_\_\_\_\_  
Kim Mathews Long  
Lessee/ Assignor

Date \_\_\_\_\_

\_\_\_\_\_  
Michael Healy, only member of Nanu  
LLC and personal Guarantor for all  
obligations of Nanu, LLC

ATTEST:

\_\_\_\_\_  
Emily Deach, Borough Clerk

(SEAL)

KIMBERLEE KAY MATHEWS-LONG  
PO BOX 189  
SKAGWAY, AK 99840

PHONE 907.612.0890

EMAIL KONAKIMMY@YAHOO.COM

Nov. 13, 2018

RECEIVED

Municipality of Skagway  
PO Box 435  
Skagway, AK 99840

NOV 20 2018

MUNICIPALITY  
OF SKAGWAY

ATTN: Skagway Municipal Assembly

RE: Land Lease of Tax Lot 5D, ATS 4 commonly known as 205 Congress Way

My tenants Albert Efergen and Arlene Diente of Mermaid Garden have terminated their lease early and left unexpectedly.

I would like to remove them from the lease as sub-tenants.

I am in the process of selling the building to Nanu, LLC, solely owned by Michael Healy. I am requesting the lease be assigned to that entity at this time.

Thank you,

Kim Mathews (Long)

A handwritten signature in black ink, appearing to read "Kim Mathews Long". The signature is written in a cursive style with a large, sweeping loop at the end.



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**Municipality of Skagway  
And  
Kim Mathews Long  
Lease Agreement  
Stowaway**

This Lease is entered into on this 21<sup>st</sup> day of June, 2018, by and between the Municipality of Skagway (hereinafter, Municipality) a municipal corporation, and Kim Mathews Long (hereinafter Lessee), for the purpose of leasing a lot in the small boat harbor uplands.

**WITNESSETH:**

**WHEREAS** the Municipality owns the small boat harbor property; and

**WHEREAS** the Municipality wishes to offer the lease of a portion of land in conformance with the Skagway Municipal Code requirements;

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, it is agreed as follows:

**1. DURATION:**

This lease shall be in effect for a 15-year period, from May 21, 2018 to May 20, 2032.

**2. FACILITIES:**

- A. The leased premises subject to this lease shall be the grounds or portion of tax lot 5D, containing 5,500 SF in fee simple interest, within ATS 4, the Municipality of Skagway waterfront as described in the Appraisal Report dated May 23, 2018 (Attachment A).
- B. The Lessee recognizes that the Municipality may construct improvements to the premises during the term of this lease. Adjustments to the lease amount, if any, due to such improvements shall be negotiated by the Municipality and Lessee and approved in writing by both parties.

**3. LEASE AMOUNT:**

Annual lease payment shall be in the amount of \$9,680.00 (Nine Thousand, Six-Hundred Eighty Dollars and No/100), plus any applicable municipal sales tax. This amount is payable in four (4) equal quarterly installments of \$2,420.00 (Two Thousand, Four Hundred Twenty Dollars and No/100) plus applicable tax, due on or before the thirtieth day of, March, June, September, and December. Additionally, Lessee shall be responsible for cost of preparing the lease, including but not limited to survey and appraisal costs.

**4. OPERATIONS AND MAINTENANCE:**

- A. Lessee shall promptly repair, rebuild or restore premises or facilities damaged or destroyed, except damage caused solely by the Municipality.
- B. The Municipality may, at all reasonable times and with prior notice, enter upon and inspect the leased premises. If the Municipality determines the Lessee has failed to perform maintenance or repair work required under this lease, and if Lessee, after prior notice of the deficiencies, fails to correct the deficiencies or begin corrective action within a reasonable time, the Municipality may enter any part of the leased premises and perform the necessary work. Lessee shall reimburse the Municipality for all reasonable expenses incurred by this work within ten days of the Municipality providing the Lessee with an invoice for the work.

**5. INDEMNITY AND INSURANCE:**

- A. Lessee shall indemnify, save harmless and defend the Municipality from any and all claims or actions for injuries or damage of any kind and any nature, including but not limited to physical injury and death, property damage, special damages, consequential damages, expenses, costs, and attorney fees, directly or indirectly arising out of, in connection with, related to, or incident to the operation of the leased premises by the Lessee and the lessees employees, agents, guests, representatives, and invitees.
- B. Lessee shall provide to the Municipality of Skagway a certificate of insurance showing that the Lessee has obtained at least two million dollars (\$2,000,000.00) general liability insurance, which covers the Lessee's operations on the leased premises. Lessee shall provide the Certificate of Insurance, naming the Municipality as an additional insured, at the time of the effective date of the lease. Failure to maintain such insurance shall constitute a material breach of the terms and conditions of the lease. Lessee shall notify the municipality twenty (20) days before the policy is canceled or terminated and unless the Lessee provides a new Certificate of Insurance within 30 days of cancellation or termination, the Municipality may terminate this lease without further notice at its sole option.

C. **HAZARDOUS WASTE RESPONSIBILITY.** Lessee represents and warrants that the leased Premises will never be used for the generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance. The term "Hazardous Waste or Substance" means hazardous or toxic substances, materials or wastes, including but not limited to any substance, material or waste which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls (PCBs); (iv) toxic or hazardous substances as defined in Alaska Statute 18.60.105 or 46.03.826, and associated regulations; (v) designated as a "Hazardous Substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ' 9601, et. seq.; (vi) designated as a "Hazardous Waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. ' 6901, et. seq.; (vii) designated as a "Hazardous Substance" under the Clean Water Act, 33 U.S.C. ' 1321, or listed pursuant to 33 U.S.C. § 11317; (viii) listed by the U.S. Department of Transportation at 49 C.F.R. Part 302; and (ix) any other substance, waste or material which is regulated as hazardous or dangerous by any Federal, State or local agency.

Lessee agrees to hold Lessor harmless and to indemnify and defend Lessor against any and all claims and losses resulting from Lessee' breach of this paragraph, including, but not limited to, any loss, damage, liability, cost, or expense, including reasonable actual attorneys' and consultants' fees and expert fees, and including without limitation (i) any claims of third parties for personal injury, property damage, or other harm, and (ii) any response costs, costs of remedial, restoration or clean-up actions, fines suffered or incurred by Lessor arising out of or related to the presence of Hazardous Materials in, on, or under the property, or out of any such use of the property, or due to the incorporation of such materials. This obligation to indemnify, defend and hold Lessor harmless shall survive the term of this lease and include any claim, cause of action or administrative regulatory enforcement action in which Lessee or Lessor are determined or alleged to be a potentially responsible party.

6. **DEFAULT:**

When the Municipality determines that the provisions of this Lease are not being met and attempts to resolve the matter are unsuccessful, written notice shall be given to the Lessee stating the nature of the deficiency and necessary corrective action. Lessee shall either take immediate corrective action or respond to the Municipality in writing within ten calendar days stating the reason for noncompliance and a schedule for compliance. If the Municipality determines this response unacceptable, in its sole discretion, the Municipality shall give Lessee written notice of default. In the event of default, Lessee shall have ten calendar days from receipt of notice to remove personal property and vacate the premises. If such property is not removed within this time period, the Municipality may take possession of the property and dispose of the property without any liability to the Lessee.

7. **TERMINATION**

The Municipality or Lessee may terminate this Agreement at any time by giving no less than 90 days written notice to the other party of such termination and specifying the effective date of such termination.

8. **TERM AND CONDITIONS:**

A. This Agreement specifically supersedes any prior written or oral agreements between parties relating to the Lease of the property as described in this agreement.

B. Unless otherwise provided for in this Lease, the provisions of Skagway Municipal Code Title 16.02.140, 16.02.150, and 16.02.160 shall govern this lease and are attached to and incorporated into the terms and conditions of this lease and the Lessee is obligated to fully comply with Skagway Municipal Code Title 16.02.140, 16.02.150, and 16.02.160.

