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SS/16/I

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
SOUTHEAST REGION
BOX 3-1000
JUNEAU, ALASKA 99802

LEASE NO. ADA-05175

LEASE AGREEMENT
AIRPORT: KETCHIKAN

THIS lease is made and entered into this 14th day of December, 1984, by and between the STATE OF ALASKA, by and through the DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, whose address is P. O. Box 3-1000, Juneau, Alaska 99802, its successors and assigns (hereinafter called the LESSOR) acting by and through its Commissioner, and the KETCHIKAN GATEWAY BOROUGH, ALASKA, whose address is 344 Front Street, Ketchikan, Alaska 99901, its successors and assigns, (hereinafter called the LESSEE) acting by and through its Borough Manager,

RECITALS

(1) LESSOR has constructed the landing field (hereinafter referred to as "landing field") and certain related landing facilities for the airport at Ketchikan, Alaska;

(2) LESSOR and LESSEE entered into that certain lease agreement designated as Lease Agreement ADA-03782, dated July 1, 1978, covering the landing field referred to in Recital (1) above (hereinafter referred to as "Landing Field Lease") and the term of said lease was established at thirty-five (35) months, commencing on August 1, 1978, and ending July 1, 1981; provided, however, said lease has, by mutual consent, been extended on a month-to-month tenancy pending negotiation of a new lease agreement.

(3) LESSOR also currently leases to LESSEE certain additional areas contiguous to the landing field at the Ketchikan Airport pursuant to Lease No. ADA-01977 (hereinafter referred to as "Building Site Lease") for a lease term commencing on June 1, 1972, and expiring on May 31, 2027.

(4) LESSEE at its cost and expense has constructed on the area covered by the Building Site Lease an airport terminal building [hereinafter referred to as "Terminal Building"] a fire and public safety building (hereinafter referred to as "Safety Building"), an airport ferry terminal facility (hereinafter referred to as "Ferry Terminal Facility"), and an airport maintenance building (hereinafter referred to as "Maintenance Building").

(5) LESSEE has sold \$2,990,000 in general obligation bonds to generate the funds necessary to build the Terminal Building, and the remaining unpaid balance of principal of such bond obligation, as of June 30, 1983, is \$2,155,000 and in addition thereto LESSEE has sold \$410,000 in revenue bonds for remodeling the interior of the Terminal Building, and the remaining unpaid balance of such bond obligation, as of June 30, 1983, is \$410,000.

(6) LESSEE has also leased from the State of Alaska, Department of Transportation and Public Facilities, Division of Marine Highways, a portion of the Alaska State ferry terminal site located on the City of Ketchikan side of Tongass Narrows on a year-to-year basis pursuant to Lease No. MTL-5 (hereinafter referred to as "City Ferry Terminal Site Lease").

(7) LESSEE has purchased, owns and operates ferry boats and a ferry system to transport passengers to and from the airport terminal.

(8) LESSOR and LESSEE acknowledge and agree that the total airport complex, including the landing field, Terminal Building, Safety Building, Maintenance Building, Ferry Terminal Facility, and other improvements constructed by LESSOR or by LESSEE at the Ketchikan airport, and at the City Ferry Terminal Site, and also the airport ferry system operated by LESSEE (all of which facilities are hereinafter referred to collectively as the "Airport") should be considered one integrated, single unit and facility and should be operated as a single integrated enterprise.

(9) LESSEE at this time desires to continue operation and control of the Airport as such an integrated unit for the mutual advantage of LESSEE, the LESSOR, the public, and the aviation and transportation enterprises serving the public.

(10) LESSEE and LESSOR desire to enter into this new comprehensive inclusive lease with the LESSOR so as to include all of the area covered by the Landing Field Lease referred to above, and also all the area included in the Building Site Lease referred to above, so that all of such areas leased by LESSEE from LESSOR will be included in one master lease and to facilitate operation of the Airport by LESSEE as an integrated Airport operation, subject however, to all of the terms, covenants, and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the terms, conditions, and other provisions hereinafter set forth, the parties hereto agree as follows:

Section 1: Leased Premises. LESSOR hereby leases, lets and rents to LESSEE, and LESSEE hereby takes, hires and leases from the LESSOR, at the rental rates and subject to all of the terms, covenants, conditions and provisions hereinafter set forth, those certain parcels of real property located on Gravina Island, Ketchikan Gateway Borough, First Judicial District, Ketchikan

Recording District, Alaska, collectively referred to as the "Leased Premises" described as follows:

(a) Landing Field Parcel: (Parcel 1)

All real property, and the improvements located thereon installed and constructed by LESSOR, designated and described as Parcel 1 on Exhibit A hereto.

(b) Building Site Parcel (Parcel 2)

All real property designated and described as Parcel 2 on Exhibit A hereto.

Section 2: Term. The term of this lease, hereinafter called the "Lease Term," shall commence on January 1, 1985, and expire, unless sooner terminated or extended as provided herein, on May 31, 2027.

Section 3: Rent. The annual rental shall consist of One Dollar (\$1.00) and other good and valuable consideration. Payment of the sum of Forty-two Dollars (\$2.00) representing rental for the entire lease term is hereby acknowledged.

Section 4: Operation as Public Airport. LESSEE agrees to operate the Airport for the use and benefit of the public; to make available, subject to reasonable fees, rules and regulations, all airport facilities and services to the public on fair and reasonable terms and conditions and without discrimination, to provide space at the Airport to the extent available, and to grant rights and privileges for the use of the landing area facilities at the Airport, to all qualified persons, firms, and corporations desiring to conduct operations at the Airport. It is specifically understood and agreed that nothing herein

contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act.

Section 5: Avigation and Hazard Easement. It is understood and agreed that during the term of this lease, or any extension thereof, LESSEE shall be authorized and entitled to use and enjoy any and all interest of the LESSOR in and to that certain Permit, Avigation and Hazard Easement, and Right of Way, dated May 15, 1969, entered into by and between the State of Alaska, Department of Natural Resources, Division of Lands, as Grantor, and the State of Alaska, Department of Public Works, Division of Aviation, as Grantee, together with Amendment No. 1 to said document dated March 16, 1971, and which is designated as Exhibit B attached hereto, and that LESSEE shall be bound by the terms and provisions thereof during the term of this lease or any extension thereof. LESSOR agrees to cooperate and to take any and all action necessary or convenient to assure the LESSEE is provided and receives the full use, entry and entitlement under said Permit, Avigation and Hazard Easement at all times during the term of this lease or any extensions thereof, and, to the extent allowed by law, assign and transfer such rights to LESSEE in the event title to the Leased Premises is acquired by LESSEE.

