

Bibliography

Gary Goldman, *Drafting a Fair Office Lease* (1989).

John B. Wood & Alan M. Di Sciullo, *Negotiating and Drafting Office Leases* (Law Journal Seminars-Press 1998).

Mark A. Senn, *Commercial Real Estate Leases: Preparation, Negotiation, and Forms* (4th ed. 2008).

Mary James Courtenay & Mark S. Rhodes, *Commercial Real Estate Leases: Preparation and Negotiation and Forms* (Aspen Law & Business 1998 Cumulative Supplement to Mark A. Senn, *Commercial Real Estate Leases: Preparation, Negotiation, and Forms* (2d ed.).

RENTABLE SPACE AND THE LEASE RATE—

RENTABLE VS. USABLE VS. GROSS. —

-
1. STANDARD METHOD FOR MEASURING FLOOR AREA IN OFFICE BUILDINGS PDF (BOMA 265.1-1996)
-

<http://shop.boma.org/showItem.aspx?product=133ELECSTD&session=EAC884F2BFAD4630A28FA63B7B0253CF>

2. <http://www.boma.org/Advocacy/MeasurementStandards/Pages/officestandard.aspx> new 2010 standard vs. 1996 standard)

3. Industrial Floor Measurement Standard 2004

<http://shop.boma.org/showItem.aspx?product=234IFMS04&session=EAC884F2BFAD4630A28FA63B7B0253CF>

TABLE OF CONTENTS

	<u>Page</u>
SECTION Field result goes here -- BASIC LEASE PROVISIONS	5
Field result goes here Date and parties.....	5
Field result goes here Premises.....	5
Field result goes here Use.....	5
Field result goes here Term.....	5
Field result goes here Improvements.	7
SECTION Field result goes here -- RENT AND SECURITY	7
Field result goes here Rent.....	7
Field result goes here Additional Rent.....	8
SECTION Field result goes here -- AFFIRMATIVE OBLIGATIONS	22
Field result goes here Compliance with Laws.....	22
Field result goes here Services and Utilities.....	24
Field result goes here Repairs and Maintenance.....	27
SECTION Field result goes here -- NEGATIVE OBLIGATIONS.....	28
Field result goes here Alterations.....	28
Field result goes here Assignment and Subleasing.....	30
Field result goes here Floor Loads.....	32
SECTION Field result goes here -- INSURANCE.....	33
Field result goes here Insurance.....	33
Field result goes here Indemnity	35
Field result goes here Limitation of Landlord's Liability.....	37
SECTION Field result goes here -- LOSS OF PREMISES	37
Field result goes here Damages.....	37
Field result goes here Condemnation.....	39
SECTION Field result goes here -- DEFAULT	41
Field result goes here Tenant's Default.....	41
Field result goes here Landlord's Remedies.....	42
Field result goes here Landlord's Default.....	44
Field result goes here Exception to Cure Periods.....	44
Field result goes here Self-Help.....	44
Field result goes here Survival.....	44
SECTION Field result goes here -- NONDISTURBANCE.....	44
Field result goes here Subordination.....	44
Field result goes here Estoppel Certificate.....	45
Field result goes here Quiet Possession.....	46
Field result goes here Landlord's Option to Move Tenant.....	46
Field result goes here Constructive Eviction.....	51
Field result goes here Tenant's cooperation.....	51
Field result goes here Confirming memorandum.....	51

Field result goes here	Disputes.....	52
Field result goes here	Cancellation.....	52
SECTION	Field result goes here -- LANDLORD'S RIGHTS.....	52
Field result goes here	Rules.....	52
Field result goes here	Mechanics Liens.....	53
Field result goes here	Right to Enter.	53
Field result goes here	Signs.....	56
SECTION	Field result goes here -- OPTIONS	56
Field result goes here	Option to Extend.....	56
SECTION	Field result goes here -- DISPUTES.....	57
Field result goes here	Arbitration.....	57
SECTION	Field result goes here -- MISCELLANEOUS	58
Field result goes here	Broker's Warranty.....	58
Field result goes here	Attorneys' Fees.....	59
Field result goes here	Notices.....	59
Field result goes here	Partial Invalidity.....	59
Field result goes here	Waiver.	60
Field result goes here	Construction.....	60
Field result goes here	Binding on Successors.....	60
Field result goes here	Governing Law.	60
Field result goes here	Insurance Increase.....	60
Field result goes here	Lease not an Offer.....	60
Field result goes here	Recording.....	60
Field result goes here	Survival of Remedies.....	60
Field result goes here	Authority of Parties.....	60
Field result goes here	Business Days.....	60
Field result goes here	Entire Agreement.....	61
Field result goes here	Definition of Lease.....	61

SECTION 1 -- BASIC LEASE PROVISIONS

1.1. Date and parties. This lease (Lease) is made _____, 199_____, between _____ (Landlord) and _____ (Tenant). Landlord is a _____, organized under the laws of _____, with principal offices at _____. Tenants a _____, organized under the laws of _____, with principal offices at _____.

1.2. Premises. Landlord leases to Tenant Suite _____, _____, (Premises) as shown cross-hatched on the attached floor plan (Exhibit A). The Premises contain the fixtures, improvements, and other property now installed plus any improvements required by paragraph 1.05 and Exhibits D and E.

Landlord warrants that the Premises contain _____ rentable square feet and _____ usable square feet, and the building (Building) in which the Premises are located (Exhibit B) contains _____ rentable square feet and _____ usable square feet. These measurements were made using the American National Standard Method of Measuring Floor Area in Office Buildings, ANSI Z65.1-1980, published by the Building Owners and Managers Association International (BOMA Standards).

Tenant and its agents, employees, and invitees have the nonexclusive right with others designated by Landlord to the free use of the common areas in the Building and of the land (Land) on which the Building is located (Exhibit C) for the common areas' intended and normal purpose. Common areas include elevators, sidewalks, parking areas, driveways, hallways, stairways, public bathrooms, common entrances, lobby, and other similar public areas and access ways. Landlord may change the common areas if the changes do not materially and unreasonably interfere with Tenant's access to the Premises or use of them.

1.3. Use. Tenant shall use the Premises for a(n) _____ office or general office only, unless Landlord gives its advance written consent to another use. Landlord warrants that applicable laws, ordinances, regulations, and restrictive covenants permit the Premises to be used for general offices. Tenant shall not create a nuisance or use the Premises for any immoral or illegal purposes.

1.4. Term.

(i) **Term.** The Lease begins (beginning Date) on the earlier of:

(1) **the date Tenant takes possession and occupies the Premises; or**

- (ii)
 - (a) after the Premises are substantially completed according to paragraph 1.04(b),
 - (b) Landlord gives the notice required by paragraph 1.04(c),
 - (c) Landlord is ready, willing, and able to deliver actual possession of the Premises, and
 - (d) the Target Date set in paragraph 1.04.(b) has arrived.

If the Beginning Date would be a Saturday, Sunday, or holiday listed in paragraph 3.02(b), the Beginning Date shall be the first business day following that Saturday, Sunday, or holiday.

The Lease ends (Ending Date) _____ months from the Beginning Date, unless ended earlier under this Lease. Within thirty days after the Beginning Date the parties shall confirm in writing the Lease's Beginning Date and Ending Date.

- (ii) **Substantial Completion.** Landlord shall use its best efforts to substantially complete the Premises by _____ (Target Date). Substantially complete means:
 - (1) completing Tenant's improvements (paragraph 1.05 and Exhibits D and E) so that (A) Tenant can use the Premises for their intended purposes without material interference to Tenant conducting its ordinary business activities and (B) the only incomplete items are minor or insubstantial details of construction, mechanical adjustments, or finishing touches like touch-up plastering or painting;
 - (2) securing a temporary or permanent certificate of occupancy from the local municipality;
 - (3) Tenant, its employees, agents, and invitees, have ready access to the Building and Premises through the lobby, entranceways, elevators, and hallways;
 - (4) the decoration, fixtures, and equipment to be installed by Landlord are installed and in good operating order;
 - (5) the Premises are ready for the installation of any equipment, furniture, fixtures, or decoration that Tenant will install;
 - (6) the following items are installed and in good operating order: (A)

building lobby, (B) hallways on floor on which Premises are located (including walls, flooring, ceiling, lighting, etc.), (C) elevators, HVAC, utilities, and plumbing serving the Premises, and (D) the doors and hardware; and

- (7) the Premises are broom clean.

- (iii) **Notice.** Landlord shall give Tenant at least thirty (30) days advance notice of the estimated substantial completion date if different from the Target Date. If the estimated substantial completion date changes at any time after Landlord gives notice, then Landlord shall give thirty (30) days advance notice of the new estimated substantial completion date.

- (iv) **Substantial Completion. Inspection and Punchlist.** Before the Beginning Date, the parties shall inspect the Premises, have all systems demonstrated, and prepare a Punchlist. The punchlist shall list incomplete, minor, or insubstantial details of construction; necessary mechanical adjustments; and needed finishing touches. Landlord will complete the punchlist items within thirty (30) days after the Beginning Date. Landlord will promptly correct any latent defects as they become known, if Tenant notifies Landlord of the defect within thirty (30) days after Tenant first learns of the defect.

- (v) **Substantial Completion. Delayed Possession.** Tenant may cancel this Lease if Landlord cannot deliver actual possession of the substantially complete Premises by one hundred and twenty (120) days after the Target Date. To cancel Tenant must give notice to Landlord within one hundred and eighty (180) days after the Target Date and before Landlord gives notice to Tenant that the Premises are substantially complete. The one hundred and twenty (120) day and one hundred and eighty (180) day periods above shall be extended in the time equal to any period of delay (as defined in Exhibit E) caused by the Tenant. Within thirty (30) days after cancellation Landlord shall return to Tenant prepaid consideration including Rent and deposits.

1.5. Improvements. Landlord, at its expense, shall make improvements to the Premises in accord with Exhibits D and E (Improvements). The Improvements shall be completed in a good and workmanlike manner and comply with all applicable laws, ordinances, rules, and regulations of governmental authorities.

SECTION 2 -- RENT AND SECURITY

2.1. Rent. Tenant shall pay to Landlord Rent of _____
(\$ _____) for the Term, payable in monthly installments of
_____. (\$ _____). The Rent shall be paid:

- (1) without advance notice, demand, offset, or deduction unless the offset or deduction is made by Tenant as permitted under paragraph 11.01(b)(ii) or to recover any unpaid (nonappealable) court judgment Tenant has against Landlord;
- (2) by the first day of each month during the Term; and
- (3) to Landlord at _____, or as Landlord may specify in writing to Tenant.

If the Term does not begin on the first day or end on the last day of a month, the Rent for that partial month shall be prorated by multiplying the monthly Rent by a fraction, the numerator of which is the number of days of the partial month included in the Term and the denominator of which is the total number of days in the full calendar month.

If Tenant fails to pay part or all of the Rent or Additional Rent (paragraph 2.02(e)) within five (5) days after it is due, the Tenant shall also pay:

- (1) a late charge equal to 4 percent of the unpaid Rent and Additional Rent, plus
- (2) interest at 10.5 percent per annum or the maximum then allowed by applicable law, whichever is less, on the remaining unpaid balance, retroactive to the date originally due until paid.

2.2. Additional Rent.

(i) Definitions.

- (1) **Base Operating Expenses:** means select A or B)
 - (a) \$ _____;
 - (b) Operating Expenses for calendar year _____ (Base Year), as adjusted under paragraph 2.02(c).
- (2) **Base Real Estate Taxes:** means (select A, B or C)
 - (a) \$ _____;
 - (b) Real Estate Taxes for the real property tax year beginning in 19 _____ and ending in 199 _____;
 - (c) The amount determined by multiplying the tax rate in effect at the

Beginning Date times the assessment for the Building and Land immediately after the Building is fully assessed as a completed and occupied unit. If there is a tax abatement in effect at the time the amount is determined under paragraph 2.02(a)(ii)(C), then this amount will be calculated as if there were no abatement.