9. **NOTICE:**

All notices and requests in connection with this lease shall be in writing and shall be addressed as follows:

**MUNICIPALITY:** Municipality of Skagway  
Municipal Manager  
P.O. Box 415  
Skagway, AK 99840

**LESSEE:** Kim Mathews Long.  
P.O. Box 189  
Skagway, AK 99840  
907-983-2456

10. **MISCELLANEOUS**

A. The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, shall be the exclusive court for jurisdiction and venue of any and all actions of any kind and any nature arising out of or related to this Lease Agreement. Venue for trial in any action shall be in Skagway, Alaska. Lessee specifically waives any right or opportunity to request a change of venue from Skagway, Alaska for trial pursuant to A.S. 22.10.040. The parties agree that this Agreement shall be governed by the laws of the State of Alaska.

B. This Agreement is binding upon the heirs, successors and assign of the parties.

C. This Agreement represents the entire Agreement of the parties and no other Agreement whether oral or written which is not specifically set forth in this

Agreement or an addendum to this Agreement will have any force or effect upon the other party. Lessee specifically understands and agrees that no Municipal employee, Assembly member, or the Mayor has any authority to verbally modify this lease and any modifications must be in writing approved by the Assembly.

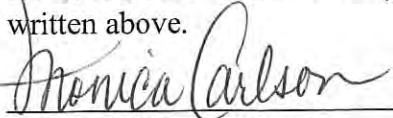
- D. The Municipality's waiver of any term or condition in this Agreement shall not constitute a waiver of any term or condition in this Agreement.
- E. If any term of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be valid and binding upon the parties.
- F. Titles and headings to sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
- G. Lessee is not relying on any representations by a Municipal employee, officer, assembly member, consultant or attorneys. Lessee has had a full opportunity to consult with their own attorney before entering this Lease.
- H. This Lease shall not be assigned by the Lessee without the prior written consent of the Municipality. The Municipality will not approve an assignment to an LLC unless all the members of the LLC guarantee performance of the Lease.

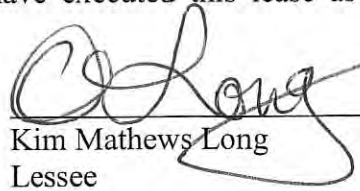
**11. LESSEE IMPROVEMENTS UPON TERMINATION OF LEASE OR AT THE EXPIRATION OF THE LEASE**

Improvements constructed by the lessee or owned by the lessee may within sixty (60) calendar days after the termination of the lease or after expiration of the lease, whichever is sooner, be removed by the lessee, provided such removal will not cause injury or damage to the lands or any improvements owned by the Municipality; and further provided that the city assembly may extend the time for removing such improvements in cases where hardship is established by the lessee and a date certain set and approved by the assembly for the removal of the improvements. All periods of time granted the lessee to remove improvements are subject to the lessee paying to the municipality the pro rata lease rentals for such periods. If any improvements and/or property are not removed within the time allowed, title to such improvements and/or property shall immediately vest in the Municipality of Skagway and the Municipality of Skagway shall have absolute title to any improvements and/or property not removed in accordance with this provision.




IN WITNESS WHEREOF, the parties hereto have executed this lease as of the date first written above.

  
\_\_\_\_\_  
Monica Carlson, Mayor  
For the Municipality of Skagway

  
\_\_\_\_\_  
Kim Mathews Long  
Lessee

Date June 27, 2018

Date July 19, 2018

ATTEST:  
  
\_\_\_\_\_  
Emily Deach, Borough Clerk





# ATTACHMENT A

APPRAISAL REPORT  
IN FEE SIMPLE INTEREST OF TAX LOT 5D, ATS 4  
LEASED TO THE STOWAWAY CAFÉ  
LOCATED ON CONGRESS WAY,  
SKAGWAY, ALASKA



(031418\_1744)

PREPARED FOR: Michelle Gihl, Deputy Clerk  
Municipality of Skagway  
P O Box 415  
Skagway, Alaska 99840

PREPARED BY: William G. Ferguson  
HORAN & COMPANY, LLC  
403 Lincoln Street, Suite 210  
Sitka, Alaska 99835

EFFECTIVE DATE: March 14, 2018

REPORT DATE: May 23, 2018

OUR FILE No.: 18-035

ATTACHMENT A  
**HORAN & COMPANY**

REAL ESTATE APPRAISERS/CONSULTANTS

CHARLES E. HORAN, MAI / WILLIAM G. FERGUSON,  
JOSHUA C. HORAN, AND SLATER FERGUSON

403 LINCOLN STREET, SUITE 210, SITKA, ALASKA 99835

PHONE NUMBER: (907)747-6666 FAX NUMBER (907)747-7417 commercial@horanappraisals.com

May 23, 2018

Michelle Gihl, Deputy Clerk  
Municipality of Skagway  
P O Box 415  
Skagway, Alaska 99840

Re: Summary Appraisal Report In Fee Simple Interest of Tax Lot 5D, ATS 4;  
Leased to the Stowaway Café, Congress Way Skagway, Alaska; Our File 18-035

Dear Ms. Gihl:

We have completed the attached appraisal report of the above-referenced property per your request. The report is provided in a brief narrative format with analysis of five comparables found within the report. The market value as of March 14, 2018 for this leased tract is estimated at:

\$121,000 or \$22.00/SF

Your attention is invited to the attached report which sets forth the Certification of Appraisal, Extraordinary Assumptions, Limiting Conditions, the most pertinent data considered and the analysis used in arriving at this final opinion of value.

If you have any questions or comments, please **don't hesitate to call**. Thank you for this opportunity to be of service.

Respectfully submitted,



William G. Ferguson  
HORAN & COMPANY, LLC

# ATTACHMENT A

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# ATTACHMENT A

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## CERTIFICATION OF APPRAISAL

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I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to the review by its duly authorized representatives.
- William Ferguson inspected the site on March 14, 2018. This is the effective date of the report.
- No one provided significant real property appraisal assistance to the person signing this certification.
- Our office has performed assessment services regarding the subject property within the prior three years, as contract appraisers for the Skagway Municipality. We have performed no other appraisal services with regard to the subject property in the previous three years.

  
\_\_\_\_\_  
William G. Ferguson, AA618

May 23, 2018  
\_\_\_\_\_  
Report Date

March 14, 2018  
\_\_\_\_\_  
Effective and Inspection Date

# ATTACHMENT A

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## 1 INTRODUCTION

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### 1.1 LOCATION

The subject property is referred to as the Stowaway Café site. It is located on Congress Way, Skagway, Alaska. The property is land leased from the Municipality of Skagway and is **identified as tax parcel 5D, a portion of ATS 4, from the City of Skagway's assessment records.**

### 1.2 PURPOSE OF APPRAISAL; INTENDED USE AND USER

The purpose and intended use of this appraisal is to estimate the fair market value to be used as a basis for annual lease rates. The market value estimated is limited by the Assumptions and Limiting Conditions herein. The site is leased to Kim Long and the entire improved property is subleased for continued use as a restaurant business. The intended user and client is the Municipality of Skagway.

### 1.3 PROPERTY RIGHTS APPRAISED

The subject property is appraised in its fee simple interest.

### 1.4 INSPECTION AND EFFECTIVE DATE

The subject property was inspected by William G. Ferguson on March 14, 2018. This is the effective date of the report.

### 1.5 THREE YEAR PROPERTY HISTORY AND OSTENSIBLE OWNER

The subject property is owned by the Municipality of Skagway and has been for some time. It has not sold in the last three years. It is proposed to be in a continued use and leased to a private business, in this case, the Stowaway Café. It has been leased by this business since 1993, though as of 2016, the entire improved property is subleased to Albert Efergan and Arlene Diente. The annual rent was previously adjusted in 2013 to \$8,800.

