



BOARD RULE NO. 11

Adopted: September 30, 1986
Amended: April 16, 1987
Amended: January 21, 1993 (Resolution No. 93-01)
Amended: April 8, 1999 (Resolution No. 99-08)
Amended: February 2, 2000 (Resolution No. 2000-01)
Amended: May 10, 2001 (Emergency Rule 2001-01)
Amended: September 6, 2001 (Resolution No. 2001-40)
Amended: May 20, 2010 (Resolution No. 2010-11)
Amended: June 7, 2012 (Resolution No. 2012-20)

Subject: Establishment of a Long-Term Lease Policy for Corporation Property

Purpose: Sets forth guidelines and principles upon which the Corporation's standard long-term lease will be based and will supersede any previous adopted rules.

Adopted: 6/7/2012

Resolution No. 2012-20

Amending and Restating Board Rule
No. 11 – Long-Term Lease Policy

WHEREAS, the Alaska Railroad Corporation (ARRC) Board of Directors is required by Section 180 of the Alaska Railroad Corporation Act (AS 42.40.180) to adopt rules to carry out its functions and the purposes of the Act, which the Board has determined includes the leasing of corporate land under AS 42.40.350; and

WHEREAS, the ARRC Board of Directors initially adopted Board Rule No. 11, pertaining to Establishment of a Long-Term Lease Policy for Corporation Property, at its September 30, 1986 Board Meeting; and

WHEREAS, Board Rule 11 has been duly amended several times by the Board of Directors; and

WHEREAS, further amendment to Board Rule No. 11 is now proposed by Management, to provide for alternative mechanisms for rent adjustment; to reflect the Legislature's amendment of Alaska Statute 42.40.285(4) to allow longer term leases by ARRC; to allow for variable rental rates during lease terms; and to otherwise reflect ARRC's current leasing practices; and

WHEREAS, public notice of the prospective rule changes and an opportunity for public comment have been given in accordance with AS 42.40.180(a).

NOW THEREFORE BE IT RESOLVED, that having reviewed the proposed changes to Board Rule 11 and having considered all relevant matters including any public comment presented to it, the ARRC Board of Directors agrees with the proposed changes as submitted by Management and attached to this resolution, and hereby approves and adopts the attachment as the amended and restated ARRC Long-Term Lease Policy, Board Rule No.11.

ALASKA RAILROAD CORPORATION

LONG-TERM LEASE POLICY

The Alaska Railroad Corporation (referred to below as "Lessor" or "ARRC" or "Railroad") will adhere to the following policies and guidelines when leasing real property for terms of five or more years. The policies and guidelines contained in this statement may be changed from time to time when the Alaska Railroad Corporation determines a change is appropriate. This policy and the guidelines contained herein shall be applied and interpreted by ARRC consistent with AS 42.40, Article 5.

1. PURPOSE.

The purpose of this policy statement is to set forth guidelines and principles upon which the Alaska Railroad Corporation's standard long-term lease will generally be based. This statement is intended to give prospective Lessees and other interested persons information about the ARRC's policy with respect to its land lease program. However, this statement is not intended to provide the precise language that will appear in a lease or to substitute for or override any terms of a lease. It is important for prospective Lessees and other persons interested in a particular lease to carefully review the terms of the particular lease itself, because the lease (and not this policy statement) creates the legal relationship between Lessor and Lessee and defines the rights of each of the parties.

This policy governs new leases entered by the Alaska Railroad Corporation. Section 4 of the policy identifies circumstances under which an existing lease will be replaced by a new lease conforming to this policy statement.

2. PRE-LEASE MATTERS.

2.01 LEASE APPLICATION PROCESS. The Railroad may accept lease applications for land which is available for lease or management may solicit bids for properties if it is determined that such property is of high economic value or has unique characteristics due to location, potential use, or limited availability of similar property. Management will develop procedures for marketing such properties and evaluating responses to requests for proposals. The Board of Directors will periodically review these procedures.

- (a) Lease Applications. For those properties that are available for lease which have not been selected for soliciting proposal, lease applications may be submitted to the Railroad for process in accordance with standard leasing procedures.

