

HB

387

MEMO

TO: Representative Al Osterback
FROM: Representative Bill Miles *Bm*
DATE: April 4, 1977
RE: HB 387

Attached, for your information, is a telegram and my response concerning the above referenced memo.

HB 3

April 4, 1977

Mr. Robert H. Etukeok
Alaska Native Brotherhood
134 West 14th Avenue
Anchorage, Alaska 99501

Dear Mr. Etukeok:

Thank you for the telegram in support of HB 387, an act relating to the leasing of state lands.

As prime sponsor, I certainly will support the bill, although, I expect it to go through serious study in the House Resources Committee before being passed out.

If you have specific comments and suggestions on how the bill may be improved, I would appreciate them.

Again, thank you for taking the time to telegram your feelings.

Sincerely yours,

Bill Miles

BM:jad

cc: Al Osterback, Chairman
House Resources Committee

TELEGRAM

TCA ALASKA COMMUNICATIONS, INC.

PHONE: 585-6147

1977 APR 1 AM 2 09

#

02098 N. ANCHORAGE AK 50 03-31 415P AST

PMS REP MILES 0031

JUN

THIS IS TO ADVISE YOU THAT THE ALASKA NATIVE BROTHERHOOD
ANCHORAGE CAMP 33 STRONGLY ENDORSES HB387 AN ACT RELATING TO
THE LEASING OF STATE LANDS. WE ASK YOUR SUPPORT OF THIS BILL.

ROBERT H ETUKEOK

ALASKA NATIVE BROTHERHOOD CAMP 33

265-5241 OR 279-7707

AGO 935790



Alaska State Legislature
House

HOUSE RESOURCES COMMITTEE

Alvin Osterback, Chairman

Pouch V, State Capitol
Juneau, Alaska 99811
(907) 465-3715

23 March 1977

Ted Smith, Director
Division of Land & Water Management
323 East 4th
Anchorage, Alaska 99501

Dear Mr. Smith,

The House Resources Committee will be reviewing HB 383 relating to State Land Leasing and HB 387 an Act relating to the Leasing of State Land other than for the extraction of Natural Resources; and providing for an effective date on Monday March 28, 1977 at 1:15 p.m. in room 118 of the Capitol Building.

Please supply us with position papers or material you have on these bills by the time of the meeting. If you have any information pertinent to these topics, the Committee would appreciate receiving that, too. If you know of other interested groups, please contact them.

If you have suggested amendments, please supply the staff with copies of that prior to the meeting.

If there are fiscal implications and notes are necessary, please prepare them and submit them to the Committee -- preferably prior to the meeting.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Al Osterback".

Al Osterback, Chairman
House Resources Committee

cc: Fran Ulmer

AO:ts



Alaska State Legislature
House

HOUSE RESOURCES COMMITTEE

Alvin Osterback, Chairman

Pouch V, State Capitol
Juneau, Alaska 99811
(907) 465-3715

23 March 1977

Guy R. Martin, Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner,

The House Resources Committee will be reviewing HB 383 relating to State Land Leasing and HB 387 an Act relating to the Leasing of State Land other than for the extraction of Natural Resources; and providing for an effective date on Monday March 28, 1977 at 1:15 p.m. in room 118 of the Capitol Building.

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Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Al Osterback".

Al Osterback, Chairman
House Resources Committee

cc: Fran Ulmer

AO:ts

TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02 103 N. ANCHORAGE AK 50 03-31 4 15P AST

PMS REP COTTON

0037

JUN

THIS IS TO ADVISE YOU THAT THE ALASKA NATIVE BROTHERHOOD
ANCHORAGE CAMP 33 STRONGLY ENDORSES HB387 AN ACT RELATING TO
THE LEASING OF STATE LANDS. WE ASK YOUR SUPPORT OF THIS BILL.

ROBERT H ETUKEOK

ALASKA NATIVE BROTHERHOOD CAMP 33

265-5241 OR 279-7707

1977 APR 1 02 13

AGO 935793

1. In 1976 the Division of Lands raised rentals to what was considered an onerous level. This level is such that there is serious doubt of the practicability of continuing the present use of the land.
2. Because of the uncertainty occasioned by the actions of the Division of Lands, both commercial and residential development of the leases became "non-bankable" in terms of loans because of no feasible upper limit of rent could be determined.
3. The proposed bill corrects this situation by:
 - a. Extending the initial period to 25 years to provide stability in the development stage, and providing for three additional reappraisals instead of about eight.
 - b. Allows the mortgagor to assume the payments in the event of a late payment or default by the lessee.
 - c. Protects the state's interest by increasing the percent of the rental fee to 10%. The original appraisal will have to be correctly done.
 - d. Results in a definable upper limit of the sum of the rental payments over the life of the lessee. This amount is 9 1/2 times the original appraisal. For example, for each \$1,000 of the original appraisal value, the lessee will pay \$9,500 in rent over a 55 year period.
4. A word on the fiscal note prepared by the Division of Lands and which states that passage of the Bill will result in a "substantial less in revenue". At best, this is half truth, since the result is subject to manipulation. Under the argument given, if the Division should decide to raise the rentals to an even higher rate, the "substantial less" would be higher. Accumulation of revenue is not the chief function of a state agency. Balanced development is a valid function. To follow the unmodified policy of the Division of Lands in this matter is to be counter productive.

*write George
Sullivan do
an analysis
HB*

See. Day 10/2/52

RENT ADJUSTMENTS FOR

STATE LEASED LANDS

1975

*\$180.00
is all we'll
get -*

| <u>ADL No.</u> | <u>Old Rental</u> | <u>New Rental</u> | <u>Per cent Increase (Decrease)</u> |
|--------------------|-----------------------|-----------------------|---------------------------------------------|
| 01227 | 112.50 | 1,575.00 | 1,300 |
| 51107 | 110.00 | 1,100.00 | 900 |
| 02534 | 608.50 | 25,500.00 | 4,090 |
| 01302 | 75.00 | 248.00 | 230 |
| 25068 | 100.00 | 380.00 | 280 |
| 38895 | 180.00 | 1,404.00 | 680 |
| 25305 | 1,425.00 | 2,886.00 | 103 |
| 52370 | 6,075.00 | 13,032.00 | 115 |
| 00273 | 6,780.00 | 14,400.00 | 112 |
| 52167 | 970.00 | 9,600.00 | 890 |
| 52209 | 195.00 | 2,040.00 | 946 |
| 52168 | 830.00 | 8,500.00 | 924 |
| 50738 | 1,400.00 | 5,280.00 | 277 |
| 44569 | 175.00 | 350.00 | 100 |
| 49723 | 150.00 | 605.00 | 303 |
| 41417 | 225.00 | 670.00 | 198 |
| 50598 | 50.00 | 630.00 | 1,160 |
| 00775 | 1,000.00 | 24,950.00 | 2,396 |
| 17103 | 1,000.00 | 18,800.00 | 1,780 |
| 51238 | 145.00 | 1,680.00 | 1,059 |
| 51515 | 160.00 | 1,680.00 | 950 |
| 51621 | 180.00 | 1,410.00 | 683 |
| 51428 | 220.00 | 1,770.00 | 704 |
| 50938 | 190.00 | 1,940.00 | 921 |
| 51065 | 210.00 | 1,700.00 | 709 |
| 46473 | 60.00 | 260.00 | 333 |
| 46474 | 60.00 | 260.00 | 333 |
| 52177 | 150.00 | 180.00 | 20 |
| 52182 | 250.00 | 285.00 | 14 |
| 21477 | 45.00 | 265.00 | 489 |
| 52185 | 300.00 | 320.00 | 7 |
| 51147 | 40.00 | 170.00 | 325 |
| 52422 | 40.00 | 170.00 | 325 |
| 52421 | 40.00 | 170.00 | 325 |
| 52187 | 75.00 | 175.00 | 133 |
| 52186 | 75.00 | 175.00 | 133 |
| 52190 | 40.00 | 100.00 | 150 |
| 52191 | 100.00 | 680.00 | 580 |
| 52714 | 40.00 | 165.00 | 312 |
| 52208 | 80.00 | 100.00 | 25 |

State Leased Lands, 1975

| <u>ADL No.</u> | <u>Old Rental</u> | <u>New Rental</u> | <u>Per Cent Increase (Decrease)</u> |
|--------------------|-----------------------|-----------------------|---------------------------------------------|
| 52205 | 50.00 | 220.00 | 340 |
| 52194 | 150.00 | 100.00 | (50) |
| 52192 | 250.00 | 235.00 | (6) |
| 50172 | 155.00 | 755.00 | 387 |
| 50688 | 75.00 | 175.00 | 133 |
| 52199 | 55.00 | 135.00 | 145 |
| 26653 | 235.00 | 470.00 | 100 |
| 26654 | 235.00 | 470.00 | 100 |
| 52179 | 235.00 | 470.00 | 100 |
| 52180 | 260.00 | 545.00 | 110 |
| 52170 | 325.00 | 575.00 | 77 |
| 52365 | 125.00 | 245.00 | 96 |
| 52430 | 125.00 | 245.00 | 96 |
| 52213 | 315.00 | 325.00 | 3 |
| 52171 | 150.00 | 295.00 | 97 |
| 52172 | 150.00 | 295.00 | 97 |
| 52213 | 315.00 | 295.00 | (7) |
| 52174 | 160.00 | 325.00 | 103 |
| 50587 | 150.00 | 385.00 | 157 |
| 50588 | 145.00 | 325.00 | 124 |
| 52703 | 40.00 | 100.00 | 150 |
| 45008 | 65.00 | 2,400.00 | 3,592 |
| 40014 | 220.00 | 2,430.00 | 1,005 |
| 45586 | 80.00 | 150.00 | 88 |
| 45585 | 460.00 | 675.00 | 47 |
| 26511 | 1,000.00 | 5,525.00 | 452 |
| 46628 | 140.00 | 1,680.00 | 1,100 |
| 46620 | 160.00 | 1,620.00 | 912 |
| 46383 | 110.00 | 600.00 | 445 |
| 49755 | 125.00 | 390.00 | 212 |
| 25956 | 125.00 | 390.00 | 212 |
| 47414 | 150.00 | 834.00 | 456 |
| 49060 | 250.00 | 702.00 | 181 |
| 22348 | 260.00 | 390.00 | 50 |
| 24099 | 215.00 | 420.00 | 95 |
| 36015 | 180.00 | 250.00 | 39 |
| 21928 | 1,260.00 | 10,920.00 | 767 |
| 01380 | 1,190.00 | 3,552.00 | 198 |
| 51395 | 820.00 | 3,054.00 | 272 |
| 00889 | 2,600.00 | 5,976.00 | 130 |
| 01308 | 7,170.00 | 10,014.00 | 40 |
| 49685 | 145.00 | 1,260.00 | 769 |
| 49795 | 175.00 | 1,500.00 | 757 |
| 25988 | 240.00 | 275.00 | 15 |
| 26269 | 165.00 | 190.00 | 15 |

RENT ADJUSTMENTS FOR
STATE LEASED LANDS

1976

| <u>ADL No.</u> | <u>Old Rental</u> | <u>New Rental</u> | <u>Per Cent Increase (Decrease)</u> |
|--------------------|-----------------------|-----------------------|---------------------------------------------|
| 71326 | | 3,500.00 | |
| 22526 | 360.00 | 2,150.00 | 497 |
| 22525 | 175.00 | 3,360.00 | 1,820 |
| 22654 | 95.00 | 1,192.00 | 1,155 |
| 50603 | 85.00 | 840.00 | 888 |
| 22652 | 155.00 | 4,350.00 | 2,706 |
| 44351 | 100.00 | 438.00 | 338 |
| 44350 | 80.00 | 744.00 | 830 |
| 46483 | 110.00 | 750.00 | 582 |
| 02380 | 880.00 | 6,540.00 | 643 |
| 39877 | 1,000.00 | 2,280.00 | 128 |
| 30489 | 240.00 | 2,350.00 | 879 |
| 26632 | 1,835.00 | 6,900.00 | 276 |
| 32919 | 1,020.00 | 2,760.00 | 171 |
| 31328 | 120.00 | 840.00 | 600 |
| 54326 | 175.00 | 910.00 | 420 |
| 54331 | 165.00 | 910.00 | 452 |
| 54365 | 205.00 | 950.00 | 363 |
| 54332 | 225.00 | 950.00 | 322 |
| 40806 | 355.00 | 690.00 | 94 |
| 54345 | 200.00 | 550.00 | 175 |
| 54346 | 175.00 | 550.00 | 214 |
| 54347 | 210.00 | 550.00 | 162 |
| 54349 | 190.00 | 575.00 | 203 |
| 54333 | 260.00 | 665.00 | 156 |
| 54334 | 250.00 | 690.00 | 176 |
| 54335 | 105.00 | 605.00 | 476 |
| 54336 | 120.00 | 605.00 | 404 |
| 54337 | 110.00 | 625.00 | 468 |
| 54338 | 145.00 | 690.00 | 376 |
| 54339 | 210.00 | 690.00 | 228 |
| 54340 | 200.00 | 690.00 | 245 |
| 54341 | 280.00 | 690.00 | 146 |
| 54342 | 270.00 | 690.00 | 156 |
| 32128 | 115.00 | 690.00 | 500 |
| 32065 | 115.00 | 665.00 | 478 |
| 54344 | 160.00 | 635.00 | 297 |
| 54351 | 430.00 | 870.00 | 102 |
| 03045 | 3,985.00 | 32,800.00 | 723 |
| 03042 | 2,925.00 | 22,360.00 | 664 |

