

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

## *CITY OF BETHEL, ALASKA*

### **ORDINANCE #09-26**

#### **AN ORDINANCE AUTHORIZING A GROUND LEASE OF THE PROPERTY LOCATED AT 127 ATSAQ WAY TO THE ORUTSARARMIUT NATIVE COUNCIL**

**BE IT ORDAINED** by the City Council of Bethel Alaska, that:

**SECTION 1. Classification.** This is a non-code ordinance.

**SECTION 2. Legal Description.** The property ("Property") which is the subject of the ground lease is more particularly described as:

Tract H, Block 2, Turnkey 111 Housing Development, according to Plat 87-6, filed in the Bethel Recording District, Fourth Judicial District, State of Alaska

**SECTION 3. Disposal to Entity Providing a Necessary Public Service.** In accordance with the Bethel Municipal Code 4.08.030 the Council finds:

- (1) that the City of Bethel has been awarded two grants from the State of Alaska to support the provision of senior services: (1) a Nutrition, Transportation, and Support Services, and (2) a Home and Community Based Care grant;
- (2) that Orutsaramuit Native Council is administering the two grants on behalf of the City of Bethel pursuant to the Memorandum of Agreement dated August 16, 2005;
- (3) that the Property is being used by the Orutsaramuit Native Council to provide services to low income seniors over 60 years of age, minorities, and those living in a rural area as specified for recipients of the Nutrition, Transportation, and Support Services grant;
- (4) that the Property is being used by the Orutsaramuit Native Council to provide services to eligible seniors, those at risk of institutionalization, individuals with disabilities and others that qualify under the Home and Community Based Care grant;
- (5) Orutsaramuit Native Council's administration of the two grants supports the public health and safety by providing services to seniors and other people in need of

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

assistance who might otherwise not receive assistance and is a necessary public service; and

- (6) By administrating the two grants, Orutsararmiut Native Council is furthering the public interest and is an appropriate entity for a ground lease of the Property as intended by the Memorandum of Agreement;

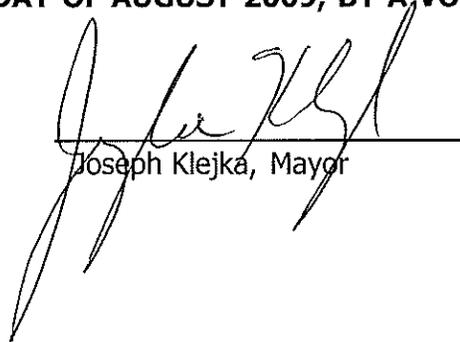
Based upon the foregoing findings, the Council hereby authorizes the City Manager to execute an agreement on behalf of the City of Bethel for a ground lease of the property described in Section 2 to the Orutsaramuit Native Council for the amount of one dollar (\$1.00) per year.

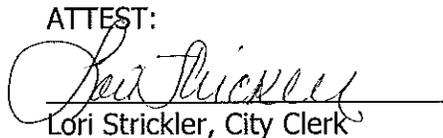
**SECTION 4. General Conditions.** The following general conditions shall be included, along with other necessary conditions, in the ground lease:

- (1) The Property is to be restricted to use as required by the two grants or otherwise used for the provision of services to seniors;
- (2) If the Property is not used as required, the ground lease shall terminate;
- (3) The ground lease shall not be assigned to another entity;
- (4) Orutsaramuit Native Council shall have full responsibility for the maintenance and upkeep of the Property; and
- (5) Orutsaramuit Native Council shall waive its sovereign immunity in regard to the ground lease;

**SECTION 5. Effective Date.** This ordinance shall become effective thirty (30) days after passage by the Bethel City Council.

**PASSED AND APPROVED THIS 8<sup>th</sup> DAY OF AUGUST 2009, BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.**

  
\_\_\_\_\_  
Joseph Klejka, Mayor

ATTEST:  
  
\_\_\_\_\_  
Lori Strickler, City Clerk

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

**BETHEL RECORDING DISTRICT**

**After Recording Return to:**

The City of Bethel  
Attn: City Manager  
P.O. Box 1388  
Bethel, AK 99559

**GROUND LEASE**

This Ground Lease (the "Lease") is entered into this - day of July, 2009 ("Effective Date"), between the City of Bethel, a municipal corporation located in Bethel, Alaska ("Landlord"), and Orutsararmiut Native Council ("Tenant").