- (b) Solicitation of Proposals. If the Railroad is going to seek proposals for selected properties, notice must be provided that the Railroad is seeking offers for each parcel.
1. Published Notice. For all properties which the Railroad is seeking proposals, electronic notice will be posted on the Railroad's official internet site and available through an internet link entitled "Public Notices" located on the internet site's home page at least fifteen (15) days prior to the date of proposal acceptance.
 2. Post Property. The property will be posted with a sign noting it is available for lease providing a contact name and number, along with the date offers must be received.
 3. Requested Notice. At the same time as posting electronic notice, the Railroad shall furnish a copy of the notice to every person who has filed a request for notice of proposed leases with the Railroad. If a person who is to receive a notice under this section requests that the Railroad mail the notice, the Railroad shall furnish the notice to the person by mail not less than fifteen (15) days prior to the date of the proposed acceptance.
 4. Brokers and Real Estate Agents. The Railroad may accept offers from Real Estate Agents or Brokers on behalf of a client and pay reasonable commission fees.
- (c) Criteria for Selecting Proposals.
1. Credit History - Applicant will be required to complete a credit application; to be included in this application are credit references, bank references and trade references. Credit decisions will be made based upon an applicant's ability and willingness to repay the lease contract. The applicant must have the financial and business ability, as determined solely by ARRC, to successfully manage the business venture on ARRC's property and to successfully repay the lease contract.
 2. Net Worth of Applicant and Composition of Assets - The applicant will be required to submit current financial

statements, including balance sheets and profit-and-loss statements, copies of the applicant's federal income tax returns for the preceding three fiscal years of the applicant's business and the business of any guarantor (owning 10% or more of the business), if any.

3. Intended Business Use of the Property - Applicant must give a general description of the intended business use of the property. The intended business use must be compatible with the surrounding land use and existing infrastructure as well as comply with all zoning requirements. Each area will be evaluated to determine the best use and impact on existing tenants.
4. Experience in the Business Type Being Pursued - Applicant must give a complete background of business experience for the business type being pursued. If the lease request involves a new business, the applicant will be required to submit a financial feasibility analysis and pro forma for the business.

2.02 COMMITMENTS. Long-term lease agreements require formal approval by ARRC Management. Neither letter proposals nor lease drafts will constitute a formal offer from Lessor. Such documents constitute nonfinal negotiating proposals by Lessor's representative and indicate the terms and conditions the representative is willing to recommend to Management. Lessor becomes bound only upon the execution of the typewritten lease by ARRC.

2.03 PUBLIC NOTICE AND RECORDATION OF LEASE. This provision relates to required public notice and public recording with respect to individual leases. It does not govern publication or relate to Lessor's marketing or leasing policies.

(a) Published Notice.

1. For leases which conform to existing land use and zoning, electronic notice will be posted on the Railroad's official internet site and available through an internet link entitled "Public Notices" located on the internet site's home page at least fifteen (15) days prior to the date of board consideration of the proposed long term lease.

2. For leases which propose either (i) a change in land use and zoning, or (ii) a use of property not previously occupied, or (iii) Lessor's "participation", notice will be posted on the Railroad's official internet site and available through an internet link entitled "Public Notices" located on the internet site's home page at least thirty (30) days prior to the date of the board consideration of the proposed long-term lease. For purposes of this paragraph 2.03, Lessor's "participation" shall mean the acquisition of an equity position in the proposed lessee (e.g., partnership, joint venture, corporation), or the investment of ARRC funds for enhancing the property proposed to be leased (e.g., infrastructure improvements), or the like.
3. The Railroad shall furnish a copy of the notice to every person who has filed a request for notice of proposed leases with the Railroad. If a person who is to receive a notice under this section requests that the Railroad mail the notice, the Railroad shall furnish the notice to the person by mail. Such notice shall be mailed not less than the applicable time period provided in subparagraphs 1 or 2 above.