Rent Adjustments for
State Leased Lands, 1976

| <u>ADL No.</u> | <u>Old Rental</u> | <u>New Rental</u> | <u>Per Cent Increase</u> |
|--------------------|-----------------------|-----------------------|------------------------------|
| 03050 | 990.00 | 7,400.00 | 647 |
| 53595 | 1,775.00 | 11,750.00 | 562 |
| 03041 | 1,340.00 | 9,360.00 | 598 |
| 03049 | 700.00 | 6,160.00 | 780 |
| 51395 | 820.00 | 6,160.00 | 651 |
| 03040 | 820.00 | 6,160.00 | 651 |
| 03059 | 820.00 | 6,160.00 | 651 |
| 03070 | 950.00 | 7,000.00 | 637 |
| 47382 | 680.00 | 5,000.00 | 635 |
| 03058 | 1,010.00 | 6,680.00 | 561 |
| 03067 | 700.00 | 5,160.00 | 637 |
| 03044 | 8,495.00 | 75,440.00 | 788 |
| 47378 | 1,720.00 | 14,400.00 | 737 |
| 47598 | 3,260.00 | 27,360.00 | 739 |
| 03051 | 1,410.00 | 13,680.00 | 870 |
| 03062 | 1,635.00 | 13,680.00 | 737 |
| 03071 | 1,410.00 | 13,680.00 | 870 |
| 03069 | 800.00 | 6,000.00 | 650 |
| 03066 | 1,745.00 | 11,600.00 | 565 |
| 03063 | 945.00 | 6,600.00 | 598 |
| 03048 | 945.00 | 6,600.00 | 598 |
| 03068 | 945.00 | 6,600.00 | 598 |
| 03073 | 945.00 | 6,600.00 | 598 |
| 03039 | 1,425.00 | 10,280.00 | 621 |
| 03052 | 2,490.00 | 18,400.00 | 639 |
| 03102 | 3,955.00 | 28,640.00 | 624 |
| 03064 | 1,305.00 | 9,120.00 | 599 |
| 03104 | 930.00 | 6,520.00 | 601 |
| 49686 | 1,835.00 | 13,240.00 | 622 |
| 57237 | 1,835.00 | 13,240.00 | 622 |
| 03065 | 3,670.00 | 26,480.00 | 622 |
| 03057 | 3,665.00 | 27,040.00 | 638 |
| 03053 | 890.00 | 6,640.00 | 646 |
| 30746 | 915.00 | 6,880.00 | 652 |
| 03043 | 910.00 | 6,680.00 | 634 |
| 47983 | 135.00 | 1,300.00 | 863 |
| 49430 | 175.00 | 1,400.00 | 700 |
| 47809 | 175.00 | 1,450.00 | 728 |
| 49172 | 120.00 | 1,300.00 | 983 |
| 46499 | 270.00 | 1,650.00 | 511 |
| 53444 | 140.00 | 1,200.00 | 757 |

Rent Adjustments for
State Leased Lands, 1976

| <u>ADL No.</u> | <u>Old Rental</u> | <u>New Rental</u> | <u>Per Cent Increase (Decrease)</u> |
|--------------------|-----------------------|-----------------------|---------------------------------------------|
| 27894 | 135.00 | 155.00 | 15 |
| 27948 | 200.00 | 230.00 | 15 |
| 50816 | 40.00 | 180.00 | 350 |
| 50669 | 40.00 | 120.00 | 200 |
| 47776 | 42.00 | 100.00 | 138 |
| 36315 | 40.00 | 100.00 | 150 |
| 47777 | 40.00 | 100.00 | 150 |
| 47778 | 40.00 | 100.00 | 150 |
| 35199 | 40.00 | 100.00 | 150 |
| 47775 | 42.00 | 100.00 | 138 |
| 41843 | 40.00 | 100.00 | 150 |
| 46609 | 72.00 | 100.00 | 39 |
| 47151 | 90.00 | 100.00 | 11 |
| 00037 | 700.00 | 5,250.00 | 650 |

MEMORANDUM

State of Alaska

TO: The Honorable Guy R. Martin
Commissioner
Department of Natural Resources

DATE: June 4, 1976

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Waiver of reappraisal and
adjustment of rent

BY: Rodger W. Pegues
Assistant Attorney General

This is further to the opinion of June 1, 1975,
by Assistant Attorney General Reeves on this subject.
In that opinion, we advised that you were without authority
under the existing law to grant a blanket waiver of all
rental increases exceeding 100 percent which was requested
by the Alaska Land & Lease Owner's Association. Since that
opinion was written, new legislation was adopted which further
restricts your authority to grant a waiver. FCCS SCSSB 139.

AS 38.05.105 has been amended to delete the
language authorizing a waiver or extension of reappraisal
"when development of the land is not otherwise possible due
to special conditions" and to provide for an extension or
waiver "only if residential development actually occurs,
and only if it is necessary for obtaining primary long-term
financing." As a result of the amendment, the Director of
the Division of Lands may now grant a waiver or lengthen

ALASKA LAND AND LEASE OWNERS ASSOCIATION

A number of Alaskans have leased State land from the Alaska Division of Lands. Most leases were written for a period of fifty-five years with renewal rights, subject to appropriate application and approval.

During the past year, ADL has reviewed the rental rates on a number of lots and parcels and, in some cases, has raised them over 1000%, others at a lesser rate but most increases seem excessive. Much of this land is in the Matanuska Susitna Borough.

We recognize that there has been a great deal of speculation on fee simple land in the Borough because of the publicity attendant to the Capitol relocation. These speculative values, however, do not necessarily apply to lease lands. However, we have been informed by ADL personnel that the new rental rates have been arrived at by appraising a limited number of fee simple parcels (not leased parcels), estimating their sales value and taking 6% of that figure as the annual rent.

A.S. 38.05.105 says "rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised annual rental value" i.e. not sale value.

There is no direct relation between the value of a title and the value of a lease, particularly when most rural land in Alaska is undeveloped. The situation differs with apartment rentals whereby when the supply is short and demand great rental value increases, but even there Governor Hammond has set up rent control boards to limit rent increases to a reasonable amount.

There are many reasons why a State leasehold cannot be equated to a title. Let me cite a few:

- 1. Bank financing is virtually unobtainable on lease land because of the uncertainties associated with the "five year adjustment" clause.
- 2. Renewal of lease is not assured at end of a 55 year period.
- 3. Use of land may be limited at ADL's discretion.
- 4. No equity accrues in the property.

In regard to point No. 4, most rural fee simple property could be purchased in a ten to twenty year period outright at or close to many of the new State rental fees and, most important, a great deal of rural land is available for fee simple purchase from individual owners, reducing the relative value of State Lease Lands, in view of the long term unpredictability of State Lease payment levels and absence of any accrued equity after long term lease.

We feel that ADL's method for adjusting lease rentals is not a fair or a correct procedure and, in fact, is in violation of State Statutes. We also feel that the procedures being used, particularly the "five year clause" deny much needed tax revenue to local governments. Putting the problem on a personal basis, many Alaskans will be forced to terminate their State leases, give up hopes for planned development, and sacrifice valuable improvements if the present policies and reappraisal methods are not improved.

We recommend several possible solutions:

1. Lands could be sold outright rather than leased.
2. Lands could be leased with an option to purchase at end of five years.
3. Rental could be:
 - a. Fixed for the fifty-five year lease period with lessee charged a percentage of any gain realized.
 - b. Increased annually at a fixed rate such as five percent.
 - c. Increased at the inflation or recession rate reflected in the Consumer Price Index.

The members of the Alaska Land and Lease Owners Association will appreciate and remember any positive action that can be taken on behalf of all State Land Leaseholders.

We appreciate you already having taken time to hear our views.

Respectfully Submitted:

William M. Mack
Chairman, Board of Directors
Alaska Land and Lease Owners Association

STATE OF ALASKA
THE LEGISLATURE

FOUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 14, 1976

SUBJECT: Surface Leasing Policy of State Owned Lands
TO: The Honorable Kay Poland
FROM: Elke Kallab *Ek*
Research Analyst

This memorandum addresses various issues which have been raised in conjunction with recent rent increases on state leased lands and, as you requested, comments on points brought up by leaseholders protesting the readjustment of their rents on a variety of grounds. Only the area of surface leasing of state owned lands has been investigated.

In summary we found that the rent increases appear to be in compliance of current, applicable statutes. However, we did discover numerous irregularities and inconsistencies in the regulations which govern surface leasing of state lands. We believe that the various shortcomings and ambiguities of the regulations have contributed significantly to the leaseholders' perceptions that the increases are illegal or arbitrary. The information and data pertaining to surface leasing regulations have been submitted to the chairman of the Administrative Regulation Review Committee, as is a copy of this memorandum.

* * * * *

I. Rent Increases

Substantial increases of rents in the process of reappraisal did not begin this year. Attached to this report are two lists which show the old and current rental rates on every state lease which came up for reappraisal in 1975 and 1976 as supplied to us by the Division of Lands. As can be seen, some of the steeper increases occurred in 1975.

Records show that the Division of Lands adopted the policy to use "market rental rates" for appraisals and reappraisals of state lands, when and where a comparable private rental market existed, as early as March 10, 1975. This decision was made because the Division of Lands believed that enough private leases existed by then which were comparable to certain types of state leases to institute market rental rates rather than charging contract rents at the rate of six percent of the fair market value of the property as was and continues to be the case when no market exists. So far, this policy has been limited in application primarily to industrial and commercial leases in the Anchorage area, since a private market for other types of leases does not exist at this time. However, a subdivision is presently being built in Anchorage in which the lots are being leased rather than being sold. Therefore, state leased lands in Anchorage which are classified as residential may soon be (re)appraised on the basis of economic rather than contract rental rates as established by the Division of Lands.

Current private market rates in Anchorage are comparable to those charged leaseholders in the Anchorage Industrial Subdivision according to the Division of Lands. (The Alaska Industrial Subdivision is located on Sec. 16 school land in downtown Anchorage.) For instance, we have been advised by the Division of Lands that Alaska Industrial Park, a private industrial subdivision on the southwest corner of C and 44th Streets charges an annual rental of eight percent of the "appraised fair market value," with a periodic five year rent adjustment provision part of the lease. Calais Company and Carr-Gottstein Properties lease their industrial lands at a rate of seven percent. However, unlike Alaska Industrial Park, they will not subordinate their lands; i.e., take a "back seat" to the improvements on the land which have been financed by a third party.

Leaseholders have charged that the Division of Lands has not used comparable parcels or proper appraisal methods when it reappraised certain leases in the Alaska Industrial Subdivision in Anchorage and a utility lease in the Matanuska Valley. However, all attempts to have these charges substantiated by the leaseholders with supporting data have been unsuccessful to date. We have looked at a randomly selected appraisal done by the Division of Lands to familiarize ourselves with appraising methods employed by the Division of Lands. Although we claim no special expertise in this field, the appraisal appeared to be thorough, extensive and impartial.

The Constitution (Article VIII, Sec.2) and various sections of Title 38 direct that state lands shall be selected, sold or leased to provide the maximum benefits to the people of the state. It is therefore difficult to find fault with the Division, in the absence of some other statutory definition, for attempting to maximize the monetary returns on state leased lands. How they set about doing it, however, is another subject.

The decision to use market rental rates was further refined and delineated when the Board of Education instructed the Division of Lands at its August 28, 1975 meeting in Kodiak that henceforth the Division was to obtain "fair market rental" ^{1/} on all leased school lands. Since Sec. 16 and 36 lands were conveyed to the state to generate school revenues, it is only reasonable to expect that rents should reflect this when they come up for periodic adjustment, particularly in light of the directive issued by the Board of Education to charge market rental value.

