

**NORTHWEST ARCTIC BOROUGH ASSEMBLY
RESOLUTION 21-62**

**A RESOLUTION OF THE NORTHWEST ARCTIC
BOROUGH ASSEMBLY APPROVING AN FY22 GROUND
LEASE FOR STORAGE OF EQUIPMENT AND RELATED
PURPOSES.**

WHEREAS: the Borough utilizes additional storage space to store building materials and Borough equipment; and

WHEREAS: the Borough wishes to continue leasing a portion of the property immediately adjacent to its current storage area and directly across from the Borough Offices; and

WHEREAS: that lot (Lot 7A, Block 13, U.S. Survey 2863, Tract "A," Kotzebue Townsite, according to the replat filed February 2, 2009, as Plat No. 2009-2, Kotzebue Recording District, Alaska containing approximately 0.20 acres) is owned by current Borough Director of Public Services, Carl Weisner; and

WHEREAS: Borough Code Section 3.36.020(F) requires that prior to approval of any contract where a Borough employee has a substantial financial interest, it must first be approved by the Department head or the Mayor in writing; and

WHEREAS: Mayor Moto provided written approval to lease the parcel for storage because the lot is uniquely situated immediately next to the Borough storage lot, the Borough maintenance shop, and it is directly across from the Borough offices; and

WHEREAS: the Assembly previously approved annual leases for the property with Carl Weisner for temporary storage space in order to efficiently and economically store building materials and equipment; and

WHEREAS: the Borough Assembly wishes to approve execution of a renewed lease agreement with Carl Weisner for storage space in order to continue storing building material and equipment for FY22 at a monthly rate of \$500 through June 30, 2022.

NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly approves execution of a ground lease agreement with

Carl Weisner in substantially the same form as accompanies this resolution for storage at a monthly rate of \$500 through June 30, 2022.

PASSED AND APPROVED THIS 23rd DAY OF NOVEMBER 2021.



Nathan Hadley, Jr., Assembly President

PASSED AND ADOPTED THIS 23rd DAY OF NOVEMBER 2021.



Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 23rd DAY OF NOVEMBER 2021.



Helena Hildreth, Borough Clerk

ATTEST:



GROUND LEASE

This GROUND LEASE (this "Lease") shall be made effective for the Fiscal Year 2022, retroactively to July 1, 2021 (the "Effective Date") between Carl J. Weisner ("Weisner" or the "Lessor"), an unmarried individual, having a mailing address of P.O. Box 591, Kotzebue, AK 99752, and the Northwest Arctic Borough ("NAB" or "Lessee"), an Alaska municipal corporation, having an address of 163 Lagoon Street, Kotzebue, AK 99752.

RECITALS

A. Lessor owns certain real property located in Kotzebue, Alaska, as depicted on Exhibit A and more particularly described as follows:

Lot 7A, Block 13, U.S. Survey 2863, Tract "A," Kotzebue Townsite, according to the replat filed February 2, 2009, as Plat No. 2009-2, Kotzebue Recording District, Alaska containing approximately 0.20 acres

(the "Property"); and

B. The Property is immediately adjacent to NAB's existing property storage and across the street from the Borough offices, making it the ideal location for additional NAB storage.

C. The parties' previous lease carried over, and Weisner and NAB wish to enter into renewed terms for the Borough's use of a portion of the Property for storage use.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements contained in this Lease, the sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Lease Grant.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property, together with all reasonable access rights, loading rights, rights of ingress and egress and appurtenances reasonably attaching or belonging to the use and occupancy of the Property, and subject to any deed restrictions, easements, rights-of-way, zoning and building restrictions, and governmental regulations now in effect or hereafter adopted by any governmental authority. Lessee leases the Property "AS IS." Lessor reserves the right to grant easements or rights-of-way through, on, or above the Property for the sole purpose of providing water, sewer, or electric service to the Property or adjacent property; however, no such easement or right-of-way may be granted that interferes with Lessee's use of the Property.

2. Use of Property.

Lessee shall use and occupy the Property solely for public purposes related to storage of equipment and material. Lessee may not use the Property for any other purpose without Lessor's

prior written approval. Lessee must actively use and operate the Premises in compliance with this Lease. Lessor retains the right to enter the Property during non-business hours only in the case of an emergency and in accordance with all applicable laws.

3. Term.

The term of this Lease (the "Term") shall made effective for one (1) year and shall and unless terminated early or extended in accordance with this Lease, expire on June 30, 2022.

