

KETCHIKAN GATEWAY BOROUGH SCHOOL DISTRICT  
AGENDA STATEMENT

No. 12 a.

MEETING OF August 12, 2020

Reviewed By

Item Title:

NEW BUSINESS

Motion to approve a lease agreement with the  
Ketchikan Gateway Borough for office space

Superintendent

Finance

Maintenance

SUBMITTED BY Beth Lougee, Superintendent

Contact Person/Telephone

APPROVED FOR SUBMITTAL

Katie Jo Parrott

247-2116

Name

Phone

SUMMARY STATEMENT:

Administration is seeking approval of a lease agreement with the Ketchikan Gateway Borough for use of office space.

ISSUE: Board Policy governs the district's purchasing and contracting procedures. Board Policy requires Board approval for expenditures and financial obligations over \$25,000. Though this request is technically under \$25,000, because it is close to the \$25,000 threshold and includes an intergovernmental agreement between our entities, the Board is being asked to provide approval.

BACKGROUND: On July 15<sup>th</sup> the District began discussions with Borough Administration regarding available office space. District Administration proposed moving out of the offices currently occupied in the Ketchikan High School facility to create much needed space. Specifically, the District identified a need for additional space to provide modified programs for immune compromised students, intensive needs, and students receiving specialized services, in addition to creating more space for Kayhi students and staff. The available office space in White Cliff would facilitate District efforts to create additional classroom and program space in Kayhi to socially distance students by immediately housing the Business Office. Initially, the District intends to move four staff members to White Cliff. This includes the HR, Payroll, Board Clerk and the Business Manager. The District would move the remaining Business Office staff following the renovation of an adjacent space.

The Borough and School District have calculated the lease payment based on the pro-rata share of the space occupied. Based on that calculation, the parties have agreed that the School District's share of the debt service for the building would be recognized as an in-kind contribution. The in-kind contribution is estimated to be \$15,645 in FY 2021. The District would pay its proportionate share of utilities, insurance, common area janitorial services and maintenance for White Cliff directly to the Borough. In FY 2021 that amount would be \$24,849. The lease is slated to expire June 30, 2021. Further extensions would be subject to agreement by the two parties.

RECOMMENDATION:

Approval of the lease agreement with Ketchikan Gateway Borough.

FISCAL NOTE

EXPENDITURE

REQUIRED

\$24,849

AMOUNT

AVAILABLE \$25,000

EXHIBITS ATTACHED

- Lease agreement
- White Cliff second floor plans with office space

RECOMMENDED ACTION:

"I move that the Board of Education approve the lease agreement with the Ketchikan Gateway Borough, as presented."

# DRAFT LEASE AGREEMENT

**THIS LEASE AGREEMENT** (the "Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the KETCHIKAN GATEWAY BOROUGH, address is 1900 First Ave., Suite 210, Ketchikan, AK, 99901 (hereinafter called the "Landlord"), and the KETCHIKAN GATEWAY BOROUGH SCHOOL DISTRICT, whose address is 333 Schoenbar Road, Ketchikan, AK 99901 (hereinafter called the "Tenant"). Landlord and Tenant may be referred to as a "Party" or "Parties" in this Lease Agreement.

This Lease involves Landlord improvements and lease of a portion of the second (2<sup>nd</sup>) floor of The White Cliff Building in Ketchikan, Alaska.

In consideration of the terms, conditions, covenants, and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

## 1. Defined Terms

1.1 Defined Terms: The following terms shall have the meanings specified in this section, unless otherwise specifically provided. Other terms may be defined in other parts of the Lease.

Landlord:	Ketchikan Gateway Borough
Landlord's Address:	1900 First Ave. Ste 210 Ketchikan, AK 99901
Tenant:	Ketchikan Gateway Borough School District
Tenant's Address:	Attn: Superintendent Ketchikan Gateway Borough School District 333 Schoenbar Road Ketchikan, AK 99901
Tenant's Use:	Office building as allowed by local zoning.
Property:	The real property located at 1900 1 <sup>st</sup> Avenue, Ketchikan, Alaska.
Building:	The White Cliff Building located at 1900 1 <sup>st</sup> Avenue, Ketchikan, Alaska
Premises:	That portion of the Building that will be leased by the Tenant. The Premises consists of offices 214, 223, 223A, 224, and 230, approximately 2,186 square feet of Rentable Space consisting of portions of the building as shown on the Floor Plan(s) attached as Exhibit "A".

