

By: Finance Department
Adopted: September 9, 2013
Vote: Buswell, Harris, Wall and Woodruff in favor
Sullivan-Leonard absent and Seat A Vacant

**City of Wasilla
Resolution Serial No. 13-21**

A resolution of the Wasilla City Council authorizing the Mayor to execute an agreement with The American Lung Association for leased space in the Meta Rose Square in the amount of approximately \$24,660 for thirty-six (36) months.

WHEREAS, the City of Wasilla leases out commercial space in the Meta Rose Square;
and

WHEREAS, the nature of the lessee's business appears to be a good fit with this space;
and

WHEREAS, the lease agreement would generate revenue to the City of \$6,850 in FY 2014, and \$8,220 in FY 2015 and FY 2016, respectively and \$1,370 in FY 2017..

NOW, THEREFORE, BE IT RESOLVED, that the Wasilla City Council authorizes the Mayor to execute an agreement with The American Lung Association for leased space in the Meta Rose Square in the amount of approximately \$24,660 for thirty-six (36) months.

ADOPTED by the Wasilla City Council on September 9, 2013.


VERNE E. RUPRIGHT, Mayor

ATTEST:


KRISTIE SMITHERS, MMC, City Clerk

[SEAL]


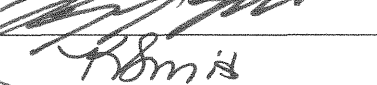

CITY COUNCIL LEGISLATION STAFF REPORT


Resolution Serial No. 13-21: A resolution of the Wasilla City Council authorizing the Mayor to execute an agreement with the American Lung Association for leased space in the Meta Rose Square in the amount of approximately \$24,660 for thirty-six (36) months.

Originator: April Dwyer, Purchasing/Contracting Officer

Date: 8/26/2013

Agenda of: 9/9/2013

| Route to: | Department Head | Signature | Date |
|-----------|---|---|---------|
| | Chief of Police | | |
| | Public Works Director | | |
| | Recreation & Cultural Services Director | | |
| X | Finance Director |  | 8-28-13 |
| X | Deputy Administrator |  | 8/28/13 |
| X | City Clerk |  | 8/29/13 |

Reviewed by Mayor Verne E. Rupright: 

Fiscal Impact: yes or no

Funds Available: yes or no

Account name/number:

Rents & Royalties Meta 001.4300.362.15.00

\$24,660

Attachments: Lease Agreement (25 pages)

Summary Statement: This agreement covers leased space of approximately 532 square feet of office space in the loft at Meta Rose Square which is currently vacant. The American Lung Association contacted the City of Wasilla on August 21st expressing interest in the Meta Rose. The American Lung Association is a Non-Profit Corporation promoting health through research, education and advocacy. They are seeking office space in Wasilla and would be a great fit for this unit. They expressed interest to sign a three (3) year lease for a portion of the loft contingent upon the annual availability of funding.

A partitioning wall will be constructed to segregate the units in the loft, creating separate entrances for each unit.

Recommended Action: Adopt Resolution Serial No. 13-21

LEASE FOR THE META ROSE SQUARE

Agreement for space lease, made between: the City of Wasilla, herein called "Landlord" and American Lung Association herein called "Tenant."

ARTICLE I

SPACE LEASED

Section 1.01 Description.

a) Landlord hereby leases to Tenant, and Tenant leases from Landlord that certain portion (herein called Space Leased) of the Meta Rose Square which approximates 532 square feet and 377 square feet of storage, more or less, in area.

b) Use and occupancy by Tenant of the Space Leased shall include the free and uninterrupted right of access to the Space Leased by means of doorways, passages, stairways and entrances to the building which afford access to the Space Leased but confers no rights either with regard to the subsurface of the land below the floor level of the building or with regard to air space above the ceiling of the building.

c) Nothing herein contained shall be construed as a grant or rental by Landlord to Tenant of the roof and exterior walls of the building of which the Space Leased forms a part or any of the walks and other common areas beyond the Space Leased including but not limited to the vehicular parking areas adjoining such building.

Section 1.02 Condition of Premises.

Tenant has leased the Space Leased after an examination of the same, and except as herein expressly provided (necessarily including construction, if any, to be undertaken or completed by Lessor as contemplated in Section 10.01) accepts such space without further representation on the part of Landlord.

Section 1.03 Services Furnished by Landlord.

Landlord shall furnish for the benefit of Tenant without additional charge the following services: heat, sewer, one common dumpster, snow removal for public parking and for the front and rear building entrance and janitorial services in the common areas.

Section 1.04 Utility Charges.

Tenant shall contract for in its own name telephone and janitorial services in the Space Leased. Tenant shall pay all charges for these services as they become due.

Section 1.05 Quiet Enjoyment.

Tenant upon paying the rents and performing all of the terms and covenants on its part to be performed, shall peaceably and quietly enjoy the Space Leased subject to the terms of this Lease, and to any deed of trust or mortgage to which this Lease is subordinated.

Section 1.06 Common Area.

Landlord shall maintain parking areas on a portion of the Premises on which the shopping center complex is erected. Said parking areas shall be for the joint use of all Tenants in the shopping center complex and for the use of the Tenant's customers, visitors and invitees.

Landlord shall designate an area for the parking of employees' vehicles which may be designated off the premises of Meta Rose Square. Employees of the Tenant shall be permitted to park their cars only in the areas designated for employee parking.

Tenant agrees that trailers and trucks shall deliver merchandise to the premises only through and at areas designated by the Landlord: said area designated is the back entrance of Meta Rose Square. Trucks will be expeditiously unloaded and not permitted to park except for such periods of time as shall reasonable be necessary for loading and unloading. Tenant shall move all unloaded freight into the Space Leased immediately.

Landlord shall keep said common area in a neat, clean and orderly condition. Landlord shall at all times have the right and privilege of making rules and regulations for the use of said common area and of determining the nature and extent of the common areas, including the size and configuration of the parking area and driveways.

