PORT OF KODIAK
PIER II WAREHOUSE LEASE AGREEMENT
City of Kodiak and Horizon Lines of Alaska, LLC
City Contract 217718

THIS LEASE AGREEMENT ("Agreement") made and entered into as of March 1, 2015, by and between the City of Kodiak, Alaska, an Alaska municipal corporation ("City"), and Horizon Lines of Alaska, LLC, a limited liability company organized under the laws of state of Delaware ("Lessee").

WITNESSETH

WHEREAS, the City owns property situated in U.S. Survey 2537B in the City of Kodiak, Alaska, commonly known as Pier II or Fishermen's Terminal, on which is situated a building (the "Warehouse"), which includes warehouse and office space, and adjacent parking space.

WHEREAS, the City has entered into a Preferential Use Agreement and a Terminal Operation Contract with the Lessee, both dated March 1, 2015, which together with this Agreement provide for the Lessee's use and occupancy of facilities at Port of Kodiak Piers II and III.

NOW, THEREFORE, in consideration of the premises and the terms, covenants, conditions, and agreements contained herein, and further stated in the Preferential Use Agreement and the Terminal Operation Contract, the parties agree as follows.

1. Premises. The City leases to the Lessee, and the Lessee takes and hires from the City, the Warehouse including offices, a site for a vehicle off-loading ramp, van rows 8 and 9, and parking adjacent to the Warehouse, but excluding the following: (i) all other city-owned property in the vicinity of Pier II, (ii) 162 sq. ft. of office space on the second floor, (iii) a 320 sq. ft. area in the warm room, (iv) two 60-ft parking areas on the north and south sides of the Warehouse, (v) one 120-ft parking area on the east end of the Warehouse, and (vi) a 60 ft. by 120 ft. (7,200 sq. ft.) section of the Warehouse for use as a port maintenance shop and other purposes as deemed appropriate by the City (the "Premises"), for storage, loading, and unloading of freight shipped or to be shipped across the City port facilities. The Premises is more particularly described in attached Exhibits A and B.

2. Term. (a) Initial Term. This Agreement shall continue in effect for a period of five (5) years commencing on March 1, 2015, and shall continue in full force and effect until midnight February 28, 2020, unless earlier terminated pursuant to the terms of Paragraph 12.

(b) This Agreement may be renewed for an additional term of five (5) years, by mutual agreement of the parties. At least ninety (90) days prior to the expiration of the term then in effect, the Lessee shall provide written notice to the City of its desire to renew or not renew this Agreement. The City will then reply within fifteen (15) days whether it wishes to renew the Agreement with the Lessee. If both parties agree, they shall then enter good faith negotiations to address any modifications to this Agreement requested by either party.
3. **Rental.** (a) Lessee agrees to pay rent for the Premises in monthly installments due on the first day of each month as shown in the table below. The monthly installment amount for a year is effective commencing on March 1 of the year and for 12 months thereafter.

<table>
<thead>
<tr>
<th>Year</th>
<th>Monthly Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$8,966.67</td>
</tr>
<tr>
<td>2016</td>
<td>$9,235.67</td>
</tr>
<tr>
<td>2017</td>
<td>$9,512.74</td>
</tr>
<tr>
<td>2018</td>
<td>$9,798.12</td>
</tr>
<tr>
<td>2019</td>
<td>$10,092.06</td>
</tr>
</tbody>
</table>

(b) Insurance Cost Escalation Clause. The monthly rent may be adjusted no more than once annually so as to require the Lessee to reimburse the City for the full amount by which the cost to the City of maintaining casualty insurance coverage for the Premises has increased over the cost of such insurance as of July 1, 2013, but only if such insurance premium costs incurred by the City have increased by five (5%) percent or more over the FY2013 cost.