The notice shall, at a minimum, describe the parcel to be leased; a common street address (if available); proposed use; a brief statement of the nature of Lessor's Participation (if applicable); the proposed Lessee; date of proposed action; and the name, address, and telephone number of the Alaska Railroad Corporation representative who may be contacted regarding the lease.

- (b) Memorandum of Lease. Upon the execution of this Agreement, both parties agree to execute a Memorandum Short Form Lease suitable for recording purposes.
- 2.04 ADMINISTRATIVE FEE. With Lessee's formal application to lease, Lessee will include payment of an administrative fee. If the application is denied, the fee will be retained to defray administrative costs. Lessor may establish the administrative fee and increase the fee from time to time when an increase becomes necessary to cover costs.
 - 2.05 PERFORMANCE OR CONSTRUCTION BONDS. At Lessor's option, Lessee will, before commencing construction of any improvement, including but

not limited to subsurface improvements on the premises, deposit with the Lessor a bond or certificate thereof, in a sum not less than the cost of such construction and in form and with surety satisfactory to Lessor, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens, together with such information and evidence as Lessor may reasonably require to assure that the Lessee is able to and will make all payments required by contract to be made as and when the Lessee is required to do so. The performance assurance, if required, may be in the form of surety, cash, assigned deposit, or irrevocable letter of credit.

- 2.06 PERMITS. All permits required by municipal, state or federal law are to be secured by and at the expense of Lessee.
- 2.07 PARCEL MAPS. If a parcel or subdivision map is required by municipal ordinance, it must be approved by the proper governmental body and recorded prior to the execution of the lease or option to lease. The preparation and public recording of parcel or subdivision maps will be the responsibility of the Lessor; however, a nonrefundable deposit may be required of the Lessee to cover the cost.
- 2.08 CONDITION OF PROPERTY. Lessor will lease property "as is, with all faults", and without any representations or warranties by Lessor as to the characteristics or suitability of the Premises. Prior to execution of the lease, Lessee will be given an opportunity to independently investigate the Premises, and to assess:
- (a) the feasibility of developing the Premises for the purposes intended by Lessee;
 - (b) the size and dimensions of the Premises;
 - (c) the availability and adequacy of water, sewage and any utilities serving Premises;
 - (d) the presence and adequacy of infrastructure or other improvements on, near, or affecting the Premises;
 - (e) the extent and condition of any grading or other site work already performed or hereafter required for Lessee's possible development of the Premises;

- (f) any surface, soil, subsoil or other physical conditions of or affecting the Premises, such as climate, geological, drainage, air, water or mineral conditions;
- (g) easements and reservations of record affecting the title;
- (h) the existence of governmental laws, regulations, ordinances, restrictions or requirements concerning the use density, location or suitability of the Premises for any existing or proposed development including such matters as zoning, building, subdivision, environmental and other regulations;
- (i) the necessity or availability of any rezoning, zoning variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps, public reports and any other governmental approval;
- (j) the necessity or existence of any dedications, taxes, fees, charges, costs or assessments that may be imposed in connection with any regulation or authorization or the obtaining of any required Permits; and
- (k) all matters concerning the condition, use and development of the Premises.

2.09 RELOCATION OF FACILITIES. Any necessary or desired relocation of Lessor's facilities will be made at the sole expense of Lessee. Lessee must communicate any request for relocation of Lessor's facilities before the lease is entered.

2.10 STORAGE OF HAZARDOUS MATERIALS. No leases will be granted for storage of hazardous materials (including gasoline and diesel fuel) unless Lessee first exhibits full compliance with municipal, state, and federal environmental laws and regulations, produces proof of satisfactory liability insurance naming Lessor as co-insured, and agrees to indemnify and save Lessor harmless from claims related to storage of such materials. Lessee is required to advise Lessor of intended storage of such materials before a lease is entered or extended. Lessee will schedule a pre-lease conference with Lessor to discuss the proposed storage, safety questions and compatibility of the proposed storage with adjoining land use; Lessee must furnish to Lessor copies of all permit applications, permits issued, denials of permits, and other actions on permit applications. Lessee whose use or

storage of small quantities of hazardous materials is only incidental to business operations will be required to indemnify and save Lessor harmless from claims related to storage of such materials.

