

**CITY OF SAND POINT
COMMERCIAL LEASE AGREEMENT**

COPY

This lease agreement ("Lease") is made this 1st day of January, 2011, by and between the CITY OF SAND POINT, hereinafter called "City" or "Lessor" and JOHN LEIGH D/B/A FLEETWELDING SERVICE, hereinafter called "Lessee."

The parties agree as follows:

1. **PREMISES:** City, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Lessee, does hereby let, lease and demise to Lessee the following described property with rights of reasonable ingress and egress:

See Attachment A

Located in the City of Sand Point, Third Judicial District, State of Alaska, and consisting of 5907 square feet, referred to herein as "the Premises" and more particularly described as the highlighted area marked on Attachment A hereto.

The Premises are taken by Lessee "AS IS, WHERE IS," except as otherwise specifically stated herein. The described Premises are leased, subject to deed restrictions, easements, rights-of-way, if any, zoning and building restrictions and government regulations now in effect or hereafter adopted by any governmental authority.

2. **LEASE TERM:** (a) **Term.** The term of this Lease shall be from January 1, 2011, through and including December 31, 2011, unless terminated earlier in accordance with the terms of this Lease.

(b) **Renewal Option.** Lessee shall have two five-year option(s) to renew this Lease. Lessee shall notify Lessor of Lessee's intent to exercise their option to renew this Lease not less than thirty-days (30) prior to the end of the lease term then in effect.

(c) **Holding Over.** In the event that the Lessee holds over at or after the initial lease term, or any extended term of this Lease under option, the tenancy shall be deemed a month-to-month tenancy commencing on the first day of the holding over period. All covenants required to be observed by Lessee continue into any holdover period.

3. **RENT, LATE FEES AND SECURITY DEPOSIT:** (a) **Rent.** Lessee agrees to pay monthly rent of **\$413** that shall not be less than \$.07 per square foot per month. If, for any reason other than the default of Lessee, this Lease begins or ends on a day other than the first or the last day of a calendar month, rent shall be prorated for that month. The monthly rental fee is to be paid in advance, without notice and demand, and shall be due on the first day of each month. First month's rent is due upon execution of this Lease, receipt of which is acknowledged by Lessor. Rent shall be made payable to the City of Sand Point and delivered to the City Clerk's office, P. O. Box 249, Sand Point, Alaska 99661, or to any other address that the City may designate in writing.

On January 1st of each year, the City may adjust the monthly rental fee charged to coincide with the CPI-Anchorage rate of inflation but in no case will said rate of inflation be a basis for requiring the City to reduce rent. Where possible, Lessor will provide Lessee with at least ten (10) days' advance notice of any increased rent assessment.

(b) **Late Fee.** Should Lessee fail to make a rent payment within ten (10) days after that rent payment is due; Lessee shall be liable for a late charge of \$25.00 as partial compensation to the City for its administrative costs resulting from the late payment of rent. This late charge shall be due and collected as additional rent on the 10th day following the due date of the rent payment.

(c) Security Deposit. At the execution of this Lease, Lessee shall make a security deposit in the amount equal to one full month's rent due during the initial lease term. This security deposit shall be applied to the cost of repairs needed upon termination to restore the Premises to its condition at the execution of this Lease, ordinary wear and tear excepted. The balance, if any, shall be paid to Lessee after completion of such repairs.

4. COMPLIANCE WITH LAWS: Lessee shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter enacted in any manner affecting the Premises for the sidewalks, alleys, 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. Lessee agrees to indemnify and hold the City financially harmless (a) from the consequences of any violation of such laws, ordinances and/or regulations, and (b) from all claims for damages on account of injuries, death or property damage resulting from such violation.

5. USE AND CARE OF PREMISES: Use of the Premises is restricted to the primary business (es) of the Lessee. Any other use of the Premises must be approved by the Lessor.

Lessee agrees that Lessee has inspected the property and finds the property suitable for Lessee's purposes and accepts the property in its condition as of the execution date of this Lease.

Lessee shall not use or permit others to use the Premises or any part thereof as a residence or sleeping quarters. Lessee further agrees that Lessee will not permit any unlawful occupation, business or trade to be conducted on said Premises or any use to be made thereof contrary to any law, ordinance or regulation. Lessee shall maintain the Premises and any improvements constructed or located thereon in good condition and repair during the term of this Lease. Lessee further agrees that Lessee will neither cause, nor maintain, nor permit any public or private nuisance to exist on the Premises, nor fail to maintain the Premises in an orderly, neat, and clean condition, free of the hazard and nuisance.