4. **Use.** The Lessee shall use the Premises for the storage, loading, and unloading of freight shipped or to be shipped across the City port facilities. If on the date of execution of this Agreement there exists a labor organization which represents the majority of the individuals living in or around Kodiak, Alaska, who earn their livelihood as warehousemen, then the Lessee shall make reasonable good faith efforts to negotiate a collective bargaining agreement with said labor organization for the provision of warehousing labor services with respect to the Premises.

5. **Office Space and Mutual Access.** The City agrees that reasonable access to and from the Premises over the contiguous property shall be made available to the Lessee, except during cruise ship operations when access to the dock and east side of the Warehouse may be restricted to comply with marine transportation security requirements. Lessee agrees that the City shall have unrestricted access to the second-floor office, the warm room, the NOAA warehouse area, and the City’s port maintenance shop, all located within the Warehouse.

6. **Repairs and Maintenance.** (a) All routine preventive maintenance and repairs costing fifteen thousand dollars ($15,000) or less in connection with any single incident of damage, decay, or breakdown shall be accomplished at the sole cost and expense of the Lessee, including but not limited to repairs to the overhead door, exterior doors and windows, boiler and electrical systems, and excepting only repairs to the roof, exterior walls, foundation, water and sewer systems and fire suppression system, all of which shall be maintained by the City.

(b) Except for the foregoing items to be maintained by the City and items covered by insurance and force majeure, the cost of any repairs totaling more than fifteen thousand dollars ($15,000) in connection with any single incident of damage, decay, or breakdown, shall be shared by the City and the Lessee, with the Lessee bearing the first fifteen thousand dollars ($15,000) of such cost and the City bearing the remainder; provided, however, that in no event shall the Lessee be liable for more than fifty thousand dollars ($50,000) in total out-of-pocket costs associated with routine preventive maintenance and repair during any one calendar year.

(c) The Lessee shall keep the Premises in a neat and broom-clean condition and contract with a janitorial service for the offices. The City retains the right to inspect the Premises during
regular business hours and, should such inspection reveal a failure by the Lessee to adequately maintain the Premises, the Lessee shall make such corrections as may be required within a reasonable time specified by the City.

(d) Snow removal on the Pier II dock shall be the responsibility of the City.

7. **Utilities.** The City shall pay all water and sewer charges. All electric, heating oil, garbage, telephone, and janitorial charges shall be borne by the Lessee.

8. **Insurance.**

(a) Lessee shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Lease, the following policies of insurance:

1. Commercial General Liability Insurance, $5,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Lease. The general aggregate limit shall be $5,000,000.

2. Commercial Automobile Liability Insurance, $5,000,000 combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--$1,000,000 each accident; and (ii) bodily injury by disease--$1,000,000 each employee, $1,000,000 policy limit.

4. Insurance in an amount of not less than $50,000 for loss due to property lost or stolen while in the Lessee's custody or control.

(b) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability

   (i) City, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the scope of protection afforded to City, its officers, officials, employees and volunteers.

   (ii) Lessee's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of Lessee's insurance and shall not contribute to it.

   (iii) Lessee's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Lessee or any sublessee for City.

2. Worker's Compensation and Employer's Liability. Lessee's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Lessee or any sublessee for City.

3. All Insurance. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days' prior written notice has been given by the Insurer to City by certified mail, return receipt requested.
(c) Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in Alaska having a Best’s rating of no less than A-: VII.

(d) Verification of Coverage. Lessee shall furnish City with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms which meet industry standard. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(e) The City shall provide fire insurance coverage for the Warehouse and Pier II structures.

9. **Alterations.** The Lessee shall make no alterations, additions, or improvements to the Premises without the prior written approval of the City. At the expiration of this Agreement or any renewal there-of, any such improvements shall become the property of the City.

10. **Fire or Other Casualty Loss.** In the event the Warehouse is damaged to such an extent as to render the same untenantable in whole or in substantial part, or is destroyed, the City has the option to repair, rebuild, or not to rebuild. During such repair or reconstruction, the Lessee's rental shall be abated in the proportion that the damaged space bears to the whole of the leased space. Should the City elect not to rebuild, this Agreement shall be deemed terminated and any advanced but unaccrued rentals shall be repaid to the Lessee. In either event, the City shall furnish notice of its intent to the Lessee within thirty (30) days after the loss occurrence.