3. TERMS OF LEASES.

3.01 PRINCIPLES GOVERNING RENT DETERMINATION. The following general principles govern rent determination by Lessor.

- (a) Rent at Fair Market Value. Rent will be established at fair market value as agreed to by Lessor/Lessee and determined by a qualified appraiser or by competitive bid.
- (b) Protection Against Inflation. Lessor will be protected against inflation by periodic revision of rent. Lessee will be protected against unforeseeable inflation by maximum rent revision limits.
- (c) Predictability of Rent. Rent revision should be accomplished in a manner that permits Lessee to engage in reasonable business planning and provides sufficient predictability to facilitate financing of Lessee's activities.
- (d) Recognition of Value Contributed by Lessee. Permanent value contributed by Lessee to Lessor's ownership interest (such as nondepreciable improvements) should be recognized through appropriate methods, including but not limited to credits against rent. Depreciable structures ordinarily will not represent such value.

3.02 DETERMINATION OF RENT.

- (a) Establishment of Initial Rent. Initial rent will be established at fair market value as agreed to by Lessor/Lessee and determined by a qualified appraiser, or by competitive bid, at Lessor's option. The initial rent will be adjusted during the term of the lease in the manner specified and prenegotiated in the lease. The standard long-term ground lease is for a period of thirty-five (35) years. However, lease terms that extend beyond or are shorter than the thirty-five (35) year period may be negotiated.
- (b) Rent Revision Parameters. The long-term master lease will incorporate three alternative approaches to rent revision that may be used for a given lease if approved by Management.

1. Standard Approach – Periodic Rent Revisions Utilizing Fair Market Value Appraisals. The standard rent revision approach will be to revise rent to current fair market value every five (5) years as determined by a qualified appraiser. A rent revision period of more or less than five (5) years may be negotiated between Lessor and Lessee at the discretion of Management. The following parameters establishing upper and lower limits for revision of rent will be incorporated into leases containing rent revisions under this standard approach.
 - A. Minimum Revised Rent ("Rent Floor"). The new rent established by the standard rent revision procedure for a particular period may be less than the prior period's rent if fair market value is so determined by appraisal. However, except as otherwise provided in subparagraph C, below, the rent shall not be decreased any more than a stated percentage below the prior period's rent. The maximum percentage decrease shall be the same percentage applied to establish the maximum rent increase under subparagraph B below.
 - B. Maximum Revised Rent ("Rent Cap"). A percentage rate establishing a maximum rate of rent revision (rent cap) to apply at the time of each revision will be predetermined and incorporated in the long-term lease. For longer-term leases, said rent cap will not apply to periodic rent revisions to fair market value as described in subsection C, below.
 - C. Periodic Adjustments to Fair Market Value for Longer-Term Leases. In addition to the standard rent revisions subject to rent floors and rent caps provided in this paragraph 3.02(b)(1), leases with terms of more than 35 years that employ the standard rent revision approach will provide for periodic rent revisions to current fair market value as determined by a qualified appraiser without regard to the rent floor and rent cap provisions of subparagraphs A and B, above. The first such rent revision to fair market value will occur no later than lease year 35 and subsequent rent revisions to fair market value will occur at intervals of no less

than once every twenty (20) years, with the actual timing of the first and subsequent revisions to fair market value to be determined by Management.

