

Attachment 3
Sample Ground Lease

GROUND LEASE

between

**ALASKA MENTAL HEALTH TRUST AUTHORITY, by and through
The State of Alaska, Department of Natural Resources Mental Health Trust Land Office,**

as LESSOR

and

_____, **as LESSEE**

Dated _____, **20**__

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GROUND LEASE

MHT # _____

THIS GROUND LEASE AGREEMENT (“Lease”) is made as of the Commencement Date (as such term is defined in Section 1.2, below) by and among **THE ALASKA MENTAL HEALTH TRUST AUTHORITY**, a public corporation within the Alaska Department of Revenue (AS 47.30.011 et seq.), acting by and through the State of Alaska, Department of Natural Resources, Trust Land Office (“TLO”), pursuant to AS 37.14.009, AS 38.05.801 and 11 AAC 99 (“Lessor”) whose address is 2600 Cordova Street, Suite 100, Anchorage, AK 99503, and **Lessee name** _____ (“Lessee”), whose address is **Lessee address**.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Lessor and Lessee hereby agree as follows:

LEASE, LEASE TERM, AND USE

Lease and Leased Premises. Subject to the terms, provisions and conditions hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the unimproved real property situated in **City**, Alaska, more particularly described as:

LEGAL DESCRIPTION

depicted on the site plan attached hereto as **Exhibit A** (“**Site Plan**”) together with all rights, privileges, easements and appurtenances described herein or otherwise belonging or in any way pertaining to said unimproved real property (the “**Premises**”). The Premises and all Improvements (as defined in **Section 2.1** below) constructed thereon are hereinafter collectively referred to as the “**Property**.”

Lease Term; Extension Options. This Lease shall be and continue in full force and effect for a term (the “**Lease Term**”) of **years in words (number)** years, commencing on **Commencement Date Month Day, Year** (the “**Commencement Date**”) and, unless sooner terminated as set forth herein, terminating on **Termination Date Month Day, Year** (the “**Termination Date**”). All obligations of Lessor and Lessee hereunder shall be binding on the parties on the Commencement Date.

If Lessee is not then in Default under the Lease, Lessee shall have the option to extend the Term of this Lease for **number in words (number)** periods of **number in words (number)** years each in accordance with the notice provisions set forth in this Section 1.2 (each an “**Extension Option**”) subject to Lessor’s approval. If the Lease Term is so extended, the Rent payable during the extended Term shall continue to be calculated and adjusted annually and every five years as set forth in Section 3.2.

If Lessee desires to exercise such Extension Option, it shall send notice thereof (“**Extension Notice**”) to Lessor no more than one hundred eighty (180) nor less than one hundred twenty (120) days prior to the then scheduled end of the Lease Term. No later than sixty (60) days prior to the

then-scheduled end of the Lease Term, Lessor and Lessee shall execute and deliver an amendment to this Lease (“Amendment”) stating the new Lease Expiration Date. If such an Amendment is not timely executed and delivered by Lessee as provided above, the Lease Term shall not be extended and the Extension Option and all remaining Extension Options shall terminate.

Use of Leased Premises. Lessee shall have the right to use the Premises for [describe limitations on use][if no restrictions: such use or uses as are permitted by laws and ordinances applicable to the Property, from time to time].

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

Lessor’s Reservation of Statutory Rights. Lessor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all rights set forth in the Alaska Statutes and regulations promulgated thereunder applicable to land held by the Alaska Mental Health Trust Authority, including but not limited to the rights set forth in AS 38.05.125(a), as the same may be amended from time to time.

DESIGN AND CONSTRUCTION OF NEW IMPROVEMENTS

Construction; Commencement of Construction; Completion Date. Lessee intends to construct on the Premises certain new improvements (collectively, whether one or more separate structures, the “**Improvements**”), in accordance with plans and specifications submitted to and approved by Lessor pursuant to 0 below. The term “Improvements” shall also mean and include any site improvements initially constructed on the Premises (such as soils, extraction, fill and other pad development work performed after the Commencement Date), buildings, structures, parking areas, landscaping, utilities, and the like and all replacement structures, renovations or improvements which may be constructed on the Premises during the Lease Term, from time to time. Following the construction of the Improvements, any subsequent alterations thereto shall be governed by the provisions of Article 7 below. As used in this Lease, the term “**Commencement of Construction**” shall mean the date upon which Lessee has obtained all necessary permits and approvals for construction of the initial Improvements and has begun construction activity on the Premises. As used in this Lease, the term “**Completion Date**” means the date upon which a certificate of occupancy is issued by the City Department for the initial Improvements, permitting occupancy and use thereof by Lessee. Lessee shall obtain an unconditional certificate of occupancy on or before _____, 20__.

Approval of Plans; Boundaries; Easements. Lessee shall construct the Improvements on the Premises in accordance with the plans Lessor has approved, copies of which are attached hereto as Exhibit B and incorporated herein by this reference (the “Plans”). Lessor’s approval shall also be required for any material change in the Plans, and Lessor shall respond not more than twenty (20) Business Days after its receipt of revised Plans and a written description of the material changes. Lessor shall not unreasonably deny, condition, object to or withhold its approval of any such material changes. Lessee shall, upon receipt of Lessor’s reasonable objections, modify the Plans submitted, taking into account Lessor’s objections, and resubmit such revised Plans for approval by Lessor in accordance with this 0. Such process of submittal, review and comment by Lessor, and resubmittal by Lessee shall continue until such time as Lessor has given its written approval of the Plans.

Lessee shall properly locate all Improvements within the boundaries of the Premises. All survey monuments, witness corners, and/or reference monuments shall be protected against damage, destruction, or obliteration. Any damaged or obliterated markers shall be reestablished at the Lessee’s expense in accordance with accepted survey practices of the State of Alaska, Department of Natural Resources, Division of Land and the Lessor. All construction activities and operations thereafter shall minimize disturbances to drainage and be undertaken in a manner that does not cause any drainage or other issues to neighboring property owners. Cuts, fills, or other activities causing any of the above disturbances, if not repaired immediately, are subject to any corrective action as may be required by the Lessor.

All easements, licenses or other right or interest (any of which will be referred to herein as an “easement”) in the Property to be granted to a third party, including any utility, government agency, or public authority, must be granted by Lessor. If Lessee requires Lessor to grant an easement in the Premises, Lessee shall apply to Lessor for such easement. The application shall contain a copy of any proposed instrument granting such easement, and sufficient drawings, background information, and legal descriptions to inform Lessor as to the nature, effect, and purpose of such easement. Lessor shall respond not more than twenty (20) Business Days after its receipt of the application and may grant or deny such application in its sole discretion or may grant such application subject to qualifications or modifications, including charging a fee or requiring Lessee to pay Lessor’s costs, including but not limited to attorneys’ fees, associated with its review of such application. Lessor may require any such easements to expire upon the termination of this Lease. Lessee shall, upon receipt of Lessor’s qualifications or modifications, modify the proposed easement taking into account Lessor’s qualifications or modifications, negotiate with the entity requesting the easement, and resubmit such revised easement for approval by Lessor in accordance with this 0. Such process of submittal, review and comment by Lessor, and resubmittal by Lessee shall continue until such time as Lessor has given its written approval of the requested easement.

Evidence of Funding; Completion Guaranty or Bond. Before Commencement of Construction, Lessee shall provide Lessor with: (a) evidence reasonably satisfactory to Lessor that all funds necessary for development and construction of the initial Improvements (including equity capital and loans) have been secured or committed; and (b) a performance bond or other guaranty of completion in form and substance satisfactory to Lessor and issued or provided by a surety or guarantor acceptable to Lessor, providing for lien-free completion of the Improvements in accordance with the Plans. The amount of the bond will be equal to the larger of (i) one hundred

percent (100%) of the estimated costs of all of the Improvements, and (ii) the fair market value of the Improvements upon completion as set forth in an appraisal acceptable to Lessor and obtained by Lessee at Lessee's sole cost and expense, plus, in each case, a ten percent (10%) contingency fee. The bond is due at the time permits are applied for or when field work begins whichever occurs first, and the bond shall be increased from time to time as necessary to reflect increases in the cost or value of the Improvements, as used for purposes of determining the initial bond amount, due to the construction of additional tenant improvements or other changes to the Improvements made after the initial bond is issued. Lessor will allow the release of such performance bond upon the issuance of all final occupancy authorizations from governing authorities and Lessor's written acceptance of the Improvements based on the successful completion of the approved Plans.

Contractor; Builder's Risk Insurance. Lessee shall contract with an experienced, qualified general contractor licensed in the State of Alaska and approved by Lessor ("Contractor") for construction of the Improvements. Lessee shall not replace the Contractor without Lessor's prior written consent. Lessee or the Contractor shall obtain and maintain in force at all times during which construction is in progress on the Premises builder's risk insurance as required under Section 0, and such insurance shall name Lessor as an additional insured thereunder.

Permits and Utilities. All building permits and other permits, licenses, permissions, utility agreements, consents, and approvals required to be obtained from governmental agencies (collectively, "Governing Bodies") or third parties in connection with construction of the Improvements shall be acquired by and at the sole cost and expense of Lessee. Lessor agrees to cooperate reasonably with Lessee as required for Lessee to apply for and obtain all such permits and approvals, provided that should Lessor incur any cost or expense (including but not limited to attorney's fees) in connection therewith, Lessee shall reimburse Lessor therefor promptly after receipt of an invoice from Lessor. Lessor's obligation to cooperate shall include the obligation to consent to any reasonable conditions that governmental authorities may impose on the issuance of a building permit for the Improvements. Lessee has sole responsibility for obtaining at its own expense any utility services; and Lessor makes no warranty or covenant regarding the cost or availability of any such services.

Liens. Lessee shall keep the Premises free from any liens arising out of work performed, materials furnished to or obligations incurred by Lessee. Lessee further covenants and agrees that any mechanic's or materialmen's liens filed against all or any part of the Premises or against the Improvements for work under this Article 2 claimed to have been done for or materials claimed to have been furnished to Lessee, shall be discharged by Lessee, by bond or otherwise, at the sole cost and expense of Lessee: (a) within ten (10) days after Lessee's receipt of written notice (whether from Lessor or otherwise) of the filing thereof, with respect to claims in excess of Ten Thousand Dollars (\$10,000); and (b) within ten (10) days after the commencement of an action for the foreclosure thereof, with respect to claims less than or equal to Ten Thousand Dollars (\$10,000). Should Lessee fail to discharge any lien of the nature described in this Section 2.6 when required, Lessor may, at Lessor's election, pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title and the cost thereof shall be immediately due from Lessee as rent under this Lease.

Hold Harmless. Lessee shall indemnify, defend with counsel acceptable to Lessor, and hold harmless Lessor and the Premises from and against all claims and liabilities arising by virtue of or relating to construction of the Improvements and any repairs made at any time to the Improvements or Premises, including repairs, restoration and rebuilding, and all other activities of Lessee on or with respect to the Improvements or Premises. If Lessee is required to defend any action or proceeding pursuant to this Section 2.7 to which action or proceeding Lessor is made a party and Lessor reasonably believes that the interests of Lessor and Lessee conflict or are divergent, then Lessor shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent Lessor is indemnified under this section, Lessee shall bear the cost of Lessor's separate defense, including reasonable attorneys' fees.

Progress Reports. From and after the Commencement of Construction and through the Completion Date, Lessee shall provide to Lessor monthly progress reports consisting of, at a minimum: (a) the then current construction schedule prepared by the Contractor (including the expected Completion Date); (b) a summary of all change orders approved by Lessee subsequent to the preceding monthly progress report; and (c) notice of any laborer's or materialmen's liens or notices of right to lien filed against the Premises.

As-Built Drawings; Survey. Within ninety (90) days following the Completion Date for the Improvements, Lessee shall deliver to Lessor two (2) copies of complete as-built drawings of the Improvements (which may consist of the Plans, annotated with field notes identifying all changes made thereto in the course of construction) and an ALTA as-built survey prepared by a licensed surveyor, certified to Lessor and showing the location of all Improvements, including easements and utilities (including underground utilities).

Ownership of Improvements. During the Term of this Lease, the Improvements located on the Premises, including without limitation, all additions, alterations, and repairs thereto or replacements thereof and all appurtenant Lessee fixtures, machinery, and equipment installed therein, shall be the property of Lessee. Unless Lessor has elected to have Lessee remove the same pursuant to Section 2.10, at the expiration or earlier termination of this Lease, the Improvements and all additions, alterations, and repairs thereto or replacements thereof and all appurtenant fixtures, machinery, and equipment installed therein, shall become the property of Lessor, free and clear of any interests or encumbrances created by, or arising as a result of the actions of, Lessee. As set forth in AS 38.05.090, title to all personal property located on the Property at the expiration of the Term of this Lease shall be automatically vested in Lessor upon Lessee's failure to remove such items prior to the expiration or earlier termination of this Lease.

Surrender Upon Termination. Upon expiration or earlier termination of this Lease, Lessee shall remove Lessee's personal property and equipment that is not attached to the Improvements or the Premises (excluding such equipment as is necessary for the proper and normal operation of the Improvements, all of which shall remain on the Premises and become the property of the Lessor) and shall surrender the Premises and equipment necessary for the proper and normal operation of the Improvements to Lessor in good condition and repair, ordinary wear and tear and casualty excepted, free and clear of all liens, consensual or nonconsensual. Lessee shall not remove from the Premises any appurtenant fixtures, machinery, or equipment, attached to or used in connection with operation of the Improvements, or any additions to or replacements

thereof made during the Term of this Lease, it being the intent of the parties that upon expiration or earlier termination of this Lease, Lessor shall receive an operating building and fully functional components of the other Improvements. All operating manuals, computer programs and software, maintenance records, warranties and other personal property, tangible or intangible, owned by Lessee and necessary to operation of the Improvements or the systems that are part of the Improvements shall be delivered to Lessor upon expiration or sooner termination of this Lease without cost to Lessor. Lessee's personal property and equipment not removed by Lessee at expiration or other termination of this Lease shall be considered abandoned and Lessor may dispose of such property in accordance with the law governing abandoned property then in effect.