Notwithstanding any other provision of this Lease, Lessee shall not commit or permit any act that disturbs the quiet enjoyment of any other user of neighboring properties. Lessee shall not use areas of ingress and egress to the Premises for sustained periods in any way that would prevent others from having unimpeded ingress and egress to neighboring properties or premises via public rights-of-ways and easements or other public access areas.

6. HAZARDOUS MATERIALS: Any fuel or oil stored on the Premises shall be stored so as to prevent the discharge of such hazardous substance from entering any ground or surface waters or adjacent waters. Lessee shall promptly clean or mop up any fuel or oil spilled on or about the Premises, including adjacent rights-of-ways and easements. If Lessee's use of the Premises results in hazardous materials being on or about the Premises, Lessee shall have materials and equipment available at all times sufficient to contain and clean up any such substances.

Lessee shall strictly comply with all applicable laws, ordinances or regulations respecting the handling, containment and cleanup of discharges or releases of Hazardous Materials. In the event of a discharge or release of a hazardous material resulting from or related in any way to Lessee's activities in, on, or about the Premises, Lessee shall (a) promptly and completely clean up the discharge or release, in strict compliance with applicable laws, ordinances or regulations, and (b) defend, indemnify and save Lessor harmless from all consequences thereof, including but not limited to third-party claims for damages, the costs of local, state or federal remedial or compliance actions, whether informal or formal, all clean up and remediation costs needed to restore the site to its previous condition, and full reasonable, actual attorney's fees.

If, during the term of this Lease, any Hazardous Materials are released or discharged on or from the Premises to, on, or about the Premises or other properties, including but not limited to the surface or subsurface waters adjacent to the Premises, Lessee shall indemnify, defend, and hold the Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, including, but not limited to costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restorative work required by any federal or state agency due to the presence of Hazardous Materials in the soil or groundwater or surface waters on or under the Premises or adjacent to the Premises, whether such losses arise during or after the term of this Lease, but only to the extent that such release or discharge is not caused by the sole fault of the Lessor or its agents, representatives, contractors or employees.

As used in this Lease, the term "Hazardous Materials" includes, but is not limited to, oil or petroleum fractions; asbestos; polychlorinated biphenyls (PCBs); any substance defined or listed by the State of Alaska or the Environmental Protection Agency as a hazardous substance under Title 46 of the Alaska Statutes or associated regulations or CERCLA, 42 U.S.C. § 6901 *et seq.*, or associated regulations; and any substance listed by the U.S. Department of Transportation or Environmental Protection Agency under 33 U.S.C. § 1317, 49 C.F.R. § 172.101 or 40 C.F.R. § 302.

7. **UTILITIES AND SERVICES:** Lessee shall pay the charges for utilities supplied to all or any part of the Premises and shall perform or pay for additional maintenance that may be required to maintain the Premises in a safe and tenantable condition.

Lessee shall be responsible for provision of any other utilities or services reasonably necessary to maintain the Premises and any improvements thereto and to keep same in a safe and tenantable condition. Failure to timely pay for utilities and services provided to the Premises is cause for termination of the Lease at the option of the City. In no event shall the City be liable for any loss or damage caused by any variation, interruption or failure of utility services. No temporary interruption or failure of such services incident to the making of repairs, alterations, or improvements, or due to accident, conditions, or events beyond the City's reasonable control shall be deemed an eviction of Lessee or relieve Lessee of any of Lessee's obligations hereunder.

8. **TAXES AND ASSESSMENTS:** Lessee agrees to pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed on the Premises. Lessee further agrees to pay all City sales taxes when due and to maintain a current City of Sand Point business license during each year of this Lease or any term extension of this Lease. Should Lessee fail to timely obtain a City business license as required by City ordinances or fail to file sales tax reports or to collect, remit and/or pay sales taxes due as required by City ordinances, it shall be considered a material breach of this Lease and a basis for default.

9. **IMPROVEMENTS:** Lessee may make such alterations, additions, or improvements as Lessee deems necessary for the use(s) identified above upon prior approval of Lessor evidenced in writing. Lessee shall provide Lessor any plans for any such improvements. All fixtures or improvements constructed or installed shall be at the sole cost of the Lessee unless otherwise agreed in writing. The approval by Lessor of any improvement or plans refers only to the conformity of such plans for the Premises. Such plans are not approved for architectural or engineering design and Lessor assumes no liability or responsibility therefore, or for any defect in any structure, fixture or improvement constructed from such plans.