2. Annual Escalator Rent Revisions. Where Management determines that a proposed material leasing transaction would provide a significant long-term benefit to ARRC, an annual rent escalator approach to rent revision may be employed. Under this annual escalator rent revision approach, initial rent will be set by means of a fair market appraisal as described in subparagraph 3.02(a), above, and the following parameters establishing methods and limits for revision of rent will be incorporated into leases.
 - A. Except as otherwise provided in subparagraph B, below, rent will be increased annually during the term of the lease by percentages negotiated between Lessor and Lessee before the lease is executed. The percentage increase of the annual escalators may be fixed for the lease term or may vary during the lease term in any manner that is otherwise consistent with Management's leasing obligations.
 - B. In addition to providing for the annual rent escalators described in subparagraph A, above, leases utilizing this rent revision approach will provide for periodic rent revisions to current fair market value as determined by a qualified appraiser, with the period of such appraisal-based rent adjustments to be no less than once every twenty (20) years, with the actual period to be determined by Management.
 - C. Under this annual escalator rent revision approach, rent will not increase from year-to-year by more than the annual escalator percentage then in effect unless it is determined by means of one of the periodic appraisal-based rent revisions described in subsection B, above, that rent should be increased more than the annual escalator percentage. Under this rent revision approach, rent will not decrease from year-to-year unless it is determined by means of one of the periodic appraisal-based rent revisions described in subsection

B, above, that rent should be decreased from the prior year's rent. Where a rent decrease or a rent increase is determined to be appropriate by means of one of these periodic appraisal-based rent revisions, the minimum and maximum revised rent (Rent Floor and Rent Cap) provisions of subparagraphs 3.02(b)(1)(A) and 3.02(b)(1)(B), above, will not apply to limit such rent decrease or increase.

3. Combined Annual Escalator – Consumer Price Index Rent Revisions. Where Management determines that a proposed material leasing transaction would provide a significant long-term benefit to ARRC, a rent revision approach utilizing a combination of annual escalators and the Consumer Price Index (CPI) may be negotiated. Under this annual escalator – CPI rent revision approach, initial rent will be set by means of a fair market appraisal as described in subparagraph 3.02(a), above, and the following parameters establishing methods and limits for revision of rent will be incorporated into leases.
 - A. Except as otherwise provided in subparagraph B, below, rent will be increased annually during the term of the lease by the lesser of (i) percentages negotiated between Lessor and Lessee before the lease is executed; and (ii) rent calculated by multiplying the previous year's rent by a fraction with the current lease year's most recent CPI figure as the numerator and the previous lease year's CPI figure as the denominator.
 - B. In addition to providing for the annual rent adjustment escalators described in subparagraph A, above, leases utilizing this rent revision approach will provide for periodic rent revisions to current fair market value as determined by a qualified appraiser, with the period of such appraisal-based adjustments to be no less than once every ten (10) years, with the actual period to be determined by Management.
 - C. Under this annual escalator – CPI rent revision approach, rent will not increase from year-to-year by more than the amount determined in accordance with subparagraph B, above, unless it is determined by one

of the periodic appraisal-based rent revisions described in subsection B that rent should be increased by a greater amount. Under this rent revision approach, rent will not decrease from year-to-year unless it is determined by one of the periodic appraisal-based rent revisions described in subsection B, above, that rent should be decreased from the prior year's rent. Where a rent decrease or a rent increase is determined to be appropriate by means of one of these periodic appraisal-based rent revisions, the minimum and maximum revised rent (Rent Floor and Rent Cap) provisions of subparagraphs 3.02(b)(1)(A) and 3.02(b)(1)(B), above, will not apply to limit such rent decrease or increase.

4. Rental Rate and Percentage Rent Revisions. ARRC's Board of Directors will periodically review the rental rate and the customary maximum percentage rental changes allowed in periodic rent revisions. The standard approach will be that a lease's rental rate will remain constant throughout the original lease term and will be stated in the lease; provided, however, that Management may approve a lease with a rental rate that changes during the term of the lease if it determines in the context of a proposed material leasing transaction that such a lease is in the best interest of ARRC and is consistent with all other provisions of this policy and AS 42.40, Article 5.
5. Materiality of Leasing Transaction. The determination of whether a proposed leasing transaction involving ARRC property is material for purposes of this policy will be at the sole discretion of Management; provided, however that any such determination shall take into account the significance of the proposed transaction in the context of the specific commercial real estate market in which the subject ARRC property is located.

(c) Rent Revision Process.

