

**LEASE OF SISD BUILDING AND EQUIPMENT
AND
SUBLEASE OF RELATED CITY LAND**

THIS LEASE OF SISD BUILDING AND EQUIPMENT AND SUBLEASE OF RELATED CITY LAND (this *Agreement*), made and entered into this ____ day of _____, 2019, by and between **Southeast Island School District (SISD)** and **Coffman Cove Development LLC (Tenant)**, with the consent of the **City of Thorne Bay** as set forth hereinafter, WITNESSETH:

Recitals

A. Southeast Island School District is a regional educational attendance area established under the statutes of the State of Alaska and is referred to in this Agreement as *SISD*.

B. Coffman Cove Development LLC is an Alaska limited liability company with its principal place of business at Coffman Cove, Alaska, and is referred to in this Agreement as *Tenant*.

C. The City of Thorne Bay is a second class city established under the municipal statutes of the State of Alaska and is referred to hereinafter as the *City*.

D. Attached hereto, marked as Exhibit A, is a full and correct copy of the Lease Agreement made and entered into effective as of November 1, 2019 by and between the City, as Lessor, and SISD, as Lessee, referred to hereinafter as the *Ground Lease*.

F. Under the Ground Lease, the City leased and demised to SISD the following described parcel of land:

City owned municipal land, located easterly of the City owned boat launch facility as shown on the attached map within the corporate boundaries of the City of Thorne Bay.

The parcel of City-owned land that is leased to SISD under this description, which is quoted from Section 1 of the Ground Lease, and is more specifically depicted in the map included in the Ground Lease attached hereto as Exhibit A, is referred to hereinafter as the *Restaurant Land*.

G. As noted in Recitals D and E, the City is the lessor under the Ground Lease. SISD as the Lessee under the Ground Lease is in turn (and with the consent of the City) agreeing to and granting Tenant a sublease of and for the Restaurant Land under the terms of this

Agreement. Capitalized terms in this Agreement that are not otherwise defined herein shall have the meaning set forth in the Ground Lease.

H. As reflected in the Ground Lease (for example, Section 5) SISD is the owner of the buildings and other structures located on the Restaurant Land, with which SISD has heretofore operated the restaurant known as the *Thorne Bay Café*. The general footprint and dimensions of the said buildings and other structures as located on the Restaurant Land are shown in the building and premises diagram that is attached hereto, marked as Exhibit B, and those SISD-owned buildings and other structures are referred to collectively hereinafter as the *Buildings*. In addition to the sublease of the Restaurant Land to Tenant, Tenant is willing to lease the Buildings from SISD and SISD is willing to lease and let the Buildings to Tenant.

I. In addition to the Buildings, SISD owns the restaurant equipment and other personal property that is listed in the inventory attached hereto as Exhibit D, which SISD utilized in its operation of the Thorne Bay Café. All the restaurant equipment and other personal property inventoried in Exhibit D is currently located in the Buildings, and is referred to collectively hereinafter as the *Equipment*. SISD and Tenant, incident to the sublease to Tenant of the Restaurant Land, is willing to include the Equipment in its lease to Tenant of the Buildings.

J. Hereinafter, the Buildings, the Equipment and the Restaurant Land are referred to collectively as the *Leased Assets*. SISD and Tenant enter into this Agreement to establish terms and provisions under which SISD will lease and let the Leased Assets to Tenant.

K. Because SISD's only right, title or interest in or to the Restaurant Land is the leasehold interest granted to SISD as the lessee under the Ground Lease, the leasehold interest in and to Restaurant Land that is granted to Tenant under this Agreement will be a sublease of the Restaurant Land. Therefore, with respect to the sublease of the Restaurant Land under this Agreement, the terms and provisions of the Exhibit A Ground Lease will be as incorporated herein by reference as set forth more fully below.

NOW THEREFORE, for good and valuable consideration, the receipt, sufficiency and mutuality of which are acknowledged, the parties agree as follows:

1. **Lease**. In accordance with and subject to the terms and provisions of this Agreement, SISD hereby leases and lets the Leased Assets to Tenant, and Tenant hereby hires and leases the Leased Assets from SISD. The Recitals of this Agreement, including but not

limited to Exhibits A, B, and C to this Agreement , are incorporated herein by reference as substantive terms and provisions of this Agreement.