The Division of Lands is quite willing to admit that in the past the Appraising Section in the Division of Lands was viewed as a "poor relation", which accounts for the continuing low rents over the years in violation of the law which provides that "... no land may be sold or leased for less than the approved, appraised market value..." (38.05.310). The Division is now applying the law, thereby correcting past neglect which resulted in low rental rates on state leased lands, benefitting the individual leaseholders, but not necessarily the people of Alaska in general.

A legal opinion (copy attached) from the Attorney General's office to Commissioner Martin prevents the Commissioner from waiving or lowering the increases.

II. Rate of Contract Rents

The statutes provide that the initial rent shall be determined based on the "approved, appraised market value" (38.05.310), and that subsequent readjustments of the rents be based on a "reappraised annual rental value" (38.05.105)

Much controversy has arisen over the term "annual rental value". Protesting leaseholders claim that rental value cannot be pegged to the market value, that it is something less. The sources we have checked for a definition of rental value state that rental value is--

"(T)he monetary amount reasonably expectable for the right to the agreed use of real estate.... Usually, it is established by competitive conditions." ^{2/}

^{1/} Memo from W. Bruce Atkinson, ADL, to File, dated November 17, 1975.

^{2/} Real Estate Appraisal Principles and Terminology, Society of Real Estate Appraisers, p. 164; and Real Estate Appraisal Manual, Jerome Knowles, Jr. and Associates, p. 286.

From the above it appears that rental value is established by market conditions. The problem which has and continues to exist in Alaska, though, is that in most instances the state (Division of Lands) makes its own market. There is no private market to speak of for agricultural, grazing, recreational and other classified lands. Therefore, the state historically has used a percentage rate of the fair market value instead of rental value to determine rents on leased lands. As mentioned earlier, where a private market exists the Division is charging market rental value.

Until 1968 this rate was five percent. There is nothing in writing which explains why the rate was set at five percent, but we have been told that the five percent figure was a minimum amount derived from the Public and Charitable Use statute of the Alaska Land Act which stipulates that the rental shall be not less than five percent of the fair market value on school, university and mental health, or acquired lands (38.05.315(d)). Also, the rate of interest on the unpaid balance of contract sales of state lands was five percent at that time, and the reasoning, according to Division personnel, was to standardize the contract sale and contract rent rates. In 1968, then Commissioner of Natural Resources, Tom Kelly, raised the rate to six percent because he felt five percent was too low. Again, there is nothing in writing which would substantiate this. The Division of Lands now charges six percent of the fair market value when there is no private lease market and the lease is of a non-revenue producing nature. The Division charges up to eight and one-half percent (8 1/2%), or the market rental rate, when a private lease market exists and when the land is a potential revenue producer; i.e., land which is classified and/or zoned commercial, industrial, or residential.

The raising of the lease rental percentage rates, in some instances (such as the Alaska Industrial Subdivision), together with reappraising the leases based on fair market value have been responsible for the steep increases. The Division of Lands is quite cognizant of the potential hardships such a policy creates for certain leaseholders, particularly for those individuals who hold non-income producing leases. 3/

Much of the bad feeling that was generated over the rent increases probably could have been avoided if the Division of Lands had been more approachable and open in what it was doing. By not being advised of significant changes in policy, even when they are justifiable and defensible, and by being confused by or ignorant of appraisal terminology as used by the Division of Lands, it is not surprising that leaseholders feel that the Division has been acting arbitrarily and capriciously.

3/ Memo from W. Bruce Atkinson, ADL, to Michael C. T. Smith, ADL, dated November 4, 1975.

III. Special Provisions on Certain Leases Limiting Reappraisal to One Time

According to the Division of Lands, four leases exist which have a special provision on the back side of the last page which indicates that the lease will be reappraised but once five years after issuance of the initial lease. These leases have been reappraised now for a second time, and the four leaseholders are protesting the reappraisals.

A legal opinion issued by the Attorney General's office, dated October 3, 1975, holds that the Division of Lands exceeded its authority granting the special provisions on several grounds.

- A. No statutory authority existed to grant the exemption from five year rent adjustments. Apparently all four leases were issued prior to passage of a 1964 bill which amended 38.05.105 providing for waivers due to special conditions.
- B. However, even if they had been issued after this amendment became law, the special provision would still be invalid since 38.05.075 stipulates that a lease has to be on a form approved by the attorney general. Clearly, these leases were not on an approved form.
- C. Finally, the special provisions are invalid because the leases were offered at public auction without the special provision being part of the terms of the lease.

As a result of the above legal opinion, parts of regulation 11 AAC 58.120, which allows for the special provision on university and school lands, should be changed immediately.

While checking into the above matter, we found that the Division of Lands is apparently in violation of 38.05.075 - Leasing Procedures. This section states that "(T)he director or his representative shall immediately issue a receipt containing a description of the land or interest leased, the price bid, and the terms of the lease." According to Division of Lands personnel this has never been done. It would appear that either the Division of Lands should provide the bidder the "terms of the lease" at the time it issues the receipt, or the reference to the "lease terms" should be removed from 38.05.075.

IV. Improvement to Leased Properties

The charge has been made by several leaseholders in the Alaska Industrial Subdivision that their land has been reappraised improperly because improvements to the land have been taken into consideration, even though the lease states quite clearly that the land is to be reappraised in a state of improvement similar to that of the land described in the lease at the time the lease was issued.

("... in a state of improvement similar to that of the land described herein at the time this lease was entered into.").

The Division of Lands maintains that while leaseholders cannot be and, for that matter, have never been penalized for the improvements made to their leased lands, improvements which were made at public expense and which as a consequence raised the value of the area or the lands under lease should be reflected in the reappraisal. We are told that this practice is consistent and standard procedure in the reappraising business. While we are not appraisers, the reasoning seems to make sense.

Short of being provided with data by the leaseholders (which we have asked for but not received) which would bear out their charge that improvements they have made to their properties were being included in the reappraisal, we cannot assume that the Division is not reappraising the properties exclusive of improvements owned by the individual leaseholders, or that they are not applying professional standards when appraising lands.

* * * * *

Conclusions

Our investigations indicate that substantive and/or long term relief to the leaseholders regarding the periodic rent adjustment of their leaseholdings is probably not possible under the existing statutes. If it is believed that increases of rents should be limited in some way, or that rents be readjusted on a different basis than percentage of fair market value or fair market rental value as is the practice now, it will be necessary to legislate to that effect.

No new legislation will be necessary to require the Department of Natural Resources (Division of Lands) to bring their regulations into compliance with existing, applicable statutes or to "clean them up" so that the ambiguities regarding meaning and the inconsistencies of the language and definitions used in the regulations are eliminated. While no new legislation is necessary for the revision and up-dating of the regulations, it is recommended that the applicable, authorizing statutes be revised as necessary to be consistent and clear throughout. They are not now, in some instances.

EK:jm
Attachments

cc: The Honorable Jalmar Kerttula

DL-37
Revised July, 1960

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
344 Sixth Avenue
Anchorage, Alaska

*Approved with
the Division of
Lands*

Lease No. ADL 03066

LEASE AGREEMENT

THIS INDENTURE made and entered into this 2nd day of May 19 61, by and between the STATE OF ALASKA, through the Director of the Division of Lands, with the consent and approval of the Commissioner of the Department of Natural Resources, acting for and on its behalf under and pursuant to Chapter 169, SLA 1959, as amended, and the regulations promulgated thereunder, as amended or hereafter amended, hereinafter referred to as the LESSOR; and James E. Rigsbee, Jr. of 2005 - 20th Avenue, Anchorage, Alaska. hereinafter referred to as the LESSEE:

WITNESSETH, that whereas the Lessor has classified the lands herein demised as: Commercial - Industrial lands on April 24, 19 61, pursuant to Chapter 169, SLA 1959, as amended; and

WHEREAS, the Lessor has caused the lands herein demised to be appraised and such appraisal was made and approved on or after February 23, 1961; and

WHEREAS, the Lessor has caused a notice of intent to lease the lands herein demised to be published as required by law or caused notices of intent to lease to be posted as required by law; and

WHEREAS, an auction of the within demised property was held at the time and place designated by notice and said sale was approved by the Director of the Division of Lands, Department of Natural Resources, State of Alaska;

NOW THEREFOR, the Lessor has agreed to let and does hereby let and demise to the Lessee, and the Lessee has agreed to take and does hereby take from the Lessor all that lot, piece, or parcel of land more particularly bounded and described, as follows: Lots One (1), and Two (2), Block Ten (10), First Addition to the Alaska Industrial Sub-division, within the Northeast Quarter of Section Sixteen, Township Thirteen North, Range Three West, Seward Meridian, containing 0.61 acres, more or less, according to the official plat thereof, on file and of record with the Recorder of Deeds, Anchorage Recording Precinct, Anchorage, Alaska.

TO HAVE AND TO HOLD the said demised premises for a term of fifty-five (55) years commencing on the 2nd day of May, 1961 and ending at 12 o'clock midnight on the 1st day of May, 2016, unless sooner terminated as hereinafter provided.

The Lessee shall pay to the Lessor rental as follows: Equal quarterly payments, in advance, on or before the 2nd day of August, November, February and May of every year during said term at the rate of Two Hundred and Fifty-five and NO/100 Dollars (\$ 255.00) per quarter

such payments to be subject to adjustment at each five year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rental value of land in a state of improvement similar to that of the land described herein at the time this lease was entered into.

It is hereby mutually covenanted and agreed that this indenture is made upon the foregoing, and upon the following agreements, conditions, covenants, and terms, VIZ:

1. The word "Lessor" as and wherever used in the lease, shall be construed to include, and shall include, bind and inure to the benefit of, the State of Alaska, its successor and assigns, at any time during the term of this lease or any renewal thereof; and the word "Lessee" as and wherever used in this lease shall be construed to include and shall include and bind and inure to the benefit of the Lessee, his successors and assigns.
2. It shall be the responsibility of the Lessee to properly locate himself and his improvements within the confines of the property leased herein.
3. The Lessor, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Provided, however, no rights shall be exercised by Alaska, its lessees, successors or assigns, until provision has been made by Alaska, its lessees, successors or assigns, to pay to the owner of the land, upon which the rights herein reserved to Alaska, its lessees, successors, or assigns are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land; provided, that if said owner for any cause whatever refuses or neglects to settle said damages, Alaska, its lessees, successors or assigns or any applicant for a lease or contract from Alaska for the purpose of prospecting for valuable minerals, or option contract or lease for mining coal or lease for extracting petroleum or natural gas, shall have the right, after posting a surety bond with the Director in a company qualified to do business in Alaska or in a form as determined by the Director, after due notice and opportunity to

be heard, to be sufficient in amount and security to secure the said owner full payment for all such damages, to enter upon the land in the exercise of said reserved rights, and shall have the right to institute such legal proceedings in a court of competent jurisdiction wherein the land is situated, as may be necessary to determine the damages which the surface lessee of such lands may suffer.

4. The lands leased herein have been classified as shown on page 1 of this agreement and in accordance with the Classification Regulations, Title 11, Division 1, Chapter 1, Subchapter 1, and any use thereof which shall be in material conflict with said classification shall, if not remedied after due notice thereof has been served on the Lessee, constitute a breach of this lease and the Lessor may thereupon terminate same in accordance with provisions herein contained. The Lessor does not warrant that by such classification the land is ideally suited for the use authorized thereunder and the Lessor gives no guaranty, actual or implied, that the utilization under said classification will be profitable.

5. All coal, oil, gas and other minerals and all deposits of stone or gravel valuable for extraction and utilization and all materials subject to Title 11, Division 1, Chapters Four (4), Five (5), and Six (6), Alaska Administrative Code, as amended or as shall hereafter be amended are excepted from the operation of this lease. Viz: The Lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peatmoss, or any other material valuable for building or commercial purposes; provided, however, that material required in the enjoyment of this lease may be used after a written permit therefor has been obtained from the Lessor.

6. The Lessor expressly reserves the right to grant easements or rights-of-way across the land herein leased if it is determined to be in the best interests of the State to do so; provided, however, that the Lessee shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of such easement or right-of-way.

7. The Lessee shall not commit waste or injury upon the lands leased herein. Any violation of this agreement shall not only subject the offender to civil liability, but upon conviction thereof he may be fined in any sum not exceeding \$1000.00.

8. If the lands leased herein are classified and leased as grazing or agricultural lands the Lessee shall not prevent or deny the lawful pursuit or the hunting of game or the taking of fish; provided, however, the Director, upon request in writing, may allow the lands leased herein, or portions thereof, to be posted to prohibit hunting and fishing when it appears necessary in order to properly protect the Lessee and his property.

9. Should the lands herein leased lie within the jurisdiction of any authorized building or zoning authority they shall be utilized in accordance with the rules and regulations promulgated by said authority.

10. The Lessee shall take all reasonable precaution to prevent, and take all reasonable action to suppress grass, brush and forest fires on the land herein leased.

