PUBLIC NOTICE

The Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District announces a Special Meeting to be held on Thursday, October 22, 2015 at 5:45 p.m. in the Woodley Island Marina Meeting Room, Eureka, CA. The purpose of the Special Meeting is for the Board to consider approval of Alaskan Anvil, LLC lease.
AGENDA
SPECIAL MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

DATE: October 22, 2015
TIME: 5:45 P.M.
PLACE: Woodley Island Marina Meeting Room

The Meeting Room is wheelchair accessible. Accommodations and access to Harbor District meetings for people with other handicaps must be requested of the Director of Administrative Services at 443-0801 at least 24 hours in advance of the meeting.

1. Call to Order Special Board Meeting at 5:45 P.M. and Roll Call

2. Pledge of Allegiance

3. Public Comment

   Note: This portion of the Agenda allows the public to speak to the Board on the various issues not itemized on this Agenda. A member of the public may also request that a matter appearing on the Consent Calendar be pulled and discussed separately. Pursuant to the Brown Act, the Board may not take action on any item that does not appear on the Agenda. Each speaker is limited to speak for a period of three (3) minutes regarding each item on the Agenda. Each speaker is limited to speak for a period of three (3) minutes during the PUBLIC COMMENT portion of the Agenda regarding items of special interest to the public not appearing on the Agenda that are within the subject matter jurisdiction of the Board of Commissioners. The three (3) minute time limit may not be transferred to other speakers. The three (3) minute time limit for each speaker may be extended by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District. The three (3) minute time limit for each speaker may be enforced by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District.

4. New Business
   a. Consideration of Alaskan Anvil, LLC Lease.

5. Adjournment
COMMERCIAL LEASE

Date: December 1, 2015

Between: Humboldt Bay Harbor, Recreation & Conservation District
P.O. Box 1030
Eureka, CA 95502-1030
("District")

And: Alaskan Anvil, LLC
C/O: Bud Hoy guwhoy69@yahoo.com
P.O. Box 791
Port Townsend, WA 98368
("Tenant")

Area: Fields Landing Boat Yard

District leases to Tenant and Tenant leases from District the following described property (the "Premises") on the terms and conditions stated below:

2,185 Square Feet of Shop Space attached to main building. 7,000 square feet of designated yard space. 170 square feet of office space located in main building. Access and use of Travel Lift building (main building) at a daily use rate.

Section 1. Occupancy

1.1 Original Term. The term of this lease shall be December 1, 2015, to November 30, 2016, unless sooner terminated as hereinafter provided.

1.2 Possession. Tenant’s right to possession and obligations under the lease shall commence on December 1, 2015.

1.3 Renewal Option. If the lease is not in default at the time each option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this lease for two successive terms, as follows:

Page 1 – Commercial Lease
(1) Each of the renewal terms shall commence on the day following expiration of the preceding term.

(2) The option may be exercised by written notice to District given not less than 120 days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties. District and Tenant shall then be bound to take the steps required in connection with the determination of rent as specified below.

(3) The terms and conditions of the lease for each renewal term shall be identical with the original term except for rent and except that Tenant will no longer have any option to renew this lease that has been exercised. Rent for a renewal term shall be the greater of (a) the rental during the preceding original or renewal term increased as set forth in Section 2 or (b) a fair market value of similar land.

Section 2. Rent

2.1 Base Rent. During the original term, Tenant shall pay to District as base rent the sum of $2,269 per month (Shop space $1,092, Yard space $1,050, Office space $127). Rent shall be payable on the first day of each month.

2.2 Security Deposit. Tenant will pay District the sum of $1,000 as a deposit at the signing of this lease to secure the lease. The deposit is nonrefundable if the tenant decides not to commence on December 1, 2015. The District shall have the right to offset against the deposit any sums owing from Tenant to District and not paid when due, any damages caused by Tenant's default, the cost of curing any default by Tenant should District elect to do so, and the cost of performing any repair or cleanup that is Tenant's responsibility under this lease. Offset against the deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by District, at its
option, in addition to any other remedy provided by law or this lease for Tenant’s nonperformance. District shall give notice to Tenant each time an offset is claimed against the deposit, and, unless the lease is terminated, Tenant shall within 10 days after such notice deposit with District a sum equal to the amount of the offset so that the total deposit amount, net of offset, shall remain constant throughout the lease term.