Landlord shall allow use of the common area by the Merchants Association for special or promotional events and may be decorated for annual holidays. All decorations must be removed in a timely manner after the holiday. Landlord reserves the right and privilege to disallow any event or decoration not considered appropriate.

Section 1.07 Landlord's Right of Entry.

Tenant, at any time during the term of this Lease, shall permit inspection of the Space Leased during reasonable hours by the Landlord or Landlord's agents or representative, and an emergency key shall be provided to Landlord or his designee for entrance into the Space Leased.

ARTICLE II

LEASE TERM

Section 2.01 Length of Term.

The term of this Lease shall be for thirty-six (36) months following the commencement of the term, unless sooner terminated or extended as herein provided. The term shall start on September 10, 2013 and terminate on September 10, 2016. The annual continuation (September 10 – September 9) of this lease is contingent upon Tenant's available funding and Tenant may terminate the lease at each annual interval by submitting written notice of termination to Landlord no later than sixty days prior to September 10th of each year.

Section 2.02 Commencement of Term.

In the event the application of the foregoing commencement provision results in a commencement date other than on the first day of a calendar month, the rent shall be immediately paid for such initial fractional month prorated on the basis of a thirty-day month and the term of the Lease shall commence on the first day of the calendar month next succeeding.

Section 2.03 Holdover.

If Tenant holds possession of the Space Leased after the term of this Lease, Tenant shall become a Tenant from month to month on the terms herein specified but at a monthly rate at twice the present rental, and Tenant shall continue to be a month-to-month Tenant until the tenancy shall be terminated by Landlord or until Tenant has given Landlord written notice at least one month prior to the date of termination of the monthly tenancy of its intention to terminate the tenancy.

Section 2.04 Surrender of Possession.

On the last day of the term, or on the sooner termination thereof, Tenant shall peaceably and quietly leave and surrender to Landlord the Space Leased. The Tenant shall shampoo all carpets, ensure the Leased Space is in good order and repair, ordinary wear and tear accepted including minor drywall repair resulting from shelving removal, together with all alterations, additions and improvements which may have been made upon the premises, at the expense of Tenant prior to the surrender of the Space Leased. If the last day of the term of this Lease falls on Sunday, this Lease shall expire on the business day immediately preceding it. Tenant, on or before said date, shall remove all property from the Space Leased, and all property not so removed shall be deemed abandoned by Tenant. If said Space leased be not surrendered at the end of the term, Tenant shall indemnify Landlord against loss or liability resulting from the delay by Tenant in so surrendering the Space Leased, including without limitations any claims made by any succeeding Tenant founded on such delay.

Section 2.05 Possession Prior to Term of Lease.

If permission be given by the Landlord to the Tenant to enter into possession of the Space Leased, or to occupy premises other than the Space Leased, prior to the date herein fixed for the commencement of the leased term, such occupancy by the Tenant shall be deemed to be that of a Tenant under all the terms, covenants and conditions of this Lease, except as to the covenant to pay rent which shall be separately identified by Landlord and Tenant in writing. Prior to possession, Tenant must give evidence to Landlord of certificates of insurance as set forth in Article VII and pay the required security deposit.

ARTICLE III

RENT

Section 3.01 Covenant to Pay Rent.

Tenant covenants to and shall pay rent to Landlord at:

City of Wasilla
290 E. Herning Avenue
Wasilla, Alaska 99654
Finance Department

or at such other place as Landlord may designate, in advance, on the first day of each calendar month during the term hereof, fixed monthly rental of \$685.00 (inclusive of storage for \$50.00) payable in advance on the first day of each month, commencing on the date the term of this Lease commences, and continuing during the term of this Lease. Minimum monthly rent for the first month or portion of it shall be paid on the day the term commences. Minimum monthly rent for any partial month shall be prorated at the rate of one-thirtieth (1/30th) of the monthly rent per day. Rent not paid within seven (7) days of the first of each month shall bear interest from the date due until paid at the rate of fourteen percent (14%) per year or at the then current maximum legal rate of interest, whichever is less. Simultaneously with the execution of this Lease, Tenant has paid to Landlord the first month's rent of (0.00), receipt whereof is hereby acknowledged.

Section 3.02 Additional Rent

In addition to the foregoing rent provided for in Section 3.01 above, all other payments to be made by Tenant to Landlord shall be deemed to be and shall become additional rent hereunder, whether or not the same be designated as such; and shall be due and payable on demand or together with the next succeeding installment of rent, whichever shall first occur, together with interest thereon; and Landlord shall have the same remedies for failure to pay the same as for a nonpayment of rent. Landlord at its election shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of Tenant to perform any of the

provisions of such sums or do such acts requiring the expenditure of monies, Tenant agrees to pay Landlord, upon demand, all such sums, and the sum so paid by Landlord, together with interest thereon, shall be deemed additional rent and be payable as such.

Section 3.03 Security Deposit

Tenant agrees to deposit with Landlord upon the execution of this Lease the sum of equal to one month rent as security for the full and faithful performance of the Tenant of each and every term, provision, covenant and condition of this Lease. In the event Tenant defaults in respect to any of the terms, provisions, covenants, and conditions of this Lease, including but not limited to payment of rent and additional rent, Landlord may use, apply or retain the whole or any part of the security so deposited for the payment of any rent in default or for any other sum which Landlord may expend or be required to expend by reason of Tenant's default. Tenant shall immediately upon demand pay the Landlord a sum equal to the portion of the security deposit expended or applied by Landlord as provided in this paragraph so as to maintain the security deposit in the sum initially deposited with Landlord and Tenant's failure to do so within five (5) days after demand by Landlord shall be a default under this Lease. In the event Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the security, or any balance thereof, shall be returned to Tenant after the expiration of the herein devised lease term and/or after the removal of Tenant and surrender of possession of the Space Leased to Landlord. Tenant shall not be entitled to any interest on the aforesaid security. If Landlord is required by law to maintain the security deposit in an interest-bearing account, Landlord shall be entitled to receive and retain the maximum amount permitted under applicable law as a bookkeeping administrative charge. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the security, or the remaining balance thereof, Landlord may return the security to the original Tenant, regardless of one or more assignments of Tenants' interest of this Lease.