11. The Lessee shall allow the Lessor, through its duly authorized representative, to enter upon the leased premises, at any reasonable time, for the purpose of an inspection thereof.

12. When the Lessee shall use the lands leased herein to construct any form of hydraulic project or employ any equipment or engage in any activity which will use, divert, obstruct, pollute or change the natural flow or bed of any river, lake or stream or that will utilize any of the waters of the State or materials from any river, lake or stream beds, the Lessee shall, prior to the commencement of any such operations, procure the approval of the Commissioner of the Department of Fish and Game and the original or an image copy thereof shall be filed with the Lessor prior to the commencement of such activity.

13. The Lessee may assign the lands, or portion thereof, herein demised, provided, he first makes application to the Lessor for a permit and the Lessor, in his discretion, may issue such permit if he finds it to be in the best interest of Alaska. Upon an assignment being granted, the assignee thereunder shall become subject to and be governed by the provisions of this lease in the same manner as though he were the original Lessee.

14. This lease may not be modified orally or in any manner other than by an agreement in writing signed by all parties hereto or their respective successors in interest.

15. This lease may be cancelled, in whole or in part, under one or more of the following conditions:

A. While in good standing by the mutual agreement in writing of the respective parties hereto.

B. If issued in error with respect to material facts.

C. If the leased premises are being used for an unlawful purpose.

16. If the Lessee should default in the performance of any of the terms, covenants or stipulations herein contained or of the regulations promulgated pursuant to Chapter 169, SLA 1959, as amended, and said default shall not be remedied within 30 days after written notice of such default has been served upon the Lessee by the Lessor, the Lessee shall be subjected to such legal action as the Lessor shall deem appropriate, including but not limited to, the forfeiture of this lease. No improvements may be removed by the Lessee during any period in which this lease is in default. In the event that this lease shall be terminated because of a breach of any of the terms, covenants, or stipulations contained herein the annual rental payment last made by the Lessee shall be retained by the Lessor as liquidated damages.

17. Any notice or demand which must be given or made by the parties hereto shall be in writing, and shall be complete by sending such notice or demand by United States registered or certified mail to the address shown on the lease or to such other address as the parties shall designate in writing from time to time. A copy of such notice shall be forwarded by the Lessor to any lienholder who has properly recorded his interest in the lease with the Lessor.

18. In the event that this lease is terminated as herein provided, by summary proceedings or otherwise, or in the event that the demised lands, or any part thereof, should be abandoned by the Lessee during the term of this lease, the Lessor may immediately, or at any time thereafter, enter or re-enter and take possession of said lands, or any part thereof, and without liability for any damage therefor, remove all

persons and property therefrom either by summary proceedings or by a writ of replevin or proceeding at law; provided, however, that the words "entry" and "re-entry" as used herein, are not restricted to their technical legal meaning. Any entry or re-entry, possession, repossession, dispossess, and/or dispossession by the Lessor, his heirs or taken by summary proceedings, or otherwise, shall not be deemed to resolve, relieve, release or discharge the Lessee, either in whole or in part, from any liability hereunder.

19. Upon the expiration, termination or cancellation of this lease, unless the same has been renewed, the Lessee shall quietly and peaceably leave, surrender and yield up unto the Lessor all of the leased land on the last day of the term of the lease.

20. The receipt of rent by the Lessor, with or without knowledge of any breach of the lease by the Lessee or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of this lease, shall not be deemed to be a waiver of any provision of this lease. No failure on the part of the Lessor to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate such terms or covenants or affect the right of the Lessor to enforce the same in the event of any subsequent breach or default. The receipt by the Lessor of any or any other sum of money or the termination, in any manner, of the term therein contained, or after giving by the Lessor of any notice hereunder to affect such termination, shall not reinstate, continue, or extend the resultant term herein depicted, or destroy, or in any manner impair the efficacy of any such notice of termination which has been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless expressed in writing and signed by the Lessor.

21. The Lessee, after written request therefor has been filed with the Lessor and prior to the commencement of such work, may receive credit toward payment of future rentals, provided the contemplated work, to be completed on or off the lands leased herein, in the discretion of the Lessor, shall result in increased valuation to other State owned lands. The Lessor is authorized to proceed with the work for rental credit, if granted, shall stipulate the type and extent of improvements, standards of construction to be followed and the maximum allowable rental credit therefor; provided further that no portion of any such credit to the Lessee shall be available until the work has been completed and the Lessor has approved same to be in accordance with the provisions of said authorization.

22. If, upon the expiration of this lease, the Lessee desires a renewal lease on the lands, properties or interests covered herein, he shall within 30 days before the expiration of this lease, make application to the Lessor on Form SL-74 entitled "Application for Renewal of Lease," in which he must certify under oath as to the character and value of all the improvements existing upon the land, the purpose for which he desires a renewal and such other information as the Director of the Division of Lands may require. Along with the application the applicant shall deposit a sum equal to 50% of the current annual rental, as provided herein, but in no event to exceed the sum of \$50.00. The Lessor may thereupon lease said lands in compliance with the provisions herein enumerated, Chapter 169, SLS 1959, as amended, and the rules and regulations promulgated thereunder, allowing a preference right to the Lessee herein.

23. The Lessee hereunder shall, upon the expiration of this lease or the prior termination thereof by mutual agreement, be allowed a preference right to re-lease the lands leased herein if all other pertinent factors are substantially equivalent. If the renewal lease does not require public auction the preference rightholder shall exercise his right within 30 days before the expiration of this lease by written notice directed

to the Lessor and failure to do so shall result in forfeiture and cancellation of such preference right. In the event that the lease is subject to and is offered at public auction the preference rightholder shall, at the close of bidding, indicate his desire to exercise his preference right and meet the highest bid. In the event the preference right holder does not elect to exercise his right and fails to do so at this time his preference right shall be forfeited and forever lost.

24. Improvements owned by a Lessee on Alaska lands shall within 60 days after the termination of the lease be removed by him; provided, such removal will not cause injury or damage to the lands; and further provided, that the Lessor may extend the time for removing such improvements in cases where hardship is proven. The retiring Lessee or permittee may, with the consent of the Lessor, sell his improvements to the succeeding lessee or permittee.

If any improvements and/or chattels having an appraised value in excess of \$10,000.00 as determined by the Lessor are not removed within the time allowed, such improvements and/or chattels shall upon due notice to the Lessee, be sold at public sale under the direction of the Lessor. The proceeds of sale shall inure to the Lessee who placed such improvements and/or chattels on the lands after paying to Alaska all rents due and owing and expenses incurred in making such sale. In case there are no other bidders at any such sales, the Lessor is authorized to bid, in the name of Alaska, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong and the said fund shall receive all monies or other value subsequently derived from the sale or leasing of such improvements and/or chattels. Alaska shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of said purchase.

If any improvements and/or chattels having an appraised value of \$10,000.00 or less, as determined by the Lessor, are not removed within the time allowed, such improvements and/or chattels shall revert to and absolute title shall vest in Alaska.

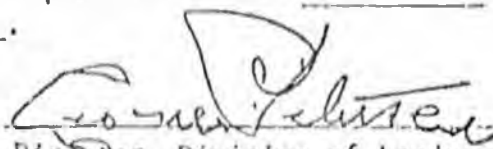
25. If any clause, or provision, herein contained, shall be adjudged to be invalid, it shall not affect the validity of any other clause or provision, of this lease or constitute any cause of action in favor of either party as against the other.

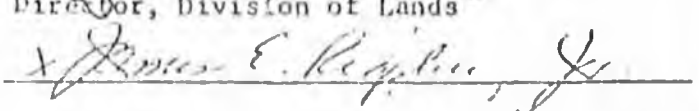
It is agreed that the covenants, terms and agreements herein contained shall be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the State of Alaska, Lessor, acting through the Director of the Division of Lands of the Department of Natural Resources, lawfully authorized thereunto, has caused these presents to be executed at Anchorage, Alaska, in duplicate and the said Lessee has hereunto set his hand, agreeing to keep, observe and perform the rules and regulations promulgated under Chapter 169, SLA 1959, as amended, the terms, conditions and provisions herein contained, on the Lessee's part to be kept, observed and performed; and executed said instrument, in duplicate on the 15th day of May, 19 61.

APPROVED:

COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
STATE OF ALASKA



Director, Division of Lands


THIS IS TO CERTIFY that on the 23rd day of June, 1961, before me, the undersigned Notary Public, personally appeared James E. Fischee known to me and known by me to be the Director of the Division of Lands of the Department of Natural Resources, and acknowledged to me that he executed the foregoing lease for and on behalf of said State, freely and voluntarily and for the use and purposes therein set forth

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

Sharon E. Barton
Notary Public in and for the State of Alaska
My commission expires March 27 1965

THIS IS TO CERTIFY that on this 23rd day of June, 1961, before me, the undersigned, a Notary Public in and for Alaska duly commissioned and sworn, personally appeared James E. Fischee to me personally known to be one of the persons described in and who executed the within instrument and the said James E. Fischee acknowledged to me that he signed and executed the same freely and voluntarily for the uses and purposes therein mentioned.

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

Sharon E. Barton
Notary Public in and for the State of Alaska
My commission expires March 27 1965

Approved as to Form:

Ralph E. Moody
Attorney General

By George W. Hughes
Title Assistant Attorney General

LEASE METHOD COMPARISONS

| | LEASE (1) | LEASE (2) | LEASE (3) | LEASE (4) |
|------------------------------------------|--------------|--------------|-------------------|-------------------|
| Rent Per Present Law and State Appraisal | \$5,691 | \$5,232 | \$1,300 | \$1,650 |
| Rent Per CSSB 159 | \$ 930 | \$ 800 | \$ 120 | \$ 270 |
| Lease Commencement | 1961 | 1961 | 1969 | 1969 |
| Lease Term | 55 yrs. | 55 yrs. | 55 yrs. | 55 yrs. |
| Location | Anchorage | Anchorage | Susitna Valley | Susitna Valley |
| Size | 14,782 S.F. | 18,012 S.F. | 40 Ac. | 80 Ac. |

LEASE NO. 1

| Term | (a) Rent By CSSB 159 | (b) Rent Per State's Appraisal | (c) State Loss in Revenue (Per Period) |
|-----------|----------------------------|-----------------------------------------|-------------------------------------------------|
| 76-2001 | \$ 930 | \$5,691 | \$119,025 |
| 2001-2011 | 1,395 | 5,691 | 42,960 |
| 2011-2021 | 2,029 | 5,691 | 36,620 |
| 2021-2031 | 3,138 | 5,691 | 25,530 |

Assume:

- (1) Land value does not rise beyond present value
- (2) Lease rate does not rise

Column:

- (a) Annual rent for each year under CSSB 159
- (b) Present rent as determined by state's appraiser
- (c) State loss in revenue under CSSB 159 (difference between column (a) and column (b) times number of years in the period)

LEASE NO. 3

| Term | (a) Rent By CSSB 159 | (b) Rent Per State's Appraisal | (c) State Loss in Revenue (Per Period) |
|-----------|----------------------------|-----------------------------------------|-------------------------------------------------|
| 76-2001 | \$120 | \$1,300 | \$29,500 |
| 2001-2011 | 180 | 1,300 | 11,200 |
| 2011-2021 | 270 | 1,300 | 10,300 |
| 2021-2031 | 405 | 1,300 | 8,950 |

Assume:

- (1) Land value does not rise beyond present value
- (2) Economic lease rate does not rise

Column:

- (a) Annual rent for each year under CSSB 159
- (b) Present rent as determined by state's appraisal
- (c) State loss in revenue under CSSB 159

FINAL REPORT AND RECOMMENDATIONS

April, 1977

THE GOVERNOR'S AD HOC ADVISORY COMMITTEE ON
STATE LAND PRACTICES AND PROCEDURES

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- II. Individuals on the Committee
- III. Committee Work Process
- IV. Findings and Recommendations of the Committee
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 - B. Recommended Bill Presented to the Legislature
 - C. Recommended Standard Lease Form with Attachments

I. SUMMARY OF THE COMMITTEE'S FORMATION,
MISSION, AND ACCOMPLISHMENTS

On October 8, 1976 the Governor's Ad Hoc Advisory Committee on State Land Practices and Procedures met for the first time. The mission of the committee was outlined by Guy Martin, Commissioner of the Department of Natural Resources. He said that the Governor desired a small, precise, and efficient panel to find new ways to improve state land practices and procedures, not to set policy but to address the legal and technical aspects of disposal and other contractual relationships. Judgments, criticisms, and new recommendations were to be effected. Michael C. T. Smith, Director of the Division of Lands, clarified the mission further by adding that the committee should:

- 1) consider primarily revenue production, as opposed to social benefits, in its analysis;
- 2) make no assumptions as to state policy regarding the number, size, and location of land sales or other disposals; and
- 3) recommend changes that will be applicable to any likely state land policy.

