

**ITEM 136-2001-R0907 Lease Agreement**

**UNIVERSITY WAY BUILDING  
OFFICE BUILDING LEASE**

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**UNIVERSITY WAY BUILDING  
OFFICE BUILDING LEASE**

THIS LEASE is made on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between University Way, LLC, hereinafter called "Landlord", and MONTANA STATE UNIVERSITY, hereinafter called "Tenant".

**1. BASIC LEASE TERMS**

**A. Premises:**

Building Name	University Way Building
Building Address	Bozeman, Montana 59715
Floors	Portions of Floors Two and Three
Suite	210 and 310
Premises Area (per subsection 2A)	
Rentable Square Feet	27,060
Total Building Area	
Rentable Square	69,177
Tenant's Percentage of Building/ Percentage of Complex	39.12%
Total Complex Area	69,177 rentable square feet.

**B. Term of the Lease: (per Section 3)**

Length	120 months
Commencing	Upon building's completion

**C. Basic Rent: (per Section 5)**

<u>Lease Months</u>	<u>Basic Rent</u>	<u>Per Rentable</u>	<u>Adjustments</u>
<u>per month</u>		<u>Foot (Yearly)</u>	<u>(Subject to Section 5)</u>

1 to 120

\$47,355

**D. Tenant's Use of the Premises:**

Office, classroom, lab, storage

**E. Landlord's Leasing Broker/Agent:**

none

**F. Addresses for Notices:**

Landlord:	University Way, LLC
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Bozeman, Montana 59715

Tenant:

Office of Legal Counsel  
Room 211, Montana Hall  
Montana State University  
Bozeman, Montana 59717

This Section 1 represents a summary of the basic terms of the Lease. In the event of any inconsistency between the terms contained in Section I and any specific clause of the Lease, the terms of the more specific clause shall prevail.

## **2. PREMISES**

**A. Premises.** Landlord hereby leases to Tenant and Tenant leases from Landlord, those certain premises described in subsection I.A. and in **Exhibit A** attached hereto (the "Premises"); provided, that the exact amount of Rentable Square Feet in the Premises shall be determined reasonably by the Landlord upon the completion of the build out of the Tenant Improvements in and to the Premises pursuant to the Work Letter Agreement attached hereto, if any, and, if no Tenant Improvements are to be constructed or installed pursuant to the terms of this Lease, then the exact of the Premises by Tenant. Until such determination of the exact number of Rentable Square Feet of space in the Premises as set forth above, the number of Rentable Square Feet of space shown in subsection I.A. shall control. Upon Landlord's determination of the number of Rentable Square Feet of space in the Premises, Landlord and Tenant shall, within ten (10) days of Landlord's request, execute a written confirmation of Rentable Square Feet. "Rentable Square Feet" as used in this Lease shall be determined in accordance with the 1996 Building Owner's and Manager's Association Standard Method for Measuring Floor Area in Office Buildings, Publication ANSI/BOMA 265.1-1996 ("1996 BOMA"). The Premises are contained within the building (the "Building") which is located at the address designated in subsection I.A. The Building is located on the real property (the "Land") described on **Exhibit B** attached hereto. Tenant's Percentage of the Building" shall equal a fraction whose numerator is the number of Rentable Square Feet within the Premises as set forth in subsection I.A. and whose denominator is the number of Rentable Square Feet within the Building as set forth in subsection I.A. as may be adjusted from time to time.

**B. Acceptance of Premises.** Neither Landlord nor its agents have made any representations with respect to the Premises or Building except as expressly set forth herein. No rights, easements, or licenses are acquired by implication or otherwise except as expressly set forth in the provisions of this Lease. Tenant accepts the Premises "as is", subject to Landlord's obligation to construct any Tenant Improvements described in **Exhibit C**. The taking of possession of the Premises by Tenant shall be conclusive evidence that the Premises and the Building were in good condition and suitable for Tenant's intended use at the time possession was taken.

**C. Common Areas.** Tenant shall have the non-exclusive right to use, in common with other tenants in the Building, the following areas ("Common Areas") appurtenant to the Premises:

- (1) The Building's common entrances, lobbies, restrooms, elevators, stairways and access ways, loading docks, ramps, drives and platforms and any passageways and service ways thereto, and the common pipes, conduits, wires, and appurtenant equipment serving the Premises.
- (2) Loading and unloading areas, trash areas, parking areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas, and similar areas and facilities appurtenant to the Building.
- (3) Other areas within the Building that are not intended for lease and which are designated (which designation may be changed from time to time) by Landlord as Common Areas set aside for the common and joint use and benefit of the occupants of the Building.

Landlord reserves the right from time to time without unreasonable interference with Tenant's use:

- (4) To install, use, maintain, repair, and replace pipes, ducts, conduits, wires, and appurtenant meters and equipment for service to other parts of the Building above the ceiling surfaces, below the floor surfaces, within the walls, and in the central core areas; and to relocate any pipes, ducts, conduits, wires, and appurtenant meters and equipment included in the Premises which are located in the Premises or located elsewhere outside the Premises; and to expand the Building.
- (5) To make changes to the Common Areas, including without limitation changes in the location size, shape, and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, and walkways.
- (6) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available.
- (7) To designate other land outside the boundaries of the Building or Land to be a part of the Common Areas.
- (8) To add additional buildings and improvements to the Common Areas.
- (9) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Building, or any portion thereof.
- (10) To do and perform such other acts and make such other changes in, to, or with respect to the Common Areas or Building, as Landlord may, in the exercise of sound business judgment, deem to be appropriate.
- (11) To establish, modify, or change rules governing the move-in and move-out procedures of Tenant's furniture, equipment, and fixtures.

### **3. TERM**

**A. Term.** The term of this Lease shall be for the period designated in Section 1 above (the "Term") unless the Term shall be sooner terminated as hereinafter provided. The Term, as well as the Tenant's obligation to pay Rent (as defined in Section 5 below), shall commence upon the date (the "Commencement Date") which is the earlier of

- (1) substantial completion (as defined in Exhibit C) of the Tenant Improvements

described in the Work Letter Agreement and the tender of possession of the Premises to Tenant, or

(2) the date that Tenant opened for business in the Premises.

If the Commencement Date does not occur on the last day of the month, Tenant shall pay rent for the fractional month on a per diem basis (calculated on the basis of a thirty (30) day month) until the last day of the following month.

#### **4. DELAY IN POSSESSION**

If Landlord is unable to deliver possession of the Premises on the Target Delivery Date set forth in Section 1 above for any reason, Landlord shall not be subject to any liability for the failure to deliver possession on said date and no such failure to deliver possession on the Target Delivery Date shall in any other respect affect the validity of this Lease or the obligation of Tenant hereunder. Provided, however, the rent shall not accrue if Landlord is unable to deliver possession of the Premises. If Landlord is unable to deliver the premises for a period of nine months after the Target Delivery Date, Tenant shall have the option to terminate the Lease.

#### **5. RENT**

**A. Monthly Basic Rent.** Tenant shall pay to Landlord, as Basic Rent for the Premises, the sum set forth in subsection 1.C., which shall be payable in equal monthly installments. The first installment (equal to the first month's rent) shall be payable upon the execution of this Lease and the remaining installments shall be paid, in advance, on the first day of each and every calendar month during the Term.

**B. Adjustment to Basic Rent.** The Monthly Basic Rent as set forth in subsection 1.D. shall be adjusted commencing the 4<sup>th</sup>, 7<sup>th</sup>, and 10<sup>th</sup> years by the percentage amount that the Consumer Price Index ("CPI"), as defined herein, has increased since the commencement of the lease. As an example, if the CPI increase for year one (1) is three percent (3%), for year two (2) is four percent (4%), for year three (3) is five percent (5%), the total change in the CPI is twelve percent (12%) and the Basic Rental would be increased by 12% commencing at the beginning of the 4th year. The CPI is identified, for purposes herein, as the Consumer Price Index - All Urban Consumers - of the Bureau of Labor Statistics for the U.S. Department of Labor for Urban Wage Earners and Clerical Workers, as posted in The Wall Street Journal, Rocky Mountain Region (1967=100).

**C. Definition of Rent.** All amounts due from Tenant to Landlord under this Lease, other than Basic Rent, shall be due as "Additional Rent". The terms "Rent" and "Rental" as used in this Lease shall mean all amounts to be paid hereunder by Tenant, whether those sums are designated as Basic Rent or Additional Rent or otherwise and as adjusted by the terms of this Lease. Failure by Tenant to pay any sum of Rent due under this Lease shall entitle Landlord to pursue any or all remedies specified in this Lease, as well as remedies otherwise allowed by law.

**D. Payment of Rent - No Deduction or Offset.** The Tenant shall pay Rent to Landlord, at the address of Landlord set forth in Section 1, without demand and without

deduction, set-off, or counterclaim. If Landlord shall at any time or times accept(s) Rent after it shall become due and payable, such acceptance shall not excuse delay upon subsequent occasions, or constitute, or be construed as, a waiver of any or all of Landlord's rights hereunder. Tenant shall pay interest at the maximum interest rate allowed by law.

## **6. OPERATING COSTS**

**A. Net Lease.** Tenant acknowledges that this Lease is, in all respects, considered to be a net lease and it is the intent of the parties that the Tenant shall pay its pro rata share of all operating costs listed below, including utility and services described in Section 7.

- (1) Wages, salaries, and fringe benefits of all employees and contractors engaged in the management, operation, and maintenance of the property and/or the Building; employer's Social Security taxes, unemployment taxes or insurance, and any other taxes which may be levied against Landlord on those wages and salaries; and the cost to Landlord of disability and hospitalization insurance and pension or retirement benefits for these employees.
- (2) All supplies and material used in the operation and maintenance of the Property and/or the Building, including landscaping.
- (3) Cost of water and power, and cost of heating, lighting, air conditioning, and ventilating the Building, the Common Areas, and the Premises, which costs shall be based on either Tenant's Proportionate Share or separately allocated to the Premises, at Landlord's option, based upon either direct usage, if separately metered, or an appropriate allocation among all tenants consuming those services as measured from the meter monitoring this usage.
- (4) The electrical costs incurred in the operation of the "chiller" for the Building, which shall be allocated pro rata among the Building tenants.
- (5) Cost of maintenance and for rental paid for such machinery, tools, and equipment (if rented) used in connection with the operation or maintenance of the Building.
- (6) All premium and deductibles on policies of compensation, public liability, property damage, rental loss, and other policies of insurance maintained by Landlord with respect to the Property, Building, or any insurable interest therein; and the cost of casualty and liability insurance applicable to the Property and/or the Building, the improvements therein, and Landlord's personal property used in connection therewith.
- (7) All taxes and assessments and governmental charges, whether federal, state, county, or municipal, and any other taxes and assessments attributable to the Property and/or the Building or its operation, including without limitation real property taxes and assessments and any tax or other levy, however denominated on or measured by the rental collected by the Landlord with respect to the Building, or on Landlord's business of leasing the Building, but excluding federal and state taxes on income.
- (8) A management fee, not to exceed current market rates, which may be payable to the Landlord;
- (9) Cost of replacing lamps, bulbs, starter, and ballasts used in the Building, other than those for which the cost is billed directly to the tenant. Operating Expenses

shall not include expenses for which the Landlord is reimbursed or indemnified (either by an insurer, condemner, tenant, or otherwise); expenses incurred in leasing or procuring tenants (including, without limitation, lease commissions, legal expenses, and expenses of renovating space for tenants); legal expenses arising out of disputes with tenants or the enforcement of the provisions of any lease of space in the Building; interest or amortization payments on any mortgage or mortgages, and rental under



any ground or underlying lease or leases; costs of any work or service performed for or facilities furnished to a tenant at the tenant's cost; the cost of correcting defects (latent or otherwise) in the construction of the Building, except those conditions (not occasioned by construction defects) resulting from wear and tear shall not be deemed defects; and costs of capital improvements, depreciation, and amortization (except as provided otherwise above).