- (3) Tenant's pro rata share: means _____ percent, calculated by dividing the rentable square footage of the Premises (numerator) by the rentable square footage of the Building (denominator), and expressing the fraction as a percentage.**

- (4) Property: means the Building and its equipment and systems, and the Land.**

- (5) Real Estate Taxes:**
 - (a) means**
 - (i) real property taxes and currently due installments of assessments, special or otherwise, imposed upon the Property, and**
 - (ii) reasonable legal fees, costs, and disbursements incurred for proceedings to contest, determine, or reduce Real Estate Taxes.**

 - (b) Notwithstanding paragraph 2.02(a)(v)(A), Real Estate Taxes exclude:**
 - (i) federal, state, or local income taxes,**
 - (ii) franchise, gift, transfer, excise, capital stock, estate, succession, or inheritance taxes,**
 - (iii) penalties or interest for late payment of Real Estate Taxes, and**

- (6) Operating Expenses:**
 - (a) means Landlord's operating expenses that are reasonable, actual and necessary, out-of-pocket (except Landlord may use its normal accrual method of accounting), obtained at**

competitive prices, and that are directly attributable to the operation, maintenance, management, and repair of the Property, as determined under generally accepted accounting principles consistently applied, including:

- (i) salaries, and other compensation; including payroll taxes, vacation, holiday, and other paid absences; and welfare, retirement, and other fringe benefits; that is paid to employees, independent contractors, or agents of Landlord engaged in the operation, repair, management, or maintenance of the Property', including the following:**
 - (1) elevator operators;**
 - (2) window cleaners, miscellaneous repair persons, janitors, cleaning personnel, and porters;**
 - (3) security personnel and caretakers; and**
 - (4) engineers, mechanics, electricians, and plumbers; but not more than one on-premises full-time manager or superintendent, and excluding executive personnel;**
- (ii) the purchase, cleaning, replacement, and pressing of uniforms of employees specified in paragraph 2.02(a)(vi)(A)(1);**
- (iii) repairs and maintenance of the Property and the cost of supplies, tools, materials, and equipment for Property repairs and maintenance, that under generally accepted accounting principles consistently applied, would not be capitalized;**
- (iv) premiums and other charges incurred by Landlord for insurance on the Property and for employees specified in paragraph 2.02(a)(vi)(A)(1) including:**
 - (1) fire insurance, extended coverage insurance, and earthquake, windstorm, hail, and explosion insurance;**

- (2) public liability and property damage insurance;**
 - (3) elevator insurance;**
 - (4) workers' compensation insurance;**
 - (5) boiler and machinery insurance; sprinkler leakage, water damage, water damage legal liability insurance; burglary, fidelity, and pilferage insurance on equipment and materials;**
 - (6) health, accident, and group life insurance;**
 - (7) insurance Landlord is required to carry under Section 5; and**
 - (8) other insurance as is customarily carried by operators of comparable first class office buildings in the Anchorage area;**
- (v) costs incurred for inspection and servicing, including all outside maintenance contracts necessary or proper for the maintenance of the Property, such as janitorial and window cleaning, rubbish removal, exterminating, water treatment, elevator, electrical, plumbing, and mechanical equipment, and the cost of materials, tools, supplies, and equipment used for inspection and servicing;**
 - (vi) costs incurred for electricity, water, gas, fuel, or other utilities;**
 - (vii) payroll taxes, federal taxes, state and local unemployment taxes, and social security taxes paid for the employees specified in paragraph 2.02(a)(vi)(A)(1);**
 - (viii) sales, use, and excise taxes on goods and services purchased by Landlord, but Tenant's pro rata share shall exclude prepaid services that are not used by Landlord;**
 - (ix) license, permit, and inspection fees;**

- (x) auditor's fees for public accounting;**
- (xi) legal fees, costs, and disbursements but excluding those --
 - (1) relating to disputes with tenants,**
 - (2) based upon Landlord's negligence or other tortious conduct,**
 - (3) relating to enforcing any leases except for enforcing lease provisions for the benefit of the Building tenants generally, or**
 - (4) relating to the defense of Landlord's title to, or interest in, the Property;****
- (xii) management fees to a person or entity other than the Landlord, subject to the adjustment under paragraph 2.02(c)(ix);**
- (xiii) the annual amortization over its useful life with a reasonable salvage value on a straight-line basis of the costs of any capital improvements made by Landlord and required by any changes in applicable laws, rules, or regulations of any governmental authorities enacted after the Building received its certificate of occupancy;**
- (xiv) the annual amortization over its useful life with a reasonable salvage value on a straight-line basis of the costs of any equipment or capital improvements made by Landlord after the Building received its certificate of occupancy, as a labor-saving measure or to accomplish other savings in operating, repairing, managing, or maintaining of the Property, but only to the extent of the savings;**
- (xv) the annual amortization over its useful life on a straight-line basis of the costs of any exterior window draperies provided by Landlord and the carpeting in the common areas;**
- (xvi) any costs for substituting work, labor, materials, or services in place of any of the above items, or for any**

additional work, labor, materials, services, or improvements to comply with any governmental laws, rules, regulations, or other requirements applicable to the Property enacted after the Building first received its certificate of occupancy, that, at the time of substitution or addition, are considered operating expenses under generally accepted accounting principles consistently applied;

- (xvii) other costs reasonably necessary to operate, repair, manage, and maintain the Property;**
- (xviii) to the extent the Landlord reasonably decides to self-insure for the types of insurance described in & 2.02(a)(vi)(A)(4), annual additions to reserve accounts for the self insured component of risk; and**
- (xix) despite any characterization as a capital expense, annual addition to a reserve account for major repairs or replacement of the roof structure and parking lot.**

(b)Unless expressly allowed by paragraph 2.02(a)(vi)(A), Operating Expenses exclude:

- (i) Real Estate Taxes as defined in paragraph 2.02(a)(v);**
- (ii) leasing commissions, costs, disbursements, and other expenses incurred for leasing, renovating, or improving space for tenants;**
- (iii) costs incurred by Landlord in discharging its obligations under paragraph 1.05 and Exhibits D and E;**
- (iv) costs (including permit, license, and inspection fees) incurred in renovating, improving, decorating, painting, or redecorating vacant space or space for other tenants;**
- (v) Landlord's cost of electricity or other service sold to tenants for which Landlord is to be reimbursed as a charge over the Rent and Additional Rent payable under the lease with that tenant;**

- (vi) costs incurred by Landlord for alterations that are considered capital improvements and replacements under generally accepted accounting principles consistently applied except that the annual amortization of these costs shall be included to the extent expressly permitted in paragraphs 2.02(a)(vi)(A)(13), (14), (15), and (19);**
- (vii) depreciation and amortization on the Building except as expressly permitted elsewhere in the Lease;**
- (viii) costs of a capital nature including capital improvements, capital repairs, capital equipment, and capital tools, as determined under generally accepted accounting principles consistently applied, except that the annual amortization of these costs shall be included to the extent expressly permitted in paragraphs 2.02(a)(vi)(A)(13), (14), (15), and (19);**
- (ix) costs incurred because the Landlord or another tenant violated the terms of any lease;**
- (x) overhead and profit paid to subsidiaries or affiliates of Landlord for management or other services on or to the Property or for supplies or other materials, to the extent that the costs of the services, supplies, or materials exceed the competitive costs of the services, supplies, or materials were they not provided by a subsidiary or affiliate;**
- (xi) interest on debt or amortization payments on mortgages or deeds of trust or any other debt for borrowed money;**
- (xii) compensation paid to clerks, attendants, or other persons in commercial concessions operated by Landlord;**
- (xiii) rentals and other related expenses incurred in leasing air conditioning systems, elevators, or other equipment ordinarily considered to be of a capital nature, except equipment used in providing janitorial services that is not affixed to the Building;**

- (xiv) **items and services for which Tenant reimburses Landlord or pays third parties or that Landlord provides selectively to one or more tenants of the Building other than Tenant without reimbursement;**
- (xv) **advertising and promotional expenditures;**
- (xvi) **repairs or other work needed because of fire, windstorm, or other casualty or cause insured against by Landlord or to the extent Landlord's insurance required under Section 5 would have provided insurance, whichever is the greater coverage;**
- (xvii) **costs incurred in operating the parking facilities for the Building except to the extent the cost of operating the parking facilities exceeds the revenues generated from operating the parking facilities and as permitted by & 2.02(a)(vi)(A)(19);**
- (xviii) **nonrecurring costs incurred to remedy structural defects in original construction materials or installations;**
- (xix) **any costs, fines, or penalties incurred because Landlord violated any governmental rule or authority, except as permitted by & 2.02(a)(vi)(A)(13);**
- (xx) **costs incurred to test, survey, cleanup, contain, abate, remove, or otherwise remedy hazardous wastes or asbestos-containing materials from the Property unless the wastes or asbestos-containing materials were in or on the Property because of Tenant's negligence or intentional acts; and**
- (xxi) **other expenses that under generally accepted accounting principles consistently applied would not be considered normal maintenance, repair, management, or operation expenses, unless expressly allowed.**

(7) Adjustment Period: means each calendar year occurring during the Term beginning with calendar year 199__, which shall be the first Adjustment Period. If the Lease Beginning Date is on or after January 1, 199__, then the first Adjustment Period shall be calendar

year 199__ not calendar year 199__.

- (ii) **Operating Expenses Control.** Landlord shall use reasonable efforts to keep Operating Expenses at reasonable amounts, while maintaining _____ [a first class office building].

- (iii) **Adjustments.** Operating Expenses as defined in paragraph 2.02(a)(vi) shall be adjusted as follows:
 - (1) **Gross-Up.** If the base for Operating Expenses is a Base Year and occupancy during the Base Year or any Adjustment Period is less than 95 percent, then Operating Expenses for that Base Year or Adjustment Period shall be "grossed up" to that amount of Operating Expenses that, using reasonable projections, would normally be expected to be incurred during the Base Year or Adjustment period if the Building was 95 percent occupied during the Base Year or Adjustment Period, as determined under generally accepted accounting principles consistently applied. Landlord shall provide in the Statement required by paragraph 2.02(g)(ii), a reasonably detailed description of how the Operating Expenses were grossed up. Only those component expenses that are affected by variations in occupancy levels shall be grossed up.

 - (2) **Eliminate/Reduce Operating Expenses.** If the base is a Base Year, then if during any Adjustment Period Landlord eliminates or reduces any component of Operating Expenses because Landlord replaces labor with a machine, equipment, or other device, the corresponding component of Operating Expenses shall be deducted from the Base Operating Expenses to calculate Tenant's share of any increased Operating Expenses. A new component shall be added to Base Operating Expenses equal to the new expense, if any, included in Operating Expenses during the first twelve (12) months following the change. Similarly, if the base is a Base Year, then if during any Adjustment Period any component of Operating Expenses is reduced because of any capital expenditure incurred for converting a facility within or servicing the Building to a different type of facility, the corresponding expense component in the Base Operating Expenses shall be replaced by an amount equal to the new expense for the first twelve (12) months after the conversion.

 - (3) **Changed Expenses.** If the base is a Base Year, then any costs incurred because of a change of policy or practice in operating the Property that causes an increase in Operating Expenses over Base Operating

Expenses (changed expenses) shall be included as Operating Expenses only if the change in policy or practice would have been made by a reasonably prudent operator of comparable first class office buildings in the Municipality of Anchorage. These changed expenses shall be included as Operating Expenses to the extent of the increase in cost over the projected costs that would have been included in Base Operating Expenses had the policy or practice been in effect during the entire Base Year.