ARTICLE IV

USE OF PREMISES

Section 4.01 Use of Premises.

Tenant shall use the Space Leased solely for an office environment to conduct non-profit business for the American Lung Association. Tenant shall not use, permit or suffer the use of the Space Leased for any other business, act, or purpose.

Section 4.02 Compliance with Laws.

Tenant shall comply with all applicable laws, statutes, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting the Space Leased, whether or not any such laws, ordinances or regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the

same. Tenant further agrees it will not permit any unlawful occupation, business or trade to be conducted on said premises or any use to be made thereof contrary to any law, statute, ordinance or regulation.

Section 4.03 Rules and Regulations of Building.

As a condition to the use of the premises, Tenant shall comply with all reasonable rules and regulations promulgated by Landlord from time to time for any and all Tenants in the building. Landlord shall not be responsible for the nonobservance by any other Tenant of said rules and regulations.

Meta Rose Square is a non-smoking complex in its entirety. A violation of the no smoking policy may result in the forfeiture of the security deposit and eviction at the sole discretion of the Landlord.

Section 4.04 Business Day.

As a condition to the use of the premises, the Space Leased may be open to the public no earlier than 8 a.m. each morning and may remain open no later than 8 p.m. each night, except upon express written permission from the Landlord.

Section 4.05 Restriction Against Unpermitted Activities.

Tenant shall not exhibit, sell or offer for sale on the Space Leased or in the building any article or thing except those items essentially connected with the stated use of the Space Leased set forth above by Tenant without the advance written consent of the Landlord. Tenant will not make or allow to be made any use of the Space Leased of any part thereof which would violate any of the covenants, agreements, terms, provisions and conditions of this Lease or which directly or indirectly is forbidden by any federal, state or local law, ordinance, statute or regulation or which may be dangerous to life, limb, or property, or which may invalidate or increase the premium cost of any policy of insurance carried on the building or covering its operation, or which will suffer or permit the Space Leased or any part thereof to be used in any manner or anything to be brought into or kept therein which, in the judgment of Landlord, shall in any way impair the character, reputation or appearance of the building as a first class retail building, or which will impair or interfere with or tend to impair or interfere with any of the services performed by Landlord for the property.

Section 4.06 Signage.

Tenant shall not display, inscribe, print, paint, maintain or fix on any place in or about the building any sign, notice, legend, direction, figure, writing or advertisement except, which shall first have been submitted in writing and approved by the Landlord. Areas designated by Landlord for signs are: (i) over the entrance door to the Space Leased, and (ii) allocated space on an outdoor sign listing Tenants of the building. The listing of any name other than that of Tenant, whether on the doors of the Space Leased or otherwise, shall not operate to vest any right or interest in this Lease or in the Space Leased or be deemed to be the written consent of Landlord relating to assignment and subletting, being expressly understood that any such listing is a privilege extended by Landlord revocable at will, at any time, by written notice to Tenant.

Section 4.07 Advertising.

Tenant may use the name of the building and may use pictures or likeness of the building in any circulars, notices, advertisement or correspondence without Landlord's consent. Landlord reserves the right and privilege to require any Tenant using the building name or image in a manner deemed inappropriate, to rescind and desist further advertising of that nature. Landlord will not be responsible for costs associated with the request.

Section 4.08 Security.

No additional locks or similar devices shall be attached to any door or window without Landlord's consent. No keys for any door other than those provided by Landlord shall be made. If more than two keys for one lock are desired, Landlord will provide the same upon payment by Tenant. All keys must be returned to Landlord at the expiration or termination of this Lease.

Section 4.09 Extraordinary Use.

All persons entering or leaving the building after hours on Monday through Friday, or at anytime on Saturdays, Sundays and holidays, may be required to do so under such regulations as Landlord may establish. Landlord may exclude or expel any peddler at any time.

Section 4.10 No Unpermitted Machinery

Unless Landlord gives consent, Tenant shall not install or operate any steam or internal combustion engine, boiler, machinery, refrigerator or heating device or air conditioning apparatus in or about the Space Leased, or carry on any mechanical business therein, or use the Space Leased for housing or accommodations or lodging or sleeping purposes, or do any cooking therein, or use any illumination other than electric light or use or permit to be brought into the building any flammable fluids such as gasoline,

kerosene, naphtha or benzene, or any explosives, radioactive materials, or other materials or other articles deemed hazardous to life, limb or property.

Section 4.11 Floor Load Limit.

Tenant shall not overload any floor. Landlord may direct the time and manner of delivery, routing and removal, and the location of safes and other heavy articles.

Section 4.12 Use of Common Areas.

The sidewalks, halls, passages, exits, entrances and stairways shall not be obstructed by Tenant or used for any purpose other than for ingress to the egress from the Space Leased. Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the sole judgment of the Landlord, shall be prejudicial to the safety, character, reputation and interests of the building and its Tenants, provided that nothing herein contained shall be construed to prevent such access to persons whom Tenant normally deals with in the ordinary course of Tenant's business unless such persons are engaged in illegal activities or activities that in any way impair the character, reputation or appearance of the building, or which will impair or interfere with or tend to impair or interfere with any of the services performed by Landlord for the property. Tenant, employee of Tenant and no employer-invitee of Tenant shall go upon the roof of the building.

Section 4.13 No Objectionable Use.

Tenant shall not use, keep or permit to be kept any foul, explosive or noxious gas or substance in the Space Leased, or permit or suffer the Space Leased to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the building by reason of noise, lighting, music, odors, and/or vibrations, or to interfere in any way with other Tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Space Leased unless the animal is a legitimate service animal being utilized by a patron of the Space Leased.