Notwithstanding the foregoing, upon the expiration or sooner termination of this Lease, Lessor shall have the right, but not the obligation, in its sole and absolute discretion, to require Lessee or any successor in interest to Lessee or substituted lessee or assignee, as the case may be, at such party's sole expense, to demolish and remove all Improvements and to restore the Premises to materially the same condition as existed on the Commencement Date. Lessor shall give the Lessee written notice not less than ninety (90) days prior to the effective termination or expiration date to notify Lessee of such obligation and Lessee shall thereafter complete all required demolition, removal and restoration activities prior to the effective termination or expiration date of this Lease. Any and all buildings, structures, fixtures, equipment and/or items of tangible personal property constructed or located upon the Premises that Lessor determines Lessee is not obligated to remove pursuant to this paragraph shall become, and thereafter shall be and remain the sole and exclusive property of Lessor. However, prior to surrender, Lessee shall comply with all provisions of this Lease concerning Hazardous Substances, including but not limited to the provisions of Article 8, and complete any subsequent repairs or abatement, as necessary.

Condition of Improvements. Lessee assumes full responsibility for the design, construction and condition of the Improvements, any renovation or remodeling of the Improvements, and any replacements thereof constructed on the Premises during the Lease Term and Lessee hereby fully releases Lessor from any and all liability relating thereto.

RENT

Commencement of Annual Rent Payments. Lessee shall pay to Lessor annual rent (“**Rent**”) in an amount as set forth in 0. Annual rent payments are due and payable in advance on the first day of each Lease Year thereafter, without notification from the Lessor. Rent for any partial months during the Lease Term, including the first, shall be prorated. In the case of a requested extension, the following year’s payment shall be tendered with the request for an extension as set forth in Section 1.2.

Initial Annual Rent Amount; Adjustments. The amount of Rent to be paid during the Lease Term shall be as set forth in this 0. Notwithstanding the expiration or termination of this Lease, Lessee’s obligation to pay rent shall continue until Lessee’s performance of all responsibilities set forth in Article VIII and Lessor’s receipt of written confirmation from all government authorities with jurisdiction over the Premises regarding the absence of Hazardous Substances on the Premises at or exceeding reportable levels.

Initial Annual Rent. During the first Lease Year, Rent shall be paid in advance in the amount of _____ Dollars (\$_____) per year. Notwithstanding the foregoing, Lessee shall tender with the first such Rent payment, a prorated share of the first partial month of occupancy if the Rent Commencement Date and the first day of the first Lease Year are not the same date. At the beginning of each Lease Year thereafter, Rent shall be adjusted by either the CPI Adjustment (as hereinafter defined) or the Land Value (as hereinafter defined); provided that in no event will such adjustments ever cause the Rent for a Lease Year to be less than the Rent for the prior Lease Year.

CPI and Land Value Adjustments. Rent shall be adjusted at the beginning of each Lease Year that is not a Land Value Adjustment Year to an amount equal to the Rent for the preceding Lease Year increased by the CPI Adjustment (as such term is defined in Section 3.2.3 below). Rent shall also be adjusted at the beginning of the sixth (6th) Lease Year and every five years thereafter (hereinafter, singularly a “**Land Value Adjustment Year**”) to an amount equal to the greater of (a) _____ percent (____%) multiplied by the Land Value (as hereinafter defined), or (b) the Rent then in effect. All costs related to determining the adjusted Land Value (including but not limited to the cost of all appraisals) will be borne by the Lessee. The Rent determined on each Land Value Adjustment Year shall then be annually adjusted by the CPI Adjustment until the next Land Value Adjustment Year. If Lessor and Lessee are unable to agree upon an appraiser within one hundred twenty (120) days prior to the commencement date of a Land Value Adjustment Year, then each party shall select its own Appraiser and each Appraiser shall prepare and deliver to Lessor and Lessee within sixty (60) days prior to such Land Value Adjustment Year such Appraiser’s written opinion of the Property with separate allocations for the Improvements and the Land Value (as defined below). If the two Appraisers’ opinions of the value of the Improvements or the Land differ by ten percent (10%) or less, then the two Land Values shall be added together, divided by two, and the product thereof shall be the Land Value for the purposes of this Section 0 and the two determinations of the value of the Improvements shall be added together, divided by two, and the product thereof shall be the value of the Improvements for purposes of this Lease. If the two Appraisers’ opinions of value of the Land or the Improvements differ by more than ten percent (10%), then within fifteen (15) days

after the delivery of the last of the Appraisers' decisions, the two Appraisers shall mutually select a third Appraiser who shall determine the value of the Property hereunder using the definitions as provided in this Lease. Within thirty (30) days after the appointment of the third Appraiser, the third Appraiser shall make its determination of the value of the Property (with the portion attributable to the Land Value and the value of the Improvements separately identified) in a written report delivered to Lessor and Lessee and such determination shall be binding on the parties. If either Lessor or Lessee shall fail to timely select its initial Appraiser, or should the two (2) Appraisers selected by Lessor and Lessee fail to timely select the third Appraiser, if required, either Lessor or Lessee shall have the right to petition for the appointment of such Appraiser by the Presiding Judge of the Superior Court of Alaska at Anchorage. Lessee shall pay all expenses and charges of every Appraiser. In the event that the Rent has not been finally determined by the commencement date of a Land Value Adjustment Year, then Lessee shall continue to pay Rent at the same rate as provided in the preceding Lease Year (adjusted by the CPI Adjustment) and, upon final determination of the Rent, Lessee shall promptly pay to Lessor the difference between the Rent paid and the adjusted Rent due, if any.

Certain Definitions. The following terms shall have the meanings set forth below:

“Appraiser” shall mean an appraiser who is a designated member of the Appraisal Institute (or its successor), with at least ten (10) years of experience in appraising commercial real estate in the state of Alaska who is acceptable to Lessor and Lessee.

“Appraisal” shall mean an appraisal prepared by an Appraiser which sets forth the Land Value and the value of all Improvements separately. The appraisal shall adhere to Uniform Standards of Professional Appraisal Practice (“USPAP”) and shall comply with such other requirements as may be adopted from time to time by Lessor. Valuation of the Improvements shall include a determination of the replacement cost value and fair market value. All costs of the Appraisal will be borne by Lessee.

“CPI Adjustment” shall mean the percentage increase, if any, between the monthly Consumer Price Index for all Urban Consumers, Anchorage, Alaska for all Items (1982-84 = 100) published by the Bureau of Labor Statistics, United States Department of Labor (“CPI”) available on the Commencement Date and the CPI in effect at the end of the calendar year most immediately preceding the Land Value Adjustment Year. If the Bureau of Labor Statistics ceases to use the 1982-84 average as the basis of calculation, or the CPI is discontinued, the parties mutually shall agree on a substitute index of comparable statistics calculating the cost of living for the municipality in which the Premises is located (or, if such index is not calculated for such municipality, then for _____, Alaska), as shall be computed by an agency of the United States or by a responsible financial periodical of recognized authority. Notwithstanding anything to the contrary herein, in no event shall the CPI Adjustment be negative.

“Land Value” shall mean: The greater of the (i) then current fair market value of the undeveloped Premises, including any amenities existing thereon as of the Commencement Date, or (ii) the Initial Land Value. Structural and site improvements, including soils, extraction, fill and other pad development work, in place on the Commencement Date shall be considered part of the Land Value in this appraisal. The Lessor and Lessee agree that the Land Value on the Commencement Date is \$ _____ (the “Initial Land Value”) and that no subsequent determination of Land Value (including but not limited to a determination set forth in

an Appraisal) made during the term of this Lease or any extension hereto shall ever be less than the Initial Land Value.

“Lease Year” shall mean a twelve (12) month period beginning on the first day of the calendar month following the Rent Commencement Date (or the Rent Commencement Date if it is on the first day of a calendar month) and each twelve (12) month period thereafter during the Lease Term.

“Rent Commencement Date” shall mean the Commencement Date.

Percentage Rent. In addition to Rent described in Sections 3.2.1-3.2.3, Lessee shall pay to Lessor percentage rent in an amount equal to ____ percent (___%) (the **“Percentage”**) (**“Percentage”**) of Lessee’s Gross Sales (as defined below) in accordance with the terms of this Section 3.2.4.

Monthly Statements. Within thirty (30) days after the end of each calendar month of the Lease Term, Lessee shall furnish to Lessor a written statement certified by Lessee to be correct, showing the total Gross Sales made in, upon and/or from the Premises during the preceding calendar month, and shall accompany each such statement with a payment to Lessor equal to the Percentage of the total Gross Sales made in, upon, or from the Premises during such calendar month. Anything herein to the contrary notwithstanding, if Lessee fails or refuses to submit the required monthly statement within such thirty (30) day period, then it shall be deemed that the Gross Sales for that month are equal to one hundred fifteen percent (115%) of Lessee’s Gross Sales for such month during the prior Lease Year or Lessee’s Gross Sales for the prior calendar month, whichever is more. The obligation to prepare and deliver the monthly statement of Gross Sales shall survive termination of this Lease with respect to all periods prior to such termination.

Annual Statement. Within thirty (30) days after the end of each calendar year of the Lease Term (including any partial calendar year at the beginning or end of the Lease Term, Lessee shall furnish to Lessor a written statement, certified by Lessee to be correct, showing the total Gross Sales made in, upon, or from the Premises during each month of the preceding calendar year, at which time an adjustment shall be made between Lessor and Lessee so that Percentage Rent, although payable monthly, shall be computed and adjusted on an annual basis. Any overpayment of Percentage Rent by Lessee shall be credited towards the next payment(s) of percentage rent due under this section. Lessee shall attach its check to such annual report, which check shall be in an amount equal to any underpayment revealed by such annual report. The obligation to prepare and deliver the annual statement of Gross Sales shall survive termination of this Lease with respect to all periods prior to such termination.

Definition. The term **“Gross Sales”** (**“Gross Sales”**) means the selling price of all goods, food and beverages, merchandise (including prepaid merchandise cards or gift certificates) and services sold in, upon and/or from any part of the Premises by Lessee or any other person, firm or corporation, shall be separated into merchandise categories selected by Lessor, and shall include, but not be limited to, sales or charges for cash or credit regardless of collection, sales by vending devices (except snack machines for the convenience of employees), rent income, mail, internet or telephone orders received or filled at the Premises, all deposits not refunded to purchasers, orders taken although filled elsewhere, fees, commissions, catalog sales, and sales by

any sublessee, assignee, concessionaire, licensee or otherwise. Tenant may deduct from Gross Sales the actual amount of returns and refunds to customers (if such sums were previously reported as Gross Sales) and the amount of any sales tax or other excise tax imposed upon such sale and charges (but only if such sales tax, excise tax or similar tax is paid by the purchaser, identified as a separate item on the receipt and paid to the taxing authority). Each sale upon installment, layaway or credit shall be treated as a sale for the full price in the month during which such sale is made, regardless of the time when Lessee receives payment from its customer or delivers the merchandise to the customer. No deduction shall be allowed for uncollected or uncollectible credit accounts.

Records. Lessee shall keep full, complete and proper books, records and accounts in accordance with generally accepted accounting principles consistently applied of all Gross Sales, including, without limitation, daily bank deposits and any sales or similar tax reports pertaining to Lessee's business, and accurately showing any deductions or exclusions claimed in computing the amount of such Gross Sales. Lessee shall give Lessor access during normal business hours to all such books and records. Such records shall cover each separate department, subtenant, and concessionaire at any time operated in the Premises. Lessor and its agents and employees shall have the right at any and all reasonable times, during regular business hours, to examine, inspect or audit all of the books and records of Lessee, including any sales tax reports pertaining to the business of Lessee conducted in, upon, and/or from the Premises, for the purpose of investigating and verifying the accuracy of any statement of Gross Sales. Lessee shall cooperate fully in connection with such examination or audit. Lessee shall keep all such records for five (5) years. All records shall be maintained by Lessee on the Premises or at its principal place of business in the _____, Alaska area. The Lessor may once in any calendar year cause an audit of the business of Lessee for any or all years since the date Lessee opened for business in the Premises, which audit shall be made by an accountant of Lessor's selection, and if the statement of Gross Sales previously made to Lessor shall be found to be inaccurate, then there shall be an adjustment in Percentage Rent and Lessee shall pay to the Lessor on demand such sums as may be necessary to settle in full the accurate amount of Percentage Rent that should have been paid to Lessor for the period or periods covered by such inaccurate statement or statements. If the audit discloses an inaccuracy of greater than ___ percent (___%) with respect to the amount of Gross Sales reported by Lessee for the period of such report, then Lessee shall immediately pay to Lessor the cost of such audit; otherwise, the cost of such audit shall be shared equally between Lessor and Lessee. If such audit discloses any willful or substantial inaccuracies, then Lessee shall pay for the audit. Lessor shall have the right to terminate this Lease upon notice to Lessee if more than two (2) Gross Sales audits during the Term reveal understatements of Gross Sales of Lessee by more than Three percent (3%) or if any such audit discloses any willful or intentional inaccuracies in Lessee's calculation of Gross Sales.

No Partnership. It is understood and agreed that the fixing of a portion of the rental on a percentage of Lessee's sales does not create a partnership or joint venture relationship between the parties hereto; that Lessor assumes no liability hereunder for the operation of the business of Lessee; and that the provisions with reference to rents herein are for the sole purpose of fixing and determining the total rents to be paid by Lessee to Lessor.

Waiver. The acceptance by Lessor of any monies paid to Lessor by Lessee pursuant to this Section 3.2.4 shall not be an admission by Lessor of the accuracy of any monthly or annual

statement furnished by Lessee during the month or year reported therein, or of the sufficiency of the amount of any such payment.

Place of Payment. Rent, including Percentage Rent, shall be payable to Lessor at the original or changed address of Lessor as provided for in Article 14 hereof or to such other person at such address as Lessor may designate from time to time in writing. All payments shall reference the MHT agreement number which appears on the first page hereof.

Guaranty. Contemporaneously upon execution of this Lease by Lessee, Lessee shall cause _____ (the “**Guarantor**“) to execute and deliver to Lessor a guaranty in the form of Exhibit C attached hereto and incorporated herein by this reference (the “**Guaranty**“).

