

Subject: Authorize the City Manager to rent out the Potato House

Agenda of: **June 27, 2013**

Council Action:

Manager: Recommend approval for renting out the Potato House.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade	CS	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s): Draft Lease Agreement

Summary Statement. The purpose of this Action Memorandum is to authorize the City Manager to rent out the Potato House for \$800 month plus all utilities.

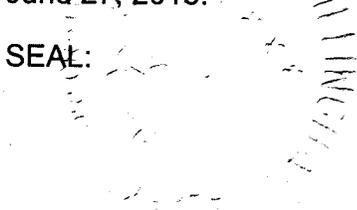
The current tenant of the Potato House has moved to Naknek and we would like to pursue renting it out as soon as we have a tenant interested. We have posted a For Rent sign on the building and will be doing some minor renovations to the building.

We may have an interested tenant and would like to execute the lease if it is approved by their supervisors.

It is therefore recommended that the City Council approves the renting of the Potato House.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on June 27, 2013.

SEAL:



Alice Ruby
Alice Ruby, Mayor

ATTEST:

Janice Williams
Janice Williams, City Clerk

LEASE AGREEMENT

THIS LEASE, entered into this _____ day of _____ 2013, by and between the **City of Dillingham**, whose address is PO Box 889, Dillingham, Alaska, 99576, and whose interest in the property hereinafter described is that of Owner, hereinafter called the **Lessor or City**, and _____, whose address is _____ hereinafter called the **Lessee**.

The Lessor hereby leases to the Lessee the property located at 412 2nd Avenue West, to have and to hold the same, with all appurtenances unto the Lessee for the term of one (1) year beginning on and ending on the _____ at and for the rental of \$_____ per month. Lessor shall give the Lessee written notice of the rent due for any extended term at least thirty (30) days in advance of commencement of the extended term.

COVENANTS OF THE LESSEE

1. The Lessee does hereby covenant and agree with the Lessor that it will:
 - a) pay said rent at the times and place and in the manner aforesaid;
 - b) use and occupy said premises in compliance with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter enacted in any manner affecting the Leased Premises, or the sidewalks, streets, and ways 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 in a careful and proper manner;
 - c) not use or occupy said premises for any unlawful purpose;
 - d) not assign this lease, not underlet said premises, nor any part thereof, without the written consent of the Lessor, provided, however, such consent shall not be unreasonably withheld;
 - e) not use or occupy said premises or permit the same to be used or occupied, for any purpose or business deemed extra-hazardous on account of fire or otherwise;
 - f) make no alterations or improvements to said premises without the written consent of the Lessor, such consent shall not unreasonably be withheld;
 - g) leave the premises at the expiration or prior termination of this lease or any renewal or extension thereof, in as good condition as received or in which they might be put by the Lessor, excepting reasonable wear and tear and/or, loss or damage caused by fire, explosions, earthquakes, acts of God, or other casualty;
 - h) permit the Lessor to enter upon said premises at all reasonable times to examine the conditions of the same;

- i) pay for heat and cooling, electricity, water, trash removal, and sewage disposal;
- j) maintain the demised premises in good repair and tenantable condition during the continuance of this lease or any renewal or extension thereof;
- k) maintain the premises in keeping with good fire prevention practices;
- l) not use the Premises as a dwelling;
- m) keep the premises clean and uncluttered;
- n) if the Premises is used for commercial purposes for which Lessee is required by law to collect and remit sales tax to the City, Lessee will timely remit sales tax as required by law.

COVENANTS OF THE LESSOR

2. And the Lessor on its part covenants and agrees with the Lessee that it will:
- a) Except as provided in this Lease, and provided Lessee is not in default hereunder, provide Lessee peaceful and quiet enjoyment of the Leased Premises
 - b) warrant and defend Lessee in the peaceful and quiet enjoyment of the Leased Premises.
 - c) If the leased property is sold during the term of the lease, or an extension thereof, the sale will be made subject to the lease. This also applies to any sale as a result of an encumbrance on the property that existed prior to the execution of this lease.

MUTUAL COVENANTS

3. It is mutually agreed by and between the Lessor and Lessee that:
- a) all terms and conditions of the preceding covenants of both Lessee and Lessor are agreeable and accepted in their entirety, except as herein noted;
 - b) all fixtures and/or equipment of whatsoever nature as shall have been installed in the demised premises by the Lessee, whether permanently affixed thereto or otherwise, shall continue to be the property of the Lessee, and may be removed by it at the expiration or termination of this lease or renewal and at its own expense repair any injury to the premises resulting from such removal; All structures, fixtures and improvements, placed or attached on or about the Leased Premises by Lessee, shall at the City's option become the property of the City at the expiration of the Lease or any extended term, unless removed by Lessee within three-hundred (300) days after the expiration or termination of the Lease. Lessee shall be responsible for paying rent and all other sums payable by it under this Lease while removing structures, fixtures or improvements.
 - c) Not later than the expiration or termination date of this Lease, or of any extended term thereof, Lessee shall remove all readily movable items of personality, provided that any

damage caused to the Leased Premises by reason of such removal shall be immediately paid by Lessee. Any movable items of personality not so removed by Lessee shall become the property of the City at the City's option.

