

## FORM OF LEASE AGREEMENT

### 1. Reserved Rights

- (a) The Grantor reserves all rights not expressly granted to the Grantee by this Agreement. These reserved rights include:
  - (i) The right to allow concurrent users.
  - (ii) The right to explore for, remove, and dispose of all resources from the Property.
  - (iii) The right to establish or grant easements and rights-of-way upon, within, or through, the Property.
  - (iv) The right to manage, convey, or dispose to third Parties by grant, lease, permit, or otherwise, all interests in the Property other than those granted by this Agreement, provided that any such conveyance to a third Party shall be made subject to the Grantee's rights under this Agreement.
- (b) The rights reserved may be exercised by the Grantor in any manner that does not unreasonably interfere with or endanger the Grantee's rights or operations under this agreement.
- (c) The Grantor shall provide the Grantee with prior written notice of the Grantor's intent to exercise any such reserved rights.
- (d) The Grantor and the Grantee shall work cooperatively to identify potential conflicts and the Grantor shall require such terms as necessary to avoid unreasonable interference with the Grantee's enjoyment of this Agreement or endangerment of the Grantee's operations.
- (e) If at any time, the exercise of the Grantor's reserved rights must cease or change made to avoid unreasonable interference with the Grantee's enjoyment of this Agreement or endangerment of the Grantee's operations, such change or cessation shall occur at no cost to the Grantee.

### 2. Penalty Fees

- (a) A late payment of 10.5% or \$50, whichever is greater, will be assessed on the unpaid balance until the Grantor receives payment in full. A returned check fee as provided in 11 AAC 05.010, or its successor regulation, will be assessed for any check on which the bank refuses payment. If the bank refuses payment,

Grantee will be notified, and the default period will continue to run until payment is satisfied.

- (b) Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs, late charges, and any unpaid interest, and any remaining amount to the land use fee.

### **3. Failure of Title**

- (a) The Grantor makes no representations or warranties, express or implied, as to title to, access to, or quiet enjoyment of, the Property.
- (b) The Grantor is not liable for any deficiency in title, or difficulty in securing access, to the Property.
- (c) If all or part of the Property has been selected by the State of Alaska under the laws of the United States granting land to the state, but the land has not been patented to State of Alaska by the United States, then this Agreement is a conditional Agreement as provided by law until the patent becomes effective. If, for any reason, the selection is not finally approved, or the patent does not become effective, any rental, royalty, or other production or profit-based payments made to The Grantor under this Agreement will not be refunded.

### **4. Valid Existing Rights**

The Grantee's use of the Property shall not interfere with valid existing rights, if any, that exist upon the Effective Date of this Agreement, without the prior written approval from the Person holding those rights.

### **5. Warranties**

- (a) The Grantor:
  - (i) Makes no warranty, express or implied, and has not assumed and expressly disclaims any liability regarding the Property, including the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability, or fitness for any particular purpose.
  - (ii) Authorizes use of the Property without any warranty of habitability.
- (b) The Grantee represents and warrants that:
  - (i) It has the capacity to enter into and perform the obligations under this Agreement. All transactions contemplated, including corporate and other actions required to authorize it to enter into and perform under

this Agreement.

- (ii) It will not breach any other agreement or violate any law or regulation by entering into or performing under this Agreement.
  - (iii) It has had a full opportunity to inspect the Property and has determined that they are suitable for the intended use and accepts the Property “as is” and “where is” with all faults.
  - (iv) It has read and is familiar with the obligations of under this Agreement, and all operations will be conducted in compliance with this Agreement, and it has notified all of its agents, employees and contractors similarly.
  - (v) This Agreement has been duly executed and delivered by it and is valid and binding upon it in accordance with the terms, including the representations and warranties.
- (c) The representations and warranties of both Parties shall survive the termination of the Agreement, unless otherwise provided under the Agreement.