2. **Sublease as to Restaurant Land.** The Recitals of this Agreement include those reflecting that the leasehold as to the Restaurant Land that is hereby granted by SISD to Tenant will necessarily be a sublease under the Ground Lease. Therefore, subject and subordinate to the terms and conditions of the Ground Lease, SISD hereby subleases and sublets the Restaurant Land to Tenant, and Tenant hereby subleases and hires the Restaurant Land from SISD, such sublease to be upon the terms and provisions herein provided.

a. Under the Lease Amendment, with the approval of the City Council, the City and SISD agreed as follows:

Section 19. Assignments and Subleases. Lessee shall not assign the Lease or any interest in the lease for any purpose and shall not sublet the Premises or any part thereof and shall not permit any person to occupy or use the Premises except upon Lessor's written consent. The lessor may consent to the lessee subletting the property in exhibit "a" to allow for the operation of a restaurant. Any unapproved assignment or sublease shall be void. Lessor reserves the right to withhold consent.

Therefore, under the Ground Lease, SISD is precluded from subleasing the Restaurant Land to Tenant except upon the written consent of the City. As contemplated by the language of amended Section 19, set forth in the Lease Amendment which has now been duly executed on behalf of the City and SISD, the City has, with the approval of its Council, granted its consent to the sublease of the Restaurant Land to Tenant under the terms of this Agreement. The City's Mayor will execute the City consent that is set forth below to formally evidence that consent.

b. Except as otherwise set forth in this Agreement, with respect to the Restaurant Land, Tenant agrees to perform and comply with all the obligations required to be kept or performed by SISD as the lessee of the Restaurant Land under the Ground Lease as if such provisions were included herein verbatim and as hereby modified.

c. Solely for interpreting the Ground Lease for the purposes of the sublease of the Restaurant Land under this Agreement: the term *Lessor* in the Ground Lease shall, for purposes of the sublease under this Agreement, mean and refer to *SISD* under this Agreement, the term *Lessee* in the Ground Lease shall, for purposes of this sublease, mean and refer to *Tenant* under this Agreement, and, in the event of any conflict between

the Ground Lease and this Agreement, this Agreement shall prevail. The term of the sublease of the Restaurant Land under this Agreement (hereinafter, *the Sublease Term*) will commence, extend and terminate as set forth below in Section 4 of this Agreement. Tenant shall have no other rights in or to, or any obligation for or with respect to, the Ground Lease or any other right, title or interest in or obligation for the Restaurant Land except as expressly set forth in this Agreement. Therefore, Tenant will have no obligation or liability for any acts, omissions, occurrences or other circumstances arising under or relevant to the Ground Lease prior to the commencement date of the Sublease Term, whether or not involving SISD, its agents, employees or other related parties. Further, excepting only as may be subsequently agreed in writing by SISD and Tenant, with the consent of the City, each acting in its sole discretion, Tenant shall have no right to or obligation for any further sublease of the Restaurant Land under the Ground Lease beyond the Sublease Term, the particulars of which are set forth in Section 4. Nothing herein is meant to or will modify or amend any of the rights or obligations of the City or SISD under or with respect to the Ground Lease.

3. **Use of Restaurant Land and Other Leased Assets.** The use to which the Leased Assets will be put by Tenant will be consistent with the purpose set forth for the Restaurant Land in Section 9 of the Ground Lease, which is to operate a restaurant; provided, however, that such restaurant operation will be conducted by Tenant for its own account on a for-profit basis using the Leased Assets and other goods and assets supplied from time to time by Tenant. Such operation by Tenant will generally involve a “fast-food- type” restaurant with indoor and outdoor seating that will be open to the general public and other business activities in support of or incident to that primary purpose. Further, the operating hours and dates of operation for such restaurant and related operation, including any off-season reduction of operating hours, off-season shutdown or both, will also be left to Tenant’s sole discretion. SISD agrees that Tenant will be entitled to conduct its restaurant operation of the Leased Assets using a business name selected by Tenant and Tenant will not be entitled or obligated to continue using the business name “Thorne Bay Café,” as used by SISD.