Section 6: Maintenance and Repair. Maintenance and repair of the Leased Premises shall be performed as follows:

(a) Landing Field (Parcel 1): Allocation of responsibility for maintenance and repair of the landing field and other portions of the Leased Premises that are included within the Landing Field Parcel (described as Parcel 1 on Exhibit A hereto) shall be as follows:

(1) LESSEE agrees to perform all maintenance and repair not resulting from subbase failure or design

flaws, on the Landing Field Parcel necessary to meet the following conditions:

- (a) to keep the runway operational at all times, except for such runway closures as may be required by emergencies or by maintenance or repair operations. The runway may be closed for maintenance or repair operations only after the LESSEE has provided the Federal Aviation Administration with such notice as it may require, and such closure shall be limited to four (4) hours duration unless the LESSOR consents to a closure of longer duration;
- (b) to limit snow accumulation on the runway to a maximum of two (2) inches at any one time, and to provide reasonable and prudent snow removal for other aircraft operational surfaces, ramps and roadways;
- (c) to maintain all road surfaces, aircraft operational surfaces, lights and striping in good, serviceable condition;
- (d) to perform regular patching and crack sealing on all paved surfaces, as needed, to maintain the integrity of said surfaces. Said surfaces include runway, taxiway, apron and roadway surfaces;

- (e) to maintain and repair the runway, taxiway, apron and roadway shoulders and embankment as reasonably necessary to prevent erosion damage;
- (f) to maintain all ditches and other surface water drainage facilities to provide adequate surface water drainage and to prevent erosion;
- (g) to prevent encroachment of any brush or trees within the Airport imaginary surfaces;
- (h) to maintain the runway clear zone areas free of all obstructions;
- (i) to maintain the seaplane float and related facilities in good serviceable condition;
- (j) to restore proper braking action to runway and taxiway surfaces where ice formation occurs on surfaces. In order to restore proper braking action, the LESSEE shall apply sand or ice melting chemicals and/or remove ice by mechanical means;
- (k) to keep the Landing Field and other areas included within the Landing Field Parcel neat and presentable.

(2) Quarterly, during the months of January, April, July and October of each year of the term of this lease, or any extension(s) thereof, representatives of the LESSOR and

LESSEE shall conduct a joint inspection of the Leased Premises for the purpose of determining the extent of the LESSEE's and LESSOR's compliance with the provisions of this section. Additional joint inspections of the Leased Premises may be conducted at such other times as may be mutually agreed upon by the LESSOR and LESSEE.

(3) The LESSOR shall have the right to require the LESSEE to perform maintenance or repair in the event any inspection by the LESSOR reveals a failure by the LESSEE to maintain the standards set forth under subsection (a)(1) of this section. Such corrective maintenance or repair work shall be accomplished by the LESSEE within a reasonable period of time as determined by the LESSOR.

(4) Payment of Maintenance and Repair Costs.

(a) Any maintenance or repair having a cost for a single maintenance or repair operation of Ten Thousand Dollars (\$10,000.00) or less shall be paid for by the LESSEE from the Airport Enterprise Fund established pursuant to Section 9 hereof, or from other revenue sources available to the LESSEE.

(b) Any maintenance or repair having a cost for a single maintenance or repair operation which exceeds Ten Thousand Dollars (\$10,000.00) shall be paid for as follows:

(1) The first Ten Thousand Dollars (\$10,000.00) of any such cost shall be paid for by the LESSEE from the Airport Enterprise Fund according to Section 9

herein or from other sources available to the LESSEE.

- (2) The balance over Ten Thousand Dollars (\$10,000.00) of any such cost shall be paid by the LESSOR from revenue sources available to the LESSOR subject to the appropriation of funds. Prior to initiating a maintenance or repair project which the LESSEE estimates will cost in excess of \$10,000, the LESSEE must contact the LESSOR's Southeast Region Director, Maintenance and Operations, and obtain authority to proceed as well as a commitment for the funds to cover the LESSOR's portion of the project cost.

The LESSOR hereby reserves the right to increase the dollar figure stipulated in subsections (b)(1) and (b)(2) above at intervals of not less than five (5) years during the term of this lease; provided, however, the date of the first such five (5) year adjustment shall not be prior to January 1, 1990. Any such increase shall be limited to the amount necessary to reflect any increase in the costs of construction which shall have occurred during the prior (5) year interval as determined by Engineering News Record Construction Index, and utilizing the date of this lease, or the date of the last five (5) year adjustment, whichever is later, as the base date for computing the increase or decrease. In the event there has been a decrease in the construction costs per the Engineering News Record Construction Index during such period of time, LESSEE shall be entitled to a decrease in the amount of the then existing contributions required to be paid by LESSEE.

(5) Runway Repairs by LESSOR. Notwithstanding any other provision herein, LESSOR shall be responsible for, and shall, at no cost or expense to LESSEE, accomplish and perform all repair or reconstruction work necessary to render the runway surface stable and adequate for commercial jet aircraft operations in a manner consistent with accepted airport engineering standards, and agrees to use its best efforts, in good faith, to apply for and obtain appropriations of funds as necessary to accomplish all of the work referred to in this section.

The parties hereto further acknowledge and agree that the existing runway surface at the airport will require a pavement overlay, or similar type of surface rehabilitation, as soon as possible, and LESSOR agrees, subject to appropriation of funds, to accomplish such overlay not later than September 1, 1985.

(6) In the event of destruction or damage to the landing strip, taxiway, apron, or any other portion of the airport, other than the buildings or structures constructed by LESSEE on the Building Site Parcel (Parcel 2 on Exhibit A hereto) by earthquake, flood, or other Act of God, LESSOR shall take all such action as may be reasonably necessary, including reconstruction, to assure and cause the landing field, aprons, and other appurtenances are reopened and made operational for aircraft use at the earliest time possible.

(b) Building Site Parcel. LESSOR shall not be responsible for any maintenance or repair of any portion of the Leased Premises that is included within the Building Site Parcel (described as Parcel 2 on Exhibit A hereto) except as to any damages or injuries which are caused or contributed to by the acts or omissions of LESSOR, its officers, employees, agents, contractors, representatives, or other persons for whose actions

LESSOR is responsible, or for which LESSOR is otherwise required to pay pursuant to the provisions of this lease.

Section 7: Waste. LESSEE shall suffer no strip or waste nor remove any rock, gravel or other material from the Leased Premises without the consent of LESSOR.

Section 8: Compliance with Federal Aviation Regulations.

