

## **AGRICULTURAL LEASE**

KPBL# xx-xxxx-xx

For good and valuable consideration, and pursuant to Ordinance 2021-xx, enacted MM-DD-YYYY, this Grazing Lease (hereinafter called "LEASE"), is made and entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (hereinafter called "LESSOR"), and Robert Gibson and Filip Martushev, DBA Alaska Land and Cattle Company, whose address is PO Box 650, Cooper Landing, AK 99572 (hereinafter called "LESSEE").

### **I. DESCRIPTION OF REAL PROPERTY**

This LEASE grants LESSEE use of the following described real property, located in the Homer Recording District, Third Judicial District, State of Alaska:

Section 22, Township T04S, Range R11W

NW1/4 & NW1/4NE1/4 & S1/2NE1/4, Section 22, T04S, R11W, Seward Meridian, containing 280 gross (273.5 net) more or less (hereinafter called "PROPERTY").

Property is subject to ADL 63711, a 60' wide public access road and utility easement recorded on December 17, 2018 in the Homer Recording District as document number 1980-00067, and commonly referred to as Basargin Road. An additional 20 feet on either side of this easement is reserved by KPBL for road construction, utilities, and public transportation.

Property is further subject to the reservation of a 80' wide roadway to the Eagle Lake Material Site. Property is further subject to CTMA 2021-01, a Community Trail Management Agreement to develop, use, and maintain open to the public recreational trails, with management widths to 50-feet.

Property is further subject to the reservation of sand and gravel materials and communication sites along with the right to enter the property for the exploration, development, and use of the same in the time and manner as may be convenient to Lessor.

### **II. PURPOSE OF LEASE**

1. Authority. Pursuant to Ordinance 2021-xx and KPBL 17.10.140(C), the purpose of this lease is for agricultural purposes according to the terms set forth herein including the applicable land classifications; and the use, improvements and development timetable specified in the approved Farm Management and Development Plan.

### III. TERMS AND CONDITIONS

2. Performance. The LESSOR and the LESSEE agree that this LEASE is conditioned on satisfactory performance by the LESSEE of all covenants and conditions contained in this LEASE. Failure to substantially use and develop the lease in accordance with the approved Range Management and Development Plan within the time frame specified in the plan shall constitute grounds for cancellation.
3. Lease Term. This lease is for a term of 20 years commencing September 1, 2021, and ending August 30, 2041.
4. Lease Rental.
  - a. Rental Rates: The annual lease rental rates are set according to the Kenai Peninsula Borough Schedule of Rates, Charges, and Fees pursuant to KPBL 1.26, as may be amended from time to time by resolution of the Kenai Peninsula Borough Assembly.
  - b. Agricultural Lease Areas: The lease is divided into several lease areas according to allowed use/management, and soils/topographic features as shown on Attachment B "Lease Rates Map" and summarized below, which shall be the basis for applying lease rental:

i. Category C: Rangeland to Hayland	190.4 Acres
ii. Category D: Managed Forestland	55.9 Acres
iii. Category E: Non-Farmed Sensitive Land	13.7 Acres
iv. Category F: Access Reserves- Ungated	16.7 Acres
v. Category H: Barnyard Site	3.0 Acres (1 Each)
  - c. Rents are subject to any applicable sales taxes as may otherwise be required by law, which shall be due with each annual lease payment. The first annual lease rental payment shall be due within 30 days of the execution of this Lease. Thereafter, the annual lease payment is due and payable on or before September 1 of each year. Rent is subject to adjustment each lease year in according to the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees (KPBL 1.26).

d. Initial Rent, for the first year of the lease, is calculated as follows:

Agricultural Lease Area	Acres	KPB 1.26 Rate	2021 Rent
Category C: Rangeland to Hayland	190.4 Acres	\$5/Ac	\$952.00
Category D: Managed Forestland	55.9 Acres	\$2.5/Ac	\$139.75
Category E: Non-Farmed Sensitive Land	13.7 Acres	\$1/Ac	\$13.70
Category F: Access Reserves- Ungated	16.7 Acres	No Fee	\$0.00
Category H: Barnyard Site	(1 each) 3.0 Acres	\$25ea +\$10/Ac	\$55.00
<b>1<sup>st</sup> Year Rent:</b>			<b>\$1,160.45</b>