4. **Term.** The term of the lease of all the Leased Assets under this Agreement, including Tenant’s sublease of the Restaurant Land as leased by the City to SISD under the Ground Lease, is referred to herein as *the Lease Term*.

a.

The Lease Term shall commence on November 1, 2019 and except as this Agreement may be sooner properly terminated, the Lease Term will continue for the full remaining term of the Ground Lease which will continue until and expire on October 31, 2020. Excepting the option to purchase and only what may be subsequently agreed in writing by SISD and Tenant, with the consent of the City, each acting in its sole discretion, Tenant will have no right to or obligation for any further lease of any of the Leased Assets, including the sublease of the Restaurant Land under the Ground Lease, beyond that expiration date of the Lease Term. Further, Tenant will not have any right, interest or use of the Leased Assets, or any obligation or liability under this Agreement for or with respect to the Leased Assets, including the Restaurant Land and the Ground Lease, for any acts, events, occurrences or circumstances prior to the commencement of the Lease Term.

5. **Rent.** Tenant is granted the lease of the Leased Assets in accordance with the following terms and provisions as to rent and related obligations:

a. For the period beginning November 1, 2019 and ending April 30, 2020, Tenant will pay SISD monthly rent of \$350.00 per month as the full measure amount of rent that Tenant is obligated to SISD for rental of all the Leased Assets, including the sublease of the Restaurant Land under the Ground Lease. For the period beginning May 1, 2020 and ending October 31, 2020, Tenant will pay SISD monthly rent of \$500.00 per month as the full measure amount of rent that Tenant is obligated to SISD for rental of all the Leased Assets, including the sublease of the Restaurant Land under the Ground Lease. For the full term of the Ground Lease, SISD will pay to the City promptly, and in any event on or before the due date, all installments of rent and related charges that are payable under the Ground Lease. Tenant is also obligated to pay to SISD any additional sums that SISD is obligated to pay the City under Section 7 of the Ground Lease for charges listed or described in that provision including, without limitation, charges under sales tax, personal property tax and special assessments, but only if and to the extent such are applicable, payable and due under the Ground Lease. In addition, if any of the charges listed or described in Section 7 of the Ground Lease are applicable to

the rent Tenant is obligated to pay SISD for the Leased Assets other than the Restaurant Land, Tenant will also pay those additives to SISD.

b. All installments of rent and other sums payable to SISD hereunder shall be paid to SISD by mail at Post Office Box 19569, Thorne Bay, Alaska 99919, or such other address as SISD may from time to time designate in writing.

c. If Tenant fails to pay any installment of rent to SISD on or before the 10th day of the month, then Tenant shall pay SISD a late fee of 10% of the monthly rent that was not timely paid, which Tenant agrees is a reasonable late fee charge and not a penalty.

6. **Triple Net Lease:** The parties intend that this Lease be a net, net, net lease. Therefore, in addition to Tenant's payment of Base Rent, Tenant shall be obligated to pay and shall pay all taxes or other assessments upon the Leased Assets, insurance premiums (except as provided in Subsection 8.c.), repairs and maintenance costs (except for structural repairs identified in Subsection 8.c. and other obligations which are expressly identified as Landlord's responsibility), any and all costs, charges and obligations which may arise due to any easement, maintenance agreement, common area agreement, or the like, operating costs and electrical costs as set forth below in Subsection 8.c. which are in addition to all utility expenses for utility services provided to the Leased Assets, in addition to all sewer and water charges, security, or any other expenses or charges related to the Leased Assets, all of which are the responsibility of Tenant regardless of whether the expense or charge is specifically considered elsewhere in this Lease. The costs and expenses identified in this Section 6 are not intended to be an exhaustive or exclusive list of Tenant's obligations, which are specifically described below, but are merely intended to provide a description of the types of costs and expenses for which Tenant will be obligated under the Lease.