(a) LESSOR and LESSEE hereby acknowledge LESSEE has prepared an airport operations manual for the Airport which has been approved by the Federal Aviation Administration, and has obtained an Airport Operating Certificate for the Airport from the Federal Aviation Administration pursuant to Part 139 of the Federal Aviation Regulations; and that said certificate names the LESSOR and LESSEE as co-operators of the Airport.

(b) LESSEE shall, subject to the responsibilities of LESSOR:

(1) comply with Part 107 of the Federal Aviation Regulations and, in compliance therewith, maintain an airport security program which is approved by the Federal Aviation Administration;

(2) comply with Part 139 of the Federal Aviation Regulations, shall keep the airport operations manual current, not surrender the airport operating certificate nor knowingly allow any condition to develop that would result in its suspension, revocation or other termination;

(3) comply with all other applicable Federal Aviation Regulations;

(4) insure that the LESSOR is provided with a copy of the existing airport operations manual and airport security program;

(5) promptly inform the LESSOR of all revisions of the airport operations manual, the airport security program and any changes in the certificate status of the Airport.

(6) LESSEE shall provide LESSOR with copies of any inspection reports received from FAA in a timely manner.

Section 9: Ketchikan Airport Enterprise Fund.

(a) LESSEE shall maintain a Ketchikan Airport Enterprise Fund (hereinafter called "Enterprise Fund"). This Enterprise Fund shall replace the Ketchikan Airport Revenue Fund that was established pursuant to Lease Agreement ADA-01967 and maintained under Lease Agreement ADA-03782 and it is hereby agreed that no excess revenue exists in the Airport Revenue Fund as of the effective date of this Lease. The Enterprise Fund shall be administered by LESSEE separate from all other accounts of LESSEE and shall be for the primary purpose of accounting for the costs and expenses of operating the Airport. All revenue derived from the operation of the Airport shall be deposited into the Enterprise Fund. Records pertaining to the Enterprise Fund shall be available for inspection or audit by LESSOR at all reasonable times.

(b) For the purpose of this Lease: (i) revenue received from operation of the airport (hereinafter referred to as "airport revenue") for deposit into the Enterprise Fund shall include state fuel tax refunds, aircraft landing fees, aircraft parking fees, fees for lease of land or any tidelands included within the Leased Premises, fuel flowage fees, terminal rental fees, fees for vehicle parking on the Airport premises, airport ferry revenues, and also any interest that is earned on any of such items,

and all other similar type revenues generated by operation of the Airport; (ii) Any and all other funds derived by LESSEE from sources, such as state shared revenue, federal shared revenue, contributions from the Borough general fund and any other monies other than from the sources specified in (i) above that are deposited into the Enterprise Fund to pay any of the costs or expenses of operation of the Airport, and also any interest that is earned on any such funds, shall not be considered airport revenue and shall be excluded in computing airport revenue for the purposes of this Lease.

(c) Should airport revenue, calculated as provided in (b)(i) above, received into the Enterprise Fund for any one fiscal year exceed LESSEE's costs and expenses in the operation of the Airport (which expenses shall include debt service on any outstanding indebtedness incurred for improvements at the Airport, plus the amount of expenditures incurred for the acquisition of capital equipment or facilities for the Airport, and for operation of the airport ferry), such excess revenues shall be credited to a separate account to be entitled "Airport Reserved Fund" established within the Enterprise Fund. Should the expenses in the Enterprise Fund exceed airport revenues, as defined in paragraph (b)(i) above), such excess expenses may be used to reduce the balance in the Airport Reserved Fund account. The amount of any excess expenses that can not be utilized to reduce this balance because they would result in the balance becoming negative, may be carried forward and used to reduce excess revenues that may occur in future years.

(d) Upon the expiration of this Lease, any balance remaining in the Airport Reserved Fund account as a result of the receipt of revenues in excess of expenses, shall be kept and retained by LESSEE and applied to any outstanding bonded indebtedness incurred for airport purposes and the amounts remaining, if any, after retirement of such bonded indebtedness,

shall be retained by LESSEE and may be used in any manner or for any purpose deemed appropriate by LESSEE.

(e) Upon termination of this lease, (as distinguished from normal expiration of the lease term), other than a termination pursuant to which LESSEE obtains title pursuant to Section 14 [Option to Acquire Title], the amount remaining, if any, in the Airport Reserved Fund account, established pursuant to Section 9 hereof, shall be transferred to the LESSOR and be applied by LESSOR first to the payment of any outstanding bonded indebtedness incurred by LESSEE for airport purposes, and then to the payment of the amounts to be reimbursed to LESSEE for the cost of improvements installed by LESSEE as provided in this lease.

Section 10: Annual Reports.

(a) Not later than the fifteenth (15th) day of October of each year of the lease term, LESSEE shall furnish to LESSOR an annual report certified by an independent auditor acceptable to both parties; provided, however, the certified general annual audit of BOROUGH operations may be used provided the audit of the Airport is set forth separately in such annual general audit.

The audit shall contain an itemized accounting of the following:

(1) all revenues earned under this lease, or Lease No. 03782, during the preceding fiscal year of July 1 to June 30;

(2) all expenditures paid out of the Airport Enterprise Fund under this lease, or under Lease No. 03782, during the preceding fiscal year of July 1 to June 30;

(3) all airport operating expenses, if any, which the LESSEE incurred under this lease during the previous fiscal year of July 1 to June 30 which were paid with funds derived from sources other than the Airport Enterprise Fund.

Section 11: State Fuel Tax. The parties hereto recognize that the provisions of Chapter 40 [motor fuel tax] of Title 43 of Alaska Statutes are applicable under this lease.

Section 12: Title Representations. The interests transferred or conveyed by this lease are subject to any and all of the covenants, terms, and conditions that are contained in the instruments conveying title or other interests or improvements to the LESSOR or contained in the public records recorded in the District Recorder's Office, Ketchikan, Alaska, provided copies thereof have been supplied to LESSEE by LESSOR.

Section 13: Renewal. At the expiration of the initial term of this lease, if the LESSEE desires a renewal, it shall, within ninety (90) days before the expiration of this lease, make application in writing for a renewal. Such application will operate to extend the term of this lease until such time as LESSOR gives written notice to LESSEE that: (a) the request for renewal has been granted and appropriate renewal documents have been executed on behalf of the LESSOR and the LESSEE; or (b) the request for renewal has been rejected. LESSOR shall not unreasonably withhold approval of a request by LESSEE to renew this lease, and on reasonable terms and conditions.