The committee made a dedicated attempt to accomplish its mission. The tasks of studying existing statutes, regulations, and practices, and examining them in light of current land disposal and contractual relationships was formidable, but many members worked successfully to this end. Uncovering and identifying disposal and contractual problems involved considerable time and effort. Correct identification of a particular problem of this nature is a major step toward solving it. Perhaps the greatest success of the committee was discerning from Division of Lands personnel and state lessees the exact nature of their problems and concisely defining them. This action will have a lasting effect on Division of Lands personnel who are charged with formulating policy and procedures for land disposals and contractual relationships. The committee did make significant recommendations to effect changes in statutes, regulations, and Division procedures and policy. The lease form used by the State was revised to include terms and conditions that would offer benefits to both the State and the lessee. The recommendations of the committee in general give the State more flexibility to respond to client needs. Both client and State will benefit greatly if the committee's recommendations are carried out. The mission of the committee has been accomplished with admirable success in this regard.

Selected areas were covered, specifically those of sales and leasing. The committee states that this report is not meant, by any means, to be all-inclusive.

II. THE INDIVIDUALS ON THE COMMITTEE

The individuals who served on the committee volunteered considerable time and effort. Each member was selected on the basis of having specialized knowledge and expertise. The following list of present members and their qualifications shows considerable diversity.

Mike Colletta - State Senator

Hugh Gellert - President of Bear Fritz, Inc., a land development company with interests in Anchorage and the Kenai Peninsula.

Herb Lang - President of Anchorage Sand and Gravel.

Jamie Love - Director of the Alaska Public Interest Research Group (AkPIRG).

David McCabe - Private Appraiser.

William Mack - Chairman of the Alaska Land and Lease Holders Association.

Carl Marrs - Land Manager for Cook Inlet Region, Inc.

John Norman - Attorney specializing in the area of corporate and natural resources law.

Lidia Selkregg - Anchorage Assemblywoman; Professor
of Regional Planning at the Arctic Environmental
Information and Data Center in Anchorage.

Theodore G. Smith - Former State Representative;
present Director of the State Division of Land
and Water Management.

III. COMMITTEE WORK PROCESS

The committee worked in a series of sessions which were all open to the public. Meetings were held weekly from October 8, 1976 to March 30, 1977 with the exception of 12/17/76 - 1/5/77, when the committee recessed for the holidays. Two additional evening work sessions were held, and two evening meetings to hear public comments took place on 12/1/76 and 3/3/77. The meetings were loosely structured to accommodate those attending and to provide time for public comment.

The committee addressed the area of sales in its first sessions and proceeded to the area of leases in the later sessions. There was considerable public input from concerned individuals, and organizations, and many persons with specialized knowledge were invited. A great deal of support was provided by many state agencies, particularly by the State Division of Lands and the Department of Law. Considerable time was spent in information gathering. The Division often was requested to provide information on current procedures. Considerable information on Division activities was compiled. The changes recommended were made cautiously and are well supported by the information gathered. The committee's recommendations were made in the form of motions which were voted on by majority vote at the meetings. Recommendations were made freely as each subject area was explored.

Many meetings, including the two evening public comment sessions, were advertised in two newspapers. Press releases and newspaper articles appeared locally. Mass mailouts provided general information and announced upcoming meetings; lists of meeting dates were available at all sessions. The interested public was encouraged to contact the Division of Lands with any verbal or written questions and comments. Copies of materials used by the committee were available to the public and public comment was specifically taken on the committee's interim recommendations and draft bill to the Governor.

Almost all sessions were tape recorded in their entirety. Written minutes of meetings were time-keyed to the tapes to allow verification. The public is welcome to listen to or make copies of these tapes by contacting the Division of Lands.

IV. FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

The findings of the committee were numerous but can be grouped into major categories:

- 1) State lessees are dissatisfied with the state interpretation of lease contract terms, especially those relating to appraisal. Many lessees testified before the committee as to their grievances.
- 2) The Division's regulations covering sales and leases are often outdated and conflicting with statutes in some cases.
- 3) The State's lease contract form is not in line with commercial contracts and has many ambiguities in it.
- 4) Some state statutes in Title 38.05 are vague and unclear.
- 5) Payment methods for state sales contracts do not match those used in the private sector and may contribute to ballooning land values.

These findings outline the basis for the committee's recommendations which follow.

The recommendations of the committee concern statute, policy, and regulation changes, and can be grouped by topic.

The following three items are of general concern:

1. The committee wishes to note that in the course of public testimony it was apparent that Division of Aviation lessees had significant problems with their current leases. This subject was not within the scope of the committee's deliberations and, therefore, not addressed.
2. To comply with new statutes the committee recommends a major overhaul of Division of Lands regulations. The committee has found many of the regulations now in effect to be outdated and superceded by statutes.
3. The committee recommends that the Legislature apply the provisions found in Title 38 to those in Title 3, Title 19, and Title 35. The rationale would be to make land laws uniform among the Division of Aviation, Department of Highways, and Division of Lands.

In order to provide predictability in appraisals and reappraisals, for the benefit of the State and the public, the committee recommends the following:

1. At present many lessees are suffering hardship due to rent increases of several hundred percent. To provide for this relief and as a curative for such future increases the statutory provisions found in section nine of the attached bill are recommended. Provision for optional conversion of present leases to ones that will place a ceiling of 100% on rental increases every five years will largely prevent future hardship cases and resolve satisfactorily the present cases. With a rent ceiling, lease rental increases will be more predictable resulting in more financial stability for the lessee. (The Alaska Industrial Subdivision hearing panel recommends insuring predictability by placing some control over the size of the rental increase through utilization of a ceiling on the size of the increase in rental every five years.)

Sections 8 and 9 of the attached bill will accomplish the above recommendations.

2. The committee recommends that land offered over the counter be reviewed at 90 to 120 day intervals to determine if an increase in value has occurred. This

review is desired so that parcels are not undervalued by progressive changes in the market.

Section 10 of the attached bill would accomplish this.

3. Since public notice is covered in AS 38.05.345 the change to " appraisal" for AS 38.05.310 is warranted by its present content. The committee recommends that land may be appraised 120 days in advance of a sale or lease. The change from 90 to 120 days would be desirable in that minimum bid information could be given to the public well in advance of the actual sale or lease auction. In addition 11 AAC 54.140 should be repealed.

Section 10 of the attached bill will accomplish this.

4. In order to provide a workable solution to the problems of confidentiality of appraisal data, the committee recommends that the Director of the Division of Lands refrain from including confidential information in any appraisal prepared for the Division of Lands use. The committee recommends adoption of the following policy statement:

The director may make confidential those portions of appraisals and supporting data which contain information provided the appraiser in confidence. Such appraisals shall be subject to review by the local chapter of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers to determine if the appraisal is acceptable under the professional practices and guidelines of the reviewing organization.

5. The committee believes that the word "primarily" may imply special consideration to some lessees. In order to treat all lessees fairly and equitably the committee recommends that the word "primarily" be stricken. Deleting "primarily" would clarify the basis for reappraisal. (This was also recommended by the Alaska Industrial Subdivision hearing panel.)

Section 8 of the attached bill will accomplish this.

To improve accounting policies, the following are recommended:

1. The committee recommends that all sales contracts over \$400.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial

strain on the buyer and yet not add significantly to the State's administrative costs. To provide quarterly payments would require a change in AS 38.05.065 with the present annual payments deleted and the quarterly payment provision adopted in its place.

Section 3 of the attached bill would accomplish this.

2. The committee recommends that a \$10.00 fee charge to cover administrative costs be given to those who make sale or lease payments with checks that are returned. It is a standard business practice to provide for such charges and is recommended to protect the State's interests.

3. The committee recommends instituting default charges for late sale or lease payments. A present, there exists no penalty and many payments are late. The form of penalty recommended is notification charges to all delinquent payments and penalty charges to payments delinquent more than 30 days. The notification charge would be \$5.00 for the first notice, \$20.00 for the second notice and a penalty charge of 6 percent of the payment.

It is suggested that the fee charges be adopted as a regulation under authority of AS 38.05.035 (4)(5) as follows:

11 AAC 54.365. Delinquent Payments.

In the event of a delinquent payment, the following charges will apply:

1. A \$10.00 penalty for payment with a check that is returned.
2. A \$5.00 penalty for notification of payments over thirty-five days late.
3. A \$20.00 penalty for a second notification of payments more than fifty days late.
4. A penalty of 6 percent of the rental or sale payment for payments delinquent by more than thirty days.

(Eff. ____ Register ____) Authority AS 38.05.035.

In order to achieve more flexibility and simplicity in handling land disposal transactions, the following are recommended:

1. The committee recommends that the State charge a market rate of interest in its sales contracts. The interest rate, at present 6%, is below market levels and may have contributed to inflated prices at state land sales. By setting interest rates at market levels, the State would help prevent inflated land prices and at the same time return more income to the State. To provide for a market rate of interest in sales contracts, no change in AS 38.05.065 would be required. The addition of a statement of market rate in this statute would be desirable, however.

Section 3 of the attached bill would accomplish this.

2. The committee recommends that the State adopt a system of level payments in place of declining payments in its sale contracts. The system of level payments is in common use in the business world, and the payment figures are easily set forth in a contract. The disadvantage of the present method is that interest must be recalculated every year and the payments decrease each year. From both the State's and the buyers' viewpoints, the level payment method would be preferred. The State would receive slightly more in interest payments over the contract terms and the buyer would not have to make as high initial payments. To provide

level payments would require a change in AS 38.05.065 with the present system deleted and the level payment system adopted in its place.

Sections 2 and 3 of the attached bill would accomplish this.

3. The committee recommends that in Title 38.05 the term "fair market value" be used in place of "fair appraised market value" and "market value." The meaning is felt to be the same in all cases. The committee would like to see one standard term used to avoid confusion and misunderstanding.

Sections 4, 5, 7, and 13 of the attached bill would accomplish this.

4. The current procedures for informing the public of state lands transactions are covered in AS 38.05.305 and AS 38.05.345. The two procedures do not mesh in a clear manner. The committee recommends that the procedures be clarified in a manner that will be flexible enough to inform the public fully and yet not require multiple advertising for minor negotiated transactions.

Section 11 of the attached bill will accomplish this:

5. The committee recommend that the Director be given the authority to set the payment period from one to twenty years. This type of flexibility would allow the State and buyers greater market possibilities. To provide for this would require that the installment clause in AS 065 be deleted and replaced by the one to twenty year provision.

Section 3 of the attached bill would accomplish this.

6. The committee recommends that the State be given more flexibility to resolve contract of sale violations. This is necessary to prevent foreclosure as the only remedy for minor contract violations.

Section 3 of the attached bill would accomplish this.

To institute improvements in the leasing system, the following are recommended:

1. To implement the new lease provisions recommended by this committee new lease forms for various types of leases will be required. It is the committee's recommendation that the Division draft new lease forms to comply with the statutes adopted, and that the new forms be reviewed by this committee.

The attachments to the standard lease in Appendix C accomplish this.

2. The committee recommends that all state leases to other public agencies be at the normal fair market value rate of payment.

This reflects a regulation change.

3. The committee recommends that state government agencies get out of residential leasing.

This would reflect a policy change.

4. To provide the lessee insurance against a land boom or unexpected increase the committee recommends that rental increases at the five year reappraisal periods not exceed 100 percent of the prior existing annual rental rate. This action would increase the predictability of the lessee's payments. The stability thus created would add significant borrowing power for the lessee to finance improvements on the leased ground.

Section 8 of the attached bill would accomplish this.

5. The duration of a lease and the economic life of substantial improvements, such as stores or factories, may not coincide. In order to see that state leased land is used in a rational, economically productive manner the committee recommends that lessees of long-term leases be given a renewal option for up to fifteen years. This type of option would grant the lessee more flexibility in maximizing his investment returns, especially during the final years of his lease. It would also increase the lessee's planning possibilities for use of the leased ground. This action would also soften the impact of termination of the lease. Specifically, this would permit a lessee to make substantial repairs to a building when the remaining term of the lease would not otherwise justify it.

Section 6 of the attached bill would accomplish this.

6. The committee agrees that a lease should be converted at its present classification, and the leaseholder should then have the option to change classification subject to Division of Lands approval.

This reflects an implementation recommendation in the event that House Bill ³⁸³ passes.
^

7. The committee recommends that a level term for recreational leases not be provided.

8. The Alaska Industrial Subdivision hearing panel recommends that in accord with the provisions of the lease, lessees should be encouraged to record expenses incurred in site preparation so that the "original condition" can be more adequately ascertained.