2.3 Additional Rent for Travel Lift Building. Additional use of Travel Lift building space, 2,520 square feet, available at a monthly rate of $3,024 or a daily rate of $100. Area consists of space under Travel Lift, any size vessel, not restricting the mobility or use of the Travel Lift. Rate available only as part of long term lease.

2.4 Additional Charges. All taxes, insurance costs, utility charges that Tenant is required to pay by this lease, and any other sum that Tenant is required to pay to District or third parties shall be additional rent. Power meters will be purchased and installed by the District. Meters will be read monthly by District Staff and will be billed to the Tenant based on PG&E advertised rate. Haul out for any size vessel is $200 for the round trip with Tenant providing a minimum of two (2) spotters. Interior Yard move $150 with Tenant providing two (2) spotters.

2.5 Late Charges. Tenant acknowledges that late payment of any rent or other payment required by this lease from Tenant to District will result in costs to District, the extent of which is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Tenant fails to make any rent or other payment required by this lease to be paid to District within ten days of the date it is due, District shall impose a late charge of five percent (5%) of the overdue payment, to reimburse District for the cost of collecting the overdue payment. District may levy and collect a late charge in addition to all other remedies available for Tenant’s default, and collection of a late charge shall not be in lieu of nor shall it waive the breach caused by the late payment.

2.6 Escalation

(1) The base rent provided in Section 2.1 shall be increased beginning the month of December of each year by a percentage equal to the percentage
change in the Consumer Price Index published by the United States Bureau of Labor Statistics of the United States Department of Labor for the most recent twelve months available as of November 15. Comparisons shall be made using the index entitled U.S. City Average—All Items and Major Group Figures for All Urban Consumers (1982-84=100), or the nearest comparable data on changes in the cost of living if such index is no longer published. The change shall be determined by comparison of the figure for the date of the term (or renewal term) with that of each succeeding year. In no event, however, shall base rent be reduced below that of the prior year.

(2) In lieu of a rent adjustment pursuant to the Consumer Price Index as set forth in 2.5(1), on each fifth annual anniversary of the commencement date of this lease, the District shall have to option to increase the Base Rent to reflect the increase in the fair market rental value of the Premises disregarding the existence of this lease and any improvements on the Premises constructed by Tenant. Fair market rental value shall be determined by an appraiser jointly hired by the parties or, if Tenant elects not to participate, by the District. District shall give Tenant a copy of the appraisal and 60 days written notice of the increase in rent. If Tenant does not accept the increase in rent, it may terminate this lease by giving District written notice and vacating the Premises prior to the date the increased rate becomes effective.

Alternate (2) In lieu of a rent adjustment pursuant to the Consumer Price Index as set forth in 2.5(1), on each fifth annual anniversary of the commencement date of this lease, the District shall have to option to increase the Base Rent to reflect any increase in the fair market value of the Premises disregarding the existence of this lease and any improvements on the Premises constructed by Tenant. If the parties cannot agree on the fair
market value of the Premises, then the matter shall be settled by final binding arbitration. The parties shall select an arbitrator, and if the parties cannot agree, then the parties will request that an arbitrator be appointed by the judge of the Humboldt County, California Superior Court who has the primary responsibility for hearing civil matters, or by the presiding judge of that court. Each party shall submit its proposed rental value to the arbitrator with the supporting information for that value, and the jurisdiction of the arbitrator shall be limited to selecting as the prevailing position the value proposed by one of the parties. The losing party shall pay all the costs of the arbitration and the reasonable attorney fees incurred in the arbitration by the prevailing party. Except as otherwise provided, the procedures for the arbitration shall be in accordance with the provisions of the California Code of Civil Procedure relating to arbitration.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for boat fabrication, maintenance, re-fitting and launch, and for no other purpose without the consent of Landlord, which consent shall not be withheld unreasonably. If this use is prohibited by law or governmental regulation, or if a higher and better use required by the zoning of the Premises is developed, this lease shall terminate on 180 days notice to Tenant.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance [unless such changes are required because of Tenant's specific use].
(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent District from taking advantage of any ruling of the California Insurance Rating Bureau, or its successor, allowing District to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by District.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of District.