For valuable consideration, including the mutual agreements of this Lease, the rental amounts required to be paid, and other valuable consideration, receipt of which is hereby acknowledged, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, that real property described in Paragraph 1 below, upon the following terms and conditions:

**1. Leased Premises.** The real property leased (the "Premises") is the surface estate in the following real property located in the Bethel Recording District, Fourth Judicial District, State of Alaska:

Tract H, Block 2, Turnkey III Housing Development, according to Plat #87-6, filed in the Bethel Recording District, Fourth Judicial District, State of Alaska,

Together with all rights, easements, privileges and appurtenances attaching to or belonging to the described land, but subject to the reservation of the subsurface estate.

**2. Term and Effective Date.** This Lease shall be effective upon the Effective Date. The term ("Term") of this Lease shall be for **Twenty (20) years** unless sooner terminated as provided herein. Notwithstanding that the Lease terminates, Tenant shall remain liable for all obligations and liabilities accruing but not performed or satisfied during the term of the Lease. The Lease may be renewed for additional terms in accordance with the Bethel Municipal Code.

**3. Rent.** Landlord agrees to lease the Premises to Tenant for an annual rent of One Dollar (\$1.00) per year ("Basic Rent") payable in advance at the Commencement of each Lease Year.

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

4. Use. The Premises, including the improvements thereon, may only be used consistent with the following:

(a) The Premises may be used for the operation of a senior center known as Chief Eddie Hoffman Senior Center (the "Project") to provide services to low-income elders and other qualifying individuals. Any change in use may cause termination of the Lease. During the Term of this Lease, Tenant shall be solely responsible, at its own cost and expense, for all operational costs and operating expenses of and related to the Project or the operations or activities conducted at or on the Premises.

(b) Tenant shall, at its sole cost and expense, promptly comply with all local, state or federal laws, statutes, ordinances and governmental rules, regulations or requirements in force with respect to use and occupancy of the Premises.

(c) Tenant must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Premises during the Lease Term or any holdover thereafter, Tenant shall immediately notify Landlord and shall, at Tenant's own expense, clean and restore the Premises to the satisfaction of Landlord and any governmental body or court having jurisdiction of the matter.

(d) Except for cleaning substances reasonably required for maintenance of the Project, which Tenant shall use in compliance with applicable laws, no Hazardous Substance may be used or stored on the Premises without the prior written consent of Landlord. "Hazardous Substance" shall mean any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, State or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including without limitation: (1) any substance, waste or material which now or hereafter is designated as a "hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. 5 1251, et seq.); (2) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901,ef seq.); (3) defined as a "hazardous substance" in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.); (4) controlled or regulated by the laws of the State of Alaska as a hazardous substance, petroleum product, waste or material;

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

or (5) asbestos containing material or any petroleum product or derivative. To the extent that Landlord consents to use or storage of a Hazardous Substance on the Premises, the Tenant agrees to require properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling such material in accordance with all applicable federal, state and local laws,

(e) Tenant agrees to indemnify, hold harmless and defend Landlord against all liability, cost and expense (including, without limitation, any fines, penalties, diminution in value of the Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against Landlord as a result of Tenant's breach of this paragraph or as a result of any discharge, leakage, spillage, emission or pollution on or discharged from the Premises during the Lease Term; provided, however, that Tenant shall not be required to indemnify Landlord if such liability, cost, or expense is caused directly and solely by the negligence of Landlord. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

#### **5. Taxes and Assessments.**

(a) General. During the Term of the Lease, Tenant shall pay as additional rent all real and personal property taxes, as legally required, general and special assessments, and other charges, fees or amounts of every description levied on or assessed against the Premises, improvements and any personal property located on the Premises, that are now or during the Term may be assessed or become liable, whether made by governmental authority or by any public utility or community service company, and whether assessed to or payable by Landlord or Tenant. Tenant shall make all such payments directly to the taxing authority or other party before delinquency and before any fine, interest or penalty becomes due; provided, however, that if payment of any or ail of the above items may be made in installments, Tenant may, at its election, pay each installment with any interest before delinquency.

(b) Licenses or Other Charges. Tenant shall be liable for and shall pay all license, excise fees, occupation taxes, or other amounts covering any activity or business conducted on the Premises. If any governmental authority levies a tax on rents payable under this Lease or a tax in any form against Landlord because of or measured by income derived from the leasing or rental of the Premises, such tax shall be paid by Tenant.

#### **6. Utilities and Services.** Tenant shall pay directly to the appropriate

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

governmental or private entity all charges for water, sewer, gas, electricity, telephone and other utilities and for all services, including snow removal, used or consumed on the Premises.