### 1.6 SCOPE OF APPRAISAL

This appraisal employs the Comparable Market Data Approach. I have also considered capitalized leases as value indications. Sales data was collected and developed through interviews with primary market sources such as buyers and sellers, as well as secondary sources including brokers, lenders, assessors, attorneys, and appraisers.

# ATTACHMENT A

## 1.7 ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal report and valuation contained herein are expressly subject to the following assumptions and/or conditions:

1. It is assumed that the data, maps and descriptive data furnished by the client or his/her representative are accurate and correct. Photos, sketches, maps, and drawings in this appraisal report are for visualizing the property only and are not to be relied upon for any other use. They may not be to scale.
2. The valuation is based on information and data from sources believed reliable, correct and accurately reported. No responsibility is assumed for false data provided by others.
3. No responsibility is assumed for building permits, zone changes, engineering or any other services or duty connected with legally utilizing the subject property.
4. This appraisal was made on the premise that there are no encumbrances prohibiting **utilization of the property under the appraiser's estimate** of the highest and best use.
5. It is assumed that the title to the property is marketable. No investigation to this fact has been made by the appraiser.
6. No responsibility is assumed for matters of law or legal interpretation.
7. It is assumed no conditions existed that were undiscoverable through normal diligent investigation which would affect the use and value of the property. No engineering report was made by or provided to the appraiser.
8. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
9. The value estimate is made subject to the purpose, date and definition of value.
10. The appraisal is to be considered in its entirety, the use of only a portion thereof will render the appraisal invalid.
11. Any distribution of the valuation in the report between land, improvements, and personal property applies only under the existing program of utilization. The separate valuations for land, building, and chattel must not be used in conjunction with any other appraisal and is invalid if so used.
12. The appraiser shall not be required to give testimony or appear in court by reason of this appraisal with reference to the property described herein unless prior arrangements have been made.

# ATTACHMENT A

## 1.8 TERMINOLOGY

### Market Value

A type of value that is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined, such as the following:

1. The most widely accepted components of market value are incorporated in the following definition: The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.
2. Market value is described, not defined, in the Uniform Standards of Professional Appraisal Practice (USPAP) as follows: A type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal. Comment: Forming an opinion of market value is the purpose of many real property appraisal assignments, **particularly when the client's intended use includes more than one intended user.** The conditions included in market value definitions establish market perspectives for development of the opinion. These conditions may vary from definition to definition but generally fall into three categories:
  - a. the relationship, knowledge, and motivation of the parties (i.e., seller and buyer);
  - b. the terms of sale (e.g., cash, cash equivalent, or other terms); and
  - c. the conditions of sale (e.g., exposure in a competitive market for a reasonable time prior to a sale).

*The Dictionary of Real Estate Appraisal, 6th Edition, Appraisal Institute, Pages 141-143*

### Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

*The Dictionary of Real Estate Appraisal, 6th Edition, Appraisal Institute, Page 90*



# ATTACHMENT A

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## 2 AREA ANALYSIS

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### 2.1 SKAGWAY AREA ANALYSIS

It is assumed the readers and reviewers of this report are familiar with the social and economic conditions and trends of the Skagway market. Skagway is situated at the northern most point of the inside passage in Southeast Alaska. It has historically been a transportation point connecting these protected waterways to the interior of Alaska and the Yukon Territory. Skagway is about 90 miles northwest of the state capital of Juneau.

#### Real Estate Market Trends

The increased seasonal demand has caused significant appreciation in general real estate housing and commercial land. Statistics kept for assessment adjustments show that values have gone up about 160% since 1995 for real estate land in general and over 200% for land in the central Historic Business District. The suburban Hillside District and Dyea area has not experienced the same level of overall appreciation, with assessment values increasing just 110% in the same time period. There was a 10% decline in 2010 and another 15% decline in **2011 in the assessment values for Skagway's core town land, reflecting the market's reaction** to the decline of tourism visitation. Tourism numbers have again been increasing, and assessed values proved stable for 2012 and 2013 and gradually increased in varying degrees 2014 – 2018, depending on the area.

# ATTACHMENT A

## 2.2 NEIGHBORHOOD ANALYSIS

The subject neighborhood is generally the waterfront side of Congress Way just north of the White Pass Dock. This area is approximately 1/4 mile south of the downtown core and serves as access to town from the cruise ship dock. Immediate improvements include the dock, the city harbor, a **small lease for Petro Marine's fuel service for the harbor**, and two restaurants on leased lands (including the subject). There is an RV campground just to the north of the subject and the harbor parking area. This area generally encompasses the entire White Pass Dock and goes to Pullen Creek at the north. The sea walk along the bulkhead has redirected pedestrian traffic away from Congress Way and along the walkway. The walkway is appealing with benches, architectural features and paved walks.