7. **Additional Changes to Ground Lease For SISD Sublease To Tenant.** With respect to SISD's sublease of the Restaurant Land to Tenant under this Agreement, in addition to the changes to the Ground Lease terms otherwise set forth in this Agreement, the following changes to the Ground Lease are also hereby agreed upon by and between SISD, as sublessor, and Tenant, as sublessee:

a. Notwithstanding Section 3 of the Ground Lease, Tenant will be granted occupancy of the Restaurant Land and the Buildings, and possession of all of the Leased Assets, beginning upon the commencement of the Lease Term under this Agreement;

b. Inasmuch as SISD is the owner of the modular building, equipment and other personal property referenced in Section 5, entitled "Purchase," and is leasing those non-real property assets to Tenant under this Agreement, that Section 5 is excluded from the terms of the Ground Lease incorporated into this Agreement for such sublease;

c. With regard to Ground Lease Section 12, "Insurance," Subsection 12.A., "Liability Insurance," SISD will at its expense continue to maintain and keep in force for the Lease Term the liability insurance coverage that is required under Subsection 12.A. of the Ground Lease. In addition to designating the City as an additional insured as required under Subsection 12.A., SISD will also designate Tenant as an additional insured under that liability coverage, which additional insured coverage with respect to Tenant shall, at a minimum, meet the coverage and other terms and requirements set forth in Subsection 12.A. In return for SISD designating Tenant an additional insured under its liability coverage in accordance with Subsection 12.A. of the Ground Lease, Tenant will obtain, maintain and keep in force during the Lease Term commercial general liability coverage as required under Section 13 of this Agreement, under which coverage Tenant shall designate SISD and the City as additional insureds upon the terms set forth in said Section 13; and,

d. With regard to Ground Lease Subsection 12.B., Property Insurance, SISD will at its expense also continue to maintain and keep in force for the Lease Term the property insurance coverage upon SISD's property in, on or upon the Restaurant Land including, without limitation, the Buildings, as required under the coverage and other terms and requirements of Subsection 12.B. of the Ground Lease. Any such insurance covering the Buildings and other SISD property shall either name Tenant, in addition to the City, as an additional insured or contain such other provisions as may be needed to preclude any subrogation claims by the property insurer(s) against Tenant. In addition to SISD maintaining such property coverage as required by Subsection 12.B., Tenant shall also be responsible for providing Tenant's own personal property/inventory insurance coverage of Tenant's personal property in or on the Restaurant Land. Tenant

acknowledges that neither SISD nor the City will be providing any insurance coverage other than as set forth in this Section 7 for the protection of Tenant, Tenant's loss of business, personal injury or property damage claims or content coverage. Tenant is responsible for providing any and all other of its own insurance coverages.

8. **Condition and Use of Leased Assets.** SISD's and Tenant's respective responsibilities and corresponding rights as to the condition of the Leased Assets during the Lease Term are as follows:

a. **The Leased Assets Are Leased *As-Is*.** Tenant has been offered and has had an adequate opportunity to inspect all of the Leased Assets. **THE LEASED ASSETS, INCLUDING THE SUBLEASE OF THE RESTAURANT LAND, ARE BEING LEASED "AS-IS" IN THEIR PRESENT CONDITION AND STATE OF REPAIR, WITH NO EXPRESS OR IMPLIED REPRESENTATIONS, STATEMENTS, OR WARRANTIES BY SISD AS TO PHYSICAL CONDITIONS, QUALITY OF CONSTRUCTION, WORKMANSHIP, STATE OF REPAIR, OR FITNESS FOR ANY PARTICULAR PURPOSE ALL OF WHICH ARE SPECIFICALLY DISCLAIMED BY SISD. SISD MAKES NO WARRANTIES REGARDING THE LEASED ASSETS' COMPLIANCE WITH LAW.**

b. **Alterations and Improvements.** Tenant shall not remodel or undertake any structural or other significant alteration of the Buildings without first having obtained SISD's written consent. Further, Tenant shall not undertake any improvements, alterations or modifications of the Restaurant Land unless and until the approval of the City is obtained as provided in Section 13 of the Ground Lease, provided that SISD would also need to concur in such City approval. No new improvements shall be placed on the Restaurant Land by Tenant without Tenant first having obtained the City's and SISD's written consent. All such undertakings shall be performed and completed in a workmanlike manner and in compliance with all applicable building and zoning codes and all other legal requirements. Tenant is to bear the costs of any and all improvements and alterations. Diagramed plans of any remodeling or alteration shall be submitted by Tenant for the consideration of SISD or the City and SISD, as the case may be, as to whether the required consent may be given.