The Ad Hoc committee concurs. This recommendation is handled in the attached lease document.

9. The Alaska Industrial Subdivision hearing panel recommends that lease language should be clarified to remove any possible inconsistencies with 11 AAC 58.520 (Adjustment of Rental).

The Ad Hoc committee concurs.

10. The Alaska Industrial Subdivision hearing panel recommends eliminating the floating easement. The State could exercise the right of eminent domain to condemn. The condemnation would probably result in greater compensation for damages to the lessee, especially in view of the Supreme Court decision in State v. Hammer,

550 P.2d 830, thus the lease would be more attractive to the leasing market. Additionally, the language in the current lease is ambiguous as to damages compensable. This ambiguity only encourages litigation.

The Ad Hoc committee concurs. This has been accomplished in the attached lease form.

11. The Alaska Industrial Subdivision hearing panel states that, if its recommendations are adopted, the State would be assured a competitive position in the lease market, would encourage development of the leaseholds consistent with the intent of the leasing regulations, and would be equitable to the lessee. The hearing panel also believes the State should be able to obtain a good return on its land. Accordingly, the rental rate should be changed to reflect the removal of the undesirable aspects of the state lease.

The Ad Hoc committee concurs. Continuing to include rate as an appraisal element will accomplish this objective. This change is found in the attached lease form.

To provide a vehicle for arbitrating protests and appeals involving land transactions, the following is recommended:

1. The Division of Lands has had many protests from private parties over the past few years leading the committee to believe that a board of appeals is highly desirable and needed at this time. At present there exists no arbitration board or board of appeals to handle appeals allowed by Division of Lands regulations. The creation of a board of appeals would effect a responsive mechanism for solving most problem cases arising out of Division of Lands transactions that affect private parties. The board of appeals would be faster and less costly to private parties than legal recourse, which would still be available. The board is structured to maintain adequate expertise while attempting to eliminate bias in favor of the Division of Lands. The appeal board would substitute for the Commissioner in the present appeal process. (The Alaska Industrial Subdivision hearing panel also recommends such an appeal process.)

Section 9 of the attached bill would accomplish this.

The committee recommends the following to improve trust land management:

1. The committee believes that state trust lands (school, mental health, and university) are now and have been managed at low intensity. These lands may be returning only a fraction of their potential value that could be realized by a small, full-time management staff. The Division manages these lands at no charge to the various trust funds and receives no reimbursement for its services. Therefore, it has traditionally placed low priority on management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the State's land act.

2. In order to provide a uniform 55 year limit for all long-term leases the committee recommends deletion of the 99 year provision found in 38.05.070(c) for school lands.

Section 6 of the attached bill would accomplish this.

V. APPENDIX A

LIST OF PUBLIC GIVING COMMENTS AT AD HOC MEETINGS

GRAHAM, Joe

AKERS, Merle (Anchorage International Airport Pilots' Association)

FORD, R. G. (Anchorage Camper Center--Alaska Industrial Subdivision)

DAVIS, Ken (Alaska Industrial Subdivision--school land lessee)

RICHARDSON, Phil (Talkeetna lessee)

BAER, Paul (International Airport Road--lessee/attorney)

NORENE, Larry (appraiser/broker)

SIMMCNS, Errol (appraiser)

CUTLER, Dale (Chairman, Anchorage International Airport Pilots' Association)

BROWN, Leon (A&W Drive-In, Brown's Electrical--Alaska Industrial Subdivision)

FERRARA, Fred (appraiser, retained by Alaska Industrial Subdivision)

BEAMER, Mr.

HOGAN, L. L.

CHRISTOPHER, Jim (Alaska Industrial Subdivision)

WEEKS, Lloyd E.

LEDBETTER, Charles (recreational lease, Rocky Lake, Matanuska Valley)

GRAY, Brian Mark

MacNUTT, Lowell (Alaska Industrial Subdivision)

DAVIS, Ken (Alaska Industrial Subdivision)

PENNEY, Bob (Penland Subdivision)

HOGGE, Andrew (attorney)
BIELAWSKI, Joe (Alaska Industrial Subdivision)
MALONEY, Dennis
WILLOUR, Joe (Alaska Industrial Subdivision)
TROEH, Paul
VANDERMOLEN, John (HUD/FHA--Anchorage Insuring Office)
MEEKINS, Russ (Alaska Land & Leaseholders Association)
HURLEY, Katherine (State Board of Education)
HEINE, Darwin (School Trust Lands--Fairbanks)
KERNS, Dick (Department of Highways)
GEORGE, Al (University of Alaska--Fairbanks)
DENHAM, Bob (Pastor, 1st Church of the Nazarene)
FLAVIN, Frank (State Ombudsman)
RIGSBEE, Alberta
ROETMAN, Emmett
BAILY, Douglas (Attorney for Alaska Industrial Subdivision)
MORRIS, Lloyd

Introduced: 3/22/77
Referred: Resources

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 383

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state land; and providing for an
7 effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 38.05.030 is amended by adding a new subsection to
10 read:

11 (f) Each trust for which the director exercises land management
12 functions shall be assessed the cost of that management which shall be
13 negotiated annually between the division and the respective trust
14 boards.

15 * Sec. 2. AS 38.05.055 is amended to read:

16 Sec. 38.05.055. SALE PROCEDURES. Except as provided in sec.
17 315(d) of this chapter, the sale shall be made at public auction to
18 the highest qualified bidder as determined by the director. An
19 aggrieved bidder may appeal to the commissioner within five days after
20 the sale for a review of the director's determination. The sale shall
21 be conducted by the director or his representative, and at the time of
22 sale the successful bidder shall deposit an amount determined by the
23 director but not less than five per cent [EQUAL TO ONETENTH] of the
24 purchase price. The director or his representative shall immediately
25 issue a receipt containing a description of the land or property
26 purchased, the price bid, and the terms of sale, which receipt shall
27 be acknowledged in writing by the bidder. A contract of sale on a
28 form approved by the attorney general shall be signed by the purchaser
29 and, after approval of the commissioner, the contract shall also be

1 signed by the director on behalf of the state.

2 * Sec. 3. AS 38.05.065 is amended to read:

3 Sec. 38.05.065. TERMS OF CONTRACT OF SALE. The contract of sale
4 shall require the remainder of the purchase price to be paid over a
5 period of not more than 20 years, to be set for each sale by the
6 director. Installment payments plus interest must be set on the
7 level-payment basis. The interest rate to be charged on installment
8 payments is the prevailing rate on similar land transactions at the
9 time the contract is signed, as determined by the director, but in no
10 case may it be below five per cent per year or above the current usury
11 rate as set by AS 45.45.010(b) and (d) [IN ANNUAL INSTALLMENTS OF NOT
12 LESS THAN 10 PER CENT OF THE PURCHASE PRICE, WITH INTEREST AT THE RATE
13 OF NOT LESS THAN FIVE PER CENT A YEAR]. The director, with the con-
14 sent of the commissioner, may also impose conditions, limitations and
15 terms which he considers necessary and proper to protect the interest
16 of the state. Violations of any provision of this chapter or the
17 terms of the contract of sale subject the purchaser to appropriate
18 administrative and legal action, including but not limited to specific
19 performance, foreclosure, ejectment, or other legal remedies in accord-
20 ance with applicable state law [LEGAL ACTION, INCLUDING A FORECLOSURE
21 ACTION IN ACCORDANCE WITH APPLICABLE STATE LAW].

22 * Sec. 4. AS 38.05.067(b) is amended to read:

23 (b) The director shall not sell the lands under this section at
24 less than their fair [APPRAISED] market value. The director shall
25 make regulations necessary to ensure that lands sold under this section
26 are for bona fide residential use and not for speculation.

27 * Sec. 5. AS 38.05.068(a) is amended to read:

28 (a) Before offering to the public any land which is subject to a
29 valid existing United States Forest Service permit in effect in a

1 state-selected area at the time the area was patented to the state, or
2 which is subject to a lease issued under sec. 87 of this chapter, the
3 director shall offer the land for sale to the permittee or his suc-
4 cessor in title, if he can be found, at not less than its fair [APPRAISED]
5 market value before offering to the general public.

6 * Sec. 6. AS 38.05.070(c) is amended to read:

7 (c) A lease may be issued for a period up to 55 years, if it
8 appears to be in the best interest of the state and if the commis-
9 sioner approves. A lease for a period in excess of 25 years must
10 grant the lessee an option entitling him to extend the term of the
11 lease for up to three consecutive five-year periods in addition to the
12 original term. If the commissioner determines that the land or a part
13 of it which is the subject of a grazing lease is not being used for
14 the purpose issued, the lease may be declared void. [HOWEVER, A NON-
15 RENEWABLE LEASE FOR SCHOOL LANDS MAY BE ISSUED FOR A PERIOD NOT TO
16 EXCEED 99 YEARS.]

17 * Sec. 7. AS 38.05.087(a) is amended to read:

18 (a) Before offering to the public any land for lease which is
19 subject to a valid existing United States Forest Service permit in
20 effect in a state-selected area at the time the area was patented to
21 the state, the director shall offer the land for leasing to the per-
22 mittee at not less than its fair [APPRAISED] market value before
23 offering it to the general public.

24 * Sec. 8. AS 38.05.105 is amended to read:

25 Sec. 38.05.105. PERIODIC RENTAL ADJUSTMENTS. (a) Each lease
26 shall stipulate that the annual rental payment is subject to adjust-
27 ment at five-year intervals and changes or adjustments shall be based
28 [PRIMARILY] on a reappraised annual rental value. Any increase due to
29 reappraisal may not exceed 100 per cent of the annual rental for the

1 preceding five-year period. However, if the director of the division
2 of lands determines that residential development is the best use for
3 the land, the reappraisal period may be lengthened or the readjustment
4 waived in accordance with regulations adopted by the commissioner.
5 Before a waiver of rental readjustment is issued, the land shall have
6 a current reappraisal. A waiver is valid only if residential develop-
7 ment actually occurs, and only if it is necessary for obtaining primary
8 long-term financing. The regulations adopted under this section shall
9 ensure that the state receives a fair return from the land.

10 (b) The 100 per cent limit on increases in annual rental applies
11 only to leases executed after the effective date of this Act and to
12 leases converted under sec. 106 of this chapter.

13 * Sec. 9. AS 38.05 is amended by adding new sections to article 3 to
14 read:

15 Sec. 38.05.106. CONVERSION OF LEASES. (a) Any person holding a
16 valid lease under secs. 70 - 106 of this chapter, or who is an approved
17 assignee of such a lessee under the terms of the lease, may convert
18 his lease to obtain the benefits described in (b) of this section,
19 which were not available to him at the time his lease was originally
20 entered, if he makes all payments due under the lease as computed
21 according to this section and is not in violation of any other lease
22 provision.

23 (b) Those lease benefits which must be made available to a
24 lessee qualifying under (a) of this section are all of those lease
25 provisions authorized to be included in new leases executed by the
26 state after the effective date of this Act.

27 (c) The effective annual rental value at conversion shall be
28 based on the most recent reappraisal if reappraisal was within two
29 years after the effective date of this Act. In all other cases, the

1 annual rental value at conversion shall be based on the next reappraisal
2 after conversion.

3 (d) The rate which is applied to the fair market value of lease
4 property to compute annual rental value shall be the current market
5 rate except the director may reduce it to not less than six per cent.

6 (e) Any lease conversion as to trust lands is effective only if
7 approved by the appropriate board of trustees.

8 (f) Applications for conversion must be made within three years
9 after the effective date of this Act.

10 Sec. 38.05.108. STATE BOARD OF LAND APPEALS; REGULATIONS. (a)
11 There is created in the department a Board of Land Lease Appeals of
12 five members, one of whom is the commissioner or his designated
13 representative. The other members of the board are to be appointed by
14 the governor from the general public, after consideration of the
15 desirability of legal, natural resource, or real estate training and
16 experience as criteria.

17 (b) The director shall provide administrative support for the
18 board.

19 (c) The terms of the public members are three years each, except
20 that the initial terms of one of the members first appointed under
21 this chapter shall be for one year and one member for two years. The
22 public members are entitled to compensation in the amount of \$50 a day
23 for each day or portion of a day spent in actual meeting or on authorized
24 official business incident to their duties, and to all transportation
25 and per diem allowances authorized by AS 39.20.180.

26 (d) Jurisdiction of the board extends to matters arising under
27 secs. 70 - 106 of this chapter related to the leasing of state land
28 other than for the extraction of natural resources from which an
29 appeal may be taken under statute or regulation to the commissioner

1 from a decision of the director. The board in all those appeals filed
2 after the effective date of this Act has the authority to hear evidence
3 and recommend decisions to the commissioner when the director's decision
4 is appealed to the commissioner. The commissioner,, after consultation
5 with the board, shall adopt regulations governing the procedures of
6 the board.