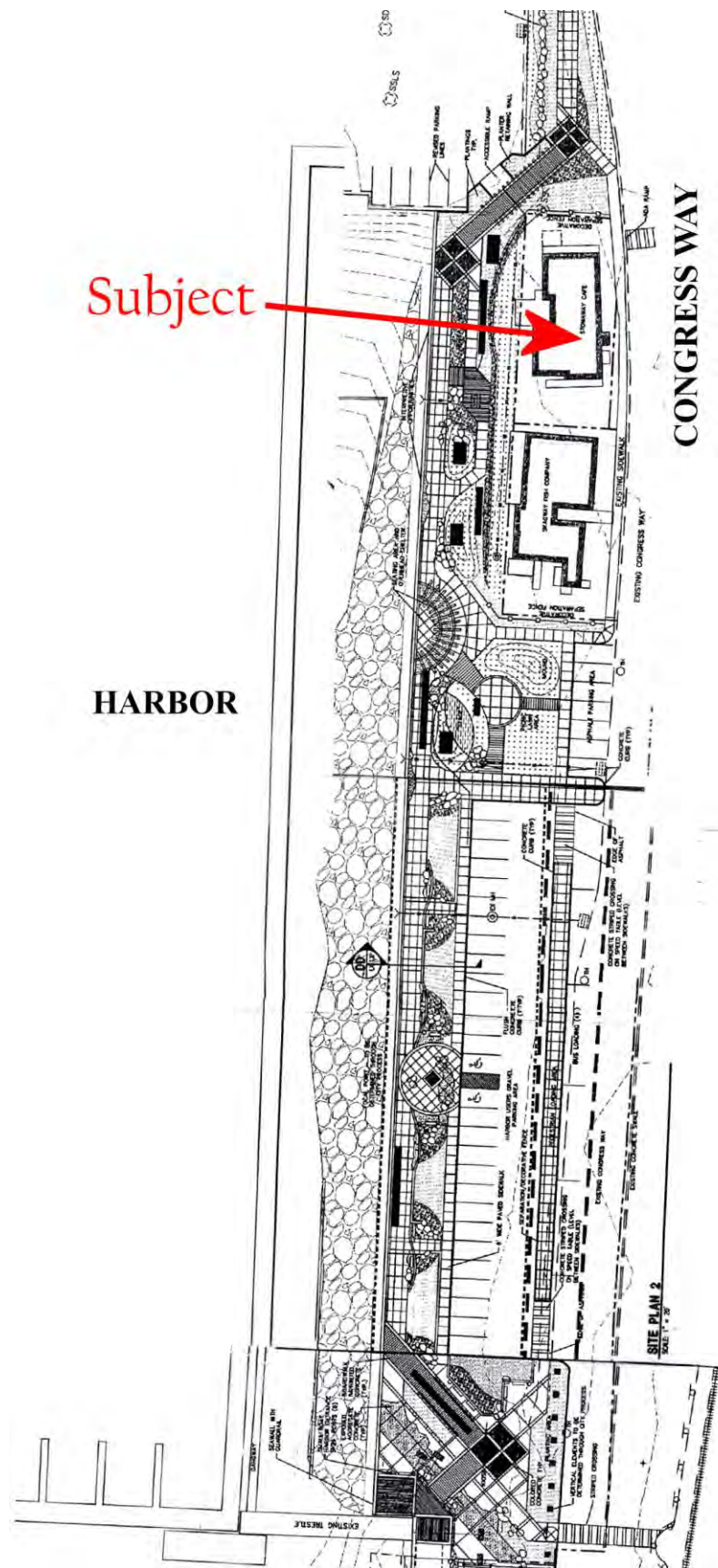


FIGURE 4 – Subject Location Map

# ATTACHMENT A

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## 3 PROPERTY DESCRIPTION

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### 3.1 SITE DESCRIPTION

The subject site is located between the fringe of the downtown core and the cruise ship dock, directly adjacent to the public harbor. It serves as view property along the sea walk and overlooking the small boat harbor. It is felt to have the same economic, social, and government influences as the entire community. The site is 5,500 SF in size. The sea walk and bulkhead provides a public walkway along the water between the cruise ship dock and harbor parking and downtown. The neighborhood is developed with two land lease areas which house restaurants as well as several tourist related facilities, the small boat harbor and the harbor master building. The ferry terminal, some leased storage areas, a small RV campground and the boat launch ramp are also in the general vicinity. As noted, the site is a portion of land within ATS 4.

#### Access, Topography & Utilities

Access to the subject is along the publicly-maintained, paved Congress Way with all public utilities available to the site. **Congress Way also includes a concrete sidewalk on the subject's** side of the road. The opposite side of the road borders the railroad right-of-way. The sea walk provides pedestrian access to the water side of the property.

The subject site is generally level and similar to the road elevation on Congress Way. There is a very slight change in grade between the sea walk and the building, which is taken up with a landscaped strip.

### 3.2 ZONING

The subject site is zoned Waterfront (W). This zoning area was created to protect the **relatively limited developable waterfront property in Skagway. "W" zoning generally allows** for public, private, and commercial moorage, warehousing and storage, marine fuel, water and sanitation facilities, research and educational facilities related to the water, port, and harbor facility, seafood processing plant, boat storage yard, fish and shell fish propagation, parks and open space, and water dependent or related visitor services, as well as sales related to maritime activity that requires or benefits from a shoreline location. **The subject's use as a** seafood restaurant conforms to the zoning.

### 3.3 EASEMENTS AND ENCROACHMENTS

There are no known easements or encroachments on the subject parcel.

### 3.4 ASSESSED VALUATION AND TAXES

The subject site is owned by the Municipality of Skagway. It is subject to taxation based on possessory interest. The assessor parcel number is 2TOWN142070. The 2018 assessed value for the possessory interest of the land is \$45,900 based on a fee simple value of \$121,000.

# ATTACHMENT A

## 4 VALUATION

### 4.1 HIGHEST AND BEST USE

1. H&B Use is defined as: The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

*The Dictionary of Real Estate Appraisal, 6th ed., Appraisal Institute, Page 109*

With the current waterfront zoning regulations, as well as location directly along the primary traffic line of cruise ship passengers, the current use of the property being leased to a commercial restaurant is felt to be the highest and best use. Retail use is not allowed in this area unless it is related to a maritime use that requires or benefits from a shoreline location. The adjacent property has a similar marine-related restaurant use.

### 4.2 LAND VALUATION

The subject land is valued by the Sales Comparison Approach. This approach employs the principal of substitution, whereby willing buyers would typically pay no more for a property than what could be found as a substitute property within a reasonable period of time. This approach compares sales or capitalized leases of vacant land relatively similar to the subject, or at least bracketing the subject, as superior or inferior, on a price per unit basis. Since there are no two properties alike, some adjustments or ranking of the comparable sales will be performed. Following is a summary of the comparable sales or capitalized leases used in developing a market value estimate for the subject property.

FM#	#	Location	Date	Price	SF	\$/SF
10137	1	Lots 11 and 12, Blk 38, ST	08/16	\$188,700	10,000	\$18.87/SF
10135	2	Lot 10, Blk 34, ST	10/16	\$232,500	5,000	\$46.50/SF
10750	3	M&M Brokerage Lse- Congress Way	01/18	\$38,000*	2,000	\$19.00/SF
10434	4	Tax Lot 5A, Petro Marine Lse – Congress Way	01/18	\$25,600**	1,600	\$16.00/SF
10752	5	Congress Way; ATS 4, Tax Lot 5C, Skagway Fish Company Lease	11/13	\$108,000**	5,400	\$20.00/SF
Subject			03/18	Solve	5,500	Solve

\*Land Allocation Capitalized Lease      \*\*Capitalized Lease

# ATTACHMENT A



Comp 1 (030917\_0118)

Comparable 1 is the 2016 sale of a much larger property. This property was zoned BG and further from the main tourist core on State Street. Due to the distance from the core as well as the larger lot size, this would be ranked inferior to the subject on a price per square foot basis.



Comp 2 (030917\_0120)

Comparable 2 is the late 2016 sale of a 5,000 SF BH zoned lot just one lot west of Broadway on 2<sup>nd</sup> Ave. It was purchased by the adjacent property owner for expansion, etc. It is similar in size. It is superior in zoning and has less restrictive use parameters. There also may have been a premium paid by the adjacent property owner. It is ranked superior on a square foot basis.



Comp 3 (FM 10750)

Comparable 3 is the capitalized lease of the estimated land portion of the M&M Tour Broker site located towards the cruise ship dock at the head of the sea walk. It is ranked slightly inferior since the site is limited to a specific use. It is in a more congested area and the more industrial petro marine lease is located directly behind it. It is ranked inferior on a unit basis.



Comp 4 (080317\_1289)

Comparable 4 is the capitalized land lease for the Petro Marine facility near the intersection of the Breakwater and Congress Way. It is inferior in its location being out on the breakwater. It is similar in zoning and smaller in size at 1,600 SF. It was updated for early 2018. **The site's use is limited as a marina fuel storage facility** and is also considered inferior in that respect. It is considered due to its location and zoning. For ranking purposes on price /SF basis, it is considered inferior to the subject.



Comp 5 (021313\_131)

Comparable 5 is the capitalized lease of the Skagway Fish Company, adjacent to the subject. The lease is from 2013 and is also due to be updated soon, so it is given less weight than the current data. It is, however, one of the few indicators on Congress Way. It is similar in location and comparable in size. For ranking purposes on price /SF basis, it is considered inferior primarily due to the age of the lease.

# ATTACHMENT A

Comp	Date	Location	Price/SF	Rating
2	10/16	2nd Ave; West of Broadway	\$47.00/SF	Superior
Subject	03/18	Subject	Solve	Similar
5	11/13	Skagway Fish (older lease)	\$20.00/SF	Inferior
3	01/18	M&M Brokerage	\$19.00/SF	Inferior
1	08/16	Lots 11 and 12, Blk 38	\$18.87/SF	Inferior
4	01/18	Portion ATS 4, Tax Lot 5A, Petro Lease	\$16.00/SF	Inferior

Four of the five comparables are ranked at least slightly inferior for various reasons described. Strong consideration is given to Comp 2 which is a sale of a similar sized lot. It is ranked superior for reasons noted, however it helps to substantiate the subject value at a slightly higher SF value than the inferior comparables indicate. Comparable 5 is most similar, but is an older lease that needs updated and is, therefore, considered inferior. The estimated value of \$22/SF is slightly below the average of all the transactions. The value can be summarized as follows:

$$5,500 \text{ SF @ } \$22/\text{SF} = \$121,000$$

# ATTACHMENT A

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# ADDENDA

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# ATTACHMENT A

SUBJECT PHOTOGRAPHS



PHOTO 1 – Looking NE onto subject property from sea walk. (031418\_1744)