(6) Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 3.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant’s reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety
or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

3.3 Fields Landing Boat Yard Rules and Regulations. Tenant will abide by yard rules and Regulations as defined in appendix A.

Section 4. Common Areas

4.1 Tenant’s Use. Tenant, its customers, agents and invitees shall have the non-exclusive right to use areas designated by District as common areas. “Common areas” means any parking areas, roadways, sidewalks, landscaped areas, security areas and any other areas owned by District where such areas have been designated or may be designated in the future by District as areas to be used by the general public or in common by tenants.

4.1 District’s Rights. With respect to the common areas the District reserves the following rights;

(1) To establish reasonable rules and regulations for the use of the common areas;
(2) To close all or any portion of the common areas to make repairs or changes;
(3) To construct, alter, or remove buildings or other improvements in the common areas and to change the layout of such common areas, including the right to add to or subtract from their shape and size or to eliminate such common areas;
(4) To exercise any of District’s governmental powers over the common areas;

and

(5) To grant the right to use the common areas to third parties.
Section 5. Insurance

5.1 Insurance Required. District shall keep the Premises insured at District’s expense against fire and other property damage and loss risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall bear the expense of any insurance insuring the personal property, equipment and fixtures of Tenant on the Premises against such risks but shall not be required to insure. District shall not be liable to Tenant for any loss or damage to Tenant’s personal property, equipment or fixtures.

5.2 Waiver of Subrogation. Tenant shall not be liable to the District or to its successors or assigns for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, District’s insurance company shall not have a subrogated claim against the Tenant. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Nothing in this provision shall be construed to waive any rights of District against Tenant for losses or damages to the premises that are caused by Tenant’s negligence or for which the Tenant is otherwise legally liable, if such damage or loss is not covered by insurance.

Section 6. Taxes; Utilities

6.1 Property Taxes and Assessments. Tenant shall pay as due all taxes on its personal property located on the Premises. Tenant shall pay as due all real property taxes and special assessments levied against the Premises before the same become past due. As a public entity, District does not pay property taxes, but Tenant will be assessed directly by the County a possessory use tax on the leasehold premises. Tenant shall provide District, on or before May 15 of each year, with proof of payment of
all taxes and any other assessments.

Section 7. Damage and Destruction

7.1 Partial Damage. If the Premises are partly damaged other than through the fault of the Tenant and Section 7.2 does not apply, the Premises shall be repaired by District at District's expense. Repairs shall be accomplished within a reasonable time.

7.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If neither party elects to terminate, District shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced and completed within a reasonable time.

7.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

7.4 Damage Late in Term. If damage or destruction to which Section 7.2 would apply occurs within one year before the end of the then-current lease term, Tenant may elect to terminate the lease by written notice to District given within 30 days after the date of the damage. Such termination shall have the same effect as termination by Landlord.

Section 8. Liability and Indemnity

8.1 Liens

(1) Except with respect to activities for which District is responsible, Tenant
shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, District may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 9% per annum from the date expended by District and shall be payable on demand. Such action by District shall not constitute a waiver of any right or remedy which District may have on account of Tenant’s default.

(2) Tenant may withheld payment of any third party claim in connection with a good-faith dispute over the obligation to pay the third party, as long as District’s property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with District cash or sufficient corporate surety bond or other surety satisfactory to District in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

8.2 Indemnification. Tenant shall indemnify and defend District from any claim, loss, or liability arising out of or related to any activity of Tenant or its customers, invitees, employees, or contractors on the Premises or any condition of the Premises in the possession or under the control of Tenant. District shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises. Tenant shall inspect the premises upon taking possession, and shall notify District in writing within three days of any condition of the premises Tenant believes constitutes a hazard or dangerous condition of the property. Failure to provide such a notice shall constitute an agreement by the Tenant that there is no such hazard or dangerous condition for which the District is responsible.