Term: Commencing upon the Commencement Date and expiring on June 30, 2021.

Commencement Date: The Commencement Date shall be the date upon which rent first starts to accrue and is estimated to be August 4, 2020.

Prepaid Rent: None required.

Security Deposit: Waived.

Base Rent: The Tenant shall pay annual rent as follows:  
 For FY 2021, annual Base Rent shall be \$24,849, calculated as follows:

Commencement through August 31, 2020:	\$1,354/mo
September 1, 2020 through September 30, 2020:	\$1,400/mo
October 1, 2020 through November 30, 2020:	\$2,295/mo.
December 1, 2020 through June 30, 2021:	\$2,475/mo.

For future years, Base Rent is calculated as a pro-rata share of the operating costs of the White Cliff building using the same formula as allocations for Borough Departments, to include utilities, janitorial and supplies for common area spaces, property insurance, maintenance and similar expenses, but excluding Bond Debt or COP payments.

Additional Rent: In addition to Base Rent, Tenant shall pay:  
**Not Applicable**

Surface Parking Spaces: Undesignated parking provided on property with overflow parking on surface streets. In the event Landlord implements assigned spaces, tenant's number of assigned spaces will based on proportion of space leased in building.

Exhibits: Exhibit A: Floor Plan

## 2. Leasehold Defined

2.1 Leasehold: Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the provisions of this Lease, the following:

- a. The phased exclusive use of the Premises as depicted as Suites 214, 223, 223A, 224, and 230 on Exhibit "A" to be located within the Building located on the Property. Suite 224 is unfinished at time of lease commencement, and Suite 230 is committed to Borough use until December 2020. During the improvements to be made in Suite 224 and Borough usage of 230, Tenant will occupy Suite 214. The Occupancy schedule is as follows:
- (1) August 2020 - September 2020 (or until 224 is completed for occupancy): Suites 223 and 214, comprising approximately 1,075 s.f.; and
  - (2) October 2020 - November 2020 (or until 230 is available for occupancy): Suite 223, 224, and 214, comprising approximately 1,994 s.f.; and
  - (3) December 2020 - July 2021: 223, 224 and 230, comprising approximately 2,186 s.f.
- b. The non-exclusive use of the Common Space of the Building as depicted on Exhibit "A".

2.2 Final Calculation of Square Footage: Not Applicable

2.3 Non-exclusive Use of Common Space: The Premises shall include the non-exclusive right to use the Common Space of the Building, which shall be reasonably maintained by the Landlord.

### 3. Term of the Lease and Renewal

3.1 Commencement Date: The Lease shall commence on the date specified in Section 1.1, or on such earlier or later date as may be specified by written notice delivered by Landlord to Tenant advising Tenant that the Premises are ready for possession and specifying the Commencement Date.

3.2 Term: The Lease shall expire on June 30, 2021. Extensions of this lease are subject to further agreement of the parties.

3.3 Renewal: No applicable.

### 4. Rental Rates

#### 4.1 Base Rent:

In accordance with the phased nature of the leasehold set forth in Section 2.1 above, Tenant shall pay Base Rent as follows:

Commencement through August 31, 2020:	\$1,354/mo
September 1, 2020 though Septemebr 30, 2020:	\$1,400/mo
October 1, 2020 through November 30, 2020:	\$2,295/mo.
December 1, 2021 through June 30, 2021:	\$2,475/mo.

For future years, Base Rent is calculated as a pro-rata share of the operating costs of the White Cliff building using the same formula as allocations for Borough Departments, to include utilities, janitorial and supplies for common area spaces, property insurance, maintenance and similar expenses, but excluding Bond Debt or COP payments.

