

## GROUND LEASE

THIS GROUND LEASE (this "Lease") is made on the day executed by the last signatory hereto, by and between the BOARD OF REGENTS OF THE UNIVERSITY OF ALASKA, a corporation created and existing under the Constitution and laws of the State of Alaska, whose address is Land Management, 1815 Bragaw Street, Suite 101, Anchorage, Alaska 99508-3438 ("Lessor"), and [NAME OF LESSEE], whose address is [Address], [City], [State] [Zip Code] ("Lessee"), collectively the "Parties."

NOW, THEREFORE, it is hereby agreed as follows:

### 1. LEASED PREMISES.

- A. Description of Leased Premises. Lessor does hereby lease to Lessee, and Lessee hereby leases from Lessor, the Property (the "Leased Premises"), situated in Section 28, Township 13 North, Range 3 West, Seward Meridian, and more particularly described as:

Tract 1, U-MED PROFESSIONAL PARK SUBDIVISION TRACT 1 AND TRACT 2, according to the survey plat thereof filed in the Anchorage Recording District on November 23, 2004 as Plat No. 2004-149.

depicted on the site plan attached hereto as Exhibit A ("Site Plan"), together with all rights, privileges, easements and appurtenances described herein or otherwise belonging or in any way pertaining to said unimproved real property (the "Premises"). The Premises and all Improvements, defined in Section 5 (Leasehold Improvements), constructed thereon are hereinafter collectively referred to as the "Property."

- B. Condition and Suitability. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty, expressed or implied, and has not assumed and shall have no liability whatsoever, with respect to the condition of the Premises, the social, economic, or environmental aspects of the Property, or the suitability of the Premises for the conduct of Lessee's business or any development contemplated by Lessee. Lessee's possession of the Premises establishes that the Premises are accepted by Lessee "As Is" with all faults, in their present condition and without any representation or warranty of Lessor whatsoever with respect to the condition thereof or the suitability for Lessee's use. Such disclaimer includes, but is not limited to, the condition of the soils, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability, or fitness for any particular purpose, the presence of radon or other gases, the presence or absence of permafrost, and ground faults. Lessor authorizes the use of the lands, rights and resources subject to this Lease.

C. Reserved Rights.

- i. Lessor's Reserved Rights. Lessor reserves all rights not expressly granted to Lessee. These reserved rights include the following, at a minimum:
- A. the right to explore for, remove, and dispose of from the Property all resources;
  - B. the right to establish or grant easements and rights-of-way upon, in, across, or through the Property for any lawful purpose, including roads, railroads, well sites, pipelines, utility lines and drill holes necessary or convenient for the working of the Property for all resources, or necessary or convenient

- for access to or the working of other land for any useful purpose; and
- C. the right to manage and to convey to third parties by grant, lease, permit, or otherwise, any and all interests in the Property other than those granted by this Lease, provided that any such conveyance to a third party shall be made subject to Lessee's rights under this Lease.
- ii. Reservation of Minerals. All oil, gas, coal, geothermal resources, and minerals of whatever nature in or under the above-described land are excluded from the Leased Premises and reserved to Lessor.
- A. Notwithstanding the foregoing, Lessee shall have the right, subject to the terms of this Lease, to use earth materials on or in the above-described land to a depth not to exceed twenty (20) feet below the surface, and to move and recontour such materials on the Leased Premises. Unless otherwise provided for below or in other written authorization, Lessee may not sell or remove from the Property any timber, stone, gravel, topsoil, or any other material valuable for building or commercial purposes ("Material"). Lessee has the right to extract and use on the Property at no cost, Materials situated on, in, or under the Property consistent with the Property Development Plan, discussed in Section 5 (Leasehold Improvements) below, and for construction and maintenance of roads reasonably necessary for access to the Property; and/or Property. All other use of Materials is subject to the written approval of the Lessor.
- B. During the term of this Lease, Lessor shall not have the right to enter on the surface of the Leased Premises, without Lessee's prior consent, for the purpose of mining and/or extracting such oil, gas, coal, geothermal resources, or other minerals and shall not mine and/or extract the same by any means at a depth less than twenty-five (25) feet below the surface of the Leased Premises. If Lessor mines and/or extracts such oil, gas, coal, geothermal resources, or other minerals, the mining and/or extraction shall not interfere with Lessee's business and activities on the Leased Premises, parking, or access to the Leased Premises.
- iii. Unreasonable Interference with Lessee's Operations Prohibited. The rights reserved pursuant to this Section shall not be exercised in any manner that unreasonably interferes with Lessee's rights or operations under this Lease. Lessor shall provide Lessee with prior notice of Lessor's intent to exercise any such reserved rights. Lessor and Lessee shall work cooperatively to identify potential conflicts and Lessor shall require, as a condition to the exercise by any permittee, lessee, or grantee of Lessor of any of Lessor's reserved rights, such stipulations as appear necessary to avoid unreasonable interference with Lessee's enjoyment of this Lease or endangerment of Lessee's operations. If at any time the exercise of any of Lessor's reserved rights must cease or a change must be made in the manner or place of such exercise to avoid unreasonable interference with Lessee's enjoyment of this Lease or endangerment of Lessee's operations, such cessation or change shall occur at no cost to Lessee.

## 2. USE.

- A. Lessee shall use the Leased Premises for [enter description of use] and for no other use throughout the term of the Lease, other than for construction uses during construction of Lessee's Improvements. Any change in use will require prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed. Requests for change of use to which Lessor fails to respond within sixty (60) days of receiving the request shall be deemed approved.

B. Prohibited Uses: Lessee shall not:

- i. Use the Property for any other use than those provided for in Section 2.A. herein without the prior written consent of Lessor, which will not be unreasonably withheld, delayed or conditioned, subject to imposition of additional rental and terms, as Lessor reasonably deems necessary;
- ii. Use or occupy the Property for any use other than those provided for in the approved Development Plan, defined in Section 5 (Leasehold Improvements) below, and in compliance with all applicable laws, regulations, ordinances, and orders that a public authority of competent jurisdiction shall put into effect or may hereafter put into effect, including those of a building or zoning authority and those relating to pollution and sanitation control;
- iii. Permit any unlawful activity, occupation, business, or trade to be conducted on the Property;
- iv. Construct or permit to be constructed any Improvements on the Property without prior written approval of the Lessor which are not within the Development Plan;
- v. Allow any lien to be filed against the Property by anyone supplying labor or materials for any Improvements or by or for the benefit of Lessee;
- vi. Commit waste of the Property or the Improvements hereafter located hereon; or
- vii. Damage survey monuments, witness comers, mining claim posts and other location markers.

3. **TERM OF LEASE.**

A. Term. This Lease shall be for [TERM] (xx) months/years (the "Term") commencing on [DATE], and expiring [DATE] without notice or other action by either party, unless earlier terminated or extended as provided in this Lease.

B. Term Extensions.

- i. Unilateral extensions. If Lessee is not then in Default under the Lease, Lessee shall have the option to extend the Term of the Lease for \_\_ (\_\_) additional terms of \_\_ (\_\_) years each ("Unilateral Renewal Terms"), on the same terms and conditions provided for in this Lease. Each such extension shall automatically be exercised unless Lessee delivers written notice of termination to Lessor no later than ninety (90) days before the date on which this Lease would otherwise extend. [Note: proposals are to specify initial term, number of unilateral extensions, and lengths of unilateral extensions, provided that the initial term and extensions in the aggregate are not to exceed fifty-five (55) years.]
- ii. Bilateral extensions. Lessee may seek additional extensions, subject to Lessor's approval. The decision to agree to such requests shall be in the complete discretion of Lessor. Unless the parties agree in writing to a different time frame, Lessee shall make such requests by sending such request in to Lessor no more than five (5) years nor less than one hundred eighty (180) days prior to the then-scheduled end of the Lease Term. If a Bilateral Extension is agreed to, Lessor and Lessee shall execute and deliver an amendment to this Lease ("Amendment") stating the new Lease Expiration Date.

C. Holdover. If Lessee shall, with the written consent of Lessor, hold over after the expiration of the term of this

Lease, such tenancy shall be for an indefinite period of time on a month-to-month tenancy, provided that this tenancy may be terminated by either party with ninety (90) days' prior notice. During such tenancy, Lessee agrees to pay Lessor monthly rent at the rate of One Hundred Twenty-Five Percent (125%) of 1/12<sup>th</sup> of the annual rent in effect immediately prior to the holding over, unless a different rate shall be agreed upon in writing. Lessee shall be bound by all the other terms, covenants, and conditions of this Lease, so far as applicable.

