

KENAI PENINSULA BOROUGH REAL PROPERTY LEASE

For good and valuable consideration, and pursuant to Ordinance 2022-___, enacted _____, 2022, the Kenai Peninsula Borough, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, ("KPB"), grants to the Anchor Point Food Pantry, an Alaska non-profit corporation, PO Box 266 Anchor Point, AK 99556 ("Lessee" or "APFP"), use of the following described parcel of real property ("the Property") situated in the Homer Recording District, Third Judicial District, State of Alaska, and described as follows:

A 3.5 acre portion of the S1/2NE1/4 Per WD Book 143, Page 830 and Per QCD Book 194, Page 985, excluding that portion as per Commissioners QCD Book 194, Page 990, Section 4, T5S, R15W, Seward Meridian, State of Alaska, containing 3.5 acres, more or less, subject to survey and platting, as shown on Exhibit A, Plan of Survey.

PURPOSE OF LEASE

Pursuant to Ordinance 2022-___ the purpose of this Lease is for the development, use, and maintenance of a community food pantry and community center and other related activities, as described in Lessee's Approved Development Plan ("the Development Plan"), attached hereto and incorporated by reference. The Property shall be used for the purposes within the scope of the application, the terms and conditions of the Lease, and in conformity with the Lessee's Development Plan. Use or development for other than allowed purposes shall subject the Lease to termination.

- a. Modification of Development Plan. The Development Plan may be modified by mutual agreement to advance the purpose of this Lease. Modifications of Lessee's development plan may be made through the written approval of the KPB Mayor of a modified development plan submitted by Lessee to the KPB in writing at least 60 days prior to anticipated modification of uses or improvements on the Lease. Approved modifications shall be attached to this Lease and effective upon the Mayor's written approval.
- b. Special Requirements. KPB may impose special requirements under this Lease as it deems reasonable and necessary to advance the public's best interest in the management of the Property.

TERMS AND CONDITIONS

1. Lease Term. This Lease is for a term of 20 years commencing May 15, 2022, and terminating May 14, 2042. Lessee shall have the option to renew this Lease for one additional ten (10) year term. Renewal option shall be exercised in writing by Lessee no less than 90 days in advance of the expiration of the initial term.
2. Lease Rental. Pursuant to KPB Ordinance 2022-___ the annual lease rental for the term of this Lease shall be equal to the unexempted real property tax rate, as determined by multiplying the most recent assessed value of the land by the effective real property tax mill rate for the locality. Payment shall be made in advance, on or before 15th day of May of every year of the said term. The lease rental amount is separate from and in addition to any real property tax that the Lessee is responsible for under the Lease. The rental for the 1st year of the Lease is calculated at \$280.00.
3. Use By General Public. In consideration for the Lease at less than fair market value the Property leased to APFP is subject to the restriction that the Property shall be used solely for community food pantry, community gatherings, community center uses and related activities. Lessee shall have the right to regulate use and may restrict use, provided that the manner of use is open to anyone regardless of race, color, religion, national origin, gender, marital status, pregnancy, parenthood or political affiliation. In the event Lessee does not use, or ceases to use, the Property leased as specified herein, KPB may terminate the lease.
4. Waste. Lessee shall not commit waste or injury upon the Property leased herein.
5. 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.
6. Safety. Lessee shall be solely responsible for maintaining the Property in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the Property developed or used for pedestrian traffic.
7. 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.
8. Hazardous Materials and Hazardous Waste. Except as may be authorized through an approved development plan as customary and necessary for shooting range facilities, including provisions for the means and methods of handling and management of materials, the storage, handling and disposal of hazardous waste shall not otherwise be allowed on lands under lease from KPB per KPB Code, Section 17.10.240(H).

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 lands leased herein. 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 subject lands during the term of this lease, Lessee shall IMMEDIATELY report such release to the KPB Planning Director or other appropriate KPB 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 KPB, 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 KPB.

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

9. Compliance with Laws. Lessee agrees to comply with all applicable federal, state, borough and local laws and regulations.
10. 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. KPB reserves and retains the right to grant additional easements for utility and public access purposes across the Property and nothing herein contained shall prevent KPB 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 KPB 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.

