

AGENDA

FOR THE SPECIAL MEETING OF THE CITY COUNCIL
FOR THE CITY OF THORNE BAY, ALASKA
COUNCIL CHAMBERS OF CITY HALL
120 FREEMAN DRIVE

Monday October 7, 2019

6:30 p.m.

There will be a Workshop of the City Council beginning at 6:00 p.m.

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1. CALL TO ORDER:
 2. PLEDGE TO FLAG:
 3. ROLL CALL:
 4. APPROVAL OF AGENDA:
 5. MAYOR'S REPORT:
 6. ADMINISTRATIVE REPORTS:
 - a. City Clerk Report:
 7. PUBLIC COMMENTS:
 8. COUNCIL COMMENTS:
 9. CONSENT AGENDA:
 - a) August 20, 2019, Regular City Council Meeting Minutes, discussion and action item:
 10. NEW BUSINESS:
 - a) Certifying the Results of the 2019 Regular Municipal Election;
 - b) Move to direct the City's Attorney Robert Blasco, to pursue legal action to obtain legal determination for who is responsible for managing the uses within the DNR right-of-way.
 - c) Move to recruit applicants for the City Administrator Position through a Professional Firm, discussion and action item:
 - d) Emergency Services Department Funding needs, discussion and possible action item:
 - e) Renewal of SISD Lease renewal for use of City Tidelands for placement and operations of a restaurant, discussion and action item:
 11. EXPENDITURES EXCEEDING \$2,000.00:
 12. EXECUTIVE SESSION: The Council May adjourn to executive session
 13. CONTINUATION OF PUBLIC COMMENT:
 14. CONTINUATION OF COUNCIL COMMENT:
 15. ADJOURNMENT:

POSTED: October 4, 2019

MINUTES

FOR THE REGULAR MEETING OF THE CITY COUNCIL
FOR THE CITY OF THORNE BAY, ALASKA
COUNCIL CHAMBERS OF CITY HALL
120 FREEMAN DRIVE
Tuesday August 20, 2019
6:30 p.m.

There will be a Workshop of the City Council beginning at 6:00 p.m.

1. CALL TO ORDER:

McDonald called the meeting to order at 6:30 p.m.

2. PLEDGE TO FLAG:

Council and audience stood for the pledge to the flag.

3. ROLL CALL:

Those present were McDonald, Burger, Carlson, Williams, Minnillo, Slayton & Edenfield,

4. APPROVAL OF AGENDA:

McDonald moved to approve agenda as written. Burger seconded the motion.
There was no further discussion.

MOTION: Move to approve the agenda.

F/S McDonald/Burger

YEAS: McDonald, Burger, Carlson, Williams, Minnillo, Slayton & Edenfield

NAYS: None

STATUS: Motion Passed.

5. MAYOR'S REPORT:

McDonald reported:

- August 17th held memorial service in Ketchikan for Judy Rochester, long time resident of Thorne Bay. A lot of people and gratifying to attend.
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6. ADMINISTRATIVE REPORTS:

b. City Administrator's Report:

ADMINISTRATOR'S REPORT 8-20-19 Wayne Benner

Meetings Attended and Updates:

- A. The Mayor and I will be at Southeast Conference Sept 17-20. The conference is in Sitka.

Tasks and Projects:

- A. Continued daily inspections of the work in progress at the water and sewer facilities.
- B. Some of the budget cuts that will have an impact
 - School Bond Debt Reimbursement by 50%

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- Alaska Public Broadcasting Commission, which directly impact emergency response
 - Behavioral Health Treatment and Recovery Grants, affecting homelessness services
 - VPSO program, affecting rural public safety
 - Rural Airport Maintenance, affecting rural transportation
 - Marine Highway Vessel Operations, affecting coastal economies and transportation
 - Municipal Debt Service for Ports/Harbors/Energy, impact on municipal budgets and local taxes
 - Community Assistance Fund recapitalization
 - REAA School Fund, affecting rural municipalities
 - Renewable Energy Grant Fund, which many municipalities have leveraged in the past

New Business:

- A. Renewal of RV Park Manager Rental Agreement. There are some suggested changes that Teri can go over.

Ordinances for Public Hearing:

- A. Ordinance 19-08-20-01 amending Title 2-Administration and Personnel, Planning Commission Duties. This removes the section of code that references the Coastal Management program which was eliminated by the vote of the people in 2014. Other sections of TBMC referencing the costal management have been deleted.
- B. Ordinance 19-08-20-02 amending Title 9-Public Peace Safety and Morals, Protection of Water Lake and Litter Control. This ordinance is clarification as to who does the enforcement of any watershed issues or litter control issues plus adds junked vehicles as litter.
- C. Ordinance 19-08-20-03 amending Title 2-Administration and Finance, Law Enforcement Department and Department Chief. Again, this ordinance revision is clarification as to Code Enforcement officer and VPSO
- D. Ordinance 19-08-20-04 amending Title 16-Subdivision. The revision is adding wording to allow the Code Enforcement Officer to be appointed as the planning official.
- E. Ordinance 19-08-20-05 amending Title 17-Zoning Enforcement Authority. This new section sets forth the enforcement authority and procedures for the Code Enforcement Officer.

Ordinances for Introduction:

- A. Ordinance 19-09-03-01, amending Title 1-General Provisions by adding fines for violations of TBMC Title 15 Building and Construction-setbacks, development plans and amending fines for violation of Title 17 Zoning. This amendment reduces the fine amounts.
- B. Ordinance 19-09-03-02, amending Title 15-Buildings and Construction, Setbacks and Development plans. This amendment adds Code Enforcement Officer and where the penalties for

Harbors and Parks:

Both harbors are full, and we have had to turn away customers. Time to start analyzing future expansion and costs. The credit card reader on the phone has been a big success with guests. Benches changed out at ball field.