PHOTO 2 – Looking approximately SE across property from sea walk. (031418\_1745)

# ATTACHMENT A

SUBJECT PHOTOGRAPHS



PHOTO 3 – Looking SW across subject property from Congress Way. (031418\_1746)

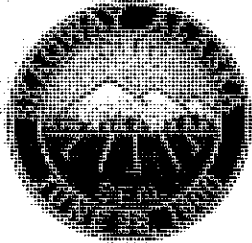


# ATTACHMENT A



Comparable Sales Map

# ATTACHMENT A



**CITY OF SKAGWAY**  
GATEWAY TO THE GOLD RUSH OF "98"  
P.O. BOX 415  
SKAGWAY, AK 99840  
(907)983-2297 (PHONE)  
(907)983-2151 (FAX)

This Lease Amendment, dated April 21, 2003, for the purpose of modifying the existing lease dated and entered into the 21<sup>st</sup> day of May 1998 and amended the 19<sup>th</sup> day of June 1997, by and between the City of Skagway (hereinafter City) a municipal government and Kimberlee and Jim Long (hereinafter Lessee), a private business, for the purpose of leasing a parcel of land 5,500 square feet located on Congress Way adjacent to the Skagway Small Boat Harbor.

Whereas the City owns the property described above, and under the lease terms of the existing lease, Section N - Renewal of Lease, signed and dated June 14, 1998 by Lessee, it states:

Upon the expiration of the term of any lease, or the cancellation of a lease by mutual consent of all parties thereto, the council may grant a new lease to the lessee or his assignee who owns valuable improvements thereon, without competitive bidding provided:

- a. The lessee or his assignee makes written application therefore at least ninety (90) days prior to such termination;
- b. The lessee is not in default under the lease;
- c. The use to which the land is to be put is compatible with the current use classification and zoning provisions of the city code on that subject;
- d. Mutual agreeable terms, consistent with the provisions of this chapter governing lease terms, are negotiated by the city and the prospective lessee.


**Amended Lease Duration:**

The amended lease duration, effective May 21, 2003, is as follows:

The lease shall be in effect from May 21, 2003 through May 20, 2018.

All other terms of the existing Lease Agreement shall remain unchanged. Any further modifications shall be agreed upon by both parties in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Modification as of the date first written above.

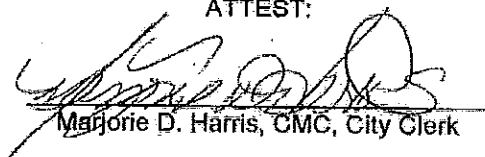
  
\_\_\_\_\_  
Tim Bourcy, Mayor  
For the City of Skagway

  
\_\_\_\_\_  
Kimberlee K. Mathews (Long)  
Lessee

Date 4-21-03

Date 4/26/03

ATTEST:

  
\_\_\_\_\_  
Marjorie D. Harris, CMC, City Clerk

(SEAL)

# ATTACHMENT A

## COMMERCIAL RESTAURANT LEASE AGREEMENT

This LEASE AGREEMENT is made and entered into this 4<sup>th</sup> day of February, 2016, with an effective date of March 1, 2016, between Kimberlee Kay Mathews-Long, whose address is P.O. Box 189, Skagway, Alaska 99840, ("Landlord"), and Albert Efergan and Arlene Diente whose address is P.O. Box 1105, Skagway, Alaska 99840 ("Tenant") & ("Guarantor") (together, "the Parties"). Any notices required to be given by this lease must be given at the addresses here listed, unless a party provides written notice to the others of a change of address.

### RECITALS:

The Landlord owns a building located at 205 Congress Way, Skagway, Alaska, and containing equipment and furnishings of a commercial restaurant ("the Premises"); and

The Landlord wishes to lease to the Tenant, and the Tenant wishes to lease from the Landlord the Premises;

THEREFORE, in consideration of the agreements and mutual promises in this Lease, the Landlord and the Tenant contract and agree as follows:

### SECTION 1. TERM

1.1 Term. The initial term of this Lease Agreement will be from March 1st, 2016 through March 1, 2019 unless terminated sooner as expressly provided in this Lease. At the end of the initial term, if the Tenant is not in default, the parties may negotiate a new lease term or a contract for Tenant to purchase the building. Tenant will have first right of refusal.

1.2 Holdover. If the Tenant remains in possession of the Premises after this Lease expires or terminates, and the Landlord does not deliver the Tenant a Notice to Quit, the tenancy will continue on a month-to-month basis at the same rental rate and under the same terms as were in effect during the last month of tenancy under the lease. The Landlord may increase the rent, or change the terms of the tenancy on thirty (30) days' notice to the Tenant. If the Tenant remains in possession of the Premises after that notice, it will be assumed that the Tenant agrees to those changes. During the holdover tenancy, either party may terminate the tenancy on thirty (30) days' notice to the other party.

### SECTION 2. RENT

2.1 The rent for the Premises will be \$4,000 (Four Thousand Dollars) per month, including sales tax. Rent is due on the first of the month, at Landlord's address listed above, or at another address designated by the Landlord, without any prior demand and without any deduction or set-off whatsoever.

# ATTACHMENT A

2.2 Late Charge. A late charge of 1% per day will accrue on any amounts not received by the 5<sup>th</sup> of the month.

2.3 Security Deposit. Tenant agrees to pay to Landlord a security deposit of \$5,000 (Five Thousand Dollars) by or before October 1, 2016, to be held in a separate account by Landlord during the term of the lease. Within 60 (sixty) days of termination of the Lease, Landlord will refund the security deposit less any amount remaining due under the lease and less any costs for repair or cleaning of the Premises. The Landlord will provide a statement of any deductions with the refund. This provision does not waive or impair the Landlord's rights to collect damages or amounts due under this Lease in excess of the security deposit.

## SECTION 3. CONDITION OF PREMISES

3.1 The Premises will be leased in their present condition, and the Landlord has made no representations or warranties about their condition or the suitability of the Premises for the Tenant's purposes. The Tenant has had an adequate opportunity to inspect the Premises before signing this Lease and accepts the Premises in their current condition.

3.2 Maintenance of Premises. Except as otherwise provided in this Lease Agreement, the Landlord will maintain in good working order and repair the roof and foundation of the Premises. Tenant will be responsible for all other maintenance of the Premises.

3.3 Fixtures, Equipment and Furnishings. The Premises contain the fixtures, appliances, equipment and furnishings necessary for a commercial restaurant, including appliances, kitchen tools and smallwares. The term "Premises" includes those appliances, fixtures, equipment and furnishings, and Tenant is responsible for maintaining them and replacing them if they are damaged or wear out. Like the Premises, the Tenant accepts these fixtures, equipment and furnishings "as-is" and Landlord makes no representations or guarantees regarding their condition or suitability for any purposes. This Lease does not require Landlord to purchase any additional or replacement appliances, equipment or furnishings for Tenant's use.

## SECTION 4. IMPROVEMENTS AND MODIFICATIONS

4.1 Tenant Improvements. The Tenant will not improve or modify the Premises without the prior written consent of the Landlord. The Landlord may not unreasonably withhold or delay consent. Any approved improvements or modifications will be at the Tenant's sole expense. The Tenant will pay for all approved improvements and modifications. All improvements affixed to the Premises will become the Landlord's property at the end of the tenancy, unless the Tenant removes them without damaging the premises before this Lease terminates. If the Tenant re-keys Premises doors, the Tenant must provide the Landlord copies of the new keys within 10 days

# ATTACHMENT A

4.2 Liens. The Tenant will not allow any liens to attach to the Premises as a result of Tenant's improvements or modifications to the Premises. The Landlord does not authorize or consent to any lien attaching to the property, and the Landlord will not be liable for any labor, materials or services provided to the Tenant (or anyone claiming to act for the Tenant).