## **6. Indemnification**

- (a) The Grantee shall protect, defend, indemnify, and hold harmless the Grantor, and their respective officers, directors, employees, volunteers, agents, successors, and assigns from and against all liens, claims, demands, fines, penalties, and causes of action of every kind and character, including claims for loss or damage to property, or injury to any person, or release or discharge of any hazardous substance arising from, or in connection with, any act or omission committed under this Agreement. Except for damage or injury caused by the sole gross negligence or willful misconduct of the Grantor.
- (b) The Grantor shall not be responsible for any defect or change of condition in the Property, whether to any person or property, due to any cause whatsoever, including, but not limited to, damage done by flood, earthquake, fire, utility outage or acts of other tenants in the building or other persons or entities, except duly authorized employees or agents of the Grantor.
- (c) The Grantee expressly waives any defense to an action for breach of a provision of this lease or damages resulting from any harm to the environment that is based on an act or omission committed by an independent contractor in the Grantee's employ.
- (d) The Grantee expressly agrees to assume responsibility for all actions of its independent contractors. The Grantee agrees to reimburse the Grantor for any and

all necessary expenses, attorney's fees, and costs incurred in the non-judicial or judicial enforcement of any part of the foregoing indemnity provision.

## **7. Insurance**

- (a) Without limiting Grantee's indemnification obligation, the Grantee shall purchase, at its own expense, and maintain in force at all times during the term of this Agreement, the policies of insurance specified on Schedule 2.
- (b) Certificates of insurance must be furnished to the Grantor upon execution of this Agreement.
- (c) The Grantee must provide at least 30-day prior written notice to the Grantor of cancellation or nonrenewal or for any required coverage that is not replaced.
- (d) Failure to furnish satisfactory evidence of insurance or the lapse of a policy is a material breach and grounds for termination of this Agreement.
- (e) Grantee's that are self-insured will be required to provide proof of insurance as specified in Schedule 2 and maintain in force at all times during the term of this Agreement.

## **8. Performance Bond / Guarantee**

- (a) In order to secure its performance and to secure return of the Property in good condition, the Grantee shall furnish a performance bond, in an amount as set forth on Schedule 3 and shall maintain such performance bond during the term. Grantee may be required to furnish an additional performance guarantee 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 Agreement.
- (b) Operations under this Agreement will be guaranteed by bond in the amount of [\$AMOUNT] and must be approved before work can begin.

## **9. Statutes and Regulations**

This Agreement is subject to all applicable local, state, and federal statutes and regulations in effect on the Effective Date of this Agreement and to all such statutes and regulations that may become effective on or after the Effective Date, except those inconsistent with the trust principals imposed on the state by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709. See AS 38.05.801. A reference to a statute or regulation in this Agreement includes any subsequent change in that statute or regulation whether by amendment, repeal or replacement and any successor statute or regulation. All references to specific governmental agencies include any successor agency or different agency that may assume the duties or jurisdiction of the referenced

agency. In case of conflicting provisions, the applicable statutes, regulations, and ordinances take precedence over this Agreement. This Agreement shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized. The Grantor takes no responsibility to act as a regulatory agency as to this Agreement, or as to any operations of the Grantee.

## **10. Development Plan**

Before commencing development activities or significant modifications, the Grantee shall submit to the Grantor for approval a proposed development plan that describes operations to be conducted on the Property and exit plans at the expiration of this Agreement. The Grantee is responsible for obtaining, all necessary authorizations, permits and/or permission required to conduct its activity and for compliance with restrictions and requirements regarding operations that are contained in this Agreement. No development of the property may occur until the development plan has been approved by the Grantor, and in compliance with the stipulations contained in Schedule 4 of this Agreement.

The Development plan shall include:

- (a) The scope of work for the proposed activity including project timelines and estimated completion date for each new activity and associated structures.
- (b) A map at a sufficient scale showing the general location of all activities and routes of travel of all equipment.
- (c) A description of the land to be affected by the application.
- (d) Nature of any improvements.
- (e) Removal of any improvements and restoration plans.

## **11. Diligent and Safe Development**

The Grantee shall conduct all activities under this Agreement in such a manner as to ensure the least practicable harm to the Property and land adjacent to the Property. The Grantee shall immediately cease and/or eliminate any condition existing or occurring as a result of granted activities, which may cause harm or damage to any person, structure, property, land, stream or wildlife and both Parties agree to notify the other and take immediate steps to remedy the condition.