- (10) Tenant shall be responsible for payment of all real estate taxes assessed against the subject property. Tenant will pay for said taxes when due.

## **7. UTILITIES AND SERVICES**

Tenant has complete and full responsibility for paying all utilities supplied to Tenant's space including gas, electricity, water, sewage, and the pro rata cost of the utility and related HVAC costs.

- A. Tenant may operate its premises twenty-four (24) hours a day, seven (7) days per week.
- B. Landlord will furnish and Tenant will pay for utilities to provide for lighting, convenience power, heat, and air conditioning during such Building Business Hours for the comfortable occupancy of the Premises. The air conditioning system achieves maximum cooling when the window coverings are closed. Landlord shall not be responsible for room temperatures if Tenant does not keep all window coverings in the Premises closed whenever the system is in operation. Tenant agrees to cooperate fully at all times with Landlord, and to abide by all regulations which Landlord may prescribe for the proper function and protection of said air conditioning system. Tenant agrees not to connect any apparatus, device, conduit, or pipe to the Building chilled and hot water air conditioning supply lines. Tenant further agrees that neither Tenant nor its servants, employees, agents, visitors, licensees, or contractors shall at any time enter mechanical installations or facilities of the building or adjust, tamper with, touch, or otherwise in any manner affect said installation or facilities. The cost of maintenance and service calls to adjust and regulate the air conditioning system shall be charged to Tenant if the need for maintenance work results from either Tenant's adjustment of room thermostats or Tenant's failure to comply with its obligation under this Section 7, including keeping window coverings closed as needed.
- C. Landlord will provide non-attended passenger elevator facilities during Building Business Hours.
- D. Landlord will provide water for drinking, lavatory, and toilet purposes drawn through fixtures installed by Landlord.
- E. It is understood that Landlord does not warrant that any of the services referred to above will be free from interruption by virtue of a strike, labor trouble, or any other cause whatsoever. Such interruption of service shall never be deemed an

eviction or disturbance of Tenant's use or possession of the Premises, or any part thereof, nor shall it render Landlord liable to Tenant for damages, by abatement, reduction of Rent, or otherwise, nor shall it render Landlord liable to Tenant for damages, by abatement, reduction of Rent, or otherwise, nor shall it relieve Tenant from performance of Tenant's obligations under this Lease, nor shall Tenant be relieved from the performance of any covenant or agreement in this Lease because of such failure or interruption. Landlord reserves the right to stop service of the elevator, plumbing, ventilation, air conditioning, and electrical systems, when necessary, by reason of accident or emergency, or for repairs, alteration, or improvements which are in the reasonable judgment of Landlord desirable or necessary, until said repairs, alterations, or improvements shall have been completed; provided, Landlord shall use its good faith efforts to minimize interruption to Tenant's business operations.

- F. Tenant will hire and pay for janitorial services needed for Tenant's Premises throughout the term of the Lease.

### **8. CARE OF PREMISES**

Tenant agrees that it shall:

- A. Not use or occupy the Premises in violation of law or of the certificate of occupancy issued for the Building, and shall, upon written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or of said certificate of occupancy. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupancy thereof.
- B. Give Landlord access to the Premises at all reasonable times, without charge or diminution of Rent, to enable Landlord to examine the same and to make such repairs, additions, and alterations as Landlord may deem advisable, including the right to show the Premises for the purpose of a potential sale or lease. If Landlord gives notice to Tenant (which notice may be given by telephone or fax) and Tenant fails to respond to Landlord within twenty-four (24) hours then Landlord shall have the right to enter the Premises.
- C. At Tenant's own cost and expense and without liens, keep, repair, maintain, and replace the Premises, and every part thereof, including all fixtures, equipment, and Tenant Improvements, in proper order, condition, and repair and shall make all repairs and maintenance necessary to keep the same in such condition; provided that Landlord shall maintain, repair, and replace the structural elements of the Building and the plumbing, heating, ventilating, air conditioning, elevator, and electrical system installed or furnished by Landlord (except for items which are installed for Tenant's exclusive use). If Tenant shall fail to so repair and

maintain the Premises or any part thereof after five (5) days' notice from Landlord to do so (or such shorter period as Landlord, in the exercise of its good faith business judgment, may decide that the circumstances warrant), Landlord may, but in no event shall be obligated to, make the repairs and Tenant shall pay the actual cost thereof to Landlord on demand as Additional Rent. Maintenance and repair costs incurred by Landlord with respect to the structural elements of the Building and the plumbing, heating, ventilating, air conditioning, elevator, and electrical system installed or furnished by Landlord shall be part of the Operating Costs defined in Section 6, the responsibility of the Landlord unless such maintenance and repairs are caused in part or in whole by the act, neglect, or omission by Tenant, its agents, employees, sublessees, licensees, or invitees, in which case Tenant shall pay to Landlord, as Additional Rent, that portion of the cost of such Maintenance and repairs which, in Landlord's good faith business judgment, is attributable to the act, neglect, or omission by Tenant, its agents, employees, sublessees, licensees, or invitees.

- D. Recognize that improvements attached to the Premises become the property of the Building and may not be removed without approval of Landlord, which approval may be subject to the Tenant's paying for the cost of repairs resulting from the approval of such improvements.
- E. Upon the termination of this Lease in any manner whatsoever, remove Tenant's property and those of any other person claiming under Tenant, and quit and deliver up the Premises to Landlord peaceably and quietly in as good order and condition as the same is now in or hereafter may be put in by Landlord or Tenant, reasonable use and wear thereof excepted. Any and all costs incurred by Landlord to restore the Premises to good order and condition will be billed to Tenant, and Property not removed by Tenant at the termination of this Lease, however terminated, shall be considered abandoned and Landlord may dispose of the same as it deems expedient with reasonable cost thereof to be billed to the Tenant.
- F. Not place signs on the Premises except as authorized and approved by Landlord and subject to all applicable governmental rules and restrictions, as well as the "Building Rules and Regulations" as set forth in **Exhibit F**.
- G. Except as expressly provided in this Lease, not make any alteration of, improvements to, or addition to the Premises without the prior written approval of Landlord.
- H. Not install or authorize the installation of any coin-operated vending machine without obtaining prior written consent from Landlord.
- I. Not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or injure, use, or allow the Premises to be used for any improper, unlawful, or objectionable purpose, nor shall Tenant cause, maintain, or permit

any nuisance in, on, or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

- J. Not do or permit to be done anything which will invalidate or increase the cost of any fire extended coverage or any other insurance policy covering the Building and/or property located therein. Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charges for such policy by reason of Tenant's failure to comply with the provisions of this subsection 9.1.
- K. Observe the "Building Rules and Regulations" described in **Exhibit F**, which may be modified by Landlord from time to time upon reasonable notice from Landlord to Tenant.
- L. Monitor issuance of keys. Unless specifically provided otherwise in the Lease, all keys and/or Building security card devices for access to the Premises and Building are provided at Tenant's cost after Tenant receives its initial allotment of keys and/or Building security card devices, the number of keys to be determined by the parties during planning stage. Any re-keying of the Premises and/or Building due to lost or missing keys shall be at Tenant's cost. No additional locks shall be placed upon any doors without the written consent of Landlord. Additional keys and/or Building security card devices shall be furnished at Tenant's cost. Upon termination of this Lease, all keys and building security card devices shall be surrendered to Landlord.
- M. Install Tenant's communications equipment and cabling in accordance with Landlord's Building Rules and Regulations.
- N. Remove, upon Landlord's request, all cabling provided in Tenant's Premises, at Tenant's sole cost, upon Lease termination.
- O. Not place any other equipment of any kind or nature whatsoever which will or may necessitate any changes, replacements, or additions to or require the use of the water system, plumbing system, heating system, air conditioning system, or the electrical system of the Premises or Building without the prior written consent of Landlord.  
  
All heating, ventilation, and air conditioning (HVAC) equipment installed in the Premises for Tenant ' s specific requirements, separate or in addition to the Building HVAC system, shall be maintained at Tenant's sole cost and expense.
- P. Comply with the Americans Disabilities Act with respect to Tenant's use and occupancy of the Premises.

## **9. ASSIGNMENT AND SUBLETTING**

- A. Tenant shall not, either voluntarily or by operation of law, assign, hypothecate, or transfer this Lease, or sublet the Premises or any part thereof, without the prior

written consent of Landlord in each instance.