#### 4. RENT.

- A. Base Rent. Lessee agrees to pay to the University the sum of [enter dollar amount] (\$\_\_\_\_) ( $\geq$ \$857,600) annually as rent, payable upon execution of this Lease with the first payment due [Month DD, Year] and on [Month DD] of each year thereafter, without deduction and without notice or demand. Payment shall be submitted to the University at the address listed on page 1 of this Lease or at such other place as the University may designate.
- B. Adjustment to Base Rent. Adjustments to the Base Rent will be made at intervals of \_\_\_\_ years ( $\leq$ 5 years) during the initial term and any extensions, on the anniversary dates of the effective date of this lease. Each adjustment will be \_\_\_\_% ( $\geq$ 2% multiplied by the number of years in the interval) applied to the annual rent for the immediately preceding interval. In no event shall any adjustment in the Base Rent under the following conditions reduce the Base Rent below that which was payable hereunder prior to such adjustment.
- C. Interest on Unpaid Rent, Late Charges. A late payment fee of five percent (5%) of the amount due shall accrue for any payments due under this Lease not made within ten (10) days of the due date. In addition to the late payment fee, unless otherwise specifically provided herein, any sum payable to Lessor hereunder which is not paid when due shall bear interest at the highest rate allowable under AS 45.45.010 (b) on all amounts past due from the date the same becomes due until paid.
- D. Security. Lessee shall immediately furnish a bond, irrevocable letters of credit ("Letters of Credit"), cash bonds, cash deposit, certificate of deposit (collectively or individually "Security"), or other form of Security acceptable to Lessor in the amount of the first two years' annual rent of [enter dollar amount] (\$\_\_\_\_\_) no later than [Month DD, Year]. Lessee will immediately replenish the required Security acceptable to Lessor to the full amount otherwise required by this subsection in the event any amount of it is drawn upon to meet Lessee's obligations under this Lease. The amount and conditions of the Security shall be sufficient to ensure faithful performance of the covenants and conditions of this Lease, including but not limited to completion of the Improvements, restoration of any failed or incomplete building attempts, required maintenance and building restoration, site cleanup and restoration and any associated costs (such as demolition and site restoration) after termination of the Lease. Lessee shall maintain the bond, irrevocable letters of credit ("Letters of Credit"), cash bonds, cash deposit, certificate of deposit or other form of security, as described in this section, until the Leasehold Improvements required under Section 5 of the Lease are completed. Upon the failure of Lessee to procure and maintain any required Security during the Lease Term, Lessor may terminate this Lease after Notice of Default and Lessee's failure to cure within the time set forth in the Notice of Default.

#### 5. LEASEHOLD IMPROVEMENTS.

- A. Definition. "Improvements" shall mean all improvements constructed or placed on the Property by Lessee pursuant to this Lease including, but not limited to, access roads, landscaping, buildings, structures, pavement, parking areas, well or sanitary systems, fuel tanks, pit liners, electrical or utility systems, sheds,

or garages erected on the Property during the Term, and any other additions or enhancements to the land approved by Lessor.

- B. Development Plan. Improvements constructed on the site will be of Class A quality. Unless otherwise agreed development standards shall be generally as shown on Exhibit B. Prior to commencing construction of Improvements, Lessee shall deliver, for Lessor's review, plans and specifications (hereinafter referred to as "Development Plan" or "Plan"), including but not limited to:
- i. site plan, including location of ingress and egress from public thoroughfares;
  - ii. building rendition and narrative; and
  - iii. construction and occupancy schedule.

The Plan shall be prepared by a licensed professional engineer and/or architect. Lessor may not unreasonably withhold, condition or delay approval of the proposed Plan. Within ten (10) days of receiving the Plan for review, Lessor may notify Lessee in writing of any objections to the Plan, with an explanation for each objection. If the Lessor does not make a timely objection to a Plan, the Plan shall be deemed to be approved by Lessor. In the event that Lessor makes a timely objection to a Plan submitted by Lessee under this Section, Lessee must revise the Plan to address each objection raised by Lessor and resubmit the Plan as thus revised for review by Lessor under this Section.

- C. Effect of Lessor's Approval. The approval by Lessor of the Plans or any modifications thereto or of any act herein referred to, or any suggestions with respect thereto, shall not constitute an opinion or representation with respect to the sufficiency thereof or impose any present or future liability or responsibility upon Lessor. Lessor does not undertake any duty to Lessee or any third party with respect to approval of design, safety features, specifications or any other element of the Plan, and Lessor makes no warranty whatsoever as to design, safety, code compliance, or any other aspect of the Plan.
- D. Lessee's Construction Obligations. Lessee shall construct Improvements in compliance with all applicable state, local and federal laws, codes, regulations, ordinances and orders. Lessee shall, at its sole cost and expense, defend, indemnify and hold Lessor and its agents and employees harmless from and against all claims, demands and actions, and all related costs and expenses (including attorneys' fees) for any failure of Lessee to comply with all valid, applicable laws, codes, regulations, ordinances and orders of any nature whatsoever now or hereafter in any manner affecting the Property and Improvements thereon, including without limitation, the Americans with Disabilities Act, all laws, ordinances and regulations regarding the serving of food and beverages, and all health and sanitation laws, ordinances and regulations, whether or not any such laws, ordinances and regulations which may hereafter be enacted involve change of policy on the part of the governmental body enacting the same. Such indemnification may include alterations in the Property or Improvements thereon which are required to make them conform with the requirements and standards of laws, ordinances and regulations, now and hereafter applicable to the Property or Lessee's use thereof, whether the work involved is structural or otherwise. Lessee shall prosecute construction of the Lessee's Improvements in such a manner as to reasonably minimize any inconvenience in or disruption to the construction or operation of any Improvements on Lessor's property that are situated adjacent to the Leased Premises. Lessee shall keep Lessor reasonably advised on a regular basis with respect to the design, permitting, scheduling, development and construction of the Lessee's Improvements. Lessee shall be solely responsible for paying any traffic mitigation, school or park fees, or other assessments or charges incurred as a result of the development of the Leased Premises by Lessee. Lessee shall not place

Improvements in or upon the Property except as provided by this Lease; provided, however, that Lessee shall immediately rectify any unsafe conditions existing at any time in or upon the Property.

- E. Permits. Lessee shall obtain any and all required permits prior to commencing construction. Lessor makes no representations, express or implied, as to the availability of permits or as to the terms that may be included therein. Lessee shall keep Lessor informed as to the status of its permit applications, and shall provide Lessor, without demand or notice, with copies of all permits and correspondence relevant thereto.
- F. Alterations. Any amendments to the Development Plan must be approved in writing by the Lessor before additional Improvements may be placed on the Property, but such approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall ensure that the construction and installation of all Improvements, alterations or renovations (the "Alterations") are in conformance with the most recent version of the final record drawings approved by Lessor and all specifications and requirements of this Lease relating to such Alterations.
- G. Costs. The cost of all construction, including but not limited to the cost of transporting materials to the Property shall be the sole responsibility of the Lessee.
- H. Nondisturbance of Other Parties. Lessee agrees to defend, indemnify and hold Lessor harmless from and against all liability, loss, cost and expenses, including reasonable attorneys' fees, incurred as a result of construction of Improvements. All work performed in connection with any improvement shall be done in a manner which will not unreasonably disturb surrounding landowners or occupants, and which will not commit waste or injury to the Property.
- I. Subsequent Construction. Following completion of the Lessee's Improvements, subject to the terms and provisions of Section 4 hereof and further subject to Lessor's right of approval as more particularly set forth in Sections 5.B and 5.C and 6.J hereof, Lessee may, at Lessee's sole cost and expense, make further alterations, renovations, replacements, improvements, demolitions, or additions in, upon or to the Leased Premises, including without limitation, to the Lessee's Improvements. Without limiting the foregoing, any alterations, renovations, improvements or additions to, or maintenance of, the Leased Premises, shall be performed expeditiously and diligently to completion in a workmanlike and professional manner and in material conformance with all applicable laws, statutes, ordinances, rules, regulations and codes.
- J. Easements. All easements, licenses or other right or interest (any of which will be referred to herein as an "easement") in the Property to be granted to a third party, including any utility, government agency, or public authority, must be granted by Lessor. If Lessee requires Lessor to grant an easement in the Premises, Lessee shall apply to Lessor for such easement. The application shall contain a copy of any proposed instrument granting such easement, and sufficient drawings, background information, and legal descriptions to inform Lessor as to the nature, effect, and purpose of such easement. Lessor shall respond not more than twenty (20) Business Days after its receipt of the application and may grant or deny such application in its sole discretion or may grant such application subject to qualifications or modifications, including charging a fee or requiring Lessee to pay Lessor's costs, including but not limited to attorneys' fees, associated with its review of such application. Lessor may require any such easements to expire upon the termination of this Lease. Lessee shall, upon receipt of Lessor's qualifications or modifications, modify the proposed easement taking into account Lessor's qualifications or modifications, negotiate with the entity requesting the easement, and resubmit such revised easement for approval by Lessor in accordance with this Section. The process of submittal, review and comment by Lessor, and resubmittal by Lessee shall continue until such time as Lessor has given its written approval of the requested easement.