Net Worth. As additional security during the entire term of this Lease, Lessee will be required to maintain a minimum net worth of \$1,000,000, which amount shall be adjusted as described in Section 6.2 of this Lease. Evidence of such security shall be provided to the Lessor at execution of this Lease and annually on every anniversary thereafter. Lessee may also be required to furnish an additional surety where a greater amount is justified by a change in the use and degree of risk involved in the types of operations being or proposed to be carried out under this Lease. If for any reason its net worth drops below the required minimum set forth above, Lessee must immediately notify Lessor. In that event, Lessor may immediately require surety in the form of a bond or other commercially available means of surety (in an amount not less than the minimum net worth Lessee is then required to maintain) from Lessee to assure compliance with this agreement in its entirety and to maintain a level of security in line with the provisions of this paragraph.

IMPOSITIONS AND OPERATING EXPENSES

Definition of Impositions. The term “**Impositions**“ shall mean all sales taxes, real estate taxes (or payments in lieu of taxes or similar charges), water and sewer charges, charges for public utilities, local improvement or special benefit district (or similar utility) assessments directly benefiting the Premises, license and permit fees or other charges which shall or may during the Lease Term be assessed, levied, charged, confirmed or imposed by any public authority upon or accrue or become due or payable out of or on account of or become a lien on the Premises or any part thereof, or the Improvements now or hereafter constructed or the use or occupancy of the Premises or Improvements or portion of either, including changes to such amounts caused by any change in the fee simple owner of the Property. The term “**Impositions**” shall not include any income tax, estate, succession, inheritance or transfer tax, gross receipts tax, business and occupation tax, withholding, profit or revenue tax or charge levied upon the rents payable to Lessor under the terms of this Lease (except to the extent such tax is imposed on Lessor in lieu of real property ad valorem taxes on the Premises), any corporate franchise tax or corporate license fee that may be levied upon or against Lessor or any successor corporate Lessor or any similar obligations assessed against or imposed on Lessor by any governmental body.

Lessee's Payment of Impositions. Throughout the Lease Term, Lessee shall continue to pay when due (subject to 0 below), all Impositions assessed against the Premises, except that:

Proration of Impositions All Impositions that are payable by Lessee pursuant hereto for the fiscal year or tax year in which the Lease Term commences, as well as during the year in which the Lease Term expires shall be prorated on an actual per diem basis so that Lessee and Lessor each shall pay their respective proportionate share of such Impositions that are payable in the year in which the Lease Term commences and in the year in which the Lease Term expires; and

Payment of Impositions in Installments Where any Imposition that Lessee is obligated to pay in whole or in part is permitted by law to be paid in installments, Lessee may pay such Imposition in installments as and when such installments become due, and Lessee shall only be obligated to pay those installments to the extent due and payable during the Lease Term, prorated as provided above if necessary.

Tax Contests. Either Lessee or Lessor may contest the validity or amount (including the assessed valuation upon the Premises) of any Imposition for which either is responsible in whole or in part, and which such party in good faith believes is excessive, improper or invalid. In such event, the payment thereof may be deferred during the pendency of such contest, if diligently prosecuted but in no event shall Lessee allow a lien for any unpaid taxes which it is contesting attach to the Premises or the Improvements. Each party agrees to join at the other's request in any such contest to the extent such joinder is prerequisite to such prosecution under statute, regulation or administrative practice; provided that for contests initiated by Lessee, Lessor may require Lessee to pay Lessor's costs incurred in participating in such contest including but not limited to Lessor's attorneys' fees. In connection with a judicial or administrative challenge to any assessment, Lessee may take advantage of any stay in collection available under statute, regulation, or court or administrative order or rules. Nothing herein contained, however, shall be so construed as to allow such items to remain unpaid for such length of time as shall permit the Premises, or any part thereof, to be sold by any governmental, city or municipal authority for the nonpayment of the same. Within ten (10) days after the amount of such contested item is finally determined to be due, the party liable for such Imposition shall pay the amounts so determined, together with the penalties, interest and expenses associated with such contest.

Operating Expenses. Except as otherwise expressly stated in this Lease, Lessee shall pay or cause to be paid all costs of any kind relating to the use, operation, maintenance, repair and replacement of the Improvements, including without limitation all charges for gas, electricity, light, heat, power, water, sewer, telephone, cable communications and other services used, rendered or supplied upon or in connection with the Premises, or levied or charged against the Premises beginning on the Commencement Date and continuing throughout the Lease Term.

INSURANCE

Maintenance of Insurance Policies. Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, from and after the Commencement Date (or

such earlier date as specified below) the insurance described in this Article 5 (or its then available equivalent), which insurance shall be subject to Lessor's reasonable review and approval, and shall name Lessor as an additional insured. Policy limits shall be reviewed annually and may be adjusted, considering levels of inflation, risk of loss, premium expenses, results of the most current Appraisal under Article 3 (which must set forth Land Value and the value of the Improvements separately), and other relevant factors subject to Lessor's written consent; provided, however, that the amount of property damage insurance that Lessee shall maintain with respect to the Premises shall never be less than the full replacement cost of the Improvements as required in accordance with Section 0 hereof.

Types of Required Insurance. Lessee shall procure and maintain the following:

Commercial General Liability Insurance. From and after the Commencement Date, commercial general liability insurance covering all claims with respect to injuries or damages to persons or property sustained in, on or about the Premises and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, which shall contain a "breach of warranty" and a cross-liability clause, with limits of liability (adjusted as provided in 0 above) no less than Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate.

Property Damage Insurance. Property damage insurance covering the Property in an amount equal to at least one hundred percent (100%) of the new replacement cost of all such property (or such lesser amount as Lessor may approve in writing). Such insurance shall: (a) be provided on a broad-form property coverage as may be customary for like properties in the vicinity of the Premises from time to time during the term of this Lease; (b) cover explosion of steam and pressure boilers and similar apparatus located on the Premises; (c) include earthquake coverage if available at commercially reasonable rates; (d) be subject in each case to deductibles no greater than those customary in the locality of the Premises for like properties, with the determination as to whether a deductible is customary to be made by Lessor in Lessor's sole and absolute discretion; (e) include coverage for demolition and increased cost of construction due to operation of building laws; (f) provide for replacement cost building valuation; (g) waive any coinsurance penalties; (h) not be required during periods of time related to initial construction or restorations when Builder's Risk insurance described in Section 5.2.3 is in force, and (i) include such other endorsements and coverage as Lessor reasonably requires from time to time.

Builder's Risk Insurance. During construction of the Improvements on the Premises and during any subsequent restorations, alterations or changes in the Improvements or Premises that may be made by Lessee or a subtenant, builder's risk insurance upon the entire work in the amount of one hundred percent (100%) replacement value thereof against "all risks" of physical loss or damage to the property insured, including earthquake and flood.

Workers' Compensation Insurance. Workers' compensation and employer's liability insurance in respect of any work by employees of Lessee on or about the Premises, as required under applicable law.

Reserved. [Reserved for inclusion of insurance required due to specific uses of Property by Lessee, i.e. pollution liability and the like.]

Terms of Insurance. The policies required under 0 shall name Lessor as additional insured (except for worker's compensation insurance) and/or loss payee, as appropriate, and Lessee shall provide to Lessor certificates of insurance and copies of policies obtained by Lessee hereunder promptly upon the request of Lessor. All policies of insurance required under 0 shall: (a) be written as primary policies not contributing with and not in excess of coverage that Lessor may carry; (b) contain an endorsement providing that such insurance may not be materially changed or amended with respect to Lessor except after thirty (30) days' prior written notice from the insurer to Lessor, and may not be cancelled with respect to Lessor except after thirty (30) days' prior written notice from the insurer to Lessor; (c) expressly provide, if available, that Lessor shall not be required to give notice of accidents or claims and that Lessor shall have no liability for premiums; and (d) be written by insurance companies having a Best's rating of "A" or equivalent, which insurance companies shall otherwise be reasonably acceptable to Lessor.

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

Insurance Proceeds. In the event of damage to or destruction of the Improvements or the Premises to be covered by the insurance described in Section 5.2, the proceeds of such insurance shall be disposed of as set forth in Article 6.

Waiver of Subrogation. Lessee hereby releases Lessor from any and all liability or responsibility (to Lessor or anyone claiming through or under Lessor by way of subrogation or otherwise) for any loss or damage to real or personal property on the Premises caused by fire or any other insured peril, even if such fire or other casualty shall have been caused by the fault or negligence of Lessor or anyone for whom such party may be responsible. Lessee shall obtain insurance policies with such a waiver of subrogation and with a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the Lessee to recover thereunder. This 0 is intended, and shall be deemed, to apply only with respect to the property insurance required under Section 0 or any similar insurance held by Lessor.

Indemnification. Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees and disbursements) arising or alleged to arise from: (a) injury to person or to property occurring within or about the Premises or the Improvements; (b) Lessee's, its employees', agents', invitees' or subtenant's acts or omissions relating to the use or occupancy of the Premises or the Improvements; (c) a breach or default by Lessee in the performance of any of its obligations under this Lease; or (d) Lessee's violation of any applicable law or statute relating to the Premises or the Improvements or their use or occupation; provided, however, that Lessor shall not be indemnified for damages, liabilities, judgments, actions, claims, attorneys' fees, consultants' fees, payments, costs and expenses to the extent arising from the grossly negligent, reckless or intentionally tortious acts or intentionally

tortious omissions of Lessor, its employees or agents in breach of Lessor's obligations under this Lease.

Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, agents, contractors, invitees, subtenants or any other person in or about the Premises or the Improvements. Except for grossly negligent, reckless or intentionally tortious acts or omissions of Lessor or its employees or agents, Lessor shall not be liable for injury to the person of Lessee, Lessee's employees, agents, contractors, invitees or subtenants, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, whether said damage or injury results from conditions arising from the Premises or from other sources or places. Lessor shall not be liable for any damages arising from any act or omission of any subtenant of Lessee or any other third party.

DAMAGE, DESTRUCTION OF IMPROVEMENTS; PERIODIC ADJUSTMENTS

Lessee's Obligation to Repair. In the event of damage to or destruction of the Improvements or the Premises:

Insured Damage. If (i) the cost of repairing or reconstructing the Improvements to substantially the same condition as existed prior to such damage or destruction is not in excess of ninety percent (90%) of the replacement cost of the Improvements and adequate funds are available from the insurance proceeds required to be carried by Lessee pursuant to Section 5.2 to effect such repair or restoration, and (ii) such repairs or reconstruction of any such damage or destruction can be made under existing laws, ordinances, statutes or regulations of any governmental authorities applicable thereto to return the Improvements to substantially the same condition as the Improvements were in prior to being damaged or destroyed, then Lessee shall repair and restore the Improvements so damaged or destroyed to substantially the same condition prior to said damage or destruction with such alterations thereto as Lessee shall reasonably determine prudent or valuable under the circumstances, including any changes required to comply with applicable laws, in compliance with the then prevailing construction practices applicable to the Premises (the "**Restoration**"). Lessee will advise Lessor and the Leasehold Mortgagee under any Leasehold Mortgage which meets the requirements of Article 11 of this Lease, of Lessee's determination of whether the preceding conditions can be met and whether such Restoration of the Improvements can proceed on or before the date which is ninety (90) days after the date of destruction. If the foregoing conditions cannot be met, such destruction shall be treated as Uninsured Damage in accordance with the provisions of Section 6.1.2. Destruction that is required to be restored by Lessee in accordance with the terms of this Section 6.1.1 shall not terminate this Lease and there shall be no abatement of Rent otherwise payable hereunder. The insurance proceeds shall be payable to Lessor, or if there is a Leasehold Mortgage which meets the requirements of Article 11 of this Lease, Leasehold Mortgagee, in trust, who shall disburse same to Lessee from time to time as the Restoration progresses as hereinafter set forth, provided, however, that Lessee shall complete such Restoration as soon as reasonably practical, but in any event not longer than that period which is eighteen (18) months from the date of the initial disbursement or twenty-four (24) months after the date of such destruction, whichever occurs first.

If the insurance proceeds are to be used for the Restoration, Lessee shall, prior to disbursement of any insurance proceeds for any work in connection with the Restoration (the “**Work**”) deliver or furnish to Lessor and Leasehold Mortgagee, if applicable, (i) complete plans and specifications for the Work that (A) have been approved by all governmental authorities whose approval is required, (B) bear the stamped approval of a licensed architect or architect reasonably satisfactory to Lessor and Leasehold Mortgagee, if applicable (the “**Architect**”), if such an architect is reasonably required given the scope and nature of the Work, and (C) are accompanied by Architect’s estimate of the total cost of the restoration. Such plans and specifications shall be subject to approval by Lessor and Leasehold Mortgagee, if applicable, which approval shall not be unreasonably withheld, conditioned or delayed (the “**Approved Plans and Specifications**”) (“**Approved Plans and Specifications**”); (ii) the amount of additional money, if any, which, as reasonably determined by Lessor and Leasehold Mortgagee, if applicable, will be sufficient when added to the net insurance proceeds to pay the entire cost of the Restoration (all money as held by Lessor or Leasehold Mortgagee, if applicable, is referred to herein as the “**Restoration Funds**”); (iii) copies of all permits and approvals required by law in connection with the commencement and conduct of the Restoration and (iv) a contract for construction executed by Lessee and a contractor reasonably satisfactory to Lessor and Leasehold Mortgagee, if applicable (“**Contractor**”) (which construction contract shall include provisions for customary retention for performance of the Work and a payment and performance bond). After commencing the Work, Lessee shall perform or cause the Contractor to perform the Work diligently and in good faith in accordance with the Approved Plans and Specifications.