Section 14: Option to Acquire Title. (a) LESSOR agrees that upon written request by the LESSEE given at any time during the term of this lease, or any extension thereof, LESSOR shall convey to the LESSEE, subject to approval of the Federal Aviation Administration, fee simple title to such portion of the Leased Premises owned by LESSOR, and to any easements, permits or

rights, and to any personal property located at the Airport, owned by LESSOR and shall, to the extent permitted by law, lease to LESSEE any property not owned by LESSOR on a long term lease, at no rent. The total purchase price shall be \$1.00. Any such conveyance shall include a provision that in the event the Leased Premises, or any part thereof, is not used for public airport purposes, as reasonably determined by LESSOR, title to such portion not used for public airport purposes shall revert back to LESSOR.

(b) In the event of acquisition by LESSEE as provided in (a) above, this lease shall automatically terminate on the effective date of the LESSOR's conveyance of title to the LESSEE.

Section 15: Existing Conditions. LESSEE has examined, knows and accepts the non-latent conditions and state of repair of the Leased Premises and acknowledges that LESSOR has made no representations concerning such condition and state of repair, nor any agreement or promise to alter, improve, adapt, repair or keep in repair the same, or any item thereof, which has not been fully set forth in this lease.

Section 16: Subject to Laws.

(a) This lease is issued subject to all of the provisions and requirements of the laws and regulations of the State of Alaska relating to the leasing of State Airport Lands and facilities.

(b) LESSEE, its agents and sublessees shall conduct all operations on the Airport in compliance with all Federal, State and local laws, ordinances, rules and regulations now or hereafter in force, which may be applicable to such operations.

(c) If any term, provision, condition or part of this lease is declared by a court of competent jurisdiction to be invalid or unconstitutional, the remaining terms, provisions, conditions or parts shall continue in full force and effect.

Section 17: Subject to Federal Aid Provisions.

(a) This lease shall be subordinate to the provisions of all (1) existing regulations, and (2) agreements entered into between LESSOR and the United States of America to obtain Federal Aid for land acquisition, construction, improvements, operation and maintenance of the Airport and which LESSOR has disclosed to LESSEE in writing and provided copies thereof to LESSEE.

(b) LESSOR specifically agrees to abide by all the regulations and assurances set forth in current and future grant agreements with the Federal Aviation Administration covering Airport land acquisition, construction, and development of stages I, II, and III, and the Seaplane Float construction and the Ferry Slip construction, insofar as they apply to authorized land acquisition and airport construction. The LESSOR acknowledges responsibility to maintain surveillance and provide the LESSEE with copies of the regulations of the Grant Agreements, Project Applications, Part III - Sponsors Assurances, Title VI Assurances of the Civil Rights Act of 1964 including attachments 1 and 2 of the Title VI Assurances, all of which are included in Projects 9-50-109-C901, 8-02-0144-01, 8-02-0144-02, 8-02-0144-03, 8-02-0144-04, 6-02-0144-05, and 6-02-0144-06 copies of which are attached hereto as Exhibit D.

(c) LESSEE specifically covenants and agrees to abide by and discharge all obligations of the LESSOR contained in regulations, provisions, and assurances set forth in subsection (b) above insofar as they apply to any operations or functions of LESSEE during the term of this lease subject to the participation

in cost by LESSOR as provided herein. It is mutually understood that such obligations of the LESSEE shall be only to the LESSOR, which in turn shall remain responsible to the Federal Aviation Administration for discharging such obligations during the term of this lease.

Section 18: Right to Construct and Install Improvements.

(a) Landing Field Parcel. LESSEE, its employees, contractors, sublessees, and permittees shall not construct, install, locate, or relocate any structures on the Landing Field Parcel (Parcel 1 on Exhibit A) without the prior written approval of LESSOR and, unless otherwise agreed, at no expense to LESSOR.

(b) Building Site Parcel.

(1) LESSEE shall have the right to construct and install structures and other improvements on any of the sites or areas included within the Building Site Parcel reasonably required or convenient for airport purposes or as may be otherwise approved by LESSOR, subject to compliance with the prior consent, approval, and other limitations and conditions specified on Exhibit F [Conditions re Construction of Improvements] attached hereto.

(2) LESSEE shall further be entitled to make such improvements to the Terminal Building and any other buildings, structures or improvements located on or included within the Building Site Parcel as LESSEE deems necessary or convenient to accommodate tenants or to further the utility of the Terminal Building or other structures or improvements on the Building Site Parcel.

Such improvements shall comply with Part 77, 139, Federal Aviation Regulations.

(3) LESSEE further agrees, in consideration of LESSOR agreeing to pay off any outstanding debt upon expiration or termination of this lease, as provided in Section 21 hereof, that LESSEE will obtain the prior approval of LESSOR to the issuance of any bonded indebtedness exceeding \$250,000 in a single issue which is to be issued to finance construction of additional Airport improvements, provided, however, LESSEE may elect to proceed without obtaining the consent of LESSOR, and in such event the LESSOR shall not be obligated to pay that portion of outstanding bonded indebtedness generated by such bond issue to which LESSOR reasonably objects.

(c) Ownership of Improvements. All structures and other improvements constructed or installed by LESSEE shall remain the property of LESSEE and the disposition thereof upon expiration or termination of this lease shall be governed by the provisions of section 21 [Disposition of Improvements and Bonded Indebtedness upon Expiration or Termination of Lease] of this lease.

Section 19: Termination by LESSOR. (a) LESSOR may terminate this lease for default by giving LESSEE not less than sixty (60) days advance written notice setting forth in detail the facts and evidence upon which such termination is based upon the happening of any of the following events, PROVIDED, the deficiency is not cured within said sixty (60) days:

(1) Failure of LESSEE to use the Leased Premises for the purposes stated herein;

(2) Failure of LESSEE to operate and maintain the Airport in compliance with all requirements for retention of the airport operation certificate as required by section 8 herein, and in compliance with all provisions of the Grant Agreements with the United States, Federal Aviation Administration for construction of the Airport, as required by section 8 herein, PROVIDED, however, that in the event violation of this subsection by LESSEE shall cause or threaten full or partial closure of the Airport by the Federal Aviation Administration, LESSOR may at its option, suspend this lease agreement without advance notice and take over immediate operation and control of the Airport and then proceed with the giving of notice of default provisions provided for herein and allow LESSEE to cure such default;

(3) Failure of LESSEE to perform, keep and observe any of the terms, covenants, conditions and agreements contained in this lease;

(b) Notwithstanding any other provision herein, in the event LESSEE disputes the grounds specified for termination and requests a review thereof pursuant to section 45 [Disputes Resolution], no termination shall become effective until thirty (30) days after exhaustion of such review proceedings as provided in said section 45 and failure by LESSEE to either comply with any decision rendered or to appeal such decision to the courts in the manner provided by law.