- (4) 100 Percent Limit. Taking account of the different Base Operating Expenses for the building tenants, if during any Adjustment Period, the total increases charged to building tenants exceeds 100 percent of the actual increase in expenses paid by Landlord over the Base Operating Expenses during the Adjustment Period, then the amount in excess of 100 percent ("grossed up" if the base is a Base Year) shall be returned to the tenants according to their pro rata shares.**
- (5) Credits/Reimbursements. Operating Expenses shall be reduced by reimbursements, credits, discounts, reductions, or other allowances received or receivable by Landlord for items of cost included in Operating Expenses, except reimbursements to the Landlord by tenants under the Additional Rent (Operating Expenses/Taxes) provision.**
- (6) Tax Refund. If Landlord receives a refund of any portion of Real Estate Taxes that were included in the Real Estate Taxes paid by Tenant, then Landlord shall reimburse Tenant its pro rata share of the refunded taxes, less any expenses that Landlord reasonably incurred to obtain the refund.**
- (7) Substituted Taxes. If any non-Real Estate Taxes are imposed against the Landlord in substitution for any Real Estate Taxes, then the substituted tax shall be considered a Real Estate Tax. Conversely, if any additional Real Estate Taxes are imposed in substitution for any non-Real Estate Taxes (that are not Substituted Taxes) they shall not be considered Real Estate Taxes.**
- (8) Increased Building Rentable Square Feet. If Landlord increases the Building's rentable square feet after the Building was fully assessed as a completed and occupied unit and the Lease was signed, then the Operating Expenses and Real Estate Taxes attributable to the additional rentable square feet shall be included in the Operating Expenses and Real Estate Taxes in an amount per rentable square**

foot not to exceed the rentable square foot cost of Operating Expenses and Real Estate Taxes of the original Building. But Tenant's pro rata share shall be reduced using the same formula in paragraph 2.02(a)(iii). In addition, an adjustment shall be made to the Base Operating Expenses equal to the amount of increased Operating Expenses and Real Estate Taxes attributable to the additional Building rentable square feet for the first twelve (12) months those new expenses are included in Real Estate Taxes and Operating Expenses, both grossed-up for full occupancy.

(9) **Management Fee.** If the Base Operating Expenses are a Base Year, then the management fee permitted under paragraph 2.02(a)(vi)(A)(12) shall remain at the rate included in the Base Operating Expenses, during the Term of the Lease and any option extension term. For example, if the management fee rate is three (3) percent of the gross rents during the Base Year, and the management company raises the fee to four percent (4%) during an Adjustment Period, then the management fee component of the Base Operating Expenses shall be adjusted to reflect a four percent (4%) rate.

(iv) **Payment by Landlord.** Subject to reimbursement under paragraph 2.02(e), Landlord shall pay the Property's Operating Expenses and Real Estate Taxes before delinquency.

(v) **Payment by Tenant.** If the Operating Expenses and Real Estate Taxes when combined for any Adjustment Period exceed the combined total of Base Operating Expenses and Base Real Estate Taxes (Operating Expense Increase), then Tenant agrees to pay Landlord as additional rent (Additional Rent), Tenant's pro rata share of the Operating Expense Increase.

[(vi) Cap. Tenant's pro rata share of the Operating Expense Increase is capped at these rates (per Premises rentable square foot per year) prorated if the Adjustment Period contains less than 12 full Lease months (using the pro rata formula in paragraph 2.02(g)(iv)):]

(1)	Adjustment Period 1 (year 19) -
	\$ _____.	
(2)	Adjustment Period 2 (year 19) -
	\$ _____.	
(3)	Adjustment Period 3 (year 19) -
	\$ _____.	

(4) Adjustment Period 4 (year 19_____) -
\$_____.

(5) Adjustment Period 5 (year 19_____) -
\$_____.

**If the Lease Beginning Date is on or after January 1, 19_____,
then the Adjustment Period caps shall be changed to:**

(i) **Adjustment Period 1 (year 19_____) -**
\$_____.

(ii) **Adjustment Period 2 (year 19_____) -**
\$_____.

(iii) **Adjustment Period 3 (year 19_____) -**
\$_____.

(iv) **Adjustment Period 4 (year 19_____) -**
\$_____.

(v) **Adjustment Period 5 (year 19_____) -**
\$_____.

(vii) Manner of Payment.

(1) **Landlord may give Tenant notice of Landlord's estimate of amounts payable under this paragraph for each Adjustment Period. Landlord's estimate shall be reasonable and based upon generally accepted accounting principles consistently applied. If Tenant requests, Landlord shall give Tenant reasonably detailed documentation to support Landlord's estimate.**

By the first day of each month during the Adjustment Period, Tenant shall pay Landlord one-twelfth (1/12th) Of the estimated amount. If, however, the estimate is not given before the Adjustment Period begins, Tenant shall continue to pay on the basis of last year's estimate, if any, until the month after the new estimate is given.

(2) **Within ninety (90) days after each Adjustment Period ends, or as soon as reasonably practical, Landlord shall give Tenant a statement**

(Statement) showing in reasonable detail the:

- (a) actual Operating Expenses for the Adjustment Period broken down by component expenses, such as repairs, management fees, electricity, janitorial; Real Estate Taxes for the Adjustment Period;**
- (b) Base Operating Expenses broken down by component expenses; Base Real Estate Taxes;**
- (c) the Operating Expense Increase for the Adjustment Period;**
- (d) the amount of Tenant's pro rata share of the Operating Expense Increase (capped, if applicable);**
- (e) the amount, if any, paid by Tenant during the Adjustment Period towards the Operating Expense Increase;**
- (f) the amount Tenant owes towards the Operating Expense Increase or the amount Landlord owes as a refund; and**
- (g) the "gross-up" information required by paragraph 2.02(c)(i).0**

The Statement shall be certified by a reputable certified public accountant designated by Landlord.

- (3) If the Statement shows that the actual amount Tenant owes for the Adjustment Period is less than the estimated Operating Expenses and Real Estate Taxes paid by Tenant during the Adjustment Period, Landlord shall return the difference (Overpayment). If the Overpayment is 3 percent more than the estimate, then Landlord shall also pay as a liquidated amount four percent of the overpayment which shall be in full satisfaction of any and all claims by Tenant for the estimate including but not limited to claims for interest, court costs and attorney's fees.**

If the Statement shows that the actual amount Tenant owes is more than the estimated Operating Expenses and Real Estate Taxes paid by Tenant during the Adjustment Period, Tenant shall pay the difference (Underpayment).

The Overpayment or Underpayment shall be paid within thirty (30) days after the Statement is delivered to Tenant. A late charge of four

(4) percent of the Underpayment or Overpayment, exclusive of any interest, shall be added if the payment is not made within the thirty (30) day period. Landlord shall use good faith efforts to issue the Statement as soon as reasonably practical after each Adjustment Period ends.

Any Additional Rent due, including interest and penalty, shall survive the ending of the Lease.

- (4) During any Adjustment Period this Lease is not in effect a complete calendar year, unless it was ended because of Tenant's default, Tenant's obligation for Additional Rent for those Adjustment Periods shall be prorated by multiplying the Additional Rent for the Adjustment Period by a fraction expressed as a percentage, the numerator of which is the number of days of the Adjustment Period included in the Term and the denominator of which is 365.**
- (5) Tenant, and its agents, and employees shall have one hundred and eighty (180) days after receiving the Statement to audit Landlord's books and records concerning the Statement at a mutually convenient time at Landlord's offices. The books and records shall be kept in accord with generally accepted accounting principles consistently applied. If Tenant disputes the accuracy of Landlord's Statement, Tenant shall still pay the amount shown owing. Tenant may, however, within 180 days after receiving the Statement, begin arbitration under paragraph 11.01. Tenant may recover that part of the Additional Rent paid plus liquidated damages in the amount of four (4) percent of the overpayment which will be in full satisfaction of any and all claims by Tenant for the overpayment including but not limited to claims for interest, court costs, and attorney's fees because of errors in the Statement, books, or records of Landlord. If Tenant does not file for arbitration within the 180-day period, then Tenant accepts as final the amount shown owing on the Statement.**

If Tenant's audit of the books and records shows that the actual increase was three (3) percent or more below the increase appearing on the Statement and Landlord concedes to the three (3) percent or higher differential or an arbitration panel so rules, then Landlord in addition to liquidated damages shall pay to Tenant, Tenant's reasonable costs of conducting the audit (either for internal or outside auditors). Internal auditors shall be billed at the hourly payroll cost of those employees to Tenant (based on a 40 hour week and including wages and benefits) multiplied by the number of hours spent auditing,

plus reasonable travel costs.

2.3. Personal Property Tax. Before delinquency Tenant shall pay taxes assessed during the Term against trade fixtures or personal property placed by Tenant in the Premises. If these taxes are assessed against the Building, Tenant shall pay its share of the taxes to Landlord within ten (10) days after receiving Landlord's written statement setting forth the amount of taxes applicable to Tenant's property and the basis for the charge to Tenant. Tenant's failure to pay within the ten-day period shall entitle Landlord to the same remedies it has upon Tenant's failure to pay Rent.

2.4. Security Deposit. The Tenant has deposited _____ dollars (\$_____) (Security Deposit) with Landlord to secure Tenant's performance of its Lease obligations. If Tenant defaults Landlord may, after giving five (5) days advance notice to Tenant, without prejudice to Landlord's other remedies, apply part or all of the Security Deposit to cure Tenant's default. If Landlord so uses part or all of the Security Deposit, then Tenant shall within ten (10) days after written demand, pay Landlord the amount used to restore the Security Deposit to its original amount. Failure to do so shall be a Default. Landlord may proceed to act on the Default, including without limitations recovery of the Premises, without any additional notice to Tenant except for statutory notices.

Landlord may mix the Security Deposit with its own funds and the security deposits of other tenants. Landlord is not obligated to pay interest on the security deposit.

Any part of the Security Deposit not used by Landlord shall be returned to Tenant within thirty (30) days after the Lease ends, unless the Landlord writes to Tenant explaining the purposes for which the Security Deposit continues to be held and when it will either be expended or returned to Tenant with the exercise of due diligence.

If Landlord sells the Building then Landlord shall be relieved of any liability for the Security Deposit if the requirements of paragraph 5.03(a) are met.

Tenant acknowledges that the Security Deposit is being held by Landlord and not by Landlord's broker.

SECTION 3 -- AFFIRMATIVE OBLIGATIONS

3.1. Compliance with Laws.

- (i) **Landlord's Compliance.** Landlord warrants, that on the Beginning Date, the Premises will comply with all applicable laws, ordinances, rules, and

regulations of governmental authorities (Applicable Laws). During the Term, Landlord shall comply with all Applicable Laws regarding the Premises and Building except to the extent Tenant must comply under paragraph 3.01(b). Compliance is construed to include any grandfather rights lawfully exercised.

(ii) **Tenant's Compliance.** Tenant shall comply with all Applicable Laws: (i) regarding the physical condition of the Premises, but only to the extent the Applicable Laws pertain to the particular manner in which Tenant uses the Premises; or (ii) that do not relate to the physical condition of the Premises but relate to the lawful use of the Premises and with which only the occupant can comply, such as laws governing maximum occupancy, workplace smoking, and illegal business operations, such as gambling.

(iii) **Americans With Disabilities Act (ADA) Compliance.** If after execution of this lease, either the use of Tenant's premises, or the application of the ADA to the Premises (in which at least one of the two parties mistakenly believed was in ADA compliance) results in necessary changes to the premises, or the Building then:

- (1) Tenant shall be responsible for all expense relating to the alteration of the Premises to comply with the ADA;
- (2) Landlord shall be responsible to any changes to the Building or the Common Areas, except the Landlord may elect to terminate this Lease, without further liability to Tenant upon 30 days notice that the renovations are too expensive in its sole judgment to be practical; and
- (3) Each party agrees to save, defend and hold the others harmless from any failure to make repairs of alterations required by the ADA but not undertaken in a timely fashion.

[(iv) Compliance Limits. Tenant, instead of complying with Applicable Laws as required by paragraph 3.01(b), may cancel the Lease by giving prompt notice to Landlord if:

- (1) Tenant would have to make alterations, changes, or additions to the Premises;
- (2) Tenant's estimated cost to comply exceeds \$ _____ ; or
- (3) less than twelve (12) months remain in the Term and Tenant does not have an option to extend the Term.

If Tenant cancels the Lease under (i), (ii), or (iii) above, Landlord may, within ten (10) days of receiving Tenant's notice of cancellation, agree to comply with the Applicable Laws at Landlord's expense by giving Tenant notice and this Lease shall continue in effect. If Tenant chooses to cancel under (i), (ii), or (iii) above and Landlord exercises its right to comply with the Applicable Laws, then Tenant shall pay promptly to Landlord the amount fixed in (ii) above or Landlord's actual cost of compliance, whichever is less.]