4.3 Signs, Awnings and Canopies. The Tenant must get the Landlord's written consent before putting up any signs, advertising or decorative material on the exterior of the Premises, or on exterior windows or doors. The Landlord may refuse consent for any or no reason. If the Landlord does allow any signs, advertising or decoration, the Tenant must maintain them in good condition at all times. Any signage put up by the Tenant must comply with all municipal codes and ordinances of the City of Skagway.

## SECTION 5. CARE OF THE PREMISES

5.1 Maintenance of Premises by the Tenant. The Tenant will keep the Premises in good order, good condition and good repair, except in the case of damage from an unavoidable accident. This includes maintaining the lighting, heating, and plumbing fixtures and painting at reasonable intervals. This also includes maintaining the appliances, fixtures, equipment and furnishings of the Premises. The Landlord will maintain the roof and foundation of the Premises. However, if the Tenant (or its employee, agent, guest, or invitee) negligently or intentionally damages the structural or common areas of the Premises, the Tenant will reimburse the Landlord for the cost of repairs, plus twenty percent (20%) for the Landlord's overhead, time and internal expenses. Reimbursement will be due within five (5) days after written demand by the Landlord.

5.2 Exterior and Interior Cleaning. The Tenant will keep the Premises clean and in good repair. The Tenant will not allow garbage, litter or debris to accumulate inside or outside the Premises. If the Tenant does not keep the Premises clean, the Landlord may clean them and charge \$50.00 per man hour to the Tenant.

5.3 Returning the Premises. When the tenancy terminates, the Tenant will return possession of the Premises to the Landlord in the same condition as it was in at the start of the tenancy, except for wear resulting from normal, non-abusive use. The Tenant will return all keys to the Premises to the Landlord, and inform the Landlord of the combination to any safes or other locks. The obligations in this paragraph continue even after termination of the tenancy.

5.4 Rules and Regulations. The Landlord may make reasonable rules and regulations relating to the use of the Premises at any time. Those rules and regulations are part of this Lease Agreement. If the Tenant fails to follow those rules and regulations, the Tenant will be in breach of this Lease. The Landlord must give the Tenant notice of the rules as regulations as soon as they are made.

## SECTION 6. INSURANCE AND INDEMNITY



# ATTACHMENT A

6.1 Indemnity. The Tenant will defend, indemnify and hold harmless the Landlord, and its directors, officers, members, shareholders, agents and employees from and against any and all actions, claims, losses and expenses, including reasonable attorneys' fees of any kind arising out of or involving the occupancy of the Premises by Tenant, the conduct of Tenant's business in or from the Premises, any act, omission or neglect of Tenant, Tenant's directors, officers, agents, contractors, employees, or invitees, or arising out of any breach of this Lease.

6.2 Waiver of Subrogation. The Tenant waives any subrogation rights it or its insurers may have for any claim against the Landlord (or the Landlord's directors, officers, members, shareholders, agents or employees) covered by Tenant's insurance, no matter the reason for the claim. The Tenant will require its insurers to agree to this waiver of subrogation.

6.3 Insurance. The Tenant will maintain insurance coverage to comply with this section at its sole expense during the tenancy, and the Tenant will provide evidence of the coverage to the Landlord upon request. If insurance held by the Tenant and the Landlord overlap in coverage, the Tenant's insurance will be the primary coverage. The Landlord will not be liable to the Tenant's insurers for any insurance premiums even though the Landlord will be a named insured.

6.3.1 General Liability Insurance. The Tenant will maintain general liability insurance in limits of not less than Two Million Dollars (\$2,000,000.00) General Aggregate and One Million Dollars (\$1,000,000.00) per occurrence. This insurance will name the Landlord as an Additional Named Insured.

6.3.2 Property Insurance. The Tenant will insure its business personal property, improvements, fixtures and loss of business income connected with the Premises, at its sole expense. The Landlord will have no obligation to insure any of the Tenant's property or interests. The Landlord will insure the building and the fixtures, equipment and property belonging to Landlord and leased with the Premises.

## SECTION 7. UTILITY AND TAX PAYMENTS.

7.1 Utility Payments. All utilities for the premises, including electricity, fuel oil, water, sewer, garbage and recycling services will be paid in full and on time by the Tenant. All utilities for the Premises will be placed in the Tenant's name and billed directly to the Tenant. The Landlord will not be liable for any interruption in any utility service, or for any utility charges associated with the Premises, no matter the cause of the interruption or charges.

7.2 Taxes and Ground Lease Payment. The Landlord will pay all real property taxes and assessments levied against the Premises. All other taxes associated with the Tenant's use or occupancy of the Premises, excluding the Landlord's own income tax liability, will be paid by the Tenant. Landlord will also make all payments due under the ground lease with the City for the real property on which the Premises is located.

# ATTACHMENT A

## SECTION 8. SALE OR TRANSFER OF LEASE

The Landlord reserves the right to sell, convey, assign, or otherwise transfer or encumber its interest in this Lease, as long as it does so subject to this Lease and without impairing the Tenant's rights under this Lease. The Landlord will provide the Tenant with notice of any sale or assignment (other than a security interest) including the name and address of the Landlord's successor in interest. Tenant has first option to buy at end of three year lease.

## SECTION 9. ASSIGNMENT AND SUBLEASE

The Tenant will not assign, mortgage, pledge, sell, sublease or transfer this Lease in any other way, in whole or in part, without the Landlord's prior written consent. This includes transfers that are involuntary or by operation of law. Landlord's consent is entirely within its discretion, and Landlord may withhold it for any reason. Even if the Landlord consents once, the Landlord does not waive any rights it has under this paragraph to withhold consent in the future. Unauthorized assignments, transfers, subleases, and encumbrances are void and a breach this Lease.

## SECTION 10. MANNER OF OPERATION OF BUSINESS

10.1 Waste and Annoyance. The Tenant will not commit any waste, public nuisance, private nuisance or annoyance upon the Premises or any part of it, or allow any of those things to be committed on the Premises.

10.2 Lawful Business Operations. The Tenant will comply with all applicable laws and legal requirements in its use of the Premises, including in its business operations on the Premises. This includes compliance with all easements, reservations, restrictions, and covenants of record, and all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or that later become applicable to the Premises, or any part of it. The Tenant will pay any fines, penalties, costs, expenses, claims and damages resulting or arising from a breach of this paragraph. However, this Section does not impose an affirmative duty on the Tenant to research easements, reservations, restrictions and covenants of record except as is reasonable in the ordinary course of its business.

## SECTION 11. DESTRUCTION OF PREMISES

If the Premises, or any part of it, is damaged by fire, weather, earthquake, flood, or other unavoidable casualty, but it is still at least partly useable, the Landlord will repair the damage within one hundred and twenty (120) days, at its own expense. During that time, the rent will be abated proportionally to account for the portion of the premises that is unusable. If a damage described above leaves the Premises completely unusable, the Landlord may do either of the

# ATTACHMENT A

following: (i) repair the damage within 120 days at its own expense, and the rent will be abated completely until the Premises are useable again; or (ii) terminate the lease by giving the Tenant notice of termination within sixty days of the damage, and rent will be abated completely between the date of the damage and the date of termination of this Lease. Note that nothing in this paragraph will impair the Landlord's right to be paid or reimbursed from the proceeds of any insurance policy.

## SECTION 12. CONDEMNATION

12.1 Total Condemnation of Premises. If the Premises are condemned, entirely, or acquired by eminent domain, then this Lease will terminate on the date that title to the Premises transfers to the condemning authority. All rent and other payments due to the Landlord under this Lease must be paid in full up to that date and the Tenant will have no claim against the Landlord for the value of the unexpired term of this Lease.