Leasehold Mortgagee, or, if there is then no Leasehold Mortgagee, Lessor, shall disburse the Restoration Funds in increments to Lessee or as Lessee may direct, from time to time as the Work progresses, to pay (or reimburse Lessee for) the costs of the Restoration, but subject to the following conditions, any of which Lessor, and Leasehold Mortgagee if applicable, may waive in its sole discretion:

Lessor and Leasehold Mortgagee, if applicable, shall make such payments only upon not less than ten (10) days prior written notice from Lessee to Lessor and Leasehold Mortgagee, if applicable, and Lessee’s delivery to Lessor and Leasehold Mortgagee, if applicable, of (A) Lessee’s written request for payment accompanied by a certificate of Architect in form, scope and substance reasonably satisfactory to Lessor and Leasehold Mortgagee, if applicable, which states that all of the Work completed to that date has been done in compliance with the Approved Plans and Specifications, if any, and in accordance with all applicable laws, that the amount requested has been paid or is then due and payable and is properly part of the cost of the Restoration and that when added to all sums, if any, previously paid out by Lessor, or Leasehold Mortgagee, as applicable, the requested amount does not exceed the value of the Work done to the date of such certificate; (B) evidence reasonably satisfactory to Lessor and Leasehold Mortgagee, if applicable, that there are no construction or similar liens for labor or materials supplied in connection with the Work to date or that any such liens have been adequately provided for to their reasonable satisfaction; and (C) evidence reasonably satisfactory to Lessor and Leasehold Mortgagee, if applicable, that the balance of the Restoration Funds remaining after making the payments shall be sufficient to pay the balance of the cost of the Restoration not completed to date (given in such reasonable detail as Lessor and Leasehold Mortgagee, if applicable, may require). In no event shall Lessor and Leasehold Mortgagee, if applicable, be required to approve

disbursement of insurance proceeds for materials not incorporated into Improvements then located on the Premises;

Lessee shall provide Lessor and Leasehold Mortgagee, if applicable, waivers of liens reasonably satisfactory to Lessor and Leasehold Mortgagee, if applicable, covering that part of the Work previously paid for, if any, and by a search prepared by a title company or by other evidence reasonably satisfactory to Lessor and Leasehold Mortgagee, if applicable, that no construction or other liens or instruments for the retention of title in respect of any part of the Work have been filed against the Premises or the Improvements and not discharged or bonded of record;

After the Restoration has been completed, Lessee shall provide Lessor and Leasehold Mortgagee, if applicable, with a copy of any certificate of occupancy or other certificates required by law to legally occupy and use the Improvements which were the subject of the Restoration for the Permitted Use.

Upon receipt by Lessor and Leasehold Mortgagee, if applicable, of the certificate of occupancy for the Improvements which were the subject of the Restoration, a title company search or such other customary evidence requested by Lessor or Leasehold Mortgagee, as applicable, that the Restoration has been completed and the costs thereof paid in full and satisfactory evidence that no construction or similar liens for labor or material supplied in connection with the Restoration are outstanding against the Premises or the Improvements, any remaining Restoration Funds then held by Lessor or Leasehold Mortgagee, as applicable, if there is at that time no default by Lessee of its covenants or obligations under this Lease shall be paid to Lessee, or if the Leasehold Mortgage so provides, to Leasehold Mortgagee.

If within ninety (90) days of such damage or destruction to the Premises or any Improvements requiring Restoration, Lessee fails to submit to Lessor and Leasehold Mortgagee, if applicable, and receive the approval of plans and specifications or fails to deposit with Lessor or Leasehold Mortgagee, as applicable, the additional amount necessary to accomplish the Restoration or after such plans and specifications are approved by all governmental authorities and Lessor and Leasehold Mortgagee, if applicable, Lessee fails to commence promptly or diligently continue to completion the Restoration or Lessee becomes delinquent in payment to mechanics, materialmen or others for the costs incurred in connection with the Restoration, then the Lessor or Leasehold Mortgagee, as applicable, may give Lessee written notice of such failure or neglect, and if such failure or neglect continues for twenty (20) days after such notice, then Lessor, in addition to all other rights which the Lessor may have, may enter upon the Premises, provide labor and materials, cause the performance of any contract, and take such other action as the Lessor may deem advisable to complete the Restoration, in which event Lessor shall be entitled to reimbursement of its costs and expenses out of such insurance proceeds. All costs and expenses incurred by the Lessor in carrying out such work for which Lessor is not reimbursed out of insurance proceeds shall be borne by Lessee and shall be payable by Lessee to Lessor upon demand as additional rent, which demand may be made by Lessor from time to time as such costs and expense are incurred, in addition to any or all other damages to which the Lessor shall be entitled hereunder.

Uninsured Damage. If the cost of repairing or reconstructing said damage or destruction to the Improvements to substantially the same condition as existed prior to such damage

or destruction is in excess of ninety percent (90%) of the replacement cost of such Improvements as provided in Section 6.1.1, or if such cost is less than ninety percent (90%) of the replacement cost of such Improvements, but available insurance proceeds are not sufficient to effect the Restoration, or if the Restoration cannot be made under existing laws, ordinances, statutes or regulations of any governmental authority applicable thereto (and cannot be so made with minor and nonmaterial changes to the former condition and form of the Improvements damaged or destroyed; or with such other changes as may be proposed by Lessee which do not detract from the value or the Improvements and which are approved by Lessor, acting reasonably), and, in any such event, the parties hereto are unable during a period of ninety (90) days after the date of such damage or destruction to agree in writing on a construction program, then Lessee may decide in Lessee's sole discretion whether or not to rebuild or repair such damage or destruction. If Lessee elects to rebuild or repair such damages or destruction, Lessee shall (i) give notice to that effect to Lessor and the Leasehold Mortgagee within ninety (90) days after the date of such damage or destruction; and (ii) demonstrate to the reasonable satisfaction of Lessor and the Leasehold Mortgagee, if applicable, that it can deposit with Lessor or Leasehold Mortgagee, as applicable, the funds required or that will be required under the provisions of Section 6.1.1 to effect such Restoration, whereupon the provisions of said Section 6.1.1 shall be fully applicable to such damage or destruction. However, if Lessee does not elect to undertake such Restoration, Lessee shall (i) remove any debris, foundations and similar materials from the portion of the Premises upon which the damage or destruction occurred and return such portion of the Premises to its condition on the Commencement Date (or such other condition as may be approved by Lessor if so requested by Lessee), (ii) restore any utilities and other infrastructure portions of the Improvements to substantially the same condition as existed immediately prior to such damage or destruction, (iii) make such adjustments or additions so that the Premises are in a condition acceptable to Lessor, and (iv) pay the Leasehold Mortgage in full. Upon Lessee's completion of the immediately preceding requirements set forth in (i) – (iv), the remaining insurance proceeds shall then be divided between the Lessor and Lessee as follows: (x) Lessor shall receive a portion equal to the remaining insurance proceeds times the number of years (including fractional years) of the Lease Term elapsed divided by the total number of years in the Lease Term, and (y) Lessee shall receive a portion equal to the remaining insurance proceeds times the number of years (including fractional years) remaining in the Lease Term divided by the total numbers of years in the Lease Term. By way of example, if the remaining insurance proceeds after the calculations identified in (i) through (iv) equals \$100,000, the Lease Commencement Date is January 1, 2003, the Termination Date is December 31, 2023, and the date upon the damage or destruction occurred is July 1, 2018, then the share of the Lessor and the Lessee shall be calculated as:

$$\$100,000 \times [15.5/20] = \$77,500 \text{ (Lessor)}$$

$$\$100,000 \times [4.5/20] = \$22,500 \text{ (Lessee)}$$

Unexercised options to extend shall not be included in the foregoing calculations. Options for which a timely Extension Notice has been sent and which had commenced prior to the date of the damage or destruction shall be included when calculating the Lease Term for purposes of determining the Lessor's and Lessee's portion of the remaining insurance proceeds under (x) and (y). By way of example, if, if the remaining insurance proceeds after the calculations identified in (i) through (iv) equals \$100,000, the Lease Commencement Date is January 1, 2003, prior to the date of the damage or destruction, the Lessee timely exercised the first of two ten year options to extend the Lease Term, the Termination Date (taking into account the exercise of the option) is

December 31, 2033, and the date upon which the damage or destruction occurred is January 1, 2027, then the share of the Lessor and Lessee shall be calculated as:

$$\$100,000 \times [24/30] = \$80,000 \text{ (Lessor)}$$

$$\$100,000 \times [6/30] = \$20,000 \text{ (Lessee)}$$

Application. The parties acknowledge that in the event the approved Plans provide for the Lessee to construct several separate buildings on the Premises, these damage and destruction provisions are to apply to each building separately so that the determination of the availability of insurance proceeds and the extent of the damage shall be made as to each building independently. All references to “**Term**” in this Article 6 shall mean the term of this Lease then in effect but excluding the term of any Extension Options not exercised prior to the date of destruction.

Catastrophic Loss. In the event of damage or destruction to the Improvements or the Premises such that, as to all such Improvements collectively, the provisions of Section 6.1.2 are applicable, Lessee shall have the option to terminate this Lease as of the date of such damage or destruction. Lessee must elect to terminate this Lease within ninety (90) days after the date of such damage and destruction, which termination shall be retroactive to the date of such damage or destruction. Except as provided herein for a catastrophic loss, Lessee may not terminate this Lease as a result of damage or destruction to the Improvements thereon. Notwithstanding such termination, Lessee shall be obligated to comply with the provisions of Section 6.1.2 above as if Lessee had elected not to rebuild or repair such damage or destruction, and any insurance proceeds shall be allocated between the parties as provided in Section 6.1.2.

Prompt Repair. If Lessee, pursuant to the terms hereof, elects to repair, replace, reconstruct or rebuild any Improvements on the Premises as hereinabove provided, the same shall be effected at Lessee’s cost and expense (which may be paid from all available insurance proceeds), and Lessee shall diligently commence and continuously carry out such repair, replacement, reconstruction or rebuilding, to full completion as soon as possible, except to the extent of delays due to strikes, lockouts, shortages of labor or materials after due diligence in obtaining the same, governmental restrictions, fire, casualty, riot, act of God, act of the public enemy, or other causes beyond the reasonable control of Lessee after the exercise of due diligence, including diligence in contracting, and the exercise of rights under contracts, with contractors and suppliers.

No Lease Termination. Except as provided in Section 6.1.4 above or Section 6.1.7 below, damage to or destruction of any Improvements shall not permit Lessee to terminate this Lease, and there shall be no abatement of Rent payable under this Lease.

Damage During Last Five (5) Years of Term. If there occurs during the last five (5) Years of the Term damage or destruction to the Improvements or the Premises and the costs of repairing, restoring, replacing or rebuilding the same exceed twenty-five percent (25%) of the new replacement cost of all Improvements on the Premises, then Lessee may elect to terminate this Lease and, in such event, Lessee shall give notice to Lessor of its election within ninety (90) days after the date of such damage or destruction, and the Term shall thereupon terminate as of the date of such notice. Notwithstanding such termination, Lessee shall be obligated to comply with the provision of Section 6.1.2 above as if Lessee elected not to rebuild or repair such damage or destruction and upon

completion of such work, any insurance proceeds shall be allocated between Lessor and Lessee in accordance with the provisions of Section 6.1.2.

Periodic Adjustments. Whenever periodic adjustments are provided for in this Lease for obligations other than Rent, such adjustments shall be made based on the percentage increase, if any, in the last CPI published prior to the Commencement Date (or prior adjustment date, as applicable) and the last CPI published prior to the adjustment date; subject to further adjustment considering levels of inflation, risk of loss, premium expenses, results of the most current Appraisal under Article 3, and other relevant factors subject to Lessor’s written consent. In addition, all amounts set forth in this Lease (but excluding Rent and amounts adjusted as set forth in the first sentence of this Section 6.2) shall be adjusted as of the first day of the eleventh (11th) Lease Year and every ten years thereafter (each a “**Decade Adjustment Date**”) by an amount equal to the percentage increase, if any, in the last CPI published prior to the Commencement Date (or prior Decade Adjustment Date, as applicable) and the last CPI published prior to such Decade Adjustment Date.

REPAIRS, MAINTENANCE AND ALTERATIONS

Repairs and Maintenance to Premises. During the Lease Term, Lessee shall keep the Improvements hereafter situated upon the Premises, including, without limitation, the structural and exterior portions, roofing and covering material, foundations, exterior walls, plumbing, electrical systems, heating and ventilation systems, in good and safe condition and in good order and repair (ordinary wear and tear, and casualty loss, excepted), and Lessee shall conform to and comply with all valid ordinances, regulations or laws affecting the Premises or any Improvements on the Premises or the use thereof. Lessor covenants and agrees that Lessee shall have the right to contest, at Lessee’s sole cost and expense, any asserted or alleged violation of such ordinances, regulations or laws of any kind or character and by whomsoever asserted or alleged in the name of Lessee or Lessor, as Lessee may deem appropriate.

Lessor shall have no obligation whatsoever to keep, maintain, alter, remodel, improve, repair, decorate or paint any Improvements hereafter situated upon the Premises. It is the intention of the parties that Lessee and not Lessor shall have the full responsibility and obligation for the repair and maintenance of the Improvements hereafter situated upon the Premises and Lessee waives, to the full extent allowed by law, any right or remedy against Lessor based upon the condition of the Improvements hereafter situated upon the Premises or any failure by Lessor or Lessee to repair or maintain the Improvements.

Alterations. In addition to the construction of the Improvements as described in Article 0, Lessee shall have the right, from time to time, to make additions, alterations and changes (hereinafter sometimes referred to collectively as “material alterations”) in or to the Improvements (including, without limitation, parking areas, sidewalks, roof top and/or tower telecommunications, and landscaping). Such material alterations reasonably expected to cost in excess of \$_____ (labor and materials) in the aggregate per rolling twelve (12) month period shall require the prior written consent of the Lessor as described in Article 2, and Lessee shall comply with all requirements of Section 2.1 and the subsections thereof unless Lessor provides a

written waiver, in advance, of Lessee's compliance with any such requirements. Lessee must submit a written request to Lessor including schematic drawings of the areas of the Improvements as modified by the material alterations, specifications, and a written statement from the architect confirming that the Improvements will be in the same or better class upon completion of the proposed material alterations. Lessee shall keep Lessor advised of all changes to the material alterations. As used herein, "material alterations" shall exclude, regardless of cost, changes of interior nonstructural demising walls, painting, removal or installation of carpeting or floor covering or other improvements or alterations that do not affect the integrity of the roof or structural elements of the Improvements. All material alterations shall be at Lessee's sole cost and expense. Alterations that are excluded from the definition of "material alterations" shall also require compliance with the provisions of Section 2.1 and subsections thereof; provided, however, that Lessor shall not require Lessee to (i) submit Plans for pre-approval as required by Section 2.2, (ii) comply with Section 2.3, or (iii) provide an as-built survey upon completion if such alterations are performed entirely within the interior of any structures that comprise part of the Improvements.