## 6. LESSEE'S COVENANTS.

- A. Utilities and Services. Lessee shall be responsible for and shall pay, prior to the delinquency date, all charges for utilities supplied to the Leased Premises for Lessee's activities. Lessor shall not be responsible for constructing or maintaining any utilities needed to service the Leased Premises for Lessee's activities and further makes no representation or warranty as to availability of such services. Lessor will, upon request by Lessee, provide reasonable utility easements to the extent that the development requires those utility easements.
- B. No Lessor Security Measures. Lessee shall be responsible for any security measures during the Lease. Lessor shall have no duty, obligation or responsibility whatsoever to provide guard service or other security measures for the benefit of Lessee in connection with Lessee's use and possession of the Leased Premises, and Lessee hereby releases Lessor from any and all responsibility for the security of Lessee and its agents, contractors, employees, and invitees on the Leased Premises from acts of third parties.
- C. Taxes and Assessments. Lessee shall be responsible for the payment of any and all taxes and assessments, including but not limited to property taxes levied upon the property and Improvements, as a result of Lessee's activities, and shall cause said taxes and assessments to be paid prior to the delinquency date. Lessor shall not be responsible for payment of any assessments or special assessments for provision of utilities to the Leased Premises for Lessee's activities. While the parties recognize that Lessor is a state instrumentality exempt from state and federal taxes, if the law changes such that Lessor becomes subject to a state or federal income tax, Lessee has no obligation to pay any income tax payable by or chargeable to Lessor.
- D. Liens. Lessee shall be solely responsible for paying for all labor performed upon or materials furnished to the Premises at the request of Lessee. Lessee shall keep the Premises free and clear of any and all mechanic's, labor or materialmen's liens arising from the performance labor upon or the furnishing of materials to the Premises. Lessee shall post and record notices of non-responsibility for the benefit of Lessor pursuant to AS 34.35.065, AS 34.35.150 and any other applicable laws.
- E. Maintenance and Repair.
- i. Lessee shall, during the term of this Lease, at its sole cost and expense, maintain and keep all Improvements now or hereafter built on the Leased Premises (including but not limited to fences, signs, landscaping and yard areas, refuse disposal equipment and facilities pavement, curbs, gutters, exterior lighting and drainage facilities), in a clean, safe and first class condition and repair and in material conformance with applicable laws, statutes, ordinances, rules, regulations and codes.
  - ii. Lessee shall immediately notify Lessor of any material defects in the Leased Premises which become known to the Lessee.
- F. Accident Hazard. Lessee shall maintain the Leased Premises free of structural or mechanical hazards. If any accident hazards relative to the Lessee's Improvements are detected through inspections of the Leased Premises, the hazards shall be corrected by Lessee promptly, and at no expense to the Lessor, unless Lessor has caused the hazard through Lessor's negligence, or willful misconduct, in which case Lessor shall make corrections at Lessor's expense.
- G. Setback. Lessee shall observe all setback lines applicable to the Leased Premises and shall not construct

or maintain any building or other structure whatever between any street boundary of the Leased Premises and any setback along such boundary, except for fences or walls approved by Lessor.

- H. Compliance with Laws. All Lessee Site Improvements and other Lessee Improvements to the Leased Premises shall conform to all applicable federal, state, and local laws, ordinances, codes and regulations including but not limited to occupational health and safety regulations, prevailing wages as determined by the Alaska Department of Labor and Work Force Development and the Americans with Disabilities Act.
  - I. Water Rights. All water rights applied for and secured during the Term of the Lease shall be in the name of Lessor and shall remain appurtenant to the property during the Term, and such water and water rights shall not be severed or transferred from the property or any part thereof without the prior written consent of Lessor which, at Lessor's sole discretion, may be withheld for any reason. Lessee shall assign all rights under any permit or certificate of appropriation to Lessor upon termination of this Lease.
  - J. Alterations by Lessee. Except for construction of Lessee's Improvements in accordance with Exhibit B, Lessee shall not commence any material alterations, renovations, replacements, renewals, improvements or additions in or to the design of the exterior of the Improvements upon the Leased Premises, including the design and location of all landscaping, lighting and signage for the Improvements upon the Leased Premises, without the prior written consent of Lessor, which consent shall not unreasonably be withheld, conditioned or delayed. Notwithstanding anything contained herein to the contrary, all alterations, renovations, improvements or additions to the Leased Premises shall be made by Lessee at Lessee's sole cost and expense. If any improvement is made or commenced without Lessor's written consent, and Lessor does not give subsequent approval thereof, the Lessee shall, upon receiving written notice from Lessor, restore that portion of the Leased Premises affected by the Improvements to its preexisting condition at Lessee's expense.
7. **NET LEASE**. It is the intention and purpose of the respective parties hereto that this Lease shall be a "net lease" to Lessor, all cost or expense of whatever character or kind, general and special, ordinary and extraordinary, foreseen and unforeseen and of every kind and nature whatsoever that may be necessary in or about the operation of the Property and Lessee's authorized use thereof during the entire Term, or its extension(s), to be paid by Lessee including but not limited to taxes, utilities, insurance, and/or property assessments, if applicable. All provisions of this Lease relating to expenses are to be construed in light of such intention and purpose to construe this Lease as a "net lease."
8. **CONDITION PRECEDENT**. Approval by Board of Regents. As a condition precedent, this lease is expressly subject to the approval of this transaction by the University of Alaska Board of Regents. If the approval of the Board of Regents has not been obtained within NINETY (90) DAYS of the Effective Date of this Lease, then this Lease shall terminate and be of no force and effect, any deposits held by Lessor will be returned to Lessee, and each party shall bear its own costs.
9. **LEASE CONTINGENCIES**.
- A. Lessee shall bear the responsibility for seeking any zoning change requests or conditional use permits sought from the Municipality of Anchorage, or other permits or authorizations sought from any governmental or regulatory agency. Lessee will also be responsible for obtaining and recording a written release from the Municipality of Anchorage to terminate the Deed Restriction of August 23, 2013, recorded August 28, 2013 in the Anchorage Recording District as Document 2013-049-077-0. Lessor will cooperate on and support Lessee's efforts under this subsection, including allowing Lessee (upon request to Lessor) to allow the



applications to be filed on behalf of Lessor; but Lessee is to bear the financial costs of such applications and approvals. In the event that Lessee is unable to obtain such authorizations within one year of the effective date of this Lease, either Lessor or Lessee may terminate this Lease upon 60 days' notice and thereby be absolved of all obligations thereunder which have not accrued as of the 60<sup>th</sup> day. Each party shall bear all out-of-pocket costs respectively incurred and have no further prospective obligation under the Lease past that 60<sup>th</sup> day as long as the parties have acted in good faith.

B. Lessee is not obligated by this lease to arrange for any environmental assessments, but if Lessee chooses to do so, Lessee shall bear the responsibility for doing so, including all costs. Lessor will cooperate on and support Lessee's efforts under this subsection, but Lessee is to bear all financial costs of such assessments. Lessee shall supply Lessor with copies of all written environmental assessments produced under this subsection. In the event that Lessee concludes that the results of its environmental assessments make the initiation of Lessee's Development Plan infeasible, Lessee will notify Lessor. Thereafter, either party may terminate this lease upon 60 days' notice and thereby be absolved of all obligations thereunder which have not accrued as of the 60<sup>th</sup> day. Each party shall bear all out-of-pocket costs respectively incurred and have no further prospective obligation under the Lease past that 60<sup>th</sup> day as long as the parties have acted in good faith.