- d) The City may, in its sole discretion, remove and store any or all property not timely removed from the Leased Premises. Storage shall be for the account and at the expense of Lessee, and without liability for loss thereof, or damage thereto, on the part of the City. If after a period of thirty (30) days or more, Lessee has not paid all sums due and owing to the City under this Lease or any Addendum hereto, including the reasonable cost of storage, the City may sell any or all of such property at a public or private sale. The City shall mail written notice of such sale to Lessee at least ten (10) days prior to sale. The notice shall state the date, time and place of the sale. The City may set the time, place and manner of the sale in its sole discretion. The proceeds of any such sale shall be applied first to the costs of sale (including reasonable attorney's fees), then to storage charges and then to delinquent sums due, or to become due the City, under this Lease or any Addendum hereto. Any remaining balance shall be mailed to Lessee.
- e) If all or part of the Leased Premises or 50% or more of the Building (regardless of whether the Leased Premises are affected) are destroyed or rendered untenable by fire, earthquake or other similar cause, Lessee shall remove the debris from the Leased Premises and clean up the Leased Premises within 100 days of the occurrence of such destruction. The City may in such event and at its sole discretion terminate the Lease on thirty (30) days written notice to Lessee.
- f) if the Lessee shall at any time be default in the payment of rent herein reserved, or in the performance of any of the covenants, terms and conditions, or provision of this lease, and the Lessee shall fail to remedy such default within ten (10) days after written notice thereof from the Lessor, it shall be lawful for the Lessor to enter upon said premises and again have, repossess, and enjoy the same as if the lease had not been made, and thereupon this lease and everything herein contained on the part of the Lessor to be done and performed shall cease and determine without prejudice however, it shall be the right of the Lessor to recover from the Lessee all rent due up to the time of such entry. In case of any such default and entry by the Lessor, said Lessor may relet said premises for the remainder of said term for the highest rent obtainable, and may recover from the Lessee any deficiency between the amount so obtained and the rent herein reserved;
- g) if the Lessee shall pay the rent as herein provided, and shall keep, observe, and perform all of the covenants of this lease by it to be kept, performed, and observed, the Lessee shall and may, peaceably and quietly, have, hold, and enjoy the said premises for the term aforesaid;
- h) this lease and all the covenants, provisions and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto;
- i) the Lessee shall have the option to renew this lease for one (1) additional year period to be exercised by giving the Lessor written notice prior to the expiration of each term.
- j) this lease is subject to all applicable laws of the State of Alaska or local government;
- l) all conditions and covenants of the lease shall remain in full force and effect during any extension hereof. Any holding over after the expiration date of this lease or any extension

or renewal thereof, shall be construed to be a tenancy from month to month, at the same monthly rental and on the terms and conditions herein specified so far as applicable;

- m) time is of the essence of this lease.
- n) Lessee leases the property "as is" and "where is" and assumes the responsibility and risks of all defects and conditions, including but not limited to environmental hazards. The intent of the parties is that tenant has had already and shall continue to have a thorough opportunity to inspect and study the property before signing this lease, but that once the lease is signed, City walks away from the property and shall have no further responsibility or liability to buyer or any third party for any claims of any kind that may arise as to the property.
- o) Except to the extent that such party may otherwise agree in writing, no waiver by such party of any breach by the other party of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by such party to seek a remedy for any breach of the other party be deemed a waiver by such party of its rights or remedies with respect to such breach.
- p) In the event either party shall be in default in the performance of any of its obligations under this Lease, and an action is brought for the enforcement thereof, the defaulting party shall pay to the other all the expenses incurred therefore, including full, actual, reasonable attorney's fees. Any sums due from the Lessee under this Lease shall accrue interest at 10.5% per annum from the date they are due until paid in full.
- q) Neither City, nor any of its officers, employees, agents, attorneys, or representatives have previously, nor does under this agreement make, any representations or warranties, and none of the persons or entities described above shall in any way be liable for or with respect to:
 - (1) the condition of the real property or the suitability of the real property for Lessee's intended use, or for any use whatsoever;
 - (2) the presence or existence of any hazardous substances, asbestos, oil or other petroleum product contamination or any other substance as to which the discharge, leakage, spillage or presence, on the property would be regulated by applicable state or federal law.

Other Provisions

4. The following additional provisions, modifications, exceptions, riders, layouts and or forms were, are, agreed upon prior to execution and made a part hereof:

None

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

Lessor: CITY OF DILLINGHAM

Lessee: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____