Section 4.14 Window Displays.

Landlord reserves the right to approve the use of window displays, writing, signs, lettering, etc., which may affect the character, reputation or visual impact of the building. Prior approval of the window displays is not required but Landlord reserves the right and privilege to request removal of any displays not considered appropriate in meeting the objective as just stated.

Section 4.15 Securing Premises.

Tenant shall see that the doors and windows, if openable, are closed and securely locked before leaving the building and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the building, and that all electricity shall be carefully shut off so as to prevent waste or damages, and for any default or carelessness, Tenant shall make good all injuries or losses sustained by either Tenants or occupants of the building or Landlord. Tenant agrees to hold the Landlord harmless for any accidents, damages, injuries or claims for failure to secure the premises.

ARTICLE V

MAINTENANCE, REPAIR, ALTERATIONS

Section 5.01 Covenant to Maintain and Repair.

- a) Tenant shall during the term of this Lease and any renewal or extension thereof, at its sole expense, keep the interior of the Space Leased in as good order and repair as it is at the date of the commencement of this Lease, except of reasonable wear and tear. Tenant shall at its cost: (i) furnish and replace as required all lighting tubes, bulbs, ballasts or like items, and (ii) perform all janitorial services necessary to keep the Space Leased clean and sanitary.
- b) Landlord during the term of his Lease and any renewal or extension thereof shall keep the structural supports, roof and exterior walls of the Space Leased in good order and repair. Landlord shall maintain and repair all plumbing, lines and equipment installed for the general supply of hot and cold water, heat, ventilation and electricity, except that Tenant shall be responsible for any and all repairs attributable to obstructions or objects deliberately or inadvertently introduced or placed in the fixtures or lines leading thereto by Tenant, its employees, servants, agents, licensees or invitees.

Section 5.02 Alterations, Additions.

- a) Tenant:
 - 1.) shall not cut, puncture, or drill or otherwise deface or injure the building;
 - 2.) shall not place or permit any awnings, sign, advertisement, illuminations, or projection on the outside of the building or upon any window of the Space Leased, including the sills or ledges thereof, unless the same shall have first been requested in writing and approved by Landlord;

- 3.) shall not obstruct or permit the obstruction of any light or skylight in or upon the building, or the adjoining sidewalk or street, or the entrance, or any other part of the building to the exclusive use of which Tenant is not entitled;
 - 4.) shall not, without the Landlord's prior written consent make any alterations, additions, remodeling, decorations, painting or improvements in or about the Space Leased;
 - 5.) shall be responsible for keeping all glass and windows clean and replacing broken glass of windows, unless windows broken are the result of actions by the Landlord, its agents, or employees;
 - 6.) shall not, without the Landlord's prior written consent first obtained in each instance, make any alterations or additions to the (i) electric wiring, (ii) plumbing, heating, or ventilation equipment, appliances, or systems, (iii) water or gas lines, equipment, appliances or system, (iv) tap any mains or pipes to supply water for refrigeration or ventilating apparatus, (v) carpeting or flooring, (vi) windows or window coverings, (vii) siding, wall coverings, wallpaper, paneling, shelving, or paint or (viii) to any other equipment, machinery, apparatus, or installations in or about the Space Leased or the building.
- b) All alterations, additions or improvements made to the Space Leased by Tenant or Landlord, including but not limited to partitions, wallpaper, paneling and shelving, unless Landlord shall otherwise elect in writing, shall, at the end of the term hereof, become the property of Landlord and be surrendered as part of the Space Leased.
- c) All alteration, additions or improvements to the Space Leased by Tenant or Tenant's agents or employees must be done by a licensed and bonded contractor and licensed and bonded subcontractors. Landlord may require proof of such license and bonding prior to approving alterations, additions or decorations, including painting. All alterations must conform with the state, borough or municipal building codes. Landlord reserves the right to require proof of license, bonding and compliance with building codes prior to approving remodeling, additions, alterations or decorations.
- d) If Landlord so elects, Tenant, at Tenant's expense, shall restore the Space Leased to the condition designated by Landlord at its election, before the last day of the term, or within thirty (30) days after notice of election is given, whichever is earlier.

Section 5.03 Prohibition of Liens.

Tenant shall not do or suffer anything to be done causing the Space Leased to be encumbered by liens of any nature, and shall, whenever and as often as any lien is recorded against said property, purposing to be for labor or materials furnished or to be furnished to Tenant, discharge the same of record within ten (10) days after the date of filing. Tenant shall inform the Landlord immediately (not more than 72 hours) upon learning that a lien of any kind has been recorded that may have an effect on the building, Space Leased or any property associated therewith.

Section 5.04 Notice of Nonresponsibility.

Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to the Tenant upon credit, and that no lien of any nature or type shall attach to or affect the reservation or other estate of the Landlord in and to the Space Leased herein demised. At least twenty (20) days before commencing any work that is or may be the subject of a lien for work done or materials furnished to the Space Leased, Tenant shall notify Landlord in writing thereof, to allow Landlord, if it desires, to post and record notices of nonresponsibility or to take any other steps the Landlord deems appropriate to protect its interests. The provisions in this Section do not eliminate the requirement for written consent(s) of the Landlord as contemplated in (Section 5.02 2) above.

ARTICLE VI

ASSIGNMENT AND SUBLETTING

Tenant shall not assign, mortgage or encumber this Lease, in whole or in part, or sublet all or any part of the Space Leased without the prior written consent of Landlord. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against any assignment or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease be assigned or if the Space Leased or any part thereof be occupied by anybody other than Tenant, Landlord may collect rent from the assignee or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this provision or the acceptance of the assignee, undertenant or occupant as Tenant, or as a release of Tenant from the further performance herein. Notwithstanding any assignment or sublease, Tenant shall remain fully liable and shall not be released from performing any of the terms of this Lease. Any assignment, hypothecation or sublease of the Space Leased, or any part thereof, whether by operation of law or otherwise without the written consent of Landlord shall be voidable as the option of Landlord.