10. **NON-SUBORDINATION OF LESSOR'S INTEREST.** Neither Lessor's interest in this Lease nor its fee interest in the Premises nor its reversionary interest in the Improvements shall be subject or subordinate to: (a) any mortgage now or hereafter placed upon Lessee's interest in this Lease or the Premises; or (b) any other liens or encumbrances hereafter affecting Lessee's interest in this Lease or the Premises. Nothing contained herein shall impair the right of Lessor to mortgage or otherwise encumber its fee interest in the Premises or its interest in this Lease, provided that each such mortgage or encumbrance shall be subject to this Lease and Lessee's rights and leasehold estate hereunder. Lessor agrees to give Lessee reasonable notice, of at least thirty (30) days, of any action by Lessor to sell, mortgage, or otherwise encumber its fee interest in the Premises.

11. **QUIET ENJOYMENT.** Lessor covenants and agrees with Lessee that, so long as there shall not be any material default by Lessee which shall remain uncured beyond any applicable cure period hereunder, Lessee shall and may peaceably and quietly have, hold, and enjoy the Leased Premises during the Term.

12. **CONDEMNATION.** If the whole or any part of the Property is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions shall control:

A. **Entire Parcel Condemned.** If the entire Property is taken by condemnation, this Lease and all rights of Lessee will terminate no later than the date of the condemnation. Advance rent received by Lessor shall be returned on a pro rata basis to reflect the unused portion of rent remaining from the date Lessee is required to surrender possession of the Property. Lessor is entitled to all condemnation proceeds, except that Lessee will be entitled to receive from the condemning authority that portion of the proceeds attributable to the fair market value, as determined in the condemnation proceedings, of Lessee's interest in any buildings or improvements taken that were placed on the condemned Property by Lessee in conformance with this Lease. Lessor shall have no duty whatsoever to pursue any compensation for Lessee's interest under the Lease or otherwise in any condemnation proceedings (or negotiations with any agency or body with the power of eminent domain) and it shall be Lessee's sole responsibility and obligation to raise and pursue such claims, if any, against the condemning authority. If Lessee fails to do so, it waives all rights to any portion of the proceeds from the condemnation.

B. **Portion of Parcel Condemned.** If only a portion of the Property is taken then the following shall apply:

- i. If the taking by condemnation materially affects the use being made by Lessee of the Property, Lessee shall have the right to elect to terminate the Lease by written notice to Lessor received by Lessor not later than one hundred eighty (180) days after the earlier of the date of taking or of possession.
- ii. If Lessee elects to terminate the Lease, the provisions in subsection (A) of this Section shall govern the condemned portion of the Property and the covenants and conditions of the Lease govern disposal of the remainder of any buildings or improvements made by Lessee in accordance with the terms of Lease.
- iii. If the conditions set forth in (B)(i) above are not applicable or if Lessee elects not to terminate, the Lease continues and Lessor is entitled to the full condemnation proceeds except that Lessee shall be entitled to receive from the condemning authority the portion attributable to the fair market value, as determined in the condemnation proceedings, less any legal fees and costs incurred by Lessor to address such point in such proceedings of Lessee's interest in the Property including, buildings or Improvements taken that were placed on the condemned portion of the Property by Lessee in conformance with this Lease. Lessor shall have no duty whatsoever to pursue any compensation for Lessee's interest under the Lease or otherwise in any condemnation proceedings (or negotiations with any agency or body with the power of eminent domain) and it shall be Lessee's sole responsibility and obligation to raise and pursue such claims, if any, against the condemning authority. If Lessee fails to do so, it waives all rights to any portion of the proceeds from the condemnation. Rent at the existing rate will terminate on the date Lessee is required to surrender possession of the condemned portion of the Property. Except as it may be adjusted from time to time under the covenants and conditions of the Lease and applicable statutes, rent for the balance of the term will be adjusted by Lessor to reflect the pro rata portion of the Net Useable area of Property taken.

### 13. SURRENDER OF PREMISES AND REMOVAL OF IMPROVEMENTS.

- A. Surrender of Premises. Upon the expiration or other termination of the Term, Lessee shall surrender to Lessor the possession of the Leased Premises. Lessee shall leave the surrendered Leased Premises and any Improvements in a broom clean condition, subject to subsection B. If Lessee fails to surrender the Leased Premises at expiration or termination, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including but not limited to claims made by any succeeding Lessee founded on or resulting from Lessee's failure to surrender. In the event of failure or refusal of Lessee to surrender possession of the Leased Premises, Lessor shall have the right to reenter the Leased Premises and remove therefrom Lessee or any person, firm or corporation claiming by, through or under Lessee and to obtain damages for trespass from Lessee.
- B. Removal of Improvements Upon Termination.
  - i. Upon the expiration or termination of this Lease, provided that Lessee is not in default on any of its obligations hereunder, Lessee may request consent from Lessor to remove some or all of Lessee's improvements, which consent shall not be unreasonably withheld, delayed or conditioned. At least six (6) months prior to termination, and no more than twenty-four (24) months prior to termination, Lessee shall notify Lessor of Lessee's request to remove any Improvements. Within ninety (90) days of such notice, Lessor shall notify Lessee of its response to that request. If Lessor makes no response by the 90th day, Lessor's consent is presumed granted.
  - ii. At Lessor's sole option, Lessor may require Lessee to either remove or demolish any Lessee

Improvements. At least six (6) months prior to termination, and no more than twenty-four (24) months prior to termination, Lessor shall notify Lessee of any improvements Lessor will require Lessee to either remove or demolish. Unless the parties otherwise agree, such removal or demolition will occur within sixty (60) days of the expiration or earlier termination of this Lease.

- iii. Except to the extent Lessor requires removal or demolition of some or all Improvements, or the extent to which Lessee exercises its option to remove some or all Improvements, the Parties hereby agree that Lessee shall leave the improvements constructed for the Lessee's Improvements and any other improvements constructed upon the Leased Premises on the Leased Premises upon termination, with Lessor becoming the owner of such improvements.
  - iv. Lessee shall leave the Leased Premises in a broom clean and leasable condition, which shall include, at Lessor's sole discretion, removal of all improvements, buildings, foundations and footings to buildings, personal property, trash, vehicles, and equipment. Any excavation on the property, including excavation to remove Lessee's Improvements, shall be filled and compacted with material approved by Lessor.
  - v. In the event Lessee fails to remove within the sixty (60) day period following expiration or early termination of this Lease those improvements Lessor has authorized Lessee to remove, or fails to demolish or dismantle those Improvements Lessor has required to be demolished or dismantled, Lessee shall be liable and reimburse Lessor for all costs, including legal and administrative expenses incurred by Lessor in removal and disposal of the Improvements.
  - vi. Any improvements owned by Lessor or added to the Leased Premises by Lessor after execution of this Lease, shall not be removed by Lessee.
- C. Abandonment of Lessee's Property. All property that Lessee is not required or allowed to leave on the Leased Premises shall, on the sixtieth (60<sup>th</sup>) day following termination, be conclusively deemed abandoned. Abandoned property shall, at the election of Lessor, become the property of the Lessor or be destroyed or removed by Lessor.
- D. Liability for Cleanup Expenses. Lessee shall be liable for all costs and expenses incurred by Lessor to remove or destroy abandoned property and Improvements not allowed by Lessor in writing to be left on the Leased Premises, and for the removal of trash or other debris left thereon. In addition, nothing in this Lease shall relieve Lessee of any obligation or liability for removal of hazardous substances (including wastes) or inappropriate fill material placed on the Leased Premises during the term of the Lease, regardless of when such hazardous substance (including waste) or inappropriate fill material is discovered.

#### 14. HAZARDOUS MATERIAL

- A. Definition. As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Alaska, or the United States. Hazardous Material also includes petroleum products and petroleum by-products.
- B. Lessee to Comply. Lessee shall, at Lessee's own expense, comply with all existing and hereafter enacted health, safety and environmental laws, rules and regulations (collectively "Environmental Laws") and make

all submissions to, provide all information to, and comply with all requirements of, any appropriate governmental authority as to Environmental Laws.