c. Maintenance of Leased Assets. The parties' rights and obligations for maintenance and repairs of the Leased Assets during the Lease Term are as set forth in this Subsection 8.c. Tenant is responsible for routine, day-to-day upkeep of the Restaurant Land, for any capital or other improvements, and for repairs of the Restaurant Land or the utility, drainage or other systems or improvements of the Restaurant Land. Tenant is also responsible for routine, day-to-day upkeep and maintenance of the Buildings and other Leased Assets and is responsible for maintaining and repairing the Buildings' existing structures, including foundations, and their existing weather shells (including walls, siding, doors and windows) and existing electrical, heating and plumbing systems. SISD is responsible for maintaining and repairing the Buildings' roof structures. This responsibility does not include any items protruding through the roof. Tenant is responsible for any additions or improvements to any existing structures and electrical, heating and plumbing systems. None of the parties to this Agreement will be obligated to undertake any improvements, additions or upgrades to any of the Leased Assets except as one or more of the parties may subsequently agree, in its or their sole discretion.

d. Damage or Destruction of Leased Assets. In the event of destruction or the constructive destruction of the Buildings by fire or other cause, or in the event of any other damage to either the Restaurant Land, the Buildings or both, sufficient to make any substantial part of the Restaurant Land, the Buildings or both inaccessible or unusable for a period in excess of thirty (30) days, then the lease and sublease under this Agreement may be together terminated by either SISD or Tenant. Further, in the event that due to destruction or damage by fire or other cause, any substantial part of the Buildings, the Restaurant Land, other Leased Assets or any combination of the foregoing are inaccessible or unusable for a period in excess of seven (7) days, then to the extent that such Leased Assets are inaccessible or unusable, there shall be an abatement of rent between the date of damage or destruction and the date of restoration or, as the case may be, to the date when the lease and sublease under this Agreement is terminated, such abatement to be based on the percentage extent to which Leased Assets are, by reason of the damage or destruction, unfit for Tenant's use.

e. Inspection Of Leased Assets. Tenant shall make the Leased Assets available to SISD, or SISD's agents, at reasonable times in order to permit inspection concerning the condition and state of repair of the Leased Assets and for any other commercially reasonable purpose. The City's right of inspection as to the Restaurant Land shall be as set forth in the Ground Lease.

9. Liens; Lien Indemnification. Tenant shall pay when due all claims for labor, materials or both furnished or alleged to have been furnished to or for Tenant for the Restaurant Land or other Leased Assets, which claims are or may be secured by any mechanic's or "materialman's" lien against any of the Leased Assets, or any interest therein. Tenant shall not allow the Restaurant Land, any aspect of the Buildings or other Leased Assets, as a result of any act, omission or neglect of or by Tenant, to become subject to any lien, charge, or encumbrance. Without limiting the foregoing, Tenant shall at all times indemnify, defend and hold SISD harmless from and against any and all such liens, charges, and encumbrances.

10. Quiet Enjoyment and Lease Renewal. During the Lease Term and as to any renewal or extension of the lease under this Agreement:

a. Subject to and in accordance with this Agreement, Tenant is entitled to, and shall hold and enjoy, the Leased Assets without interference from SISD so long as Tenant promptly pays the monthly rent installments herein required and performs the covenants and abides by the terms and provisions herein contained; and,

b. Subject to the prohibition upon Tenant assigning this Agreement or any interest in this Agreement and in the Leased Assets, and the prohibition upon Tenant subletting the Leased Assets, all provisions hereof shall inure to the benefit of, extend to, and include, and be binding upon, the heirs, executors, administrators, successors and assigns of Tenant and SISD.

11. Liability for Loss. SISD is not responsible to Tenant for any damage to or destruction of Tenant's of personal property maintained on the Leased Assets or Tenant's leasehold improvements as a result of fire, storm, water damage, corrosion, vandalism, or other casualty, whether occasioned by the negligence or fault of Tenant, SISD or any third party, and Tenant shall address the risk of such loss by obtaining casualty insurance upon its personal property and leasehold improvements.

