

## Assignment, Assumption and Amendment of Lease

This Assignment, Assumption and Amendment of Lease (this “**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and among Vigor Alaska - Seward LLC, an Alaska limited liability company (“**Assignor**”), JAG Alaska, Inc., an Alaska corporation (“**Assignee**”), and the City of Seward, Alaska, an Alaska municipal corporation (“**Lessor**”). Assignor, Assignee and Lessor may each be referred to as a “**Party**” and any two or more of them may be referred to collectively as the “**Parties**”.

### RECITALS

A. By that certain *Ground Lease* dated April 25, 1995, as amended by that certain *Lease 95-094 Amendment No. 1*, dated as of December 23, 1997, as further amended by that certain *Lease Amendment Number 2*, dated as of January 2000, as further amended by that certain *Ground Lease Amendment No. 3*, dated as of October 26, 2001, as further amended by that certain *Ground Lease Amendment No. 4*, dated as of January 14, 2010, as further amended by that certain *Agreement to Extend Ground Lease*, dated as of January 26, 2010, as further amended by that certain *Agreement to Extend Ground Lease*, dated as of July 11, 2012, as further amended by the *Assignment, Assumption and Amendment of Lease* dated as of July 8, 2014, copies of which are attached hereto marked ANNEX A (collectively, the “**Lease**”), by and between Lessor, as lessor, and Assignor or its predecessor in interest, as lessee or successor lessee, Lessor agreed to lease to Assignor and Assignor or its predecessor agreed to lease from Lessor all that certain tract of land with improvements situated thereon commonly known as Lots 1-A and 3 Block 7, Fourth of July Creek Subdivision Seward Marine Industrial Center (the “**Premises**”).

B. Assignor assumed the Lease from Seward Ship’s Drydock, Inc. on or about July 8, 2014 and has occupied the Premises from that date through and including the Effective Date described in Section 2 below (“**Assignor’s Occupancy**”).

C. Assignor wishes to sell and assign to Assignee, and Assignee wishes to purchase from Assignor, substantially all of Assignor’s assets related to the Premises, and to assume certain specifically identified liabilities of Assignor (the “**Purchase/Sale Transaction**”). One of the conditions of the Purchase/Sale Transaction is Assignor’s assignment of the Lease to Assignee, Assignee’s acceptance and assumption of the Lease, and Lessor’s release of Assignor from future liability under the Lease. The Lease permits Assignor to assign the Lease, subject to Lessor’s consent. Therefore, the closing of the Purchase/Sale Transaction will be effective only if and when the Parties have executed and delivered this Agreement and the other conditions in Section 2 below have been satisfied or waived.

### AGREEMENT

NOW, THEREFORE, in consideration of the provisions in, and intending to be legally bound by, this Agreement, the Parties agree as follows:

1. Recitals; Definitions. The recitals set forth above are incorporated in this Agreement by reference. Capitalized terms not otherwise defined in this Agreement will have the same meaning as in the Lease.

2. Assignment and Assumption of Lease; Release. Subject to the terms of this Agreement and the satisfaction of the conditions in this Section 2, Assignor assigns to Assignee all of Assignor's right, title and interest in and to the Lease (the "**Assignment**"). Assignee agrees to and accepts the Assignment and assumes and agrees to keep, perform and fulfill all of the terms, covenants, conditions and obligations otherwise required to be kept by Assignor under the Lease that arise on and after the Effective Date described below. Lessor releases Assignor from any and all obligations and/or breach of the Lease that occurs on or after the Effective Date. This Agreement will not become effective or bind any of the Parties unless and until each of the following conditions has been satisfied (or waived) (the "**Effective Date**"): (a) Assignee has posted a performance and payment surety satisfactory to Lessor; (b) each Party has executed and delivered to each other Parties the *Assignment, Assumption and Amendment of Operating Agreement*, dated the same date as the Effective Date; (c) Assignor has delivered to Assignee, in a form satisfactory to Assignee, a *Bill of Sale and Assignment* for the personal property owned by Assignor associated with the Premises (the "**Bill of Sale**"); and (d) Assignee has delivered to Assignor, in immediately available funds, the consideration for that property stated in the Bill of Sale.