3.2. Services and Utilities.

- (i) **Services.** Landlord shall provide at its expense, subject to reimbursement under paragraph 2.02:
- (1) **Heating, ventilation, and air conditioning (HVAC) for the Premises during business hours to maintain temperatures for comfortable use and occupancy in light of Tenant's space plan (Exhibit D);**
 - (2) **Automatic passenger elevators providing adequate service leading to the floor on which the Premises are located;**
 - (3) **Freight elevators providing service to the floor on which the Premises are located as reasonable scheduling permits;**
 - (4) **Janitorial services to the Premises as specified in Exhibit G;**
 - (5) **Hot and cold water sufficient for drinking, lavatory, toilet, and ordinary cleaning purposes to be drawn from approved fixtures in the Premises if shown on Exhibit D or on the floor on which the Premises are located;**
 - (6) **Electricity to the Premises during business hours that provides electric current in reasonable amounts necessary for normal office use, lighting, and HVAC;**
 - (7) **Replacement of lighting tubes, lamp ballasts, and bulbs;**
 - (8) **Extermination and pest control when necessary; and**
 - (9) **Maintenance of common areas in a manner comparable to other first class office buildings in the Municipality of Anchorage. The maintenance shall include cleaning, HVAC, illumination, snow**

shoveling, deicing, repairs, replacements, lawn care, and landscaping.

- (ii) **Business Hours.** In paragraph 3.02 business hours means:
- (1) **Monday through Friday, 8:00 a.m. through 6:00 p.m., and**
 - (2) **Saturday, 8:00 a.m. through 1:00 p.m., but excludes the following holidays or the days on which the holidays are designated for observance: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving Day, and Christmas Day.**
- (iii) **24 Hour Access.** Tenant, its employees, agents, and invitees shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week. During nonbusiness hours Landlord may restrict access by requiring persons to show a badge or identification card issued by Landlord. Landlord shall not be liable for denying entry to any person unable to show the proper identification.
- Landlord may temporarily close the Building if required because of a life-threatening or Building-threatening situation. Landlord shall use its best efforts to close the Building during nonbusiness hours only. If, however, the Building must be closed during business hours, then the Rent and Additional Rent shall abate during any closing that lasts more than twelve (12) hours.
- (iv) **Extra Services.** Whenever Landlord knows that any tenant (including Tenant) is using extra services because of either nonbusiness-hours use or high electricity consumption installations, Landlord will directly charge that tenant for the extra use and exclude those charges from Operating Expenses. Extra services include:
- (1) **NonBusiness-Hours Use.** HVAC and electricity required by Tenant during nonbusiness hours shall be supplied upon reasonable advance verbal notice. If more than one tenant directly benefits from these services then the cost shall be allocated proportionately between or among the benefiting tenants based upon the amount of time each tenant benefits and the square footage each leases.
 - (2) **Excess Utility Use.** Tenant shall not place or operate in the Premises any electrically operated equipment or other machinery, other than typewriters, personal computers, adding machines, reproduction machines, and other machinery and equipment normally used in offices, unless Tenant receives Landlord's advance written consent. Landlord shall not unreasonably withhold or delay its consent. But

Landlord may require payment for the extra use of electricity caused by operating this equipment or machinery.

Landlord may require that special, high electricity consumption installations of Tenant such as computer or reproduction facilities (except personal computers or normal office photocopy machines) be separately sub-metered for electrical consumption at Tenant's cost.

(3) Payment. Tenant's charges for the utilities provided under (i) and (ii) above shall be the lesser of:

(a) one hundred and ten percent (110%) of Landlord's actual cost of labor and utilities; or

(b) the lowest rate charged to any other tenant in the Building during the calendar year. Tenant's failure to pay the charges in (i) and (ii) above within thirty (30) days of receiving an invoice shall entitle Landlord to the same remedies it has upon Tenant's failure to pay Rent.

(v) Interruption of Services.

(1) Interruptions. Landlord does not warrant that any services Landlord supplies will not be interrupted. Services may be interrupted because of accidents, repairs, alterations, improvements, or any reason beyond the reasonable control of Landlord. Except as noted in (ii) below, any interruption shall not:

(a) be considered an eviction or disturbance of Tenant's use and possession of the Premises;

(b) make Landlord liable to Tenant for damages;

(c) abate Rent or Additional Rent; or

(d) relieve Tenant from performing Tenant's Lease obligations.

(2) Remedy. If any essential services (such as HVAC, passenger elevators if necessary for reasonable access, electricity, water) supplied by Landlord are interrupted, and the interruption does not result from the negligence or willful misconduct of Tenant, its employees, invitees, or agents, Tenant shall be entitled to an abatement of Rent and Additional Rent. The abatement shall begin on the fourth consecutive

business day of the interruption or when Tenant stops using the Premises because of the interruption, whichever is later. The abatement shall end when the services are restored. Tenant shall have the option to cancel the Lease if the interruption unreasonably and materially interferes with Tenant's use of or access to the Premises for at least thirty (30) consecutive days and Landlord is not exercising its best efforts to restore the services. To exercise this option Tenant must give Landlord notice of the cancellation within ten (10) days from the end of the thirty (30) day period.

3.3. Repairs and Maintenance.

(i) Tenant's Care of Premises. Tenant shall:

- (1) keep the Premises and fixtures in good order;**
- (2) make repairs and replacements to the Premises or Building needed because of Tenant's misuse or primary negligence, except to the extent that the repairs or replacements are covered by Landlord's insurance or the insurance Landlord is required to carry under Section 5, whichever is greater;**
- (3) repair and replace special equipment or decorative treatments above Building Standard installed by or at Tenant's request and that serve the Premises only, except**
 - (a) to the extent the repairs or replacements are needed because of Landlord's misuse or primary negligence, and are not covered by Tenant's insurance or the insurance Tenant is required to carry under Section 5, whichever is greater; or**
 - (b) if the Lease is ended under paragraphs 6.01 (Damages), 6.02 (Condemnation) or 7.03 (Landlord's Default); and**
- (4) not commit waste.**

(ii) Landlord's Repairs. Except for repairs and replacements that Tenant must make under paragraph 3.03(a), Landlord shall pay for and make all other repairs and replacements to the Premises, common areas and Building (including Building fixtures and equipment).

Landlord shall make the repairs and replacements to maintain the Building in a condition comparable to other [first class] office buildings in the

Municipality of Anchorage. This maintenance shall include the roof, foundation, exterior walls, interior structural walls, all structural components, and all systems, such as mechanical, electrical, HVAC, and plumbing.

- (iii) Time for Repairs. Repairs or replacements required under paragraphs 3.03(a) or 3.03(b) shall be made within a reasonable time (depending on the nature of the repair or replacement needed) after receiving notice or having actual knowledge of the need for a repair or replacement.**
- (iv) Surrendering the Premises. Upon the Ending Date or the date the last extension Term, if any, ends, whichever is later, Tenant shall surrender the Premises to Landlord in the same broom clean condition that the Premises were in on the Beginning Date except for:**
 - (1) ordinary wear and tear;**
 - (2) damage by the elements, fire, and other casualty unless Tenant would be required to repair under paragraph 3.03(a);**
 - (3) condemnation;**
 - (4) damage arising from any cause not required to be repaired or replaced by Tenant; and**
 - (5) alterations as permitted by this Lease unless consent was conditioned on their removal.**

On surrender Tenant shall remove from the Premises its personal property, trade fixtures, and any alterations required to be removed under paragraph 4.01 and repair any damage to the Premises caused by the removal. Any items not removed by Tenant as required above shall be considered abandoned. Landlord may dispose of abandoned items as Landlord chooses and bill Tenant for the cost of their disposal, minus any revenues received by Landlord for their disposal.

SECTION 4 -- NEGATIVE OBLIGATIONS

4.1. Alterations.

- (i) Definitions. "Alterations" means alterations, additions, substitutions, installations, changes, and improvements, but excludes minor decorations and the Improvements Landlord is to make under paragraph 1.05 and Exhibits D and E.**
- (ii) Consent. Tenant shall not make Alterations without the Landlord's advance written consent. Landlord's consent shall not be unreasonably withheld or unduly delayed for nonstructural interior Alterations to the Premises that do**

not adversely affect the Building's appearance, value, and structural strength.

(iii) Conditions of Consent. Landlord may condition its consent in paragraph 4.01(b) on all or any part of the following:

- (1) Tenant shall furnish Landlord with reasonably detailed plans and specifications of the Alterations;**
- (2) The Alterations shall be performed and completed --**
 - (a) in accord with the submitted plans and specifications,**
 - (b) in a workmanlike manner,**
 - (c) in compliance with all applicable laws, regulations, rules, ordinances, and other requirements of governmental authorities,**
 - (d) using new materials and installations at least equal in quality to the original Building materials and installations,**
 - (e) by not disturbing the quiet possession of the other tenants,**
 - (f) by not interfering with the construction, operation, or maintenance of the Building, and**
 - (g) with due diligence;**
- (3) Tenant shall use workers and contractors who Landlord employs or approves in writing, which approval shall not be unreasonably withheld or unduly delayed;**
- (4) Tenant shall modify plans and specifications because of reasonable conditions set by Landlord after reviewing the plans and specifications;**
- (5) Tenant's contractors shall carry builder's risk insurance in an amount then customarily carried by prudent contractors and workers' compensation insurance for its employees in statutory limits;**
- (6) Tenant's workers or contractors shall work in harmony and not unreasonably interfere with Landlord's workers or contractors or other tenants and their workers or contractors;**
- (7) If the Alteration's estimated cost exceeds \$10,000.00, Tenant shall**

supply a lien and completion bond, bank letter of credit, or other security satisfactory to Landlord, in an amount equal to the estimated cost to insure Landlord against materials and mechanics' liens and against completion of the Alterations;

- (8) Tenant shall give Landlord at least fifteen (15) days advance notice before beginning any Alterations so that Landlord may post or record notices of nonresponsibility;
 - (9) Upon demand Tenant shall give Landlord evidence that it complied with any condition set by Landlord;
 - (10) Tenant shall give Landlord complete as-built mylar drawings of the Alterations after they are finished; and
 - (11) Tenant shall remove the Alterations and repair any damage from their removal by the Ending Date, or the date the last extension Term ends, if any, whichever is later.
- (iv) **Payment and Ownership of the Alterations.** Alterations made under this paragraph shall be at Tenant's expense. The Alterations shall belong to Landlord when this Lease and the last extension Term, if any, ends except for those Alterations required to be removed by Tenant, if any, under paragraph 4.01(c). Nevertheless, Tenant may remove its trade fixtures, furniture, equipment, and other personal property if Tenant promptly repairs any damage caused by their removal.

4.2. Assignment and Subleasing.

- (i) **Consent Required.** Tenant shall not transfer, mortgage, encumber, assign, or sublease all or part of the Premises without Landlord's advance written consent. Landlord's consent to any assignment or sublease shall not be unreasonably withheld or unduly delayed.
- (ii) **Reasonableness.** The Landlord's consent shall not be considered unreasonably withheld if:
 - (1) the proposed subtenant's or assignee's financial responsibility does not meet the same criteria Landlord uses to select comparable Building tenants;
 - (2) the proposed subtenant's or assignee's business is not suitable for the Building considering the business of the other tenants and the

Building's prestige; or

- (3) the proposed use is inconsistent with the use permitted by paragraph 1.03.**

(iii) Procedure.

- (1) Tenant must provide Landlord in writing:**

(a) the name and address of the proposed subtenant or assignee;

(b) the nature of the proposed subtenant's or assignee's business it will operate in the Premises;

(c) the terms of the proposed sublease or assignment; and

(d) reasonable financial information so that Landlord can evaluate the proposed subtenant or assignee under paragraph 4.02(b)(i).