Streets and Roads:

As of yesterday, it appears the excavator has been repaired although it has not been used to do any hard work. Seems dirty fuel may be contributing to some of the issues.

Water and Sewer:

Interior construction on the water treatment plant is on hold waiting for the mechanical to relocate some lines. Once moved the remaining work will continue getting walls finished. Waiting for the arrival of roofing, siding, window and doors. Contractor has started the layout of the groundwork at the sewage treatment facility so the concrete work can be done in conjunction with the remaining concrete work for the water treatment project.

Solid Waste:

Still waiting for word on the status of the new control panel for the baler.

Library:

Ads are out for a new librarian. With two volunteers gone in September and one going back to work the library needs volunteers if we are to try and maintain the current schedule of hours open to the public.

c. City Clerk Report:

Elections:

So far have had the following candidates declare for office:

Seat A: Ray Slayton & Roger Longbotham

Seat B: Risa Carlson & Eric Rhodes

Seat C: No candidates as of today

QuickBooks Profit and Loss:

Income: \$370,108.04

Expense: \$355,660.54

Net Income: \$14,447.60

Name	Available Balance
QuickBooks	\$14,447.60
First Bank	\$60,844.22
<u>HEALTH PREMIUM</u>	<u>\$35,012.73</u>
<u>OCCUPANCY GEN.</u>	\$5,015.38
<u>SALES TAX 40%</u>	\$100,050.54
<u>OCC TAX EMS/FIR</u>	\$9,653.75
<u>OCC TAX TOURISM</u>	\$5,961.05

<u>OCC TAX PARKS</u>	\$8,266.39
<u>OCC TAX HARBOR</u>	\$16,328.52
<u>CHECKING</u>	\$233,895.98
<u>SALES TAX 60%</u>	<u>\$203,667.66</u>
<u>HARBOR</u>	\$79,895.21
<u>FISHERIES</u>	<u>\$22,068.04</u>
ACCOUNT TOTALS	\$719,815.25

7. PUBLIC COMMENTS:

Roger Longbotham commented on the following:

- Stated the following items were discussed at the August 19th Town Hall Meeting
 - No shooting signs needed
 - Lack of livable wage Jobs in Thorne Bay
 - Need for EMS
 - Float plane dock for Davidson Landing – Concern why we don't have a float plane dock over there. This could also be used for emergency services medivac etc.
 - Concern for Public Safety and speeding concerns in town and South Thorne Bay. The City has no way to clock speeds and issue tickets.

Brad Clark commented on the following:

- Questioned the term of office posted for the vacant city council seats. He explained that the posted term for Seat B was 2-years, however his recollection was a 3-year term with Seat C as a 1-year.

8. COUNCIL COMMENTS:

Burger commented on the following:

- ATV operations in Thorne Bay.

Williams commented on the following:

- Will the VPSO be able to issue tickets for speeding?

9. NEW BUSINESS:

f) Renewal of RV Park Manager Rental Agreement, discussion and action item:

McDonald moved to approve the rental agreement for Edenfield. Carlson seconded the motion. Edenfield abstained from voting due to conflict of interest. There was no further discussion.

MOTION: Move to approve RV Park Manager Lease Agreement
 F/S: McDonald/Carlson
 YEAS: McDonald, Burger, Carlson, Williams, Minnillo, Slayton
 NAYS: None
 STATUS: Motion Passed.

10. ORDINANCE FOR PUBLIC HEARING:

- a) **Ordinance 19-08-20-01**, amending Title 2-Administration and Personnel, Chapter 2.48-Planning Commission, Section 2.48.200-Commission Duties, discussion and action item:

McDonald Moved to approve Ordinance 19-08-20-01. Minnillo seconded the motion. There was no further discussion.

MOTION: Move to approve Ordinance 19-08-20-01
F/S McDonald/Minnillo
YEAS: McDonald, Burger, Slayton, Edenfield, Carlson, Williams and Minnillo
NAYS: None
STATUS: Motion Passed.

- b) **Ordinance 19-08-20-02**, amending Title 9 – Public Peace Safety and Morals, Chapter 9.16-Protection of Water Lake Watershed & Chapter 9.20-Litter Control, discussion and action item:

McDonald moved to approve Ordinance 19-08-20-02. Slayton seconded the motion. There was no further discussion.

MOTION: Move to approve Ordinance 19-08-20-02
F/S McDonald/Slayton
YEAS: McDonald, Burger, Carlson, Williams, Minnillo, Slayton & Edenfield,
NAYS: None
STATUS: Motion Passed.

- c) **Ordinance 19-08-20-03**, amending Title 2-Administration and Finance, Chapter 2.36 – Law Enforcement Department, Section 2.36.030-Department Chief, discussion and action item:

McDonald moved to approve Ordinance 19-08-20-03. Carlson seconded the motion. There was no further discussion.

MOTION: Move to approve Ordinance 19-08-20-03
F/S: McDonald/Carlson
YEAS: Minnillo, Slayton, Edenfield, McDonald, Burger, Carlson & Williams,
NAYS: None
STATUS: Motion Passed.

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- d) **Ordinance 19-08-20-04**, amending Title 16-Subdivisions, discussion and action item:

McDonald moved to approve Ordinance 19-08-20-04. Carlson seconded the motion. There was no further discussion.

MOTION: Move to approve Ordinance 19-08-20-04
F/S McDonald / Carlson
YEAS: McDonald, Burger, Carlson, Williams, Minnillo, Slayton and Edenfield
NAYS: None
STATUS: Motion Passed.

