

## **IDAHO WATER CENTER**

### **FACILITIES LEASE, OPERATING AGREEMENT, AND PARKING ACCESS AGREEMENTS (IDAHO WATER CENTER)**

#### **SUBJECT**

Request authority to enter into three interrelated agreements that are integral to the implementation of the IDAHO*place* development and specifically to the Idaho Water Center facility.

- 1) Request authority to enter into a Facilities Lease for the Idaho Water Center (IWC) in Boise. The University and the Idaho Department of Water Resources (IDWR) will lease the facility from the Idaho State Building Authority (ISBA).
- 2) Request authority to enter into an Operating Agreement with IDWR. The Operating Agreement establishes the responsibilities between IDWR and the University with regard to the occupation and management of the IWC as provided by the Facilities Lease.
- 3) Request authority to enter into a Parking Access Agreement with Capital City Development Corporation (CCDC), the Urban Renewal Agency for the City of Boise. The Agreement provides the University with access to public parking facilities in and around the IWC facility.

#### **BACKGROUND**

The 2002 session of the Idaho Legislature adopted House Concurrent Resolution No. 60 authorizing the ISBA to finance the Water Center and lease it to the University and IDWR. This Facilities Lease assigns debt service and building management responsibility for the project jointly to the University and IDWR. The Operating Agreement allocates and defines these responsibilities between IDWR and the University. The Parking Access Agreement provides access to CCDC's parking facilities and shared parking regimen for a term of 95 years.

At its meeting on June 21-22, 2001, plans for the Water Center project were presented to the Board, and the Board authorized the University to lease space in the Water Center, subsequent to the expiration of the MK Plaza IV building on August 31, 2003. At its meeting on January 21, 2002, the Board approved the form of the Facilities Lease. At its meeting on June 27, 2002, the Board reaffirmed its approval of the transaction based on further presentations by the ISBA about the respective roles of the University and the ISBA for the financing. The ISBA and the University have continued to refine cost estimates and space plans for the project and develop other documents needed for issuance of the

ISBA's bonds. Approval of the Facilities Lease, the Operating Agreement and the Parking Access Agreement will allow ISBA to offer the bonds for sale in mid-December, at which time the Facilities Lease and the related documents will be signed.

## **DISCUSSION**

The Facilities Lease in substantially final form presented to this meeting differs from the form of facilities lease presented to the January 21, 2002 meeting in the following respects:

- IDWR and University property interests in the IWC have been combined into a single lease;
- A separate Operating Agreement between the University and IDWR has allocated responsibilities for occupation of space and management of the facility;
- Provision has been made for allocated space to the U.S. Forest Service consistent with Regents approval at the August 15, 2002 meeting;
- The form of acquisition of the real property interest in the Ada County Courthouse Corridor has been changed to conform to requirements of Ada County and the Boise Urban Renewal Agency (CCDC).

In addition to these revisions to the Facilities Lease and creation of the companion Operating Agreement, the terms of the Parking Access Agreement have not previously been available for Board review. The Parking Access Agreement minimizes the cost to the University for designing constructing, and managing the type of parking facilities necessary to permit construction of the IWC and to provide the users of the building with suitable parking. This Agreement provides access to a managed public parking system that has been integrated into the design and operation of the IWC. The University will pay \$350,000 per year for 30 years to CCDC for its provision of managed parking facilities and services. These costs will be offset by reimbursements from non-University occupants such as IDWR and the US Forest Service based on their share of space utilization of the building.

## **IMPACT**

Annual payments required under the Facilities Lease will be established by the final bond sizing and will be paid from institutional and appropriated funds. The annual payment required by the Parking Access Agreement will also be paid from institutional and appropriated funds. As described above, a portion of this payment will be offset by reimbursements from other IWC tenants, including IDWR and USFS.