- (2) Landlord will, within sixty (60) calendar days after receiving the information under paragraph 4.02(c)(i), give notice to Tenant to permit or deny the proposed sublease or assignment. If Landlord does not give notice within the sixty (60) calendar day period, then Tenant may sublease or assign part or all of the Premises upon the terms Tenant gave in the information under paragraph 4.02(c)(i).**

(iv) Affiliates. Notwithstanding paragraphs 4.02(a), (b), and (c), Tenant may assign or sublease part or all of the Premises without Landlord's consent to:

- (1) any corporation or partnership that controls, is controlled by, or is under common control with, Tenant; or**

- (2) any corporation resulting from the merger or consolidation with Tenant or to any entity that acquires all of Tenant's assets as a going concern of the business that is being conducted on the Premises, as long as the assignee or sublessee is a bona fide entity and assumes the obligations of Tenant.**

(v) Conditions. Subleases and Assignments by Tenant are also subject to:

- (1) The terms of this Lease;**

- (2) The Term shall not extend beyond the Lease Term;**

- (3) Tenant shall remain liable for all Lease obligations;**
- (4) Consent to one sublease or assignment does not waive the consent requirement for future assignments or subleases; and**
- (5) Seventy-five (75) percent of the consideration (Excess Consideration) received by Tenant from an assignment or sublease that exceeds the amount Tenant must pay Landlord, which amount is to be prorated where a part of the Premises is subleased or assigned, shall also be paid to Landlord. Excess Consideration shall exclude reasonable leasing commissions paid by Tenant, payments attributable to the amortization of the cost of Tenant improvements made to the Premises at Tenant's cost for the assignee or sublessee, and other reasonable, out-of-pocket costs paid by Tenant, such as attorneys' fees directly related to Tenant's obtaining an assignee or sublessee. Tenant shall pay this Excess Consideration to Landlord at the end of each six (6) month period (or less if at the end of the Term) during which Tenant collects any Excess Consideration. Each payment shall be sent with a detailed statement showing
 - (a) the total consideration paid by the subtenant or assignee and**
 - (b) any exclusions from the consideration permitted by this paragraph.**
 - (c) Landlord shall have the right to audit Tenant's books and records to verify the accuracy of the detailed statement.****
- (6) Landlord shall have the option to require Tenant to execute the assignment or sublease to Landlord or Landlord's designee on the same terms and conditions as Tenant proposes in paragraph 4.02(c)(k)(C), or set forth in this Lease, whichever is lower. If Landlord exercises this option, it shall release Tenant from any further obligation under the Lease, for the parties subject to assignment of sublease. Landlord shall exercise this option within the 60 day period set forth in & 4.02(c)(ii).**

4.3. Floor Loads.

The floors of the building have or will have a partition load capacity of _____ pounds per square foot plus a live load capacity of _____ pounds per square foot. Tenant agrees not to exceed these loads without Landlord's written permission.

Tenant is fully responsible for any and all structural damage(s) caused to the Building, injury to others, and any other consequential damage covered by placing loads in excess of these limitations.

SECTION 5 -- INSURANCE

5.1. Insurance.

- (i) Landlord's Building Insurance.** Landlord shall keep the Building, including the Improvements (paragraph 1.05 and Exhibits D and E), insured against damage and destruction by fire, earthquake, vandalism, and other perils in the amount of the full replacement value of the Building, as the value may exist from time to time. The insurance shall include an extended coverage endorsement of the kind required by an institutional lender to repair and restore the Building.
- (ii) Property Insurance.** Each party shall keep its personal property and trade fixtures in the Premises and Building insured with "all risks" insurance in an amount to cover one hundred (100) percent of the replacement cost of the property and fixtures. Tenant shall also keep any non-Building-standard improvements made to the premises at Tenant's request insured to the same degree as Tenant's personal property.
- (iii) Liability Insurance.** Each party shall maintain contractual and comprehensive general liability insurance, including public liability and property damage, with a minimum combined single limit of liability of two million dollars (\$2,000,000.00) for personal injuries or deaths of persons occurring in or about the Building and Premises.
- (iv) Waiver of Subrogation.** Each party waives claims arising in any manner in its (Injured Party's) favor and against the other party for loss or damage to Injured Party's property located within or constituting a part or all of the Building. This waiver applies to the extent the loss or damage is covered by:
 - (1) the Injured Party's insurance; or**
 - (2) the insurance the Injured Party is required to carry under Section 5, whichever is greater. The waiver also applies to each party's directors, officers, employees, shareholders, and agents. The waiver does not apply to claims caused by a party's willful misconduct.**

If despite a party's best efforts it cannot find an insurance company meeting the criteria in paragraph 5.01(f) that will give the waiver at reasonable commercial rates, then it shall give notice to the other party within thirty (30) days after the Lease's Beginning Date. The other party shall then have thirty (30) days to find an insurance company that will issue the waiver. If the other party also cannot find such an insurance company, then both parties shall be released from their obligation to obtain the waiver.

If an insurance company is found but it will give the waiver only at rates greater than reasonable commercial rates, then the parties can agree to pay for the waiver under any agreement they can negotiate. If the parties cannot in good faith negotiate an agreement, then both parties shall be released from their obligation to obtain the waiver.

(v) Increase in Insurance. The amounts of coverage required by this Lease for the Tenant are subject to review at the end of each three-year period following the Beginning Date. At each review, if necessary to maintain the same level of coverage that existed on the Beginning Date, the amounts of coverage shall be increased to the lesser of:

- (1) the amounts of coverage carried by prudent tenants of comparable first class office buildings in the Municipality of Anchorage; or**
- (2) twenty-five percent (25%) higher than the previous insurance amounts.**

If the parties do not agree to the amount of the increase, then the party requesting the increase may submit the dispute to arbitration under paragraph 11.01 within thirty (30) days of the request for the increase. Landlord shall not request increased insurance unless it makes, at appropriate times, similar requests of all other tenants whose insurance coverage is below the amount carried by prudent tenants of similar buildings.

(vi) Insurance Criteria. Insurance policies required by this Lease shall:

- (1) be issued by insurance companies licensed to do business in the state of Alaska with general policyholder's ratings of at least A and a financial rating of at least XI in the most current *Bests Insurance Reports* available on the date in paragraph 1.01. If the *Bests* ratings are changed or discontinued, the parties shall agree to an equivalent method of rating insurance companies. If the parties cannot agree they shall submit the dispute to arbitration under paragraph 11.01;**

- (2) name the Landlord as an additional insured as its interest may appear;
 - (3) provide that the insurance not be canceled or materially changed in the scope or amount of coverage unless fifteen (15) days' advance notice is given to the Landlord;
 - (4) be primary policies -- not as contributing with, or in excess of, the coverage that the other party may carry;
 - (5) be permitted to be carried through a "blanket policy" or "umbrella" coverage;
 - (6) Tenant's policies shall not have deductible greater than \$ _____; and
 - (7) be maintained during the entire Term and any extension Terms.
- (vii) **Evidence of Insurance.** By the Beginning Date and upon each renewal of its insurance policies, Tenant shall give certificates of insurance to the Landlord. The certificate shall specify amounts, types of coverage, the waiver of subrogation, and the insurance criteria listed in paragraph 5.01(f). The policies shall be renewed or replaced and maintained by the Tenant. If Tenant fails to give the required certificate within thirty (30) days after notice of demand for it, the Landlord may obtain and pay for that insurance and receive reimbursement from the party required to have the insurance.

5.2. Indemnity

- (i) Tenant shall indemnify Landlord and save it harmless from claims, suits, actions, damages, liability and expense (including actual attorneys' fees) in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon or at the Demised Premises or the occupancy or use by Tenant of the Demised Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees or concessionaires, either within the Demised Premises or anywhere within the Common Areas, the Property and/or the Building.
- (ii) Tenant shall store its property in, and shall occupy the Demised Premises and all other portions of the Property and/or the Building at its own risk. Tenant releases Landlord to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property

damage.

- (iii) Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, stock-in-trade, equipment, fixtures or other personal property of Tenant or to Tenant's business.**
- (iv) Landlord shall not be responsible or liable to Tenant or to those claiming, by, through or under Tenant any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying other areas within the Property and/or the Building.**
- (v) Landlord shall not be responsible or liable for any defect, latent or otherwise, in the Demised Premises, the Building, the Property or in any other building on the Property or any of the equipment, machinery, utilities, appliances or apparatus therein.**
- (vi) Landlord and Landlord's agents and employees shall not be liable for, and Tenant waives all claims for, loss or damage to Tenant's business or damage to person or property sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Demised Premises, or any other part of the Property, including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) any defect in, or failure of electric, plumbing, heating, ventilating or air conditioning equipment, including, but not limited to, disruption of same caused by strikes, accidents, federal, state or local regulations, unavailability at reasonable cost of electricity, coal, fuel, oil or other suitable fuel or energy source; (iii) electric wiring or the installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (iv) broken glass; (v) the backing up of any sewer pipe or downspout; (vi) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Demised Premises, the Property, the Building or any other building or buildings on the Property; (vii) the escape of steam or hot water; (viii) water, snow, or ice being upon or coming through the roof, skylight, trap door, stairs, doorways, show windows, walks or any other place upon or near the Demised Premises, the Property, the Building or any other building or buildings in the Property, or otherwise; (ix) the falling of any fixture, plaster, dry wall, tile or stucco, and (x) any act, omission or negligence of other tenants, licensees or of any other persons or occupants of any premises in the Property, or of adjoining or contiguous buildings, or of owners of adjacent or contiguous property.**
- (vii) Tenant shall give actual notice to Landlord within three (3) working days in case of fire or accidents in the Demised Premises, the Property or in the Building and of any defects therein or in any fixtures or equipment.**

- (viii) In the event that Landlord shall be made a party to any litigation commenced by or against Tenant, then, and to such extent Tenant shall indemnify, defend, protect and hold Landlord harmless from any liability arising therefrom and shall pay all Landlord's costs, expenses and actual attorney's fees.**

5.3. Limitation of Landlord's Liability.

- (i) Transfer of Premises. If the Building is sold or transferred, voluntarily or involuntarily, Landlord's Lease obligations and liabilities accruing after the transfer shall be the sole responsibility of the new owner if:**
 - (1) the new owner is able to and expressly agrees in writing to assume Landlord's obligations; and**
 - (2) the Tenant's funds that the Landlord is holding, such as the Security Deposit, are given to the new owner.**
- (ii) Liability for Money Judgment. If Landlord, its employees, officers, or partners are ordered to pay Tenant a money judgment because of Landlord's default, then Tenant's sole remedy to satisfy the judgment shall be:**
 - (1) Landlord's interest in the Building and Land including the rental income and proceeds from sale;**
 - (2) any insurance or condemnation proceeds received because of damage or condemnation to, or of, the Building or Land that are available for use by Landlord; and**
 - (3) an amount equal to any security deposit paid and not forfeited to Landlord.**
- (iii) This provision does not limit Landlord or Tenant's right to specific performance.**

SECTION 6 -- LOSS OF PREMISES

6.1. Damages.

- (i) Definition. "Relevant Space" means:**

- (1) the Premises as defined in paragraph 1.02, excluding Tenant's non-Building-Standard fixtures;**
 - (2) access to the Premises; and**
 - (3) any part of the Building that provides essential services to the Premises.**
- (ii) Repair of Damage. If the Relevant Space is damaged in part or whole from any cause and the Relevant Space can be substantially repaired and restored within one hundred and twenty (120) days from the date of the damage using standard working methods and procedures, Landlord shall at its expense promptly and diligently repair and restore the Relevant Space to substantially the same condition as existed before the damage. This repair and restoration shall be made within one hundred and twenty days from the date of the damage unless the delay is due to causes beyond Landlord's reasonable control.**

If the Relevant Space cannot be repaired and restored within the one hundred and twenty (120) day period, then either party may, within ten (10) days after determining that the repairs and restoration cannot be made within one hundred and twenty (120) days (as prescribed in paragraph 6.01(c)), cancel the Lease by giving notice to the other party. Nevertheless, if the Relevant Space is not repaired and restored within one hundred and twenty (120) days from the date of the damage, then Tenant may cancel the Lease at any time after the one hundred and twentieth (120th) day and before the one hundred and fiftieth (150th) day following the date of damage. Tenant shall not be able to cancel this Lease if its willful misconduct causes the damage.

- (iii) Determining the Extent of Damage. If the parties cannot agree in writing whether the repairs and restoration described in paragraph 6.01(b) will take more than one hundred and twenty (120) days to make, then the determination will be submitted to arbitration under paragraph 11.01.**
- (iv) Abatement. Unless the damage is caused by Tenant's willful misconduct, the Rent and Additional Rent shall abate in proportion to that part of the Premises that is unfit for use in Tenant's business. The abatement shall consider the nature and extent of interference to Tenant's ability to conduct business in the Premises and the need for access and essential services. The abatement shall continue from the date the damage occurred until ten (10) business days after Landlord completes the repairs and restoration to the**

Relevant Space or the part rendered unusable and notice to Tenant that the repairs and restoration are completed, or until Tenant again uses the Premises or the part rendered unusable, whichever is first.