7. Maintenance of Premises.

(a) Maintenance and Repair by Tenant. Tenant shall, at all times throughout the Term, at its sole cost and expense, keep all of the Premises, including (but not limited to) the structural and non-structural portions of the improvements, roof, roof structure, foundations, walls, exterior and interior doors and entrances, windows, moldings, trim, partitions, door surfaces, fixtures, equipment and appurtenances thereof, electrical, lighting, heating, mechanical, HVAC, plumbing and all other improvements, paving, landscaping and the entirety of the Premises, without limitation or exception, in good order, condition and repair, reasonable wear and tear excepted.

(b) Repairs by Landlord. Landlord shall not be responsible to maintain, repair or restore any part of the Premises or its improvements.

8. Construction of improvements.

(a) Ownership of improvements at Termination. At Landlord's election given in writing all improvements and renovations on or to the Premises (other than signs and personal property of Tenant located on the Premises) shall become Landlord's property, free and clear of all encumbrances placed by or through Tenant, at the expiration of the Term or sooner termination of this Lease. In the event that Landlord elects to retain the improvements no additional compensation shall be due Tenant from Landlord, with any value for such having been included in the Lease consideration. In the event that Landlord elects in writing not to retain all or a portion of the improvements, then Tenant shall be obligated to remove such improvements from the Premises, remove all materials and debris, and (if required by Landlord) to fill and regrade the Premises to a safe condition. In that event, any sewer systems, water systems, hazardous substances, environmentally damaging materials and any other matter or property shall also be removed. All such removal, filling and regrading shall be completed by the end of the Lease term or sooner termination of this Lease.

(b) Subsurface Resources. The Tenant may not excavate any subsurface material, including silt, sand or gravel located within or under the Premises.

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

**9. Insurance.** The Tenant shall obtain and at all times keep in force during the term of this Lease the following insurance coverage: **[TO COME]**

**10. Indemnity.** It is agreed that Landlord shall not be liable for injury to any person, or for the loss of or damage to any property (including property of Tenant) occurring in or about the Premises from any cause whatsoever, including any natural or man-made condition or hazards created or permitted to exist on the Premises. Effective as of the Commencement Date and during the term of the Lease, Tenant shall indemnify, hold harmless and defend Landlord from and against any and all claims, charges, suits, liabilities, obligations, penalties, damages, costs and expenses (including attorney's fees) arising, claimed, charged against or incurred by Landlord arising from Tenant's construction, repair, alteration and/or modification of any improvements on the Premises, Tenant's use of the Premises, the conduct of its operations, business, or from any activity, work or other things done, or permitted by Tenant on the Premises, including any damages arising from any act or negligence of Tenant, or any employee, officer, agent, contractor, subcontractor, licensee, customer, resident, guest, invitee of Tenant or anyone else on the Premises, and from all costs, attorney's fees, and liabilities incurred in the defense of any such claim or any action or proceeding brought against Landlord by reason of such claim.

The Tenant further shall indemnify, hold harmless and defend the Landlord for any and all claims brought by any entity or person, including employees of the Tenant, with respect to any obligation under safe place statutes, or under laws, rules, acts or regulations pertaining to the safety of the Premises, including the Federal Occupational Safety and Health Act (OSHA), Americans with Disabilities Act and any other applicable law and shall defend against such. The Landlord shall not be liable to the Tenant or to any other persons or entities for any injury to or death of any person or for loss or damage to property, including the property of the Tenant, occurring in, on or about the Premises from any cause whatsoever and the Tenant shall indemnify, hold harmless and defend the Landlord from and against any and all claims related to the Premises, the condition, and activities on the Premises, provided, however, that the liability and indemnification obligations shall not apply to the extent that any such liability, loss, damage or expense arises out of or is based upon the Landlord's negligence or willful misconduct in accordance with comparative negligence principles applicable under Alaska law. The liability of Tenant to indemnify and defend shall extend to any loss sustained by Landlord or third parties, whether to persons or property located within or without the Premises, and including activities of Tenant which extend to property adjoining the Premises (*e.g.*, encroachment, trespass, etc.).

**11. Liens and Encumbrances.** Tenant shall keep the Premises and the

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

improvements free from any liens arising out of any work performed, materials furnished or obligations incurred at the request of Tenant. Landlord may post upon the property such notices of non-responsibility for labor or materials supplied to the Premises as it may deem fit.