ARTICLE VII

INDEMNITY, LANDLORD LIABILITY INSURANCE

Section 7.01 Indemnity: Landlord Liability.

- a) Tenant shall indemnify Landlord and save it harmless from suits, actions, damages, liability, and expense in connection with loss of life, bodily harm or personal injury or any property damage or loss of property arising from or out of any occurrence in, upon, at or around, or from the Space Leased, or the occupancy or use by Tenant of said Space Leased or any part thereof, occasioned wholly or in part by servants, invitees, licensees or concessionaries, including the sidewalks and common areas and facilities in or about the building;
- b) Tenant shall store its property in and shall occupy the Space Leased at its own risk, and releases Landlord, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury, or property loss or damage;
- c) Landlord shall not be responsible or liable at any time for any loss or damages to Tenant's panels, decoration, office fixtures, railing, ceiling, floor covering, partitions equipment, fixtures, supplies, merchandise, stock, or any personal property of Tenant, Tenants employees or invitees or to Tenant's business;
- d) Landlord shall not be responsible or liable to Tenant or to those claiming by, through or under Tenant for any loss or damages to either the person or property of Tenant that may be occasioned by or through the acts of omissions of persons occupying adjacent, connecting or adjoining Space Leased;
- e) Landlord shall not be responsible or liable for any defect, latent or otherwise, in the building in which the Space Leased is situated, or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused by or resulting from bursting, breakage or from leakage, steam or snow or ice, running or the overflow of water or sewerage in any part of said Space Leased, common area or for any injury or damage caused by or resulting from acts of God or the elements, or for any injury or damage caused by or resulting from any defect in occupancy, construction, operation or use of any of said Space Leased, common area, building, machinery, apparatus or equipment by any person or from the acts of negligence of any occupancy or invitee or criminal act, in, on or about the Space Leased, common area, or building;

- f) Tenant shall give prompt notice to Landlord in case of any fire or accident in the Space Leased, common area, or in the building of which the Space Leased are a part, or defects therein, or in any fixtures or equipment;
- g) In case Landlord shall without fault on its part be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay any and all costs, expenses and attorney's fees.

Section 7.02 Insurance.

Tenant shall maintain at its own cost and expense:

- a) Fire and extended coverage in an amount adequate to cover the cost of replacement of any and all panels, decoration, office fixtures, railing, ceiling, floor covering, partitions carpets, wall coverings, equipment, machinery, vehicles, decorations, improvements, fixtures and contents in or servicing the Space Leased in the event of fire, vandalism, malicious mischief, or other casualty generally included in extended coverage policies;
- b) Public liability insurance on an occurrence basis with minimum limits of liability in an amount of One Million Dollars (\$1,000,000.00) for bodily injury, personal injury death to any one or more persons, and One Million Dollars (\$1,000,000.00) with respect to damages to property. All public liability and property damage insurance shall insure performance by Tenant of the indemnity provisions of paragraph 7.01. Both parties shall be named as additional insured, and the policies shall contain cross-liability endorsements.

Section 7.03 Insured Waiver, Notice.

Any insurance procured by Tenant as herein required shall be issued in the name of Landlord and Tenant by a company licensed to do business in Alaska subject to these requirements:

- a) Such insurance may not be cancelled or amended with respect to Landlord without thirty (30) days written notice by certified or registered mail to Landlord, by the insurance company, at the following address:

City of Wasilla
290 E. Herning Avenue
Wasilla, Alaska 99654

- b) Tenant shall be solely responsible for payment of premiums and deductibles; and
- c) In the event of payment of any loss covered by such policy, payment shall be made to Tenant and Landlord as their interest may appear; and
- d) Shall contain an express waiver of any right of subrogation by the insurance company against the Landlord. The original policy of all such insurance shall be delivered to Landlord by Tenant within (10) days of issuance of such policy by the insurance company. The minimum limits of any insurance coverage required herein shall not limit Tenant's liability under Section 7.01.

ARTICLE VIII

CASUALTIES, DESTRUCTION

Section 8.01 Restoration Abatement.

If all or any part of the Space Leased or the building in which Space Leased is damaged or destroyed by fire or other casualty insured under the standard fire insurance policy or other casualty insured under the standard fire insurance policy with an extended coverage endorsement applicable to such property, the Landlord, unless it otherwise elects as herein provided, shall repair the same with reasonable dispatch out of the insurance proceeds received by it from the insurer. If the Space Leased or any part thereof is damaged by fire or other casualties to such an extent as to be rendered untenable in whole or in part, then the rent shall be abated to an extent corresponding with the part untenable, and for a period corresponding with the period during such untenability exists. If, however, Tenant fails to adjust its own insurance claim within a reasonable time, and as a result thereof the repairing and restoration is delayed, there shall be no abatement of rent during the period of such resulting delay, or if the fire or damage to said Space Leased was caused by carelessness or negligence or improper conduct of Tenant, then notwithstanding such damage or destruction, Tenant shall be liable for the rent during the unexpired period of the demised term, without abatement. If the Landlord elects to restore the Space Leased as provided in this paragraph, Landlord shall not be required to restore alterations made by Tenant, Tenant's improvements, Tenant's trade fixtures, equipment and Tenant's personal property, including without limitation any panels, decoration, office fixtures, railing, ceiling, floor covering, partitions and the like, such excluded items being the sole responsibility of Tenant to restore. Landlord shall not be responsible for lost profits during the restoration period.

Section 8.02 Termination of Lease Upon Damage of Casualty.