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- e) **Ordinance 19-08-20-05**, amending Title 17-Zoning, adding Chapter 17.05-Enforcement Authority, discussion and action item:

McDonald moved to approve Ordinance 19-08-20-05. Burger seconded the motion. There was no further discussion.

MOTION: Move to approve Ordinance 19-08-20-05
F/S McDonald/Burger
YEAS: Carlson, Williams, Minnillo, McDonald, Burger, Slayton & Edenfield
NAYS: None
STATUS: Motion Passed.

11. ORDINANCE FOR INTRODUCTION:

- a) **Ordinance 19-09-03-01**, amending Title 1-General Provisions, Chapter 1.16-General Penalty Sections, Section 1.16.035-Minor Offense fine Table, adding fines for violation of TBMC Title 15-Buildings and Construction, Chapter 15.04-Setbacks, Section 15.04.020-Development Plans, and amending fines for violation of Title 17-Zoning, discussion and action item:

McDonald moved to approve Ordinance 19-09-03-01. Carlson seconded the motion. There was no further discussion.

MOTION: Move to approve Ordinance 19-09-03-01
F/S McDonald/Carlson
YEAS: McDonald, Burger, Carlson, Williams, Minnillo, Slayton, Edenfield,
NAYS: None
STATUS: Motion Passed.

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- b) **Ordinance 19-09-03-02**, amending Title 15-Buildings and Construction; Chapter 15.04-Setbacks, Section 15.04.020-Development Plans

McDonald moved to approve Ordinance 19-09-03-02. Edenfield seconded the motion. There was no further discussion.

MOTION: Move to approve Ordinance 19-09-03-02
F/S McDonald/Edenfield
YEAS: Minnillo, Slayton, Edenfield, McDonald, Burger, Carlson & Williams
NAYS: None
STATUS: Motion Passed.

12. EXPENDITURES EXCEEDING \$2,000.00:

None

13. EXECUTIVE SESSION: The Council May adjourn to executive session for the purpose of discussing pending or threatened lawsuits in which the city has an interest, which are matters, the immediate knowledge of which would clearly have adverse effect upon the finances of the city.

14. CONTINUATION OF PUBLIC COMMENT:

No further public comments.

15. CONTINUATION OF COUNCIL COMMENT:

No further council comments.

16. ADJOURNMENT:

McDonald adjourned the meeting at 7:07 p.m.

Harvey McDonald, Mayor

ATTEST:

Teri Feibel, CMC

CERTIFICATE OF ELECTION



CERTIFICATE OF ELECTION

CITY OF THORNE BAY, ALASKA

THIS IS TO CERTIFY THAT ON THE 7TH DAY OF OCTOBER 2019, ROGER LONGBOTHAM, ERIC RHODES, AND ROSALYN HERT, WERE ELECTED TO THE OFFICE OF CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA, AND BALLOT PROPOSITION NO (1) **FAILED**, WITH VOTES OF (83 / 109) & BALLOT PROPOSITION NO (2) **PASSED**, WITH VOTES OF (158 / 30), AS CONFIRMED BY THE CITY COUNCIL OF THE CITY OF THORNE BAY UPON THE COMPLETION OF THE FINAL CANVASS OF BALLOTS THE 4TH DAY OF OCTOBER 2019, THAT BEGAN AT 5:30 PM AND ENDED AT 6:30 PM, IN THE CITY HALL COUNCIL CHAMBERS.

THE FINAL CANVASS OF THE BALLOTS WAS:

SEAT A 3-YEAR TERM

<u>NAME</u>	<u>TOTAL VOTES</u>
ROGER LONGBOTHAM	<u>95</u>
RAYMOND SLAYTON	<u>66</u>
EVERETT COOK	<u>33</u>

SEAT B 3-YEAR TERM

<u>NAME</u>	<u>TOTAL VOTES</u>
ERIC RHODES	<u>101</u>
RISA CARLSON	<u>83</u>

SEAT C 1-YEAR TERM

<u>NAME</u>	<u>TOTAL VOTES</u>
ROSALYNN HERT	<u>81</u>
ABBY COOK	<u>47</u>
THOM CUNNINGHAM	<u>42</u>

CERTIFICATE OF ELECTION

BALLOT PROPOSITIONS

PROPOSITION NO. 1 - SALES TAX

"Shall the City of Thorne Bay, Alaska increase its sales tax rate from six percent to seven percent, if the sales tax revenue generated by the rate increase is dedicated to funding an Emergency Services Coordinator for the Emergency Services Department?"

YES 83 NO 109

PROPOSITION NO. 2—ELECTION OF MAYOR

"Shall the Thorne Bay Mayor be elected by the popular vote of the people at large, from the council per AS 29.20.230 (d)?"

YES 158 NO 30

CERTIFIED BY A DULY CONSTITUTED QUORUM OF THE THORNE BAY CITY COUNCIL ON THIS 7TH
DAY OF OCTOBER 2019

Harvey McDonald, Mayor

ATTEST:

Teri Feibel, City Clerk/Treasurer

SISD & CITY LEASE AGREEMENT
LEASE OF CITY OWNED TIDELANDS

THIS AGREEMENT of Lease is made effective this 1st day of November 1, 2019, by and between the City of Thorne Bay, an Alaska municipal corporation, P.O. Box 19110, Thorne Bay, Alaska 99919 (hereinafter called the City or Lessor), and Southeast Island School District (SISD) of PO Box 19569, Alaska 99919, hereinafter referred to as (Lessee).