Upon termination of this Lease and any renewal or extension thereof, Lessee shall remove all fixtures and movable personal items, provided that any damage caused to the Premises by reason of such removal shall be paid by Lessee. Any trade fixtures and other movable personal items not so removed by Lessee shall become the property of the City. All permanent improvements shall become the property of

the City.

Lessor may, in its sole discretion, remove and store and sell or dispose of any or all property not timely removed from the Premises. Storage shall be for the account and at the expense of Lessee. If after a period of thirty-days (30) or more Lessee has not paid all sums due and owing to Lessor under this Lease, Lessor may sell any or all of such property of value at a public or private sale. Lessor 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. Lessor may set the time, place and manner of the sale. The proceeds of any such sale shall be applied first to the costs of sale (including actual, reasonable attorney's fees), then to storage charges and then to delinquent sums due or to become due Lessor under this Lease and any remaining balance shall be mailed to Lessee.

10. **LIENS:** Lessee shall not permit any mechanics, laborers, or material man's liens to stand against the Premises for any labor or materials furnished to Lessee or claimed to have been furnished to Lessee or to Lessee's agents, contractors, or subleases, in connection with work of any character performed or claimed to have been performed on said Premises or improvements by or at the direction or sufferance of Lessee, provided however, Lessee shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Lessee shall give to City reasonable security as may be demanded by City to ensure payment thereof and prevent any sale, foreclosure or forfeiture of the Premises or improvements by reason of such non-payment. Lessee will immediately pay a judgment rendered with all proper costs and charges and shall have such liens released or judgment satisfied at Lessee's own expense. Lessee shall post upon the property, during the construction of any improvements, a notice that the City shall not be responsible for the payment of any mechanic's, material man's or laborer's liens.

11. **INDEMNIFICATION AND INSURANCE:** Lessee agrees to protect, defend, indemnify and save harmless the City from and against any and all claims, demands and causes of action of any nature whatsoever, and any expenses incident to defense of and by City therefrom for any injury to or death of persons or loss of or damage to property occurring on the Premises, or in any manner arising out of Lessee's use and occupation of said Premises, or the condition thereof, during the term of this Lease.

Lessee shall procure and maintain broad form comprehensive public liability and property insurance coverage naming the City as an additional insured, which coverage shall pertain to the Premises and Lessee's activities thereon, and which shall not be less than \$100,000 per person, \$300,000 in the aggregate per accident. Lessee agrees to furnish the certificate(s) of insurance evidencing insurance coverage of the Premises to the City at or before the time this Lease is signed. The certificates of insurance shall contain an endorsement providing for not less than thirty-days (30) notice to the City of intent to cancel or decrease the insurance.

12. **EMINENT DOMAIN:** If the entire Premises shall be taken by any public or governmental authority under the power of eminent domain, the term of this Lease shall cease as of the date possession is taken by such authority and the rents shall be paid up to that date. If only a part of the Premises shall be taken and the remainder remains tenantable for the purposes for which Lessee has been using the Premises, then this Lease shall continue in effect, except that the rent shall be reduced in proportion to the Premises that remain tenantable. All damages awarded for such taking may be retained by City except City shall not be entitled to any portion of the award made to Lessee for cost or removal of stock, fixtures and leasehold improvements. The term "eminent domain" as used herein shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu thereof.

13. **NOTICES:** Any and all notices required or permitted under this Lease, shall be in writing to each party at its following address or fax number (or to such other address or fax number as that party may have most recently given notice of in writing to the other party) and shall be delivered via first-class mail,

postage prepaid, via facsimile, or in person, and shall be directed as follows:

LESSOR: City of Sand Point
P.O. Box 249
Sand Point, AK 99661
(907) 383-2698 (fax)

LESSEE: John Leigh d/b/a Fleetwelding Service
P.O. Box 4
Sand Point, AK 99661
(907) 383-5844 (phone) (907) 383-_____ (fax)

Notices shall be effective at the earlier of receipt or within three (3) days of being placed in the U.S. Mails, postage prepaid.