- a) If the Landlord, in its sole discretion, shall decide within ninety (90) days after the occurrence of any fire or other casualty, even though the Space Leased herein leased may not have been affected by such fire or other

casualty, to demolish, rebuild or otherwise replace or alter the building containing the Leased Premises, then upon written notice given by Landlord to Tenant, this Lease shall terminate on a date specified in such notice, but no sooner than twenty (20) days from the date of such notice, as if that date had been originally fixed as the expiration date of the term herein leased. However, if the building or Lease Space is found to be a danger the structure may be demolished immediately without notice at the Landlord's convenience.

- b) In the event of damage to or destruction of the Space Leased, unless the Landlord shall have repaired such damage within ninety (90) days, or has commenced repairing within ninety (90) days and is proceeding with diligence and continuity, Tenant may with written notice terminate this lease on the date specified in such notice, as if the date and been originally fixed as the expiration date of the term herein leased, provided such early termination date be not later than one hundred fifty (150) days after the event of damage or destruction contemplated herein.

ARTICLE IX

EMINENT DOMAIN

Section 9.01 General.

If the whole or part of the Space Leased shall be taken for any public or quasi-public use, under any statute, or by right of eminent domain, or private purchase or sale thereof by a public body vested with the power of eminent domain, then, when possession shall be taken thereunder of the Space Leased, or any part thereof, the following provisions described in Section 9.02 through 9.05 shall be operative.

Section 9.02 Taking of All of Space Leased.

If all of the Space Leased is taken, the term herein leased and all rights of the Tenant hereunder shall immediately cease and terminate and the rent shall be adjusted as of the time of such termination so that Tenant shall have paid rent up to the time of taking only.

Section 9.03 Taking of Substantial part of Space Leased.

If the taking reduces the area of the Space Leased by at least fifty percent (50%) and materially affects the use being made by the Tenant of the Space Leased, Tenant shall have the right by written notice to Landlord effected not later than thirty (30) days after possession shall be taken, to elect to terminate this Lease. And if the taking reduces the area of the Space Leased by fifty percent (50%), Landlord shall have the right by written notice to Tenant effected not later than thirty (30) days after possession shall be taken to elect to terminate this Lease.

- a) If the election to terminate be made by either the Tenant or Landlord, the provisions for the taking of the whole shall govern, or-
- b) If the election not be made – the Lease shall continue, the Landlord shall be entitled to the full condemnation proceeds and the rent shall be reduced in the same proportion that the floor area of the Space Leased taken bears to the 'original' floor area leased and Landlord may, upon receipt of the award in condemnation, make all necessary repairs or alterations to the building in which the Space Leased is located so as to constitute the portion of the building not taken a complete architectural unit, but such work shall not exceed the scope of the work to be done by Landlord in originally constructing said building, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as damages for the part of the Space Leased so taken. "Amount received by Landlord" shall mean that part of the award in condemnation which is free and clear to Landlord of any collection from any mortgagees for the value of the diminished property or any reduction because of age devaluation, deductible withholding or any other diminution.

Section 9.04 Taking of Insubstantial Part of the Premises.

If the taking reduces the ground area of the Space Leased by less than fifty percent (50%), the provisions of section 9.03 b above (where election not made) shall govern.

Section 9.05 Award.

Tenant shall not be entitled to and expressly waives all claim to any condemnation award for any taking, whether whole or partial, except tenant shall have the right to claim from the condemner, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for damage to Tenant's fixtures and improvements installed by Tenant at its expense.

ARTICLE X

CONSTRUCTION

Section 10.01 Construction of Space Leased.

If Landlord upon the request of the Tenant installs or constructs any items or equipment for Tenant, such items or equipment shall be paid for by Tenant fifteen (15) days prior to installation or construction. If the actual installation or construction exceeds the bid or estimated cost the Tenant will have fifteen (15) days after the copy of the receipt or bill is presented to pay the Landlord the difference.

Section 10.02 Tenant's Installations.

Tenant shall fully equip the Space Leased with all trade equipment, lighting fixtures other than those provided by Landlord, furniture, operating equipment, fixtures and any other equipment necessary for the proper operation of Tenant's business. All fixtures installed by Tenant shall be new or completely reconditioned. Tenant shall not do any construction work or install any equipment without first giving Landlord the written plans and specifications for such work thirty (30) days prior to the date of construction. If the nature of the work does not require plans or specifications the Tenant shall describe the construction or modification in writing thirty (30) days prior to construction.

Landlord reserves the right before approving any such work to require Tenant to furnish to Landlord a performance and payment bond issued by a surety company approved by Landlord.

ARTICLE XI

DEFAULT AND REMEDIES

Section 11.01 Default of Tenant.

Each of the following, but not limited thereto, shall be deemed a default by Tenant and a breach of this Lease:

- a) A default in the payment of the rent herein reserved, or any part thereof, for a period of ten (10) days.
- b) A default in the performance of any other covenants – or conditions on the part of Tenant to be performed, for a period of twenty (20) days after the service of notice thereof by Landlord.
- c) The filing of a petition, by or against Tenant, for adjudication as a bankrupt under the Bankruptcy Act of 1898, as now or hereafter amended or supplemented, or for reorganization within the meaning of Chapter X of said Bankruptcy Act, or for arrangement within the meaning of Chapter XI of said Bankruptcy Act, or the filing of any petition by or against Tenant under any future bankruptcy act for the same or similar period.
- d) The dissolution, or the commencement of any action or proceeding for the dissolution or for liquidation, of Tenant, whether instituted by or against Tenant, or for the appointment of a receiver or trustee of the property of the Tenant.

- e) The taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the Tenant.
- f) The making by Tenant of a general assignment for the benefit of creditors.
- g) The vacation or abandonment of the Space Leased by Tenant.

Section 11.02 Remedies of Landlord.

In the event of any default of Tenant as above provided, the Landlord shall have the following rights or remedies, in addition to any rights or remedies that may be given to Landlord by code, regulation statute, law or otherwise.