- (v) Tenant's Property. Notwithstanding anything else in Section 6, Landlord is not obligated to repair or restore damage to Tenant's trade fixtures, furniture, equipment, or other personal property, or any Tenant improvements unless agreed to separately in writing and attached to this Lease as an Exhibit.**
- (vi) Damage to Building. If:**
 - (1) more than forty (40) percent of the Building is damaged and the Landlord decides not to repair and restore the Building;**
 - (2) any mortgagee of the Building shall not allow adequate insurance proceeds for repair and restoration;**
 - (3) the damage is not covered by Landlord's insurance required by paragraphs 5.01(a) and (b); or**
 - (4) the Lease is in the last twelve (12) months of its Term, then Landlord may cancel this Lease. To cancel, Landlord must give notice to Tenant within thirty (30) days after the Landlord knows of the damage. The notice must specify the cancellation date, which shall be at least thirty (30) but not more than sixty (60) days after the date notice is given.**
- (vii) Cancellation. If either party cancels this Lease as permitted by paragraph 6.01, then this Lease shall end on the day specified in the cancellation notice. The Rent, Additional Rent, and other charges shall be payable up to the cancellation date and shall account for any abatement. Landlord shall promptly refund to Tenant any prepaid, unaccrued Rent and Additional Rent, accounting for any abatement, plus security deposit, if any, less any sum then owing by Tenant to Landlord.**

If Landlord cancels this Lease as permitted by paragraph 6.01, then Landlord must also cancel all other similarly affected tenant leases in the Building.

6.2. Condemnation.

- (i) Definitions. The terms "eminent domain;" "condemnation;" "taken;" and the like in paragraph 6.02 include takings for public or quasi-public use and**

private purchases in place of condemnation by any authority authorized to exercise the power of eminent domain.

(ii) **Entire Taking.** If the entire Premises or the portions of the Building required for reasonable access to, or the reasonable use of, the Premises are taken by eminent domain, this Lease shall automatically end on the earlier of:

- (1) the date title vests; or
- (2) the date Tenant is dispossessed by the condemning authority.

(iii) **Partial Taking.** If the taking of a part of the Premises materially interferes with Tenant's ability to continue its business operations in substantially the same manner and space then Tenant may end this Lease on the earlier of:

- (1) the date when title vests;
- (2) the date Tenant is dispossessed by the condemning authority; or
- (3) sixty (60) days following notice to Tenant of the date when vesting or dispossession is to occur.

If there is a partial taking and this Lease continues, then the Lease shall end as to the part taken and the Rent and Additional Rent shall abate in proportion to the part of the Premises taken and Tenant's pro rata share shall be equitably reduced.

(iv) **Termination by Landlord.** If title to a part of the Building other than the Premises is condemned, and in the Landlord's reasonable opinion, the Building should be restored in a manner that materially alters the Premises, Landlord may cancel this Lease by giving notice to Tenant. Cancellation notice shall be given within sixty (60) days following the date title vested. This Lease shall end on the date specified in the cancellation notice, which date shall be at least thirty (30) days but not more than ninety (90) days after the date notice is given.

(v) **Rent Adjustment.** If the Lease is canceled as provided in paragraphs 6.02(b), (c), or (d), then the Rent, Additional Rent, and other charges shall be payable up to the cancellation date, and shall account for any abatement. Landlord, considering any abatement, shall promptly refund to Tenant any prepaid, unaccrued Rent and Additional Rent plus Security Deposit, if any, less any sum then owing by Tenant to Landlord.

- (vi) **Repair.** If the Lease is not canceled as provided for in paragraphs 6.02(b), (c), or (d), then Landlord at its expense shall promptly repair and restore the Premises to the condition that existed immediately before the taking, except for the part taken, to render the Premises a complete architectural unit, but only to the extent of the:

 - (1) condemnation award received for the damage; and
 - (2) building to normal and standard specifications.
- (vii) **Awards and Damages.** Landlord reserves all rights to damages paid because of any partial or entire taking of the Premises. Tenant assigns to Landlord any right Tenant may have to the damages or award. Further, Tenant shall not make claims against Landlord or the condemning authority for damages.

Notwithstanding anything else in Paragraph 6.02(g), Tenant may claim and recover from the condemning authority a separate award for Tenant's moving expenses, business dislocation damages, Tenant's personal property and fixtures, the unamortized costs of leasehold improvements paid for by Tenant, excluding the Landlord's Buildout described in paragraph 1.05 and Exhibits D and E, and any other award that would not substantially reduce the award payable to Landlord. Each party shall seek its own award, as limited by paragraph 6.02(g), at its own expense.
- (viii) **Temporary Condemnation.** If part or all of the Premises are condemned for a limited period of time (Temporary Condemnation), this Lease shall remain in effect. The Rent and Additional Rent and Tenant's obligations for the part of the Premises taken shall abate during the Temporary Condemnation in proportion to the part of the Premises that Tenant is unable to use in its business operations as a result of the Temporary Condemnation. Landlord shall receive the entire award for any Temporary Condemnation.

SECTION 7 -- DEFAULT

7.1. Tenant's Default. Each of the following constitutes a default (Default):

- (i) **Tenant's failure to pay Rent or Additional Rent within three (3) days after Tenant receives notice from Landlord of Tenant's failure to pay Rent or Additional Rent;**
- (ii) **Tenant's failure to pay Rent or Additional Rent by the due date, at any time during a calendar year in which Tenant has already received three notices of**

its failure to pay Rent or Additional Rent by the due date;

- (iii) Tenant's failure to perform or observe any other Tenant obligation after a period of thirty (30) business days or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure, after it receives notice from Landlord setting forth in reasonable detail the nature and extent of the failure and identifying the applicable Lease provision(s);**
- (iv) Tenant's abandoning or vacating the Premises if Tenant fails to timely pay the Rent and Additional Rent by the due date;**
- (v) Tenant's failure to vacate or stay any of the following within ninety (90) days after they occur:**
 - (1) a petition in bankruptcy is filed by or against Tenant;**
 - (2) Tenant is adjudicated as bankrupt or insolvent;**
 - (3) a receiver, trustee, or liquidator is appointed for all or a substantial part of Tenant's property; or**
 - (4) Tenant makes an assignment for the benefit of creditors.**

7.2. Landlord's Remedies.

- (i) Remedies. Landlord in addition to the remedies given in this Lease or under the law, may do any one or more of the following if Tenant commits a Default under paragraph 7.01:**
 - (1) end this Lease, and Tenant shall then surrender the Premises to Landlord;**
 - (2) enter and take possession of the Premises either with or without process of law and remove Tenant, with or without having ended the Lease; and**
 - (3) alter locks and other security devices at the Premises.**

Tenant waives claims for damages by reason of Landlord's reentry, repossession, or alteration of locks or other security devices and for damages by reason of any legal process.
- (ii) No Surrender. Landlord's exercise of any of its remedies or its receipt of Tenant's keys shall not be considered an acceptance or surrender of the**

Premises by Tenant. A surrender must be agreed to in a writing signed by both parties.

- (iii) Rent. If Landlord ends this Lease or ends Tenant's right to possess the Premises because of a Default, Landlord may hold Tenant liable for Rent, Additional Rent, and other indebtedness accrued to the date the Lease ends. Tenant shall also be liable for the Rent, Additional Rent and other indebtedness that otherwise would have been payable by Tenant during the remainder of the Term had there been no Default, reduced by any sums Landlord receives by reletting the Premises during the Term.**

- (iv) Other Expenses. Tenant shall also be liable for that part of the following sums paid by Landlord and attributable to that part of the Term ended due to Tenant's Default:**
 - (1) reasonable broker's fees incurred by Landlord for reletting part or all of the Premises prorated for that part of the reletting Term ending concurrently with the then current Term of this Lease;**

 - (2) the cost of removing and storing Tenant's property;**

 - (3) the cost of minor repairs, alterations, and remodeling necessary to put the Premises in a condition reasonably acceptable to a new Tenant; and**

 - (4) other necessary and reasonable expenses incurred by Landlord in enforcing its remedies.**

- (v) Payment. Tenant shall pay the sums due in paragraphs 7.02(c) and (d) within thirty (30) days of receiving Landlord's proper and correct invoice for the amounts. Landlord is not entitled to accelerated Rent. During each action to collect Landlord shall be limited to the amount of any sums due under paragraph 7.02(c) that would have accrued had the Lease not been ended and sums under paragraph 7.02(d) that have been incurred by Landlord and are now payable by Landlord.**

- (vi) Mitigation. Landlord may mitigate its damage by making reasonable efforts to relet the Premises on reasonable terms. Landlord may relet for a shorter or longer period of time than the Lease Term and make any necessary repairs or alterations. Landlord may relet on any reasonable terms including a reasonable amount of free rent. If Landlord relets for a period of time longer than the current Lease Term, then any special concessions given to the new tenant shall be allocated throughout the entire reletting Term to not**

unduly reduce the amount of consideration received by Landlord during the remaining period of Tenant's Term.

7.3. Landlord's Default. Landlord's failure to perform or observe any of its Lease obligations after a period of thirty (30) business days or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure after receiving notice from Tenant is a Default. The notice shall give in reasonable detail the nature and extent of the failure and identify the Lease provision(s) containing the obligation(s). After Tenant receives notice of a Mortgagee's name and address and request for notice upon Landlord's Default, Tenant shall provide the notice required by this paragraph to the Mortgagee at the same time Tenant gives notice to Landlord.

If Landlord commits a Default, Tenant may pursue any remedies given in this Lease or under the law.

7.4. Exception to Cure Periods. The cure periods in paragraphs 7.01(a)(iii) and 7.03 do not apply to:

- (1) emergencies;
- (2) failure to maintain the insurance required by paragraph 5.01.

7.5. Self-Help. If either party defaults (Defaulting Party), the other party (Nondefaulting Party) may, without being obligated and without waiving the Default, cure the Default. The Nondefaulting Party may enter the Premises or Building to cure the Default. The Defaulting Party shall pay the Nondefaulting Party, upon demand, all costs, expenses, and disbursements incurred by the Nondefaulting Party to cure the Default.

7.6. Survival. The remedies permitted by Section 7, the parties' indemnities and limitations in paragraphs 5.02 and 5.03, and Landlord's obligation to mitigate damages in paragraph 7.02(f) shall survive the ending of this Lease.

SECTION 8 -- NONDISTURBANCE

8.1. Subordination.

- (i) **Mortgages.** Subject to paragraph 8.01(b), this Lease is subordinate to prior or subsequent mortgages covering the Building.
- (ii) **Foreclosures.** If any mortgage is foreclosed, then:
 - (1) This Lease shall continue;
 - (2) Tenant's quiet possession shall not be disturbed if Tenant is not in Default;

- (3) Tenant will attorn to and recognize the mortgagee or purchaser at foreclosure sale (Successor Landlord) as Tenant's landlord for the remaining Term; and**
- (4) The Successor Landlord shall not be bound by:**
 - (a) any payment of Rent or Additional Rent for more than one month in advance, except the Security Deposit and free rent, if any, specified in the Lease,**
 - (b) any amendment, modification, or ending of this Lease without Successor Landlord's consent after the Successor Landlord's name is given to Tenant unless the amendment, modification, or ending is specifically authorized by the original Lease and does not require Landlord's prior agreement or consent, and**
 - (c) any liability for any act or omission of a prior Landlord.**
- (iii) Self-Operating. Paragraph 8.01 is self-operating. However, Tenant shall promptly execute and deliver any documents needed to confirm this arrangement.**

8.2. Estoppel Certificate.

- (i) Obligation. Either party (Answering Party) shall from time to time, within ten (10) business days after receiving a written request by the other party (Asking Party), execute and deliver to the Asking Party a written statement. This written statement, which may be relied upon by the Asking Party and any third party with whom the Asking Party is dealing shall certify:**
 - (1) the accuracy of the Lease document;**
 - (2) the Beginning and Ending Dates of the Lease;**
 - (3) that the Lease is unmodified and in full effect or in full effect as modified, stating the date and nature of the modification;**
 - (4) whether to the answering Party's knowledge the Asking Party is in default or whether the Answering Party has any claims or demands against the Asking Party and, if so, specifying the Default, claim, or demand; and**

(5) to other correct and reasonably ascertainable facts that are covered by the Lease terms.