## **12. Records and Reporting**

Throughout the term of this Agreement and for at least three years following termination, the Grantee shall keep and retain in its possession books, reports, surveys, and records (collectively referred to as Records) concerning the operations and activity conducted under this Agreement. The Grantee shall permit the Grantor or its agent to examine these

Records at all reasonable times. The Grantee shall use consistently applied generally accepted accounting procedures (GAAP) for its financial accounting records. Financial information and trade secrets shall be kept confidential upon written request of the Grantee under AS 38.05.035(a)(8).

### **13. Inspection**

The Property shall be open to inspection by the Grantor at all reasonable times, to examine, show, or to make such repairs, alternations, improvements, or additions as the Grantor deems necessary or desirable.

### **14. Information Acquired from Operations**

The Grantee shall furnish the Grantor paper and digital copies in a format required by the Grantor of all physical and factual results, logs, surveys, or any other derivative data resulting from operations on the Property, including by any person or entity acting on behalf of the Grantee. Any information filed by the Grantee with the Grantor in connection with this Agreement will be available at all times for the use of the Grantor, its agents, and contracting personnel. All geological, geophysical, and engineering data supplied shall be kept confidential upon written request of the Grantee under AS 38.05.035(a)(8).

### **15. Assignment**

This Agreement or an interest in the Agreement may not be assigned or otherwise transferred to any person(s) except upon the prior written authorization of the Grantor. The Grantor reserves the right to reject any proposed assignment to any unaffiliated entity. Any transfer of interest is not effective unless approved by the Executive Director of the Trust Land Office, Department of Natural Resources, State of Alaska, or designee, on a form designated by the Executive Director. Any unauthorized attempt to assign or otherwise transfer any of the Grantee's interest under this Agreement is void. Unless expressly provided by the Grantor, the assignment or transfer of an interest does not relieve the Grantee of any obligations or liability under this Agreement. The Grantee will fully disclose all terms and conditions associated with any proposed assignment or transfer with the understanding that the Grantor approval may be subject to revision of this Agreement or to receiving a reasonable portion of the monetary benefits associated with the proposed assignment or transfer.

### **16. Land Alterations**

The Grantee will not be responsible for damage to the Property caused by a natural disaster or from an Act of God. In the event of a natural disaster or Act of God, which renders all, or a portion of the Property unusable, the Grantor will not be obligated to take any actions to provide for continued occupancy by the Grantee as to the affected portion of the Property. In such event, the Grantee may choose to vacate or the Parties may mutually agree to terminate this Agreement, and under either option the Grantee will

remain responsible for compliance with this Agreement, subject to reasonable consideration of the consequences of a natural disaster or Act of God to the Property.

### **17. Co-Location**

The Grantee may not co-locate other equipment owned or operated by a third-party on the Parcel unless the Grantor approves a separate Agreement with the third-party.

### **18. Condemnation**

If all or a portion of the Parcel as may be required for the reasonable use of the Grantee, are taken by eminent domain, this Agreement, or portion of the Agreement, as it pertains to the affected Parcel shall automatically terminate as of the date the Grantee is required to vacate the Parcel and all rent shall be paid to that date. In case of the taking of a portion Parcel not required for the reasonable use by the Grantee, this Agreement shall continue in full force and effect and the rent may be modified as mutually agreed to by the Parties, such rent reduction to be effective as of the date possession of such portion is delivered to the condemning authority. The Grantor reserves all rights to damages to the Parcel for any taking of eminent domain, and the Grantee assigns to Grantor any right Grantee may have to such damages or award, and the Grantee shall make no claim against Grantor for damages for termination of the Parcel interest or interference with Grantee's business. The Grantee shall have the right, to claim and recover from the condemning authority compensation for any loss to which Grantee may be put for the Grantee's expenses and for the interruption of or damage to Grantee's business, provided that such damage may be claimed only if they are awarded separately in the eminent domain proceeding and not as part of the damages recoverable by Grantor.