Lessee shall, provided the Lease is in full force and effect and Lessee is not in default under any of the terms and conditions of the Lease at the time of notification or commencement, have the option to extend this Lease for an additional twelve (12) months, on the same terms and conditions set forth in the Lease, except as modified by the following terms, covenants, and conditions: this option shall be exercised only by Lessee delivering to Lessor no less than thirty (30) days before the expiration of the Term of this Lease written notice of Lessee's election to exercise the option to extend the Term of this Lease as provided in this section.

4. Rent.

As consideration for this Lease, Lessee shall pay to Lessor rent for the Property in the amount of \$500 per month (the "Rent"). Lessee shall pay the Rent to Lessor monthly, due and payable in advance on the first day of each month during the Term without notice or demand, provided that prorated Rent for the first month of the Term shall be payable on the Effective Date.

5. Taxes.

Lessor shall promptly pay to the applicable governmental or public authorities all taxes, assessments, general and special, permits, inspection and license fees, and any other public charges, whether of a like or different nature, levied upon or assessed against the Property and any buildings, structures, fixtures, or improvements now or hereafter located on the Property, or irrespective of Lessee's occupancy, use, or possession of the Property, which accrue during the Term.

6. Liens and Encumbrances.

6.1. Lessee shall not permit any liens, including without limitation, mechanics' or laborers' liens, against the Property for improvements of any labor or materials furnished to Lessee or claimed to have been furnished to Lessee or to Lessee's agents or contractors, in connection with work performed or claimed to have been performed on the Property or improvements by or at the direction of Lessee in connection therewith. In the event any such lien is recorded, Lessee shall cause the same to be removed within ninety (90) days of recordation.

6.2. Except as otherwise provided in this Lease, Lessee shall not encumber or cloud Lessor's fee simple title to the Property or any portion thereof, nor enter into any lease, sublease,

assignment, or other obligation. Any act or omission in violation of this Section 6.2, without the prior written consent of Lessor shall be void against Lessor.

7. Compliance with Laws.

During the Term, Lessee shall (i) maintain its storage equipment and material on the Property in good condition and repair; (ii) not permit waste of the Property; and (iii) operate on the Property in compliance with all applicable laws, regulations, ordinances, and permits.

8. Utilities.

Lessor is under no obligation to provide utilities to the Property or to pay any costs for utility usage on the Property during the Term.

9. Maintenance and Repairs.

Lessee shall be solely responsible, at its own expense, for all routine maintenance, including snow removal, related to Lessee's use and occupancy of the Property. Lessee shall keep the Property in a clean and safe condition, shall dispose of all garbage and other waste in a clean and safe manner.

10. Lessee's Rights.

During the Term, so long as Lessee is not in default under this Lease, Lessee shall have the right to store equipment and materials.

11. Hazardous Substances.

Lessee shall not bring, leave, store, use, generate, transport, produce or release any hazardous substances in, on or about the Property without Lessor's express written consent. All hazardous substances shall be used and stored in compliance with all governmental regulations, manufacturer's directions and best business practices. Lessee shall immediately notify Lessor of any contamination of the Property or other land, air or water by hazardous substances, or any release or threatened release of hazardous substances. "Hazardous substances" means any substance defined under Section 12.3 of this Lease.

12. Indemnification and Insurance.

12.1. Lessee's Indemnity. Lessee shall indemnify, defend, and hold harmless Lessor, his agents, and affiliates from and against:

(a) any and all liability for loss, damage, expenses, claims or fees which arise out of, or are related to, any act or omission by Lessee; and

(b) any and all liability (including voluntary response costs, penalties, fines and attorney's fees) arising from the presence of Hazardous Substances upon, about or beneath the

Property or any of the easement and access areas used by Lessee under this Lease or migrating from the Property and access areas used by Lessee under this Lease arising in any manner whatsoever out of the activities of Lessee, whether or not Lessee has been negligent. This obligation shall include, but not be limited to, the expense of defending all third-party claims, suits, or administrative proceedings, even if such claims, suits, and proceedings are groundless, false, or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, or other sums due against Lessor.

12.2. Lessor's Indemnity. Lessor shall indemnify, defend, and hold harmless Lessee, its agents, affiliates, officers, assembly members, and employees from and against:

(a) any breach of a representation or warranty under Section 20 of this Lease; and

(b) any and all liability for loss, damage, expenses, claims, or fees which arise out of, or are related to any activity of Lessor (or agents, contractors, employees, or any other representative of Lessor) occurring on the Property prior to execution of the Lease or the previous lease agreement between the parties for the Property, including any liability related to Hazardous Substances or Petroleum Products. This obligation shall include, but not be limited to, the expense of defending all third-party claims, suits, or administrative proceedings, even if such claims, suits, and proceedings are groundless, false, or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, or other sums due against Lessee.