ENVIRONMENTAL PROVISIONS

Benchmark Environmental Report. Lessor has provided Lessee with a baseline environmental assessment consisting of a Phase I Environmental Site Assessment ("ESA") dated _____, prepared by _____ and, if the ESA determined that Recognized Environmental Conditions ("RECs") were present, a limited Phase II ESA dated _____ prepared by _____ addressing the RECs (collectively, the "Initial Reports"). The Initial Reports shall serve as a benchmark for the condition of the property as of the Commencement Date and a reference for the Clearance Assessment in Section 8.3. Lessee has also inspected the Premises and agrees that there is no visible evidence of conditions on the Premises as of the Commencement Date, which differ from the conditions reported in the Initial Reports except as set forth on Schedule 8.1. Lessee expressly accepts the Premises and acknowledges that notwithstanding the provisions of the Initial Reports, the Premises may contain Hazardous Substances not mentioned in the Initial Reports and Lessee agrees to perform additional testing of potentially impacted media prior to construction in any untested areas where it plans to drill, excavate or disturb soils.

Hazardous Substances. Lessee shall comply with all federal, state and local laws, ordinances, rules, regulations or requirements relating to the environment, health and safety now existing and as may hereafter be enacted ("**Environmental Laws**") and including but not limited to those such as the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6901 et seq.); Alaska Statute 46.03.822; and others relating to the handling, use, generation, accumulation, storage, transportation, disposal, treatment or sale of Hazardous Substances (as defined in this Section 8.2) in, on or under the Premises or the Improvements.

Lessee shall give notice to Lessor promptly after learning of any release of any Hazardous Substance on or at the Premises, the Improvements or surrounding environment. This notice shall include a description of measures taken or proposed to be taken by Lessee to obtain and/or remedy the release and any resulting damage to property, persons or the environment. At Lessee's own

expense, Lessee shall promptly take all steps necessary to contain and remedy any release of Hazardous Substances in, on or under the Premises, the Improvements or surrounding environment, and all resultant damage or injury to property, persons and the environment (the “**Response Action**”). Lessee shall be solely responsible for coordinating the Response Action with the Alaska Department of Environmental Conservation and/or any other federal, state, or local agency with jurisdiction (collectively, the “**Regulator**”). Lessee shall provide Lessor with not less than seven days to review and comment on any submittal to a Regulator made as part of a Response Action prior to submission, and shall provide Lessor with copies of any communication with the Regulator arising from or related to a Response Action.

At any time, and from time to time, prior to the expiration of the Lease, Lessor shall have the right, but not any obligation, to conduct appropriate tests of the Premises or any portion thereof to determine whether contamination has occurred due to the acts or omissions of Lessee provided, however, that (a) all such testing shall be conducted at Lessor’s sole cost and expense except as set forth in the next sentence, (b) Lessor shall provide Lessee with copies of the results of any such testing, (c) Lessor shall not perform any intrusive or destructive testing of the Premises without first obtaining Lessee’s prior written consent and (d) Lessor shall promptly repair any physical damage caused by such testing and restore the Property to substantially the same physical condition it was in immediately prior to such testing. Lessee shall pay all reasonable costs of such tests if such tests reveal that Hazardous Substances exist in the Premises in violation of Environmental Laws or that contamination of the Premises has occurred.

At least 10 days prior to termination of this Lease, Lessee shall remove all Hazardous Substances which have been stored, or released onto or from, the area to be vacated and shall decontaminate vacated areas in the Premises and Improvements in which Hazardous Substances were generated, stored, accumulated, released, or otherwise present. If Hazardous Substances were stored in tanks or containers, Lessee shall decommission such equipment. Documentation of this removal and decommissioning shall be included in the Clearance Assessment.

Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, demands, damages, costs, fees, penalties, and charges asserted against, imposed upon, and incurred by Lessor (including fees and costs of attorneys, consultants, laboratory testing charges and personal injury claims) as a result of (i) the handling, use, generation, accumulation, storage, transportation, disposal, treatment and/or sale of Hazardous Substances at or from the Premises or Improvements; (ii) the release of any Hazardous Substance on, at or from the Premises or Improvements which is attributable to any act or omission of Lessee, or its employees, agents, invitees or subtenants; (iii) the failure of Lessee, or its employees, agents, invitees or subtenants to comply with any Environmental Laws; (iv) Lessee’s failure to remove all Hazardous Substances or decontaminate, decommission, or, if appropriate, sterilize all areas in the Premises in which any of Hazardous Substances were generated, stored, handled, accumulated, or released; and (v) Lessee’s failure to comply with any other requirement of this Section 8.2.

As used in this Lease, a “**Hazardous Substance**” shall mean any substance, waste or material that is or becomes designated as, or regulated as hazardous, dangerous, toxic, infectious, biohazardous, radioactive, dangerous or harmful under any Environmental Laws.

Environmental Report Upon Expiration or Termination. Prior to Lessee's surrender of possession of any part of the Property, or the expiration or termination of this Lease, and after completion of any work required in Section 8.2, Lessee shall provide Lessor with copies of such environmental reports as may be requested by Lessor (dated as of a date acceptable to Lessor) and as are standard for real estate development in the city in which the Property is located as necessary for Lessor to determine that the Property does not contain any Hazardous Substances (as such term is defined under applicable Environmental Laws then in effect) other than those, if any, that were identified in the Initial Reports. If such new reports indicate the presence of Hazardous Substances, then Lessee shall also provide Lessor with (a) a clearance assessment addressing any potential releases of Hazardous Substances handled by the Lessee or any of its invitees on the Premises during the term of the Lease to the workplace, soils, sewers, drywells, surface water, or groundwater, and any threats to human health or the environment posed by Lessee's operations or the Improvements (the "**Clearance Assessment**"); the scope of the Clearance Assessment must be approved by Lessor, such approval not to be unreasonably withheld, and will include provisions complying with the standards for Phase II ESA's as specified by the ASTM standard in effect at the time or any successor standards published by ASTM International (formerly known as the American Society for Testing and Materials) or any successor organization (or, if ASTM International and its successors no longer exist, a similar entity publishing similar standards) and any applicable standards for site assessment or remediation under the Environmental Laws then in effect; (b) written evidence of all appropriate governmental notifications that have been made or releases reported as may be required by laws in effect at that time, including laws pertaining to releases of Hazardous Substances and the surrender of the Property; and (c) a plan to address any further permit requirements or releases of Hazardous Substances which are Lessee's responsibility under Section 8.2. In addition, Lessee agrees to remain responsible after the surrender of the Premises for the remediation of any Hazardous Substances set forth in items (a) and (c) above that Lessee is otherwise responsible for pursuant to this Lease, to comply with any recommendations regarding such Hazardous Substances set forth in the Clearance Assessment, and to continue to pay rent until the Lessee provides evidence acceptable to Lessor that all Hazardous Substances, if any, then present on the Property are below reportable levels. Lessee's obligations under this Section and Section 8.2 shall survive the expiration or earlier termination of the Lease.

ASSIGNMENT AND SUBLETTING

Lessee's Right to Assign and Sublet. Subject to the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed, Lessee shall have the right to assign its interest in this Lease or to sublet all or part of the Premises to any other party if: (i) at the time of assignment or sublease Lessee is not in default under any of its obligations under this Lease; (ii) neither Lessee (except as expressly provided herein) nor any guarantor of this Lease shall be relieved from liability hereunder or under such guaranty; (iii) each proposed assignee or sublessee agrees in writing to be bound by and assume the terms of this Lease; and (iv) each proposed assignee or sublessee is, in Lessor's judgment, financially capable of performing Lessee's obligations under this Lease and is an experienced owner, operator and/or manager of projects similar in kind to the Improvements. Lessee shall provide Lessor with at least thirty (30) days prior written notice of any proposed assignment or sublease hereunder, including the identity of

the proposed assignee or subtenant. Lessee shall provide Lessor with such additional information as Lessor shall reasonably request regarding the proposed assignee or subtenant, its financial status and its experience. Lessor's consent to a sublease or assignment shall not relieve Lessee from full and primary liability under this Lease. All costs and fees reasonably incurred by Lessor in connection with reviewing any request by Lessee for Lessor's consent to or approval of any assignment, sublease, nondisturbance agreement or similar transaction contemplated under Article 9, including without limitation attorneys' fees, shall be reimbursed by Lessee to Lessor promptly upon demand. All of the following shall constitute assignments subject to this Article 9: (a) if Lessee is a corporation that is not publicly traded on a national exchange, then any transfer of this Lease by merger, consolidation or liquidation, or any direct, indirect or cumulative change in the ownership of, or power to vote more than twenty-five percent (25%) of Lessee's outstanding voting stock, shall constitute an assignment; (b) if Lessee is a partnership, then a change in twenty-five percent (25%) or more of the general partners in, or voting or decision-making control of, the partnership shall constitute an assignment; (c) if Lessee is a limited liability company, then a change in more than twenty-five percent (25%) of the membership interests therein or of the members thereof, if such change alters voting or decision-making control of the limited liability company, shall constitute an assignment; and (d) if Lessee is any other type of entity, then a change in the beneficial ownership of a majority of interests therein shall constitute an assignment. Any change in ownership of Lessee's parent of the type described in (a), (b), (c) or (d) above shall also constitute an assignment subject to this Article 9. These provisions shall apply to any single transaction or any series of related or unrelated transactions having the effect described.

Subtenant Leases; Nondisturbance. Lessee shall have the right to enter into subleases ("Subtenant Leases") for all or a portion of the Premises, on terms and in a form as determined by Lessee from time to time in its sole and absolute discretion; provided, however, that at all times Lessor shall have the right to review and approve all Subtenant Leases which approval: (i) shall not be unreasonably withheld or delayed, and (ii) shall be deemed denied if not given in a written notice delivered to Lessee within thirty (30) days after Lessor's receipt of Lessee's submittal or request for approval. All Subtenant Leases shall be in writing and expressly state that the subtenant's rights thereunder are subject to the terms and conditions of this Lease. The permitted uses under each such Subtenant Lease shall not conflict with the uses permitted under this Lease. At least once in every Lease Year, Lessee shall provide Lessor with a rent roll listing as of such date all Subtenant Leases and identifying the tenants, spaces leased, terms and basic rental rates, as applicable. Upon the request of Lessee or any Leasehold Mortgagee as provided in Article 11 hereof, Lessor shall within a reasonable time execute, acknowledge and deliver a nondisturbance agreement with such Leasehold Mortgagee and with any tenant under a Subtenant Lease that Lessor has otherwise reviewed and approved (which approval shall not be unreasonably withheld or delayed), confirming that in the event of termination of this Lease for any reason, such subtenant shall be entitled to continued occupancy in the Premises in accordance with its Subtenant Lease as long as: (a) such Subtenant Lease is not terminated in accordance with its terms (including termination for default upon expiration of all applicable periods to cure), and (b) such tenant agrees to attorn to Lessor under the applicable Subtenant Lease (including the payment of all rent and other charges without offset for prepayments previously made other than rent and other charges paid not more than one month in advance) and agrees not to effect the termination of the same due to any termination of this Lease. Notwithstanding the foregoing, such nondisturbance shall not apply to leases for building management purposes or to leases to affiliates of Lessee at rates and

terms other than those then prevailing in the market, and upon the termination or expiration of this Lease, such building management leases and below-market leases to affiliates of Lessee shall also terminate. In addition, no such nondisturbance shall obligate Lessor to undertake or complete any construction obligations or provide any allowances to be provided by Lessee under any Subtenant Lease.

No Right to Mortgage. In no event shall any tenant under a Subtenant Lease mortgage or grant a deed of trust against or otherwise encumber tenant's interest in any Subtenant Lease, the estate created by a Subtenant Lease or any portion of the Improvements.

Estoppel Certificates. Lessor and Lessee from time to time shall execute and deliver to each other or to any person whom the requesting party may reasonably designate, an estoppel certificate consisting of statements, if true, that: (a) this Lease is in full force and effect, with Rent paid through the date of the certificate; (b) this Lease has not been modified or amended (or setting forth all modifications and amendments); (c) to the best of such party's knowledge and belief, the other party is not then in default; and (d) such other matters as the requesting party may reasonably request.

DEFAULT

Events of Lessee Default. Each of the following shall be deemed an event of default by Lessee and a material breach of this Lease:

Failure to Pay Rent or Impositions. Failure by Lessee to pay any installment of Rent or to pay Impositions (to the extent Lessee is obligated to pay same), insurance premiums or other sums of money herein stipulated to be paid by Lessee if such failure shall continue for a period of thirty (30) days after the due date.

Lessee Failure to Perform. Failure by Lessee to perform or observe any other terms, covenants, conditions, agreements and provisions of this Lease if such failure shall continue for a period of thirty (30) days after notice thereof has been delivered to Lessee (provided that no notice shall be required in any event in which Lessor's ability to give notice is restricted by an applicable Law), except that if any such failure cannot reasonably be cured within such thirty (30) day period and Lessee has promptly commenced to cure such failure, then Lessor shall not have the right to terminate this Lease or Lessee's right to possession pursuant to 0 and/or 10.2.2 for so long as Lessee pursues in good faith and with continued due diligence the cure of such failure.

General Creditor's Assignment. A general assignment for the benefit of creditors by Lessee or any current guarantor of this Lease.

Bankruptcy The occurrence of any one or more of the following: (a) Lessee's filing of a petition under any chapter of the Bankruptcy Code, or under any federal, state or foreign bankruptcy statute now existing or hereafter enacted; (b) the filing of an involuntary petition under any chapter of the Bankruptcy Code, or under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted, or the filing of a petition for adjudication of

bankruptcy or for reorganization or rearrangement, by or against Lessee; or (c) the entry of an order for relief under any chapter of the Bankruptcy Code, or under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted.

Receiver. The appointment of a “custodian,” as such term is defined in the Bankruptcy Code (or of an equivalent thereto under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted), for Lessee, or the appointment of a trustee or receiver to take possession of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this Lease.

Judicial Seizure. The attachment, execution or other judicial seizure of all or substantially all of Lessee’s assets or the Premises, if such attachment or other seizure remains undismissed or undischarged for a period of thirty (30) days after the levy thereof.