1. **Leased Premises.** The City of Thorne Bay hereby leases to Lessee the following described municipal land ("Premises"), situated in the City of Thorne Bay, First Judicial District, State of Alaska, described as follows:
 - a. City owned municipal land, located easterly of the City owned boat launch facility as shown on the attached map within the corporate boundaries of the City of Thorne Bay.
 - b. In additions to the terms and conditions contained in all of the sections of this Lease, the provisions of Title 2, Article III of the Thorne Bay Municipal Code shall apply to the terms and conditions of this Lease Agreement unless otherwise amended in this Lease.
2. **Term.** The term of this Lease shall be for a one (1) year term commencing **November 1, 2019 and terminating October 31, 2020.** The lease shall terminate automatically on the expiration of the first year, unless the Lessor and Lessee have executed a new lease for a new term, or agreed to an extension of this lease in writing. Absent an approved Lease Agreement, the Lessee shall vacate the Premises on or before the ending date of this Lease Agreement by removing all structures thereon. If the City and Lessee enter a new lease, or an extension of this Lease, the monthly lease payment shall be reviewed and adjusted in accordance with the provisions of Section 2.56.210 of Title 2, Article III of the Thorne Bay Municipal Code.
3. **Occupancy.** Lessee was granted occupancy of the Premises on or about October 31, 2014. Lessee will be granted continued occupancy of premises upon signature of this lease renewal.
4. **Rent.** This is a triple-net Lease with Lessee responsible for rent and taxes as defined herein. Lessee agrees to pay to Lessor rent, on or before the first day of each calendar month, payable to Lessor and mailed to City of Thorne Bay, PO Box 99110, Thorne Bay, Alaska 99919. Payments received after the 10th day of the month will be subject to a 10% late charge.
 - a) **Rental Rate.** Lessor will pay rent at the rate of **\$300.00 per month, for the months of June 2020, through October 31, 2020.**
 - b) **Reduced Rental Rate:** Lessor will pay a reduced rental rate of **\$150.00 per month, for the months of November 2019, through May 31, 2020**
5. **Purchase.** Lessee is the owner of the modular building and equipment, personal property, and inventory per the sales agreement entered into on October 14, 2014.

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6. **Annual Rent Adjustment.** The parties agree that if the Lessor and Lessee execute a new lease for a new term, or agreed to an extension of this lease in writing the monthly rent shall be subject to adjustment mutually agreed upon by both parties. Under no circumstances shall the rental price be decreased from the amount charged at the outset of this Lease until the rent amount charged at the outset of this Lease has been paid for twelve (12) months.
7. **Sales and Property Taxes.**
- a. A. Lessee shall pay, in addition to the rentals specified in Paragraph 4 above, any sums required to be paid under the sales tax, personal property tax, special assessments and/or real property laws that may be in force from time to time within the City of Thorne Bay, Alaska. The amounts for sales tax, special assessments and personal property taxes shall be payable at least ten (10) days prior to delinquency. Proof of the payment of Sales Taxes shall be provided to the Lessor on a monthly basis. Real property taxes for the year [insert year] on [insert year] actual taxable amount shall be prorated monthly over a nine-month period with one ninth of the annual estimated real property taxes paid by Lessee to Lessor at the time Lessee makes its monthly rent payments for May through September [insert date]. If the real property taxes for [insert date] are increased above the [insert date] real property taxes assessed by the City of Thorne Bay, once the new tax assessment has been determined Lessee will make arrangements with Lessor to increase the required prorate monthly payment to assure that the total real property tax payment has been paid to Lessor by September 1st of the following year to assure that Lessor has received from Lessee the required annual real property tax payment. Thereafter the property taxes will be prorated over a twelve-month period based on projected property taxes due and owing. Nonpayment of sales taxes, assessments and/or real property taxes shall be enforceable in the same manner as nonpayment of rent.
 - b. Lessee shall be responsible for and pay all personal property taxes applicable to the personal property owned by Lessee and located on the leased Premises.
8. **Deposits.** Lessee shall deposit with the City an amount equal to N/A. Upon termination of the Lease the Lessee shall vacate the premise leaving it in the same clean condition as presented at the time the Lease was entered. If the Premises are in need of cleaning, repairs or the Lessee is in default in payments the deposit shall be used to offset such costs. In the event the Premises are clean and in need of no repairs the deposit will be refunded in full.
9. **Use.** Lessee shall use the leased premises for the purposed of maintaining and operating a restaurant owned by the Southeast Island School District with indoor and outdoor seating open to the general public. Uses to also include other structures or facilities added to or adjacent to the restaurant for the purpose of display or sale of items associated with Southeast Island School District, or the maintaining and operating of the restaurant. The leased premises shall not be used for any other purposes without the prior written consent of Lessor.

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10. **Permits and Compliance with Law.** Lessee shall obtain all necessary local, state and federal permits necessary for the operation of Lessee's business and shall comply with all local, state and federal laws, rules and regulations. Failure to comply with any requirements of this section shall constitute a material breach of and a default of the Lease Agreement resulting in the Lessor's option to terminate the Lease Agreement, in the sole discretion of the Lessor. Upon termination due to a breach or default under this section, the Lessee shall vacate the premise immediately.

11. **Acceptance of the Leased Property by Lessee.** Lessee acknowledges that it/he/she has thoroughly examined the leased premises. Lessee accepts the leased premises in their "AS IS" condition. The Lessor shall not be required to perform any work to prepare leased premises for the Lessee. Lessee's taking possession of leased premises shall be conclusive evidence against the Lessee that, at the time possession was taken, leased premises were in good and satisfactory condition. Lessee has not relied upon any representations or statements of the Lessor or its representatives or agents regarding the condition of leased premises or their suitability for Lessee's uses under this Lease.