- B. In the event Tenant desires to assign, hypothecate, or otherwise transfer this Lease or sublet the Premises, then at least thirty (30) days prior to the date when Tenant desires the assignment or sublease to be effective (the "Assignment Date"), Tenant shall give Landlord a written notice (the "Assignment Notice"), which shall set forth the name, address, and business of the proposed assignee or sublessee, information (including references) concerning the character, ownership, and financial condition of the proposed assignee or sublessee, the Assignment Date, any ownership or commercial relationship between Tenant and the proposed assignee or sublessee, and the consideration and all other material terms and conditions of the proposed assignment or sublease, all in such detail as Landlord shall reasonably require. If Landlord requests additional detail, the Assignment Notice shall not be deemed to have been received until Landlord receives such additional detail and Landlord may withhold consent to any assignment or sublease until such information is provided to it.
- C. Landlord may, in its absolute discretion, withhold consent to any assignment, hypothecation, or transfer, assign this Lease. In any event, Landlord may withhold its consent to any assignment or sublease if the proposed sublessee or assignee, or any person or entity which directly or indirectly controls, is controlled by, or is under common control with the proposed sublessee or assignee, either (1) occupies space in the Building at the time of the request for consent, or (2) is negotiating with Landlord or has negotiated with Landlord during the six (6) month period immediately preceding the date Landlord receives Tenant's request for consent, to lease space in the Building. As a further condition to any rights Tenant may have under this Lease to sublet all or any portion of the Premises, Tenant shall sublease such space at a base rental rate no lower than Landlord's then current highest asking base rental rate for other space in the Building which is then on the market for direct lease. If there is no space in the Building then currently on the market for direct lease, Tenant shall sublease the space at a base rental rate no lower than the fair market rental rate. The subletting of substantially all the Premises for all or any part of the remaining term of this Lease shall be deemed an assignment rather than a sublease for purposes of this clause. Notwithstanding the foregoing, Landlord shall consent to the assignment or transfer, if the Assignment Notice states that Tenant desires to assign the Lease to any entity into which Tenant is merged, with which Tenant is consolidated, or which acquired all or substantially all of the assets of Tenant, provided that the assignee first executes, acknowledges, and delivers to Landlord an agreement whereby the assignee agrees to be bound by all the covenants and agreements in this Lease which Tenant has agreed to keep, observe, or perform, that the assignee agrees that the provisions of this Section 9 shall be binding upon it as if it were the original Tenant hereunder, and that the assignee shall have a net worth (determined in accordance with generally accepted accounting principles consistently applied) immediately after such assignment which is at least equal to the net worth (as so determined) of Tenant at the time this Lease was entered into.

- D. If Tenant shall sublet all or any portion of the Premises, then any consideration paid by the sublessee for the portion of the Premises being sublet that exceeds the Basic Rent and rental adjustments provided by this Lease for such portion of the Premises being sublet shall be due, owing, and payable from Tenant to Landlord when paid on owing by the sublessee under the sublease without any deduction or adjustment whatsoever for costs incurred by Tenant in connection with the sublease. For the purpose of this Section 9, the rent for each square foot of floor space in the Premises shall be deemed equal. All costs incurred in connection with any sublease including, without limitation, broker's fees and tenant improvement costs, shall be paid by Tenant.
- E. Any sale, assignment, hypothecation, or transfer of this Lease or subletting of the Premises that is not in compliance with the provisions of this Section 10 shall be void and shall, at the option of Landlord, terminate this Lease. The consent by Landlord to any assignment or subletting shall not be construed as relieving Tenant or any assignee of this Lease or sublessee of the Premises from obtaining the express written consent of Landlord to any further assignment or subletting, or as releasing Tenant or any assignee or sublessee of Tenant from any liability or obligation hereunder whether or not then accrued. Tenant shall pay Landlord as Additional Rent a reasonable fee for costs incurred in connection herewith, including but not limited to costs for attorneys, accountants, architects, Tenant Improvement oversight, and administration at the time Tenant requests in writing that Landlord consent to any assignment or subletting of the Lease. At a minimum, Landlord shall charge a fee of One Thousand and No/100 Dollars (\$1,000.00) for all assignments and subleases which require or do not require Landlord's consent, whether or not an assignment or sublease is executed. This Section 9 shall be fully applicable to all further sales, hypothecations, transfer, assignments, and subleases of any portion of the Premises by any successors or assignee of Tenant, or any sublessee of the Premises.
- F. Notwithstanding any provisions of this Section 9 to the contrary, after the Landlord receives a request from Tenant to consent to either an assignment or sublease, Landlord shall have the option, to be exercised by written notice within thirty (30) days after the receipt of such request, to terminate this Lease and the Term hereof with respect to the portion of the Premises covered by the proposed assignment or sublease on not less than thirty (30) days' and not more than ninety (90) days' notice to the Tenant. If the Landlord elects to terminate this Lease as aforesaid, Tenant shall have the right, to be exercised by written notice to the Landlord ten (10) days after receipt of such notice of termination, to withdraw the request for consent to the proposed assignment or sublease, in which case the Tenant shall not proceed with such assignment or sublease, the notice of termination shall be null and void, and this Lease shall continue in full force and effect in accordance with its terms. In the event Landlord elects to terminate this Lease as provided herein, Landlord shall have the additional right to negotiate directly with Tenant's proposed assignee or subtenant and to enter into a direct

lease with such party on such terms as shall be acceptable to the Landlord in its sole and absolute discretion, and Tenant hereby waives any claims against Landlord related thereto, including without limitation any claims for any compensation or profit related to such lease.

The term "assign", as used herein, shall include an assignment of a part of interest in this Lease, as well as any assignment from one co-tenant to another; and an assignment to any prior owner of the Tenant's interest herein or part thereof. An assignment within the meaning of this Section 9, shall be deemed to include one or more sales or transfers, by operation of law or otherwise.

### **10. DAMAGE OR DESTRUCTION**

- A. In the event the Building and/or the Premises are damaged by fire or other perils covered by Landlord's insurance, Landlord shall:
- (1) In the event of a partial destruction of the Building and/or the Premises, to an extent not exceeding twenty-five percent (25%) of the full insurable value thereof, and if the damage thereto is such that the Building and/or the Premises may be repaired, reconstructed, or restored within a period of one hundred twenty (120) days from the date of the happening of such casualty and if Landlord will receive insurance proceeds sufficient to cover the cost of such repairs, then Landlord shall commence and proceed diligently with the work of repair, reconstruction, or restoration and this Lease shall continue in full force and effect.
  - (2) If such repair, reconstruction, or restoration shall require a period longer than one hundred twenty (120) days or exceeds twenty-five percent (25%) of the full insurable value thereof, or if said insurance proceeds will not be sufficient to cover the cost of such repairs, then Landlord may elect to either so repair, reconstruct, or restore and the Lease shall continue in full force and effect or Landlord may elect not to repair, reconstruct, or restore and the Lease shall then terminate.
  - (3) Under any of the conditions of this subsection IO.A., Landlord shall give written notice to Tenant of its intention within forty-five (45) days after the occurrence of such damage or destruction. In the event Landlord elects not to restore the Building and/or the Premises, this Lease shall be deemed to have terminated as of the date of such partial destruction. In the event Landlord elects to restore the Building and/or the Premises, but it is reasonably estimated that such restoration will take longer than nine (9) months from the date of the casualty, then Tenant may terminate this Lease on written notice to Landlord.
- B. Upon any termination of this Lease under any of the provisions of this Section 10, the parties shall be released without further obligation to the other from the date

possession of the Premises is surrendered to Landlord except for items which have theretofore accrued and are then unpaid.

- C. In the event of repair, reconstruction, or restoration by Landlord as herein provided, the Rental payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the period of such repair, reconstruction, or restoration. Tenant's recovery for damages, if any, is limited to Rental abatement. Tenant shall not be entitled to any compensation or damages for loss in the use of the whole or any part of the Premises and/or any inconvenience or annoyance occasioned by any damage, repair, reconstruction, or restoration.
- D. Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Section 10. Notwithstanding anything to the contrary contained in this Section 10, if Landlord is delayed or prevented from repairing or restoring the damaged Premises within nine (9) months after the occurrence of such damage or destruction by Acts of God, war, governmental restrictions, inability to procure the necessary labor or materials, or other cause beyond the control of Landlord, Landlord shall be relieved of its obligation to make such repair or restoration and Tenant shall be released from its obligations under this Lease as of the end of said nine (9) month period and this Lease shall be deemed terminated.
- E. If damage is due to any cause other than fire or other peril covered by extended coverage insurance, Landlord may elect to terminate this Lease.
- F. If Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall be obligated to make repair or restoration only of those portions of the Building and/or the Premises which were originally provided at Landlord's expense, including special improvements, and the repair and restorations of items not provided at Landlord's expense shall be the obligation of Tenant.
- G. Notwithstanding anything to the contrary contained in this Section 10, Landlord shall not have any obligation whatsoever to repair, reconstruct, or restore the Premises when the damage resulting from any casualty covered under this Section 10 occurs during the last nine (9) months of the then current term of this Lease. However, if Landlord chooses not to restore, Tenant may elect to terminate this Lease.

## **11. INDEMNIFICATION**

- A. Tenant shall indemnify, defend, and hold Landlord harmless from all claims arising from Tenant's use of the Premises, the conduct of its business, or from any activity, work, or thing done, permitted, or suffered by Tenant in or about the Premises. Tenant shall further indemnify, defend, and hold Landlord harmless from all claims arising from any breach or default in the performance of any



obligation to be performed by Tenant under the terms of this Lease, or arising from any act, neglect, fault, or omission of Tenant or of its agents or employees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in or about such claim or any action or proceeding brought thereon. In case any action or proceeding shall be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense provided that the foregoing provisions shall not be construed to make Tenant responsible for loss, damage, liability, or expense resulting from injuries to third parties caused by the negligence of Landlord, or its officers, contractors, agents or employees. In the event of concurrent negligence of Tenant, its sublessees, assignees, invitees, agents, employees, contractors, or licensees on the one hand, and that of Landlord, its agents, employees, or contractors on the other hand, which concurrent negligence results in injury or damage to person or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of the Premises, Common Areas, or Building, Tenant's obligation to indemnify Landlord as set forth in this Section shall be limited to the extent of Tenant's negligence, and that of Tenant's sublessees, assignees, agent, employees, contractors, or licensees, including Tenant's proportional share of costs, attorney's fees, and expenses incurred in connection with any claim, action, or proceeding brought with respect to such injury or damage. The parties agree that this provision was mutually negotiated.

- B. Landlord shall indemnify, defend, and hold Tenant harmless from all claims arising from Landlord's work in or about the Common Area. Landlord shall further indemnify, defend, and hold Tenant harmless from all claims arising from any breach or default in the performance of any obligation to be performed by Landlord under the terms of this Lease, or arising from any act, neglect, fault, or omission of Landlord or of its agents or employees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in or about such claim or any action or proceeding brought thereon. In case any action or proceeding shall be brought against Tenant by reason or any such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord' s expense by counsel approved in writing by Tenant; provided that the foregoing provision shall not be construed to make Landlord responsible for loss, damage, liability, or expense resulting from injuries to third parties caused by the negligence of Tenant, or its officers, contractors, agents, or employees.

## **12. DAMAGE TO TENANT'S PROPERTY**

Notwithstanding anything in this Lease to the contrary, Landlord or its agents shall not be liable for any damage to Tenant's property which is caused by:

- A. Loss or damage to any property by theft or otherwise.
- B. Landlord or its agents shall not be liable for interference with light or other

incorporeal hereditaments.

Tenant shall give prompt notice to Landlord in case of fire or accidents on the Premises or in the Building, or of defects therein, or in the fixtures or equipment.