### **19. Default, Termination and Remedies**

- (a) Failure of the Grantee to abide by all express or implied terms of this Agreement shall constitute a default in the Grantee's obligations. The Grantee shall have thirty (30) days after written notice of non-monetary default or ten (10) days after a monetary default to cure the default. The cure period for non-monetary defaults shall be extended for a reasonable period of time if such non-monetary default cannot be cured within the thirty (30) day cure period, provided that Grantee takes appropriate action to cure said default within the thirty (30) day cure period and continues to take such action as may be necessary to complete the cure within a reasonable time.
- (b) If resource damage is the cause of the default, the Grantor, without waiving or releasing any obligation or default, shall have the right, but shall be under no obligation, to step in and cure the default immediately and charge Grantee with the costs of curing said default, or may require Grantee to cure the default in less than thirty (30) days.



- (i) If Grantee fails to cure the default to the reasonable satisfaction of the Grantor within the allotted time, the holder of an approved performance guarantee who has received notice this Paragraph may remedy the default within sixty (60) days from the date of receipt of notice, or within any additional period the Grantor may in its sole discretion allow for good cause shown.
  - (ii) If the Grantor cured the default to prevent resource damage, then the Grantor may order suspension of all operations and activity under this Agreement until compliance is achieved, or the Grantor may at its sole option terminate this Agreement. It is specifically agreed that no judicial action shall be necessary to terminate this Agreement or to allow the Grantor to retake possession of the lands subject to this Agreement.
- (c) The Grantor is not liable for any expenditure made or undertaken by the Grantee under this Agreement.
- (d) In addition to the above, if a Default by Grantee occurs under this Agreement, the Grantor, shall be entitled, after the cure periods set forth above have expired:
  - (i) To recover any and all damages including incidental and consequential damages and the full actual amount of all costs and/or fees, including attorneys' fees, reasonably incurred.
  - (ii) To terminate this Agreement.
  - (iii) To pursue any and all remedies in addition to, or by way of, alternatives to the foregoing available at law or in equity.
- (e) No improvements may be removed from the Property while the Agreement is in default except with the Grantor's prior written approval.
- (f) If this Agreement is terminated, the Grantor may immediately enter or reenter, and take possession of the Property. Any entry, reentry, possession, repossession, or dispossession by the Grantor, whether taken with or without judicial action, does not absolve, relieve, release, or discharge the Grantee, either in whole or in part, of any liability under the Agreement. The Grantee shall be liable for any deficiency, and for all reasonable and justifiable costs, expenses, and fees incurred by the Grantor arising out of the default, including the Grantor's efforts to re-let the Property. It is specifically agreed that no judicial action shall be necessary to terminate this Agreement or to allow the Grantor to retake possession of the lands subject to this Agreement.
- (g) No right or remedy conferred upon either Party shall be exclusive of any other right or remedy contained in any instrument or document delivered in connection



with this Agreement. Every right and remedy shall be cumulative under the applicable laws.

## **20. Surrender**

The Grantee may at any time file with the Grantor a written surrender of all rights under this Agreement or any portion of the Property area comprising one or more legal subdivisions with the consent of the Grantor. That surrender will be effective as of the date of filing. Upon any partial or full surrender of this Agreement, the Grantee shall return the Property to the Grantor in their original condition free and clear of all liens and encumbrances by the Grantee, its agents, or subcontractors. The Grantor may immediately enter and take possession of the Property. Such action does not absolve, relieve, release, or discharge the Grantee of any liability under this Agreement.

## **21. Rights upon Termination or Surrender**

- (a) Upon termination, surrender, or expiration of this Agreement, the Grantee shall, within 60 days, remove from the Parcel all improvements or personal property placed in, on or under the Parcel by Grantee. Upon the expiration of such period and at the option of the Grantor, any machinery, equipment, tools, or materials that Grantee has not removed from the Parcel may be removed or sold by the Grantor at the Grantee's expense. The actual expenses of such removal, including compensation for the Grantor's time involved relating to the removal, may be recovered at the Grantor's discretion from the performance deposit (if any), the proceeds of any sale of such equipment, and/or any other sources available to the Grantor at law or in equity. Any funds remaining after payment of those expenses shall be returned to Grantee within a reasonable time following the sale.
- (b) Upon the termination, surrender, or expiration of this Agreement, the Grantee shall peacefully quit the Parcel, leave and deliver up Parcel in as good a condition as was in effect at the commencement of this Agreement, excepting reasonable wear and tear associated with use for intended and approved purposes. The Grantee shall return the Parcel to the Grantor free and clear of all liens and encumbrances arising by, through or under Grantee, its agents or subcontractors.
- (c) Upon any partial or full surrender of this Agreement, the Grantee shall return the Parcel to the Grantor in a condition as described in the approved Development Plan under paragraph 14 above, free and clear of all liens and encumbrances by the Grantee, its agents, or subcontractors. Termination, surrender, or expiration shall not reduce Grantee's obligation to reclaim or otherwise comply with other obligations that may have accrued as a result of Grantee's activities under this Agreement.
- (d) The Grantor may immediately enter and take possession of the Parcel. Such action does not absolve, relieve, release, or discharge the Grantee of any liability under this Agreement. A total surrender of the Parcel by the Grantee shall result