- a. Lessee specifically acknowledges that Lessee has had access to the water reports related to the City of Thorne Bay water system and Lessee has reviewed those reports to the extent deemed necessary by the Lessee before determining to enter this Lease. Lessee admits and acknowledges that Lessee is fully aware that the City of Thorne Bay water system is not in full compliance with EPA and ADEC water quality standards. Lessee acknowledges that the City of Thorne Bay has no obligation whatsoever to comply with the EPA or ADEC water quality standards as a condition of this Lease. The decision to enter this Lease and operate the restaurant on the premises and to use and serve City water, or to use or serve some other water source, is solely that of the Lessee, and Lessee takes full responsibility to the fullest extent of the law for the water source it chooses to use in the operation of the restaurant. Lessee acknowledges that it/he/she has no cause of action of any kind or any nature, including any administrative proceedings or complaints, against the City of Thorne Bay based on any allegation or claim related to the water quality of the City of Thorne Bay water system.

12. **Insurance.**

- a. **Liability Insurance.** During the term of this Lease, Lessee shall, at Lessee's own expense, maintain and keep in force adequate insurance to protect both the Lessor and Lessee against comprehensive liability, personal injury, including death, property damage, including as to any equipment or improvements, fire, and extended coverage claims. Lessee shall maintain insurance in amounts not less than comprehensive general liability insurance with minimum limits of \$1,000,000, with minimum limits of \$1,000,000 per individual and \$1,000,000 per accident. Lessor shall be named as an

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additional insured on all policies. Proof of Insurance shall be provided to Lessor within thirty (30) days after the parties have executed this lease and prior to public use of the premises. Lessor shall be notified at least thirty (30) days before the cancellation or termination of any policy. Failure to place and maintain insurance in compliance with this section constitutes an immediate, material breach of and default of the Lease. Failure of the Lessee to provide the Certificate of Insurance showing the City of Thorne Bay as an additional insured within thirty (30) days of the signing of this Lease by the Lessee shall constitute a material breach and a default on the lease and the City shall have the right to immediately terminate the lease and pursue any other remedies allowable by law to remove the Lessee from the premises.

- b. **Property Insurance.** During the term of this Lease, Lessee shall at all times carry upon any property belonging to Lessee and placed, erected or installed in, on or upon the Premises, fire and casualty insurance protecting against loss, damage or destruction caused by wind, fire, lightning, explosion, vandalism, malicious mischief, or such other casualties and such other risks as may be provided by extended coverage. Any such insurance shall name Lessor as an additional insured or contain such other provisions as may be needed to preclude any subrogation claims by the insurers against Lessor. Any such insurance shall be endorsed to require at least thirty (30) days' notice to Lessor prior to cancellation. Lessee shall also be responsible for providing Lessee's own personal property/inventory insurance coverage. Lessor will not be providing any insurance for the protection of Lessee, Lessee's loss of business, personal injury or property damage claims or content coverage. Lessee is responsible for providing any and all of its own insurance coverage. Lessee shall store its property in and shall occupy leased premises at its own risk, and releases the Lessor, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage.
- c. **Workers' Compensation Insurance.** Lessee shall maintain Worker's Compensation Insurance in compliance with the laws of the State of Alaska, AS 23.30 et seq., and federal jurisdiction where the work is being performed.
- d. **Fire Insurance.** During the term of this Lease, Lessor shall maintain fire and extended coverage insurance on the building structures, solely for Lessor's benefit.
- e. **Insurance Policy Requirements.** All policies of insurance shall be issued by and maintained in responsible insurance companies selected by Lessee, organized under the laws of one of the states of the United States or The Underwriters at Lloyd's of London, authorized under the laws of the State of Alaska to assume the risks covered thereby, and rated at least "A" by A.M. Best Company, Inc. or Standard & Poor's

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Ratings Services, a Division of The McGraw-Hill Companies, Inc. Lessee will deposit annually with Lessor policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to Lessor and Lessee at least 30 days before the cancellation, non-renewal or modification becomes effective.

13. **Improvements to Real Property.** There shall be no improvements, alterations or modifications on the Premises without the prior review and written approval of all plans by Lessor. Any alteration, addition or improvement approved by Lessor shall be performed in a good and workmanlike manner and by competent craftsmen. All alterations, additions and improvements shall comply with all federal, state and local governmental statutes, ordinances, laws, codes and regulations affecting the leased Premises and the use thereof. Lessee is required to obtain building permit authorization from the Lessor for construction of any and all structures placed on the lease area.
14. **Leasehold Improvements.** All signs or symbols placed on or about the leased premises shall be subject to Lessor's prior written approval. With prior written consent of Lessor, Lessee may make alterations and improvements on or to the leased premises, at Lessee's sole cost and expense. All fixtures, buildings and/or equipment of whatsoever nature which shall have been installed on the Premises by the Lessee, whether permanently affixed or otherwise, shall be the property of Lessee, and shall be removed by Lessee at the expiration or termination of this Lease. at Lessee's sole cost and expense, in the sole discretion of the Lessor unless Lessor and Lessee mutually agree to improvements remaining on leased premise. Any of Lessee's improvements remaining on the leased premises longer than thirty (30) days after termination or expiration of the lease shall become the property of the Lessor.
15. **Termination of Lease.** If Lessee vacates the leased Premises prior to the end of the Lease term, Lessee shall be responsible for continuation of Lease payments until the Lease expires at the end of the Lease term, or Lessor and Lessee mutually agree to terminate Lessee's Lease obligation.
16. **Quiet Enjoyment.** If Lessee performs and fulfills all the covenants and conditions herein contained, Lessee shall quietly enjoy the Premises during the term of this Lease and any extensions thereof.
17. **Destruction of Premises.**
 - a. A. In the event the Premises or any substantial portion thereof shall be damaged by fire, wind, flood, earthquake or other casualty, and it reasonably appears that repair cannot be effected so as to permit re-occupancy within thirty (30) days from the date of casualty, either party at its option, may by written notice mailed within ten (10) days from the date of such casualty elect to terminate this Lease, effective as of the date of such casualty. If

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neither party shall so elect to terminate this Lease, Lessee's liability for rent shall abate in proportion to that portion of the Premises rendered unfit for Lessee's operation by reason of such casualty until such time as repairs are completed; provided, however, that if repair work progresses in stages and results in rendering portions of the Premises fit for utilization by Lessee from time to time, the abatement of rent shall be reduced proportionately as repairs to portions of the demised Premises are completed.