8.3 Liability Insurance. Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry
the following insurance at Tenant's cost: comprehensive general liability insurance in a responsible company with limits of not less than $1,000,000 for injury to one person, $2,000,000 for injury to two or more persons in one occurrence, and $1,000,000 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Premises. Such insurance shall protect Tenant against the claims of District on account of the obligations assumed by Tenant under Section 8.2, and shall name District as an additional insured. The insurance procured by Tenant shall be primary to any similar insurance coverage procured by District. Certificates evidencing such insurance and bearing endorsements requiring 10 days' written notice to District prior to any change or cancellation shall be furnished to District prior to Tenant's occupancy of the property.

Section 9. Quiet Enjoyment; As Is

9.1 District's Warranty. District warrants that it is the owner of the Premises and has the right to lease them. Tenant takes the Premises “AS IS”, with all faults, except as to those conditions of which it gives notice to the District pursuant to 8.2. Tenant shall be responsible for all maintenance of the premises except for structural components and the roof.

9.2 Estoppel Certificate. Either party will, within 20 days after notice from the other, execute and deliver to the other party a certificate stating whether or not this lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.
Section 10. Assignment and Subletting

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of District. This provision shall apply to all transfers by operation of law. If Tenant is a corporation or partnership, this provision shall apply to any transfer of a majority voting interest in stock or partnership interest of Tenant. No consent in one instance shall prevent the provision from applying to a subsequent instance. District may withhold or condition such consent in its sole and arbitrary discretion.

Section 11. Default

The following shall be events of default:

11.1 Default in Rent. Failure of Tenant to pay any rent or other charge within 10 days after written notice that it is due.

11.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days after written notice by District specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

11.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying
of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to District that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

11.4 Abandonment. Failure of Tenant for twenty (20) days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

Section 12. Remedies on Default

12.1 Termination. In the event of a default the lease may be terminated at the option of District by written notice to Tenant. Whether or not the lease is terminated by the election of District or otherwise, District shall be entitled to recover damages from Tenant for the default, and District may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

12.2 Reletting. Following reentry or abandonment, District may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but District shall not be required to relet for any use or purpose other than that specified in the lease or which District may reasonably consider injurious to the Premises, or to any tenant that District may reasonably consider objectionable. District may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting
of some rent-free occupancy or other rent concession.

12.3 Damages. In the event of termination or retaking of possession following default, District shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

(1) The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out.

(2) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

(3) Any excess of the value of the rent and all of Tenant's other obligations under this lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major California banks in effect on the date of trial.

12.4 Right to Sue More than Once. District may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

12.5 District’s Right to Cure Defaults. If Tenant fails to perform any obligation under this lease, District shall have the option to do so after 30 days' written notice to Tenant. All of District's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 9% annum from the date of expenditure by District. Such action by District shall not waive any other remedies available to District because of the default.

12.6 Remedies Cumulative. The foregoing remedies shall be in addition to
and shall not exclude any other remedy available to District under applicable law.

Section 13. Surrender at Expiration

13.1 Condition of Premises. Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to District and surrender the Premises in good repair and broom clean. District shall have the option, in its sole discretion, to permit alterations constructed by Tenant to remain at no cost to the District, or be removed or restored to the original condition at the expense of Tenant. Repairs and restoration for depreciation and wear from ordinary use for the purpose for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

13.2 Fixtures

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at District's option, become the property of District at no cost to the District. If District so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of District, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, District may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and District may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 days after removal was required, District may elect to hold Tenant to its obligation of removal. If District elects to require Tenant to remove, District may effect a removal and place the property in public storage for
Tenant's account. Tenant shall be liable to District for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by District.

13.3 Holdover

(1) If Tenant does not vacate the Premises at the time required, District shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and at a rental rate equal to 150 percent of the rent last paid by Tenant during the original term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by District for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section, the tenancy shall be terminable at the end of any monthly rental period on written notice from District given not less than 10 days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 14. Miscellaneous

14.1 Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict
performance of the same provision in the future or of any other provision.

14.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court or arbitrator may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

14.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

14.4 Succession. Subject to the above-stated limitations on transfer of Tenant’s interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

14.5 Recordation. This lease shall not be recorded without the written consent of District. [District shall execute and acknowledge a memorandum of this lease in a form suitable for recording, and Tenant may record the memorandum.]