Rent shall include base rent per square foot of exclusive space, which rate includes the proportionate cost of common space and the following utilities: water, sewer, garbage pick-up, electricity, and heat. The tenant shall be responsible for all janitorial within exclusive use spaces, any utilities not named above, and any property taxes on their possessory interest, as applicable.

4.2 Inflationary Adjustment: Not applicable.

4.3 Additional Rent: Not Applicable

4.4 Late Charge: If any payment of Rent is not received by Landlord within ten (10) business days after the same is due, Tenant shall pay to Landlord a late payment charge equal to three percent (3%) of the amount of such delinquent payment of Rent in addition to the installment of Rent then owing, regardless of whether or not a notice of default has been given by Landlord. All payments not made within thirty (30) days after the same is due, shall bear interest at the rate of twelve percent (12%) per annum.

4.5 Rental Rate For Renewal Terms: The parties shall agree on the rental rate for each renewal term, if any, prior to the expiration of the previous term.

## 5. **Uses and Quiet Enjoyment**

5.1 Permitted Uses: The Premises shall be used in a manner consistent with a quiet office environment and for no other purpose without the prior written consent of the Landlord.

5.2 Quiet Enjoyment: The Tenant has the right to occupy and enjoy the Premises during the Term of the Lease with no disturbances by the Landlord or other tenants of the Building.

5.3 Landlord's Right to Enter: It is agreed that the duly authorized officers or agents of Landlord may enter to view said Premises at any time upon reasonable prior notice, except in the case of an emergency, then with no prior notice, and if the business or normal function of Landlord should at any time require that it enter upon the Premises to perform any work or make any improvements, it may do so upon reasonable prior notice, except in the case of an emergency, then with no prior notice, but not in such manner as to materially injure Tenant or interfere with its normal and usual operation. In addition, within one-hundred and seventy (170) days of the expiration of the Lease, duly authorized officers or agents of Landlord may enter to

view said Premises at any time upon reasonable prior notice, for the purpose of showing the Premises to prospective tenants.

## **6. Tenant Improvements**

6.1 Tenant Improvements: Landlord shall construct improvements to the Premises in order to allow Tenant's use of the Premises as administrative office space.

6.2 Tenant Obligations: To the extent Tenant's tenant improvements are not completed in time for the Tenant to occupy or take possession of the Premises on the Commencement Date due to the failure of Tenant to fulfill any of its obligations under this Lease, upon prior notice to the Landlord, Tenant shall have an automatic additional thirty (30) days in which to occupy the Premises. After the initial thirty (30) day period, the Lease shall commence on the Commencement Date.

6.3 Inspection Upon Substantial Completion: Once the Premises are ready for Tenant's occupancy upon receipt of notice of Substantial Completion, Tenant shall inspect the Premises and notify the Landlord of any claims of deficiencies in construction. Landlord shall correct any item that Landlord's Architect reasonably concludes is a deficiency in construction. Thereafter, Tenant shall accept the Premises "as is" without further maintenance liability on the part of the Landlord, except as provided herein, and is not relying on any representations of Landlord as to the condition or usability of the Property, except as specifically provided herein. Once renovated, these Building improvements shall remain the property of the Landlord.

## **7. Expenses**

7.1 Landlord's Expenses: Landlord shall pay property insurance for the Building and the Landlord owned contents (but excluding liability for Tenant owned property), liability insurance, maintenance and repair as described in Paragraph 8 below, and other related expenses for the operation maintenance and service of the Building and Premises.

## **8. Maintenance, Repair, and Janitorial**

8.1 Landlord's Repair and Maintenance: The Landlord shall maintain the Property and the Building, including the Common Space and Premises in good repair and tenantable condition during the Term of the Lease, except for damage arising from the negligent acts or omissions of the Tenant's trustees, officers, directors, employees, agents, or volunteers on the Premises as a result of the Tenant's activities. The Landlord's maintenance and repair obligations shall include the mechanical, electrical, interior lighting (including replacement of ballasts and starters as required but not including lamps and/or florescent tubes), plumbing, heating, ventilating and air-conditioning systems (including replacement of filters as recommended in equipment service manual); elevators; outside walls (including windows); all structural portions of the Building (including the roof and the watertight integrity of same); porches, stairways; sidewalks; exterior lighting; parking lot (including snow removal, cleaning and re-striping as required); wheel bumpers; drainage; and landscaping. For the purposes of maintenance and repair, the Landlord

reserves the right at reasonable times to enter and inspect the Premises and to do any necessary maintenance and repairs to the Building or Premises.