5. Defense and Indemnification. LESSEE shall indemnify, defend, save and hold LESSOR, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from LESSEE's performance or failure to perform in accord with the terms of this LEASE in any way whatsoever. LESSEE shall be responsible under this clause for any and all claims of any character resulting from LESSEE or LESSEE's officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by LESSOR or its agents which are said to have contributed to the losses, failure, violations, or damage. However, LESSEE shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of LESSOR, its agents or employees.

To the extent allowed by law and subject to assembly appropriation of available lands, LESSOR shall indemnify, defend, save and hold LESSEE, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from the sole negligence or willful misconduct of LESSOR, its agents or employees.

6. Insurance.

a. General terms. Insurance coverage required under this Agreement shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Agreement shall remain in effect for the life of this Agreement and shall be a part of the contract price. If

Contractor's policies contain higher limits, the KPB shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) calendar days' prior written notice to the Borough. Certificates of Insurance, acceptable in form and content, will be delivered to the Borough at the time of submission of the signed Agreement and updated certificates shall be provided upon insurance coverage renewal, where applicable.

At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska. All policies required shall be written as primary policies and not contributing to nor in excess of any coverage the Borough may choose to maintain.

No Representation of Coverage Adequacy. By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect Contractor and its subcontractor(s) of any tier, and such coverage and limits shall not be deemed as a limitation on the liability of the Contractor and subcontractor(s) of any tier under the indemnities granted to the Borough in this Agreement.

- b. Commercial General Liability. LESSEE shall provide and maintain, Commercial General Liability Insurance (CGL). The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered

with a Commercial Umbrella or Excess Liability policy. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

- c. Auto Liability. LESSEE shall provide and maintain, Auto Liability Insurance (ALI). The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.
  
- d. Worker's Compensation. LESSEE shall provide and maintain, for all of its employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The LESSEE shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than the minimum amounts required by law. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included. Subrogation shall be waived.

- 7. Use of Leasehold. LESSEE may use and develop the property only for agricultural purposes as specified in the approved Farm Management and Development Plan, attached hereto and incorporated by reference; and within the scope of provisions of this lease.

Failure to use the Property in accordance with the provisions of this lease above may result in the LESSOR, at the LESSOR'S discretion and upon 60 days written notice, reducing the lease area to reflect the actual level of use or may constitute grounds for cancellation.

If utilization of the lease, even under an approved practice, causes or begins to cause substantial damage to vegetation, soil stability, water quality, or any other valuable resource it is the responsibility of the LESSEE to take immediate actions to abate and correct the problem. The LESSOR should be notified as soon as possible of the required actions that were taken and the proposed changes in

management that will address the situation into the future. Failure to take corrective actions or to notify the LESSOR shall be grounds for cancellation. The LESSEE shall use and occupy the leasehold in compliance with the all applicable laws, regulations, ordinances, and orders that a public authority has put into effect or may put into effect. The LESSEE shall properly locate all activities and improvements on the leasehold, and may not commit waste of the parcel. The LESSEE shall maintain and repair the leasehold including improvements in a reasonably neat and clean condition, and shall take all necessary precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion, unreasonable deterioration, or destruction of the land or improvements.

8. Farm Management and Development Plan. A Farm Management and Development Plan is required for this lease. No activities or improvements are authorized on the leasehold unless they are in a plan approved by LESSOR.

A Range Management and Development Plan shall be a record containing explicit information specific to the leasehold, accompanied by supporting maps and references that serve to document existing and proposed improvements, operational details and activities, and schedules thereof. The planning process shall include technical guidance from the appropriate Soil and Water Conservation District. The plan must be based on sound farm management practices, it must be supported by technical procedures, and it must conform to the uses authorized by this lease.