- C. Remedial Action. Without limiting the generality of the foregoing, should the appropriate governmental authority require remedial action due to the presence of, or any disposal, release, spill, or discharge, or threatened disposal, release, spill, or discharge of or contamination by oil, fuel or other hazardous substances (as defined below) on, to or from the Property that occurs during the term of this Lease and that arises out of or in connection with Lessee's use or occupancy of the Property, Lessee shall prepare a remedial action plan and undertake a remedial action. In such instance, Lessee shall, at Lessee's own expense, prepare and submit the required plans and financial assurances and carry out such plans with all diligence and without delay as required by law and provide Lessor with adequate notice pursuant to subsection H hereof. Lessee's obligations under this Section shall arise if there is any event or occurrence at the Property during the Term of this Lease, which arises out of or is in any way connected with Lessee's use or occupancy of the Property, that requires compliance with Environmental Laws.
- D. Lessee to Indemnify Lessor. Lessee shall indemnify, defend, and hold harmless Lessor from all fines, penalties, suits, judgments, procedures, claims, demands, liabilities, settlements, losses (including but not limited to lost rents and profits) and actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge of any threatened disposal, release, spill, or discharge of any hazardous substance arising from or in connection with Lessee's use or occupancy of the Property; and from all fines, penalties, suits, judgments, procedures, claims, demands, liabilities, settlements, losses, and actions of any kind arising out of governmental authority under any Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs during the term of this Lease and that arises out of or in connection with Lessee's use or occupancy of the Property.
- E. Compliance With Law. Lessee shall not, except as permitted by law, store, treat, discharge, or dispose of or suffer the storage, treatment, discharge, or disposal of any petroleum products, gasoline, hazardous chemicals, hazardous substances or hazardous wastes into the atmosphere, ground, wastewater disposal system, sewer system, or ground water or surface water.
- F. Presumptions. In any court action or administrative proceeding, as between Lessor and Lessee, in addition to all other applicable presumptions, it shall be rebuttably presumed that any environmental contamination of the Property (i) has been released on the Property, (ii) has resulted from acts or omissions of Lessee or its agents; and (iii) has occurred during the Term of this Lease. Lessee has the burden of rebutting the presumptions by clear and convincing evidence.
- G. Lessee's Duties And Liabilities Under Title 46. This Section of this Lease does not in any way alter Lessor's powers and rights or Lessee's duties and liabilities under Title 46 (or any successor statute) of the Alaska Statutes or other state, federal, or municipal statutes, regulations, or ordinances. Lessee's obligations under this Section 14 shall survive the termination of this Lease for any reason.
- H. Notification Required. Lessee shall authorize any agency responsible for enforcement of Environmental Laws to transmit to Lessor any notices of violation of Environmental Laws or similar notices received in connection with Lessee's activities on the Property. Lessee shall carry out at its expense all lawful orders and requirements of any governmental authority respecting Lessee's activities on the Property. Upon Lessor's request, Lessee shall notify Lessor in writing of the measures being taken by Lessee to dispute, remedy, or otherwise resolve the matters raised in the notice. If Lessee shall fail to resolve any such notice of violation or other similar notice or to carry out any such lawful order or requirement, Lessor shall have the right,

together with any other available legal recourse (including those available under Section 21 (Default and Remedies) hereof in case of default), to enter the Property for the purpose of satisfying (at Lessee's expense) Lessee's obligations under this Section 14 and taking (at Lessee's expense) such other actions as may be necessary to remedy or prevent additional damage or waste of the Property.

- I. The obligations arising under this Section shall survive expiration or earlier termination of this Lease.
- J. Nothing in this Section is intended to relieve Lessee, its employees, agents, representatives, contractors, subcontractors or invitees from any responsibility imposed by any government agency dealing with Hazardous Materials.

## 15. ASSIGNMENT AND SUBLETTING

- A. Subtenant leases and Nondisturbance. Lessee shall have the right to enter into subleases ("Subtenant Leases") for all or a portion of the Premises, on terms and in a form as determined by Lessee from time to time in its sole and absolute discretion; provided, however, that at all times Lessor shall have the right to review all Subtenant Leases upon request. Subtenant Leases shall be in writing and expressly state that the subtenant's rights thereunder are subject to the terms and conditions of this Lease. The permitted uses under each such Subtenant Lease shall not conflict with the uses permitted under this Lease. At least once in every Lease Year, Lessee shall provide Lessor with a rent roll listing as of such date all Subtenant Leases and identifying the tenants, spaces leased, terms and basic rental rates, as applicable. Upon the request of Lessee or Lessee's leasehold mortgagee, Lessor shall within a reasonable time execute, acknowledge and deliver a non-disturbance agreement with such Leasehold Mortgagee under Section 16 and with any tenant under a Subtenant Lease that Lessor has otherwise reviewed and approved (which approval shall not be unreasonably withheld or delayed or conditioned), confirming that in the event of termination of this Lease for any reason, such subtenant shall be entitled to continued occupancy in the Premises in accordance with its Subtenant Lease as long as: (a) such Subtenant Lease is not terminated in accordance with its terms (including termination for default upon expiration of all applicable periods to cure), and (b) such tenant agrees to attorn to Lessor under the applicable Subtenant Lease (including the payment of all rent and other charges without offset for prepayments previously made other than rent and other charges paid not more than one month in advance) and agrees not to effect the termination of the same due to any termination of this Lease. Notwithstanding the foregoing, such non-disturbance shall not apply to leases for building management purposes or to leases to affiliates of Lessee at rates and terms other than those then prevailing in the market, and upon the termination or expiration of this Lease, such building management leases and below-market leases to affiliates of Lessee shall also terminate. In addition, no such non-disturbance shall obligate Lessor to undertake or complete any construction obligations or provide any allowances to be provided by Lessee under any Subtenant Lease.
- B. Other Lessee rights to assign or sublet. In addition to the subtenant leases under subsection A, Lessee shall have the right (subject to the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned) to assign its interest in this Lease or to sublet all or part of the Premises to any other party if: (i) at the time of assignment or sublease Lessee is not in default under any of its obligations under this Lease; (ii) neither Lessee (except as expressly provided herein) nor any guarantor of this Lease shall be relieved from liability hereunder or under such guaranty; (iii) each proposed assignee or sublessee agrees in writing to be bound by and assume the terms of this Lease; and (iv) each proposed assignee or sublessee is, in Lessor's judgment, financially capable of performing Lessee's obligations under this Lease and is an experienced owner, operator and/or manager of projects similar in kind to the Improvements. Lessee shall provide Lessor with at least thirty (30) days prior written notice of any proposed assignment or

sublease hereunder, including the identity of the proposed assignee or subtenant. Lessee shall provide Lessor with such additional information as Lessor shall reasonably request regarding the proposed assignee or subtenant, its financial status and its experience. Lessor's consent to a sublease or assignment shall not relieve Lessee from full and primary liability under this Lease. All costs and fees reasonably incurred by Lessor in connection with reviewing any request by Lessee for Lessor's consent to or approval of any assignment, sublease, nondisturbance agreement or similar transaction, including without limitation attorneys' fees, shall be reimbursed by Lessee to Lessor promptly upon demand. All of the following shall constitute assignments subject to this subsection: (i) if Lessee is a corporation that is not publicly traded on a national exchange, then any transfer of this Lease by merger, consolidation or liquidation, or any direct, indirect or cumulative change in the ownership of, or power to vote more than twenty-five percent (25%) of Lessee's outstanding voting stock, shall constitute an assignment; (ii) if Lessee is a partnership, then a change in twenty-five percent (25%) or more of the general partners in, or voting or decision-making control of, the partnership shall constitute an assignment; (iii) if Lessee is a limited liability company, then a change in more than twenty-five percent (25%) of the membership interests therein or of the members thereof, if such change alters voting or decision-making control of the limited liability company, shall constitute an assignment; and (iv) if Lessee is any other type of entity, then a change in the beneficial ownership of a majority of interests therein shall constitute an assignment. Any change in ownership of Lessee's parent of the type described in (i), (ii), (iii) or (iv) above shall also constitute an assignment subject to this subsection. These provisions shall apply to any single transaction or any series of related or unrelated transactions having the effect described. Lessor's approval for such assignments or subleases under this subsection (i) shall not be unreasonably withheld or delayed or conditioned, and (ii) shall be deemed granted if not denied in a written notice delivered to Lessee within thirty (30) days after Lessor's receipt of Lessee's submittal or request for approval.