12.3. As used in this Section 12 and in this Lease; the following terms have the following meanings:

(a) "Hazardous Substance" means one or more of: (A) any hazardous or toxic substance, material or waste, including but not limited to: (1) those substances, materials and waste listed in the U.S. Department of Transportation Hazardous Materials Table at 49 C.F.R. 172.101, (2) those substances listed by the U.S. Environmental Protection Agency as hazardous substances at 40 C.F.R. Part 302, or (3) those substances listed by the State of Alaska as hazardous substances at AS 46.03.826(5); (B) amendments to those collective provisions of Subsection (A) above of state and federal law, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law; or (C) Petroleum Products.

(b) "Petroleum Products" means crude oil, petroleum, diesel fuel, marine fuel, heating oil, gasoline, kerosene, aviation fuel, jet fuel, motor oil, lubricants, hydraulic fluids, and other petroleum-based substances, by-products, additives, and derivatives.

13. Quiet Enjoyment.

Provided Lessee is not in default under this Lease, Lessor covenants that Lessee shall have peaceful and quiet enjoyment of the Property without interference by Lessor.

14. Default.

14.1. By Lessee. The occurrence of any of the following events shall constitute an event of default under this Lease by Lessee:

(a) Failure to observe or perform any of Lessee's covenants, agreements, or obligations under this Lease, provided that Lessee may cure such default by bringing its performance into compliance with the covenants, agreements, or obligations of this Lease within thirty (30) days of written notice to Lessee. However, if Lessee's default cannot reasonably be cured within thirty (30) days, Lessee shall be allowed additional time as is reasonably necessary to cure the default, so long as: (i) Lessee commences to cure the default within thirty (30) days, and (ii) Lessee diligently pursues a course of action that will cure the default and bring Lessee back into compliance with this Lease; or

(b) Lessee's unequivocal abandonment of the Property.

14.2. By Lessor. Lessor shall be in default of this Lease if Lessor fails to perform or comply with, or breaches, any of the material representations, covenants, terms or conditions of this Lease, and Lessor's the nonperformance, noncompliance or breach continues for a period of thirty (30) days after receipt of written notice from Lessee. However, if Lessor's default cannot reasonably be cured within thirty (30) days, Lessor shall be allowed additional time as is reasonably necessary to cure the default, so long as: (i) Lessor commences to cure the default within thirty (30) days, and (ii) Lessor diligently pursues a course of action that will cure the default and bring Lessor back into compliance with this Lease.

15. Remedies.

15.1 Lessor's Remedies. Upon any default, Lessor shall have the right, at its election, to give Lessee notice of Lessor's intent to terminate this Lease and all Lessee's rights hereunder, on a date specified in the notice, which date shall not be less than thirty (30) days after the date of giving of such notice, and on the date specified in the notice, the Term and all of Lessee's rights under this Lease shall terminate as if the Lease naturally expired by its terms. Lessee shall peaceably and quietly surrender the Property and execute and deliver such instrument(s) as may be reasonably required by Lessor to properly evidence the same.

15.2. Lessee's Remedies. In the event of any default by Lessor, Lessee shall have the right, at its election, to give Lessor notice of Lessee's intent to terminate this Lease and all Lessor's rights hereunder, on a date specified in the notice, which date shall not be less than thirty (30) days after the date of giving of such notice, and on the date specified in the notice, the Term and all of Lessor's rights under this Lease shall terminate as if the Lease naturally expired by its terms. Lessor shall execute and deliver such instrument(s) as may be reasonably required by Lessee to properly evidence the same.

16. Surrender of the Property.

Upon expiration or early termination of this Lease, all Lessee's rights in the Property and this Lease shall immediately terminate and revert to Lessor, and Lessee shall surrender and vacate the Property, provided, however, that Lessee shall have 60 days to remove from the Property any equipment, personal property, and movable installments, unless a longer period of time is reasonably required. Subject to the immediately preceding sentence, Lessee shall repair any damage to the Property that results from such removal within 90 days after the expiration or early termination of this Lease. If Lessee fails to remove its equipment, personal property, and movable installments within the 90 days, the same shall be deemed abandoned and all rights of Lessee with respect thereto shall automatically cease and be vested in Lessor. Alternatively, Lessor may require Lessee to remove all or a portion of the equipment, personal property, and movable installments, provided that Lessor provides Lessee with written notice thereof specifically identifying which such items Lessee must remove no less than 30 days prior to the expiration or early termination of this Lease.

17. Holding Over.

Except as provided in Section 16 above, if Lessee remains in possession of the Property after the expiration of the Term without Lessor's written consent, Lessor may treat such holdover as a tenancy at sufferance and take such steps as are necessary to remove Lessee from the Property, regain possession of the same and recover Lessor's actual damages caused by the wrongful holdover. Alternatively, at Lessor's option, such holdover may operate to create a month-to-month tenancy, subject to the same conditions, provisions, and obligations of this Lease (except that the Term will be month-to-month).