- a) Surrender of Premises - Termination of Lease. Upon any termination of this Lease, Tenant shall surrender possession and vacate the Space Leased immediately, and deliver possession thereof to Landlord. Tenant hereby grants to Landlord full and free license to enter into and upon the Space Leased in such event with or without process of law and to repossess Landlord of the Space Leased and to expel or remove Tenant and any others who may be occupying within Space Leased and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.
- b) Reentry of Space Leased--No Termination of Lease. If Tenant abandons the Space Leased or Landlord otherwise becomes entitled so to elect, and Landlord elects, without terminating this Lease, to endeavor to relet the Space Leased, Landlord may, at Landlord's option enter into the Space Leased, remove Tenant's signs and other evidence of tenancy, and take and hold possession thereof as provided in paragraph a) of this section, without such entry and possession terminating this Lease or releasing rent thereunder for the full term as hereinafter provided. Upon and after entry into possession without termination of this Lease, Landlord may relet the Space Leased or any part thereof for the account of Tenant to any person, firm or corporation other than Tenant for such rent, for such time and upon such terms as Landlord shall determine to be reasonable. In any such case, Landlord may make repairs, alterations and additions in or to the Space Leased, and redecorate the same to the extent deemed by Landlord necessary or desirable, and Tenant shall, upon demand, pay the cost thereof, together with Landlord's expenses of the reletting including, without limitation, staff costs, broker's commissions and advertising expenses. If the consideration collected by Landlord upon any such reletting for Tenant's account is not sufficient to pay monthly the full cost of repairs, alterations, additions, redecorating and Landlord's expenses for

reletting, Tenant shall pay to Landlord the amount of each monthly deficiency upon demand for the residual of the term of this Lease. Or at Landlord's election, as liquidated damages, Landlord may demand in lump sum, payment of advance rental equal to six (6) months of rental otherwise payable.

- c) Removal of Property. Any and all property which may be removed from the Space Leased by Landlord pursuant to the authority of this Lease or of law, to which Tenant is or may be entitled, may be handled, removed or stored by Landlord at the risk, costs and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's control. Any such property of Tenant not removed from the Space Leased or retaken from storage by Tenant within thirty (30) days after the end of the term of this Lease or of Tenant's right to possession of the Space Leased, however terminated, shall be conclusively deemed to, have been forever abandoned by Tenant and either may be retained by Landlord as its property or may be disposed of in such manner as Landlord sees fit.
- d) Repayment of Landlord's Payment of Tenant's Obligations. Tenant agrees that if it shall at any time fail to make any payments or perform any other act on its party to be made or performed under this Lease, Landlord may, but shall not be obligated to, and after reasonable notice or demand and without waiving, or releasing Tenant from, any obligation under this Lease, make such payment or perform such other act to the extent Landlord may deem desirable, and in connection therewith to pay expense and employ counsel. Tenant agrees to pay any and all attorney's fees if legal action is required to enforce performance of by Tenant of any condition, obligation or requirement hereunder. All sums so paid by Landlord and all expenses in connection therewith, together with interest thereon at the rate of fourteen percent (14%) per year or the current maximum legal rate of interest, whichever is less, from the date of payment to the date of repayment, shall be deemed additional rent hereunder and payable at the time of any installment of rent thereafter coming due and Landlord shall have the same rights and remedies for the nonpayment thereof, or of any other additional rent, in the case of default in the payment of rent.

ARTICLE XII

GENERAL PROVISIONS

Section 12.01 Waiver of Breach.

No failure by either Landlord or Tenant to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease, or to exercise any right of remedies consequent upon a breach thereof, shall constitute a waiver of any such breach of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other than existing or subsequent breach.

Section 12.02 Subordination Clause.

Tenant accepts this Lease subject and subordinate to all the underlying leases, leasehold mortgages, deed of trust, or other mortgages now or hereafter a lien upon or affecting the land and building of which the Space Leased is a part. The Tenant shall, at any time hereafter, on demand, execute any instruments, releases, or other documents that may be required (i) by any beneficiary, mortgagee or mortgagor, for the purpose of subjecting and subordinating this Lease to the lien of any such deed of trust, mortgage or mortgages, or underlying lease; or (ii) alternatively, if any such beneficiary, mortgagee or mortgagor elects to have this Lease made a prior lien to its mortgage or deed of trust. The failure of Tenant to execute any such instruments, releases or documents shall constitute a default hereunder. In the case of the failure of Tenant to execute said papers on demand, Landlord is hereby authorized, as the attorney and agent of Tenant, to execute such releases, instruments, of other documents, and in such event Tenant hereby confirms and ratifies any such instruments so executed by virtue of this power of attorney.

Section 12.03 Entire Agreement – Changes, Waivers.

This agreement supersedes all or any other prior agreements and understandings between the parties or any prior Landlord and may not be changed or terminated orally, and no change, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties against whom the same is sought.

Section 12.04 Construction of Lease.

Words of gender used in this Lease shall be held to include any other gender; and words of the singular numbers shall be held to include the plural, when the sense requires. Use of the term "Landlord" shall include Landlord, Landlord's agents and/or employees. Use of the term "Tenant" shall include Tenant's agents employees or Tenant's invitees.

Section 12.05 Notices.

Any notice or demand which under the terms of this Lease or any statute may or must be given or made by the parties hereto, shall be in writing and given or made by mailing the same by registered or certified mail, addressed to the other party as follows:

| | |
|-----------|----------------------------------|
| Landlord: | <u>City of Wasilla</u> |
| | <u>290 E. Herning Avenue</u> |
| | <u>Wasilla, Alaska 99654</u> |
| Tenant: | <u>American Lung Association</u> |
| | <u>290 N. Yenlo Street</u> |
| | <u>Wasilla, Alaska 99654</u> |

Either party may, however, designate in writing such new or other address to which such notice or demand shall thereafter be so given, made or mailed. Any notice given hereunder by mail shall be deemed delivered when deposited in the United States general or branch post office, enclosed in a registered or certified prepaid wrapper addressed as hereinbefore provided.

