ORDINANCE 153

AN ORDINANCE OF THE CITY COUNCIL OF BETHEL, ALASKA, AUTHORIZING THE CITY OF BETHEL TO ENTER INTO A LEASE OF REAL PROPERTY WITH AVCP INCORPORATED

BE IT ORDAINED BY THE CITY COUNCIL OF BETHEL, ALASKA, that the City of Bethel, Alaska enter into a lease of Tract D, Block 2, Turnkey III housing Development with The Association of Village Council Presidents, Inc. for educational purposes under terms pursuant to the Lease hereto attached.

PASSED AND APPROVED THIS 13th DAY OF December, 1984.

Joe Sullivan
MAYOR

ATTEST:

Anna Wassilie
Wayne J. Maiers, City Clerk

LEASE AGREEMENT

This lease is made this 17th day of December, 1984, by and between the CITY OF BETHEL, hereinafter called "Lessor" and ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS, hereinafter called the "Lessee".

WITNESSED:

1. Premises. Lessor, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Lessee, does hereby let, lease and demise to Lessee that certain real property hereinafter called "leased premises", situated in Bethel, Alaska, and more particularly described as an unimproved property containing approximately 16480 square feet legally described as:

> Block 2, Tract D, Turnkey III Housing Development, Bethel Recording District Fourth Judicial District, Bethel, Alaska, as shown in Book 17, Pages 13-16, as Recorded April 11, 1969.

2. Appurtenances, etc. Lessor leases and grants to Lessee all easements, parking and loading rights, right of ingress and egress, fixtures and appurtenances now or hereafter belonging to or appertaining to said premises.

3. Encumbrances. The described premises are leased, subject to deed restrictions, easements, right-of-way, if any, zoning and building restrictions and government regulations now in effect or hereafter adopted by any governmental authority.

4. Term. The term of this lease shall be 20 years, commencing March 1, 1985, through and including February 28, 2005, unless sooner terminated as hereinafter provided.

Lessor agrees to extend the term of this lease for a further term of 5 years, at the same rental, payable in like manner and subject to same agreements as are contained in this lease, provided Lessee gives written notice to Lessor of his desire to renew lease, at least 3 months before expiration of

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terms of this lease, and provided tenant is not in default in performance of terms and conditions of this lease, and provided this lease is not terminated before expiration of term thereof as provided for herein.

5. Rental. Lessee agrees to pay a monthly rental fee of One hundred dollars ($ 100.00) for each and every month of the entire term hereof, payable on or before the first day of each month.

6. Compliance With Laws and Care of Premises. Lessee shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter enacted in any manner affecting the demised premises for the sidewalks, alleys, streets, and way adjacent thereto or any buildings, structures, fixtures and improvements or the use thereof, whether or not any such laws, ordinances or regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Lessee agrees to hold Lessor financially harmless (a) from the consequences of any violation of such laws, ordinances and/or regulations and (b) from all claims for damages on account of injuries, death or property damage resulting form such violation. Lessee further agrees that it will not permit any unlawful occupation, business or trade to be conducted on said premises or any use to be made thereof contrary to any law, ordinance or regulation as foresaid with respect thereto.

Lessee, at its own costs 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 condition and repair during the entire term of this lease, hereby expressly waiving the right to make repairs at the expense of landlord as provided for in any statute or law in effect at the time of the execution of this lease or any amendment thereof, or any other statute or law which may be hereafter passed during the term of this lease.

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7. Lessee's Duties. Lessee agrees to pay all charges for light, heat, fuel, power and water furnished or supplied to or on any part of the premises. Lessee further agrees to pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed on the premises.

8. Lessee's Right, etc. Lessee, agrees to keep the premises in as good repair as the same shall be at the commencement of the term, wear and tear arising from the reasonable use of the same and damages by the elements excepted. Lessee may make such alterations, additions, or improvements in such parts of the premises as he deems necessary for his purposes, provided, however, written consent of Lessor is first obtained. Upon termination by expiration of time or otherwise of this lease or of any renewal thereof, Lessee shall remove all improvements, trade fixtures and moveable items of personalty, provided that any damage caused to the leased premises by reason of such removal shall be paid by Lessee. Any improvements, trade fixtures and moveable items of personalty not so removed by tenant shall become the property of Lessor.