18. Notices.

Any and all notices required or permitted under this Lease shall be in writing and shall be delivered to the other party at the party's address set forth below:

Lessor:	Carl Weisner P.O. Box 591 Kotzebue, Alaska 99752
Lessee:	Northwest Arctic Borough Attn: Public Services Director P.O. Box 1100 Kotzebue, Alaska 99752

Any demand, request, approval, consent, or notice (collectively referred to as a "notice") given to either party by the other shall be in writing and delivered by hand or sent by mail (postage pre-paid), facsimile or e-mail, return receipt requested. Each notice shall be deemed to have been received or given on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Lessee has vacated the Property without providing a new address, three (3) days

after notice is deposited in the U.S. mail. A party may change its address by providing written notice to the other party as set forth in this Section 18.

19. Assignment. Lessee may not assign this Lease or sublet any interest in the Property without Lessor's prior written consent, which consent shall not be unreasonably withheld. An approved assignment or sublease shall be subject to all of the terms and conditions of this Lease and the assignor shall not be relieved of the assignor's obligations as Lessee under this Lease. An approved sublease shall be in writing and be subject to the terms and conditions of this Lease.

20. Warranties.

20.1 Lessor and Lessee each acknowledge and represent that it has the right, power, and authority to enter into this Lease and bind itself to the terms of this Lease through execution by its authorized representative.

20.2 Lessor represents and warrants that: (i) Lessor solely owns the Property as a legally-recorded lot in fee simple; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements that would adversely affect Lessee's use and enjoyment of the Property under this Lease; and (iii) Lessor's execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreements binding on Lessor.

21. Miscellaneous.

21.1. Modification of Lease. This Lease may only be modified or amended by a document in writing executed by Lessor and Lessee.

21.2. Entire Agreement. This Lease embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings, written or oral, related to the subject matter of this Lease.

21.3. Waiver and Forbearance. Either party's failure to declare a default immediately upon its occurrence, or delay in taking action for a default shall not constitute a waiver of the default, nor shall it constitute an estoppel. Either party's failure to enforce its rights for a default shall not constitute a waiver of its rights regarding any subsequent default.

21.4. Remedies. Except as otherwise provided in this Lease, Lessor and Lessee shall be entitled to any or all remedies provided under this Lease and as otherwise available at law or in equity.

21.5. Severability. If any provision of this Lease or any application of any provision of this Lease is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

21.6. Headings. Descriptive paragraph headings throughout this Lease are for convenience and reference only; the words contained therein shall not be held to expand, modify, amplify, or aid in the interpretation, construction or meaning of this Lease.

21.7. Attorneys' Fees. If either party institutes a suit against the other for violation of or to enforce any covenant or condition of this Lease, or if either party intervenes in any suit in which the other is a party to enforce or protect its interest or rights, the prevailing party shall be entitled to all of its costs and expenses, including without limitation, reasonable attorneys' fees.

21.8. Choice of Law; Venue. This Lease and the rights and obligations of the parties shall be interpreted, construed, and enforced in accordance with the laws of the State of Alaska and Lessee and Lessor hereby irrevocably consent to the jurisdiction of such state with venue in Kotzebue, Alaska.

21.9. Delay in Performance. Whenever a period of time is prescribed for the taking of an action by Lessor or Lessee, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, civil disturbances, and other causes beyond the reasonable control of the performing party (an "event of force majeure"). However, events of force majeure shall not extend the Term or any period of time for the payment of Rent or other sums payable by either party or any period of time for the written exercise of an option or right by either party.

21.10. No Partnership; Successor and Assigns. This Lease shall create only the relationship of Lessor and Lessee between the parties, and not a partnership, joint venture, or any other relationship. This Lease and the covenants and conditions in this Lease shall inure only to the benefit of and be binding only upon Lessor and Lessee and their permitted successors and assigns.

21.11. Continuing Obligations. The expiration of the Term, whether by lapse of time or otherwise, shall not relieve either party of any obligations which accrued prior to or which may continue to accrue after the expiration or early termination of this Lease.

21.12. Counterparts. This Lease may be executed in one or more counterparts, each identical to the other, so long as the counterparts in a set contain the signatures of all the parties to this Lease. Counterparts of this Lease may be delivered and exchanged electronically or by facsimile.

Lessor and Lessee have executed this Lease as of the Effective Date.

[SIGNATURE PAGE FOLLOWS]

LESSOR:

CARL WEISNER



LESSEE:

NORTHWEST ARCTIC BOROUGH

By:  _____

Mayor

Its: _____

EXHIBIT A
LEASED PREMISES