3. Direct Lease. The Lease will continue in full force and effect as a direct Lease between Lessor and Assignee, as Lessee under, and upon and subject to all of the terms, covenants, and conditions of, the Lease.

4. Amendment to Section 4.01 Use of Premises. Lessor and Assignee hereby agree to amend and Section 4.10 of the Lease, effective as of the Effective Date, in its entirety with the following language: The parties agree that the Premises is one of few parcels within the SMIC suitable for vessel repair and construction and that the City has made a substantial investment in public facilities adjacent or in proximity to the Premises with the objective of providing opportunities for businesses such as Lessee's to operate. Consistently during the term of the Lease, Lessee shall take all necessary actions to be capable of providing vessel repair and construction, and shall use the Premises only for vessel repair and construction, and purposes incidental thereto. Lessee shall operate a vessel repair and construction facility continuously during the Lease Term. Lessee is not operating a vessel repair and construction facility continuously on the Premises if, during any period of 60 consecutive days, the Shiplift Facility is not used to perform vessel repair or construction work on any vessel on the Premises, or if the Shiplift Premises are not full. If there were no business during a 60 day period to meet this requirement, the requirement will be deemed fulfilled by having executed 6 drydocking operations in the previous 12 month period.

5. Amendment to Section 14.06 (Notices) of the Lease. Lessor and Assignee hereby amend Section 14.06 of the Lease, effective as of the Effective Date, to replace the Lessee's address as follows:

JAG Alaska, Inc.

\_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_  
Attention: \_\_\_\_\_

6. Warranties and Representations. As of the Effective Date:

5.1 Lessor. Lessor represents and warrants to Assignor and to Assignee that: (a) the documents attached as ANNEX A are collectively a true and correct copy of the Lease immediately prior to the Effective Date; (b) other than the provisions of this Agreement, and that certain *Maintenance and Operating Agreement* between Lessor and Assignor dated as of April 1, 2012, as amended contemporaneously with this Agreement, the Lease represents the entire agreement between Lessor and Assignor relating to the Premises and has not been amended by any agreement, written, verbal or otherwise, between Assignor and City; (c) neither Lessor nor Assignor has taken any action to terminate the Lease, and the Lease remains in full force and effect and is enforceable in accordance with its terms; (d) beginning on the Effective Date, and subject to the terms of the Lease, the Premises at all times hereafter during the term of the Lease may be held by Assignee (or its assignee or sublessee) without any lawful interruption by Lessor or any person or persons claiming under or through Lessor; and (e) Lessor has the right, power, and authority to enter into this Agreement.

5.2 Assignor. Assignor represents and warrants to Lessor and to Assignee that during the period of Assignor's Occupancy: (a) Assignor has not taken any action to terminate the Lease prior to its expiration pursuant to its terms; (b) all material obligations under the Lease have been complied with by Assignor (or waived in writing by Lessor), and except for Assignor's lack of work at the Premises, no material violation of or default under any of the terms of the Lease by Assignor has occurred, and no facts exist which, with the giving of notice and/or the passage of time, would constitute such a violation or default or any other claim by Lessor or Assignor under the Lease of any nature or kind; (c) Assignor has not assigned the Lease or received notice of an assignment of the Lease by Lessor; (d) Assignor has not sublet all or any portion of the Premises; (e) Assignor has the right, power, and authority to enter into this Agreement.

5.3 Assignee. Assignee represents, warrants and covenants to Lessor and to Assignor that: (a) Assignee has taken all necessary corporate action to enter into this Agreement and carry out its provisions; (b) Assignee has the financial capacity and expertise to enter into this Agreement and to operate a shipyard on the Premises in accordance with this Agreement; (c) Assignee's entry into this Agreement and carrying out the provisions hereof does not violate or conflict with the terms of any law or order of any administrative agency or the terms of any agreement of the Assignee or any order, judicial or otherwise to which Assignee may be subject; and (d) Assignee has the right, power, and authority to enter into this Agreement.