12. **Indemnity.** The use of the Leased Assets by Tenant, its agents, employees, contractors, customers and guests shall be at their own risk. SISD may not be held answerable or accountable to anyone for or on account of death or any injury or injuries sustained by any person, or for any loss or damage incurred to any property in, upon or about the Restaurant Land, the Buildings or with respect to those or any other Leased Assets, or any part thereof, during the Lease Term. Tenant, as a material part of the consideration to be rendered to SISD, waives all claims against SISD for damages to goods, wares and merchandise in, upon, or about the Leased Assets, and for death or injury to any person in or about the Leased Assets, arising at any time from any cause or causes. Tenant shall indemnify, defend and hold SISD harmless from any and all Claims (as defined below) including, without limitation, for injury to any person, including death, for damage to or destruction of the goods, wares, merchandise or other personal or real property of any person, and for any combination of the foregoing, arising in any way from or caused in any way by any one or more of the following: a) Any act, omission, or neglect of Tenant, Tenant's employees or contractors, or of any person permitted by Tenant to be upon or about the Leased Assets or the Property; and, b) Tenant's use or occupancy of, or Tenant's presence or its operations or activities on or around, the Leased Assets. For purposes of this Section 12, entitled *Indemnity*, the term *Claims* shall be defined as any and all claims, demands, causes of action, damages, liabilities, liens, charges, judgments, penalties, fines, costs, and expenses including, without limitation, actual attorneys' fees and litigation costs. The parties' rights and obligations under this Section 12 shall survive the expiration or earlier termination of this Agreement.

13. **Required Insurance.** Tenant shall at all times during the Lease Term, at Tenant's own expense, maintain, keep in effect, furnish, and deliver to SISD evidence of the following insurance coverages in amounts not less than those specified, and in form satisfactory to SISD. Tenant shall deliver insurance binder(s) for such coverages to SISD on the commencement date of this Agreement, and no later than ten (10) days after such commencement date and each policy renewal date thereafter, certificates of insurance evidencing such and showing the types and monetary limits of the coverage secured:

- a. **Commercial General Liability Insurance** with respect to the Leased Assets, including but not limited to the Restaurant Land and all operations of Tenant that are contemplated under this Agreement in, upon, or about said premises and the Buildings,

with minimum limits of \$1,000,000 per individual, \$1,000,000 per occurrence and \$1,000,000 general aggregate; SISD and the City shall be named as additional insureds on such liability insurance policies; and,

b. Worker's Compensation Insurance with regard to Tenant's and any other person's or entity's employees employed in, on or with respect to the Leased Assets. All insurance to be placed and maintained by Tenant will provide for a minimum of twenty (20) days written notice to SISD prior to cancellation.

14. **Waiver of Subrogation.** SISD and Tenant, for and on behalf of their respective selves, as well as for and on behalf of all of those claiming any right of subrogation through either one of them, waive all rights of subrogation against the other for loss or damage sustained by one or the other arising during the course of Tenant's occupation of the Leased Assets, during the term of this lease, to the extent that such loss or damage is, in fact, insured against by one or more insurance policies which, by their terms, entitle the damaged party to be reimbursed for such loss, excepting therefrom, however, such losses as are the result of an act of one of the parties intended by that party to cause the loss sustained by the other.

15. **Compliance With Laws and Regulations.** Tenant shall not use or conduct any activity on the Property, including the Leased Assets, or permit anything to be done in or on the Leased Assets which conflicts with any applicable federal, State of Alaska or local laws, statute, ordinance, regulation, code or other governmental rule, regulation or requirement, including zoning ordinances and restrictions, now in force or hereafter enacted or promulgated (all of which are referred to collectively as *Applicable Laws*). Tenant shall at its cost and expense comply at all times with all Applicable Laws relating to or affecting the condition, use or occupancy of and activities and operations on or in the Leased Assets.