1. Appraisal. The rent will be revised at a minimum every five (5) years or as otherwise negotiated in the lease. For leases employing the standard rent revision approach described in subparagraph 3.02(b)(1), and for periodic appraisal-based rent

revisions under the fixed annual escalator and annual escalator – CPI rent revision approaches described in subparagraphs 3.02(b)(2) and 3.02(b)(3), Lessor shall obtain a fair market value appraisal from an independent qualified appraiser. Appraisal instructions for each reopen period will be defined in the master lease document. At the end of the original lease term, the property is to be appraised at the highest and best use compared with similar properties within the community.

2. Arbitration. An arbitration clause will be incorporated into the lease to provide an equitable means of resolving disputes concerning the appraised value of the premises. The arbitrator's decision with respect to a rent revision shall be final.
 3. Determination of Fair Market Value Rent By Use of Fixed Rental Rate. Except as otherwise provided in subparagraph 3.02(b)(4), the rental rate used for rent revision under a lease will remain fixed during the term of the lease and the same rate will be employed in connection with all revisions. The rental rate will be based on an independent study of relevant Alaska markets to be periodically commissioned by ARRC and reviewed by the ARRC Board of Directors. The revised rent will be determined by applying to the appraised value a percentage representing the general return or rental rate in effect for ARRC properties on the date the lease is executed; provided, however, that Management may approve a different return or rental rate for a particular proposed material leasing transaction that such a different return or rental rate is in the best interest of ARRC and is consistent with all other provisions of this policy.
- (d) Establishment of Fees for Options and First Refusals. ARRC may charge a fee for an option to extend or otherwise lease beyond the initial lease term. If charged, this fee will be in addition to the fair market value rent as determined under this Policy, and shall be imposed throughout the entire term of the lease (including the option or extension period). In no event shall the extension period and the initial term, taken together, exceed ninety-five years without compliance with AS 42.40.285(4). Any fee for such options will be established by ARRC management and will be periodically reviewed

by the ARRC Board of Directors. Management may also establish fees for rights of first refusal to lease ARRC property for periodic review by the Board. Any fees approved subject to this section will be applied equally to similarly-situated lessees.

- 3.03 RENT CREDITS. Rent credits or rental offsets may be negotiated PRIOR to the installation of certain nondepreciable improvements. Upon installation, these improvements immediately become the property of the Lessor and are to be considered in any future rent modification. Examples of nondepreciable improvements include, but are not limited to, excavation, backfill, and gravel.
- 3.04 EFFECTIVE DATE OF RENT ADJUSTMENTS. Until any increase in the original rent rate (called the "Base Rent") is determined, Lessee shall pay the same Base Rent as was applicable the previous year. When an adjustment of Base Rent has been determined and Lessee notified, such adjusted Base Rent as so determined shall be due and payable to Lessor, retroactive to the commencement of the lease year for which such rental adjustment is made, and any deficiency resulting from such rent adjustment shall be payable within thirty (30) days after the giving of such notice to Lessee. Lessee will be responsible for NO MORE THAN NINETY (90) days of unbilled retroactive rent at an increased level. Any surplus payment resulting from such rent adjustment shall be applied by Lessor within thirty (30) days after the giving of such notice to Lessee toward the annual rent for the next Lease year for which rent has not yet been paid by Lessee.
- 3.05 PUBLIC ENTITIES. As a public corporation, the Alaska Railroad Corporation is exempt from taxation by local governments. In recognition of the Alaska Railroad Corporation's position as a participating member within each host community, the Alaska Railroad Corporation may lease its lands to the State and its political subdivisions at less than fair market value. Specific requests will be negotiated on a case-by-case basis. (The Alaska Railroad Corporation will also institute a fee-use permit system for municipalities for various kinds of land use that do not require leases. This program is not covered by this policy.)
- 3.06 TAXES AND ASSESSMENTS. Lessee will pay all applicable taxes and assessments on Lessee's improvements and leasehold interest directly to the taxing authority.
- 3.07 INDEMNIFICATION AND LIABILITY INSURANCE.