(c) If this lease is terminated by LESSOR, the provisions of section 21 [Disposition of Improvements and Bonded Indebtedness upon Expiration or Termination of Lease] shall apply.

Section 20: Termination by LESSEE. (a) LESSEE shall have the right to terminate this lease as follows:

(1) Fiscal insufficiency. LESSEE may, in addition to any other grounds for termination provided for herein, terminate this lease in the event the expenses of operating the Airport, (including the airport ferry system), after having considered and applied any surplus airport revenues carried over from the previous year:

- (a) exceed airport revenue (as defined in Section 9 hereof) by 35% in any single fiscal year; or
- (b) exceed airport revenue during two (2) of any four (4) consecutive fiscal years by an average shortage for such two (2) year period of 20% of expenses over revenue;

(2) Failure of LESSOR to perform terms.

(a) LESSEE may terminate this lease in the event LESSOR fails to perform, keep, or observe any of the terms, covenants, conditions and agreements contained in this lease; provided LESSOR is given not less than sixty (60) days advance written notice setting forth in detail the facts and evidence upon which such termination is based and such deficiency is not cured within said sixty (60) days.

(b) Notwithstanding any other provision herein, in the event LESSOR disputes the grounds specified for termination under (a)(3) [Failure to Perform Terms] and requests review thereof pursuant to section 45 [Disputes Resolution], no termination shall become effective until thirty (30) days after exhaustion of the review proceedings as provided in said section 45 and failure by LESSOR to either comply with any decision rendered or to appeal such decision to the courts in the manner provided by law. The effective date of termination by LESSEE under (a) (1) above shall not be extended under this paragraph (b).

Section 21: Disposition of Improvements and Bonded Indebtedness upon Expiration or Termination of Lease Term.

(A) If the term of this lease is extended, or this lease is otherwise renewed, or LESSEE exercises the option to acquire the Airport as provided for in Section 14, all buildings and other improvements constructed on the Leased Premises by the LESSEE, including those constructed or installed by any of LESSEE'S tenants, if title thereto has inured to LESSEE under the terms of such tenant's lease, shall remain the property of LESSEE.

(B) If the provisions of (A) above do not apply, then upon termination of this lease:

(1) By LESSOR Without Cause:

(a) In the event LESSOR terminates this lease without proper cause, as determined pursuant to the proceedings provided for in section 45, [Disputes Resolution] and LESSOR fails to comply with any decision rendered pursuant to such proceedings within thirty (30) days thereafter, then in such event this lease shall terminate and LESSOR shall acquire, and shall reimburse LESSEE for the cost of all Airport improvements constructed or installed by LESSEE as hereinafter provided. Computation of the amount to be reimbursed to LESSEE by LESSOR for such improvements, and the manner of payment thereof, shall be as follows:

(i) Amount of Reimbursement: LESSEE shall be paid:

- a) The amounts paid on the construction cost of the improvements from other than bond proceeds; plus
- b) the total amount of principal and interest which has been paid by LESSEE on any bonds issued to obtain funds to construct such improvements,

(ii) Manner of Payment: the reimbursement provided for in (a) above shall be paid:

- a) in one lump sum in the event appropriated funds are available therefore and title to the improvements shall thereupon pass to LESSOR; or
- b) in the event funds are not available, LESSOR shall lease from LESSEE any such improvements for which payment is not immediately made at an annual rental sufficient to complete payment of reimbursement over a period of not to exceed five (5) years, and provided further, such lease shall provide for LESSOR to provide building maintenance, insurance, (with LESSOR and LESSEE as loss payees as their interest may appear), and other reasonable lease terms to protect the interest of LESSEE during such reimbursement period.

(b) LESSOR, in addition to (a) above, shall cause all bonded indebtedness incurred by LESSEE for the purpose of constructing, installing, or improving any improvements on the Leased Premises (Parcel 1 or Parcel 2) to be timely paid, provided, however, LESSEE agrees to apply any amounts remaining in the Airport Reserved Fund to such indebtedness as provided for in Section 9(d). LESSEE shall have no further obligation to LESSOR to apply, pay or contribute any amounts to payment of any such bonded indebtedness of LESSEE existing at the expiration or termination of the term of this lease except as provided in this section.

(2) By LESSOR For Default of LESSEE Pursuant to Section 19:

(a) All improvements constructed by LESSEE at the Airport shall become the property of LESSOR and the reimbursement payment provisions of (B) (1) (a) above shall not apply.

(b) LESSOR shall cause all bonded indebtedness referred to in (B) (1) (b) above to be paid as therein specified.

(3) By LESSEE for Fiscal Insufficiency Pursuant to Section 20 (a) (1):

(a) All improvements constructed by LESSEE at the airport shall become the property of LESSOR

and the reimbursement payment provisions of (B) (1) (a) above shall not apply.

(b) LESSOR shall cause all bonded indebtedness referred to in (B) (1) (b) above to be paid as therein provided.

(4) By LESSEE for Failure of LESSOR to Perform Terms Pursuant to Section 20 (a) (2):

(a) LESSOR shall reimburse LESSEE for all improvements installed by LESSEE as provided for in (B) (1) (a) above, and in addition thereto

(b) LESSOR shall cause all bonded indebtedness referred to in (B) (1) (b) above to be paid as therein specified.

(C) Normal Expiration of Lease Term.

If the provisions of (A) above do not apply, then upon the normal expiration of the term of this lease or any extension thereof, (i.e. a non-termination situation):

(1) LESSOR shall reimburse LESSEE for all improvements installed by LESSEE as provided in (B) (1) (a) above; and

(2) LESSOR shall cause all bonded indebtedness referred to in (B) (1) (b) above to be paid as therein provided.

(D) LESSEE's Right to Lease Improvements. Upon the expiration of the lease term, or upon any termination of this

lease, whether by LESSEE or by LESSOR, LESSEE shall have the right, at its option, to lease back all or any portion of any of the improvements installed by LESSEE at such reasonable rent, and on such reasonable terms and conditions as are consistent with the then existing rules and regulations regarding lease by the State of Alaska of airport property, or in the absence thereof, at a reasonable rate of rent and on other reasonable terms and conditions.

(E) Personal Property. All portable equipment, materials, accessories and supplies shall remain the property of the LESSEE; provided, however, that if the LESSEE, upon the expiration or termination of the lease term, fails to remove any such property from the Leased Premises, or any portion of the Leased Premises that is not leased back to LESSEE, within sixty (60) days after receipt of written notice from the LESSOR to do so, any such property remaining on the Leased Premises thereafter shall be deemed to have been abandoned by the LESSEE to the LESSOR. LESSOR may then, at its option:

- (1) assume ownership of such abandoned property, or
- (2) remove such property to land owned by the LESSEE, in which event the LESSEE shall reimburse the LESSOR for the reasonable cost of such removal.