## **12. Eminent Domain.**

(a) Termination of Lease. If more than fifty percent (50%) of the area of land included in the Premises is taken or appropriated by eminent domain, this Lease may, at the option of Tenant be terminated by written notice given to the Landlord not more than thirty (30) days after Landlord and Tenant receive notice of the taking or appropriation, and such termination shall be effective as of the date when Tenant is required to vacate the portion of the Premises so taken. In the event of such termination, all rent, taxes, assessments and other maintenance charges due hereunder shall be paid or pro rated to the date of termination. If there is a Partial taking, Tenant has right to rebuild and restore Project, subject to the consent of the Leasehold Mortgagee, and the Leasehold Mortgagee consents to distribution of the proceeds, which shall first be applied to payment of Leasehold Mortgage debt.

(b) Non-Termination of Lease. In the event this Lease is not terminated as provided in paragraph 12(a) above, it shall continue as to the portion of the Premises which has not been appropriated or taken, and, from the date Tenant is required to vacate that portion of the Premises taken, the rent payable hereunder shall not be changed.

(c) Definition. The term "eminent domain" shall include the taking or damaging of property by, through or under any condemnation proceedings by any governmental or quasi-governmental authority, and any purchase or acquisition in lieu thereof.

(d) Damages. All compensation for taking of the fee simple interest in the land without improvements and any remainder interest in the improvements, without reduction for any value assignable to the Lease, shall belong to Landlord.

## **13. Default By Tenant.**

(a) Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (1) Tenant's abandonment or surrender of the Premises or of the leasehold estate,

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

- (2) Tenant's failure or refusal to pay when due any installment of rent or of any other sum required by this Lease to be paid by Tenant,
  - (3) Failure by Tenant to insure (as specified in paragraph 9 above) for any period, with or without notice of such default by Landlord:
  - (4) Failure by Tenant to perform under any of the covenants, conditions or provisions of this Lease to be performed by Tenant (other than with regard to rent and insurance, with such failure continuing for a period of thirty (30) days after written notice thereof by Landlord to Tenant. Provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion;
  - (5) Making by Tenant of any general assignment or general arrangement for the benefit of creditors; or by the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of an involuntary petition filed against Tenant, such is dismissed within thirty (30) days of filing); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged in 30 days after appointment of the trustee or receiver, or the filing of the petition for the appointment of the same, whichever shall first occur.
  - (6) Failure by Tenant to utilize the Project in providing services to low-income seniors and other qualifying individuals. **[ANY MORE REQUIREMENTS?]**
- (b) Notices. As a precondition to pursuing any remedy for an alleged default by Tenant, Landlord shall, before pursuing any remedy, give notice of default to Tenant. Each notice of default shall state the alleged event of default

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

and the intended remedy, but the identification of the intended remedy shall not limit Landlord's right to seek or use any other available remedy not identified in the notice.

(c) Remedies in Default. In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach:

- (1) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from the Tenant reasonable attorney's fees and costs; or
- (2) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease; or
- (3) In the event of Tenant's failure to perform any of its obligations under the terms of this Lease, Landlord may perform that obligation, including bearing the costs and attorney's fees, or providing the services or labor and materials required, and the Landlord is entitled to Immediately recover the costs incurred or advanced by Landlord in Tenant's behalf, plus interest as provided in paragraph 13(c)(7) above.

(d) Other Remedies. Pursue any other remedy now or hereafter available to Landlord under the laws of the State of Alaska or the federal government.

(e) Legal Expenses. If the Landlord is required to bring or maintain any action (including assertion of any counterclaim or cross-claim, or claim in a proceeding in bankruptcy, receivership or any other proceeding), or otherwise refers this Lease to an attorney for the enforcement of any of the covenants, terms or conditions of this Lease, Landlord shall be reimbursed by the Tenant for all the costs incurred by the Landlord including reasonable attorney's fees.

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

(f) Remedies Cumulative; Waiver. Landlord's remedies hereunder are cumulative, and Landlord's exercise of any right or remedy shall not be deemed a waiver of, or to alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or by law. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time after the happening of any event authorizing the termination of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition or to deprive Landlord of its right to terminate this Lease at any time that cause for termination may exist, or be construed to estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease, at law or in equity.

(g) Acceptance of Payment. Landlord's acceptance of any sum, whether as rent, or otherwise, which is less than the amount claimed as due by Landlord shall not be deemed to be a waiver of the claimed amount due or a compromise or accord and satisfaction of the amount claimed as due.