9. Liens. Lessee will not permit any mechanics, labors, or materialmans liens to stand against the leased premises 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 or claimed to have been 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 reasonable security as may be damanded by Lessor to insure payment thereof and prevent any sale, foreclosure or forfeiture of the premises or improvements by reason of such non-payment. Lessee will immediately pay a judgment rendered with all proper

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costs and charges and shall have such liens released or judgment satisfied at Lessee's own expense.

10. Use of Premises. Tenant convenants that the demised premises will be used only for the purposes directly related to the operation of educational facilities and no other use whatsoever shall be made of the demised premises. The Lessee further covenants that he will neither cause, nor maintain, nor permit any public or private nuisance to exist on the leased land, nor will tenant fail to maintain the land in an orderly, neat, and clean condition, free of hazard and nuisance.

11. Indemnification. Lessee agrees to protect, defend, indemnify and save harmless Lessor from and against any and all claims, damands and causes of action of any nature whatsoever, and any expenses incident to defense of and by Lessor therefrom for any injury to or death of persons or loss of or damage to property occurring on the demised premises, or in any manner arising out of Lessee's use and occupation of said premises, or the condition thereof, during the term of this lease.

Lessor agrees to protect, defend, indemnify and save harmless Lessee from and against any and all claims, demands and causes of action for injury to or death of persons or loss of or damage to property occurring on the demised premises arising out of Lessors activities, if any, upon the premises.

Lessee shall procure and maintain liability insurance coverage, naming Lessor as an insured, which coverage, pertaining to the demised premises, for such amounts as the Lessor reasonably requires to adequately cover any risk which may arise by Lessees use of the same. Lessee agrees to furnish copies of certificates evidencing insurance coverage of the demised premises to Lessor.

12. 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 public body invested with the power

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of eminent domain, then, when possession shall be taken thereunder of the demised premises, or any part thereof, the following provisions shall be operative.

(a) Taking of All Premises. The term herein demised and all rights of Lessee hereunder shall immediately cease and terminate and the rent shall be adjusted as of the time of such termination so that tenant shall pay rent up to the time of taking only; provided, however, that Lessee shall be entitled to that portion of the award attributable to the value of the buildings or improvements put up by Lessee with its own funds.

(b) Taking of Substantial Part of Premises. If the taking reduces the ground area of the demised premises by at least 50% and materially affects the use being made by the Lessee of the demised premises, Lessee shall have the right, by written notice to landlord affected not later than 30 days after possession shall be taken, to elect to terminate this lease. If the election to terminate is made, the provisions of (a) of this section relating to the taking of the whole shall govern. If election to terminate is not made or if there is a taking of an insubstantial part of the premises, the following shall govern (1) the lease shall continue; (2) the Lessor shall be entitled to the full condemnation proceeds except the portion thereof attributable to the value of buildings or improvements put up by lessee; and (3) rent at the old rate shall be adjusted as of the date of taking possession and the rent for the balance of the term, except as modified from time to time under provision 9 hereof, shall be reduced so that the new rent shall be that part of the formal rent (before condemnation) which the unimproved value of the untaken premises (appraised after the taking, and repair of any building damage) bears to the unapproved value of the entire premises demised immediately before the taking.

13. Quiet Enjoyment. Provided lessee is not in default hereunder, lessor covenants that Lessee shall have peaceful and

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quiet enjoyment of the lease premises without let or hindrance on the part of Lessor, and that Lessor will warrant and defend Lessee in the peaceful and quiet enjoyment of the demised premises.