7 * Sec. 10. AS 38.05.310 is amended to read:

8 Sec. 38.05.310. NOTICE AND APPRAISAL. (a) No land may be sold
9 or leased, or a renewal lease issued [WITHOUT PUBLIC NOTICE,] except
10 in the case of an oil or gas or mineral lease, unless it has been
11 appraised within 120 [90] days before the date of [FIXED FOR THE] sale
12 or lease. For over-the-counter sale under (b) of this section, an
13 appraisal [WHEN LAND IS OFFERED AT PUBLIC SALE BUT IS NOT SOLD AND IS
14 AVAILABLE AT PRIVATE SALE, NO REAPPRAISAL] is required unless the
15 director finds [CONSIDERS] that a change in value of the lands has not
16 [MAY HAVE] occurred. A grazing lease may be granted to a lessee of
17 federal grazing lands without prior appraisal, if his federal lease
18 was cancelled to allow the state to select the lands under lease. No
19 land may be sold or leased for less than fair [THE APPROVED, APPRAISED]
20 market value, except as provided in secs. 315 and 320 of this chapter
21 and secs. 75 - 85 of this chapter. No land or interest in land may be
22 sold, leased, or otherwise disposed of without public notice.

23 (b) When land is offered at public sale but is not sold, it may
24 be available for sale over the counter. The director shall review the
25 list of parcels of land available on a quarterly basis and shall
26 certify that there has been no change in value since the last reapprai-
27 sal. If an increase in value occurs in any parcel, the director shall
28 withdraw that parcel from sale over the counter.

29 * Sec. 11. AS 38.05.345(a) is amended to read:

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(a) Public notice of an auction sale [, LEASE OR OTHER DISPOSAL] of land or interest in it shall be substantially as follows.

* Sec. 12. AS 38.05.345 is amended by adding a new subsection to read:

(e) Public notice of a sale, lease, or other disposal of land or an interest in it other than by auction, or notice of a classification or other action concerning land, shall conform to the requirements of sec. 305 of this chapter and of this subsection. That notice must comply with the provisions of (b) and (d) of this section, except that the disposal may be made more than five weeks following the last appearance of the published notice.

* Sec. 13. AS 38.05.365 is amended by adding a new paragraph to read:

(24) "market value" or "fair market value" means the price, estimated in terms of money, which the property would bring if exposed for a sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

V. APPENDIX C
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
323 East Fourth Avenue
Anchorage, Alaska 99501

ADL NO. _____

LEASE AGREEMENT

THIS Lease agreement made and entered into this _____ day of _____, 19____, by and between the State of Alaska, through the Director of the Division of Lands, with the consent and approval of the Commissioner of the Department of Natural Resources, acting for and on its behalf under and pursuant to AS 38.05, as amended, and the regulations promulgated thereunder, as amended or hereafter amended, hereinafter referred to as the LESSOR; and _____ of _____ hereinafter referred to as the LESSEE:

WHEREAS, the Lessor has caused the lands herein demised to be appraised and such appraisal was made and approved on or after _____, 19____; and

WHEREAS, the Lessor has caused a notice of intent to lease the lands herein demised to be published as required by law or caused notices of intent to lease to be posted as required by law; and

WHEREAS, an auction of the herein demised property was held at the time and place designated by notice and said sale was approved by the Director of the Division of Lands, Department of Natural Resources, State of Alaska:

NOW THEREFOR, the Lessor has agreed to let and does hereby let and demise to the Lessee, and the Lessee has agreed to take and does hereby take from the Lessor the surface estate of all that lot, piece, or parcel of land more particularly bounded and described, as follows:

Located in the _____ Recording District, State of Alaska.

TO HAVE AND TO HOLD the said demised premises for a term of _____
() years commencing on the _____ day of _____, 19____, and ending at
12 o'clock midnight on the _____ day of _____, _____, unless
sooner terminated as hereinafter provided.

The Lessee shall pay to the Lessor rental as follows: Equal _____ payments,
in advance, on or before the _____ day of _____ of every year during
said term at the rate of _____
Dollars (\$ _____) per _____; such payments to be subject to adjustment
as hereinafter required from the effective date hereof, as provided herein.

It is agreed that each of the covenants, terms and agreements herein contained
shall be binding upon the parties and upon their respective successors and assigns.

1. Appurtenances, and Encumbrances-- Lessor leases and grants to Lessee all ease-
ments, parking and loading rights, rights of ingress and egress, fixtures and
appurtenances now or hereafter belonging or pertaining to said premises. The des-

cribed premises are leased, subject to patent restrictions, easements, rights-of-way, if any, zoning and building restrictions and statutes and governmental regulations now in effect or hereafter adopted by any governmental authority.

2. Payment of Taxes and Assessments-- Lessee agrees to pay to the public authorities charged with collection thereof, promptly as the same may become due and payable, all taxes, permit, inspection and license fees and other public charges, whether of a like or different nature, except for general and special assessments lawfully levied upon the leasehold estate and any buildings, structures, fixtures, improvements or leasehold interest now or hereafter located thereon, or arising in respect of the occupancy, use or possession of the leased Premises, and which are charged against and are, or may become, a lien during the term of this lease; and Lessee agrees to exhibit to Lessor, on demand receipts evidencing payment of all taxes, fees and other similar public charges so payable by Lessee. Lessee shall also pay all charges of water, sewer, gas, electricity, power or other public utility services rendered on or to the Premises during the term of this lease as such charges become due.

3. Documentation of Improvements-- Lessee must within 90 days of completion of any site improvements, including but not limited to clearing, leveling, excavation, and backfill, and exclusive of any structures, file with the lessor adequate and reasonable documentation of such improvements including any applicable costs and quantities. Such documentation is intended to aid in future determinations of the original condition of the Premises.

4. Notification and Late Payment Charge-- In the event lessee becomes 30 days delinquent in payments due, a late payment charge of 6% of such amount due shall be levied against the lease. Additionally, a charge for notification for payments 30 days late shall be made at the rate of \$5.00 for the first notice and \$20.00

for the second notice.

5. Permitted Uses-- (a) The Lessee shall use the leased Premises for uses and purposes consistent with those cited in Attachment 1, and in conformance with applicable local zoning ordinances. At any time Lessee may request a change in permitted uses, provided that Lessee's existing or proposed use of the Premises is consistent with existing zoning. If the Lessor concurs with such change of permitted use, then this lease shall terminate, and a new lease, upon a form and containing terms, appraisal and rental rate applicable to the changed classification; shall be executed for the balance of the unexpired lease term, or renewal term if applicable, then remaining.

b. Lessee may request that part of the leased Premises be severed from the Premises for purposes of changing of that part for a use or uses not permitted under the then existing permitted uses of the Premises. If the Lessor concurs, then this lease shall terminate as to the part so severed, and a new lease, upon a form and containing terms, appraisal and rental rate applicable to the changed permitted uses; shall be executed for the balance of the unexpired lease term, or renewal term if applicable, then remaining. The annual rentals applicable to the original leased Premises shall be adjusted to reflect the effect of severance of the part permitted by this paragraph for the balance of the original lease term or the renewal term, if applicable. If severance of a portion of the Premises is permitted, Lessee shall comply with all state and local laws and ordinances regarding the subdivision of real property, and shall bear the expenses and costs attributable to survey, recording and other compliance with said laws and ordinances.

6. Compliance with Laws' Ordinance and Regulations-- Lessee shall comply with all applicable laws, ordinances and regulations of duly constituted public au-

thorities now or hereafter in existence which in any manner affect the leased Premises or the sidewalks, alleys, streets, and ways adjacent thereto, or any buildings, structures, fixtures or improvements or the use thereof. Lessee further agrees that it will not permit any unlawful occupation, business or trade to be conducted on the Premises, or any use to be made thereof contrary to any law, ordinance or regulation applicable thereto.

The lessee, at its own cost and expense, shall keep the leased Premises and all improvements which at any time during the term of this lease may be situated thereon, in good maintenance, condition and repair during the entire term of this lease, and hereby expressly waives any right to make repairs to the Premises at the expense of Lessor which may be allowed by any statute or law in effect at the time of the execution of this lease or any amendment thereof, or by any other statute or law which may be hereafter passed during the term of this lease. The Lessee's rights under this Lease may be terminated by the Director, in whole or in part, if the leased Premises are used for a purpose unlawful under Federal or State law or regulation, or local Government ordinance as applicable.

7. Lessee's Rights of Occupancy and Use-- Lessee, when not in default of performance of any of its obligations hereunder, shall have the following rights, during the term of this Lease; from time to time and in such manner, and to such extent, as Lessee may in its sole judgment deem advisable, except where any of said rights is conditioned upon prior approval of Lessor: (a) The right to demolish, remove or otherwise dispose of any improvements presently or subsequently situated upon the leased Premises; (b) The right to erect, place, or install upon the leased Premises buildings, structures, and improvements as from time to time it shall deem advisable; (c) The right to make such alterations, additions and repairs to the leased Premises as it may desire.

8. Disposition of Improvements Upon Termination— (a) All buildings, structures and permanent improvements, including any signs which are installed, placed or attached in or about the leased Premises by Lessee, shall remain the property of Lessee at the expiration or termination of this lease, or of any renewal term thereof. The lessee shall within 60 days after termination or expiration of the lease remove all improvements located on the leased Premises, provided that such removal will not cause injury or damage to the leased Premises; and further provided that the Lessor may extend the time for removing such improvements in a case where hardship is demonstrated. Following removal Lessee shall leave Premises in a safe and natural condition. The retiring Lessee may, with the consent of the Lessor, sell his improvements to the succeeding lessee.

(b) If any improvements and/or chattels having an appraised value in excess of \$10,000.00, as determined by the Lessor, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee, be sold at public sale under the direction of the Lessor. The proceeds of sale shall inure to the Lessee who placed such improvements and/or chattels on the lands after payment to the Lessor of all rents due and owing and expenses incurred in holding such sale. In case there are no other bidders at any such sale, the Lessor is authorized to bid on such improvements and/or chattels. The Lessor shall acquire all rights, both legal and equitable, that any other purchaser could acquire by reason of said sale and purchase.

(c) If any improvements and/or chattels having an appraised value of \$10,000.00 or less, as determined by the Lessor, are not removed within the time allowed, such improvements and/or chattels shall revert to, and absolute title shall vest in, the Lessor.

9. Freedom From Liens-- Lessee will not permit any mechanics', laborers', or

materialmen's liens to stand against the leased Premises or improvements for any labor or materials furnished to Lessee, or claimed to have been furnished to Lessee or to Lessee's agents, contractors, or sublessees, in connection with work of any character performed on said Premises or improvements by or at the direction or sufferance of Lessee; provided, however, that Lessee shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Lessee shall give to Lessor such reasonable security as may be demanded by Lessor to insure payment thereof and to prevent any purported sale, foreclosure or forfeiture of the premises or improvements by reason of such non-payment. Such security need not exceed one and one-half times the amount of such lien or such claim of lien. Lessee shall record such bond as contemplated by Section 34.35.072, Alaska Statutes upon Lessor's demand. Lessee shall immediately pay any judgment rendered on any proven claim of lien, together with all proper costs and charges, and shall have such lien released or judgment satisfied at Lessee's own expense. The State may file such notices of non-responsibility as it may deem necessary, pursuant to A.S. 34.35.065.

10. Lawful Use of Premises-- The Lessee may use and occupy the leased Premises for any lawful purpose provided such purpose is allowed under Attachment 1 of this Lease.

11. Indemnity to Lessor-- Lessee will indemnify and hold Lessor harmless from and against all claims and demands for loss or damage, including property damage, personal injury or wrongful death, arising out of or in connection with the use or occupancy of the Premises by Lessee or any other person under Lessee, and from any accident or fire on the Premises and from any nuisance made or suffered thereon, and from any failure by Lessee to keep the Premises in a safe condition, and Lessee will reimburse Lessor for all its costs and expenses, including reasonable attorneys' fees, incurred in the defense of any such claims; and Lessee will hold all goods,

materials, furniture, fixtures equipment, machinery and other property whatsoever on the Premises at the sole risk of Lessee, and will save Lessor harmless from any claim of loss or damage thereto by any cause whatsoever. If all or part of the improvements placed by Lessee on the demised premises are destroyed by fire, earthquake or other cause, Lessee shall remove the debris and clean up the affected area within 60 days of the occurrence of such destruction, and may surrender to Lessor this lease, together with any interest of Lessee and of any mortgagee in the remaining insurance proceeds and Lessee may thereby be relieved of any further obligation hereunder.