11. **Assignment.** The Lessee may not assign or sublease any rights or interests under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, except to an entity that is owned solely by or that is an affiliate of the Lessee, after thirty (30) days prior notice to the City. The Lessee shall include in such notice a statement of any legal requirement for confidentiality regarding the notice or the related transaction, with which the City shall comply. Should the City consent to an assignment the Lessee shall nevertheless remain liable for the performance of all of its obligations under this Agreement and the acceptance by the City directly from an assignee of any payments or other performance due under this Agreement shall not be construed as a waiver of The lessee’s continuing liability. A change of control of the Lessee other than from the parent entity of the Lessee to an affiliate shall constitute an assignment for purposes of this provision. Notwithstanding the foregoing, no consent by the City shall be required in connection with the merger pursuant to that certain Agreement and Plan of Merger dated as of November 11, 2014 by and among Horizon Lines, Inc., Matson Navigation Company, Inc. and Hogan Acquisition Inc.

12. **Default and Termination.** The City may declare a default hereunder and terminate this Agreement upon the occurrence of any of the following:

A. The failure of the Lessee to pay rent or any other sum of money due under this Agreement within 10 days after the due date.

B. The failure of the Lessee to perform or observe any covenant or condition of this Agreement, other than a default in the payment of money described in Section 12(A), which is not cured within 30 days after notice thereof from the City to Lessee, unless the default is of a kind that may be cured, but not within such 30-day period, in which case no event of default shall be declared so long as Lessee shall commence the curing of the default within such 30 day period and thereafter shall diligently and continuously prosecute the curing of same.
C. The commencement of a case under any chapter of the federal Bankruptcy Code by or against the Lessee, or the filing of a voluntary or involuntary petition proposing the adjudication of the Lessee as bankrupt or insolvent, or the reorganization of the Lessee, or an arrangement by the Lessee with its creditors, unless the petition is filed or case commenced by a party other than the Lessee and is withdrawn or dismissed within ninety (90) days after the date of its filing.

D. The admission in writing by the Lessee of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of the Lessee, unless such appointment shall be vacated within 10 days after its entry; the Lessee making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of the Lessee.

E. If the Lessee is in default under either the Preferential Use Agreement or the Terminal Operation Contract.

13. Indemnification.

(a) The Lessee shall indemnify and hold harmless the City and its elected and appointed officials, employees, agents, and servants from any and all losses, expenses, damages, demands, and claims by any person in connection with or rising out of any injury (including death) to persons or in connection with damage to property or the natural environment, sustained in whole or in part as a result of the Lessee’s occupancy and maintenance of the Premises, and/or exercise of its rights under this Agreement or the Lessee’s breach of this Agreement. The Lessee shall defend all suits and actions brought against the City and any of its elected or appointed officials, employees, agents or servants from any such injury or damage and shall pay all damages, costs, and expenses, including attorney’s fees incurred in connection with the suits or actions. The only exception to this indemnity provision shall be for claims resulting from the negligence, gross negligence, or willful misconduct of the City or its employees, agents, or servants, and for claims resulting from an act or omission of a third party, with respect to which the Lessee’s obligations under this paragraph shall be limited to that portion of any such claim not attributable to the City and not attributable to a third party.

(b) This indemnity provision specifically includes all environmental damage that may result from the Lessee’s operations under this Agreement and any penalties or fines which may be assessed in connection therewith.

(c) Notwithstanding any provision of this Agreement, Lessee shall not be liable for, and shall not be liable to indemnify, defend or hold the City harmless from, any condition on the Premises, whether known or unknown, which was in existence before July 1, 2004.

14. Compliance with Federal, State, and Local Laws. At all times during the lease term the Lessee shall conduct operations in accordance with all applicable federal, state, and local laws and ordinances.