## 16. MORTGAGE OF LEASEHOLD INTEREST OF LESSEE

- A. Lessee shall have the unrestricted right to encumber, for loan security purposes to a lending institution, by mortgage, deed of trust, assignment or other appropriate instrument, Lessee's interest in part or in whole to the leased premises and in and to this Lease, provided that no such encumbrance shall extend to or affect the fee, the reversionary interest, or the estate of Lessor in the premises.
- B. A leasehold mortgagee, a beneficiary of a deed of trust, or a security assignee shall have and be subrogated to any and all rights of Lessee with respect to the curing of any default hereunder by Lessee.
- C. If the holder of any such mortgage, the beneficiary of any such deed of trust, or the security assignee shall give Lessor, before any default shall have occurred in the Lease, a written notice containing the name and post office address of such holder, Lessor shall thereafter give to such holder a copy of each notice of default by Lessee at the same time as any notice of default shall be given by Lessor to Lessee; and Lessor will not thereafter enter into any modification of this Lease without the prior written consent of the holder of any first mortgage, beneficial interest under a first deed of trust, or security assignment in this Lease.
- D. If by reason of any default of Lessee, either this Lease or any extension thereof shall be terminated at the election of Lessor prior to the stated expiration therefor, Lessor shall enter into a new lease with the leasehold mortgagee, the beneficiary of a deed of trust, or the security assignee, for the remainder of the term, effective as of the date of such termination, at the rent and additional rent and on the terms herein contained, subject to the following conditions:
  - i. Such mortgagee, beneficiary or security assignee shall make written request to Lessor for a new lease

within forty (40) days after the date of such termination; and such mortgagee, beneficiary or security assignee shall execute and deliver the new lease to Lessor within fifteen (15) days after the date Lessor has presented the new lease to the mortgagee, beneficiary or security assignee;

- ii. such mortgagee, beneficiary, or security assignee shall pay to Lessor, at the time of the execution and delivery of such new lease, in good funds for immediate credit to Lessor: (1) any and all sums due under such new lease; (2) any and all sums which would at the time of the execution and delivery of such new lease be due under this Lease but for such termination, whether such sums accrued prior to or after the termination of this Lease, but excluding rent and other sums which the mortgagee, beneficiary or security assignee must also pay under the new lease; and (3) any reasonable expenses, including legal and attorneys' fees to which Lessor shall have been subjected by reason of Lessee's default;
- iii. such mortgagee, beneficiary or security assignee shall, on or before the execution and delivery of such new lease, perform all the other conditions required to be performed by Lessee to the extent that Lessee shall have failed to perform such conditions.

E. Lessor agrees that, to the extent the mortgagee, beneficiary or security assignee pays sums to Lessor including sums under the new lease, Lessor shall not also have the right to collect such sums from Lessee under this Lease, or as damages for default under this Lease.

F. Lessor agrees that, in order to attempt to assist Lessee with such financing, which will enable Lessee to construct and operate the Improvements to be situated on the Property, Lessor shall give prompt, fair and reasonable consideration to, and shall negotiate in good faith regarding, any commercially reasonable (standard for commercial lending on ground leases in the Municipality of Anchorage) revisions to the language of this Lease that a proposed mortgagee, beneficiary, or security assignee (collectively, "Lender") may reasonably require as a part of an interim or permanent loan to Lessee on the security of Lessee's leasehold estate and the Improvements to be situated thereon, including without limitation, provisions regarding notices to the Lender, the Lender's ability to cure Lessee's defaults, rights to and allocation of condemnation proceeds, and rights to a new lease in the event of termination. Nevertheless, Lessor shall not be obligated to consider, negotiate on or accept any revisions that would have the effect of subordinating Lessor's fee estate or reversionary interest in the Property to any Lender.

17. **LIABILITY AND INDEMNITY.** Lessee assumes all responsibility, risk and liability for all activities of Lessee, its employees, agents, representatives, contractors, subcontractors, invitees or licensees, directly or indirectly conducted in connection with its use, performance, activities or operations on or surrounding the Leased Premises, including environmental or hazardous materials risks and liabilities whether occurring during or after the term of this Lease. Lessee shall indemnify, defend and hold the Lessor, its Board of Regents, officers, employees, agents and representatives harmless from and against any and all loss, expense, including attorney's fees and litigation costs, damage, claim, demand, judgment, fee, charge, lien, liability, action, cause of action or proceedings of any kind whatsoever on account of damage to or loss of property, or personal injury, emotional distress or death arising directly or indirectly in connection with the use, performance, activities or operations of Lessee, its employees, agents, representatives, contractors, subcontractors and invitees. This indemnification does not apply where the injury is caused by the Lessor's sole negligence or intentional misconduct. This indemnification applies before and after Lessee's activities and operations on the Leased Premises and shall survive any termination or expiration of this Lease. In the event any part of this indemnification clause is determined to be contrary to law or public policy, Lessee agrees to provide the Lessor with the maximum indemnification allowed by law.

## 18. INSURANCE.

### A. General Requirements.

- i. Lessee and its contractor and subcontractor(s) of any tier are required to carry the types and limits of insurance shown in this insurance clause, and to provide the Lessor with a Certificate of Insurance ("certificate"). The Lessee and its contractor and subcontractor(s) shall not commence work until satisfactory evidence has been provided to the Lessor that the Contractor can cover the requirements set forth in this provision with regard to the Lessee and all its contractors and subcontractors when engaged in any work performed on the Property. All certificates shall be coordinated by the Lessee and provided to the Lessor prior to signing of the contract by the Lessee. Certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below. All certificates shall provide for THIRTY (30) DAYS' written notice to the Lessor prior to cancellation, non-renewal, or other material change of any insurance referred to therein as evidenced by return receipt of United States certified mail. Lessee shall independently provide the same THIRTY (30) DAYS' written notice to the Lessor. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the Lease and its contractor and subcontractor's services. Failure to comply with this provision may also preclude other contracts and agreements between the Lessee and Lessor.
- ii. Additionally, and at its option, Lessor may request certified copies of required policies and endorsements. Such copies shall be provided within SIXTY (60) DAYS' of the Lessor's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed to do business in Alaska; either as Admitted insurers or on the approved list of surplus lines insurers. All policies required shall be written as primary policies and not contributing to nor in excess of any coverage the Lessor may choose to maintain. Failure to maintain the required insurance may result in termination of this Lease at the Lessor's option.
- iii. Those policies in subsection B that so specify shall name the Lessor as Additional Insured, except as Lessor may, at Lessee's request and in Lessor's sole discretion, agree otherwise as to particular policies. On the certificate, Lessor shall be stated as: "University of Alaska." Certificates shall be mailed to:  
  
University of Alaska Land Management  
1815 Bragaw Street, Suite 101  
Anchorage, Alaska 99508
- iv. Failure of Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of the obligation of Lessee and its contractor and subcontractor(s) of any tier to maintain such insurance.
- v. By requiring insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee and its contractor and subcontractor(s) of any tier, and such coverage and limits shall not be deemed as a limitation on the liability of the Lessee and its contractor and subcontractor(s) of any tier under the indemnities granted to the Lessor in this Lease.
- vi. Lessee is responsible for coordinating the reporting of claims and for the following: (a) notifying Lessor in writing as soon as practicable after notice of an injury or a claim is received; (b) cooperating completely



with Lessor in the defense of such injury or claim; and (c) taking no steps (such as admission of liability) which will prejudice the defense or otherwise prevent the Lessor from protecting its interests.

vii. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Lessee's policy contains higher limits, the Lessor shall be entitled to coverage to the extent of such higher limits.

viii. If Lessee at any time during the Term fails to procure or maintain insurance required hereunder or to pay the premiums therefor, Lessor shall have the right to procure the same and to pay any and all premiums thereon. Any amounts paid by Lessor in connection with the acquisition of insurance shall be immediately due and payable as additional rent, and Lessee shall pay to Lessor upon demand the full amount so paid and expended by Lessor, together with interest thereon at the Applicable Rate from the date of such expenditure by Lessor until repayment by Lessee.