14. Waiver of Sovereign Immunity. The Tenant hereby irrevocably waives any right it may have to assert sovereign immunity from suit and from execution for the sole purpose of any claim, legal challenge, or dispute regarding the validity or enforcement of this Lease. This waiver is for the limited purposes specified herein and is without prejudice to all other sovereign rights of the Tenant.

15. Damage or Destruction. In the event a building or improvement situated on the Premises is destroyed or damaged by fire or other casualty, Tenant shall comply in full with one of the following conditions within ninety (90) days of such destruction or damage (or within such other time period as it mutually agreed to in writing):

Tenant may repair, rebuild, or otherwise reinstate the damaged improvements in a good and substantial manner and in substantially the same form as it previously existed. In such event, the Lease shall continue in full force and effect.

Tenant may repair, rebuild or otherwise reinstate the damaged improvements in a manner and style different from the previously existing improvements, so long as the plans are approved by Landlord. In such event the Lease shall continue in full force and effect.

Tenant may elect to terminate the Lease by (i) giving written notice to Landlord of its intention to terminate, and (ii) removing the damaged improvements.

16. Access By Landlord. Landlord or Landlord's employees, agents or contractors shall have the right to enter the Premises and any improvements at any

Introduced by: City Manager Foley  
Introduction Date: August 11, 2009  
Public Hearing: August 25, 2009  
September 8, 2009  
Action: Passed  
Vote: 6-0

reasonable time during normal business hours to examine them, to show them to prospective purchasers or tenants, or for such legitimate purposes as Landlord deems necessary or desirable. All inspections will be conducted in a manner that does not unreasonably interfere with the operation of Tenant's business.

17. Sale of Premises By Landlord. Landlord retains the absolute and unconditional right to convey fee title in the Premises, or an interest or estate therein, subject to this Lease.

18. Surrender or Abandonment of Leased Premises. Tenant shall promptly yield and deliver to Landlord possession of the Premises (including all keys and methods of access) at the expiration or prior termination of this Lease, which Premises shall be in a good condition and state of repair.

19. Authority to Execute Lease. The individual executing this Lease on behalf of the Tenant warrants that he or she is duly authorized to execute and deliver this Lease on behalf of the Tenant, that the resolution, execution and delivery are in accordance with the partnership agreement of Tenant, and that the Lease is binding on Tenant in accordance with its terms.

20. Notices. All notices required under the terms of this Lease or by law shall be in writing, shall contain a clear and concise statement setting forth the reasons therefore, and shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested (without restricted delivery), to the appropriate party at the address specified hereafter or such other address as that party may designate in writing to the other party from time to time:

Landlord:

City of Bethel  
P.O. Box 1388  
Bethel, Alaska 99559

Tenant:

Orutsaramuit Native Council  
P.O. Box 927  
Bethel, Alaska 99559

Notice shall be deemed to have been given when personally served, as provided above, or five (5) business days after mailing as provided above.

21. Assignment of Lease. Tenant shall not assign, transfer, sublet, or otherwise transfer all or any part of Tenant's interest in this Lease.

22. Miscellaneous.

(a) Law and Venue. This Lease shall be construed, interpreted, and governed by the laws of the State of Alaska. Venue for any action arising out of

Introduced by:	City Manager Foley
Introduction Date:	August 11, 2009
Public Hearing:	August 25, 2009 September 8, 2009
Action:	Passed
Vote:	6-0

this Lease shall be at Bethel, Alaska.

(b) Attorneys' Fees. In the event of any suit or action to enforce or interpret any provision of this Lease, the prevailing party shall be entitled to recover from the other party its reasonable costs, expenses and attorneys' fees, in addition to other sums allowed by law.

(c) Waiver. Voluntary Acts. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition.

(d) Successors or Assigns. All the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective successors and assigns.

(e) Partial Invalidity. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(f) Recording. This Lease and any amendments to the Lease may be recorded.

(g) Marginal Headings. The marginal headings and titles to the paragraphs and subparagraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part.

(h) Covenants and Conditions. Every provision in this Lease which imposes an obligation upon Tenant or invests an option, power, or right in Landlord shall be deemed to be a covenant of Tenant in favor of Landlord, and the time of observance and performance by Tenant of each such covenant shall be of the essence. Full and faithful observance and performance by Tenant of each of its covenants contained in this Lease shall be a condition thereof.

(i) Prior Agreements. This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.