The minimum requirements of a development plan are: 1) disclosure of use of the Property including crop or animal type, cultivation or feeding practices; crop volume or animal unit months as applicable; 2) location and nature of existing improvements and their estimated value; 3) location and nature of proposed improvements, their purpose, and their value; 4) a development, use, and construction time table.

The Farm Management and Development Plan is subject to approval by the mayor or mayor's designee, and may be modified with stipulations, conditions and/or exclusions by the mayor, or the mayor's designee, as deemed reasonable and appropriate to ensure that the use of the leasehold is within the scope of the lease and sound management practices. An approved Farm Management and Development Plan may be later modified and/or amended by mutual agreement subject to written approval by the mayor, or the mayor's designee. The LESSEE shall provide the LESSOR with an updated Farm Management and Development Plan within 120 days of the date a request is made by the LESSOR to update the Farm Management and Development Plan required by this lease.

Pursuant to 17.10.140(D)(4), failure on the part of the LESSEE to substantially use and develop the leasehold in accordance with the Farm Management and Development Plan within the timeframe specified in the plan shall constitute grounds for cancellation. Utilization or development of the leased land for uses other than those allowed by this lease and specified in the approved Farm Management and Development Plan shall be grounds for termination of the lease. The mayor or his designee shall determine whether the plan is substantially complete and may extend these deadlines for good cause shown or when the mayor determines it to be in the borough's best interests.

9. Identification of Livestock. All livestock permitted on a borough grazing lease shall be properly identified and, if applicable, such identification registered in accordance with AS 03.40.010 -03.40.270.
10. Health of Livestock. Prior to placing livestock on the lease all animals shall be examined by a veterinarian, experienced cattleman or other qualified professional, and if determined necessary treated for any diseases and parasites. Livestock shall be cared for using acceptable livestock husbandry practices at all times. Sick or dead animals shall be promptly treated or disposed of in a lawful manner which affords the greatest protection of humans, other livestock, wildlife and domestic animals. If applicable, AS 03.45 controls over this section.
11. Control of Livestock. LESSEE shall have sufficient control of livestock to keep all livestock within the boundaries of the leasehold at all times. It is the responsibility of the LESSEE, upon approval and at no expense to the LESSOR, to properly locate and place fencing or other deterrents to the movement of livestock.
12. Certified Seed, Forage and Other Plant Materials. Whenever possible, any plant seed introduced to the property shall be certified. Certification shall be by a state program or a state recognized program or authority. LESSEE shall take all other reasonable precautions to avoid the spread of noxious or invasive species through forage products, plant seeds, other plant materials, feedstuffs or any other means.
13. Surface Resources. Unless otherwise provided by this lease, Farm Management and Development Plan, or other written authorization, the LESSEE may not sell or remove from the leasehold any timber, stone, gravel, peat moss, topsoil, or any other material valuable for building or commercial purposes.

Up to 1,000 Cubic Yards of on-site materials may be utilized at the current rate set forth in the Kenai Peninsula Borough Schedule of Rates, Charges, and Fees pursuant to KPBL 1.26, provided LESSEE includes the borrow site location and utilization plan in the Farm Management and Development Plan.

14. Petroleum Products, Chemicals, and Hazardous Materials. LESSEE shall comply with all applicable laws and regulations concerning petroleum products, chemicals, hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials including petroleum products.

Storage and use of petroleum products, pesticides, or other chemicals is allowed only in amounts necessary, only as specified in the approved Farm Management and Development Plan, and only upon condition that LESSEE exercise proper care, handling, and safe and proper storage, and according to labeled directions when applicable. Fuel may not be placed within 100 feet of any wetland or the mean or ordinary high water mark of any lakes, streams, or other bodies of water. Fuel and pesticides must be stored in leak proof containers and placed within a secondary containment, impermeable berms and basins capable of retaining 110 percent of storage capacity plus 12 inches of free board to minimize uncontained spills or leaks.