8.2 Tenant's Repair and Maintenance: During the Term of this Lease, Tenant shall be responsible for the maintenance and repair of all other items in the Premises, except as set forth in Paragraph 8.1 including, but not limited to, all interior wall, floor and window coverings.

8.3 Janitorial Services: Tenant to provide its own janitorial services including cleaning, and general janitorial work, and will be responsible and pay directly for these services for Tenant's space. The Landlord shall provide janitorial services including trash collection, cleaning, and general janitorial work in Common Space.

## 9. **Tenant Improvements and Fixtures**

9.1 Installation of Improvements and Fixtures: The Tenant shall have the right, during the existence of this Lease with the written permission of the Landlord (such permission shall not be unreasonably withheld), to make alterations and attach fixtures in or upon the Premises hereby leased, including installation of an antenna on the roof. Performance of any of the rights authorized above shall be conducted in compliance with all applicable governmental regulations and building codes, including obtaining any necessary permits. Tenant shall save, defend and hold Landlord harmless from any failure to obtain the appropriate permits. Any fixtures, additions, or structures so placed in or upon or attached to the said Premises shall be and remain the property of the Tenant and may be removed therefrom by the Tenant upon the termination of this Lease. Any damage caused by the Tenant from the removal of any of the above items, shall be repaired by the Tenant.

9.2 Disposition of Improvements at End of Lease: Tenant shall have the right to remove all equipment, personal property and improvements, which may have been placed upon the Premises by Tenant during the period of this Lease, providing that the same are removed before the Lease is terminated and that the Lease is in good standing. Any improvements not removed from the Premises by the conclusion of this Lease shall, at Landlord's option, revert to Landlord. The Premises will be restored by Tenant to conditions prevailing at the time of initiation of this lease, normal wear excepted.

9.3 Removal of Property: If Tenant fails to remove any of its personal property from the Premises or the Building at the termination of this Lease, or when Landlord has the right of re-entry, Landlord may, at its option, remove and store said property without liability for loss thereof or damage thereto. Such storage shall be for the account and at the expense of Tenant. If Tenant fails to pay the storage costs after thirty (30) days or more, Landlord may, at its option, sell any or all of such property at a public or private sale, in such manner and at such times and places as Landlord, in its sole discretion, may deem appropriate, without notice to Tenant, and shall apply the proceeds of the sale first, to the costs of the sale, including attorneys' fees, second, to the storage costs, and third, to the payment of any amounts then or thereafter due to Landlord from Tenant under this Lease. The balance, if any, shall be returned to Tenant.

9.4 Tenant Shall Obtain Permits: Tenant agrees to obtain and comply with all necessary permits for any leasehold improvement constructed by the Tenant after occupancy. If Tenant fails to obtain and comply with such permits, then Tenant accepts full responsibility for any and all costs incurred by Landlord, including actual attorneys' fees. In this way, Tenant agrees to hold Landlord harmless for Tenant's failure to fully comply with any necessary permit process and requirements.

9.5 Liens: Tenant agrees to keep the Property described herein free and clear of all liens and charges whatsoever arising as a result of actions taken by the Tenant. Tenant shall not allow any materialmen's, mechanic's or other liens to be placed upon the Premises as a result of actions taken by the Tenant. If such a lien is placed on record, Tenant shall cause it to be discharged of record, at its own expense, within ten (10) days of Landlord's demand. Failure to comply with Landlord's demand within ten (10) days shall be a default under the terms of this Lease.

## 10. **Discrimination**

10.1 Non-Discriminatory: Landlord assures and certifies that, with regard to the Building and the Project, the Landlord shall comply with the applicable and mandatory provisions of the Americans With Disabilities Act of 1990 (42 U.S.C. 12101-12213), as well as Alaska State law against discrimination, AS 18.80.230.