### **13. TENANT'S INSURANCE**

- A. Tenant is an agency of the State of Montana and, as such, maintains and will continue to maintain such liability and other insurance as is outlined in Title 2, Chapter 9, of the Montana Code Annotated.
- B. The parties acknowledge that the leased property is going to be used predominantly for general office use and secondarily for laboratory and research purposes.
- C. Tenant shall not allow any waste or nuisance on the Premises, or use or allow the Premises to be used for any unlawful purpose.
- D. To the extent not prohibited by or violative of any policy of fire or extended coverage insurance issued to Landlord or to Tenant, Landlord and Tenant hereby waive the right to maintain a direct action against the other for damages arising out of such other's negligent or otherwise tortious acts or omissions, but only to the extent that the cost of repairing such damage is covered by insurance or would have been covered by insurance proceeds payable under any policy required to be maintained under this Lease, but not so maintained. Each policy of such insurance shall, if obtainable from the insurer without additional expense either: (1) contain a waiver of subrogation by insurer against Tenant or Landlord, as the case may be; or (2) include the name of the Landlord or Tenant, as the case may be, as an additional insured, but not as a party to whom any loss shall be made payable. If the inclusion of either said provisions would involve an additional expense, either party, at its expense, may require such provisions to be inserted in the other's policy. In the event a party is unable to obtain such a waiver, it shall immediately notify the other of this inability. In absence of such notification, each party shall be deemed to have obtained such waiver of subrogation.

### **14. EMINENT DOMAIN**

If more than twenty-five percent (25%) of the Building containing the Premises shall be taken or condemned for public or quasi-public use, under any statute or by right of eminent domain, or private purchase in lieu thereof, by any competent authority, Tenant shall have no claim against Landlord and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of any such condemnation. All rights of the Tenant to damages therefore are hereby assigned by the Tenant to Landlord; provided, nothing contained in this Section 14 shall be deemed to give Landlord any interest in any award made to Tenant for the taking of personal property and fixtures belonging to Tenant. Upon such condemnation or taking, the term of this Lease shall cease and terminate from the date such

governmental agency takes possession, and the Tenant shall have no claim against Landlord for the value of any unexpired term of the Lease. If less than twenty- five percent (25%) of the Building shall be so taken, but if such taking shall substantially affect the Premises or the means of access thereto, or if such taking shall be of a substantial part of the Premises, Landlord or Tenant shall have the right, by delivery of notice in writing to the other party, to terminate this Lease as of the date when possession shall be so taken. If neither party shall so elect, this Lease shall be and remain unaffected by such taking except that, effective as of the date when possession shall be so taken, the Rent payable hereunder shall be diminished by all amounts which shall bear the same ratio to the rent as the area of the part of the Premises taken bears to the area of the Premises before such taking.

### **15. BANKRUPTCY**

If Tenant shall file a petition in bankruptcy under any provision of the Bankruptcy Code as then in effect, or if Tenant shall be adjudicated bankrupt in involuntary bankruptcy proceedings and such adjudication shall not have been vacated within thirty (30) days from the date thereof, or if a receiver or trustee shall be appointed of Tenant's property and the order appointing such receiver or trustee shall not be set aside or vacated within thirty (30) days after the entry thereof, or if Tenant shall assign Tenant's estate or effects for the benefit of creditors, or if this Lease shall, by operation of law or otherwise, pass to any person or persons other than Tenant, then in any such event Landlord may terminate this Lease, if Landlord so elects, with or without notice of such election and with or without entry or action by Landlord. In such case, notwithstanding any other provisions of this Lease, Landlord, in addition to any and all rights and remedies allowed by law or equity, shall, upon such termination, be entitled to recover damages in the amount provided for by Section 18 of this Lease.

Neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or order of any court shall be entitled to possession of the Premises but shall surrender the Premises to Landlord. Nothing contained herein shall limit or prejudice the right of Landlord to recover damages, by reason of any such termination, equal to the maximum allowed by any statute or rule of law in effect at the time, and governing the proceedings in which such damages are to be proved, whether or not such amount is greater, equal to, or less than the amount of damages recoverable under the provisions of this Section 15.

### **16. DEFAULT AND REMEDIES**

- A. The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:
- (1) The vacation or abandonment of the Premises by Tenant. Abandonment is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) business days or longer while Tenant is in default of any provisions or term of this Lease.
  - (2) The failure by Tenant to make any payment of Rent or any other payment

required to be made by Tenant hereunder, as and when due.

- (3) The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in (1) or (2) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant. If the nature of Tenant's default is such that more than a ten (10) day period is reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said ten (10) day period and thereafter diligently prosecute such cure to completion, which completion shall occur no later than sixty (60) days from the date of such notice from Landlord.
- (4) The filing by or against Tenant of a petition to have Tenant adjudged as bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy, unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days.
- (5) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days.

B. In the event of any such default by Tenant, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

- (1) The amount of any unpaid Rent which had been earned at the time of such termination; plus
- (2) The amount by which the unpaid Rent which would have been earned after termination and for the balance of the Lease Term exceeds the amount of such Rental loss that Tenant proves could have been reasonably avoided; plus
- (3) Any interest charged on delinquent Rent; plus
- (4) The costs incurred by Landlord in re-letting the Premises, which costs shall include but not be limited to real estate broker's fees incurred by Landlord; the costs of repairing the Premises and putting the same into a tenantable condition; the cost of tenant improvements, alterations, renovations, and decorating the Premises for the new tenant(s); any allowances or credits which Landlord grants such new tenant(s); any expenses or costs related to any assumption by Landlord of the lease of such replacement tenant( s ); an amount equal to the difference between the Basic Rent as specified in this Lease and the rent payable by the replacement tenant(s); the attorney's fees and costs incurred by Landlord; plus

- (5) Any other amount necessary to compensate Landlord for all the actual damages proximately caused by Tenant's failure to perform Tenant's obligation under this Lease.
- C. In the event of any such default by Tenant, and in addition to all other remedies, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. Landlord shall be entitled to hold and sell Tenant's property in a commercially reasonable manner as specified in the Uniform Commercial Code as enacted in the State of Montana. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 16 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction.
- D. (1) In the event of any such default by Tenant and in the event that Landlord shall elect to re-enter as provided above or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, Landlord may from time to time, without terminating this Lease, and without waiving its right to recover all damages incurred, re-let the Premises or any part thereof for the term of this Lease on terms and conditions as Landlord, in its sole discretion, may deem advisable with the right to make alterations and repairs to the Premises.
- (2) In the event that Landlord shall elect to so re-let, then Rentals received by Landlord from such re-letting shall be applied first to the payment of any cost of such re-letting (including the costs described in subsection 16.B.(4) above); second, to the payment of the cost of any alterations and repairs to the Premises; third, to the payment of an indebtedness other than Rent due hereunder; and fourth, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied to payment of future Rent as the same may become due and payable hereunder. Should the portion of such Rentals received from such re-letting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefore by Landlord.
- E. Tenant acknowledges that certain benefits or concessions provided by Landlord are conditioned upon Tenant's timely, full, and faithful performance of each and every obligation, covenant, representation, and warranty of this Lease throughout the entire Term, even though such benefits or concessions may be realized by Tenant over less than the entire Term. Accordingly, notwithstanding anything to the contrary contained herein, in the event Landlord brings an action against Tenant for default under this Lease, Landlord shall become immediately entitled

to receive from Tenant, as Additional Rent, the amount of all such benefits and concessions allocable to the balance of the Lease term on a pro rata basis, including without limitation:

- (1) any amounts theretofore or thereafter paid by Landlord to Tenant or to any third party or any amounts credited to Tenant or to any third party, for or on account of:
  - i) any moving, tenant improvement, decorating, or other allowance or credit granted to Tenant;
  - ii) any real estate commission paid on account of this Lease;
  - iii) any expenses or costs related to assumption by Landlord of any other lease.
- (2) rent for any period for which this Lease provides any zero or nominal Rent, including any period of early occupancy of the Premises prior to the commencement of the Term of this Lease; plus
- (3) the amount spent by Landlord for any tenant improvements to the Premises.

All rights, options, and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and not one of them shall be exclusive of the other; and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any Rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

- F. Landlord shall be in default in the performance of any material obligation required to be performed by Landlord under the Lease if Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) calendar days are required for its performance, then Landlord shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion.

## **17. SUBORDINATION, QUIET ENJOYMENT**

- A. Without the necessity of any additional document being executed by Tenant for the purpose of effective subordination, and at the election of Landlord or any mortgagee or beneficiary of a deed of trust with a lien on the building or any part

thereof, or any ground lessor ( collectively referred to in this Lease as "Mortgage"), this Lease shall be subject and subordinate at all times to:

- (1) All ground leases or underlying leases which may not exist or hereafter be executed affecting the Building or any part thereof; and
  - (2) The lien of any mortgage or deed of trust which may not exist or hereafter be executed in any amount for which the Building, ground leases, underlying leases, or Landlord' s interest or estate in any of said items is specified as security (collectively referred to as "Mortgages").
- B. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or Mortgages to this Lease.
- C. In the event that any ground lease or underlying lease terminates for any reason or any Mortgage is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor-in-interest to Landlord, at the option of such successor-in-interest. Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents evidencing the priority of subordination of this Lease with respect to any such ground leases or underlying leases, or in lieu of any such Mortgage. Should Tenant fail to sign and return any such documents within twenty (20) business days of such request, Tenant shall, at Landlord's election, be in default under this Lease.
- D. In the event of any such subordination of this Lease pursuant to subsection 17.C., Tenant's possession of the Premises shall remain undisturbed and Tenant' s rights under this Lease shall be recognized and shall not be adversely affected so long as Tenant is not in default under this Lease.

## **18. ESTOPPEL CERTIFICATES**

Tenant shall from time to time, upon written request of Landlord, execute, acknowledge, and deliver to Landlord, or its designee, a written statement stating: the date this Lease was executed; the Term Commencement Date, as well as the date of Term expiration; the date Tenant entered into occupancy of the Premises; the amount of minimum monthly Rental and the date through which such Rental has been paid; and certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented, or amended in any way (or specifying the date of the agreement so affecting this Lease); that this Lease represents the entire agreement between the parties as to this leasing; that all conditions under this Lease to be performed by Landlord have been satisfied; that all required contributions by Landlord to Tenant on account of Tenant's improvements have been received; that on this date there are no existing defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; and that not more than one month's Rental has been paid in advance.

## **19. ATTORNEY'S FEES**

- A. **Payment to Prevailing Party.** If either party shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against any other party by reason of the breach or alleged violation of any covenant, term, or obligation hereof, or for the enforcement of any provision hereof, or to interpret the Lease, or for any other claim otherwise arising out of this Lease, the Prevailing party (as defined below) in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorney's fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 19 shall include, without limitation, a party who dismisses all action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.
- B. **Attorney's Fees in Third-Party Litigation.** If either party is required to litigate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim of third-party claim) because of the other party's breach of this Lease, or otherwise arising out of this Lease, and such party is the Prevailing Party in such action or proceeding, then the party so initiating or defending shall be entitled to reasonable attorney's fees from the other party.
- C. **Scope of Fees.** Attorney's fees under this Section 19 shall include attorney's fees on any appeal, attorney's fees on any confirmation of an arbitration award or in enforcing any judgment on an arbitration award; and, in addition, a party entitled to attorney's fees shall be entitled to all other reasonable costs and expenses occurred in connection with such action.