- b. In the event that less than a substantial portion of the demised Premises are damaged by fire, wind, flood, earthquake or other casualty, this Lease shall not end, but the rent shall be abated in accordance with the provisions contained in subparagraph (a) above, during any period in which repairs are being performed.
 - c. As used in this paragraph, the term "substantial portion" means damage depriving Lessee of use of fifty percent (50%) or more of the Premises.
 - d. Notwithstanding subparagraphs (a) and (b) above, this Lease shall not end nor shall any abatement of rent occur if the damage or destruction of the Premises is caused by any act or omission on the part of Lessee, its agents, invitees or licensees.
18. **Government Requirement.** The Lessee shall comply with all federal, state and municipal laws, ordinances, regulations, or orders, and all court orders and administrative orders.
19. **Assignments and Subleases.** Lessee shall not assign the Lease or any interest in the lease for any purpose and shall not sublet the Premises or any part thereof and shall not permit any person to occupy or use the Premises except upon Lessor's written consent. The lessor may consent to the lessee subletting the property in exhibit "a" to allow for the operation of a restaurant. Any unapproved assignment or sublease shall be void. Lessor reserves the right to withhold consent.
20. **Liens.** Lessee shall not do or permit anything causing the Premises to be encumbered by any lien and shall, whenever and as often as such lien is claimed against the Premises purporting to be for labor or materials furnished to Lessee or otherwise being based on a claim against Lessee, discharge the same within ten (10) days or Lessee shall post with Lessor a bond in an amount and with sureties which are satisfactory to Lessor guaranteeing that said lien will be removed. Notice is hereby given that Lessor shall not be liable for any labor or materials furnished to Lessee upon credit and that no mechanic's lien for such labor or material or other lien shall be attached to the interest of Lessor in the Premises.
21. **Entry of Lessor.** Lessor shall be privileged at any time to inspect the Premises, and during the six-month period next preceding the expiration of the term thereof, shall be privileged, together with brokers and prospective Lessees, to inspect the Premises. If, at reasonable hours, admission to the Premises for the stated purposes cannot be obtained, or if at any time Lessor shall deem admission necessary for the benefit of Lessee, Lessor may, but is not obligated to, enter the Premises by means of a master key or other peaceable manner.

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22. Waiver and Indemnification.

- a. **Waiver.** The City of Thorne Bay shall not be liable to Lessee and Lessee hereby waives all claims against Lessor, in their capacity as the Lessor under this Lease, for any injury, illness, or death of any person or damage to any property in or about the Premises or real property caused by any act or omission of Lessee, its agents, or employees.
- b. **Indemnification.** Lessee agrees to protect, defend, indemnify, and hold the City of Thorne Bay and its mayor, council members, agents and employees, harmless from and against any and all claims, damages, actions, administrative proceedings, liability, loss, or expense (including reasonable attorneys' fees), of any kind and any nature, incurred in connection with or arising from any injury, illness, or death to any person or damage to any property or from any other cause whatsoever occurring in on or about the Premises or real property or any part thereof arising at any time and from any cause whatsoever in the Lessee's use of the Premises. In case any action or proceeding is brought against Lessor by reason of any such claim or liability, Lessee shall defend any and all suits that may be brought, and claims which may be made, against Lessor, at Lessee's sole cost and expense.
- c. The Lessor shall not be responsible or liable for any injury, loss or damage to any person or to any property of Lessee or other person caused by or resulting from the elements, frosting, breakage, leakage, steam, snow, ice, running water, or the overflow of sewage, in any part of leased premises or surrounding area used by or in support of restaurant operations. The Lessor shall not be responsible for any injury or damage caused by or resulting from acts of God or Mother Nature.
- d. Lessee shall defend, indemnify and hold the City and its mayor, council members, employees and agents harmless from any and all civil or criminal liabilities or penalties, including costs of defense, resulting from or arising out of or related to in any way Lessee's noncompliance with any term or provision of this Lease, which the noncompliance causes environmental or water quality damage, spill or other environmental related event, or civil or criminal penalties or sanctions to be incurred or alleged.

23. **Building Containing Premises/Grounds.** Lessee shall maintain the leased premises at Lessee's sole cost and expense and at all times keep the leased premises neat, clean and in a sanitary condition. Lessee shall keep and use the leased premises in accordance with applicable laws, ordinances, rules, regulations and requirements of all governmental authorities. Lessee shall permit no waste, damage or injury to the leased premises.

24. **Hazardous Substances.** Lessee shall not use the leased Premises in a manner that violates any federal, state or local law, regulation, or ordinance, including, but not limited to, any such law, regulation or ordinance pertaining to air and water quality, the handling, transportation,

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storage, treatment, usage or disposal of Hazardous Substances. "Hazardous Substances" shall be interpreted broadly and include, but not be limited to, any material or substance that is defined or classified under federal, state or local laws as (a) "hazardous substance" pursuant to § 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 (14) or § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, each as now or hereafter amended; (b) a "hazardous waste" pursuant to § 1004 or § 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903, 42 U.S.C. § 691, as now or hereafter amended; (c) a toxic pollutant under § 307(l)(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(l)(a); (d) a "hazardous air pollutant" under § 112 of the Clean Air Act, 42 U.S.C. § 7412, as now or hereafter amended; (e) a "hazardous material" under the Hazardous Material Transportation Act, 49 U.S.C. § 1802(2), as now, or hereafter amended; (f) toxic or hazardous substances pursuant to regulations promulgated now or hereafter under the aforementioned laws; or (g) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances, or regulations, as now, or as may be passed or promulgated in the future.