(ii) Remedy. The Answering Party's failure to comply with its obligation in paragraph 8.02(a) shall be a Default. Notwithstanding paragraphs 7.01(a)(iii) and 7.03, the cure period for this Default shall be five (5) business days after the Answering Party receives notice of the Default.

8.3. Quiet Possession. If Tenant is not in default, and subject to the Lease terms and the above encumbrances, Landlord warrants that Tenant's peaceable and quiet enjoyment of the Premises shall not be disturbed by anyone, subject only to the principal rights, if any, of the mortgage-holders and lien-holders with rights prior to this Lease.

8.4. Landlord's Option to Move Tenant.

(i) Moving Option. Landlord shall have the option to move Tenant ("Moving Option") from the Premises¹ to different office space within the Building² ("New Space") designated by Landlord, subject to paragraphs (b) to (g), both inclusive.

(ii) Conditions.

(1) Reasonableness: Landlord shall exercise its Moving Option reasonably and in good faith.

(2) Triggering event: Landlord shall not exercise its Moving Option unless Landlord is leasing the Premises to another tenant, who after leasing the Premises will lease fifty percent (50%) or more of the rentable square footage of the floor on which the Premises is located. Landlord shall give Tenant information and documents verifying the above within three (3) days of receiving Tenant's written request therefor.

(3) Timing: Landlord shall not exercise its Moving Option before the Premises is substantially complete³ and the Beginning Date⁴ has

¹This term refers to the original space leased to Tenant.

²This term refers to the building in which the Premises is located.

³This term refers to the standard that triggers the Lease's Beginning Date.

passed.

- (4) **Number of Moves:** During this Lease as it may be extended under Section 10, Landlord is entitled to exercise its Moving Option only once.
- (5) **Location:** The New Space shall be located
- (6) **Advance Notice:** Landlord shall give Tenant at least sixty (60) days advance written notice ("Moving Notice") before Tenant must move.
- (7) **Contents of Notice:** The Moving Notice shall contain at least the following:
 - (a) the Landlord is exercising its Moving Option;
 - (b) the location and floor number of the New Space including a floor plan showing the New Space cross-hatched;
 - (c) a reasonably detailed description of the additional improvements and decorations, if any, that will be required under paragraph (xi) of Conditions including a rough space plan;
 - (d) Landlord's good faith estimate of the Moving Date;
 - (e) whether the Landlord will move Tenant's equipment, furniture, trade fixtures, supplies, and other personal property or whether Tenant should arrange for its own movers subject to paragraph (xiii)(A);
 - (f) a representation that the other tenant upon leasing the Premises will be leasing fifty percent (50%) or more of the rentable square footage of the floor on which the Premises is located;
 - (g) the usable square footage of the New Space;

⁴This term refers to the date the Lease begins.

(h)the reduction, if any, in Rent, Additional Rent,⁵ and pro rata share⁶ under paragraph (xiv)(B).

(8) Effective Date of Move: Tenant shall vacate the Premises and move to the New Space by the later of:

(a)sixty (60) days after the Moving Notice is sent to Tenant; or

(b)within five (5) calendar days after the New Space is Substantially Finished (defined below).

The "Moving Date" means the earlier of: (1) the later date of (A) or (B) above; or (2) the date Tenant occupies the New Space.

"Substantially Finished" means: (I) all items in paragraph (b)(i)-(vii), both inclusive, except "Tenant's improvements" shall mean those improvements and decorations, if any, required by paragraph (b)(xi); (II) the notice required by paragraph (c) except thirty (30) days shall be changed to five (5) days; and (III) Landlord is ready, able, and willing to deliver actual possession of the New Space.

(9) New Space (size): The New Space shall contain at least 95% but not more than 120% of the number of usable square feet that are contained in the Premises.

(10) New Space (selection): Landlord shall use reasonable efforts to accommodate Tenant's request for space different from the comparable New Space proposed by Landlord in its Moving Notice; provided, however, that Tenant pays the costs for improvements and decorations for any space selected by Tenant to the extent such costs exceed the greater of (A) the costs that Landlord would have incurred for the comparable New Space Landlord proposed in its Moving Notice of (B) the costs Landlord would have incurred for the comparable New Space Landlord proposed in its Moving Notice assuming the New Space was the same size as the Premises. Tenant shall pay any excess costs within 30 days of receiving Landlord's invoice therefore.

(11) New Space (Description) -

(a)"Comparable" means: (1) that the location, configuration,

⁵This term refers to the amount Tenant pays for increased operating expenses and taxes.

⁶This term refers to the percentage of the increase Tenant pays in operating expenses and taxes.

improvements, decorations, and condition of the New Space are well suited for comparison with those of the Premises; and (2) the improvements and decorations of the New Space are at least equal in kind, condition, quality, and quantity to those in the Premises.

(b) The New Space shall be comparable to the Premises as of the date Tenant received Landlord's Moving Notice. If, however, the Premises were damaged because of a fire, casualty, or other cause covered by Section 6, and that damage was not repaired and restored by the date Tenant received the Moving Notice, then the New Space shall be comparable to the Premises that existed immediately before that damage. Notwithstanding the above, any improvements or decorations Tenant made to the Premises without receiving Landlord's prior written consent under paragraph 4.01, shall not be considered comparable improvements and decorations that Landlord must make.

(c) The New Space decorations shall be identical to those in the Premises. However, subject to Tenant's advance written consent, which shall not be unreasonably withheld, Landlord may substitute similar decorations to the extent that identical decorations are unavailable within a reasonable time. Tenant's failure to give or deny its consent within ten (10) days after Landlord's written request for it constitutes consent.

(d) Landlord may move improvements or decorations from the Premises into the New Space; provided that the improvements and decorations will be in as good condition after the move as the condition required by paragraphs (b)(xi)(A) and (B), and subject to paragraph (b)(xv).

(e) If the New Space is larger or smaller than the Premises (as permitted by paragraph (b)(ix)) then the New Space shall be comparable with the Premises as if the Premises were the same size as the New Space.

(12) **New Space (Payment):** Subject to paragraph (b)(x), Landlord at its sole expense shall prepare the New Space as required by paragraph (b)(xi).

(13) Moving

(a)Payment: Landlord shall pay Tenant, within thirty (30) days of receiving Tenant's invoice, Tenant's out-of-pocket moving expenses reasonably incurred because of moving to the New Space. Moving expenses include but are not limited to the cost of: moving and reinstalling Tenant's equipment (including but not limited to phones, utilities, and computers), furniture, trade fixtures, supplies, and other personal property from the Premises to the New Space; directory, floor, and exterior office signs; replacing the number of stationery and business cards Tenant has on hand on the Moving Date; and announcements to customers and vendors that a reasonably prudent businessperson would make upon such a move.

(b)Timing: Landlord shall cooperate with Tenant so Tenant's equipment, furniture, trade fixtures, supplies, and personal property can be moved from 5:00 p.m. - 9:00 a.m..... the following morning or over a weekend (Friday 5:00 p.m. - 9:00 a.m. the following Monday).

(c)Directional sign: Landlord, at its sole expense, shall place a noticeable sign (directing visitors to tenant's New Space) in the elevator lobby of the floor on which the Premises is located for six consecutive months beginning on the Moving Date.

(14) Terms and Conditions: As of the Moving Date, all Lease terms shall remain in effect except as modified below:

(a)Subject to (b)(xiv)(B) and (C) below, the Tenant's Rent, Additional Rent, and pro rata share shall remain unchanged even if the New Space's square footage is larger than the Premises;

(b)If the New Space contains less usable square feet than the Premises, then Tenant's Rent, Additional Rent, and pro rata share shall be reduced in proportion to the reduction in usable square footage;

(c)If Tenant selected the New Space under paragraph (b)(x) and Tenant's selection contains more usable square feet than the comparable New Space proposed by the Landlord, then

Tenant's Rent, Additional Rent, and pro rata share shall be increased in proportion to the increase, if any, of Tenant's selected space from the greater of (1) the usable square footage of the Premises or (2) the usable square footage of the New Space proposed by Landlord in the Moving Notice; and

(d)The New Space shall be considered the Premises.

- (15) Noninterference with Tenant's business: Landlord, in moving Tenant, shall not materially interfere with Tenant's ability to reasonably conduct its business from 9:00 a.m. Monday through 5:00 p.m. Friday, both inclusive.**
- (16) Punchlist: Paragraph (d) shall apply to the New Space but "Moving Date" shall be substituted for "Beginning Date" and "New Space" shall be substituted for "Premises."**

8.5. Constructive Eviction. Landlord's exercise of its Moving Option as permitted by paragraph a shall:

- (1) not constitute a constructive eviction, an interference with tenant's right of quiet enjoyment, or a disturbance of Tenant's right to use the Premises; and**
- (2) not subject Landlord to damages, including but not limited to damages for loss of goodwill, business, or profits.**

8.6. Tenant's cooperation. Tenant shall act reasonably, in good faith, and fully cooperate with Landlord in all aspects of moving to the New Space.

8.7. Confirming memorandum. The parties shall, within thirty (30) days after the Moving Date, confirm in writing:

- (1) the Moving Date;**
- (2) the New Space location including a floor plan showing the New Space cross-hatched;**
- (3) the New Space's suite number**
- (4) the New Space's rentable and usable square footage;**
- (5) the Rent, Additional Rent, and pro rata share if any of those items**

change under paragraphs (b)(xiv)(B) and (C); and

- (6) any other terms related to the move that either party reasonably requests to be confirmed.

8.8. Disputes. Disputes under paragraph 8.04 shall be subject to arbitration under paragraph 11.01.

8.9. Cancellation. Landlord shall have the option to cancel this Lease instead of moving the Tenant to New Space if Landlord complies with paragraph (b)(ii) and:

- (1) there has been a final, unappealable judicial determination of Tenant's default; or
- (2) there are twelve or less months remaining in the Lease term (excluding the 120-day notice period below), and Tenant does not have an option to renew or the option to renew has expired without being exercised.

If Landlord cancels the Lease as permitted above, then each parties' rights and obligations shall end except for any obligations accrued before the cancellation. If Landlord cancels under (ii) above, then Landlord shall give Tenant at least one-hundred and twenty (120) days' prior written notice before the cancellation date and pay Tenant by the date the Lease ends a sum equal to one-half of the Rent that Tenant would have paid during the rest of the Lease term had the Lease not been cancelled.

SECTION 9 -- LANDLORD'S RIGHTS

9.1. Rules.

- (i) **Rules.** Tenant, its employees and invitees, shall comply with:
 - (1) the Rules attached as Exhibit F; and
 - (2) reasonable modifications and additions to the Rules adopted by Landlord that:
 - (a) Tenant is given thirty (30) days advance notice of;
 - (b) are for the safety, care, order, or cleanliness of the common areas;

(c)do not unreasonably and materially interfere with Tenant's conduct of its business or Tenant's use and enjoyment of the Premises; and

(d)do not require payment of additional moneys.

- (ii) Conflict with Lease. If a Rule issued under paragraph 9.01(a) conflicts with or is inconsistent with any Lease provision, the Lease provision controls.**
- (iii) Enforcement. Although Landlord is not responsible for another tenant's failure to observe the Rules, Landlord shall not unreasonably enforce the Rules against Tenant.**

9.2. Mechanics Liens.

- (i) Discharge Lien. Tenant shall, within ten (10) days after receiving notice of any mechanic's lien for material or work claimed to have been furnished to the Premises on Tenant's behalf and at Tenant's request, except for work-contracted by Landlord including the Buildout described in paragraph 1.05 and Exhibits D and E:**
 - (1) discharge the lien; or**
 - (2) post a bond equal to the amount of the disputed claim with companies reasonably satisfactory to Landlord.**

If Tenant posts a bond, it shall contest the validity of the lien. Tenant shall indemnify, defend, and hold Landlord harmless from losses incurred from these liens.