14.6 Entry for Inspection. District shall have the right to enter upon the Premises at any time to determine Tenant’s compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

14.5 Interest on Rent and Other Charges. Any rent or other payment required of Tenant by this lease shall, if not paid within 10 days after it is due, bear interest at the rate of 9% per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid.

14.8 Proration of Rent. In the event of commencement or termination of this lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded.
to Tenant or paid on its account.

14.9 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this lease.

14.10 Complete Agreement. This Agreement constitutes the complete and entire agreement of the parties. No modification of the Agreement is effective unless in writing and signed by the parties.

Section 15. Arbitration

15.1 Disputes to Be Arbitrated. If any dispute arises between the parties arising out of this lease other than the rental value pursuant to section 2.5(2) the matter shall be resolved by binding arbitration. The arbitrator and arbitration procedures shall be mutually agreed upon by the parties. If the parties cannot agree on the selection of an arbitrator, they shall request the judge of the Humboldt County, California Superior Court with primary responsibility for hearing civil matters, or the presiding judge of that Court, to select an arbitrator.

15.2 Procedure for Arbitration. The arbitrator shall proceed according to the California statutes governing arbitration, and the award of the arbitrator shall have the effect therein provided. The arbitration shall take place in Humboldt County, California, unless the parties stipulate in writing to a different location. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.
Humboldt Bay Harbor, Recreation & Conservation District

By: __________________________
    President

By: __________________________
    Secretary

Tenant: Alaskan Anvil LLC

Bud Hoy

By: __________________________
    President

By: __________________________
    Counsel for Tenant

APPROVED AS TO FORM:

Counsel for District

APPROVED BY COMMISSION ON:


Page 19 – Commercial Lease
Exhibit A:

YARD RULES AND REGULATIONS

Any person using the facilities at the Boat Building and Repair Facility shall assume all risk of damage or loss to his property and the District assumes no risk on account of fire, theft, act of God, or damage of any kind to vessels or equipment at the Boat Building and Repair Facility. The District shall not be liable in any manner or for any cause whatsoever for any vessel or equipment or its contents, gear thereof, or any loss or damage thereto howsoever occasioned, storage shall be at the sole risk of Lessee.

At all times Lessee shall comply and shall obtain the compliance of and be liable for, Lessee's family, employees, agents, business visitors, contractors and invitees, of all laws, ordinances, rules and regulations, including those of the federal and state government, the County of Humboldt and the District. District may remove any vessel or equipment from any space to any other space, or to place the same in storage at Lessee's expense if in the discretion of the District it may be necessary to do so for the safety or security of the vessel or equipment or District's property or to repair District's facilities, or for any other reason in the best interests of the District, and District shall have no liability for any loss or damage resulting therefrom or for any failure to move the same.

In the event District deems it necessary to resecure or relocate a vessel or equipment for any reason, Lessee shall pay a reasonable cost or charge therefor, plus all costs and materials used therefor. District shall assume no responsibility for the safety of vessels or equipment and shall not be liable for fire, theft, or any damage to vessels or equipment by reason of District's decision either to resecure the vessel or equipment or not to resecure the vessel or equipment.

Removal, relocation or storage of vessels and equipment as provided in this ordinance shall be without liability to the District, its Harbor Master, employees or agents.

All contractors shall have on file with the District, prior to commencement of work, current liability insurance listing the Humboldt Bay Harbor, Recreation and Conservation District as additionally insured.

An agreement shall authorize the holder thereof to use the facilities at the Boat Building and Repair Facility for purposes vessel building, repairs and maintenance, and storage of vessels and marine equipment only, and grants no further rights, privileges or uses. Additional or varying uses shall not be allowed except at the sole discretion of the Harbor Master or as provided in the ordinances and regulations of the District.

District shall have the right at all times to refuse an agreement or to refuse to issue a Boat Yard Agreement to any Lessee if any vessel or equipment that may be in the opinion of the Harbor Master is unsightly, improperly maintained, inappropriate or may present a danger to District's property or other vessels or equipment.

It shall be unlawful for any person to willfully injure, break, remove or tamper with any part of any vessel or equipment in the Boat Building and Repair Facility, any waterway or facility thereof, or to climb into or upon any vessel or equipment without the consent of the owner, unless in the performance of official duties or to protect life or property.