in termination of this Agreement.

- (e) The Grantee shall continue to make rental payments in effect after the time of the termination, surrender, or expiration or earlier removal period set forth in Paragraph 3 equal to the rent, including annual adjustments applicable during the month immediately preceding such termination, surrender, or expiration until all improvements have been removed.

## **22. Authorized Representatives**

- (a) The Executive Director of the Alaska Mental Health Trust Land Office, or designee, shall be the authorized representatives of signing this Agreement.
- (b) The Grantor or the Grantee may change the authorized representative or the address to which notices to that representative are to be sent by a written notice given in accordance with the notice provision of this Agreement. The Grantee shall also designate by name, job title, and address, an agent who will be present in the State during the term of this Agreement.

## **23. Notices**

Any notices required under this Agreement shall be deemed delivered upon receipt if personally delivered in writing, upon confirmation of successful transmission if sent via facsimile, or Certified Mail return receipt requested, and addressed as set forth in this Agreement if mailed. Either Party may change its notice address by effective written notice given to the other Party.

The following addresses shall be used for notices required under this Agreement:

To Grantor:

Trust Land Office  
2600 Cordova Street, Suite 100  
Anchorage, Alaska 99503  
Phone No.: (907) 269-8658  
Fax No.: (907) 269-8905  
Attention: Executive Director

To Grantee:

NAME  
ADDRESS  
CITY, STATE, ZIP CODE  
Phone No.:  
Fax No.:  
Attention:

## **24. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, notwithstanding the fact that the Grantor and the Grantee are not signatories to the original or the same counterpart.

## **25. Jurisdiction**

This Agreement and the respective rights and obligations shall be construed and interpreted as a contract under the laws of the State of Alaska. This Agreement shall be interpreted so as to carry forward the intent of the Alaska Mental Health Act of 1956, P.L. 84-830 70 Stat. 709 and AS 38.05.801 et seq. and promulgated regulations. The laws of the State of Alaska shall apply in any legal action arising out of or related to this Agreement. The jurisdiction and venue of such legal action shall lie exclusively with the courts for the Third Judicial District for the State of Alaska, at Anchorage, Alaska.

## **26. Severability**

If any clause or provision of this Agreement is determined illegal, invalid, or unenforceable, in a final judicial proceeding by a court of competent jurisdiction, then the remainder of this Agreement will not be affected, and the Agreement shall be automatically reformed to carry out the intent of the Parties without regard for such clause or provision.

## **27. Binding Effect**

The Grantor and the Grantee agree that this Agreement, including all attachments and documents that are incorporated in this Agreement by reference, contains the entire agreement between the parties, and each of the covenants and conditions in this Agreement including any attachments will be binding upon the parties and upon their respective heirs, administrators, successors and assigns. Any amendment to this Agreement must be executed in writing by both Parties. This Agreement shall not be construed more strongly against one Party than the other.

## **28. Trust Land Office Authority**

The TLO is executing this Agreement as agent for the Alaska Mental Health Trust Authority, a public corporation within the Alaska Department of Revenue under AS 47.30.011 et seq., as established by Chapter 66, Session Laws of Alaska, 1991, in order to implement the State's obligation as trustee of the trust established by the Alaska Mental Health Enabling Act of 1956, (P.L. 84-830, 70 Stat. 709), in accordance with State v. Weiss, 706 P.2d 681 (Alaska 1985).