## **20. NOTICES**

Unless specifically set forth elsewhere in this Lease, all notice required or permitted to be given hereunder must be in writing and may be given by personal delivery, overnight air courier, or by mail; and, if given by mail, shall be mailed by certified mail, return receipt requested, addressed to Tenant or to Landlord at the addresses designated in subsection 1.F. Notice shall be deemed sufficiently given:

- A. When tendered, if written notice is personally delivered; or
- B. On the date delivered ( or on the date delivery is refused) if sent by overnight air courier; or
- C. If mailed, forty-eight (48) hours after deposit of the above-described certified mail with the United States Postal Service. Either party may specify a different address for notice purposes by written notice to the other.

## **21. HOLDING OVER**



Should Tenant continue to occupy the Premises after expiration or termination of the Term or any renewal or renewals thereof with Landlord's written consent, such tenancy shall be from month-to-month at a monthly Rent equal to 150% of the Rent and Additional Rent paid for the last month of the Term of this Lease and all other charges due hereunder for each month or any part thereof of any such holdover period. In the event of any unauthorized holding over by Tenant, such tenancy shall be a tenancy at sufferance at a rental rate equal to 200% of the Rent and Additional Rent paid for the last month of the Term, and Tenant shall indemnify Landlord against all claims for damages by any other tenant to whom Landlord may have leased all or any part of the Premises covered hereby effective upon termination of this Lease.

## **22. ALTERATIONS**

### **A. Approval Process.**

- (1) Interior Finishes or Structural Work. Tenant shall not make or cause to be made interior finish work (alterations, additions, or improvements) to the Premises or structural interior alterations (structural interior alterations include but are not limited to alterations involving the Building's electrical, mechanical, plumbing, fire safety, life, or other Building's systems), without the prior written approval of Landlord. All work must comply with the Tenant Improvement Specifications and the Building Shell Specifications (as defined in **Exhibit C**). All work shall be performed by Landlord using contractors which are licensed and bonded. In addition, Tenant shall comply with the terms and conditions provided in the Construction Rules and Regulations attached hereto as **Exhibit G**. Tenant shall provide Landlord with written notice of its intent to make changes at least fourteen ( 14) days prior to the start of any proposed work. Notice shall include detailed information concerning the following items:
  - i) General description of the changes to be made including the description of any demolition work;
  - ii) It is a requirement to use licensed and bonded contractors to do the work. All contractors shall provide Landlord with a certificate of insurance complying with Landlord's insurance requirements prior to commencement of any work;
  - iii) Estimate of cost of work;
  - iv) Intended work schedule, including duration and indicating whether the work will be accomplished during "normal Building hours" or on an off-hours basis; and
  - v) Plans and specifications for the work, including all cabling and

mechanical/electrical plans (unless work only involves finishes, e.g., decorating, floorings, wall coverings, carpeting, painting, where plans and specifications are not applicable).

- B. Work at Tenant's Risk.** Tenant shall complete any work done pursuant to subsection 22.A. at Tenant's sole risk, cost, and expense in accordance with the Construction Rules and Regulations attached hereto as **Exhibit G**.
- C. Title to Property.** Landlord shall notify Tenant prior to the commencement of any improvements under this Section 22 if Tenant will be required to remove such additions, alterations, or improvements at the end of the Lease term and restore the Premises to the same condition it was in prior to such installation. Improvements which Landlord does not require the Tenant to remove shall immediately become the property of the Landlord. Notwithstanding the foregoing sentence, Tenant shall be obligated to remove, at Tenant's cost, all cabling within the Premises, and to restore the Premises to its original condition in connection with such removal. At the expiration or earlier termination of this Lease, all alterations, additions, or improvements made by Tenant after the Commencement Date shall, at Tenant's option (unless otherwise required by Landlord), either be removed and the Premises returned to their original configuration (normal wear and tear and damage due to fire or other casualty excepted), or shall become the property of Landlord, free and clear of liens, claims, and encumbrances, to remain upon and be surrendered with the Premises. Notwithstanding anything to the contrary herein, all movable partitions, business and trade fixtures, machinery and equipment, communications equipment, and office equipment affixed to or located within the Premises, which can be removed without damage to the Building, shall remain the property of Tenant; provided, Tenant shall promptly repair any damage to the Premises and Building upon their removal. Furniture, furnishings, and other articles of personal property owned by Tenant and located in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the Term and any extensions thereof.

All alterations to the Premises with or without Landlord's written approval shall be made in accordance with Landlord's Construction Rules and Regulations attached hereto as **Exhibit G**. Landlord reserves the right to modify such rules and regulations as Landlord determines in its sole discretion.

### **23. PRIOR AGREEMENT, AMENDMENTS**

Neither party hereto has made any representations or promises except as contained herein or in some further writing signed by the party making such representations or promises. No agreement hereinafter made shall be effective to change, modify, discharge, or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or on behalf of the party against whom enforcement of the change, modification, discharge, or abandonment is sought.

## **24. SUCCESSORS**

All of the covenants, agreements, terms, and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, legal representatives, successors, assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

## **25. RIGHT TO PERFORM**

If Tenant shall fail to pay any sum of money, other than Basic Rent and Additional Rent required to be paid by it hereunder, or shall fail to perform hereunder, and such failure shall continue for ten (10) days after notice hereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease. Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of non-payment of sums due under this Section 25 as in the case of default by Tenant in the payment of Rent.

## **26. FORCE MAJEURE**

Whenever performance is required of either party hereunder, that party shall use all due diligence to perform and shall take all necessary measures in good faith to perform; provided, however, that, except with respect to Tenant's obligation to pay Rent or any other charges due under this Lease, if completion of performance shall be delayed at any time by reason of Acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, governmental actions, Landlord's inability to obtain permits or other governmental approvals, inability to obtain materials, or damage to work in progress by reason of fire or other casualty, or other cause beyond the reasonable control of said party (except to the extent of such party's negligence), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused.

## **27. LIMITATION ON LIABILITY**

In consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach, or default hereunder by Landlord:

- A. The sole and exclusive remedy shall be against Landlord's interest in the Building.
- B. Landlord shall not be liable for liability or damage claims for injury to persons or property from any cause relating to the occupancy of the premises by Tenant during the term of this lease or any extension thereof, except to the extent of Landlord's negligence or willful misconduct. Tenant shall indemnify and hold Landlord harmless from all liability, loss, or other damage claims or obligations resulting from any injuries or losses of this nature, and shall carry premises liability insurance as provided by Montana law, except to the extent of Landlord's

negligence or willful misconduct. Proof of such insurance shall be furnished to Landlord upon execution of this agreement.

- C. Any cause relating to the occupancy of the premises by tenant during the term of this lease or any extension thereof, except to the extent of Landlord's negligence or willful misconduct. Tenant shall indemnify and hold Landlord harmless from all liability, loss, or other damage claims or obligations resulting from any injuries or losses of this nature, and shall carry premises liability insurance, with Landlord as additional insured, except to the extent of Landlord's negligence or willful misconduct. Proof of such insurance shall be furnished to Landlord upon execution of this agreement. Proof of subsequent renewals shall be sent to Landlord at the above address on the annual anniversary date of this agreement.

## **28. MODIFICATION BY LENDER**

If, in connection with obtaining construction, interim, or permanent financing for the Building, the lender shall request reasonable modification of this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay, or defer its consent thereto, provided that such modification(s) do not increase the obligations of Tenant hereunder or materially and/or adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

## **29. MISCELLANEOUS**

- A. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of the Rent due shall be deemed to be other than on account of the amount due nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction. Landlord's right to recover the balance of such Rent or any installment, or to pursue any other remedy provided in this Lease, shall be unaffected by said payment, endorsement, or statement. Landlord reserves the right, in the absence of instructions to the contrary, to apply payment received from Tenant in whatever manner Landlord chooses.
- B. **Authority.**
- (1) **Tenant.** If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that she/he is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. Concurrently with the execution of this Lease, Tenant shall deliver to Landlord a certified copy of a resolution of the Board of Directors of said corporation authorizing the execution of this Lease. If Tenant is a partnership, each individual executing this Lease on behalf of said partnership represents and warrants that she/he is duly authorized to

execute and deliver this Lease on behalf of said partnership and that this Lease is binding upon said partnership in accordance with its terms and, concurrently with the execution of this Lease, Tenant shall deliver to Landlord such evidence of authorization as Landlord may require. If Tenant is a marital community, or a member of a marital community, both members of the marital community shall exercise this Lease or, concurrently with execution of this Lease, Tenant shall deliver to Landlord such evidence as Landlord may require that the member signing this Lease has the authority to sign on behalf of the marital community or, with Landlord's prior written consent, that Tenant's interest in this Lease is to be the separate estate of the signing member .

(2) **Landlord.** The individual executing on behalf of Landlord represents and warrants that she/he is duly authorized to execute and deliver this Lease on behalf of Landlord and that this Lease is binding upon said Landlord.

C. **Captions.** The captions of the paragraphs in this Lease are inserted and included solely for convenience and shall never be considered or given any effect in construing or interpreting the provisions hereof if any question of intent should arise.

D. **Construction.** This Lease shall be construed in accordance with the laws of the State of Montana.

E. **Definition of "Landlord".** The term "Landlord", as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title of the Premises or the lessees under any master lease, if any. In the event of any transfer, assignment, or other conveyance or transfers of any such title, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment, or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of the Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

F. **Definition of "Tenant".** The word "Tenant", wherever used in this Lease, shall be construed to mean tenants in all cases where there is more than one tenant, and the necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships, or individuals, men or women, shall in all cases be assumed as though in each case fully expressed. Each provision hereof shall extend to and shall, as the case may require, obligate or inure to the benefit of

Landlord and Tenant and their respective agents and employees.