7. Environmental Matters.

6.1 Environmental Audits. Before Assignor occupied the Premises, Phase I and Phase II environmental audits of the Premises were performed (the "**2014 Audits**"). A copy of the 2014 Audits is attached as Exhibit C to the *Assignment, Assumption and Amendment of Lease* dated as of July 8, 2014. Attached to this Agreement as ANNEX B is a copy of the Phase I and any Phase II environmental audits of the Premises performed by Assignee prior to the Effective Date (the "**2018 Audit(s)**"). As between Lessor and Assignee, all references in the

Lease to “Baseline Audit” will mean and refer to the 2018 Audit(s). The parties agree that the 2014 Audits disclose the presence of historical releases of Hazardous Substances on the Premises prior to Assignor’s occupancy in 2014, and that the 2018 Audit(s) describes the presence of Hazardous Substances on the Premises as of the date(s) of the 2018 Audit(s). The 2014 Audits and the 2018 Audit(s) will be used by the Parties as an aid in determining contamination existing on the Premises as of the dates of those audits, and for determining future environmental cleanup responsibilities, if any, as may be required by government or third party actions.

6.2 Responsibility. Assignor will not be responsible for any Hazardous Substances present on the Premises before the 2014 Audits, or that are brought on to the Premises after the 2018 Audit(s), or for the exacerbation of the Hazardous Substances disclosed in the 2014 Audits or that were first disclosed in the 2018 Audit(s). Assignee will not be responsible for any Hazardous Substances present on the Premises before the 2018 Audit(s) or for the exacerbation of the Hazardous Substances reflected in the 2014 Audits. Assignor will indemnify, defend, and hold harmless Lessor and Assignee for the cleanup of any Hazardous Substances as required by law that were brought on to the Premises after the 2014 Audits and before the 2018 Audit(s), and for the exacerbation of those Hazardous Substances, and Assignor will remove or cause to be removed all such Hazardous Substances to extent required by applicable law. Assignee will indemnify, defend, and hold harmless Lessor and Assignor for the cleanup of any Hazardous Substances that are brought on to the Premises after the 2018 Audit(s), and for the exacerbation of those Hazardous Substances, and Assignee will remove or cause to be removed all such Hazardous Substances to extent required by applicable law. Except to the extent otherwise required by applicable law, Assignor or Assignee, as appropriate, will have the exclusive and unfettered right to control the timing, nature, and content of communications with the Alaska Department of Environmental Conservation, the United States Environmental Protection Agency, or other federal, state or local governmental entities regarding the actual, possible, or suspected presence of Hazardous Substances in or around the Premises.

6.3 Post-Assignment Insurance by Assignee. Assignee will obtain from a licensed insurer a policy of premises pollution liability insurance insuring Lessor and Assignor from claims made during the policy term for contamination that occurs during the period of Assignee’s Occupancy, which insurance will: (a) be subject to commercially reasonable terms and exclusions, (b) have limits of liability of \$1,000,000.00 per pollution condition and \$3,000,000.00 aggregate, (c) name Lessor and Assignor as insureds, and (d) be maintained in effect for a period of four (4) years from the Effective Date. For the avoidance of doubt, a single insurance policy that meets both the requirements of this Section 6 and Section 6 of the *Assignment, Assumption and Amendment of Operating Agreement* by and among the Parties, of even date herewith, will satisfy the requirement of this Section 6.