11. Inspections. Lessee shall allow KPB, 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. KPB's right to enter and inspect shall be exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this Lease.

12. Indemnification and Liability Insurance.

- a. Indemnification and Hold Harmless. The Lessee shall indemnify, defend, save and hold KPB, its elected and appointed officers, agents, volunteers, counsel, and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from Lessee's performance or failure to perform in accord with the terms of this lease in any way whatsoever. The 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 subcontractors performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by KPB 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 the borough, its agents, or employees.
- b. Liability Insurance. Lessee shall purchase at its own expense and maintain in force at all times during the term of this Lease Comprehensive General Liability Insurance, which shall include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the Lessee in which the coverage shall not be less than \$1,000,000 per occurrence. The policy purchased shall name Lessee as the insured and KPB as an additional insured, and shall also require the insurer to provide KPB with thirty (30) days or more advance written notice of any pending cancellation or change in coverage. Insurance coverage limits shall be adjusted every 10 years to match KPB's then-current standard limit requirements for similar contracts.
- c. Proof of Insurance. At the time of executing this agreement, and at the time of each renewal of insurance, Lessee shall deliver to the KPB Planning Director certificates of insurance meeting the above criterion.

13. Property Taxes. Lessee shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this agreement will terminate automatically should Lessee become delinquent in the payment of any such obligations.

14. Assignments. Lessee may assign this Lease only if approved in advance by KPB. 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 KPB are fully protected. The assignee shall be subject to and governed by the provisions of this Lease and laws and regulations applicable thereto.

15. Subleasing. No Lessee may sublease lands or any part thereof without written permission of the KPB Mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

16. Cancellation. At any time that this Lease is in good standing it may be canceled in whole or in part upon mutual written agreement by the Lessee and either the KPB Mayor or Planning Director when applicable. This Lease is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
17. Termination. Upon termination of this Lease, Lessee covenants and agrees to return the Property to KPB in a neat, clean and sanitary condition, and to immediately remove all items of personal property subject to the terms and conditions of paragraph 21 below. All terms and conditions set out herein are considered to be material and applicable to the use of the Property under this Lease. Subject to the following, in the event of Lessee's default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty (30) calendar days after written notice of the default, KPB may terminate 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 contract is in default.

In the event Lessee breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the Property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this Lease without further notice to Lessee.

18. Violation. Violation of any of the terms of this Lease may expose Lessee to appropriate legal action including forfeiture of lease/purchase interest, termination, or cancellation of its interest in accordance with state law.
19. Notice of Default. Notice of the default, where required, will be in writing and as provided in the Notice provision of this agreement.
20. Entry or Re-entry. In the event that the Lease is terminated, canceled or forfeited, or in the event that the Property, or any part thereof, should be abandoned by the Lessee during the Lease term, KPB or its agents, servants or representatives, may immediately or any time thereafter, enter or re-enter and resume possession of the Property 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 KPB shall not be deemed an acceptance of surrender of the contract.
21. Removal or Reversion of Improvements Upon of Lease.
 - a. Improvements on the property owned by Lessee shall, within thirty calendar days after the termination of the Lease, be removed by Lessee; provided such removal will not cause injury or damage to the Property; and further provided that the Mayor, or Planning Director when applicable, may extend the time for removing such improvements in cases where hardship is proven. The Lessee may dispose of its improvements to a succeeding Lessee with the consent of the KPB Mayor.
 - b. If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within

the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee under the terminated or canceled contract, be sold at public sale under the direction of the KPB Mayor and in accordance with the provisions of KPB Code. The proceeds of the sale shall inure to the Lessee who placed such improvements and/or chattels on the Property, or its successors in interest, after paying to KPB all monies due and owing plus all costs, fees and expenses incurred in storing the goods and making such a sale. In case there are no other bidders at any such sale, the KPB Mayor is authorized to bid, in the name of KPB, on such improvements and/or chattels. The bid money shall be taken from the fund to which said Property belongs, and the fund shall receive all moneys or other value subsequently derived from the sale or leasing of such improvements and/or chattels. KPB shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

c. If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the KPB Mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, the purchaser, Lessee, or permittee shall convey said improvements and/or chattels by appropriate instrument to KPB.

26. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the Property during its tenure with or without its permission and remaining upon the Property after the termination of the Lease shall entitle KPB to charge a reasonable rent therefor.

27. Resale. In the event that this Lease should be terminated, canceled, forfeited or abandoned, KPB may offer the Property for sale, lease or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations. If the Property is not immediately disposed of, then said land shall return to the Land Bank.

28. 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 Lease. 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
KENAI PENINSULA BOROUGH
Planning Director
144 N. Binkley
Soldotna, AK 99669-7599

Lessee
Anchor Point Food Pantry
Melissa Martin, President
PO Box 266
Anchor Point, AK 99556

29. Responsibility of Location. It shall be the responsibility of the Lessee to properly locate itself and its improvements on the leased lands.
30. 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, except in connection with financing transactions as discussed below. 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 KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorneys' fees.

For the purpose of interim or permanent financing of improvements to be placed upon the Property, and for no other purpose, Lessee, after giving written notice thereof to KPB, may encumber by mortgage, deed of trust, assignment or other appropriate instrument, Lessee's interest in the Property and in and to this Lease, provided such encumbrance pertains only to such leasehold interest and does not pertain to or create any interest in KPB's title to or interest in the Property. Any such encumbrance shall be entirely subordinate to KPB'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.

31. Non-Waiver Provision. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by Lessee, or of any default on the part of the 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 agreement. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB 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.
32. Jurisdiction. Any suits 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 in the Third Judicial District at Homer, Alaska and shall be governed by Alaska law.
33. 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.

34. 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 original parties hereto.
35. 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.
36. Lessee warrants that the persons executing this agreement are authorized to do so on behalf of APFP.

Anchor Point Food Pantry

KENAI PENINSULA BOROUGH

Melissa J. Martin, President

Charlie Pierce, Mayor

Dated: _____

Dated: _____

Chris Anne Syme, Secretary

Dated: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY BY:

Johni Blankenship
Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Melissa J. Martin, President, Anchor Point Food Pantry, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Chris Anne Syme, Secretary, Anchor Point Food Pantry, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

DRAFT

Return to: Kenai Peninsula Borough
Land Management Division
144 N. Binkley Street
Soldotna, AK 99669

(Above 2” Space for Recorder’s Use Only)

Prepared by and Return to:

Kenai Peninsula Borough
Attn: Land Management Division
144 N. Binkley St.
Soldotna, AK 99669

Grantor: Kenai Peninsula Borough
Grantee: Anchor Point Food Pantry
Legal Description: Lot 4, Common Ground
Subdivision, Plat No 2022-__
Homer Recording District, Alaska

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) is entered into by and between **KENAI PENINSULA BOROUGH**, an Alaska Municipal Corporation, having a mailing address of 144 N. Binkley St., Soldotna, AK 99669 (“**Lessor**”) and **ANCHOR POINT FOOD PANTRY**, an Alaska non-profit corporation, having a mailing address of PO Box 266, Anchor Point, AK 99556 (“**Lessee**”).

1. Lessor and Lessee entered into a certain Real Property Lease (“Lease”) on the 15th day of May, 2022, for the purpose of development, use, and maintenance of a community food pantry and community center and other related activities, as described in Lessee’s Approved Development Plan. All of the foregoing is set forth in the Lease.
2. The initial lease term will be twenty (20) years commencing on the Effective Date with one (1) ten (10) year option to renew.
3. The Real Property being leased to Lessee is described as Lot 4, Common Ground Subdivision, Plat No. 2022-22, Homer Recording District, Third Judicial District, State of Alaska.
4. Lessor and Lessee now desire to execute this Memorandum to provide constructive knowledge of Lessee’s lease of the Real Property.
5. This Memorandum and Agreement are governed by the laws of the state of Alaska.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

Anchor Point Food Pantry

KENAI PENINSULA BOROUGH

Melissa J. Martin, President

Charlie Pierce, Mayor

Dated: _____

Dated: _____

Chris Anne Syme, Secretary

Dated: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY BY:

Johni Blankenship
Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Melissa J. Martin, President, Anchor Point Food Pantry, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Chris Anne Syme, Secretary, Anchor Point Food Pantry, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____