- G. Examination of Lease.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option of Lease, and it is not effective as a Lease or otherwise until execution by and delivery to both Landlord and Tenant.
- H. Exhibits.** All exhibits attached to this Lease are incorporated herein by reference.
- I. Light and Air.** This Lease does not grant any right of access to light, air, or view over the property and Landlord shall not be liable for any diminution of such light, air, or view by an adjacent structure and/or vegetation. Tenant agrees and covenants that no diminution of light, air, or view by any structure which may hereafter be erected shall entitle Tenant to any reduction in Basic or Additional Rent under this Lease, result in any liability or obligation of Landlord to Tenant, or in any way affect this Lease or Tenant's obligations hereunder.
- J. Merger.** This Lease supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Premises and contains all of the covenants, agreements, and other obligations between the parties with respect to the Premises.
- K. Name.** Tenant shall not, without the written consent of Landlord, use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises, and in no event shall Tenant acquire any rights in or to such names.
- L. Parking.** Landlord shall provide adequate parking meeting Bozeman Code requirements for employees on the east side of the parking lot and for guests on the west side of the parking lot.
- M. Partial Invalidity.** If any term, covenant, or condition of this Lease is held invalid or unenforceable, the validity and enforceability of the Lease shall not be affected thereby; all remaining terms, covenants, or conditions of this Lease shall be valid and be enforceable to the fullest extent of the law.
- N. Recording.** Neither Landlord nor Tenant shall record this Lease, nor a short form memorandum thereof, without the consent of the other.
- O. Severability.** Any provision of this Lease which shall prove to be invalid, void, or illegal in no way affects, impairs, or invalidates any other provision hereof, and such other provisions shall remain in full force and effect.
- P. Signage.** At Tenant's request, Landlord shall install, as a part of the Tenant Improvement allowance, up to one (1) building standard lobby directory slip and one (1) tenant plaque for suite signage.

- Q. Time.** Time is of the essence of this Lease with respect to the performance of every provision of this Lease in which time or performance is a factor.
- R. Waivers.** The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice, which may grow up between the parties in the administration of the terms hereof, be deemed a waiver of or in any way affect the right of Landlord to insist upon the performance by Tenant in strict accordance with said terms. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

### **30. HAZARDOUS MATERIALS**

- A. "Hazardous Material" means any substance, waste, or material which is deemed hazardous, toxic, a pollutant, or a contaminate under any federal, state, or local statute, law, ordinance, rule, regulation, or judicial or administrative order or decision, now or hereafter in effect.
- B. The parties recognize that Tenant will use hazardous materials in its laboratory spaces. Tenant has a hazardous waste management program that will apply to the laboratories of Tenant in the Building. Tenant agrees to manage and dispose of hazardous materials as required by federal, state, or local statute, law, ordinance, rule, regulation, or judicial or administrative order or decision, now or hereafter in effect.
- C. Tenant shall be liable to Landlord for any and all clean-up costs and any and all other charges, fees, penalties imposed by any governmental authority with respect to Tenant's use, disposal, transportation, generation, and/or sale of hazardous materials or other waste materials in or about the Property. Tenant shall indemnify, defend, and save Landlord harmless from any and all costs, fees, penalties, and charges assessed against or imposed upon Landlord as a result of Tenant's use, disposal, transportation, generation, and/or sale of hazardous substances or other waste materials.

### **31. OPTION TO EXTEND**

Tenant shall have one ( 1) option to extend the Term of Lease by giving Landlord written notice of its intent to extend at least twelve (12) months prior to the expiration of the original Term of the Lease or the subsequent Terms of the Lease. The option to extend shall be for a term of five (5) years at a Rent equal to the Rent being paid for the last year of the Lease plus six percent (6%), with a rental increase at the beginning of the fourth (4<sup>th</sup>) year as determined by the terms of Section 5.B. herein.

**32. RIDERS:**

Clauses, plats, and riders, if any, signed by both Landlord and Tenant, and affixed to this Lease, are a part hereof.

IN WITNESS WHEREOF, the respective parties hereto have executed this Lease or caused this Lease to be executed by their duly authorized representatives the day and year first hereon written.

LANDLORD:

TENANT:

UNIVERSITY WAY, LLC

MONTANA STATE UNIVERSITY

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_



LANDLORD'S ACKNOWLEDGMENT

STATE OF MONTANA     )  
  ) ss.  
County of Gallatin     )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared

\_\_\_\_\_, known to me to be the Partners of UNIVERSITY WAY, LLC, the entity that executed the foregoing instrument to be the free and voluntary act and deed of UNIVERSITY WAY, LLC, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

IN WITNESS WHEREOF, my hand and official seal are hereto affixed the day and year in this instrument above written.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires:

\_\_\_\_\_

TENANT'S ACKNOWLEDGMENT

STATE OF MONTANA )  
 ) ss.  
County of Gallatin )

On this \_\_\_\_ of \_\_\_\_\_, 200\_\_, before me the undersigned, a Notary Public in and for the State of Montana, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to be the \_\_\_\_\_ of MONTANA STATE UNIVERSITY, the entity that executed the foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of MONTANA STATE UNIVERSITY for the uses and purposes therein mentioned, and on oath stated that he/she/they is/are authorized to execute said instrument.

IN WITNESS WHEREOF my hand and official seal are hereto affixed the day and year in this instrument above written.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**FLOOR PLAN OF PREMISES**

This exhibit is a continuation of that certain Lease dated \_\_\_\_\_, 200\_\_ by and between UNIVERSITY WAY, LLC, as Landlord, and MONTANA STATE UNIVERSITY as Tenant, for certain real property in the City of Bozeman, Gallatin County, Montana, and by this reference shall become part of that agreement. This Exhibit A consists of the following floor plan which is marked Exhibit A.

## **EXHIBIT B**

### **LEGAL DESCRIPTION OF LAND AND BUILDING**

This exhibit is a continuation of that certain Lease dated \_\_\_\_\_, 200\_\_\_\_, by and between \_\_\_\_\_, Landlord, and MONTANA STATE UNIVERSITY, tenant, for certain real property located in the City of Bozeman, Gallatin County, Montana, and by this reference shall become part of that agreement.

Lot 2 of Minor Subdivision No. 371, Gallatin County, Montana.

## EXHIBIT C

### WORK LETTER AGREEMENT

This exhibit is a continuation of that certain Lease dated \_\_\_\_\_, 200\_\_ by and between \_\_\_\_\_, LLC ("Landlord"), and MONTANA STATE UNIVERSITY ("Tenant"), for certain real property located in the City of Bozeman, Gallatin County, Montana, and by this reference shall become part of that agreement.

This Work Letter Agreement is entered into upon the date this Lease is fully executed by and between Landlord and Tenant.

#### RECITALS

A. Concurrently with the execution of this Work Letter Agreement, Landlord and Tenant have entered into a lease (the "Lease") covering certain premises (the "Premises") more particularly described in the Lease.

B. In order to induce Tenant to enter into the Lease (which is hereby incorporated by reference to the extent that the provisions of this Work Letter Agreement may apply thereto) and in consideration of the natural covenants hereinafter contained, Landlord and Tenant hereby agree:

1. Space Plan and Related Requirements.
  - a. Within thirty (30) days from the date of this Lease, Landlord and Tenant shall agree upon a space plan (the "Space Plan"), which shall be based on Landlord's Uniform Building Standard Specifications attached hereto as Exhibit C-1 (the "Tenant Improvement Specifications") for the tenant improvements to be constructed in the Premises. The Space Plan shall show the location of demising walls, partitions, doors, electrical devices, communication devices, and indicates in general the improvements to be done in Premises pursuant to this Work Letter Agreement (which improvements are hereafter referred to as the "Tenant Improvements").
  - b. Within five (5) calendar days following Landlord's approval of the Space Plan, Tenant shall furnish to Landlord any final adjustments to the Space Plan, including final location of partitions, doors, ceiling devices, and final specifications for materials and finishes, electrical devices, electrical loads, heat loads, extraordinary floor loads, special equipment, and all other requirements (all of which must be in conformance with the Tenant Improvement Specifications). Final adjustments to the Space Plan shall not materially change the defined scope or cost of the Tenant Improvements. Any increases in cost due to Tenant's changes not covered by the Tenant Improvement Allowance shall be paid for by Tenant upon demand. Tenant agrees to meet and cooperate with Landlord's architects and engineers as required and provide complete information as requested.

Landlord shall be entitled, in all respects, to rely upon information so supplied by Tenant and Tenant's vendors. If Tenant does not provide Landlord with any adjustments to the Space Plan within the five (5) day period referenced above, the Space Plan approved by Landlord shall be the Final Space Plan.

- c. All space plans and related requirements referred to hereinabove shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld except to the extent there are variations from the Tenant Improvement Specifications, in which case Landlord may withhold its approval in Landlord's sole discretion.
- d. Tenant shall be allowed up to a maximum of two (2) adjustments to the Space Plan. Any adjustments beyond the first two (2) shall be at Tenant's sole cost and expense.

2. Work Schedule.

Provided Tenant does not delay in providing any final adjustments to the Space Plan within the time period described in subsection l.b. above, then within ten (10) business days following Landlord's approval of the Space Plan, Landlord shall provide Tenant with a preliminary work schedule (the "Preliminary Work Schedule") setting forth the various items of work and duration of each task.

3. Construction Drawings and Specifications.

- a. Within five (5) days of the last date on which Tenant may make adjustments to the Space Plan or the date Tenant notifies Landlord there will be no further adjustments to the Space Plan, whichever is earlier, Landlord shall cause its architects and engineers to prepare the initial set of construction drawings and specifications (the "Construction Drawings") detailing the complete scope of the Tenant Improvements (the "Work") based on the approved Space Plan. The Construction Drawings shall include architectural, structural, plumbing, mechanical, electrical, and fire protection drawings as required and shall be prepared by duly-licensed or registered architects as required by regulatory agencies, and shall utilize the Uniform Building Specifications. Any additional drawings or revisions shall be at Tenant's sole cost and expense.
- b. Tenant and Landlord shall approve Construction Drawings within five (5) days from their completion, such approval not to be unreasonably withheld. Unless a party disapproves of the Construction Drawings within such five (5) day period, approval shall be deemed granted. If either party disapproves of the Construction Drawings, Landlord shall cause the drawings to be corrected within five (5) days. After final approval, no further changes may be made to the Construction Drawings without the prior written approval of Tenant and Landlord, which approval may be

withheld by Landlord if such changes will result in a delay in completion. Additional revisions requested by the Tenant resulting in additional costs shall be the sole responsibility of the Tenant. Approval of Construction Drawings shall be considered final authorization to proceed.

- c. Within five (5) days after the approval of the Construction Drawings by Landlord and Tenant as described in Section 3.b. above, Landlord shall cause approved Construction drawings to be submitted to the appropriate governmental agencies for plan review and building permit. Landlord shall diligently pursue all applicable governmental approvals in a timely manner so as not to delay progress or completion of the Work. Revisions which may be required by governmental agencies as a result of the plan review process shall be reviewed by the Tenant and Landlord and modifications reflecting same shall be mutually agreed upon in a timely manner so as not to delay progress of the Work. Upon mutual agreement of any modifications required by governmental agencies, Landlord shall cause its architects and engineers to promptly incorporate said modifications into the Construction Drawings which shall then be re-submitted to the City by Landlord. The final work schedule and substantial completion date shall be extended as required to reflect time lost, if any, to incorporate any such revisions.