- (ii) Landlord's Discharge. If Tenant does not discharge the lien or post the bond within the ten (10) day period, Landlord may pay any amounts, including interest and legal fees, to discharge the lien. Tenant shall then be liable to Landlord for the amounts paid by Landlord.**
- (iii) Consent not Implied. Paragraph 9.02 is not a consent to subject Landlord's property to these liens.**

9.3. Right to Enter.

- (i) Permitted Entries. Landlord and its agents, servants, and employees may enter the Premises at reasonable times, and at any time if an emergency, without charge, liability, or abatement of Rent, to:**

- (1) examine the Premises;**
 - (2) make repairs, alterations, improvements, and additions either required by the Lease or advisable to preserve the integrity, safety, and good order of part or all of the Premises or Building;**
 - (3) provide janitorial and other services required by the Lease;**
 - (4) comply with Applicable Laws under paragraph B .01;**
 - (5) show the Premises to prospective lenders or purchasers and during the ninety (90) days immediately before this Lease ends to prospective tenants, accompanied, if requested by Tenant, by a Tenant representative;**
 - (6) post notices of nonresponsibility;**
 - (7) remove any Alterations made by Tenant in violation of paragraph 4.01; and**
 - (8) post "For Sale" signs and, during the one hundred and twenty (120) days immediately before this Lease ends, post "For Lease" signs.**
- (ii) Entry Conditions. Notwithstanding paragraph 9.03(a), entry is conditioned upon Landlord:**
- (1) giving Tenant at least twenty-four (24) hours advance notice, except in an emergency;**
 - (2) promptly finishing any work for which it entered; and**
 - (3) causing the least practical interference to Tenant's business.**
- (iii) Interference with Tenant. Notwithstanding paragraphs 9.03(a) and (b):**
- (1) if Landlord's entry materially and substantially interferes with the conduct of Tenant's business (and the entry is not needed because of Tenant's negligence or willful misconduct), the Rent and Additional Rent shall abate in proportion to the extent of the interference; and**
 - (2) if the Landlord causes damage to Tenant's property, Landlord shall be liable for any damage to the extent the damage is not covered by Tenant's insurance or the insurance Tenant is required to carry**

under Section 5, whichever is greater.

9.4. Holdover.

- (i) **Holdover Status. If Tenant continues occupying the Premises after the Term ends (Holdover) then:**
 - (1) **if the Holdover is with Landlord's written consent, it shall be a month-to-month tenancy, terminable on thirty (30) days advance notice by either party. Tenant shall pay at the beginning of each month Rent and Additional Rent that is fifteen (15) percent higher than the amount due in the last full month immediately preceding the Holdover period unless Landlord specifies a lower or higher Rent and Additional Rent in the written consent;**
 - (2) **if the Holdover is without Landlord's written consent, then Tenant shall be a tenant-at-sufferance. Tenant shall pay by the first day of each month three times the amount of Rent and Additional Rent due in the last full month immediately preceding the Holdover period and shall be liable for any damages suffered by Landlord because of Tenant's Holdover. Landlord shall retain all remedies against Tenant who holds over without written consent.**

- (ii) **Holdover Terms. The Holdovers in paragraph 9.04(a) shall be on the same terms and conditions of the Lease except:.**
 - (1) **the Term (paragraph 1.01);**
 - (2) **Rent and Additional Rent (paragraphs 2.01 and**
 - (3) **the extension Term is deleted (paragraph 10.01);**
 - (4) **the Quiet Possession provision is deleted (paragraph 8.03) !**
 - (5) **Landlord's obligation for services and repairs for a paragraph 9.04(a)(ii) Holdover (paragraphs 3.02 and 3.03) is deleted;**
 - (6) **consent to an assignment or sublease may be unreasonably withheld and delayed (paragraph 4.02)**
 - (7) **the provision on Landlord's Default is deleted (paragraph 7.03)**
 - (8) **the Defaulting Party may be Tenant only (paragraphs 7.03 and 7.05);**

and

- (9) the Buildout is deleted (Exhibits D and EL and paragraph 1.05).

9.5. Signs.

- (i) **Permitted Signs.** Landlord shall provide Tenant, at Landlord's expense, the following listings and signs as specified in Exhibit H:
 - (1) listing on the Building and appropriate floor directories; and
 - (2) a sign on the exterior wall or door of the Premises inside the Building.
- (ii) **Nonpermitted Signs.** Other than the signs and listings permitted in paragraph 9.05(a), Tenant shall not place or have placed any other signs, listings, advertisements, or any other notices anywhere else in the Building.

SECTION 10 -- OPTIONS

10.1. Option to Extend.

- (i) **Option.** Tenant may extend this Lease for a period of _____ (_____) years (Extension Term) beginning immediately after the Term, upon the same terms and conditions of the Lease, except that:

- (1) the Term shall be modified as stated above;
- (2) the Rent and Additional Rent shall be calculated as follows:

- (3) the Option to Extend shall be deleted (paragraph 10.01); and
- (4) the Buildout shall be deleted (paragraph 1.05 and Exhibits D and E).

- (ii) Conditions. To exercise this Option to Extend Tenant must:**
 - (1) not be in default at the time it exercises the Option to Extend; and**
 - (2) give notice to Landlord that Tenant is exercising its Option to Extend at least one hundred and twenty (120) days but not more than two hundred and forty (240) days before the Term ends.**

SECTION 11 -- DISPUTES

11.1. Arbitration.

- (i) Procedure. For disputes subject to arbitration under paragraph 11.01(c) that are not resolved by the parties within ten (10) days after either party gives notice to the other of its desire to arbitrate the dispute, the dispute shall be settled by binding arbitration by the American Arbitration Association in accord with its then-prevailing rules. Judgment upon the arbitration award may be entered in any court having jurisdiction. The arbitrators shall have no power to change the Lease provisions. The arbitration panel shall consist of three arbitrators, one of whom must be a real estate attorney actively engaged in the practice of law for at least the last five (5) years. Both parties shall continue performing their Lease obligations pending the award in the arbitration proceeding. The arbitrators shall award the prevailing party reasonable expenses and costs including reasonable attorneys' fees pursuant to paragraph 12.02 plus interest on the amount due at eighteen (18) percent per annum or the maximum then allowed by applicable law, whichever is less.**
- (ii) Payment. The losing party shall pay to the prevailing party the amount of the final arbitration award. If payment is not made within ten (10) business days after the date the arbitration award is no longer appealable, then in addition to any remedies under the law:**
 - (1) if Landlord is the prevailing party, it shall have the same remedies for failure to pay the arbitration award as it has for Tenant's failure to pay the Rent; and**
 - (2) if Tenant is the prevailing party, it may deduct any remaining unpaid award from its monthly payment of Rent, Additional Rent, or other charges.**
- (iii) Arbitration. The following disputes are subject to arbitration:**

- (1) any disputes that the parties agree to submit to arbitration;**
 - (2) the date when the Premises are substantially completed;**
 - (3) the amount of any abatement of Rent and Additional Rent because of damage or condemnation;**
 - (4) the amount billed as Additional Rent or any component part of the calculation of Additional Rent;**
 - (5) which party must comply with Applicable Laws under paragraph 3.01;**
 - (6) whether the utilities are being provided in the quality and quantity required by paragraph 3.02;**
 - (7) whether Tenant may abate Rent and Additional Rent or cancel the Lease under paragraph 3.02(e)(ii);**
 - (8) whether Landlord's withholding of consent is unreasonable or unduly delayed under paragraphs 4.02(a) and (b);**
 - (9) the amount of any insurance increase under paragraph 5.01 (e);**
 - (10) whether either party can cancel the Lease under Sections 6 or 7;**
 - (11) any allocation required under paragraph 2.02(a)(v)(B)(4).**
- (iv) Notwithstanding the provisions of Section 11.01(c), it is the intent of the parties not to subject any proceeding to arbitration for forcible entry and detainer, or in the event of Tenant Default, for back rents, and damages due to default, even if one or more of the issues in the proceeding relate directly or indirectly to the arbitrable issues of 11.01(c). It is the parties specific desire not to be forced to bifurcate its proceedings and waive its rights to a court or jury trial in these circumstances.**
- (v) Initiating a court action on an issue, which considered with it counterclaims and cross-claims, could raise an arbitrable issue, shall be deemed a waiver of the right to arbitration by that party on all issues raised in the court proceeding under the applicable rules of civil procedure.**

SECTION 12 -- MISCELLANEOUS

12.1. Broker's Warranty. The parties warrant that _____ is the only broker

they dealt with on this Lease. The party who breaches this warranty shall defend, hold harmless, and indemnify the nonbreaching party from any claims or liability arising from the breach. Landlord is solely responsible for paying the commission of

_____.

12.2. Attorneys' Fees. In any litigation between the parties regarding this Lease, the losing party shall pay to the prevailing party all reasonable expenses and court costs including attorneys' fees incurred by the prevailing party. A party shall be considered the prevailing party if:

- (1) it initiated the litigation and substantially obtains the relief it sought, either through a judgment or the losing party's voluntary action before arbitration (after it is scheduled), trial, or judgment;
- (2) the other party withdraws its action without substantially obtaining the relief it sought; or
- (3) it did not initiate the litigation and judgment is entered for either party, but without substantially granting the relief sought.

12.3. Notices. Unless a Lease provision expressly authorizes verbal notice, all notices under this Lease shall be in writing and sent by registered or certified mail, postage prepaid, as follows:

To Tenant:

Before Term begins:

After Term begins:

-- and

To Landlord:

Either party may change these persons or addresses by giving notice as provided above. Tenant shall also give required notices to Landlord's mortgagee after receiving notice from Landlord of the mortgagee's name and address. Notice shall be considered given and received on the latest original delivery or attempted delivery date as indicated on the postage receipt(s) of all persons and addresses to which notice is to be given.

12.4. Partial Invalidity. If any Lease provision is invalid or unenforceable to any extent, then that provision and the remainder of this Lease shall continue in effect and be enforceable to the fullest extent permitted by law.

12.5. Waiver. The failure of either party to exercise any of its rights is not a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

12.6. Construction.

- (i) Construction Against Drafter.** The parties each have access to counsel and have carefully reviewed the terms of this Lease and therefore any ambiguity of intent will not be applied against the Landlord who supplied the Lease.
- (ii) Deletions.** If the parties delete any provision or part of a provision, the Lease will be interpreted as if the deleted language was never part of the Lease.

12.7. Binding on Successors. This Lease shall bind the parties' heirs, successors, representatives, and permitted assigns.

12.8. Governing Law. This Lease shall be governed by the laws of the state in which the Building is located.

12.9. Insurance Increase. If due to Tenant's particular use of the Premises the Landlord's insurance rates are increased, Tenant shall pay the increase.

12.10. Lease not an Offer. Landlord gave this Lease to Tenant for review. It is not an offer to lease. This Lease shall not be binding unless signed by both parties and an originally signed counterpart is delivered to Tenant.

12.11. Recording. Recording of this Lease is prohibited except as allowed in this paragraph. At the request of either party, the parties shall promptly execute and record, at the cost of the requesting party, a short form memorandum describing the Premises and stating this Lease's Term, its Beginning and Ending Dates, and other information the parties agree to include.

12.12. Survival of Remedies. The parties' remedies shall survive the ending of this Lease when the ending is caused by the Default of the other party.

12.13. Authority of Parties. Each party warrants that it is authorized to enter into the Lease, that the person signing on its behalf is duly authorized to execute the Lease, and that no other signatures are necessary.

12.14. Business Days. Business days means Monday through Friday inclusive, excluding holidays identified at paragraph 3.02(b). Throughout this Lease, wherever "days" are used the term shall refer to calendar days. Wherever the term "business days" is used the term shall refer to business days.

12.15. Entire Agreement. This Lease contains the entire agreement between the parties about the Premises and Building. Except for the Rules for which paragraph 9.01(a) controls, this Lease shall be modified only by a writing signed by both parties.

12.16. Definition of Lease. This Lease consists of the following:

- (1) Title Page;
- (2) Table of Contents;
- (3) Sections 1 through 12;
- (4) Signature Page;
- (5) Rider containing __ paragraphs; and
- (6) Exhibits A through __.

LANDLORD: _____

SIGNATURE _____

WITNESS

NAME _____

TITLE _____

TENANT: _____

SIGNATURE _____

WITNESS

NAME _____

TITLE _____

p:\forms\leases commercial\office\fair office lease.doc