## 11. **Damage or Destruction**

11.1 Effect of Total Damage or Destruction: In the event the Building or Premises are destroyed or substantially injured by fire, earthquake or other casualty so as to render the Premises unfit for occupancy, and the Landlord neglects and/or refuses to restore said Building or Premises to their former condition within a reasonable time, the Tenant may then terminate this Lease and shall be reimbursed for any unearned Rent that has been paid as its sole remedy.

11.2 Effect of Partial Damage or Destruction: In the event said Building or Premises are partially destroyed by any of the aforesaid means, the Rent herein agreed to be paid shall be abated from the time of occurrence of such destruction or injury until the Building or Premises are restored to their former condition, and any Rent paid by the Tenant during the period of abatement, shall be credited upon the next installment(s) of Rent to be paid. It is understood that the terms "abated" and "abatement" mean a *pro rata* reduction of an area unsuitable for occupancy of Tenant due to casualty loss in relation to the total leased area. This provision shall not apply in the event the damage or destruction is caused in whole or in part by the negligent or willful acts of the Tenant, its, agents, employees, students or others on the Premises with the permission of the Tenant.

## 12. **Insurance and Indemnification**

12.1 Tenant Insurance: Tenant shall purchase general liability insurance and such insurance shall have annual limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate with and a deductible of not more than \$5,000. Tenant shall provide the Landlord with a copy of the signed insurance policies evidencing the insurance coverage required under this section and providing for not less than thirty (30) days' notice to the Landlord of the cancellation of such insurance. Tenant shall insure that the Landlord is listed as an additional insured on the insurance policies. The failure of Tenant to fully comply with the obligations in Paragraph 12.1 constitutes a material breach of the Lease.

12.2 Waiver of Subrogation: To the extent permitted by the applicable insurance policies, and to the extent a loss is covered by insurance, Landlord and Tenant waive any subrogated claim against each other.

12.3 Loss or Damage to Tenant's Property: The Parties hereto agree that the Landlord shall not be responsible to the Tenant for any property loss or damage done to any property owned, leased, or otherwise controlled by the Tenant, occasioned by reason of any fire, storm, water, or other casualty whatsoever. It shall be the Tenant's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Landlord, Tenant, third party, or act of nature.

12.4 Landlord's Insurance: During the term, Landlord shall procure and maintain, in full force and effect with respect to the Building, a policy or policies of all-risk insurance (including, to the extent required, sprinkler leakage, vandalism and malicious mischief coverage, and any other endorsements required by the holder of any fee or leasehold mortgage) in an amount not less than the full replacement cost of the Building, excepting foundations. If the annual premiums charged to Landlord for such casualty insurance exceed the standard premium rates specifically and expressly as a result of the nature of Tenant's operations in the Premises, then Tenant shall, upon receipt of appropriate premium invoices, reimburse Landlord for such increased amount. Landlord shall have the right, at its option, to keep and maintain, in full force and effect, during the term of the Lease such other insurance in such amounts and on such terms as Landlord may reasonably require from time-to-time in form, in amounts, and for insurance risks against which a prudent Landlord would protect itself including, but not limited to, rental abatement, earthquake and flood insurance.

12.5 Landlord to Defend, Indemnify, and Hold Harmless: Landlord shall defend, indemnify and hold harmless Tenant, its trustees, officers, directors, employees, agents and volunteers from and against all claims, demands, damages or causes of action, including actual costs and attorney's fees, in proportion that such claims, demands, damages arise out of or are related to the negligent acts or omissions of the Landlord or anyone on the Property arising from the business of Landlord.

12.6 Tenant to Defend, Indemnify, and Hold Harmless: Tenant shall defend, indemnify, and hold harmless Landlord, its officers, directors, employees, agents and volunteers from and against all claims, demands, damages or causes of action, including actual costs and attorney's

fees, in proportion that such claims, demands, damages arise out of or are related to the negligent acts or omissions of the Tenant or anyone on the Property arising from the business of Landlord.