14. **DEFAULT:** If Lessee at any time during the term of this Lease or any extension hereof shall (a) fail to make payment of any installment of rent or of any other sum herein specified to be paid by Lessee, or (b) fail to observe or perform any of Lessee's other covenants, agreements or obligations hereunder, and if any such default shall not be cured as to (a) within fifteen (15) days after mailing of written notice of such failure to make payments, or as to (b) if within twenty (20) days after Lessor shall have delivered to Lessee written notice specifying such default or defaults, Lessee shall not have commenced to cure such default and proceed diligently to cure the same, then in any such event Lessor shall have the right at its election, then or at any time thereafter, and while such default(s) or events shall continue, to give Lessee notice of termination of this Lease. In such a case, on a date specified in such notice, which date shall not be less than fifteen (15) days after the date of mailing of such notice ("termination date"), the term of this Lease shall come to an end. Lessee hereby covenants peaceably and quietly to yield up and surrender to Lessor, not later than the termination date, said Premises and all structures, buildings, improvements and equipment located thereon not the property of the Lessee, and to execute and deliver to Lessor such instrument or instruments as shall be required by Lessor as will properly evidence termination of Lessee's rights hereunder or its interest therein.

In the event of termination of this Lease, Lessor shall have the right to repossess the Premises and such structures, buildings, improvements and equipment, without process of law or any form of suit or proceedings, subject to Lessee's removal rights under this Lease. Lessor shall further have the right to sue for and recover all rents, accrued and unaccrued, and other sums owing including but not limited to interest, and damages arising out of any breach on the part of Lessee. Further, Lessor shall also have the right, without resuming possession of the Premises or terminating this Lease, to sue for and recover all rents and other sums, including damages, at any time and from time to time accruing hereunder.

Lessor shall not be in default of any of its obligations hereunder unless and until it shall have unreasonably failed to perform said obligation within thirty-days (30), or such additional time as may be reasonably required, after receipt of written notice from Lessee specifying the claimed default.

15. **COSTS UPON DEFAULT:** If either party is in default in the performance of any of its obligations under this Lease and an action may be brought for the enforcement thereof, the defaulting party shall pay to the other all the expenses incurred therefore, including reasonable, actual attorney's fees and all costs. Any sums due from Lessee under this Lease shall accrue interest at ten percent (10%) per annum from the date due until paid in full.

16. **RIGHTS AND REMEDIES:** No right or remedy herein conferred upon or reserved to the City is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given thereunder, or now or hereafter existing at

law or in equity or by statute.

17. **WAIVER AND FORBEARANCE:** No waiver by the City of any breach by Lessee of any of its obligations or agreements or covenants herein under shall be deemed to be a waiver of any subsequent breach of the same or any other covenants, agreement or obligation, nor shall any forbearance by the City to seek remedy for any breach by Lessee be deemed a waiver by the City of its rights and remedies with respect to such breach.
18. **INSPECTION AND ACCESS:** Lessor shall have reasonable access to the Premises for purposes of inspection regarding the faithful performance of the covenants and conditions of this Lease and for the performance of other lawful requirements. Lessee shall provide Lessor with a complete set of keys to the Premises (where the Premises or any improvement includes and interior space) for use in an emergency. Lessee shall also provide Lessor with the name and home phone number of the appropriate owner or manager, if other than the person identified in paragraph 14, above, for use and notification of in an emergency.
19. **SUCCESSORS IN INTEREST:** This Lease shall be binding upon and shall inure to the benefit of the respective heirs, successors and assigns of the parties hereto.
20. **ASSIGNMENT OR SUBLETTING:** Lessee shall not assign, sublet or grant a security interest in the Premises, or any part thereof, without the prior written consent of the City (which shall not be unreasonable withheld) to such subletting or assignment or grant of security interest. Lessee's request to assign or sublease must be in writing and must show the name, address, and telephone number of the proposed assignee or sublessee. The City may request additional information about any proposed assignee or sublessee. If Lessee is a corporation or limited liability company, any transfer of the Lease by way of a change in effective control or change in ownership of 30% or more of the stock or interest in the entity is an assignment for purposes of this Lease. Lessee shall not be released from their obligations without a written release by City.
21. **SEVERABILITY.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.
22. **TIME OF THE ESSENCE.** Time is of the essence as to each term and provision of this Lease to be performed by Lessee.
23. **RELATIONSHIP OF PARTIES.** This Lease is intended to create the relationship of landlord and tenant between Lessor and Lessee and no other relationship.
24. **GOVERNING LAW.** This Lease shall be construed and governed by the laws of the State of Alaska. All suits related to this Lease shall be brought only in state court in the Third Judicial District, State of Alaska.
25. **INTEGRATION AND MODIFICATION:** This document contains the entire agreement of the parties hereto. All negotiations, statements, or representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this lease and the performance of either party hereto are merged and integrated into the terms of this document. This Lease may not be modified or amended except in writing signed by all of the parties. Any purported amendment, understanding or modification is without effect until reduced to writing signed by each party hereto.