Lessor Remedies for Lessee Default. If any event of default occurs hereunder, Lessor may, at any time thereafter prior to the curing thereof and without waiving any other rights hereunder, in addition to any other remedy which Lessor may have hereunder or by law or equity, either cumulatively or in the alternative, do one or more of the following:

Lessor’s Right to Lease. Subject to the provisions of Article 11 hereof with respect to the rights of any Leasehold Mortgagee, terminate this Lease by giving Lessee ten (10) days’ written notice thereof (with a copy of said notice to any Leasehold Mortgagee as provided in Article 11 hereof), in which event this Lease and the leasehold estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Article 0 hereof for the expiration of the Lease Term, and Lessor, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Premises, reserving Lessor’s right to seek damages.

Termination of Lessee’s Right to Possession. Subject to the provisions of Article 11 hereof with respect to the rights of any Leasehold Mortgagee, terminate Lessee’s right to possession of the Premises and enjoyment of the rents, issues and profits therefrom, without terminating this Lease or the leasehold estate created hereby, reenter and take possession of the Premises and remove all persons and property therefrom, with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for any breaches of covenants (including the payment of rent), then existing or thereafter occurring, and lease, manage and operate the Premises and collect the rents, issues and profits therefrom, all for the account of Lessor for application against and credit to the satisfaction of Lessee’s obligations hereunder the net rent thus received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing and operating the Premises). Lessor shall use reasonable good faith efforts to mitigate the injury, loss or damages accruing from any such default of Lessee.

Lessor’s Right to Cure Default. Cure any such default or any portion thereof for the account of and at the expense of Lessee either concurrently with, or at any time before or after, the exercise of any other remedy granted herein or by law, in which event all costs and expenses reasonably paid or incurred by Lessor in connection with the curing of such default shall be due and payable by Lessee to Lessor immediately.

Lessor's Right of Re-Entry. If Lessor exercises any of the remedies provided for in Section 10.2, after expiration of any required notice period, Lessee shall surrender possession and vacate the Premises immediately and deliver possession thereof to Lessor, and Lessor may then or at any time thereafter re-enter and take complete and peaceful possession of the Premises in accordance with applicable law.

Removal of Lessee's Personal Property. If Lessee fails to remove Lessee's personal property within thirty (30) days after receipt of written notice of the termination of this Lease, then Lessor may remove the same at Lessee's expense, or may treat such property as having been abandoned and, subject to the rights of any third parties, said property shall become the property of Lessor and Lessor may use, sell or otherwise dispose of all such property in such manner as Lessor deems reasonably advisable without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without relinquishing Lessor's right to Rent or any other right given to Landlord hereunder or by operation of law.

Interest and Fees. Unless otherwise specifically provided herein, any sum payable to Lessor hereunder which is not paid when due shall bear interest at the highest rate allowable under AS 45.45.010 (b) on all amounts past due from the date the same becomes due until paid.

A late payment fee of five percent (5%) of the amount due shall accrue for any payments due under this Lease not made within ten (10) days of the due date.

A returned check fee as provided in Lessor's written fee schedule or applicable regulation, as the same may be amended from time to time, will be assessed for any check on which the bank refuses payment. If the bank refuses payment, Lessee will be notified and the default period will continue to run until payment is satisfied.

Cumulative Remedies; No Waiver of Default. No remedy herein or otherwise conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Lease to Lessor may be exercised from time to time and as often as occasion may arise which may be deemed expedient by Lessor, as the case may be. No delay or omission by Lessor to exercise any right or power arising from any default under this Lease shall impair any such right or power. No waiver of any breach of any covenant or provision of this Lease shall be construed to be a waiver of any other or subsequent breach of the same or of any other covenant or provision.

RIGHTS OF LEASEHOLD MORTGAGEE; FEE MORTGAGE

Leasehold Mortgages. Lessee, and its successors and assigns, shall have the right to mortgage its interests under this Lease, subject, however, to the prior written consent of Lessor and compliance with the other terms, conditions and limitations of this 0. In no event shall more than one Leasehold Mortgage at any time be a lien on the Lessee's interest under this Lease. As used herein, "**Leasehold Mortgage**" shall mean any mortgage or deed of trust on the Leasehold Estate created by this Lease; "**Leasehold Estate**" shall mean the estate of Lessee created by this

Lease upon and subject to all the terms and conditions of this Lease but expressly excluding Lessor's fee simple interest in the land described in Section 1.1 (it being the intent and understanding of Lessor and Lessee that Lessor's fee simple interest in the land and reversionary interest in the Improvements constructed by Lessee shall not be subject or subordinate to any Leasehold Mortgage); and "**Lending Institution**" shall mean a national bank, insurance company, pension fund, major financial lending institution, or other entity generally recognized as a source of construction and/or permanent mortgage financing with total assets of at least Five Hundred Million Dollars (\$500,000,000) and net worth of at least One Hundred Million Dollars (\$100,000,000) (adjusted every fifth (5th) anniversary of the Commencement Date using the formula provided in Section 6.2) as evidenced by its last annual audited statement. Any such Leasehold Mortgage shall be subject and subordinate to the rights of Lessor hereunder in accordance with all the terms and conditions of this Lease.

Conditions. The right of Lessee to mortgage its interests under this Lease shall be subject to fulfillment of all of the following conditions:

Lessee shall notify Lessor of the existence and identity of any proposed Leasehold Mortgagee and provide Lessor with a copy of final, unsigned instruments constituting the Leasehold Mortgage and the promissory note and loan agreement secured thereby. Lessor shall have fifteen (15) Business Days to respond with comments. No holder of a Leasehold Mortgage ("**Leasehold Mortgagee**") on this Lease shall have the rights or benefits mentioned in this 0, nor shall the provisions of this 0 be binding upon Lessor, unless and until Lessor's written consent to such Leasehold Mortgage is recorded and the name and address of the Leasehold Mortgagee has been delivered in writing to Lessor, which notice shall be joined in or confirmed in writing by Lessee, notwithstanding any other form of notice, actual or constructive.

The Leasehold Mortgagee is a Lending Institution.

The Leasehold Mortgagee specifically acknowledges, in writing, the priority of this Lease and of the Lessor's rights hereunder including but not limited to the Lessor's reversionary rights to the Improvements constructed by Lessee upon the expiration or sooner termination of this Lease, free and clear of any lien created by the Leasehold Mortgage.

Protection of Leasehold Mortgagees. If Lessee, or Lessee's successors or assigns, shall mortgage this Lease in compliance with the provisions of this 0, then during the term of this Lease, so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

Lessor, upon providing Lessee any notice of: (i) default under this Lease, (ii) a termination of this Lease, or (iii) a matter on which Lessor may predicate or claim a default, shall at the same time provide a copy of such notice to the Leasehold Mortgagee if, and only if, Lessor has been provided notice in accordance with Section 0 and Lessor has consented to the Leasehold Mortgage. In the event of the termination of this Lease as a result of Lessee's default, Lessor shall, in addition to providing the notices of default and termination set forth above, provide the Leasehold Mortgagee with written notice that the Lease has been terminated ("**Final Termination Notice**"), together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to Lessor. Lessor agrees to

enter into a new lease (“**New Lease**“) of the Premises with such Leasehold Mortgagee or its designee for the remainder of the term of this Lease, effective as of the date of termination, at the same Rent and upon the terms, covenants and conditions of this Lease; provided:

Such Leasehold Mortgagee shall make written request upon Lessor for such New Lease within thirty (30) days after the date such Leasehold Mortgagee receives Lessor’s Final Termination Notice if any default specified in such notice can be cured by the payment of money (including any failure to pay any amounts due under any fee mortgage encumbering the Premises pursuant to Section 11.2), or within sixty (60) days after the date such Leasehold Mortgagee receives Lessor’s Final Termination Notice if no such default is capable of being cured by the payment of money. Such Leasehold Mortgagee shall pay or cause to be paid to Lessor at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease (including interest as required under the terms of this Lease) but for such termination, and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which Lessor shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Lessor from Lessee or other parties in interest under Lessee. Such Leasehold Mortgagee or such designee shall agree to remedy any of Lessee’s defaults of which said Leasehold Mortgagee was notified by Lessor’s Final Termination Notice and which are reasonably capable of being so cured by Leasehold Mortgagee or such designee. Any New Lease made pursuant to this Section 11.1.2(a) shall have the same priority with respect to any mortgage or other lien, charge or encumbrance on the fee of the Premises as this Lease, and the Lessee under such New Lease shall have the same right, title and interest in and to the Premises and the Improvements as Lessee had under this Lease as of the date of the New Lease.

A Standard Mortgage Clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Lessee hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and the Leasehold Mortgage shall so provide; except that the Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to the Lessee (but not such proceeds, if any, which are supposed to be payable to the Lessor or jointly to the Lessor and the Lessee) pursuant to the provisions of this Lease. Notices from Lessor to the Leasehold Mortgagee shall be mailed to the address furnished Lessor pursuant to Section 11.1.1. and those from the Leasehold Mortgagee to Lessor shall be mailed to the address designated pursuant to the provisions of Article 14. Such notices, demand and requests shall be given in the manner described in Article 14 and shall in all respects be governed by the provisions of that Article.

No payment made to Lessor by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and any Leasehold Mortgagee having made any payment to Lessor pursuant to Lessor's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided written demand therefor shall have been delivered not later than one (1) year after the date of such payment. The rights of a Leasehold Mortgagee hereunder shall not diminish any right or claim of Lessor against Lessee.

Assignment by Leasehold Mortgagee. Notwithstanding any other provision of this Lease, if any Leasehold Mortgagee or other successor in interest shall acquire title to Lessee's interest in this Lease by foreclosure or other sale pursuant to a Leasehold Mortgage thereon or by assignment in lieu of foreclosure or by an assignment from a designee or wholly owned subsidiary corporation of such Leasehold Mortgagee, or under a New Lease pursuant to this 0, such Leasehold Mortgagee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on the Lessee's part to be performed and observed from and after the date of such assignment; provided that the assignee of such Leasehold Mortgagee shall have assumed such lease in accordance with 0; and, further provided that, if such Leasehold Mortgagee acquired its Leasehold Mortgage after completion of construction of the Improvements, then such assignor shall be released only as follows:

As a condition to such release, such assignor, at the time of such assignment, shall have complied with all the requirements described in Section 11.1.2 above; and Such release shall not include any claims or obligations which arose during the period of possession by such assignor.

Unsubordinated Lease; Fee Mortgage. Neither Lessor's interest in this Lease nor its fee interest in the Premises nor its reversionary interest in the Improvements shall be subject or subordinate to any Leasehold Mortgage or other lien or claim arising by or through Lessee. Nothing contained herein shall impair the right of Lessor to mortgage or otherwise encumber its fee interest in the Premises or its interest in this Lease, provided that each such mortgage or encumbrance shall be subject to this Lease and Lessee's rights and leasehold estate hereunder.

CONDEMNATION

Total Taking. Lessor and Lessee agree that should the whole of the Premises be taken (which term when used in this Article 12 shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) by the government of the United States, State of Alaska, or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should the whole of the Premises and Improvements be condemned by any court, city, state, borough or governmental authority or office, department or bureau of the city, borough, state, or United States, then this Lease shall terminate as of the date of taking of possession by the condemning authorities and the award will be allocated and distributed as set forth in this Section 12.1. The Lessee hereby authorizes the Lessor to negotiate the payment of an award from the condemning authority as compensation for the total taking of the Premises and the Improvements, provided that the Lessee shall cooperate in negotiations or litigation with the condemning authority upon Lessor's request. Lessor shall collect the award and shall deposit the

award (less the costs, if any, incurred by Lessor in connection with the collection of the award), with a commercial bank acceptable to Lessor. Such award, less all fees and costs assessed by such commercial bank, shall be distributed by Lessor as follows:

First, the award shall be paid to the Lessor until the Lessor has recovered the value of the Land as identified in the most recent Appraisal obtained in accordance with Article III, plus CPI Adjustment from the date of the Appraisal to the date of such payment;

Second, the balance of the award, if any, shall be used to pay outstanding indebtedness secured by a Leasehold Mortgage, if any; and

Third, the balance of the award, if any, shall be allocated between the Lessor and the Lessee as follows: (x) Lessor shall receive a portion equal to the remaining award amount times the number of years (including fractional years) of the Lease Term elapsed divided by the total number of years in the Lease Term, and (y) Lessee shall receive a portion equal to the remaining award times the number of years (including fractional years) remaining in the Lease Term divided by the total numbers of years in the Lease Term. Options to extend that were not timely exercised before the date of the taking shall not be included in these calculations and calculations of the Lease Term shall not take into account the date of actual termination of the Lease caused by the condemnation. By way of example, if the remaining award amount equals \$2,000,000, the Lease Commencement Date is January 1, 2003, the Termination Date is December 31, 2023, and the date of the taking is July 1, 2018, then the share of the Lessee and the Lessor shall be calculated as:

$$\begin{aligned} \$2,000,000 \times [15.5/20] &= \$1,550,000 \text{ (Lessor)} \\ \$2,000,000 \times [4.5/20] &= \$450,000 \text{ (Lessee)} \end{aligned}$$

Award for Partial Taking that Results in Termination of Lease. Lessor and Lessee agree that should the fee simple title to a part of the Premises be taken by the government of the United States, State of Alaska, or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should a part of the Premises be condemned by any court, city state, borough or governmental authority or office, department or bureau of the city, borough, state or United States, then in such event this Lease shall nevertheless continue in effect as to the remainder of the Premises unless in Lessor's and Lessee's judgment so much of the Premises shall be so taken or condemned as to make it economically unsound to attempt to use the remainder for the uses and purposes contemplated herein, in which latter event this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had been thus taken or condemned; provided, however, that if a Leasehold Mortgage then encumbers the Premises this Lease shall not terminate without the prior written consent of the Mortgagee. The Lessee hereby authorizes the Lessor to negotiate the payment of an award from the condemning authority as compensation for a partial taking of the Premises and the Improvements, provided that the Lessee shall cooperate in negotiations or litigation with the condemning authority upon Lessor's request. Lessor shall collect the award and shall deposit the award (less the costs, if any, incurred by Lessor in connection with the collection

of the award), with a commercial bank acceptable to Lessor. Such award, less all fees and costs assessed by such commercial bank, shall be distributed by Lessor as follows:

First, the award shall be paid to the Lessor until the Lessor has recovered the value of the Land as identified in the most recent Appraisal obtained in accordance with Article III, plus CPI Adjustment from the date of the Appraisal to the date of such payment;

Second, the balance of the award, if any shall be paid to Lessor to be used by Lessor to pay the costs necessary to (i) remove the Improvements remaining on such portion of the Premises that were not taken by the condemning agency and restore such remaining portion of the Premises to an undeveloped condition, or (ii) repair, alter and restore the remaining part of the Improvements left on the remaining part of the Premises to a condition acceptable to Lessor, which election of (i) or (ii) shall be made by Lessor in Lessor's sole discretion;

Third, the balance of the award, if any, shall be used to pay outstanding indebtedness secured by a Leasehold Mortgage, if any; and

Fourth, the balance of the award, if any, shall be allocated between the Lessor and the Lessee as follows: (x) Lessor shall receive a portion equal to the remaining award amount times the number of years (including fractional years) of the Lease Term elapsed divided by the total number of years in the Lease Term, and (y) Lessee shall receive a portion equal to the remaining award times the number of years (including fractional years) remaining in the Lease Term divided by the total numbers of years in the Lease Term. Options to extend that were not timely exercised before the date of the taking shall not be included in these calculations, and calculations of the Lease Term shall not take into account the date of actual termination of the Lease caused by the condemnation.