(F) LESSEE shall, to the extent the LESSOR may reasonably require, within thirty (30) days after the removal of any improvements by LESSEE, restore the portion of the Leased Premises damaged by the removal of improvements, if any, to a condition as good as that which existed prior to the construction of said improvements. Upon failure to do so, the LESSEE shall be liable for the reasonable costs of such restoration as are required in writing by the LESSOR not later than thirty (30) days thereafter.

Section 22: Existing Leases.

(a) It is understood and agreed between the parties hereto that LESSEE herein shall be the successor in interest of LESSOR during the term of this lease or extensions thereof, in and to:

(1) That certain Lease Agreement, designated ADA-02684, dated April 25, 1975, by and between the State of Alaska, Department of Public Works, Division of Aviation, Lessor and the Federal Aviation Administration, Lessee, (attached and referred to herein as Exhibit "E-2").

(2) Those certain licenses designated ADA-01971, ADA-02034, ADA-02364, ADA-02659, ADA-02682, ADA-02687, ADA-03052, ADA-03232, ADA-03742 and ADA-05286 between the State of Alaska, Licensor and the Federal Aviation Administration Licensee (attached and referred to herein as Exhibits "E-3", "E-4", "E-5", "E-6", "E-7", "E-8", "E-9", "E-10", "E-11", and "E-12", respectively).

(b) LESSEE herein shall be bound by the terms and provisions of said lease agreements and licenses referred to in (a) above during the term of this lease, or any extension thereof; PROVIDED, that LESSEE herein shall have no responsibility for any actions or events which may have occurred prior to commencement of the term of this lease, except such responsibilities as were assumed by LESSEE pursuant to those certain lease agreements between the LESSOR and LESSEE designated as Lease Agreements ADA-01967 and ADA-03782.

(c) LESSOR asserts and represents that as of the date of commencement of the term of this lease there are no leases, licenses, rights-of-way, easements, encumbrances or other outgrants made by the LESSOR relating to the landing field or the Airport other than those specified herein.

Section 23: Right to Sublease or Grant Permits.

(a) LESSEE shall have the right, subject to the written consent of the LESSOR, to execute subleases and to grant permits covering portions of the Leased Premises for airport purposes so long as such subleases or permits do not interfere with the operation and maintenance of the facility as a public airport.

(b) LESSOR hereby grants consent to all leases, subleases or permits which were made or entered into by LESSEE on or before the date of this lease, as set forth on Exhibit C hereto.

(c) All subleases and permits executed by the LESSEE pursuant to this section shall be subject to the terms and conditions of this lease agreement and shall be governed in all respects by all laws and regulations of the State of Alaska.

(d) LESSEE shall establish fees and rates for leasing of land or granting of privileges at the Airport as provided in Section 25.

LESSOR hereby consents to and approves all fees and rates which have been charged or fixed by LESSEE as of the date of this lease.

(e) Upon the expiration or earlier termination of this lease, or of any renewal thereof, all subleases entered into by LESSEE shall continue in full force and effect and shall be recognized by LESSOR. In such event, LESSEE shall assign to LESSOR its interest in all subleases, licenses, and permits and any other agreements effecting the Leased Premises; provided, however, this provision shall not apply in the event this lease is terminated pursuant to the provisions of section 14 [Option to Acquire Title] herein.

Section 24: Assignment. LESSEE shall not assign this lease or any part thereof without the prior written consent of the LESSOR. Any such attempted assignment without the prior written consent of the LESSOR shall be void and of no force or effect.

Section 25 Landing, Parking and Other Fees and Rates.
LESSEE shall have the right to fix fees and charges relating to the Landing Field Parcel (Parcel 1 on Exhibit A) and the improvements constructed and installed on the Building Site Parcel (Parcel 2 on Exhibit A hereto), as follows:

(a) Landing Field Parcel. The LESSEE shall establish landing fees, aircraft parking fees and other State airport user fees, as well as rates and fees for leasing of land or granting of privileges at the Airport regarding the Landing Field Parcel in a manner consistent with AS 02.15.090 (Alaska Statutes). Said fees and rates must be reasonable and uniform for the same class of privilege or service. Prior to implementation of any new rates or fees:

- (1) The LESSEE shall provide to the LESSOR evidence of publication of appropriate public notice of proposed fees and rates or changes in fees or rates. Such notices must provide the public with an opportunity to submit comments.
- (2) The LESSEE shall provide the LESSOR with a summary of the public comments received in response to the public notice required by paragraph (1) above.
- (3) The LESSEE shall request the LESSOR review the proposed fees and rates upon submission of evidence of publication and public comment summary to the LESSOR by the LESSEE.

(4) The LESSOR shall have a maximum of forty-five (45) days after the receipt of the evidence of publication and LESSEE's request for review to review the proposed fees and rates and to approve or disapprove of the same in writing. If no written response is provided by the LESSOR to the LESSEE within said forty-five (days) days, such fees and rates shall be deemed to be approved by the LESSOR.

(5) The proposed fees or rates shall be deemed approved and become effective upon the occurrence of either one of the following:

(a) LESSEE receives written confirmation of the LESSOR's approval; or

(b) Expiration of the forty-five (45) day period provided for in (4) above without disapproval by LESSOR.

(b) Building Site Parcel. LESSEE may sublease any areas within improvements, buildings or structures installed or constructed by LESSEE on the Building Site Parcel with the consent of the LESSOR; PROVIDED HOWEVER, such consent may only be withheld in the event such sublease is in conflict with or in violation of any law or regulation of any public authority or any obligation of the LESSOR as to the Ketchikan International Airport.

Section 26: Easements. LESSOR reserves the right to grant easements or rights-of-way through, on or above the Leased Premises; provided, however, no such action shall be taken without prior written notification to the LESSEE and provided further, no such grant or easement shall be made that will unreasonably

interfere with the use of the Leased Premises by LESSEE or its tenants.

Section 27: LESSOR'S Rights.

LESSOR shall have:

(a) The right, at all times, to enter the Leased Premises or any part thereof for purposes of inspection;

(b) The right, together with its agents and contractors, at all times to enter the Leased Premises (other than the Terminal Building or other buildings constructed or installed by LESSEE) for purposes of providing additional improvements, together with the right, upon not less than twenty-four (24) hours prior written notice, to require temporary closure of the runway or aircraft or vehicle access routes, or parts thereof, for purposes of necessary construction of improvements.