### 13. **No Guarantees - Binding Authority**

13.1 No Guaranties: It is understood that no guarantees, express or implied, representations, promises or statements have been made by the Tenant unless endorsed herein in writing, and it is further understood that the Tenant represents that it has the authority to enter into this Lease, that the signatory below is the authorized signer with power to bind the Southeast Alaska Power Agency in contracts, and that all processes required to create this Lease as a valid and binding obligation have been satisfied.

### 14. **Hazardous Substances**

14.1 Landlord's Warranty: Except for the presence of asbestos and lead paint, which was fully and properly remediated as a result of the renovation of The White Cliff Building, Landlord warrants that, to the best of Landlord's knowledge, no hazardous substance (as the term is defined below) has been produced, disposed of, is or has been kept on the Premises, or if found on the Property, would subject the owner or user to any damages, penalties, or liabilities under an applicable local, state or federal law or regulation. Tenant, at its option, may conduct whatever site assessment Tenant deems desirable or necessary before entering this Lease. If the Tenant chooses not to conduct a site assessment, Tenant agrees that it enters this Lease and takes possession of the Premises "as is" with respect to any presence of hazardous substances other than those identified to be addressed in the renovation. Landlord shall defend, indemnify and hold Tenant harmless from any and all claims, demands, judgments, orders, cleanup costs, expenses, penalties, fees, or damages, and including all actual attorneys' fees and actual costs resulting, directly or indirectly, from the presence of such substances on the Premises.

14.2 Hazardous Substance Hold Harmless: Tenant shall defend, indemnify and hold Landlord harmless from any and all claims, demands, judgments, orders, cleanup costs, expenses, penalties, fees, or damages, including actual attorneys fees and actual costs, and including all actual attorneys fees and actual costs resulting, directly or indirectly, from hazardous substances on the Property caused in whole or in part by the activity of the Tenant, its agents, subtenants, representatives, volunteers, licensees, invitees, or any other person or entity on the Premises during the Term of this Lease and any renewals thereto. It is the intent of the parties that Tenant shall be responsible and shall defend, indemnify and hold Landlord harmless from any hazardous substances that have or may occur on the Premises during the Tenant's occupancy of the Premises.

14.3 Definition of Hazardous Substances: The term "hazardous substances," as used herein, shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1257 et seq.; the Clean Air Act, 42 U.S.C. Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42

U.S.C. Sec. 9601 et seq.; all as amended and subject to all regulations promulgated thereunder, and as defined in any statute of the State of Alaska.

## **15. Laws and Regulations**

15.1 Tenant to Obey Laws and Regulations: Tenant agrees to conform to and abide by all lawful rules, codes, laws and regulations in connection with its use of said Premises, and the construction of improvements and operation of Tenant's business thereon, and not to permit said Premises to be used in violation of any lawful rule, code, law, regulation or other authority.

15.2 Environmental Laws: The Tenant's and Landlord's obligations herein shall include, but in no way be limited to, the obligation to comply with all state and federal environmental laws and regulations. The Tenant covenants and agrees that it will defend, indemnify and hold harmless the Landlord from any fine, penalty, or damage, including actual attorneys fees and actual costs, which may be imposed by any lawful authority, arising directly or indirectly as a result of the Tenant's failure to comply with the any environmental law or laws. The Landlord covenants and agrees that it will defend, indemnify and hold harmless the Tenant from any fine, penalty, or damage, including actual attorneys fees and actual costs, which may be imposed by any lawful authority, arising directly or indirectly as a result of the Landlord's failure to comply with the any environmental law or laws.

## **16. Waste, Refuse, and Signs**

16.1 No Waste or Refuse: Tenant agrees not to allow conditions of waste and refuse to exist on the Premises, and to keep the Premises in a neat, clean, and orderly condition and to be responsible for all damages caused to the Premises by Tenant, its agents or anyone on the Property as a result of Tenant's activities.

16.2 Signs: Tenant shall not install signs upon the Premises without Landlord's prior written approval, which shall not be unreasonably withheld. Any such signage shall be subject to any applicable governmental laws, ordinances, regulations and other requirements.