B. Required Insurance Coverage. Without limiting Lessee's indemnification, it is agreed that Lessee and its contractor and subcontractor(s) shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement policies of insurance covering the following types and limits:

i. Builder's Risk Insurance. During the construction of Improvements, and at Lessee's sole cost and expense, Lessee shall maintain builder's risk insurance, written on the so-called "Builder's Risk — Completed Value Basis," in an amount equal to 100% of the replacement costs of the Improvements as of the date of completion, naming Lessor as an additional named insured, with coverage on the so-called "all risk," nonreporting form of policy.

ii. Commercial General Liability Insurance. Lessee and its contractor and subcontractor(s) of any tier shall maintain Commercial General Liability ("CGL") written on an occurrence basis and with a limit of not less than TEN MILLION DOLLARS (\$10,000,000) each occurrence and TEN MILLION DOLLARS (\$10,000,000) aggregate. If such CGL insurance contains a general aggregate limit, it shall apply separately by location and shall not be less than FIVE MILLION DOLLARS (\$5,000,000). CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage, acceptable to Lessor) and shall cover liability arising from premises, operations, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name the Lessor as Additional Insured and waiver of subrogation language shall be included.

iii. Commercial Auto Insurance. Lessee and its contractor and subcontractor(s) of any tier shall maintain a Commercial Auto policy with a Combined Single Limit of not less than ONE MILLION DOLLARS (\$1,000,000); Underinsured and Uninsured Motorists limit of not less than \$1,000,000; and a Medical Payments limit of not less than \$10,000. Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the Lessor as Additional Insured and waiver of subrogation language shall be included.

iv. Workers' Compensation. Lessee and its contractor and subcontractor(s) of any tier shall provide and maintain, for all of its employees engaged in work under this contract, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Lessee and its contractor shall be responsible

for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than ONE MILLION DOLLARS (\$1,000,000) each accident, ONE MILLION DOLLARS (\$1,000,000) each person and ONE MILLION DOLLARS (\$1,000,000) policy limit. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.

- v. Personal Property. Upon request from Lessor, Lessee and its contractor and subcontractor(s) of any tier shall purchase insurance to cover personal property of Lessee and its contractor and subcontractor(s) of any tier. In no event shall Lessor be liable for any damage to or loss of personal property sustained by Lessee and its contractor and subcontractor(s) of any tier, even if such loss is caused by the negligence of Lessor, its Board of Regents, officers, employees, agents and representatives.
- vi. Professional Liability. Upon request from Lessor, if available generally to members of the professions of Lessee and any of Lessee's contractor and subcontractor(s) of any tier, Lessee and its contractor and subcontractor(s) of any tier shall maintain Professional Liability (Errors & Omissions) insurance on a claims made basis, covering claims made during the policy period and reported within three years of the date of occurrence. Professional Liability shall include all errors, omissions, or negligent or wrongful acts of the Lessee, contractor, subcontractor, or anyone directly or indirectly employed by them, made in the performance of this contract which results in financial loss to the Lessor. Limits of liability shall be not less than ONE MILLION DOLLARS (\$1,000,000). Coverage shall be maintained for the duration of this contract plus THREE (3) YEARS following completion of construction.
- vii. Pollution Liability Insurance. Lessee and its contractor and subcontractor(s) of any tier, shall maintain Pollution Liability Insurance covering pollution legal liability arising from sudden and accidental and gradual pollution, and applicable to bodily injury, property damage, including natural resource damage, loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs, removal, storage, disposal and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. Coverage shall be maintained in an amount of at least TWO MILLION DOLLARS (\$2,000,000) per loss. Coverage shall apply to sudden and gradual pollution conditions resulting in the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases natural gas, waste materials, or other irritants, contaminants or pollutants. If coverage is written on a claims-made basis, the Lessee and its contractor and subcontractor(s) warrants that any prior acts or retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of THREE (3) YEARS beginning from the time that work under this contract is completed. This policy shall name the Lessor as additional insured and waiver of subrogation language shall be included.
- viii. Excess Liability. If necessary to provide the required limits, required policy limits may be layered with a Commercial Umbrella or Excess Liability policy or policies. This policy shall name the Lessor as Additional Insured and waiver of subrogation language shall be included.
- ix. Lessor's Right to Request Other Insurance and Increased Insurance Coverage. Lessor may from time to time require that lessee provide commercially - reasonable insurance coverages for the benefit of the Lessor, of the types, amounts, terms and conditions determined by Lessor, including casualty insurance. Lessor reserves the right to increase the required insurance coverage limits from time to time to reflect then current industry standards or to accommodate changed conditions or perceived risks.

**19. RIGHTS OF ACCESS.**

- A. Lessor Access. Lessor and its officers, directors, agents, employees and contractors shall have the right to enter upon the Leased Premises at any time upon reasonable notice for the purpose of inspecting the same, provided that such access shall not materially and unreasonably interfere with Lessee's use of the Leased Premises.
- B. Lessee Access. Lessor shall provide Lessee at all times with convenient and unimpeded vehicular and pedestrian access to the Leased Premises, except temporarily during times of emergency or required repair or as may otherwise be ordered by any governmental authority.
- C. Lessor's Right of Access for Environmental Purposes. In addition to any right of access described elsewhere in this Lease, Lessee hereby agrees to provide Lessor access to the Premises at all reasonable times for the purposes of assessing, sampling, or otherwise determining the current environmental condition of the Premises and, if deemed necessary or prudent by Lessor in its sole discretion, conducting or implementing any interim or final cleanup measures or other action protective of human health and the environment, whether or not such action is required by a regulatory agency with jurisdiction in the matter.

20. **NOTICES.** Unless otherwise provided herein, all notices or other communications required or permitted by this Lease shall be in writing and shall be deemed to have been duly given on the date of delivery if delivered personally to the party to whom notice is given or if sent by confirmed facsimile transmission, by e-mail with delivery confirmation or read receipts requested, or on the date of actual delivery if sent by overnight commercial courier or by first class mail, registered or certified, with postage prepaid and properly addressed to the party at its address set forth below, or at any other address that any party may from time to time designate by written notice to the other:

LESSOR:  
University of Alaska  
Land Management Office  
1815 Bragaw Street, Suite 101  
Anchorage, Alaska 99508  
Phone: (907) 786-7766  
E-mail: \_\_\_\_\_

LESSEE:  
[Name of Lessee]  
[Address]  
[City], [State] [Zip Code]  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**21. DEFAULT AND REMEDIES.**

- A. Default of Lessee. Each of the following, but not limited thereto, shall be deemed a default by Lessee and a breach of this Lease:
  - i. A default in the performance of any covenants or condition on the part of Lessee to be performed, for a period of TEN (10) business days after the service of notice by Lessor, provided, however, that no default on the part of Lessee in the performance of work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if before the end of such TEN (10) business day period, Lessee has begun to rectify the same, and thereafter prosecutes the curing to completion with diligence and continuity.
  - ii. The taking possession of the property of Lessee by any governmental office or agency pursuant to

statutory authority for the dissolution or liquidation of the Lessee.

iii. The vacation or abandonment of the Leased Premises by Lessee for more than SIXTY (60) days.

B. Remedies of Lessor. In the event of any default of Lessee as above provided, the Lessor shall have the following rights or remedies, in addition to any rights or remedies that may be given to Lessor by statute, law, equity or otherwise:

i. Re-enter the Leased Premises and take possession.

ii. Re-let the Premises in whole or in part for any period equal to, or greater or less than, the remainder, of the Term of this Lease, for any reasonable sum.

iii. Declare the Lease Term ended.

iv. Recover from Lessee such damages attributable to its default.

v. Re-entry or re-letting of part or all of the Leased Premises shall be deemed a termination of this Lease. The enumeration of the Lessor's remedies is not intended to imply they are mutually exclusive nor that they are in lieu of any or all other statutory common law or other rights.

C. Default of University. The following, but not limited thereto, shall be deemed a default by Lessor and a breach of this Lease: A default in the performance of any other covenants or condition on the part of Lessor to be performed, for a period of TEN (10) business days after the service of notice by Lessee, provided, however, that no default on the part of Lessor in the performance of work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if before the end of such TEN (10) business day period, Lessor has begun to rectify the same, and thereafter prosecutes the curing to completion with diligence and continuity.

D. Remedies of Lessee. In the event of any default of Lessor as above provided, the Lessee shall have any rights or remedies that may be given to Lessee by statute, law, equity or otherwise and may terminate this Lease.