16. **Hazardous Substances.**

a. Tenant shall not use or store Hazardous Substances on the Leased Assets except to the extent allowed by applicable law. Tenant shall indemnify, defend and hold SISD harmless from and against any and all losses, fines, damages, clean-up expenses, penalties and other Claims of every kind which arise or result in any way from or are related to Tenant's use or storage of Hazardous Materials on the Leased Assets, whether or not such use or storage is in violation of applicable law.

b. As used in this Section, the term "Hazardous Substance" shall mean any product, substance, chemical, material or waste defined or listed or designated hazardous, toxic or radioactive, or any other similar term by any applicable federal, state, or local statute, regulation, or ordinance now or hereafter in effect. The term "Hazardous Substance" shall include, but not be limited to, asbestos-containing materials, hydrocarbons, petroleum, gasoline, crude oil, or any products, by-products or fractions thereof.

c. All of Tenant's obligations under this paragraph shall survive termination of the lease.

17. **Assignment and Subletting.** Tenant shall not either voluntarily or involuntarily, directly, by operation of law or otherwise, assign, sell, or otherwise transfer this Agreement, any interest in this Agreement or any right, title or interest in or to the Leased Assets, or any of Tenant's rights hereunder, or sublet the Leased Assets or any portion thereof, without SISD's prior written consent in each instance, which consent shall not be compelled by operation of law or otherwise.

18. **Termination of the Lease.** The terms and provisions governing the expiration or termination of the lease under this Agreement and Tenant's departure from the possession of the Leased Assets are as follows:

a. Time is declared to be of the essence as to the performance of all conditions and covenants created by the execution of this Agreement with the consequence that any material default hereunder gives SISD the right to take possession of the Leased Assets and to occupy the Leased Assets to the exclusion of Tenant, with SISD thus having the option to thereupon terminate the lease. SISD's re-taking of possession of the Leased Assets does not constitute a termination of the lease unless SISD provides written notice of termination of the lease to Tenant. Notwithstanding termination of the lease as a result of default by Tenant, Tenant remains liable for unaccrued rent over the remainder of the Lease Term, subject to SISD's obligation of mitigation.

b. On expiration of the Lease Term or termination of the lease under this Agreement, whether by reason of breach or otherwise, Tenant shall vacate and depart the

Restaurant Land and Buildings, leaving the Leased Assets in as good a condition and state of repair as when possession was taken, excepting only ordinary wear and tear.

c. Upon termination and Tenant vacating the Leased Assets, Tenant shall be entitled to remove all of its personal property and all fixtures and improvements which may have been installed by Tenant or at Tenant's direction, provided that such removal either not damage the Buildings or any damage that may occur is properly repaired by Tenant before the end of the Lease Term.

19. **Default by Tenant.** Tenant's default or breach of this Agreement shall be deemed to have occurred in the event that one or more of the following conditions occur:

a. Failure to make any monthly installment payment as hereinabove required for a period in excess of fifteen (15) days after the same is due.

b. Failure to perform any other obligation or condition required to be performed for a period of twenty (20) days after service on Tenant of a notice spelling out the specific performance or condition required to be remedied, and Tenant fails to take steps in good faith to promptly rectify and remedy the condition or, if the nature of the remedy reasonably requires more than twenty (20) days to complete, then Tenant's failure to commence and pursue same with reasonable diligence shall in those circumstances constitute an event of default.

c. The vacation or abandonment of the Leased Assets by Tenant prior to termination of the lease, or default in the performance of any conditions of contemporaneously executed security agreements.

d. Failure to obtain or maintain insurance as herein required, provided that such default may be cured by Tenant promptly upon receiving actual notice of such failure.

20. **SISD's Default Remedies.** In the event default has occurred, the following rights and remedies (in addition to those provided by statute or at common law, whether at law or in equity) are available to SISD, to-wit:

a. Re-entry of the premises by SISD and the removal and storage of all of Tenant's property on the Leased Assets at Tenant's cost, and without responsibility for loss or damage provided Tenant is given reasonable notice.

SISD's re-entry and retaking of possession of the Leased Assets shall not terminate this lease unless SISD gives written notice of such termination.