- (a) Indemnification. Lessee will be required to defend, and hold Lessor harmless against all liability, damages, costs, losses, and expenses arising out of Lessee's use or occupancy of the Premises.
- (b) Liability Insurance. Lessee will, at his own expense, obtain and maintain in effect, during the whole of the lease term, comprehensive general liability insurance in respect to the leased premises, under policies naming Lessor as additional assureds, issued by an insurance company authorized to do business in Alaska with minimum limits of not less than the amounts specified by Lessor. Satisfactory evidence of insurance will be furnished to the Lessor prior to the execution of the lease. This evidence will provide for thirty (30) days prior notice to Lessor of any written cancellation, nonrenewal, or material change in the policy.

3.08 TRACKAGE.

- (a) Use of Lessee-Owned Trackage. A separate, standard form of track agreement will cover the installation, maintenance, and operation of trackage.
- (b) Use of Lessor-Owned Trackage. Where Lessee desires use of Lessor-owned trackage, the lease form will provide such rights. Use of Lessor-owned trackage may be restricted to the extent Lessor deems necessary. The rental rate will be a standard, system-wide charge, which may be revised by Lessor from time to time.

3.09 ENVIRONMENTAL AND OTHER LAWS AND REGULATIONS. Lessee, at its own expense, will comply with all laws, regulations, rules and orders applicable to its property and operations, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality.

Should any discharge, leakage, spillage, emission, and pollution of any type occur upon or from the premises due to Lessee's own use and occupancy including subleasing and uses by others, Lessee, at its expense, will be obligated to clean the premises to the satisfaction of Lessor and any governmental body having jurisdiction thereover.

(Note: Lessor prohibits new leases for gasoline service stations or assignment of existing service station leases from the present Lessee to a

third party having a substantially lesser net worth. Use of underground storage tanks for any purpose requires Lessor's specific approval. Oil and gasoline bulk plant leases will be written with Lessor's commercial lease indemnity and insurance provisions.)

- 3.10 USE OF PREMISES. Lessee's failure to commence use of the premises for the purposes specified in the lease, or discontinuance of such use for a period to be specified in the lease, will constitute an event of default.
- 3.11 SUBORDINATION. Lessor will not agree to subordinate its legal title to land; however, Lessee may assign the lease to an institutional lender as security for a loan to finance development, subject to the provisions of Paragraph 3.12.
- 3.12 ASSIGNMENT. Assignment of the leased premises for any reason will require Lessor's prior written consent. Lessor will consent to an assignment only when Lessor is satisfied that Lessor's interests will not be adversely affected. Requests for consent to assignment of the lease are to include the proposed assignee's current and complete financial statement as prepared by a certified public accountant in accordance with generally accepted accounting principles or the prior two (2) years' tax returns. An administrative fee will be charged by the ARRC to cover the cost of processing a request for assignment. The financial considerations of the assignment need not be disclosed to the ARRC. Approval of assignment will not be unreasonably withheld by the ARRC.
- 3.13 SUBLEASING. Lessor's written consent to a sublease is required before the Lessee enters the sublease. Copies of any sublease approved must be filed with Lessor and will be subject to the terms of the master lease relating to the terms of subleases. Any financial considerations can be "blocked out" by the Lessee and are not required to be disclosed to the ARRC.
- 3.14 OWNERSHIP OF SUBSURFACE IMPROVEMENTS. Tenant improvements to the subsurface estate, including excavation and backfill, become the property of Lessor upon installation and will be considered in all future rental modifications. Rental credits or offsets may be negotiated for certain nondepreciable improvements in accordance with Paragraph 3.03, above. Means and methods of construction must be of mutual benefit to Lessee and Lessor; for example, the economics of excavation and fill may be weighed against the economics of alternative piling construction methods. The type of improvement and method of installation must be approved by Lessor in advance.

3.15 REMOVAL AND OWNERSHIP OF ABOVE-SURFACE IMPROVEMENTS. Ownership of such above-surface improvements at the end of the lease term will be governed by the terms of the lease. The appropriate disposition of above-surface improvements as specified in the lease at the end of the lease term will depend on the circumstances surrounding a particular lease, including the length of the lease, the nature and value of the improvement contributed by the Lessee, the likelihood that the lease will be renewed, and Lessor's assessment of the best use of the property following the expiration of the lease.