12. Default-- If Lessee at any time during the term or renewal term of this lease (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal, which has or might have the effect of preventing Lessee from complying with the terms of this lease) (a) shall fail to make payment of any installment of rent or of any other sum herein specified to be paid by Lessee, or (b) shall fail to observe or perform any of Lessee's other covenants, agreements or obligations hereunder, and if any such default shall not be cured as to (a) within ten days after Lessor shall have given Lessee written notice of such failure to make payment, or as to (b) within thirty (30) days after Lessor shall have given to Lessee written notice specifying such default or defaults, Lessee shall not have commenced diligently to cure such default; or if Lessee has filed a voluntary petition or has become subject to an involuntary petition under any provision of the Bankruptcy Act, 11 U.S.C. 701 et. seq; or if Lessee finally and without further possibility of appeal or review is adjudicated a bankrupt or insolvent; or if Lessee has a receiver or a Trustee appointed for all or substantially all of its business or assets on the ground of Lessee's insolvency; or if Lessee has itself appointed as debtor-in-possession in a proceeding for a reorganization or an arrangement; or if Lessee shall make an assignment for the benefit of its creditors, then in any such event Lessor shall have the right,

at its election, then or at any time thereafter, and while such default, defaults or events shall continue, to give Lessee written notice of Lessor's intention to terminate this lease and all of Lessee's rights hereunder, on the date specified in such 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 such notice this lease and all rights granted Lessee hereunder shall terminate as fully as if the lease had then expired by its own terms; and Lessee hereby covenants to peaceably and quietly surrender to Lessor said leased Premises and all structures, buildings improvements and equipment located thereon, subject to paragraph 7 (a) above and to execute and deliver to Lessor such instrument or instruments which may be required by Lessor to properly evidence termination of Lessee's rights and interest hereunder.

In the event of termination of this lease as provided in this paragraph 12, Lessor shall have the right to repossess the leased Premises and such structures, buildings, improvements and equipment, thereon and subject to paragraph 5 above either with process of law or through any form of suit or proceeding, as well as the right to sue for and recover all rents and other sums accrued up to the time of such termination, and damages arising out of any breach on the part of Lessee, including damages for rent for the balance of the lease term not then accrued. Lessor shall also have the right, without taking possession of the premises or terminating this lease, to sue for and recover all rents and other sums, including damages, at any time and from time to time which may accrue hereunder as a result of any default of Lessee.

13. Condemnation-- If the whole or any part of the demised premises shall be taken for any public or quasi-public use, under any statute or by right of eminent domain or private purchase in lieu thereof, by any public or quasi-public body vested with the power of eminent domain, then when possession shall be taken thereunder of the leased Premises, or any part thereof, the following provisions

shall control:

a. Taking of All Premises— If all of the Premises are taken by condemnation the term of this lease and all rights of the Lessee hereunder shall immediately terminate, and the rent shall be adjusted as of the time of such termination so that Lessee shall have paid rent only up to the time of such taking. Lessor shall be entitled to the full condemnation proceeds, except that portion thereof attributable to the value of the buildings or improvements placed on the Premises by Lessee.

b. Taking of Substantial Part of Premises-- If the taking by condemnation reduces the ground area of the leased Premises by at least thirty percent (30%), or materially affects the use being made by the Lessee of the demised premises, Lessee shall have the right, by written notice to Lessor made not later than one hundred eighty (180) days after possession shall be taken, to elect to terminate or to not terminate this lease under the provisions set forth herein. If the election to terminate is made the provisions of (a) of this paragraph relating to the taking of the whole Premises shall govern. If the election not to terminate is made the lease shall continue and Lessor shall be entitled to the full condemnation proceeds except the portion thereof attributable to the value of the buildings or structural improvements placed on the Premises by Lessee; and rent at the existing rate and amount shall be adjusted as of the date of the taking of possession, and the rent for the balance of the term, except as modified from time to time under paragraph 1 of attachment 1 hereof, shall be reduced so that the new rent shall be that part of the former rent (before condemnation) which the unimproved value of the untaken Premises (appraised after the taking) bears to the unimproved value of the entire Premises immediately before the taking. Any dispute, controversy or claim arising out of or relating to the fixing of the new rent shall be settled by arbitration as provided herein.

c. Taking of Insubstantial Part of Premises-- If the taking is of such an insubstantial portion of the ground area that the use being made by Lessee of the leased premises is not materially affected, the provisions of this paragraph regarding Lessee's election not to terminate shall govern.

14. Quiet Enjoyment-- Provided Lessee is not in default hereunder, Lessor covenants that Lessee shall have peaceful and quiet enjoyment of the leased Premises without let or hindrance on the part of Lessor, and Lessor will warrant and defend Lessee in the peaceful and quiet enjoyment of the leased Premises.

15. Notices-- All notices required or permitted under this agreement shall be made by certified or registered mail, postage prepaid, to the parties at the following addresses.

To The Lessor:

To The Lessee:

16. Rights or Remedies-- Except as may be inconsistent with or contrary to any provision of this lease, no right or remedy herein conferred upon or reserved to Lessor shall be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

17. Waiver or Forebearance-- The receipt of rent by the Lessor, with or without knowledge of any breach of the lease by the Lessee, or of any default on the part of the Lessee in the observance or performance of any of the conditions or covenants of this lease, shall not be deemed to be a waiver of any provision of this lease. No failure on the part of the Lessor to enforce any covenant or provision herein

contained, nor any waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate such term or covenant; nor shall any forbearance or written waiver affect the right of the Lessor to enforce any term or covenant in the event of any subsequent breach or default. The receipt by Lessor of rent or any other sum of money or the termination, in any manner, of the lease term or the giving by Lessor of any notice hereunder to effect such termination, shall not reinstate, continue, or extend any term herein leased, or destroy, or in any manner impair the validity of any such notice of termination as may have been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless the contrary effect shall be expressed in writing and signed by the Lessor.

18. Inspection— Lessor shall, at all reasonable times have access to the Premises for the purpose of inspection.

19. Successors in Interest-- This Lease shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of the parties hereto.

20. Assignment or Subletting-- Lessee shall not sublet or assign the leased premises or any part thereof, without the prior written consent of Lessor to such subletting or assignment, which consent shall not be unreasonably withheld, subject to use provisions of this lease. However, Lessee, without prior authorization may assign this Lease, or any part thereof, to a duly licensed and authorized lending institution for loan security purposes, provided that this right to assign shall not operate as a subordination of Lessor's rights hereunder, nor a subordination of its fee. Lessor agrees that upon receipt of application for assignment by Lessee, it will consent to or deny a proposed subletting or assignment by Lessee. No assignment or subletting of the Premises or any portion thereof by Lessee shall void Lessee's

obligation to pay the rent herein reserved for the full term of this sublease or any extensions thereof. Anything contrary in the foregoing notwithstanding, Lessee shall have the right to sublease all or any portion of the enclosed space in any building which Lessee may construct upon the leased Premises without prior written approval of Lessor.

21. Soil Conditions and Water Drainage-- Lessor makes no warranty and assumes no liability regarding the soil conditions or water drainage upon the leased premises.

22. Mineral Reservation-- The Lessor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above-described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials and fossils. All coal, oil, gas and other minerals and all deposits of stone or gravel valuable for extraction or utilization, are excepted from the operation of a surface lease. Specifically, the lessee of the surface rights shall not sell or remove for use elsewhere any timber, stone, gravel, topsoil, or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used. It also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessee, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils; and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by

its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Provided, however, no rights shall be exercised by the Lessor or its mineral lessees, until provision has been made by the Lessor or its mineral lessees to pay to the Lessee of the land, upon which the rights herein reserved to the Lessor or its mineral lessees, are sought to be exercised, full payment for all damages sustained by said Lessee, by reason of entering upon said land; and provided that if said Lessee for any cause whatever refuses or neglects to settle said damages, the Lessor or its mineral lessees, or any applicant for a mineral lease or contract from the Lessor or its lessees for the purpose of prospecting for valuable minerals, or option contract or lease for mining coal or lease for extracting petroleum or natural gas, shall have the right, after posting a surety bond with the Director issued by a corporation qualified to do business in Alaska and licensed to sell insurance in Alaska, or a bond executed by one or more individual sureties approved by the Director, after due notice and opportunity to be heard, to be sufficient in amount and security to secure the said Lessee full payment for all such damages, to enter upon the land in the exercise of said reserved rights, and shall have the right to institute such legal proceedings in a court of competent jurisdiction wherein the land is situated, as may be necessary to determine the damages which the surface lessee of such lands may suffer.

23. Mortgage of Leasehold Interest of Tenant— A leasehold mortgagee, a beneficiary of a deed of trust, or a security assignee shall have and be subrogated to any and all rights of Lessee with respect to the curing of any default hereunder by Lessee. If the holder of any such mortgage, the beneficiary of any such deed of trust, or the security assignee shall give Lessor, before any default shall have occurred in the Lease, a written notice containing the name and post office address of such holder, Lessor shall thereafter give to such holder a copy of each notice of default by Lessee at the same time as any notice of default shall be given by Lessor to Lessee; and Lessor will not thereafter enter into any modification of this Lease without the prior written consent of such mortgagee, beneficiary or security assignee. If by reason of any default of Lessee, either this Lease or any renewal thereof shall be terminated at the election of Lessor prior to the stated expiration thereof, Lessor shall enter into a new Lease with the leasehold mortgagee, the beneficiary of a deed of trust, or the security assignee, for the unexpired portion of the lease term, effective as of the date of such termination, at the rent and on the terms herein contained, subject to the following conditions.

Mortgagees, beneficiary or security assignee shall do the following:

- a. make written request to Lessor for a new lease within forty (40) days after the date of such termination; and such written request shall be accompanied by payment to Lessor of all sums then due Lessor under this lease as if termination had not occurred but with such costs as are permitted under this Lease.
- b. pay to Lessor, at the time of the execution and delivery of such new Lease, any and all sums due thereunder, in addition to those which would at the time of the execution and delivery thereof be

due under this Lease but for such termination, and in addition thereto, any reasonable expenses, including legal and attorneys' fees to which Lessor shall have been subjected by reason of such default.

c. on or before the execution and delivery of such new Lease, perform all other conditions required to be performed by Lessee, to the extent that Lessee shall have failed to perform such conditions.

24. Arbitration— Any dispute between the parties arising under this lease or through the performance or non-performance of any term of this lease shall be first subject to resolution by arbitration, under the authority and procedures contained in Alaska Statutes 09.43. Appointment of an arbitrator shall be made by agreement between the parties. If no agreement can be reached, each party shall appoint an arbitrator, who shall by agreement between themselves appoint a third arbitrator. If any State Board of Land Appeals is later created which shall have jurisdiction over disputes which may arise under this lease, such Board shall assume jurisdiction and no requirement for arbitration shall thereafter be imposed during the pendency of such jurisdiction.

25. Integration and Modification— This document including attachments which by reference are made a part hereof, contains the entire agreement of the parties hereto. All negotiations, statements, representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this lease, and the performance by either party hereto, are merged and integrated into the terms of this document.

This Lease may not be modified nor amended except by a writing signed by both parties hereto, and any purported amendment or modification is without

effect until reduced to a writing signed by both parties hereto.

IN WITNESS WHEREOF the State of Alaska, Lessor, acting through the Director of the Division of Lands of the Department of Natural Resources, lawfully authorized thereunto, has caused these presents to be executed at Anchorage, Alaska, in duplicate, and the said Lessee has hereunto set his hand, agreeing to keep, observe and perform the rules and regulations promulgated under AS 38.05, as amended, the terms, conditions and provisions herein contained, on the Lessee's part to be kept, observed and performed.

Director, Division of Lands

APPROVED:

Trustee

COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
STATE OF ALASKA

UNITED STATES OF AMERICA)

LESSEE(S)

ss

State of Alaska)

THIS IS TO CERTIFY that on the _____ day of _____, 19____,
before me, the undersigned Notary Public, personally appeared _____
known to me and known by me to be the _____ of the Division of
Lands of the Department of Natural Resources, and acknowledged to me that he

executed the foregoing lease for an on behalf of said State, freely and voluntarily and for the use and purposes therein set forth.

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

Notary Public in and for the State of Alaska

My commission expires _____

UNITED STATES OF AMERICA)

ss

State of Alaska)

THIS IS TO CERTIFY that on this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for Alaska duly commissioned and sworn, personally appeared _____ to me personally known to be one of the persons described in and who executed the within instrument and the said _____ acknowledged to me that he signed and executed the same freely and voluntarily for the uses and purposes therein mentioned.

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

AGO 935867

Notary Public in and for the State of Alaska

My commission expires _____

APPROVED AS TO FORM:

ATTORNEY GENERAL

By _____

Deputy Attorney General