#### 4. Construction of Tenant Improvements.

After the Construction Drawings have been prepared and approved, Landlord shall submit for a building permit for the Tenant Improvements. Landlord shall obtain three (3) competitive estimates from Landlord's preferred contractor list. Landlord and Tenant shall approve one (1) estimate within three (3) days from Landlord's notice to Tenant of the estimates. Upon approval, Landlord shall enter into a construction contract with its contractor for the installation of Tenant Improvements in accordance with the Construction Drawings. Within five (5) business days from the date Landlord enters into the construction contract, Landlord shall obtain from the contractor a final work schedule (the "Final Work Schedule") which shall replace the Preliminary Work Schedule. Landlord shall supervise the completion of the Work and shall use its reasonable best efforts to secure completion of the Work by the date set forth in subsection I.B. of the Lease.

Tenant shall have two (2) weeks early access to the Premises for the installation of furniture, equipment, telephone lines, data network wiring, and security system, provided that such access does not delay Landlord's work or increase the cost to Landlord in completing the Tenant Improvements.

#### 5. Payment for Tenant Improvements.

- a. Landlord shall provide Tenant an allowance of up to \$15.00 per rentable square foot (which, based on 27,060 rentable square feet, totals \$405,900.00 (the "Tenant Improvement Allowance") towards the cost of

the installation of the Tenant Improvements excluding Tenant's moving costs, furniture, fixtures, equipment, telephone data, and other communications cabling. Landlord shall have no additional responsibility or obligation to pay any amount in excess of the Tenant Improvement Allowance. All costs or expenses incurred by Landlord in excess of the Tenant Improvement Allowance shall be the sole and exclusive responsibility of Tenant and shall be payable to Landlord as Additional Rent upon invoice by Landlord on an ongoing basis during construction based on Tenant's pro rata share of Tenant Improvement costs, which pro rata share shall be based on the amount by which the total estimated costs of the Tenant Improvements exceeds the amount of the Tenant Improvement Allowance. The Tenant Improvement Allowance shall be disbursed by Landlord directly to Landlord's contractor.

- b. Landlord shall provide Tenant an additional allowance of up to \$12.00 per Rentable Square Foot ("Special Tenant Improvement Allowance"), which, based on 27,060 rentable square feet totals \$324,720.00. The Special Tenant Improvement Allowance may be applied toward the cost of laboratory related Tenant Improvements, excluding those Tenant Improvements and other costs itemized in subsection 5.a., **Exhibit C**, above. This Special Tenant Improvement Allowance shall be disbursed by Landlord directly to Landlord's contractor. Tenant shall pay Landlord additional Rent for the Special Tenant Improvements of \$324,720.00, amortized over the initial term of the Lease (120 months)) which shall be at the annual rate of \$1.90 per rentable square foot or \$4,285.00 per month (1.90 x 27,060 sq. ft. divided by 12 months). In the event the Special Tenant Improvements total less than \$324,720.00, the additional Rent shall be reduced proportionately.
- c. Maintenance of Special Tenant Improvements shall be the responsibility of Tenant.

6. Additional Work.

- a. Any changes to the Tenant improvements requested by the Tenant after final approval of the Construction Drawings ("Additional Work") shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld and shall, upon approval by Landlord, be incorporated into the Construction Drawings by Tenant. Thereafter, Landlord shall submit to Tenant a written cost estimate of the Additional Work, all of which shall be completed at Tenant's sole cost and expense, including costs associated with: (1) revisions to the Space Plan and/or Construction Drawings; (2) construction of the Additional Work; (3) required permits, governmental fees, and inspections; (4) as-built record documentation; and (5) delay of the Final Work Schedule. Upon written approval thereof by Tenant, Landlord shall authorize its contractor, architect, engineer, and/or vendor to proceed with the Additional Work,



and to submit actual costs by change order to the construction contract for invoicing to Tenant. Failure by Tenant to approve the cost estimate or Final Work Schedule within five (5) days of receipt thereof shall be deemed a withdrawal of request, and contractor shall proceed with the Work as defined in the Lease. Under no circumstances shall the Substantial Completion Date or the Rent Commencement Date change as a result of Tenant's Additional Work.

- b. Tenant shall pay to Landlord a fee for overhead and coordination of the Additional Work equal to four percent (4%) of the gross value of the Additional Work.
- c. Tenant shall utilize Uniform Building Specifications as defined in Exhibit C-1 to the extent such finishes and materials are applicable to the scope of the Additional Work. Tenant shall be responsible for all costs related to the proper design, operation, and maintenance of the Additional Work, whether or not installed by Landlord's contractor at Tenant's request.
- d. All Additional Work referred to hereinabove shall be subject to Landlord's approval, which approval shall not be unreasonably withheld.

7. Substantial Completion and Commencement of Term.

- a. Subject to the provisions of subsection 7.b. below, the terms "Substantial Completion", "Substantially Complete", and words of similar import as used herein shall mean the earlier of the following dates: (1) the date upon which the Tenant takes possession or commences operation of its business in the Premises; or (2) the date upon which a Certificate of Occupancy or temporary Certificate of Occupancy has been issued for the Premises.
- b. Notwithstanding the provisions of subsection 7.a. above, if there is a delay in Substantial Completion as a result of:
  - (1) Tenant's failure to approve any item or to perform any other obligation by the date specified in the Work Letter, including, without limitation, Tenant's failure to approve the Construction Drawings within the time limits set forth above;
  - (2) Tenant's request for materials, finishes, or methods of construction not readily available; or
  - (3) Tenant's request for Additional Work (whether or not agreeable to Landlord) or Change Orders; such a delay shall cause the Commencement Date to accelerate by the number of days delayed from the date the Commencement Date would otherwise have occurred.

8. ADA Compliance.

- a. With respect to any Tenant Improvements installed by Landlord, Landlord shall

comply with the provisions of the Americans with Disabilities Act (ADA), Title III, "Commercial Facilities", in place at the time of construction and as enforced by the applicable governing agencies.

- b. The Tenant shall determine and provide for reasonable accommodation to persons with disabilities within the Premises in accordance with the Americans with Disabilities Act (ADA) Title I, "Employment".

9. Cooperation.

The parties agree to use their reasonable best efforts to cause each of their respective consultants, architects, and/or engineers to cooperate with one another so that the Tenant Improvements are promptly, diligently, and efficiently constructed in accordance with the Work Schedule.

10. Force Majeure.

Landlord shall have no liability whatsoever to Tenant for the inability or delay of Landlord to fulfill any of Landlord's obligations under this Work Letter Agreement on account of any cause beyond Landlord's reasonable control, including without limiting the generality of the foregoing, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association of which the Landlord is a member or to which the Landlord is otherwise bound), strikes, labor disputes, inability to procure materials or services, restrictive governmental laws or regulations, inability to procure necessary permits, fire, act of God, floods, delays in transportation, acts of civil or military authorities, riots, insurrection, sabotage, rebellion, and war. If the Lease, this Work Letter Agreement, or the Work Schedule specifies a time period for performance of all obligations of Landlord, that time period shall be extended by the period of any delay in Landlord's performance caused by any of the events of force majeure described above.

## **EXHIBIT C-1**

### **UNIFORM BUILDING STANDARD SPECIFICATIONS**

This exhibit is a continuation of that certain Lease dated \_\_\_\_\_, 200\_\_ by and between UNIVERSITY WAY, LLC ("Landlord"), and MONTANA STATE UNIVERSITY ("Tenant"), for certain real property located in the City of Bozeman, Gallatin County, Montana, and by this reference shall become part of that agreement.

Construction of the Tenant Improvements shall be per the space plan attached herein and detailed per industry and building standard practice. All materials and finishes shall be per the uniform Building standard specifications as defined herein. The intent of the uniform Building standard specifications is to achieve a uniform and consistent appearance throughout the Building. Materials and finishes not specifically defined herein, if requested by Tenant and approved by Landlord, shall be at Tenant's sole cost and expense and may be subject to an additional Tenant cost to restore the premises to a uniform Building standard condition upon termination of the Lease. Payment terms for all items subject to restoration shall be agreed upon prior to the start of any Work.

#### Partitions:

Demising Walls - 2½" x 9'-0" - 25 gauge-metal studs, 5/8" gypsum wall board each side taped with smooth finish, sound attenuating blanket in wall cavity, and ceiling plenum 2'-0" each side of wall.

Interior walls - 2½" x 9'-0" metal studs, 5/8" gypsum wall board each side, taped with smooth finish.

Finish - one coat latex primer, one coat latex paint with eggshell finish, neutral colors.

Partitions must be attached to mullions with double back tape.

#### Ceilings:

Existing 2'x2' exposed suspended ceiling grid at 9'-0" A.F.F., existing lay-in acoustical mineral fiber panels with fissured pattern finish, off-white uniform Building standard color.

#### Floors:

Carpet - 28 oz. cut pile, glue down installation or similar quality as determined by Landlord.

Vinyl composition tile - Armstrong "Exelon" 12" x 12" tiles, Imperial texture finish, neutral colors.

#### Doors, Frames, and Hardware:

Doors and frames - 3'-0" uniform Building standard 7' -0" full height 1-¾" solid core with 5-ply

plain sliced red oak veneer.

Wood finish - uniform Building standard stain to match, sanding sealer, clear, water-based lacquer semi-gloss finish coat.

Hardware - ADA compliant commercial grade lever action passage latch set by uniform Building standard manufacturer, 2 pair butt hinges, brushed aluminum finish.

Window Treatment:

Existing 1" mini-blinds on exterior walls, uniform building standard color.

Millwork:

Cabinetry - prefabricated particle board modular units with standard manufacturer's laminated finish.

Plumbing:

Stainless steel Kohler single lever faucet and sink, 6 gallon electric hot water circulating pump.

Electrical, Lighting, and Communications Systems:

Convenience power - one 120V/180W duplex outlet per office mounted at interior partition and/or one 120V/20A circuit in junction box per group of eight modular workstations mounted at plenum or interior partition.

Equipment power - one dedicated 120V/20A copier circuit mounted at interior partition.

Telephone and data - mud ring with pull string, one per office and/or one per group of eight modular workstations mounted at interior partition. Installation of system wiring by Tenant's vendor in accordance with Item 3 of the Building Rules and Regulations attached hereto as **Exhibit F**. Location of telephone/data processing equipment shall be in Tenant's premises.

Ambient light fixtures - existing 2 x 4 fluorescent lay-in fixture with parabolic louver, existing cool white lamps. Approximately one (1) per 80 square feet.

Switching - one switch per office and/or open area.

Electrical panel must be re-labeled.

Mechanical Systems:

Existing building shell heating, ventilating, and air conditioning system per building design standard specifications. All twenty-four (24) hour cooling must be separately metered.