12.2 Partial Condemnation of Premises. If the Premises are only partially condemned or acquired by eminent domain, and the Premises are still suitable for the Tenant's business, then this Lease will continue in full force and effect and rent will not be abated. If the Premises are not suitable for the Tenant's business directly after the condemnation or acquisition, but may be returned to a suitable condition, then the Landlord will promptly restore the Premises to that condition, and rent will be abated proportionally between the taking and completion of the restoration.

12.3 Tenant Claims. The Tenant will have no right to claim compensation from the condemning authority unless this Lease terminates as a result of the condemnation. In that case, the Tenant may make a claim against the condemning authority for the fair market value of its leasehold interest and loss or damage to the Tenant's business. However, the Tenant may not make any claim that would reduce or otherwise negatively affect the Landlord's recovery from the condemning authority. The Tenant's claim will be determined separately from the Landlord's claims.

12.4 Non-Impairment of Tenant's Claims. The Landlord will provide prompt notice to the Tenant of any proposed or pending condemnation or taking of the Premises. The Landlord will not impair the Tenant's right to compensation during negotiations with the condemning authority.

## SECTION 13 DEFAULT

13.1 The Tenant is in default under this Lease if any of the following occur:

a. The Tenant assigns this Lease or sublets the Premises, voluntarily or involuntarily, without the Landlord's express consent;

# ATTACHMENT A

b. The Tenant fails to pay rent when due, or any other payment due under the Lease, If Tenant fails to pay when due, any rent or additional payments required under the terms of this Lease, except that there will be a 30 (thirty) day grace period before default for nonpayment of rent;

c. The Tenant fails to maintain the Premises as required by this Lease, and does not fix a problem within thirty (30) days of written notice from the Landlord specifying the problem;

d. The Tenant fails to comply with any other provision of this Lease, and does not cure a failure within thirty (30) days after written notice from by Landlord specifying the failure;

e. The Tenant abandons the Premises;

f. The Tenant enters bankruptcy or insolvency proceedings, or proceedings to reorganize, liquidate or dissolve it, or appoint a receiver for it, and the proceedings are not dismissed within thirty (30) days of filing;

13.2 In the event of Default, the Landlord may choose to terminate this Lease or to retake possession of the Premises in order to re-let it. If the Landlord decides not to terminate this Lease and to re-let the Premises, the Tenant will continue to be liable for rent and other payments due under this Lease until the term of the Lease expires. The Tenant will also be liable for all of the Landlord's foreseeable costs and expenses from re-letting the Premises, including attorney fees, any necessary alterations or repairs, and the difference between the rent under this Lease and the rent received from re-letting the Premises. The Landlord may apply rent received from re-letting the premises to the various amounts owed it by Tenant however the Landlord sees fit.

13.3 The Tenant will immediately return possession of the Premises to the Landlord on demand in the event of Default.

13.4 In the event of Default that is not for non-payment of rent, the Landlord may choose to cure the default at the Tenant's expense. The Tenant will reimburse the Landlord for the cost to cure the default, including attorney fees and incidental costs. If the Tenant does not reimburse the Landlord within five (5) days of written demand from the Landlord, any amount not reimbursed when due will be charged interest at twelve percent (12%) per annum or the maximum interest rate permitted by the laws of the State of Alaska, whichever is lower. This option is in addition to the Landlord's other options in case of Default and does not waive any of the Landlord's other rights in the event of Default.

# ATTACHMENT A

13.5 If the Landlord does not exercise its rights under this Lease in the event of a Default, that does not mean that the Landlord waives its rights under this Lease in the event of future similar Defaults.

13.6 The Landlord's rights under this Lease in the event of default are in addition to any other rights that the Landlord has under state statutory or common law. The remedies in this Lease and at law are cumulative, not exclusive.

13.7 If the Landlord breaches a provision of this Lease, the Landlord will have thirty (30) days after written notice from the Tenant of the Default in which to either cure the default completely or start diligent work to cure it. If the Landlord fails to cure or start curing the default within thirty days, the Tenant may terminate the Lease. That is the Tenant's sole remedy, and it does exclude any other remedies the Tenant might have under state or common law.

13.8 If the parties litigate over this Lease, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs associated with the litigation and enforcing a judgment (or enforcing some other type of relief). Litigation includes bankruptcy court, administrative proceedings, superior court proceedings, and any appeals.

## SECTION 14. RIGHT OF ENTRY

14.1 Right of Entry. The Landlord (or the Landlord's agent) will have the right to enter any part of the Premises at any time to inspect it, to show it to prospective buyers or tenants, and to make any repairs or alterations that the Landlord wishes to make. This includes the right to bring in materials and workers necessary for those repairs or alterations. Rent will not abate during those repairs or alterations. The Landlord will give the Tenant five (5) days prior notice before entering, unless it is impractical to do so. In the six months before this Lease expires, the Landlord may post "For Rent" or "For Sale" notices on the Premises and show it to prospective buyers or tenants. The Tenant will not remove those signs or interfere with the showings. If the Tenant is not present to let the Landlord (or agent) in, then the Landlord (or agent) may let themselves in with a master key.

## SECTION 15. LOSS AND DAMAGE AT PREMISES

15.1 Loss and Damage. The Landlord will not be liable for any damage to the Tenant's property (or the property of others) located on the Premises, no matter how the damage occurs. The Landlord will not be liable for any latent defect in the Premises. The Tenant keeps property on the Premises at its own risk. The Tenant hereby releases the Landlord from any liability for any claims for property damage, personal injury, or loss of business income even if they were caused by the Landlord's negligence (or the negligence of its agents or employees).

# ATTACHMENT A

15.2 Notice by the Tenant. The Tenant will give immediate notice to the Landlord in case of any casualty or accidents at the Premises, and of any defects discovered in the Premises.

## SECTION 16 GENERAL PROVISIONS

16.1 Successors. This Lease binds all successors to the original Landlord and Tenant. Successors include executors, administrators and receivers. If in the future there are multiple Tenants, they will all be jointly and severally liable under this Lease. But an assignee that was not approved by the Landlord cannot benefit from this Lease.

16.2 Quiet Enjoyment. Except as otherwise provided in this Lease, and while the Tenant is not in Default, the Tenant will peaceably and quietly hold and enjoy the Premises during the term of this Lease. Again subject to the terms of this Lease, the Landlord will not hinder or interrupt this quiet enjoyment.

16.3 Waiver. If the Landlord waives any provision of this Lease once, that does not mean that Landlord waives it (or any other provision) in the future. If the Landlord accepts rent (or partial rent payments) while the Tenant is in Default, the Landlord does not waive its rights under this Lease. The only way that the Landlord can waive a right under this Lease is by signing a written waiver of the right.

16.4 Accord and Satisfaction. The Landlord's acceptance of a partial rental payment, or partial payment of another amount due, is not an accord and satisfaction of the rent or amount due, no matter what is written on the check or a memorandum with it. The Landlord may always accept a partial payment without waiving the right to recover the balance due or pursue any other remedy in this Lease or at law.

16.5 Entire Agreement. This written Lease (and any exhibits attached to it) contains the entire agreement between the parties. No oral agreements or conditions on the subject of this Lease exist. This Lease may only be amended in writing signed by both parties.

16.6 No Partnership. This Lease does not make the Landlord and Tenant partners or joint venturers.

16.7 Force Majeure. If either party is delayed in performing a provision in this Lease, other than payment of rent, because of force majeure, the time to perform will be extended for the length of the delay. Force Majeure means war, riots, insurrection, natural disaster, power failure, strikes, lock-outs, other labor troubles, inability to procure materials, or similar problems not the fault of the party delayed.