Lessee agrees to immediately notify Lessor if Lessee becomes aware of

- i. any Hazardous Substances or other environmental problem or liability with respect to the Premises or real property, or
- ii. any lien, action, or notice resulting from violation of any of the laws, regulations, ordinances, or other environmental laws.

It shall be Lessee's sole responsibility to pay for any and all remediation resulting from any contamination caused by Lessee or resulting from Lessee's use of the Premises. Lessee agrees to defend, indemnify and hold Lessor harmless from any liability, including costs and actual attorney's fees, associated with remediation of any hazardous waste identified on the subject property resulting from any use of the Premises by the Lessee.

25. **Utilities.** Lessee shall be responsible for utilities associated with the Premises, including but not limited to electricity, heat, water, sewer, telephone and refuse disposal. Lessee agrees to pay, and keep current, ALL charges, including deposits, for all utilities, including but not limited to water, sewer, refuse collection, electricity, propane, fuel oil and telephone. Failure to do so will result in the utility being shut off. If the City shuts off any of the utilities, such action shall constitute a material breach of the Lease and the Lessor shall have the immediate right to terminate the lease upon the shutoff, in the sole discretion of the Lessor. Absent an approved Lease Agreement, the Lessee shall vacate the premise immediately upon the shutoff of any utility.
26. **Signs.** Lessee will pay for exterior signage for Lessee's business. All signage must be consistent with any ordinances of the City related to signage.

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27. **Default.** Any of the following shall constitute a default hereunder by Lessee:

- A. Failure to perform the covenants contained in this Lease for the payment of rent;
- B. Failure to perform or fulfill any other covenant or condition contained in this Lease;
- C. Dissolution, other termination of existence, or insolvency, in any sense, of Lessee;
- D. The shut off of utilities;
- E. The filing of a petition by or against Lessee for adjudication as a bankrupt, or for reorganization or arrangement within the meaning of the Bankruptcy Act;
- F. The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of the Lessee or for the appointment of a receiver or trustee of leased premises of the Lessee;
- G. The taking possession of leased premises of the Lessee by any governmental officer of agency pursuant to statutory authority for the dissolution or liquidation of the Lessee;
- H. The making by the Lessee of an assignment for the benefit of creditors;
- I. Lessee vacates or abandons the leased premises; and
- J. A failure that continues for five (5) days or more to have the Lessor named as an additional insured as required under paragraph 12, and Lessee fails to cure such default within ten (10) days after receipt of a written notice has been received by Lessee specifying such failure to name the City as an additional insured.

The specification of events constituting default by the Lessee in this Section are in addition to any defaults specified in the Thorne Bay Municipal Code. Failure to perform a covenant or fulfill a condition contained in this Lease shall constitute a default for purposes of this paragraph, regardless of whether other consequences of such failure are provided for herein, as in the case where an assignment without consent is void.

28. **Lessor's Remedies on Default.** All rights and remedies of the Lessor enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies in this Lease provided, the Lessor shall be entitled to the restraint by injunction of the violation or attempted violation of any of the covenants, agreements or conditions of this Lease. Lessor's remedies are as follows:

In the event of any default of the Lessee, the Lessor shall have the following rights and remedies – all in addition to any rights or remedies that may be given to the Lessor by statute, common law, or under Thorne Bay Municipal Code.

- a. If Lessee defaults in the payment of the rent reserved in this Lease, and such default continues for ten (10) days after written notice, or if Lessee defaults in the prompt and full performance of any other provision of this Lease and such default continues for thirty (30) days after notice, or if the leasehold interest of Lessee be levied upon under execution or be attached by process of law, or if Lessee abandons the

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Property, then, in any such events, Lessee shall be in default under this Lease and Lessor may, at its election, either terminate this Lease and Lessee's right to possession of the Premises or, without terminating this Lease, endeavor to relet the Premises. Nothing herein shall be construed so as to relieve Lessee of any obligation including payment of the rent reserved in this Lease.

- b. Re-enter leased premises and take possession thereof, remove all persons therefrom, and remove Lessee's property therefrom and store it in a public warehouse or elsewhere at the cost of Lessee, all without service of notice or resort to legal process (all of which Lessee expressly waives) and without becoming liable for trespass, forcible entry, detainer, or other tort or for any loss or damage which may be occasioned thereby;
- c. Declare the Term ended;
- d. Re-let leased premises in whole or in part for any period equal to or greater, or less, than the remainder of the Term for any sum which is commercially reasonable;
- e. Collect all reasonable damages, costs and expenses that the Lessor may incur by reason of default by Lessee, together with interest calculated at the rate of ten percent (10%) per annum;
- f. If Lessee abandons the Premises or Lessor otherwise becomes entitled so to elect, and Lessor elects, without terminating this Lease, to endeavor to relet the Premises, Lessor may, at Lessor's option, enter into the Premises, remove Lessee's signs and other evidence of tenancy, and take and hold possession thereof as provided in subparagraph (ii) of this paragraph, without such entry and possession terminating this Lease or releasing Lessee, in whole or in part, from Lessee's obligation to pay the rent hereunder for the full term as hereinafter provided. Upon and after entry into possession without termination of this Lease, Lessor may relet the Premises or any part thereof for the account of Lessee to any person, firm or corporation other than Lessee for such rent, for such time and upon such terms as Lessor shall determine to be reasonable. In any such case, Lessor may make repairs, alterations and additions in or to the Premises, and redecorate the same to the extent deemed by Lessor necessary or desirable, and Lessee shall, upon demand, pay the cost thereof, together with Lessor's expenses of the reletting including, without limitation, broker's commissions and advertising expenses. If the consideration collected by Lessor upon any such reletting for Lessee's account is not sufficient to pay yearly the full amount of the rent reserved in this Lease, together with the cost of repairs, alterations, additions, redecorating and Lessor's expenses, Lessee shall pay to Lessor the amount of each yearly deficiency upon demand.