Fire Protection and Life Safety Systems:

Type, quantity, and location of devices per Fire Marshall, Uniform Fire Code, and all applicable municipal regulatory agencies.

**EXHIBITS D AND E**

Exhibits D and E are not applicable to this Lease.

## EXHIBIT F

### BUILDING RULES AND REGULATIONS

This exhibit is a continuation of that certain Lease dated \_\_\_\_\_, 200\_\_\_\_, by and between University Way, LLC, Landlord, and Montana State University, Tenant, for certain real property located in the City of Bozeman, Gallatin County, Montana, and by this reference shall become part of that agreement, which **Exhibit F** Landlord shall have the right to amend from time to time.

1. The sidewalks, entries, passages, court corridors, stairways, and elevators shall not be obstructed by Tenant, its employees, or agents, or used by them for purposes other than ingress and egress to and from Premises.

2. Notwithstanding any of the terms and provisions of this Lease, Tenant will refer to all contractors, contractors' representatives, and installation technicians rendering any service on or to the Premises for Tenant to Landlord for Landlord's approval and supervision before performance of any contractual service. This provision shall apply to all work performed in the Building, including installation of telephones, telegraph equipment, electrical devices and attachments, and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings, or any other physical portion of the Building. Such approval, if given, shall in no way make Landlord a party to any contract between Tenant and any such contractor, and Landlord shall have no liability therefore. In the event a contractor is hired by Tenant, the Tenant and the contractor shall execute Landlord's standard form Hold Harmless Agreement, which holds Landlord, its agents, and invitees harmless from any and all liability in connection with contractor's work.

3. Tenant's communication equipment, cabling, telegraphic, telephone, security systems, or other electrical connections shall not be installed without Landlord's prior written approval. Tenant shall install its phone and computer systems in Tenant's suite and Landlord will require Tenant to label all such installations at the point of beginning, in each mechanical room, every twenty (20) feet to the end point. Within thirty (30) days of final completion of any such work, Tenant shall provide Landlord a final as-built, detailing the routes and locations of such installation.

4. Except as otherwise indicated herein, no signs, advertisements, or notices shall be inscribed, painted, or affixed on any part of the inside or outside of the Building unless of such color, size, style, and in such place upon or in the Building as shall first be designated in writing by Landlord; there shall be no obligation or duty on Landlord to allow any sign, advertisement, or notice to be inscribed, painted, or affixed on any part of the inside or outside of the Building. Signs on doors will be painted for the Tenant by a sign writer approved by Landlord, the cost of the painting to be paid by Tenant. No furniture shall be placed in front of the Building or in any lobby or corridor without the prior written consent of Landlord. Landlord shall have the right to remove all other signs and furniture without notice to Tenant at the expense of Tenant.

5. Landlord's acceptance of any name for listing on the Building Directory will not be deemed, nor will it substitute for, Landlord's consent, as required by this Lease, to any

sublease, assignment, or other occupancy of the Premises.

6. Tenant shall have the non-exclusive use in common with Landlord, other tenants, their guests, and invitees, of the automobile parking areas, driveways, and footways, subject to reasonable rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord shall have the right to designate parking areas not so designated, specifically including driveways, fire lanes, load/ unloading areas, handicapped zones, walkways, and building entrances. Tenant agrees that, upon written notice from Landlord, it will furnish to Landlord, within five ( 5) days from receipt of such notice, the state automobile license numbers assigned to the automobiles of the Tenant and its employees. Landlord shall not be liable for any vehicle of the Tenant or its employees that Landlord shall have towed from the Premises. Landlord will not be liable for damage to vehicles in the parking areas or for theft of vehicles, personal property from vehicles, or equipment of vehicles. Cars parked overnight may be towed, at Tenant' s expense, unless Tenant has prior written permission from Landlord.

7. No Tenant shall do or permit anything to be done in the Premises, or bring or keep anything therein, which will in any way increase the rate of casualty insurance on the Building, or on property kept therein, or obstruct or interfere with the rights of other tenants, or in any way injure or annoy them, or conflict with the laws relating to fire, or with any regulations of the fire department, or with any insurance policy upon said buildings or any part thereof, or conflict with any rules and ordinances of any governmental agency or department.

8. No windows or other openings that reflect or admit light into the corridors or passageways, or to any other place in said Building shall be covered or obstructed by Tenant.

9. No person shall disturb the occupants of the Building by the making of loud or objectionable noises, or any other unreasonable or offensive conduct or activity, including but not limited to smoking, which is in violation of any applicable law or as designated by Landlord. In the absence of a designated smoking area, no person shall smoke within thirty (30) feet from any posted "No Smoking" signs or any Building entrance. No dogs or other animals or pets of any kind will be allowed in the Building.

10. The water closets and other water fixtures shall not be used for any purpose other than those for which they were constructed, and any damage resulting to them from misuse, or by the defacing or injury of any part of the Building, shall be borne by the Tenant who, or whose employees or agents, shall have caused it.

11. No bicycles or similar vehicles will be allowed in the Building.

12. Nothing shall be thrown out the windows of the Building or down the stairways or other passages.

13. Tenant shall not be permitted to use or to keep in the Building any kerosene, gasoline, or any inflammable or combustible fluids or materials, without the prior written consent of Landlord.

14. If Tenant desires, at its cost, shades, draperies, or awnings, they must be of such



shape, color, materials, and make as shall be designated by Landlord. Any outside awning may be prohibited by Landlord. Landlord or its agents shall have the right to enter the Premises to examine the same or to make such repairs, alterations, or additions as Landlord shall deem necessary for the safety, preservation, or improvement of the Building. Landlord or its agents may show said Premises and may place on the windows or doors thereof, a notice "For Rent") for six (6) months prior to the expiration of the Lease.

15. No portion of the Building shall be used for the purpose of lodging rooms or for any unlawful purposes.

16. All glass, locks, and trimmings in or about the doors and windows and all electric fixtures belonging to the Building shall be kept whole, and whenever broken by anyone shall be immediately replaced or repaired and put in order by Tenant under the direction and to the satisfaction of Landlord; and, on removal, shall be left whole and in good repair.

17. Landlord reserves the right at any time to take one elevator out of service for the exclusive use by the Building management in servicing the Building.

18. All safes, furniture, or other heavy articles shall be carried up or into the Premises only at such times and in such manner as shall be prescribed by Landlord at Tenant's sole cost and expense. Landlord requires Common Area walls and corners to be protected and Masonite board to be installed and used in the Common Areas for all furniture moves. Landlord shall in all cases have the right to specify the proper weight and position of any such safe or other heavy article. Any damage done to the Building by taking in or removing any such equipment or from overloading any floor in any way shall be the responsibility of the Tenant. Defacing or injuring in any way any part of the Building by the Tenant, its agents, or employees shall be paid for by the Tenant.

19. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.

20. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements, and conditions of Tenant's Lease of its Premises in the Building.

21. Tenant shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as Landlord, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems. Landlord expressly reserves the right to conduct examinations, tests (including but not limited to a geohydrologic survey of soil and subsurface conditions), inspections, and review of the premises as Landlord in its sole and absolute discretion may determine to be necessary.

22. Landlord reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety and security, for care

and cleanliness of the Building, and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

23. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, contractors, Clients, customers, invitees, and guests.

24. If Tenant's use of heating, cooling, or convenience power exceeds the design load parameters of the Building and a service call is requested, then Tenant is responsible for such service as a direct Tenant cost.

25. Tenant shall pay for all additional security costs and Landlord maintenance personnel required in connection with Tenant's move-in or move-out. Landlord shall have the right to establish and modify from time to time rules governing the move-in and move-out of Tenant's furniture, fixtures, and equipment; and Tenant shall fully comply with such rules as established and modified.

## **EXHIBIT G**

### **CONSTRUCTION RULES AND REGULATIONS**

This exhibit is a continuation of that certain Lease dated \_\_\_\_\_, 200\_\_, by and between UNIVERSITY WAY, LLC, Landlord, and MONTANA STATE UNIVERSITY, Tenant, for certain property located in the City of Bozeman, Gallatin County, Montana, and by this reference shall become a part of that agreement.

1. All finishes must be matched to the building standard including doors and frames, hardware, interior partition detail, column details, etc.
2. Any materials not reused in Tenant's alterations must be returned to Landlord. Tenant agrees to have Tenant's contractor store such items in the areas designated by Landlord.
3. All workmanship must be done in conformity with commercial standards in a first class office building and in accordance with all local and federal governmental codes, including any requirements necessary to bring the Premises into compliance therewith.
4. Building electrical panel must be labeled to show electrical changes, including but not limited to electrical outlets and lighting relocations and additions.
5. All common areas including but not limited to entrances, carpeted areas, elevators, and ceilings affected by the performance of Tenant's alterations, must be restored to their original condition immediately upon request of Landlord. Landlord hereby states that all common areas are in excellent condition and do not show any signs of wear and tear. Should Tenant or Tenant's contractor notice any common areas which have an existing condition of wear and tear, Tenant or Tenant's contractor shall notify Landlord in writing prior to commencement of improvements.
6. Addition of any equipment which will in any way increase the consumption of electricity beyond the building standard use or will have a significant impact on the HVAC system, must be specified and detailed in writing to Landlord for review and approval.
7. Any work performed must not affect any of the building systems, including but not limited to fire protection, mechanical, and electrical, and shall be coordinated with the Landlord. All systems are required to be restored at the end of the day.
8. All work performed must not affect the structural integrity of the Building.
9. Work performed during regular business hours must not disrupt the business or operations of adjoining tenants. Specifically, all work which creates disruptive noise or odors must be completed during non-business hours.
10. Tenant must obtain all governmental permits and approvals before commencing work.

11. Tenant indemnifies, defends, and holds Landlord harmless from and against all losses, liabilities, damages, heirs, costs, penalties, and expenses arising from or out of the performance of such alterations.

12. Work related to the roof of the Building:

- Access by authorized personnel only.
- No objects shall be left unattended.
- Core penetrations shall be performed by Landlord's contractor at Tenant's cost.

13. In addition to the conditions listed above, Tenant's contractor shall fully comply with the following additional conditions:

- No smoking is allowed except in areas designated as smoking areas, or a minimum of thirty (30) feet from any Building entrance.
- All common areas must be kept clear of contractor's supplies and materials.
- All perimeter doors shall not be held open during non-business hours. Violation of this condition will result in fines to Tenant and Tenant's contractor.
- No loading or unloading of contractor's supplies or materials shall be done during normal business hours. Loading and unloading during non-business hours must be done with protection to the common areas of the building. Landlord must be advised twenty-four (24) hours in advance of deliveries in or out of the building.
- Contractor shall not use any existing lines of communication to the building for its own use.
- Restoring the premises to the condition delivered to Tenant, including labor and materials of the suspended ceiling, lights, mechanical systems, or any other condition existing prior to the alterations.