Section 28: Quiet Enjoyment. LESSOR shall not unreasonably interfere with the LESSEE's or LESSEE's tenant's lawful use of the Leased Premises and guarantees that the LESSEE and its tenants shall peacefully and quietly have and hold the Leased Premises subject to the terms and conditions of this lease.

Section 29: No Waiver of Rights. The failure of either party to insist, in any one or more instances, upon strict performance by the other party of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this lease shall not be considered as a waiver or relinquishment thereof for the future, but the lease shall continue and remain in full force and effect, and no waiver of any provision, term, covenant, reservation, condition or stipulation of this lease may be deemed to have been made in any instance unless expressed in writing.

Section 30: Reversion Free of Liens. LESSEE, its successors and assigns, hereby agrees to return the Leased Premises to the LESSOR at the expiration, or earlier termination of this lease, or of any renewal thereof, free and clear of liens, except for such encumbrances as the LESSOR may have approved or accepted in writing.

Section 31: Indemnity. The LESSEE shall indemnify, save harmless, and defend the LESSOR State, its officers, agents and employees from liability of any nature or kind, including costs and expenses for or on account of any and all legal actions or claims of any character whatsoever resulting from injuries or damages sustained by any person or persons or property as a result of any error, omission or negligent act of the LESSEE relating to its performance of this lease.

All legal actions or claims including defense costs resulting from injuries or damages sustained by any person(s) or property arising from the LESSEE'S performance of this lease which will result in joint liability of the LESSOR State and LESSEE shall be apportioned on a comparative fault basis. Any such joint liability on the part of the LESSOR State must be due to active negligence on the part of the LESSOR State or defective design or construction of the airport.

Section 32: Nondiscrimination. LESSEE covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age, or sex will not be knowingly permitted against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. LESSEE recognizes the right of the LESSOR to take any action necessary to enforce this covenant, including actions required pursuant to federal or state law.

Section 33: Affirmative Action. LESSEE agrees that to the extent required by law it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person will be excluded from participating in any employment activities covered by 14 CFR Part 152, Subpart E on the grounds of race, creed, color, national origin, or sex. LESSEE hereby agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by said subpart.

Section 34: Insurance. LESSEE shall purchase and maintain insurance with a carrier or carriers satisfactory to Department of Administration, Division of Risk Management covering injury to persons or property suffered by the LESSOR or a third party, as a result of errors or omissions or operations which arise both out of and during the course of this agreement by the LESSEE or by a subcontractor of LESSEE or anyone directly, or indirectly employed by LESSEE or such subcontractor. The coverage will also provide protection against injuries by all employees of the LESSEE and the employees of any subcontractor engaged in work for LESSEE under this agreement. A Certificate of Insurance will be furnished to LESSOR. This certificate will show evidence of coverage and provide a written thirty (30) day prior notice to the LESSOR of cancellation, non-renewal or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach.

Before performing under this agreement, evidence of the following coverages will be provided:

(1) Workers' Compensation Insurance: The LESSEE shall provide and maintain, for all employees of the LESSEE engaged in work under this agreement, workers' compensation insurance as required by AS 23.30.045. The LESSEE shall be responsible for assuring any of LESSEE's subcontractors who directly, or indirectly, provide services under this agreement provide workman's compensation insurance, to include:

(A) statutory coverage for employees engaging in work,

(B) employer's liability protection in the amount of \$500,000 per person/\$500,000 per occurrence,

(C) broad form all State's endorsement,

(D) all State and Federal acts where applicable, and

(E) voluntary compensation endorsement.

(2) Public Airport Owner's and Operator's Liability Insurance with coverage limits of \$100,000,000 per occurrence/annual aggregate to include:

(A) premises operations, and

(B) LESSOR as an additional insured.

(3) Public Liability Insurance with coverage limits of \$100,000,000 per occurrence/annual aggregate to include:

(A) independent contractors,

(B) products/completed operations,

(C) blanket contractual,

(D) personal injury, including but not limited to false arrest, false imprisonment, libel and slander, and

(E) include LESSOR as an additional insured.

(4) Comprehensive Automobile Liability with coverage limits \$5,000,000 per occurrence/annual aggregate:

(A) all owned vehicles,

(B) all hired vehicles,

(C) all non-owned vehicles, and

(D) uninsured motorists.

Section 35: Notice. Notices shall be given as follows:

(a) Any notice, demand request, consent, approval or other communication to be given by a party under this lease that requires, or authorizes, the performance of an act or the taking of action within a specified time after

the giving of such notice, demand, request, consent, approval, or other communication, shall be in writing and sent postage prepaid, certified, return receipt requested to the other party at the address set forth in (d) below. Any time period to be measured from the giving of such notice shall commence to run from the date such return receipt is signed.

- (b) Any communication other than as specified in (a) above shall be in writing and either served personally, or sent postage prepaid, first-class mail to the party at the address set forth in (d) below;
- (c) Either party may change its address by notifying the other party of such change of address in writing;
- (d) Mail shall be addressed to LESSEE and LESSOR as follows:

LESSEE: Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Attn: Borough Manager

LESSOR: State of Alaska
Department of Transportation and
Public Facilities, Southeast
Region, Airport Leasing
P. O. Box 3-1000
Juneau, Alaska 99802

Section 36: Approval Required. This lease shall not be valid unless executed by the Commissioner of the Department of Transportation and Public Facilities, State of Alaska, and until the LESSOR receives a letter of non-objection to the issuance of this lease from the Federal Aviation Administration.

Section 37: Definitions. "Leased Premises" as used herein refers to the parcel of real property which is subject to this lease together with all improvements presently located thereon

constructed by LESSOR and also those which may be constructed on the Leased Premises by the LESSOR at any time during the term of this lease.

Section 38: Lease Supersedes Prior Lease. Effective as of the date of the commencement of the term of this lease, this lease shall replace and supersede those certain lease agreements between the parties hereto designated as State Lease Agreement ADA-03782 and State Lease Agreement ADA-01977, and any other previous agreements, whether verbal or written, between the LESSOR and LESSEE regarding the Leased Premises.

Section 39: Natural Disasters. In the event any cause which is not due to the fault or negligence of either LESSEE or LESSOR renders the Leased Premises unusable and makes the performance of this lease impossible, this lease may be terminated by either party upon written notice to the other party. Such causes include, but are not limited to, acts of God or the public enemy, acts of the United States, fires, floods, epidemics, quarantine restrictions, or strikes.

Section 40: Integration and Merger. This agreement sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements, whether written or oral, regarding the Leased Premises. No modification or amendment of this lease shall be effective unless in writing and signed by both parties.