- b. The right to declare the Lease Term to have ended.
- c. The right to re-rent the Leased Assets for any reasonable sum which may be deemed the best available rental rate.
- d. The right to declare all rent due and owing in accordance with the amounts otherwise set forth herein, and at SISD's election, as set forth above, the same shall be immediately due and payable.
- e. The right to declare all obligations due and payable and to enforce the payment thereof, and the right to perfect all rights and interest to which SISD shall be entitled.
- f. The right to recover damages against Tenant in accordance with the following:
 - i. The cost of performing Tenant's obligations pursuant to this Agreement.
 - ii. The amount equal to the total due under this Agreement, as otherwise set forth, less payments made by Tenant or rent received by reason of SISD's re-letting the Leased Assets.
 - iii. Interest at the rate of ten percent (10%) per annum or, if that rate exceeds the maximum legal rate applicable, then at such lesser rate as is the maximum, from the date damage was incurred or rental payments became due.
 - iv. Reasonable actual attorneys' fees and costs computed in accordance with reasonable hourly rates and charges prevailing in the community.

21. **Notice.** Notice to either party will be sufficient if mailed, postage prepaid, by certified or registered mail, or sent by national courier service to the following addresses:

SISD: Southeast Island School District
Post Office Box 19569
Thorne Bay, Alaska 99919

Tenant: Coffman Cove Development LLC
Post Office Box 18042
Coffman Cove, Alaska 99918

City: City of Thorne Bay
Post Office Box 19110
Thorne Bay, Alaska 99919
Attn: Wayne Benner, City Administrator

or at such other address as may be designated in writing by either party.

22. **Miscellaneous.** This Agreement shall not be modified except in writing signed by or on behalf of each of the parties hereto. Failure of SISD to require strict performance by Tenant of any of the provisions, terms or conditions of this Agreement will not be deemed a waiver or diminishment of any right of SISD to demand strict performance of this Agreement thereafter. This Agreement shall be construed as binding upon each party and its successors and assigns. If, at any time, either party shall employ counsel in connection with the enforcement of its rights under the terms of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs incurred with respect to pursuing such rights. Time is made of the essence of this Agreement. Each party warrants to the other that this Agreement and the transactions contemplated hereby have been or will be duly authorized, executed and delivered and that this Agreement and any related documents constitute valid and legally binding obligations of each party and are enforceable against them in accordance with their respective terms.

23. **Construction.** This Agreement is to be governed and construed in accordance with the laws of the State of Alaska. Jurisdiction and venue for any action relating to this Agreement shall be in the Superior or District Court for the State of Alaska, First Judicial District, at Ketchikan. Should any provision of this Agreement need additional interpretation, it is agreed that the Court interpreting and construing the same shall not apply a presumption that this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who, by himself or through his agent, prepared the same.

24. **Entire Agreement.** This Agreement is a final and complete expression of all the terms and conditions of the agreement between the parties hereto and shall supersede all previous communications, representations or agreements, either verbal or written. No representations, warranties, promises, guarantees, or agreements, oral or written, expressed or implied, are made by either party hereto, except as expressly provided herein. No modification

IN WITNESS WHEREOF, SISD and the Tenant have caused these presents to be executed as of the dates set forth below.

Sherry Becker, Superintendent

Brian G. Wilson, Sr., Member

Roxanne Wilson, Member

The terminology utilized in this City of Thorne Bay Consent is as established in the within and foregoing Lease of SISD Building and Equipment and Sublease Of Related City Land, which is referred to in this Consent as this *Agreement*. To the full extent that this Agreement sets forth or includes terms and provisions for the sublease by SISD to Tenant of the Restaurant Land, which is among the City's municipal land, the City hereby consents to and approves that sublease to Tenant.

IN WITNESS WHEREOF, the City has caused these presents to be executed as of the date set forth below.

Harvey McDonald, Mayor

STATE OF ALASKA)
) ss:
First Judicial District)

THIS IS TO CERTIFY that on this _____ day of October, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Sherry Becker**, to me known to be the **Superintendent** of the **Southeast Island School District**, the regional educational attendance area that executed the above and foregoing instrument; who acknowledged to me that he signed and sealed the same freely and voluntarily on behalf of the Southeast Island School District for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

Notary Public for Alaska

Commission expires: _____

STATE OF ALASKA)
) ss:
First Judicial District)