15. Severability. If any part, term or provision of this Agreement is declared null or unenforceable by a court or other tribunal of competent jurisdiction, the validity and enforceability of the rest of this Agreement shall not be affected.

16. Waivers. No waiver by Lessee or the City of any covenant or condition of this Agreement shall be construed as a waiver of any other covenant or condition, nor shall the waiver of one breach be considered a waiver of any other breach.

17. Modifications and Notices. (a) No modification of this Agreement shall be effective unless agreed to by Lessee and the City in writing. No modification of one provision of this
Agreement shall be considered a waiver, breach or cancellation of any other provision.

(b) All notices required to be given under this Agreement shall be effective on the date of receipt and shall be mailed to the parties at the following addresses:

Horizon Lines of Alaska, LLC  
1717 Tidewater Road  
Anchorage, Alaska 99501  
Attn: Kodiak, Alaska 99615

City Manager  
City of Kodiak  
710 Mill Bay Road  

Any notice or document delivered by facsimile transmission to a facsimile machine at which the recipient routinely receives such transmissions shall be effective upon the date of receipt of the complete and fully legible document (so long as the original is also mailed in accordance with this paragraph) unless the transmission occurred outside of the usual business hours of the recipient, in which event the document shall be deemed to have been received on the next business day.

18. **Alaska Law.** The parties agree that this Agreement was entered into in the State of Alaska, that Alaska law will govern its interpretation and application, and that venue of any suit or other action arising out of this Agreement shall be in Alaska.

19. **Binding on Successors and Assigns.** All provisions of this Agreement shall inure to the benefit of and be binding on the parties, their successors, and permitted assigns.

20. **Complete Agreement.** This Agreement, including Exhibits A and B hereto, and the Preferential Use Agreement and Terminal Operation Contract, both dated March 1, 2015, between the Lessee and the City, constitute the final agreement between the parties. They are the complete and exclusive expression of the parties’ agreement on the matters contained in this Agreement. All prior and contemporaneous oral and written negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by the aforementioned agreements.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date or dates indicated beneath the signature of their respective officers or agents.

City of Kodiak  
Horizon Lines of Alaska, LLC

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Lon White, Acting City Manager  
Date

Kenneth Gill  
Director of Operations  
Date

Debra L. Marlar  
City Clerk  
Date

Richard Khiaziowski  
Terminal Manager  
Date
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Anchorage, Alaska 99501  
Attn: Marion G. Davis  
Kodiak, Alaska 99615

City Manager  
City of Kodiak  
710 Mill Bay Road  
Kodiak, Alaska 99615

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City of Kodiak  
Lon White Date  2/28/15  
Acting City Manager

Horizon Lines of Alaska, LLC  
Marion G. Davis Date  1-20-15  
President and Chief Executive Officer

ATTEST:

Debra L. Marlar Date  2/28/15  
City Clerk

Richard Knieziowski Date  2-6-15  
Terminal Manager
Exhibit -A
Pier 2 Warehouse Lease Agreement
(Warehouse, Van Rows, Car Off-load Ramp Site and parking)
EXHIBIT-B

PIER 2 WAREHOUSE LEASE AGREEMENT
(Office Floor Plans)

City Storage Vans
(320 SQ FT)

HEATED WAREHOUSE
1305 SQ. FT
(GROUND FLOOR)

City Office
162 SQ FT
(SECOND FLOOR
OFFICES)

Office
267 SQ FT
(GROUND FLOOR
OFFICES)

Office
267 SQ FT
(SECOND FLOOR
OFFICES)

Warehouse
1305 SQ. FT
(GROUND FLOOR)

Scale
1/40 = 1'

Scale
1/40 = 1'

NOTICE
This floor plan is for illustrative purposes only and may not be to scale. Please refer to the lease agreement for exact dimensions.

City Office
162 SQ FT
(GROUND FLOOR
OFFICES)