In the event of such taking or condemnation of a portion of the Premises where this Lease is not terminated thereby under the provisions of the first sentence of this Q, Rent payable during the remainder of the Term after taking of possession by said condemning authority shall be reduced on a just and proportionate basis considering the relative value and square footage of the portion of the Premises thus taken or condemned as compared to the remainder thereof and taking into consideration the extent, if any, to which Lessee's use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking or condemnation. The award for a partial taking that does not result in a termination of the Lease shall be paid as set forth in Section 12.3.

Award for Partial Taking that Does not Result in Termination of Lease. If (i) a part of the Premises and Improvements be taken under the power of eminent domain, or by condemnation proceedings occurs, and (ii) this Lease is not terminated by reason of such partial taking, then Lessee hereby authorizes the Lessor to negotiate the payment of an award from the condemning authority as compensation for the total taking of the Premises and the Improvements, provided that the Lessee shall cooperate in negotiations or litigation with the condemning authority upon Lessor's request. Lessor shall collect the award and shall deposit the award (less the costs, if any, incurred by Lessor in connection with the collection of the award), with a commercial bank

acceptable to Lessor. Such award, less all fees and costs assessed by such commercial bank, shall be distributed by Lessor as follows:

First, the award shall be paid to the Lessor until the Lessor has recovered the value of the portion of the Land that was taken as identified in the most recent Appraisal obtained in accordance with Article III, plus CPI Adjustment from the date of the Appraisal to the date of such payment;

Second, the balance of the award, if any, shall be held and disbursed as set forth in Section 6.1.1 for the costs necessary for the repair, alteration and restoration of the remaining part of the Improvements to a condition acceptable to Lessor;

Third, the balance of the award after completion of the work necessary to repair, alter and restore the remaining part of the Improvements, if any, shall be allocated between the Lessor and the Lessee as follows: (x) Lessor shall receive a portion equal to the remaining award amount times the number of years (including fractional years) of the Lease Term elapsed divided by the total number of years in the Lease Term, and (y) Lessee shall receive a portion equal to the remaining insurance proceeds times the number of years (including fractional years) remaining in the Lease Term divided by the total numbers of years in the Lease Term. Options to extend that were not timely exercised before the date of such payment shall not be included in these calculations.

Lessee shall commence and thereafter proceed with reasonable diligence to repair, alter and restore the remaining part of the Improvements, subject to such changes or alterations as Lessee and Lessor may reasonably agree to make. Should (i) the cost of such repairs, alterations and restoration be estimated by an architect reasonably acceptable to Lessor and Lessee to be in excess of the balance of the award, or (ii) or if Lessee fails to commence to repair, alter and restore the remaining part of the Improvements within ninety (90) days after receiving written notice of the amount of the award available to pay for the costs of such repairs, alterations, and restoration, Lessor shall have the option to terminate this Lease by giving written notice thereof to Lessee, subject, however, to the rights of any Leasehold Mortgagee as set forth in 0. In the event of a termination of this Lease as a result of Lessee's failure to commence and perform the Work, this Lease shall terminate and come to an end as through the date of the taking were the expiration date of the term of the Lease and Lessee's Condemnation Proceeds shall be allocated between Lessor and Lessee in the same manner as provided in 0.

Temporary Taking. If the whole or any part of the Premises or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay the Rent in full. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease as though such taking had not occurred. In the event of any such taking as in this 0 referred to, Lessee shall be entitled to receive the entire amount of any award made for such taking whether such award is paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend beyond the expiration date of the term of this Lease in which case such award, after payment to Lessor therefrom of the estimated cost of restoration of the Premises to

the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned by Lessor and Lessee as of such date of expiration in the same ratio that the part of the entire period for such compensation is made falling before the date of expiration and that part falling after, bear to such entire period.

Rights of Leasehold Mortgagee. If a Leasehold Mortgage encumbers the leasehold estate at the time of such taking, the Leasehold Mortgagee shall, to the extent permitted by law, be made a party to any condemnation proceeding, if it so desires.

WARRANTY OF PEACEFUL POSSESSION

Subject to Lessee's performance of its duties and obligations hereunder, Lessor covenants and warrants that Lessee shall and may peaceably and quietly have, hold, occupy, use, and enjoy, all of the Premises during the entire Lease Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease. Notwithstanding the foregoing, the Lessor shall have the right upon reasonable notice to Lessee and at reasonable times to enter the Property in order to inspect it, examine it, to show it to prospective purchasers or lessees, or to make such repairs, alterations, improvements, or additions as the Lessor may deem necessary or desirable. This right shall not be exercised in any manner that unreasonably interferes with the Lessee's rights or operations under this agreement. The Lessor may, in its discretion, charge Lessee with the inspection costs permissible under 11 AAC 05.010, or its successor regulation, including a reasonable inspection fee, reimbursement for Lessor time involved, and/or other associated costs.

NOTICE

Any notice, communication or reply (herein for convenience called "notice") in this instrument provided or permitted to be given, made or accepted by either party to any other party must be in writing and shall, unless otherwise in this instrument expressly provided, be given or be served by (i) depositing the same in the United States mail, postage paid and registered or certified and addressed to the party to be notified, with return receipt requested, (ii) delivering the same via overnight courier using a reputable courier service, (iii) by delivering the same in person to such party, or (iv) by delivering the same by facsimile transmission with prompt telephonic confirmation of receipt. Notice shall be effective, unless otherwise stated in this Lease, upon delivery, or three (3) days following deposit in the U.S. mail in the manner set forth above, or confirmation of delivery by facsimile transmission, as applicable. For purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Lessor, to:	Mental Health Trust Land Office 2600 Cordova Street, Suite 200 Anchorage, AK 99503 Atten: Executive Director Phone: (907) 269-8658 Fax: (907) 269-8905
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with a copy to:

[REDACTED]
Assistant Attorney General
I

If to Lessee, to:

Phone:

Fax:

with a copy to:

[Attorney for Lessee]

The parties shall have the right from time to time at any time to change their respective addresses, by providing written notice to the other party.

ENTIRE CONTRACT AND NONWAIVER

This Lease constitutes and contains the entire agreement between Lessor and Lessee and supersedes any and all prior and contemporaneous negotiations, correspondence, statements, representations, warranties, understandings and agreements between the parties respecting the subject matter hereof, whether oral or written. No amendments, variations, modifications, or changes herein shall be binding upon any party hereto unless executed by it or by a duly authorized officer or a duly authorized agent of the particular party. Neither Lessee nor Lessor shall be bound by any verbal or implied agreements. Lessor's only duly authorized officer or agent is the Executive Director of the TLO. No waiver or waivers of any breach or default of any breaches or defaults by either party of any term, condition, or liability of or performance by the other party of any duty or obligation hereunder including, without limitation, the acceptance by Lessor or payment by Lessee of any Rent at any time or in any manner other than as herein provided shall be deemed a waiver thereof, nor shall any such waiver or waivers be deemed or construed to be a waiver or waivers of subsequent breaches or defaults of any kind, character, or description under any circumstance.

SIGNAGE

Lessee shall have the right, at Lessee's cost and expense, to install, maintain, repair and replace on the Premises all signage that Lessee deems necessary or appropriate in connection with Lessee's use of the Premises, including exterior signage and interior signage for any lessees under

Subtenant Leases. All such signage shall be in conformance with applicable governmental regulations and pursuant to all required permits.

BINDING AGREEMENT

This Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective heirs, successors, permitted assigns and legal representatives.

NO MERGER OF TITLE

Except upon expiration of the Lease Term or upon termination of this Lease pursuant to an express right to do so herein, there shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate (including the Improvements hereafter situated upon the Premises), and (b) the fee estate in the Premises or any part thereof or any interest in such fee estate (including the Improvements hereafter situated upon the Premises), unless and until all persons, including any assignee of Lessor, having any interest in this Lease or the leasehold estate created by this Lease shall join in a written instrument affecting such merger and shall duly record the same.

MISCELLANEOUS

Applicable Law. This Lease shall be construed and enforced in accordance with the laws of the State of Alaska.

Approvals, Consents. Wherever in this Lease the approval or consent of a party is required, such approval or consent shall not be unreasonably withheld or delayed, except where expressly stated to the contrary in this Lease. All approvals or consents by Lessor required under the terms of this Lease: (i) shall not be unreasonably withheld or delayed; (ii) shall be deemed withheld or denied (without prejudice) if not given in a written notice delivered to Lessee within the time specified for response herein; (iii) if such approval or consent is conditioned, such conditional approval or consent must be in writing and must specify the conditions with particularity, and (iv) any costs or expense incurred by Lessor in connection therewith shall be reimbursed by Lessee promptly after receipt of an invoice from Lessor. At the request of either Lessor or Lessee, each party shall designate an individual to give consents and approvals on their behalf hereunder (which designation may be changed from time to time by such party upon written notice to the other party). The consent or approval of such designated individual shall be binding upon Lessor or Lessee, as appropriate. The initial designee of Lessor for such purposes is the Executive Director of the TLO and the initial designee of Lessee for such purposes is _____.

Attorneys' Fees. If Lessee or Lessor defaults in the performance of or otherwise breaches any of the terms, covenants, conditions, agreements, or provisions contained in this Lease and Lessor or Lessee employs attorneys in connection with the enforcement of this Lease, then the nonprevailing party shall pay the prevailing party its reasonable attorneys' fees and costs, whether or not suit is commenced, including any costs on appeal.

Authority. Each party hereto warrants that it has the authority to enter into this Lease and to perform its obligations hereunder and that all necessary corporate action to authorize this transaction has been taken, and the signatories, by executing this Lease, warrant that they have the authority to bind the respective parties.

Captions. The table of contents, the index and the title or headings to the Articles and Sections of this Lease are not a part hereof and shall have no effect on the construction or interpretation of any term and provisions contained herein.

Commissions. Each party represents and warrants to the other that it has engaged no broker, agent or finder in connection with the negotiations leading to this Lease. Lessee and Lessor each hereby indemnify, defend and hold the other party harmless from and against any and all claims for commissions or fees from any brokers, agents or finders arising by or through the actions of the indemnifying party.

Computation of Time. The word "day" means "calendar day" herein, and the computation of time shall include all Saturdays, Sundays and banking holidays for purposes of determining time periods specified herein, unless stated to the contrary. The term "**Business Day**" ("**Business Day**") means every calendar day excluding Saturdays, Sundays and banking holidays observed by Lending Institutions doing depository banking business in the State of Alaska.

Construction. The parties acknowledge that this Lease has been jointly drafted by Lessor and Lessee, following negotiations between them and their respective legal counsel. This Lease shall be construed according to the fair intent of the language as a whole, and not for or against either party.

Costs of Consents. Except for Lessor's approval of the Plans attached hereto as Exhibit B (the cost of which approval is included in the Rent) whenever any provision of this Lease requires the Lessee to obtain the Lessor's written consent, Lessee shall pay Lessor any amount of reimbursement set by or provided in any written procedures or regulations of Lessor, or in the absence of any such procedures or regulations applicable thereto, a fee of \$_____ (or \$_____ for Lessor's consent to assignments or subleases) plus any out-of-pocket costs incurred in connection with Lessor's review and consideration of such request for consent. Lessor may condition its consent upon receipt of such payment from Lessee and may require payment to be submitted with the Lessee's request. The fee set forth herein shall be adjusted from time to time by the Lessor in accordance with its fee schedule, applicable regulation, or practices, as the same are then in effect.

Exhibits and Schedules. Exhibits A through D and all schedules attached hereto are hereby incorporated herein and made a part of this Lease, and the term "Lease" shall include all exhibits hereto.

Further Documents. Upon request, the parties will execute such further documents as may be necessary in order to carry out the intent of this Lease.

Prohibited Persons. Lessor and Lessee each hereby represent and warrant to the other that they shall at all times during the Term of the Lease (including any renewal or extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), and other governmental action relating thereto.

Pronouns. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and partnerships, corporations and associations of every kind and character, and the singular shall include the plural and the plural the singular of all nouns and pronouns herein wherever applicable.

Recordation. This Lease shall not be recorded, but following the Commencement Date, the parties hereto shall execute a Memorandum of Ground Lease in the form attached hereto as Exhibit D and cause the same to be recorded in the real property records of the _____ Recording District, _____ Judicial District, State of Alaska.

Records. Throughout the term of this Lease and for at least five years following termination, Lessee shall keep and retain in its possession; (i) all information relating to capital expenditures, remediation activities and the Improvements constructed on the Premises; and (ii) books, reports and records pertaining to the operations and activity conducted under this Lease or on the Premises during the most recent five year period, on a rolling basis. Lessee shall permit the Lessor to examine all such information at reasonable times. All of Lessee’s financial reports shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) when applicable.

Relationship of Parties. Nothing contained in this Lease shall be construed to create, nor shall either party represent the existence of, a partnership, a joint venture, an association, a corporation, a trust or other entity, nor to constitute either party the agent of the other.