## **17. Litigation**

17.1 Litigation by or Against Tenant: In the event Landlord shall be made a party to any litigation commenced by or against Tenant (but not including actions commenced against Landlord by Tenant), then Tenant agrees to pay all costs, expert witness fees, and attorneys' fees, including all customary charges, incurred by Landlord in connection with such litigation. However, if Landlord is made a party defendant and Tenant undertakes the defense of the action on behalf of Landlord, then no obligation for costs and attorneys' fees will be chargeable against Tenant by Landlord for costs arising out of such undertaking. Tenant also agrees to pay all costs and attorneys' fees incurred by Landlord in enforcing any of the covenants, agreements, terms, and provisions of this Lease.

17.2 Litigation by or Against Landlord: In the event Tenant shall be made a party to any litigation commenced by or against Landlord (but not including actions commenced against Tenant by Landlord), then Landlord agrees to pay all costs, expert witness fees, and attorneys' fees, including all customary charges, incurred by Tenant in connection with such litigation. However, if Tenant is made a party defendant and Landlord undertakes the defense of the action on behalf of Tenant, then no obligation for costs and attorneys' fees will be chargeable against Landlord by Tenant for costs arising out of such undertaking. Landlord also agrees to pay all costs and attorneys' fees incurred by Tenant in enforcing any of the covenants, agreements, terms and provisions of this Lease.

17.3 Litigation Between Landlord and Tenant: In action brought to enforce any term or condition of this Lease by either party against the other, the prevailing party shall be awarded its actual costs and attorneys' fees.

## **18. Assignment of Lease, Estoppel Certificate, Attornment, and Recording**

Tenant shall not assign, rent, or sublease any portion of this Lease or any extension thereof, without the prior written reasonable consent of Landlord, and no rights hereunder or in or to said Premises shall pass by operation of law or other judicial process or through insolvency proceedings.

## **19. Default**

19.1 Landlord Default: If the Landlord breaches any material agreement, term or covenant of this Lease, and after written notice specifying the breach by the Tenant to the Landlord, and the breach continues for a period of thirty (30) calendar days and upon, the Tenant shall be entitled to terminate this Lease. Provided, however, if the default is not capable of cure within the thirty (30) day period and Landlord is diligently proceeding to cure said default, then Tenant shall not be entitled to declare a default so long as the cure is ongoing. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

19.2 Tenant's Breach - Failure to Pay Rent: Failure to pay Rent by the first (1<sup>st</sup>) day of each month, shall constitute a default under the terms of this Lease. If default in the payment of Rent occurs then, at Landlord's sole option, upon ten (10) days' written notice, this Lease may be terminated and Landlord may enter upon and take possession of said Property. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

19.3 Tenant's Breach - Non-Monetary: If Tenant shall fail to perform any term or condition of this Lease other than the payment of Rent, after written notice specifying the breach by the Landlord to the Tenant, and the breach continues for a period of thirty (30) days and upon, then Landlord, upon providing Tenant thirty (30) days' written notice of such default, may terminate this Lease and enter upon and take possession of the Property. Provided, however, if the default is not capable of cure within the thirty (30) day period and Tenant is diligently proceeding to cure said default, then Landlord shall not be entitled to declare a default so long as

the cure is ongoing. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

## 20. Termination

20.1 Termination and Surrender of Premises: Landlord may terminate Tenant's interest under the lease, upon a Tenant Event of Default, but no act by Landlord other than written notice from Landlord to Tenant of termination shall terminate this lease. The lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the rent and other sums that would have been owing by Tenant under this Lease for the balance of the Lease term, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to the termination, after deducting all Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ij) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the lease, or which in the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses.