During hours of darkness, all persons shall be prohibited from the Boat Building and Repair Facility, unless expressly authorized by the Harbor Master. It shall be unlawful for persons to be within the facility after hours of darkness and may be considered trespassers and prosecuted by law.

Page 20 – Commercial Lease
It shall be unlawful for any person under the age of thirteen (13) years to go, remain, or be upon any of the gangways, floats, vessels or equipment in the Boat Building and Repair Facility unless such person is accompanied by an adult, or unless such person has the written permission of the owner, on file with the Harbor Master, of any vessel or equipment located at the Boat Building and Repair Facility to go upon such vessel or equipment, or unless such person has permission of the Harbor Master.

No vessel or equipment within the Boat Building and Repair Facility shall be used as a place of residence and no person shall use the same as place of residence except with expressed written permission of the Harbor Master.

All activities at the Boat Building and Repair Facility shall be in accordance with best management practices to prevent water, soil and air pollution. Lessee will be held financially responsible for clean-up expenses and fines as a result of pollution arising from any activity or persons involved in Lessee’s vessel or equipment causing pollution.

No persons shall dump, throw, discharge, or deposit from any vessel or equipment or from the shore or float, or in any other manner any refuse matter, human waste, dead animals, fish, shellfish, fish parts, bait, putrefying matter, bilge water, paints, solvents, oil, spirits, inflammable liquid, hazardous materials, contaminates, plastics or garbage of any kind whatsoever into or upon the water of Humboldt Bay or in, on or upon the banks, walls, sidewalks, parking area, or any waters within the boundaries Boat Building and Repair Facility. All material shall be disposed of in an approved manner for the specific material. Tarps must be used at all times to control the release of dust, sandings, chemical spills and other residues.

No person on board any vessel within the Boat Building and Repair Facility shall use the sanitary facilities, toilets or sinks on board such vessel.

Pets shall not be allowed within the Boat Building and Repair Facility or to commit any nuisance within the Boat Building and Repair Facility and the owners of said pets shall be responsible for cleaning up any nuisance or mess left by said pet.

Any person found in violation of safe and appropriate disposal practices shall have their Boat Yard Agreement revoked immediately and shall be responsible for all clean up costs plus any damages.

All persons entering the Boat Building and Repair Facility must log in daily at the office prior to commencing any work.

All vessels and equipment must be secured so that no part, including bow sprit, boom, boomkin, or other appurtenance shall block any portion of any walkway or driveway.

All bilges shall be cleaned prior to any work that opens or penetrates the hull. Oil absorbent materials shall be used when removing contaminated bilge water and Lessee shall be responsible for the removal of all absorbent material from District property. Dispose of waste oil and filters in appropriate waste oil and filter recovery areas.

No spray painting without first notifying the District. Use all caution while spray, roller, or brush painting. Lessee shall be responsible for damage to adjacent vessels and equipment. The use of antifouling paint containing tributyl tin is prohibited. All paint spillage must be cleaned up immediately.

Sandings from boats shall be collected by using visquine, plastic tents, or other materials to keep pollutants from contaminating the soil or becoming airborne. Vacuum up all dry sandings. Exterior wet sanding is not allowed. DO NOT clean area with water. Storms drains may go directly into Humboldt Bay.
Sand blasting is prohibited except in approved areas.

At such time as it may become necessary to perform work involving use of welding or burning equipment, every person intending to engage in welding or burning shall notify the District of the nature and extent of the proposed work, the workman or company doing the work and the date and time the work shall be performed. This notification shall be given to the District prior to the start of work and whenever practical at least one day before the work is to be performed. Fire extinguishers shall be provided by the Lessee and be immediately available during welding or burning.

Use of fuel heating stoves or any fuel cooking facilities on board a vessel while at the Boat Building and Repair Facility is strictly prohibited.

No person shall display on any vessel a "For Sale" sign in excess of 150 square inches on the face.

Bulk fueling of any vessel in the Boat Building and Repair Facility is prohibited unless with the expressed written permission of the Harbor Master.

Lessee is responsible for keeping their space clean on a daily basis. All tools, equipment and supplies are to be picked up and either placed on the vessel or placed in an orderly fashion within Lessee’s space before leaving the area for the day. Lessee is responsible for final clean up of space. Space will be inspected and must pass inspection prior to launching.