The LESSEE agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or hazardous materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water. Pesticides may be used only according to labeled directions. Aerial spraying of pesticides shall not be allowed.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, LESSEE shall IMMEDIATELY report such release to the KPBL Planning Director or other appropriate KPBL official and to any other agency as may be required by law, and LESSEE shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPBL, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261, and any other hazardous waste as defined by the federal government, the state of Alaska or KPBL.



The covenants and obligations described in this article shall survive the termination of this lease.

15. Liens and Mortgages. LESSEE shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease. In the event that any prohibited lien is placed against the property, LESSEE shall immediately cause the lien to be released. LESSEE shall immediately refund to LESSOR any monies that LESSOR may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorney's fees.

#### **IV. RIGHTS RESERVED BY LESSOR**

16. Reservation of Easements. The LESSOR expressly reserves the right to take for the use of the LESSOR and the right to grant to third parties, easements or rights-of-way of unlimited size across the parcel herein leased if it is determined to be in the best interest of the LESSOR to do so, even if the creation of the easement or right-of-way terminates the entire leasehold estate; provided, however, that the LESSEE shall be entitled to compensation for all improvements which are damaged or destroyed as a direct result of such easement or right-of-way. LESSEE will not be entitled to compensation for loss of available forage, however the rental rates may be adjusted to reflect any changes in total lease-hold acreage.
17. Surface Reservations. The LESSOR hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of exploring for, opening, developing, harvesting, drilling and working surface mines, excavations, or timber sales on these or other lands and taking out and removing therefrom all valuable surface resources such as timber, stone, gravel or any other material valuable for building or commercial purposes and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, power lines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient to such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

The parties acknowledge and agree that this lease and land are subject to a reservation of rights by the State of Alaska to enter and extract minerals and to use the surface as provided in AS 38.05.125.

As the parties agree that these are reserved rights, which are reflected in the annual lease rental, in the event that LESSOR exercises a right in Items 1 or 2 above, it is agreed and understood that LESSEE shall receive no damages for such grant or action.

## **V. MISCELLANEOUS TERMS AND CONDITIONS**

18. Assignments. Lessee may assign this Lease only if approved in advance by KPBL. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all interests of KPBL are fully protected. The assignee shall be subject to and governed by the provisions of this Lease and laws and regulations applicable thereto. No agricultural lease may be assigned within two years of the anniversary date.
19. Subleasing. LESSEE shall not sublease the Premises or any part thereof without written permission of the KPBL Mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of this Lease.
20. Waste. LESSEE shall not commit waste upon or injury to the lands leased herein.
21. Fire Protection. LESSEE shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the PROPERTY, and comply with all laws, regulations, and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the PROPERTY is located.
22. Safety. LESSEE shall be solely responsible for maintaining the premises in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the PROPERTY as needed for LESSEE's use of the PROPERTY. LESSEE is responsible for the safety of all persons conducting activities on the PROPERTY under this LEASE.
23. Sanitation. LESSEE shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The PROPERTY shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environmental Conservation regulations.

24. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on PROPERTY. LESSEE shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the PROPERTY. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the PROPERTY during the term of this LEASE, LESSEE shall IMMEDIATELY report such release to LESSOR and any other agency as may be required by law, and LESSEE shall, at its own cost, assess, contain, and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 CFR 171.8, and any other substance determined by the federal government, the State of Alaska or Kenai Peninsula Borough, to pose a significant health and safety hazard. The covenants and obligations described in this article shall survive the termination of this License.

25. Compliance with Laws. LESSEE shall abide by all applicable federal, state, city, and borough statutes, ordinances, rules, and regulations. LESSEE is responsible for obtaining all federal, state, and local permits applicable to licensee's activities and shall keep such permits in good standing.

26. Easements and Rights-of-Way. This LEASE is subject to all easements, rights-of-way, covenants and restrictions of which LESSEE has actual or constructive notice. LESSOR reserves and retains the right to grant additional easements for utility and public access purposes across the PROPERTY and nothing herein contained shall prevent LESSOR from specifically reserving or granting such additional easements and rights-of-way across the PROPERTY as may be deemed reasonable and necessary.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPBL grants future additional easements or rights-of-way across the PROPERTY, it is agreed and understood that LESSEE shall receive no damages for such grant.