Reservation of Rights. Lessor reserves for itself and others all rights not expressly granted to Lessee. These reserved rights include the right to manage and to convey to third Parties by grant, lease, permit, or otherwise, any and all interests in the Premises other than those granted by this Lease to Lessee, provided that any such conveyance to a third Party shall be made subject to Lessee’s rights under this Lease. The rights reserved pursuant to this provision shall not be exercised in any manner that unreasonably interferes with Lessee’s rights or operations under this Lease. Lessor shall provide Lessee with prior written notice of Lessor’s intent to exercise any such reserved rights. Lessor and Lessee shall work cooperatively to identify potential conflicts and Lessor shall require, as a condition to the exercise by any permittee, lessee, or Lessee of Lessor of any of Lessor’s reserved rights, such terms as appear necessary to avoid unreasonable interference with Lessee’s enjoyment of this Lease or endangerment of Lessee’s operations. If at any time the exercise of any of Lessor’s reserved rights must cease or a change must be made in

the manner or place of such exercise in order to avoid unreasonable interference with Lessee's enjoyment of the Premises or endangerment of Lessee's operations, such cessation or change shall occur at no cost to Lessee.

Severability. If any term, covenant, or condition of this Lease (or part thereof) or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease (and/or the remainder of any such term, covenant or condition), or the applicability of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition (or part thereof) of this Lease shall be valid and be enforced to fullest extent permitted by law.

Time of Essence. Time is expressly declared to be of the essence of this Lease.

IN WITNESS WHEREOF, this Lease is made and entered into in multiple original counterparts, on the day and year first above written.

[signatures on following page]

LESSOR:

LESSEE:

ALASKA MENTAL HEALTH TRUST
AUTHORITY, by and through the State of
Alaska, Department of Natural Resources,
Mental Health Trust Land Office

_____, a

By _____
Name: _____
Title: Executive Director

By _____
Name: _____
Title: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____, Executive Director of the State of Alaska, Department of Natural Resources, Mental Health Trust Land Office, acting for and on behalf of the Alaska Mental Health Trust Authority, an Alaska public corporation established under AS 47.30.011, et seq., on behalf of the public corporation.

Notary Public in and for the State of Alaska
My Commission Expires: _____

STATE OF _____)
) ss.
_____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____ the _____ of _____, a _____, on behalf of said _____.

Notary Public in and for the State of _____
Print Name: _____

EXHIBIT A
SITE PLAN

EXHIBIT B

DESCRIPTION OF IMPROVEMENTS

(Lessee to provide before lease is executed)

EXHIBIT C

As an inducement to ALASKA MENTAL HEALTH TRUST AUTHORITY by and through The State of Alaska, Department of Natural Resources, Mental Health Trust Land Office (“Lessor”), to enter into that Lease dated [_____, 20__] which covers certain premises legally described as:

(the “Lease”) with _____ (“Lessee”), the undersigned (“Guarantor”), being financially interested in Lessee and benefiting from the Lease, hereby unconditionally and irrevocably guarantees to Lessor the prompt payment and faithful performance of all liabilities, obligations, duties, terms, conditions and covenants (including, but not limited to, the payment of rent) imposed upon, required of or to be performed by Lessee under the Lease (collectively, the “Obligations”). If Lessee fails to make such payment or render such performance when due, such payment or performance shall be deemed due concurrently from Guarantor, and Guarantor shall forthwith pay all rent and the other sums that may be due, perform all such Obligations and pay all damages that may result from the nonpayment or nonperformance thereof by Lessee. Guarantor’s obligations hereunder are joint and several, and independent of the obligations of Lessee, and a separate action or actions may be brought and prosecuted against Guarantor regardless of whether an action is brought against Lessee and regardless of whether Lessee is joined in any such action or actions, and Guarantor waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof.

The terms of the Lease may be extended, altered, amended, renewed, affected, modified or changed by agreement between Lessor and Lessee, or by a course of conduct, all without the consent of or notice to Guarantor, and the Lease may be assigned or the Premises sublet and Guarantor shall forthwith pay all rent and the other sums that may be due, perform all such Obligations and pay all damages that may result from the nonpayment or nonperformance thereof by Lessee or such assignee or sublessee. No course of conduct in which Lessor or Lessee consults with or informs Guarantor of any of the foregoing shall require Lessor or Lessee to consult with or inform Guarantor in any other instance.

Following any breach or default by Lessee, Lessor shall have the right, in Lessor’s sole discretion and without previous notice to or demand upon either Lessee or Guarantor, to bring an action against Guarantor, any one or more of them if there are more than one and/or Lessee for the enforcement of any rights which Lessor may have against Lessee pursuant to or under the terms of the Lease, at law or in equity. Lessor may maintain successive actions for other defaults. Its rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless the Obligations have been paid and fully performed.

Guarantor hereby expressly waives (i) notice of default in payment of rent under the Lease or notice of default in the performance of any other Obligation of Lessee under the Lease, (ii) notice of acceptance of this Guaranty, (iii) demand for payment, presentation and protest, (iv) all right to assert or plead any statute of limitations as to or relating to this Guaranty and/or the Lease, (v) any right under applicable law to require Lessor to proceed against Lessee, any other guarantor or any other person or entity liable to Lessor, before proceeding against Guarantor, it being expressly agreed by Guarantor that its liability under this Guaranty shall be primary and that in

any right of action which may accrue to Lessor under the Lease or this Guaranty, Lessor may proceed against Guarantor without having taken or commenced any action or obtained any judgment against Lessee or any other person or entity liable to Lessor, (vi) any right under applicable law to require Lessor to exhaust or apply to any default any security or collateral held by Lessor, including, without limitation, any security deposit Lessor may hold under the Lease, before proceeding against Guarantor, (vii) any right under applicable law to require Lessor to proceed against Guarantor, (viii) any right of subrogation to Lessor's rights against Lessee and all rights of Guarantor against Lessee until the Obligations of Lessee under the Lease shall have been fully paid and fully performed, as well as any right to assert or claim that Guarantor is exonerated by any action taken by Lessor which impairs Guarantor's right to be so subrogated or Guarantor's right to proceed against Lessee for reimbursement, or both, (ix) any provisions under applicable law which limit a surety's obligation by reason of the principal's personal disability or the alteration of the Lease or any Obligation without the consent of Guarantor and (x) the benefit of any defenses or rights of setoff of Lessee that may arise by reason of (a) the lack of legal capacity or authority of Lessee to execute, deliver and perform the Lease, (b) the failure of Lessor to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of Lessee or any other or others, (c) the unenforceability in whole or in part of the Lease or this Guaranty, or (d) any taking, modification or release of any collateral or guaranties for any obligation of Lessee to Lessor under the Lease or any failure to perfect any security interest in, or the taking of or failure to take any other action with respect to, any collateral securing said Obligations.

The liability of Guarantor hereunder shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of liability of Lessee or its estate or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Federal Bankruptcy Code, or any similar law or statute of the United States or any state thereof covering insolvency, bankruptcy, rehabilitation, liquidation or reorganization, it being the intention of Guarantor that Guarantor's liability hereunder shall be determined without regard to any rule of law or order which may relieve Lessee of any of the Obligations.

Guarantor agrees that in the event Lessee shall become insolvent, have an order for relief entered against it under the Federal Bankruptcy Code or file a petition for reorganization, arrangement or similar relief under any present or future provision of the federal Bankruptcy Code or any similar law or statute of the United States or any state thereof; if such a petition filed by creditors of Lessee shall be approved by a Court; if Lessee shall seek a judicial readjustment of the rights of its creditors under any present or future federal or state law; or a receiver of all or part of its property and assets is appointed by any state or federal court, and in any such proceeding the Lease shall be terminated or rejected or the Obligations of Lessee thereunder shall be modified, Lessor shall have the option to either (a) require Guarantor, and Guarantor hereby so agrees, to execute and deliver to Lessor a new Lease as Lessee for the balance of the term then remaining as provided in the Lease and upon the same terms and conditions as set forth therein; or (b) recover from Guarantor that which Lessor would be entitled to recover from Lessee under the Lease in the event of a termination of the Lease by Lessor because of a default by Lessee, and such shall be recoverable from Guarantor without regard to whether Lessor is entitled to recover the same from Lessee in any such proceeding.

Guarantor agrees that, in the event any Obligation is performed by Lessee, the liability of Guarantor under this Guaranty shall remain in full force and effect in the event that all or any part of such performance is avoided or recovered from Lessor as a preference or fraudulent transfer or otherwise, in any bankruptcy, insolvency, liquidation, reorganization or other proceeding involving Lessee.

Guarantor will file all claims against Lessee in any bankruptcy or other proceeding in which the filing of claims is required by law upon any indebtedness of Lessee to Guarantor and will assign to Lessor all rights of Guarantor thereunder. If Guarantor does not file any such claim, Lessor, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Lessor's discretion, to assign the claim and to cause proof of claim to be filed in the name of Lessor's nominee. In all such cases, whether in administration, in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Lessor the full amount thereof, and to the full extent necessary for the purpose, Guarantor hereby assigns to Lessor all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled.

Guarantor hereby subordinates all existing or future indebtedness of Lessee to Guarantor to the obligations owed to Lessor under the Lease and this Guaranty.

The term "Lessor" whenever used herein refers to and means the Lessor specifically named in the Lease and any assignee of Lessor, whether by outright assignment or by assignment for security, and any successor to the interest of Lessor or of any assignee of such Lease or any part thereof, whether by assignment or otherwise. So long as Lessor's interest in or to the Premises or the rents, issues and profits therefrom or in, to or under the Lease are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantor of Lessor's interest in the Premises or under the Lease shall affect the continuing obligation of Guarantor under this Guaranty, which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment; any purchaser at a sale by judicial foreclosure or under private power of sale; and the successors and assigns of any such mortgagee, beneficiary, trustee, assignee or purchaser.

The term "Lessee" whenever used herein refers to and means the Lessee specifically named in the Lease, any assignee of the Lease and any successor to the interest of Lessee.

If Lessor shall employ an attorney to present, enforce or defend any or all of Lessor's rights or remedies hereunder, Guarantor shall pay all attorneys' fees, costs and expenses and all other costs and expenses incurred by Lessor in connection therewith (including any fees related to any Lessee or Guarantor bankruptcy filing), whether or not an action is commenced by Lessor for such purpose.

Any amount due from Guarantor to Lessor which is not paid when due shall bear interest at the lesser of (a) the maximum rate allowed by law, or (b) the prime rate of interest as announced from time to time by _____ (or any comparable financial institution selected by Lessor), _____ percent (___ %) per annum, but the payment of such interest shall not excuse or cure the failure to make such payment when due.

This Guaranty shall be binding upon Guarantor and the successors, heirs, personal representatives, executors and administrators of Guarantor without the necessity of filing any claim

or notice with the estate of Guarantor and shall inure to the benefit of Lessor and Lessor's successors and assigns.

Lessor may assign or transfer the Lease and this Guaranty, or both, without notice to Guarantor, and no such assignment or transfer shall extinguish or diminish the liability of Guarantor under this Guaranty. Guarantor shall reaffirm and or confirm in writing the continued validity of this Guaranty upon request.

Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

No provision of this Guaranty or right of Lessor hereunder can be waived, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by an authorized officer of Lessor. No such waiver shall be applicable except in the specific instance for which given.

Wherever in this Guaranty the context so requires, reference to either the singular or the plural shall be deemed to include the other.

This Guaranty shall be construed and interpreted in accordance with, and all disputes hereunder shall be governed by, the laws of the State of Alaska and venue in any action related to this Guaranty shall in the Municipality of Anchorage and Guarantor waives any claim related to the inconvenience of such forum.

Each person that signs this Guaranty on behalf of an entity represents and warrants that such person has the power and authority to sign on behalf of such entity. Guarantor acknowledges that Lessor will rely on the foregoing representation and that it is a material term of this Guaranty.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty on _____, 20__.

GUARANTOR: _____

By: _____

Name: _____

Its: _____

EXHIBIT D

**After recording in the _____
Recording District, Return to:**

Mental Health Trust Land Office
2600 Cordova Street, Suite 200
Anchorage, AK 99503
Atten: Executive Director

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease (this "Memorandum") is made as of this _____ day of _____, 20____, by and between the Alaska Mental Health Trust Authority, by and through the State of Alaska, Department of Natural Resources, Mental Health Trust Land Office ("Lessor"), and _____, a _____ ("Lessee"), who agree as follows:

1. Lease Term and Premises. Lessor has leased to Lessee, and Lessee has leased from Lessor, pursuant to a Ground Lease dated as of _____, 20____ (the "Lease"), the real property located in _____, Alaska described as:

[LEGAL DESCRIPTION]

(the "Premises"), for a term of _____ (____) years commencing _____. The provisions of the Lease are incorporated herein.

2. Lessee's Right to Extend or Renew. The Lease [does not contain] contains an option to extend or renew the term of the Lease in favor of [Lessor/Lessee] on the following terms and conditions _____.

3. Right of First Refusal/Option to Purchase. The Lease does not grant Lessee any right of first refusal, option to purchase or similar rights.

4. Provisions Binding on Lessor and Lessee. All of Lessor's covenants under the Lease, both affirmative and negative, are intended to and shall bind Lessor and its successors, and shall inure to the benefit of Lessee and its successors. All of Lessee's covenants under the Lease, both affirmative and negative, are intended to and shall bind Lessee and its successors and shall inure to the benefit of Lessor and its successors.

5. Purpose of Memorandum. This Memorandum is prepared for the purpose of recordation to give notice of the Lease. It shall not constitute an amendment or modification of the Lease.

EXECUTED as of the date first above written.

LESSOR:

LESSEE:

ALASKA MENTAL HEALTH TRUST
AUTHORITY, by and through the State of
Alaska, Department of Natural Resources,
Mental Health Trust Land Office

_____, a

By _____
Name: _____
Title: Executive Director

By _____
Name: _____
Title: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by
_____, Executive Director of the State of Alaska, Department of
Natural Resources, Mental Health Trust Land Office, acting for and on behalf of the Alaska Mental
Health Trust Authority, an Alaska public corporation established under AS 47.30.011, et seq., on
behalf of the public corporation.

Notary Public in and for the State of Alaska
My Commission Expires: _____

STATE OF _____)
) ss.
_____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by
_____ the _____ of _____, a
_____, on behalf of said _____.

Notary Public in and for the State of _____
Print Name: _____
Residing at: _____
My Commission Expires: _____

[REVISE ACKNOWLEDGEMENT FOR LESSEE IF NOT SIGNED IN ALASKA]

SCHEDULE 8.1
Variance from Environmental Report
[insert description or write “none”]