3.16 LESSEE'S OBLIGATIONS WITH RESPECT TO IMPROVEMENTS. The Lessee will agree not to remove, destroy, waste or substantially modify improvements on the Premises without Lessor's prior written authorization. This policy is intended to protect the Lessor's security interest in the improvements of the Premises and to enhance land-use planning. Approval of improvements will not be unreasonably withheld by ARRC.

4. REPLACEMENT OF CERTAIN EXISTING LEASES.

The Alaska Railroad Corporation will honor the binding terms of existing leases it acquired from the Federal Government. However, it is the policy of the Alaska Railroad Corporation, to the extent feasible, to bring existing leaseholds under the new standard long-term lease reflecting the principles set forth in this statement. This policy is adopted to implement the legislature's determination that fair market value should be obtained for leases, to make the administration of the leasing program more efficient and equitable as a whole, to promote uniformity, and to eliminate unnecessary controversy and uncertainty concerning the terms of leases issued by the Federal Government before the sale of The Alaska Railroad to the State of Alaska. To implement this policy, the following actions, among others, will be taken:

- (a) If a Lessee desires extension of a lease term, and Lessor is agreeable to such extension, the existing lease will be terminated and a new lease consistent with this policy statement will be issued.
- (b) If Lessee desires to change the area under lease by increasing or decreasing acreage, and Lessor is agreeable to such change, the existing lease will be terminated and a new lease consistent with this policy statement will be issued.
- (c) All existing leases containing a provision allowing Lessor to terminate a lease upon ninety (90) days notice will be terminated

after providing the required notice to the Lessee, and, at the time notice of termination is given, Lessor will offer Lessee an opportunity to enter a new lease consistent with this policy statement.

- (d) Existing Lessees, at their option, will be given the opportunity to terminate their current leases and enter into the new Alaska Railroad Corporation long-term lease contract.

In appropriate cases, as determined by Lessor, an existing lease may be amended and restated, rather than replaced, by substitution of terms consistent with this policy statement. For example, Lessor will offer Lessee an amended lease in lieu of a new lease in cases where termination of the existing lease would cause the Lessee's note to become due and payable at the time of termination.

5. RENEWAL OF LEASES.

It is the policy of the Alaska Railroad Corporation to approve a Lessee's request for renewal of a lease made no less than six (6) months prior to the end of the lease term when:

- (a) The Lessee has faithfully complied with the requirements of the existing lease;
- (b) The Lessee's continuing use of the property is consistent with surrounding land use, any relevant land-use or development plans of Lessor, and the highest and best use of the property; and
- (c) Lessor does not require the property for Railroad purposes.

The rental terms and renewed leases will be adjusted to incorporate the then-prevailing fair market rental value and will include rent revision requirements, in accordance with the lease policy and relevant provisions of law in effect at the time of renewal. To the extent terms of the existing lease are inconsistent with policy or law in effect at the end of the lease term, or are otherwise obsolete, the renewed lease will be modified to eliminate such inconsistent obsolete provisions.

6. REGULATORY AUTHORITY OF ALASKA RAILROAD CORPORATION.

Under Section 390 of the Alaska Railroad Corporation Act (AS 42.40.390), the Board of Directors of the Alaska Railroad Corporation is given governmental authority to adopt exclusive rules governing use of Railroad lands by Lessees and others having interest in

such lands. The terms of leases issued by the Alaska Railroad Corporation do not limit the Board's authority to adopt land-use rules governing activities on the leaseholds. Lessees will be given reasonable advance notice of any rule proposed to or under consideration by the Board that might affect activities on leasehold property or impose an obligation on Lessees.

The foregoing terms and conditions constitute, in part, guidelines and standards on which Lessor's long-term industrial lease is based. Many terms are not negotiable, and applicants are urged to study them very carefully. Please address all questions to Lessor's representative at the outset of negotiations: Director, Real Estate, Alaska Railroad Corporation, P.O. Box 107500, Anchorage, AK 99510-7500, or phone 265-2617.

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