8. Miscellaneous:

7.1 Successors and Assigns. This Agreement will inure to the benefit and will be binding upon the successors and assigns of each of the Parties

7.2 Interpretation. The words “includes” and “including” are not limited in any way and mean “includes or including without limitation.” The word “person” includes individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons. The term “and/or” means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The words “will,” “shall,” and “must” are synonyms, and each refers to action that is mandatory rather than optional. All documents and exhibits attached to or referenced in this Agreement are a part of and are incorporated in this Agreement. Each Party has had an opportunity to have this Agreement reviewed by its attorneys; therefore, no rule of construction or interpretation that disfavors the Party drafting these Terms, or that favors the other Party, will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to its fair meaning. If there is any conflict between the provisions of the Lease and the provisions of this Agreement, the provisions of this Agreement will control, and except as expressly amended by this Agreement, all of the terms, covenants and conditions of the Lease will remain in full force and effect after the Effective Date. All section and paragraph headings of this Agreement are inserted for convenience only and will not constitute a part of this Agreement, nor will they in any way affect its meaning, construction, interpretation or effect. This Agreement will be construed and enforced exclusively in accordance with the laws of the State of Alaska.

7.3 Notices. All notices, requests, demands, directions and other communications (collectively, “notices”) under the provisions of this Agreement will be in writing (including email communication) unless otherwise expressly permitted under this Lease and will be sent by first-class or first-class express mail, or by email with confirmation in writing mailed first-class, in all cases with charges prepaid, and any such properly given notice will be effective when received. All notices will be sent to the applicable Party at its address in Section 14.06 of the Lease or, in the case of Assignor, to 5555 N. Channel Avenue, Portland, OR 97217, Attn: General Counsel, or in accordance with the then unrevoked written direction from that Party to the other Parties.

7.4 Relationship. The Parties recognize that, for purposes of this Agreement, Assignee is a “lessee” of Lessor and “assignee” of Assignor, and nothing in the Lease or this Agreement is intended or will be construed to create an employer/employee relationship or a joint venture or a partnership relationship, or to allow Lessor or Assignor to exercise control or direction over the matter or method by which Assignee performs under this Agreement.

7.5 Severability. The invalidity of any portion of this Agreement will not affect the force and effect of the remaining valid portions of this Agreement.

7.6 Further Assurances. Each of Lessor, Assignor and Assignee will, from time to time upon the request of any of the others, promptly and duly execute, acknowledge and deliver any and all such further instruments and documents, and will take such further action, as may be necessary or desirable to confirm this Agreement and to carry out its purpose and intent.

7.7 Counterparts/Execution. This Agreement may be executed in counterparts, including by means of PDF signature pages, each of which will constitute an original and all of which, when taken together, will constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by electronic transmission will constitute effective execution and delivery of this Agreement as to the Parties and such copies may be used in lieu of the original Agreement for all purposes.

9. Lessor's Consent. Assignor and Assignee acknowledge and agree that Lessor's consent is necessary for this Agreement. Lessor, intending to be legally bound hereby, consents to the Assignment of the Lease by Assignor to Assignee pursuant to the terms of this Agreement. Lessor represents and warrants that it has full power and authority to enter into and grant this Lessor's consent under Resolution 2018-\_\_\_\_\_ of Lessor authorizing its City Manager to enter into this Agreement on behalf of Lessor and the Parties agree that the power and authority of Lessor to enter into and grant this consent is subject to the terms of Resolution 2018-\_\_\_\_\_.

Each of Assignee and Assignor have provided Lessor with certified copies of all necessary corporate resolutions and other documents evidencing the authority of persons signing this Agreement on their behalf and to bind them in accordance with the terms of this Agreement.

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals by their duly authorized officers as of the date and year set forth opposite their names below, intending to be legally bound.

Dated:	<b>ASSIGNOR:</b>  VIGOR ALASKA—SEWARD LLC, an Alaska limited liability company  By: _____ Name: Title:
Dated:	<b>ASSIGNEE:</b>  JAG Alaska, Inc., a _____ corporation  By: _____ Name: Title:
Dated:	<b>LESSOR:</b>  CITY OF SEWARD, ALASKA, an Alaska municipal corporation  By: _____ Name: Title:

ANNEX A

**The Lease**

*[Insert complete copy of Lease]*

ANNEX B

The 2014 Audits and the 2018 Audit(s)

*[Insert environmental audits]*