16.8 Notices. Notices and demands required by this Lease must be delivered in person or sent via certified US mail, postage prepaid, to the addresses listed in the opening paragraph of

# ATTACHMENT A

this Lease. Notices and demands are considered delivered at the time personally delivered or two days after being placed in the mail.

16.9 Recording. The Tenant will not record this Lease Agreement without prior written consent of the Landlord; however, if either party requests it, the parties will execute a memorandum of lease to be recorded. The memorandum will only describe the parties, the Premises and the term of the lease.

## SECTION 17 GUARANTY


17.1 Guarantor personally guarantees all Tenant's obligations under this lease, including payment to Landlord of all liabilities and obligations which Tenant has incurred or may incur arising out of this lease.

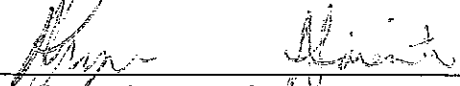
THE PARTIES NOW EXECUTE THIS LEASE AND AGREE TO ALL ITS TERMS

TENANTS

Albert Efergan  
Arlene Diente

LANDLORD

  
Kimberlee Kay Mathews-Long  
GUARANTOR

  
Albert Efergan and Arlene Diente

STATE OF ALASKA )  
 )  
FIRST JUDICIAL DISTRICT )

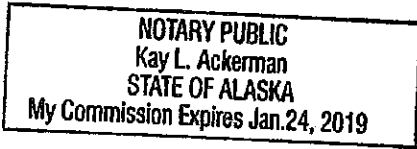
ss:

THIS CERTIFIES that on this 3 day of February, 2016, before me, a Notary Public in and for the State of Alaska, personally appeared Albert Efergan and Arlene Diente, to me known and known to me to be the persons whose names are subscribed to the foregoing instrument, acknowledged to me that they duly authorize this document.



# ATTACHMENT A

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



Kay L. Ackerman  
Notary Public for Alaska.  
My Commission Expires: Jan 24, 2019

STATE OF ALASKA                    )  
                                                  )  
FIRST JUDICIAL DISTRICT        )        ss:

THIS CERTIFIES that on this 4<sup>th</sup> day of February, 2016, before me, a Notary Public in and for the State of Alaska, personally appeared Kimberlee Kay Mathews-Long, to me known and known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

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



Michelle Gihl  
Notary Public for Alaska.  
My Commission Expires: 04-23-2017

# ATTACHMENT A

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## QUALIFICATIONS OF WILLIAM G. FERGUSON

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### **Education:**

Graduated from Pennsylvania State University, B.S./B.L.A. in Landscape Architecture, 1977

### **Employment:**

Appraiser, Horan & Company, LLC, 08/04-Present

Appraiser, Horan, Corak & Company, formerly Pomtier, Duvernay & Horan, 03/87-07/04

Appraiser, Pomtier, Duvernay & Horan, 1986-1987

Associate Planner, City and Borough of Sitka, Alaska 1985-1986

Landscape Architect, U.S. Forest Service, Sitka, Alaska, 1983-1985

Landscape Architect, GWSM Inc., Pittsburgh, PA, 1977-1983

### **Certification:**

State of Alaska, General Real Estate Appraiser, APRG618

### **Appraisal Education:**

AIREA Residential Valuation, May 1989, Portland, Oregon

AIREA Residential Case Studies and Report Writing, May 1989, Portland, Oregon

AIREA Standards of Professional Practice, October 1987, Anchorage, Alaska

FNMA Appraisal Guidelines Seminar, July, 1987

FNMA Appraisal Guidelines Seminar, July, 1988

Veterans Administration Guidelines Seminar, February, 1988

AIREA Real Estate Appraisal Principals, October 1988 Traverse City, Michigan

Residential Demo - Appraisal Report Writing, Northern California Chapter, August 1992

Feasibility Analysis - Highest and Best Use, Alaska Chapter, November 92

Appraising the Tough Ones, Alaska Chapter, November 1992

Standards of Professional Practice - Part A, Alaska Chapter, January 1993

Standards of Professional Practice - Part B, Alaska Chapter, January 1993

New URAR Seminar, Anchorage, Alaska, December 1993

Valuation of Leasehold Interests, Anchorage, Alaska, December 1993

Understanding Limited Appraisals, Anchorage, Alaska, July 1994

Appraisal Institute, Appraisal Procedures, Pittsburgh, Pennsylvania, February, 1995

The Internet and the Appraiser, May 1996, Seattle, Washington

HighTech Appraisal Office, May 1996, Seattle, Washington

Dynamics of Office Bldg. Valuation, October 1996, Anchorage, Alaska

Appraisal of Retail Properties, October 1996, Anchorage, Alaska

Standards of Professional Practice - Part B, April 1997, Seattle, Washington

Basic Income Capitalization, March 1998, Chapel Hill, North Carolina

Standards of Professional Practice - Part C, 1998, Edmonds, Washington

FHA Training Seminar, October 1999, Seattle, Washington

FHA Seminar, August 2000, Anchorage, Alaska

FHA Appraisal Inspection From the Ground Up, June 2000, Anchorage, Alaska

Undivided Partial Interest Valuation/Divided Partial Interest Valuation, May 2001, Anchorage

Technical Inspection of Real Estate, April 2003, Anchorage, Alaska

# ATTACHMENT A

Code of Professional Ethics/Scope of Work, April 2003, Anchorage, Alaska  
Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), Jan 2004, Philadelphia, PA  
Rates and Ratios: Making Sense of GIMs, OARs and DCF, Feb 2005, Anchorage, AK  
USPAP Update; Uniform Standards of Professional Appraisal Practice, Feb 2005, Anchorage, AK  
USPAP 15 Hr; Uniform Standards of Professional Appraisal Practice, April 2006, Sacramento, CA  
Basic Income Capitalization 310, July 2006, San Diego, CA  
General Applications 320, July 2006, San Diego, CA  
Subdivision Valuation, February 2008, Anchorage, AK  
Appraisal of Local Retail Properties, February 2008, Anchorage, AK  
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, June 2009, Juneau, AK  
Home Valuation Code of Conduct & 1004 Market Conditions Form Seminar, June 2009, Juneau, AK  
Business Practices and Ethics, November 2009, Online  
Real Estate Appraisal Operations, February 2010, Online  
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, February 2010, Kent, WA  
Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), Dec 2010, Sacramento, CA  
Fundamentals of Separating Real Property, Personal Property and Intangible Business Assets, April 2012, Portland, OR  
Appraising the Appraisal - Appraisal Review - General, September 2012, Reno, NV  
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, February 2013, Pittsburgh, PA  
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, April 2014, Juneau, AK  
Real Estate Finance Statistics and Valuation Modeling; February 2015, Las Vegas, NV  
Supervisory Appraiser/Trainee Appraiser Course; April, 2015 Anchorage, AK  
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, January 2017, Online  
Analyzing Operating Expenses, February 2017, Online  
Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), May 2017, Seattle, WA  
Using Spreadsheet Programs in Real Estate Appraisals – The Basics, December, 2017 Online

## **Types of Property Appraised:**

Residential - Single family residences, duplexes, tri-plexes, four-plexes, mobile homes, and vacant land  
Commercial - Warehouses, vacant tracts, islands, office buildings, remote sites, hangars, tidelands, retail buildings, apartments, industrial complexes, market data and research

## **Types of Property Assessed for Taxation:**

Appraiser, City of Petersburg real property assessment roll; Assistant Assessor, Cities of Pelican and Skagway; Appraiser, City of Craig real property assessment roll; Expert Witness, Board of Equalization, Petersburg, Pelican, Craig and Skagway; Single family, multi-family, vacant lands, mobile homes, commercial properties, remote homesites, islands and subdivisions

## **Planning Experience:**

Site planning, construction documentation, construction supervisor  
Local government planning duties including public presentations, narratives, zoning rewrites, mapping  
University and recreation master planning