Lessee engaged in work on their vessel or equipment must take care not to interfere with the work of others.

Vehicles must park in appropriate areas and must never hinder access for the travelift and other equipment. No vehicle shall be parked so as to obstruct the road, driveway, gate, or other public access. The District reserves the right to regulate all parking of motor vehicles, including guests and invitees of Lessee. No overnight parking of vehicles of any kind shall be permitted except under the provisions of a permit issued by the District. All vehicles left unattended or illegally parked may be towed away at owner’s or Lessee’s expense.

No brokers, peddlers, agents, or solicitations shall be permitted in the Boat Building and Repair Facility except upon the prior written consent of the District.

All paints, solvents, resins and fillers must be stored in their original container with labels identifying material enclosed.

Travelift services shall be arranged by making a prior appointment with the District. Emergency services may be available by contacting the District offices. Travelift services may be refused by District in the event that services may be deemed unsafe, including but not limited to weather conditions, for District personnel, property, or equipment.

Prior to any Travelift services, a release of liability form must be signed by the Lessee (legal owner, operator, or individual legally in possession of the vessel or equipment).

Prior to lift, Lessee must ensure that all gear and equipment in and on the vessel or equipment is secured. All fore and aft stays and other appurtenance that may interfere with hoisting of vessel or equipment must be loosened or removed in advance to avoid lifting delays.

Lessee must direct placement of slings of travelift and blocks to ensure that no damage occurs to hull. Lessee shall assume all responsibility and liability for any damage that may occur due to improper or proper placement of slings and blocks.
Vessels with hard chines, bilge keels, rubbing strakes, vent covers, etc. are vulnerable to damage by slings when hoisting. Lessee shall assume all responsibility for any damage that may occur as a result of requesting Travelift services.

A "Round Trip" consists of a recovery and launch and includes a maximum of thirty (30) minutes for owner to wash down vessel or equipment.

Boats that have been painted and are being launched will be given a maximum of thirty (30) minutes in order to touch up holidays left by cradle.

Charges for hanging in the slings for the purpose of surveying or inspecting the vessel are based on one (1) hour of time. The vessel will not be moved from the haul-out site without prior arrangements or by rescheduling within the first fifteen (15) minutes, schedule permitting.

Charges for lift commence at time scheduled unless District operator is not ready to commence. Time of completion is when District operator and Travelift is no longer engaged in handling Lessee's vessel or equipment.

When delay is encountered on Travelift operations that is caused by the Lessee, the Lessee will be charged hourly in one half hour increments, as per the rate schedule.

All charges accrued for Travelift, blocking, storage and other services shall be paid in full prior to launch or release from premises.

Anyone more than fifteen (15) minutes late for a reservation may have their appointment cancelled, if necessary, due to scheduling, or at the discretion of the District.

Lessee is responsible and liable for Lessee's family, employees, agents, business visitors, contractors and invitees within the Boat Building and Repair Facility for compliance with all rules, regulations and provisions of the Boat Yard Agreement and this ordinance.

All vessels area required to be either currently documented with the United States Government or registered with a state and must remain currently documented or registered to retain a Boat Yard Agreement.

Diver inspection of a vessel while in the travelift area is permitted only after first notifying the District and receiving permission from the District. Divers will not be permitted in the water within the travelift area while a vessel is being held in the slings over the water.

In the event the Board of Commissioner of the District determines that Lessee has failed to comply with the terms and provisions of the Boat Yard Agreement or with the ordinances, rules and regulations promulgated by the District, for the safety of District's facilities, the Boat Yard Agreement may be terminated forthwith by the District and upon being so notified in writing by the District, Lessee shall immediately remove his vessel and all equipment from the assigned area and out of and away from District's facilities.

The Harbor Master or his designated representative shall have full authority to enforce the provisions of this ordinance and to enforce the provisions of this ordinance and to issue citations for violations of any provision of this ordinance. Non-compliance will result in a minimum $150.00 clean-up fee.

I have received a copy of Ordinance No. 16, The Boat Building and Repair Facilities Rules and Regulations: _______

Page 23 – Commercial Lease