27. Inspections. LESSEE shall allow LESSOR, through its duly authorized representative, to enter and inspect the PROPERTY at any reasonable time, with or without advance notice to LESSEE, to ensure compliance with the terms and conditions of this lease. LESSOR's right to enter and inspect shall be exercised at LESSOR's sole discretion and the reservation or exercise of this right, and any related action or inaction by LESSOR, shall not in any way impose any obligation whatsoever upon LESSOR, and shall not be construed as a waiver of any rights of LESSOR under this LEASE.
28. Property Taxes. LESSEE shall timely pay all real property taxes, assessments and other debts or obligations owed to the Kenai Peninsula Borough. Pursuant to KPB Code, Section 17.10.150(H), any taxes levied against the leasehold interest shall be the responsibility of the LESSEE to pay when due. Pursuant to KPB Code, Section 17.10.120(F) this LEASE will terminate automatically should LESSEE become delinquent in the payment of any such obligations.
29. Cancellation. At any time that this LEASE is in good standing it may be canceled in whole or in part upon mutual agreement by LESSEE and LESSOR, on such terms as the Mayor, or Mayor's Designee determines to be in the best interest of the Kenai Peninsula Borough.
30. Termination. Upon termination of this LEASE, LESSEE covenants and agrees to return the property to LESSOR in the condition which existed immediately prior to entry on the PROPERTY by LESSEE, and to immediately remove all items of personal property subject to the conditions of Section 24 below. All terms and conditions set out herein are considered to be material and applicable to the use of the PROEPRTY under this LEASE. Subject to the following, in the event of LESSEE's default in the performance or observance of any of the LEASE terms, conditions, covenants and stipulations thereto, and such default continues for thirty (30) calendar days after written notice of the default, LESSOR may cancel this lease, or take any legal action for damages or recovery of the PROPERTY. No improvements may be removed during the time in which the LEASE is in default.

In the event LESSEE breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials, or hazardous waste on the PROPERTY, and fails to immediately terminate the operation causing such release upon notice from LESSOR, then LESSOR may immediately terminate this LEASE without notice to LESSEE.

31. Violation. Violation of any of the terms of this LEASE may expose LESSEE to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.

32. Notice of Default. Notice of the default, where required, will be in writing and as provided in Section 27 of this LEASE.

33. Entry or Re-entry. In the event that this LEASE is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the LESSEE during the LEASE term, LESSOR or its agents, servants or representatives, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings, or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by LESSOR shall not be deemed an acceptance of surrender of the contract.

34. Removal or Reversion of Improvements Upon Termination of Lease.

Improvements on the PROPERTY owned by LESSEE shall, within ninety (90) calendar days after the termination of the LEASE, be removed by LESSEE; provided such removal will not cause injury or damage to the land; and further provided that LESSOR may extend the time for removing such improvements in cases where hardship is proven. LESSEE may dispose of its improvements to a succeeding lessee with the consent of LESSOR.

If LESSEE fails to remove improvements or chattels upon LESSOR's request, the LESSOR may do so at the expense of LESSEE.

At LESSOR's sole option, it may choose to retain the improvements or chattels rather than having them removed. If LESSOR elects to retain the improvements and chattels, it shall give written notice of the election to LESSEE. Upon request, LESSEE shall convey said improvements and/or chattels by appropriate instrument to LESSOR.

35. Rental for Improvements or Chattels Not Removed. Any improvements and/or chattels belonging to LESSEE or placed on the PROPERTY during its tenure with or without its permission and remaining upon the premises after the termination of the contract shall entitle LESSOR to charge a reasonable rent therefor.

36. Resale. In the event that this LEASE is terminated, canceled, forfeited, or abandoned, LESSOR may offer said land for sale, lease, or other appropriate disposal pursuant to the provisions of KPBL Code, Chapter 17.10 or other applicable regulations.