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- g. If Lessor elects to terminate this Lease in any of the contingencies specified in this paragraph, it being understood that Lessor may elect to terminate the Lease after, and notwithstanding its election to terminate Lessee's right to possession as provided in subparagraph (i) of this paragraph, Lessor shall forthwith, upon such termination, be entitled to recover as damages, and not as a penalty, an amount equal to the then present value of the rent reserved in this Lease for the residue of the term of this Lease, less the present value of the fair rental value of the Premises for the residue of the term of this Lease.
- h. Lessee agrees that if it shall, at any time, fail to make any payment or perform any other act on its part to be made or performed under this Lease, Lessor may, but shall not be obligated to, after ten (10) days prior written notice and without waiving, or releasing Lessee from any obligation under this Lease, make such payment or perform such other act to the extent Lessor may deem desirable, and in connection therewith to pay expenses and employ counsel. Lessee agrees to pay a reasonable attorney's fee if legal action is required to enforce performance by Lessee of any condition, obligation or requirement thereunder. All sums so paid by Lessor and all expenses in connection therewith, together with interest thereon at the current maximum legal rate of interest from the date of payment to the date of repayment, shall be deemed additional rent hereunder and payable at the time of any installment of rent thereafter becoming due, and Lessor shall have the same rights and remedies for the non-payment thereof, or of any other additional rent, as in the case of default in the payment of rent.

29. **Lessor's Remedies.** In the event of default hereunder by Lessee, Lessor shall have all the rights and remedies afforded by law, which shall be cumulative and may be exercised separately or concurrently.

30. **Waiver.** Except to the extent that a party may have otherwise agreed in writing, no waiver by a party of any breach by the other party of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by a party to seek a remedy for any breach of the other party be deemed a waiver of its rights or remedies with respect to such breach.

31. **Changes.** No modifications, amendments, deletions, additions or alterations of the Lease Agreement shall be effective unless in writing and signed by Lessor and Lessee and such representatives of the Lessor and Lessee are authorized to make such changes.

32. **Joint Product.** The language set out in this Lease represents the joint product of the parties and shall not be construed against one party in favor of the other. Each party hereto has had

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the option of seeking the advice of legal counsel in the drafting of this Lease, and the rule of construction favoring construction against the drafter shall not apply. Lessee acknowledges and agrees that Lessee has not received any legal advice from the Lessor's attorney or from anyone associated with the Lessor.

33. **Authority.** The parties and their undersigned representatives warrant that they have full authority to enter into this Lease Agreement and to execute this Lease Agreement.
34. **Surrender of Leased Premises.** Upon termination of this Lease Agreement, Lessee agrees to peacefully quit and surrender the leased premises without notice, remove all of Lessee's buildings, equipment and personal property and leave the leased premises neat and clean. The Lessor, may through mutual agreement with Lessee, allow Lessee to leave all buildings, equipment and personal property on the Premise.
35. **Governing Law, Jurisdiction and Venue.** The laws of the State of Alaska shall govern the construction, interpretation and validity of this Lease. The Superior Court for the State of Alaska, First Judicial District at Craig, Alaska, shall be the exclusive jurisdiction and venue for any action of any kind and any nature arising out of or related in any way to this Lease and to the use of the Premises by the Lessee. Lessee specifically waives any right or opportunity to request a change of venue for trial from Craig, Alaska pursuant to A.S. 22.10.040.
36. **Acknowledgment by Lessee.** Lessee acknowledges that Lessee has had a full opportunity to consult with attorneys of Lessee's choice before signing this Agreement. Lessee acknowledges that Lessee is not relying on any statements or representations made by any employees, representatives, officers, consultants, the Mayor, or Council members of the City in entering this Lease. Lessee further acknowledges that Lessee has not received and is not relying on any legal advice or representations by the City attorney.
37. **General.**
- a. The provisions of this Lease shall bind and inure to the benefit of the successors, devisees, legatees, heirs, distributes, representatives, and assigns of the parties. This provision does not limit in any way the Lessor's sole discretion as to any subletting or assignment of the Premises.
 - b. This Lease contains all of the covenants, promises, agreements, conditions and understanding, either oral or written, between the parties. No subsequent alteration, change or amendment to this Lease shall be binding upon the parties unless reduced to writing and signed by them. This Lease supersedes all previous agreements or discussions or negotiations, whether orally or in writing, between the parties.

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38. **Notice.** Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to Lessor at P.O. Box 19110, Thorne Bay, Alaska 99919, or the Lessee at, PO Box 19569, or at such other address as either party may designate in writing to the other.

DATED this ____ day of ____ 2019.

**LESSOR:
THE CITY OF THORNE BAY**

**LESSEE:
SISD**

By _____
Mayor

By _____
Sherri Becker, Superintendent

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the person named in and who executed the within and foregoing document, and he acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

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

Notary Public, State of Alaska
My commission expires:

THIS IS TO CERTIFY that on this ____ day of October 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the person named in and who executed the within and foregoing document, and he acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

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

Notary Public, State of Alaska
My commission expires: _____