Section 41: Holding over. If LESSEE, with LESSOR's consent, remains in possession of the premises after expiration or termination of the lease term, such possession by LESSEE shall be deemed to be a month-to-month tenancy terminable on thirty (30) days notice given at any time by either party.

Section 42: National Emergency. In the event of any national emergency declared by the Federal Government, neither party may be held liable for any inability to perform all or any of the terms of this lease due to and caused by such national emergency.

Section 43: Consent Not Unreasonably Withheld. Whenever, in this lease, or pursuant thereto, the approval or consent of a party is required or requested, such approval or consent shall not be unreasonably withheld.

Section 44: Entry to Perform Work. Whenever in this lease, a party is required to accomplish any maintenance or repair, and fails to perform or accomplish such acts within the time provided, the other party may, after giving reasonable prior notice of intent to do so, may, but is not required to, enter any portion of the Leased Premises and perform, or arrange for any contractor or other qualified person to perform, all such maintenance or repair, including engaging an engineer or other qualified person to prepare any plans or specifications or perform any inspection or other services, at the cost and expense, and as an agent of, the party who has failed to perform such acts as are required in this lease.

Section 45: Disputes Resolution. The LESSOR and the LESSEE, consistent with the provisions of AS 09.50.250 and AS 44.77.070 agree to the following mandatory procedure to adjudicate claims and disputes between them arising under this lease.

- (a) In the event of any dispute under this lease, except a claim or dispute arising under Section 31 [Indemnity], either party may give notice to the other that a dispute exists specifying the facts and provisions of the lease relied upon in reaching the conclusion that a dispute exists.

- (b) The parties shall attempt by good faith negotiation to resolve the dispute within thirty (30) days from the date notice of the dispute is first given.
- (c) If the dispute is not resolved within thirty (30) days, either party may request that an independent and unbiased hearings officer be appointed by the Commissioner of the Department of Transportation and Public Facilities. Such hearings officer shall be appointed from the hearings officer roster from which hearings officers are appointed under AS 44.62.350. No officer or employee of either party shall be eligible to be appointed. Either party may challenge a hearings officer for cause.
- (d) The hearing before the hearings officer shall occur in a timely fashion and shall be conducted on the record in accordance with the Alaska Rules of Civil Procedure and Rules of Evidence. In rendering a decision the hearings officer shall render findings of fact and conclusions of law.
- (e) In the event either LESSOR or LESSEE disputes the decision of the hearings officer, an appeal may be made to the Superior Court under Appellate Rule 601, provided the appeal is made within thirty (30) days of the hearings officer's rendering of the decision. The appealing party is responsible for the costs of preparing the record including transcript preparation though that expense may have been previously paid under the provisions of paragraph (f) below. Review by the Superior Court is limited to a review of the record to determine whether the decision is supported by substantial evidence and is not contrary to law.
- (f) The LESSOR shall render compensation to the hearing officer and shall pay all costs arising from the conduct of the hearing. Each party shall bear its own

costs and attorney's fees arising from the adjudication.

- (g) In the event of an appeal to the Superior Court under the provisions of Appellate Rule 601 the prevailing party in that appeal shall be awarded costs and attorney's fees as provided by law.

Section 46: Payment of Funds Subject to Appropriations. Any obligation in this lease requiring the payment of funds by either LESSOR or LESSEE is subject to the appropriation of the funds necessary therefore, provided however, LESSOR and LESSEE each hereby agree to use their best efforts, in good faith, to obtain appropriations of funds, from time to time, as are necessary to enable such party to comply with and perform all of the provisions and obligations imposed or required by such party by this lease.

WHEREFORE, the parties have entered into this lease the date and year first above written at the City of Ketchikan, Alaska.

LESSEE:

KETCHIKAN GATEWAY BOROUGH,
ALASKA

By: _____

David G. Crow
David G. Crow
Borough Manager

ATTEST:

Georgiana Booth
Borough Clerk

APPROVED AS TO FORM:

Russell W. Year
Municipal Attorney

LESSOR:

STATE OF ALASKA, by and through
the DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: Jonathan W. Scribner
Deputy Commissioner
Title

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss:
)

On this 19th day of December, 1984, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared DAVID G. CROW, Borough Manager, and GEORGIANNA BOOTH, Borough Clerk, to me known to be the persons whose names are subscribed to the foregoing Lease as officers of the KETCHIKAN GATEWAY BOROUGH, and acknowledged that they and each of them executed said instrument as their knowing and voluntary act and deed; as the voluntary act and deed of the KETCHIKAN GATEWAY BOROUGH; and that they and each of them were duly authorized to sign said Lease by authority of the Assembly of the KETCHIKAN GATEWAY BOROUGH.

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

[Signature]
NOTARY PUBLIC FOR ALASKA
My Commission Expires: October 9, 1988

(SEAL)

STATE OF ALASKA)
1st JUDICIAL DISTRICT) ss.
)

THIS IS TO CERTIFY that on this 19th day of December, 1984, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Jonathan W. Scribner, Department of Transportation and Public Facilities, and he acknowledged to me that he executed the foregoing instrument freely and voluntarily on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes therein set forth and that he is authorized by said State of Alaska so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first written above.

[Signature]
Notary Public in and for Alaska
My Commission Expires: October 9, 1988

MEMORANDUM OF UNDERSTANDING
RE RESPONSIBILITY FOR DEFECTS IN DESIGN OR
CONSTRUCTION OF FERRY TERMINAL FACILITY AT
KETCHIKAN INTERNATIONAL AIRPORT

The State, as LESSOR, and the Borough, as LESSEE, under that certain lease No. ADA-05175 dated December 19, 1984, hereby agree that the Borough shall not be responsible for any costs or expenses caused by, or associated with, any defects in the design or construction of the ferry terminal facility constructed by the State on the ferry terminal building site on Gravina Island as shown on said lease, and that all of such costs and expenses and any damages or injuries caused by such defects in design or construction shall be the responsibility of and be paid by the State of Alaska, and that Section 6(b) and the other provisions of such lease shall be interpreted and construed in accordance with this Memorandum of Understanding. In the event the costs, expense, damage or injury are caused by a combination of inadequate maintenance by the Borough and a defect in design or construction, such costs and expense shall be apportioned on the basis of comparative fault.

LESSEE

KETCHIKAN GATEWAY BOROUGH

DATE: 12/19/84

By: David Crow
David Crow
Borough Manager

LESSOR

STATE OF ALASKA, by and
through the DEPARTMENT OF
TRANSPORTATION AND PUBLIC
FACILITIES

DATE: 12/19/84

By: Jonathan W. Scriber
Deputy Commissioner
Title