## 22. SUBORDINATION AND ATTORNMENT.

A. Lessee accepts this Lease subject and subordinate to all the underlying leases, leasehold mortgages, deeds of trust, or other mortgages now or hereafter a lien upon or affecting the land and building of which the Leased Premises are a part. Lessee shall, at any time hereafter, on demand, execute any instruments, releases, or other documents that may be required (i) by any beneficiary, mortgagee or mortgagor, of the purpose of subjecting and subordinating this Lease to the lien of any such deed of trust, mortgage or mortgages, or underlying lease; or (ii) alternative, if any such beneficiary, mortgagee or mortgagor elects to have this Lease made a prior lien to its mortgage or deed of trust. The failure of Lessee to execute any such instruments, releases, or documents, shall constitute a default hereunder.

B. In the case of the failure of Lessee to execute said documents on demand, Lessor is hereby authorized, as the attorney and agent of Lessee, to execute such releases, instruments, or other documents, and in such event Lessee hereby confirms and ratifies any such instruments so executed by virtue of this power of attorney.

23. **COVENANT AGAINST LIENS AGAINST LESSOR'S FEE INTEREST.** Lessee agrees to use its best efforts to prevent the filing of any lien or claim caused or permitted solely by Lessee against Lessor's fee interest in the Leased Premises and to promptly release or bond around any such lien or claim caused or permitted solely by Lessee that may be filed against Lessor's fee interest in the Leased Premises, and Lessee shall indemnify, hold harmless and defend Lessor for, from and against any such liens and encumbrances and for any actual costs and expenses incurred by Lessor in connection therewith or arising as a result thereof. If Lessee shall, in good faith, contest the validity of any such claim or demand, then Lessee shall, at its sole expense, defend itself and Lessor against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Leased Premises. The obligations contained in this Section shall survive the termination or expiration of this Lease.
24. **COOPERATION.** Parties shall at all times cooperate, in good faith, with each other and shall promptly furnish (and/or sign) all documents and other information reasonably necessary in order to (a) establish the Leased Premises as a separate tax parcel and as a parcel property subdivided and legally transferable under Alaska statutes; and (b) obtain any such licenses, approvals, permits and entitlements as may be required to effect the purposes of and carry out the intent of this Lease. Without limiting the foregoing, to the extent any lender of Lessor or Lessee shall reasonably require any modifications or amendments to this Lease, then Lessor and Lessee agree to cooperate, in good faith, to prepare and execute any such modifications or amendments to this Lease in form and substance acceptable to Lessor and Lessee.
25. **ESTOPPEL CERTIFICATES.** At any time either party, upon request of the other party, shall execute, acknowledge and deliver any instrument stating, without limitation, if the same be true, that this Lease is a true and exact copy of the Lease between the parties hereto, that there are no amendments hereof (or stating what amendments there may be), that the same is then in full force and effect and that to the best of its knowledge, there are no offsets, defenses or counterclaims with respect to the payment of rent reserved hereunder or in the performance of the other terms, covenants and conditions hereof on the part of Lessor or Lessee, as the case may be, to be performed, and that as of such date no default has been declared hereunder by either party, if that be the case. Such instrument will be executed by the other party and delivered to the requesting party within thirty (30) days after receipt of request therefor, or the party failing to execute and deliver the estoppel certificate within such thirty (30) day period shall be estopped from asserting a claim or objection to any statement or statements contained in the requesting parties' certificate. If the non-requesting party objects to any statement contained in the requesting parties' certificate, the non-requesting party shall send written notice, to the requesting party within such thirty (30) day period, stating its objections to any provision of said estoppel certificate, whereupon the parties shall diligently seek to resolve any such objection.
26. **GENERAL PROVISIONS.**
- A. Waiver of Breach. No failure by either Lessor or Lessee to insist upon the strict performance by the other of any term or condition of this Lease, or to exercise any right or remedies upon a breach, shall constitute a waiver of any breach or term or condition. No waiver of any breach shall affect or alter this Lease, but all terms of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.
- B. Compliance with Laws. The Parties shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting the Premises, 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 further agrees it will not permit any unlawful occupations,

business or trade to be conducted on the Premises or any use to be made thereof contrary to any law, ordinance or regulation.

- C. Entire Agreement – Changes, Waivers. This Lease supersedes all or any other prior agreements and understandings between the Parties regarding the Leased Premises and may not be changed or terminated orally; and no change, termination or attempted waiver of any of the provisions shall be binding unless in writing and signed by the Parties.
- D. Construction of Lease. Words of any gender used in this Lease shall be held to include any other gender: and words of the singular number shall be held to include the plural, when the sense requires. Captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.
- E. Broker. Lessor and Lessee represent they have not had any dealings with any realtor, broker, agent or finder, in connection with the negotiation of this Lease.
- F. Binding Effect. The terms, conditions, covenants and agreements of this Lease shall be binding upon the successors and assigns of the Parties.
- G. Survival of Indemnities. The obligations of an indemnifying party and rights of each indemnified party under each and every defense, indemnification, and hold harmless provision contained in this Lease shall survive the expiration or earlier termination of this Lease.
- H. Attorney Fees. If by reason of any default by either party in the performance of the terms and conditions of this Lease, a party deems it necessary to employ an attorney, the prevailing party shall receive all costs, expenses, and attorney's fees expended or incurred by the prevailing party.
- I. Rule of Construction. The rule of strict construction of a document against the drafter is waived in partial consideration for the other covenants contained in this Lease, and all Parties to this Lease recognize that they have been afforded the opportunity to be represented by separate counsel in this transaction, and all terms and conditions have been negotiated at arm's length.
- J. Memorandum of Lease. Parties agree that Lessor will not record this Lease. At the request of either Lessor or Lessee, the Parties shall execute a Memorandum of Lease for recording purposes in lieu of recording this Lease.
- K. Time of Essence. Time is of the essence in the performance of the Parties' respective obligations under this Lease.
- L. Severability. If any term or condition of this Lease or the application of any term or condition to any person or under any circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.
- M. Surrender of Lease Not Merger. Neither the voluntary or other surrender of the Lease by Lessee, nor the mutual termination of this Lease shall cause a merger of the titles or estates of Lessor and Lessee, but such surrender or cancellation shall, at the option of Lessor, either terminate all or any existing subleases or operate as an assignment to Lessor of any such subleases.

- N. No Partnership. Nothing contained in this Lease shall be deemed or construed by the parties hereto, nor by any third party, to create a relationship of principal and agent, or a partnership or joint venture between Lessor and Lessee, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee with respect to this Lease.
- O. Governing Law and Venue. This Lease and the rights, remedies, liabilities and obligations of the Parties shall be interpreted, construed and enforced in accordance with the laws of the State of Alaska. Venue for any action regarding this Lease shall be filed in the state courts in the Third Judicial District at Anchorage, Alaska.
- P. Force Majeure. Neither party shall be in default or responsible for any delay damages for failure to perform any of its obligations hereunder during periods in which performance is prevented by any cause reasonably beyond the party's control which shall include, but is not limited to, fires, floods, windstorms, other damage from the elements, or acts of God; strikes, terrorism or war (declared or undeclared), insurrection, mob violence, riots, or acts of public enemies; interference, action, administrative proceedings, legislation and regulation by any governmental or military authority; litigation; epidemic and pandemic; and non-availability of construction materials from suppliers.
- Q. Standard for Consent. Where this Lease calls for the consent of either party without explicitly providing a standard, and without reserving such consent to that party's sole discretion, the standard is to be that consent shall not be unreasonably withheld, delayed or conditioned.
- R. Authority. Lessee and Lessor represent and warrant to each other that each is fully authorized to enter into this Lease without the joining of any other person or entity, and the person executing this Lease on behalf of such party has full authority to do so and any and all corporate, partnership, or limited liability company action required has been taken.

IN WITNESS WHEREOF, the parties hereto have executed this Lease.

LESSEE:

\_\_\_\_\_  
[Name], [Title]  
[COMPANY NAME]

\_\_\_\_\_  
Date

LESSOR:

\_\_\_\_\_  
Adrienne K. Stolpe  
Director of Land Management  
**UNIVERSITY OF ALASKA**

\_\_\_\_\_  
Date

Exhibits:     Exhibit A – Site Plans of Leased Premises  
                  Exhibit B – Construction Plans and Specifications

DRAFT



**EXHIBIT A  
SITE PLAN OF LEASED PREMISES**

Property:  
[Legal Description]

Leased Premises contain approximately [number of square feet/acres].

Access Area: [number of square feet/acres]

Site Plan:

EXHIBIT B  
CONSTRUCTION PLANS AND SPECIFICATIONS

[Insert project plans and specifications]