20.2 Reletting the Premises: Upon receipt of written notice of termination, the Landlord shall make every reasonable effort to relet the Premises. Rents received by Landlord from reletting shall be applied to the payment of any indebtedness from Tenant to Landlord for Tenant Improvement work, to the payment of any costs and expenses of such reletting and including but not limited to, attorneys fees, advertising fees, brokerage fees and the payment of any repairs (provided that any costs incurred with respect to a reletting shall be amortized over the term of the reletting and only the portion applicable to the remainder of the term of this Lease shall be charged against the Tenant), to the payment of Base Rent and Additional Rent due and to become due hereunder, and, if after so applying the rents collected from reletting there is any deficiency in the Tenant Improvement work costs (if applicable), Base Rent and Additional Rent to be paid by Tenant under this Lease, Tenant shall pay any deficiency to Landlord monthly on dates to be negotiated.

## 21. Non Waiver

21.1 No Waiver Landlord: Neither the acceptance of Rent nor any other act or omission of Landlord after a default by Tenant shall operate as a waiver of any past or future default by

Tenant, or to deprive Landlord of its right to terminate this Lease, or be construed to prevent Landlord from promptly exercising any other right or remedy it has under this Lease.

21.2 No Waiver Tenant: No act or omission by Tenant after a default by Landlord shall operate as a waiver of any past or future default by Landlord, or to deprive Tenant of its right to terminate this Lease, or be construed to prevent Tenant from promptly exercising any other right or remedy it has under this Lease.

## 22. Notices

22.1 Notices: Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party, shall be in writing addressed to the other party at the addresses as follows:

TO LANDLORD:                   Ketchikan Gateway Borough  
  Attn: Borough Manager  
  1900 First Ave. Suite 210  
  Ketchikan, AK 99901

TO TENANT:                     Ketchikan Gateway Borough School District  
  Attn: Superintendent  
  333 Schoenbar Road  
  Ketchikan, AK 99901

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

## 23. Holding Over

23.1 Holding Over is a Month-to-Month Tenancy: If the Tenant remains in possession of said Premises after the date of expiration of this Lease or any extension thereof, with the written consent of the Landlord, it is hereby agreed and understood that until such time as a new agreement in writing shall be entered into between the parties thereto, Tenant shall continue to make payments to Landlord on a month-to-month basis as provided for in this Lease. Upon the date of holding over, the rent shall be increased to 125% the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. Said holdover tenancy may be terminated by either party at the end of any such monthly period by sending written notice not less than thirty (30) days before the end of such period. Said holding over shall be subject to the approval of Landlord. All other terms of the Lease shall remain in effect.

## 24. Survival

24.1 Survival of Obligations: All obligations of the Landlord and the Tenant, as provided for in this Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease which require performance beyond the termination date, shall survive the termination date of this lease.

## 25. **Successors and Assigns**

25.1 Successors and Assigns: All of the terms, conditions, covenants and agreements of this Lease are binding upon and, subject to the provisions of Sections 12, 14 and 15 of this Lease, shall inure to the benefit of Landlord, Tenant, and their respective heirs, administrators, executors, successors and assigns.

## 26. **Captions and Interpretation**

26.1 Disputes Concerning Interpretation: In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Landlord or the Tenant. If any provision is found to be ambiguous, the language shall not be construed against either the Landlord or Tenant solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease. The captions and paragraph headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any paragraph.

## 27. **Governing Law**

27.1 Governing Law and Venue: This Lease shall be governed by the laws of Alaska State. Any action brought hereunder shall be in the Superior Court in the First Judicial District at Ketchikan, Alaska.

## 28. **Signatory Authority – Binding Obligation**

28.1. Authority to Execute the Lease. The undersigned each represent and warrant that they have authority to execute this lease on behalf of their respective party without any further action or approval from the party and when executed the lease will become the binding obligation of that party subject only to the terms and conditions herein

## 29. **Entire Agreement**

30.1 No Other Understandings: This Lease and the exhibits attached hereto is the complete and exclusive statement of the agreement between the parties relevant to the purpose described, and supersedes all prior agreements or proposals, oral or written, and all other communications between the parties related to the subject matter of this Lease. No modification

of this Lease will be binding on either party except as a written addendum signed by an authorized agent of both parties.

**IN WITNESS WHEREOF**, the parties hereto have hereunto subscribed their names.

Ketchikan Gateway Borough

\_\_\_\_\_ Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Ketchikan Gateway Borough School District

\_\_\_\_\_ Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

DRAFT