14. Notices. Any and all notices required or permitted under this lease, unless otherwise specified in writing by the party whose addresses change, shall be as follows:

Lessor:

CITY OF BETHEL
CITY MANAGER
P.O. Box 323
Bethel, Alaska 99559

Lessee:

PRESIDENT
ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS
P.O. Box 219
Bethel, Alaska 99559

15. Default. If Lessee at any time during the term of this lease shall (a) fail to make payment of any installment of rent or of any other sum herein specified to be paid by Lessee, or (b) 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 30 days after such default to make payment, or as to (b) within 30 days after Lessor shall have given to Lessee written notice specifying such default or defaults, Lessee shall not have commenced to cure such default and proceed diligently to cure the same, 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 notice of Lessor's intention to terminate this lease and all Lessee's rights hereinunder, on a date specified at such notice, which date shall not be less than 30 days after the date of giving of such notice, and on the date specified in such notice, the term of this lease and all rights granted Lessee hereinunder shall come to an end as fully as if

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the lease then expired by its own terms, and Lessee hereby covenants peaceably and quietly to yield up and surrender to Lessor said lease premises and all structures, buildings, improvements and equipment located thereon, and to execute and deliver to Lessor such instrument or instruments as shall be required by Lessor as will properly evidence termination of Lessee's rights hereinunder or its interests therein.

In the event of termination of this lease as in this paragraph above provided, Lessor shall have the right to repossess the leased premises and such structures, buildings, improvements and equipment, 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 not then accrued. Lessor shall also have the right, without resuming 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 accruing hereinunder.

16. Cost Upon Default. In the event either party shall be in default in the performance of any of its obligations under this lease and an action shall be brought for the enforcement thereof, the defaulting party shall pay to the other all the expenses incurred therefore, including reasonable attorneys' fees.

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

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

19. Inspection. Lessee agrees to permit Lessor and his agents to enter on the premises or any part thereof, at all reasonable hours, for purpose of examining or exhibiting same or making such repairs or alterations as may be necessary for safety or preservation thereof.

20. Successors in Interest. This lease shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

21. Assignment or Subletting. Should this lease be terminated prior to the expiration date as a result of Lessees default, upon notice to Lessor, the State of Alaska may assume, and/or delegate the rights and duties of Lessee under this lease for the purposes and pursuant to the terms set forth in this lease. Lessee may not otherwise assign or sublet the demised premises or any part thereof without the prior written consent of Lessor to such subletting or assignment. Lessees request to asign or sublease must be in writing and must show name and address of the proposed assignee or sublessee.

22. Holding Over Period. In the event that the Lessee holds over at or after the term, or any extended term, the tenancy shall be deemed a month to month tenancy commencing on the first day of the holding over period.

23. Integration and Modification Period. This document contains the entire agreement of the parties hereto. All

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3812 Spenard Road
Suite 201
Anchorage, AK 99503
(907) 276-3125

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negotiations, statements, or representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this lease and the performance of either party hereto are merged and integrated into the terms of this document.

24. State of Alaska. The State of Alaska, in accordance with the provisions of Chapter 24, SLA 84, has granted $250,000.00 to the Association of Village Council Presidents for the design, construction, and acquisition of a Headstart/preschool building. A copy of this grant is on file with the Alaska Department of Health and Social Services. In recognition of the terms of that grant, both the Lessor and the Lessee agree that the improvements constructed with the grant funds may be used only for purposes described in that grant. These grant covenants and restrictions shall run for a period of twenty years from the date of the grant agreement. In the event that the improvements revert to the Lessor because of default by the Lessee or termination of the lease, both parties agree that the interest of the State of Alaska in these improvements shall be recognized.

This lease may not be modified nor amended except by writings 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 parties have hereunto executed this lease agreement the day and year first hereinabove written.

DATED: 12/17/84 CITY OF BETHEL,

By: City Manager

DATED: 12/17/84 ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS,

By: President

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

The foregoing lease agreement was acknowledged before me this 17th day of December, 1984, by Lynne Hoffman, on behalf of CITY OF BETHEL.

Brian Shaver Santamour
Notary Public for the State of Alaska
My Commission Expires: 03/2/87

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

The foregoing lease agreement was acknowledged before me this 17th day of December, 1984, by Gene Peltola, on behalf of ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS.

Brian Shaver Santamour
Notary Public for the State of Alaska
My Commission Expires: 03/2/87

LEWIS SHEPHERD & GARRETT
3012 Spenard Road
Suite 201
Anchorage, AK 99503
(907) 276-1625