37. Notice. Any notice or demand, which under the terms of this LEASE must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

LESSOR:

Planning Director  
Kenai Peninsula Borough  
144 N. Binkley Street  
Soldotna, AK 99669

LESSEE:

Robert Gibson, Partner  
Alaska Land and Cattle Company  
PO Box 650  
Cooper Landing, AK 99572

38. Responsibility of Location. It shall be the responsibility of LESSEE to properly locate itself and its improvements on the PROPERTY.

39. Liens and Mortgages. LESSEE shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease. In the event that any prohibited lien is placed against the PROPERTY, LESSEE shall immediately cause the lien to be released. LESSEE shall immediately refund to LESSOR any monies that LESSOR may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorney's fees. For the purpose of interim financing or refinancing of the improvements to be placed upon the PROPERTY, and for no other purpose, LESSEE may, upon written approval of LESSOR, encumber by mortgage, deed of trust, assignment or other appropriate instrument, LESSEE's interest in the PROPERTY and in and to the LEASE, provided said encumbrance pertains only to the leasehold interest. Any such encumbrance shall be entirely subordinate to LESSOR's rights and interest in the PROPERTY.

A leasehold mortgagee, beneficiary of a deed of trust or security assignee shall have and be subrogated to any and all rights of the LESSEE with respect to the curing of any default hereunder by LESSEE.

In the event of cancellation or forfeiture of this LEASE for cause, the holder of a properly recorded mortgage, deed of trust, or assignment will have the option to

acquire the LEASE for the unexpired term thereof, subject to the same terms and conditions as in the original instrument, as may be amended.

40. Non-Waiver Provision. The receipt of payment by LESSOR, regardless of LESSOR's knowledge of any breach by LESSEE, or of any default on the part of LESSEE in observance or performance of any of the conditions or covenants of this LEASE, shall not be deemed to be a waiver of any provision of the LEASE. Failure of LESSOR to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of LESSOR to enforce the same in the event of any subsequent breach or default. The receipt by LESSOR of any payment of any other sum of money after notice of termination or after the termination of the LEASE for any reason, shall not reinstate, continue or extend the LEASE, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.
41. Jurisdiction. Any lawsuits filed in connection with the terms and conditions of this LEASE, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law, without regard to conflict of law principles.
42. Savings Clause. Should any provision of this LEASE fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this LEASE or constitute any cause of action in favor of either party as against the other.
43. Binding Effect. It is agreed that all covenants, terms, and conditions of this LEASE shall be binding upon the successors, heirs and assigns of the parties hereto.
44. Full and Final Agreement. This LEASE constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This LEASE may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. LESSEE avers and warrants that no representations not contained within this LEASE have been made with the intention of inducing execution of this LEASE.
45. Warranty of Authority. LESSEE warrants that the person executing this LEASE is authorized to do so on behalf of LESSEE.

LESSEE: Robert Gibson and Filip  
Martushev, DBA Alaska Land &  
Cattle

LESSOR: Kenai Peninsula Borough

\_\_\_\_\_  
Robert Gibson, Partner

\_\_\_\_\_  
Charlie Pierce, Borough Mayor

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Filip Martushev, Partner

\_\_\_\_\_  
Dated

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship  
Borough Clerk

\_\_\_\_\_  
Sean Kelley  
Deputy Borough Attorney

**KPB NOTARY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

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

**LESSEE NOTARY ACKNOWLEDGMENTS**

STATE OF ALASKA            )

Kenai Peninsula Borough  
KPBL# «Authorization»; Alaska Land & Cattle Co



THIRD JUDICIAL DISTRICT                    ) ss.  
  )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Robert Gibson, of Alaska Land and Cattle Company, for and on behalf of the company.

\_\_\_\_\_  
Notary Public for State of Alaska  
Commission Expires: \_\_\_\_\_

STATE OF ALASKA                            )  
  ) ss.  
THIRD JUDICIAL DISTRICT                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Filip Martushev, of Alaska Land and Cattle Company, for and on behalf of the company.

\_\_\_\_\_  
Notary Public for State of Alaska  
Commission Expires: \_\_\_\_\_