Section 12.06 Estoppel Certificates.

Tenant shall, at any time and from time to time upon not less than fifteen (15) days prior request by Landlord execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified (or in full force and effect as modified and stating the modifications) and the dates to which the rent(s) and any other charges have been paid in advance, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser or encumbrance (including assignees) of the Space Leased.

Section 12.07 Excuse for Nonperformance.

Either party hereto shall be excused from performing any or all of its obligations hereunder with respect to any repair and construction work required under the terms of this Lease for such times as the performance of any such obligation is prevented or delayed by an act of God, floods, explosion, the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action by labor unions, or laws or order of governmental agencies, or any other cause whether similar or dissimilar to the foregoing which is not within the reasonable control of such party.

Section 12.08 Broker.

Tenant represents it has not had any dealings with any realtor, broker, agent or finder, in connection with the negotiation of this Lease, excepting only _____.

Section 12.09 Time is of the Essence.

Time is of the essence of each and every provisions hereof.

Section 12.10 Binding Effect.

This Lease, subject to the provisions of Section 6.01, shall be binding upon and inure to the benefit of the parties hereto their legal representatives, successors, and assigns.

Section 12.11 Rights Reserved to Landlord.

Landlord reserves the following rights:

- a) Name Building. To name the building and the property and to change the name or street address of the building and the property.
- b) Install Signs. To install and maintain a sign or signs on the exterior or interior of the building and the property.
- c) Pass Keys. To constantly have pass keys to the Space Leased.
- d) Show Premises. On reasonable prior notice to Tenant, to exhibit the Space Leased to prospective tenants during the last six (6) months of the term of this Lease, and upon one (1) day advance notice to any prospective purchaser, mortgagee, or assignee of any mortgage on the property and to others having a legitimate interest at any time during the term of this Lease.
- e) Emergency Repairs. At any time in the event of any emergency and otherwise at reasonable times, to take any and all measures, including inspections, repairs, alterations, additions and improvements to the Space Leased or to the building, as may be necessary or desirable for the safety, protection or preservation of the Space Leased or the building or Landlord's interest, or as may be necessary or desirable in the operation or improvement of the building or in order to comply with all laws, orders and requirements of governmental or other authority.
- f) Rules and Regulations. Landlord may from time to time issue in writing rules and regulations deemed by Landlord to be for the benefit of Landlord, Tenant, and other Tenants, which shall become as incorporated in Lease.

Section 12.12 Sale or Transfer of Premises.

If Landlord sells or transfers the building or the property, on consummation of the sale or transfer, Landlord shall be released from any liability thereafter accruing under this Lease. If the security deposit or prepaid rent has been paid by Tenant, Landlord can transfer the security deposit or prepaid rent to Landlord's successor and on such transfer Landlord shall be discharged from any further liability in reference to the security deposit or prepaid rent.

Section 12.13 Lien and Security Interest.

Landlord shall have a lien on, and Tenant hereby grants Landlord a security interest in all goods, supplies, inventory, merchandise, equipment, fixtures and all other personal property, which are or may be put on the Space Leased, to secure the payment of the rent and additional rent reserved under this Lease. If Tenant shall default in the payment of such rent, Landlord may at its option, without notice or demand, take possession of and sell such property in accordance with the Uniform Commercial Code of Alaska. Landlord shall apply the proceeds of sale as follows:

- a) To the expenses of sale, including all costs, fees and expenses of Landlord and Landlord's reasonable attorney's fees in connection with such sale;
- b) To the payment of such rent; and
- c) The surplus, if any, to Tenant.

Section 12.14 Rights Reserved to Tenant.

Landlord agrees to maintain the occupancy level of the building's main floor to a specified level and use. The use of the building's main floor is targeted toward businesses of a retail nature, to include but not exclusive, product sales, food/beverage sales, personal services, etc. If the retail occupancy level of the main floor falls below sixty percent (60%), based on lease-able square footage, for a period of time exceeding ninety days without a commitment to lease, Tenant may terminate lease without penalty.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 13.01 Consent in Writing Only.

Whenever consent, permission or approval of the Landlord is required, such must be in writing and signed by Landlord to be valid and must be given in advance.

Section 13.02 Corporation Resolution.

If Tenant is a corporation, Tenant shall deliver to Landlord upon execution of this Lease a certified copy of a resolution of its board of directors authorizing the execution of this Lease and naming the officers that are authorized to execute this lease on behalf of the corporation. If Tenant is a corporation, individuals of the corporation shall sign this Lease individually and shall be individually responsible for compliance with its terms and provisions and all payments in connection therewith.

Section 13.03 All Agreements - Amendments.

This Lease contains all the agreements of the parties and cannot be amended or modified except by a written agreement signed by the parties hereto.

Section 13.04 Landlord's Copy to Control.

In the event of a variation or discrepancy, Landlord's original copy of this Lease shall control.

Section 13.05 Execution of All Parties.

It is understood and agreed that this Lease shall not be binding until and unless all parties have signed it.

Section 13.06 Money Received After Term Expires.

No receipt of money by Landlord from Tenant after the termination of this Lease or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Space Leased shall reinstate, continue or extend the term of this Lease or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required.

Section 13.07 Negotiated and Mutually Drafted Lease

The Tenant understands that this lease document was drafted by counsel for the City of Wasilla but hereby acknowledges that he has either had his own attorney or counsel review the lease and/or had ample opportunity to have the document reviewed by an attorney of his choice or counsel.

The Tenant also agrees that the lease was mutually created and negotiated by himself and the City of Wasilla. Therefore, if there is a question of interpretation of the drafted language herein the interpretation should not be construed against either author.

LANDLORD:

Verne E. Rupright, Mayor
City of Wasilla

Date

TENANT:

Renee Klein, President and CEO
American Lung Association

Date