## **BOARD ACTION**

A motion to approve the resolution as presented, authorizing the President of the Board of Regents and the President of the University of Idaho to execute and deliver documents regarding the Water Center.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

See attached:

- Resolution – pg 4-5
- Facilities Lease – pg 6-29
- Parking Access Agreement – pg 30-99
- Operating Agreement – pg 100 - 111
- Agreement for Financing & Development – pg 112-118

BEFORE THE BOARD OF REGENTS  
OF THE UNIVERSITY OF IDAHO

IN THE MATTER OF THE )  
IDAHO WATER CENTER )  
PROJECT )  
\_\_\_\_\_ )

RESOLUTION

WHEREAS, the Second Regular Session of the Fifty-Sixth Legislature of the State of Idaho passed House Concurrent Resolution No. 60, 2002 Idaho Session Laws 1085 (“HCR No. 60”), wherein the Legislature authorized the University of Idaho to enter into an agreement with the Idaho State Building Authority (the “Authority”) to lease a portion of the proposed building to be constructed by the Authority known as the Idaho Water Center; and

WHEREAS, the Authority and the University of Idaho have determined that the leasing of a portion of the Idaho Water Center by the University of Idaho requires the execution of several contracts, including the Facilities Lease, the Agreement for Financing and Development of the Idaho Water Center, the Parking Access Agreement, and the Operating Agreement; and

WHEREAS, Section 33-107(2), Idaho Code, grants authority to the Board of Regents (“Board”) to acquire title, rights and interests in real property; and

WHEREAS, the Board has determined that the occupancy of the Idaho Water Center by the University of Idaho effects the purposes of Section 33-2801, *et seq.*, Idaho Code, and HCR No. 60.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby authorizes the President of the Board, on behalf of the Board, to execute and deliver the Facilities Lease, the Agreement for Financing and Development of the Idaho Water Center, the Parking Access Agreement and the Operating Agreement and such other documents as may be required or necessary in connection with leasing a portion of the Idaho Water Center for the University of Idaho, and to take all such and further consistent actions as the President shall deem necessary, desirable, appropriate or expedient, in his discretion, to carry into effect the provisions of this Resolution and HCR No. 60.

BE IT FURTHER RESOLVED, that the Board hereby authorizes the President of the University of Idaho, on behalf of the University of Idaho as a constitutional entity, to execute and deliver the Facilities Lease, the Agreement for Financing and Development of the Idaho Water Center, the Parking Access Agreement, and the Operating Agreement and such other documents as may be required or necessary in connection with leasing a portion of the Idaho Water Center for the University of Idaho, and to take all such and further actions as may be required by law and as the President of the University of Idaho shall deem necessary, desirable, appropriate or expedient, in his discretion, to carry into effect the provisions of this Resolution and HCR No. 60.

PASSED AND APPROVED this \_\_\_\_\_ day of December, 2002.

\_\_\_\_\_  
BLAKE HALL, President

ATTEST:

\_\_\_\_\_  
ROD LEWIS, Secretary

**FACILITIES LEASE  
(Idaho Water Center)**

THIS FACILITIES LEASE is entered into and is effective as of the 17th day of December, 2002, between the IDAHO STATE BUILDING AUTHORITY (the "Authority"), as lessor, the STATE OF IDAHO (the "State") acting through the DEPARTMENT OF WATER RESOURCES ("IDWR"), the IDAHO WATER RESOURCE BOARD (the "Water Board"), the DEPARTMENT OF ADMINISTRATION ("DOA"), and THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO (the "University"), each of which are state bodies as defined in the Idaho State Building Authority Act, as lessee.

**RECITALS**

A. The Authority was created by the Idaho State Building Authority Act, Title 67, chapter 64, Idaho Code (the "Act"), to finance, construct, and operate facilities for the purposes set forth in the Act; and

B. The Authority is empowered by the Act, among other powers, to acquire property; to enter into agreements with any agency, board, department or commission of the State of Idaho in furtherance of the purposes of the Act, including the acquisition, development, maintenance, operation, and financing of any facility; to provide for the construction, reconstruction, improvement, alteration, or repair of any facility or part thereof; and to lease such facilities to a state body as defined in the Act; and

C. In accordance with the provisions of Idaho Code, Section 67-6410(a), the Idaho Legislature, pursuant to House Concurrent Resolution No. 60, Second Regular Session of the Fifty-Sixth Legislature has authorized the University and IDWR as state bodies under the Act to enter into agreements with the Authority as may be reasonable and necessary for the purpose of providing financing and development of office, research and educational facilities for their use ; and

D. The Water Board is a party to this Facilities Lease because of its power to contract on behalf of IDWR; and

E. The DOA is a party to this Facilities Lease pursuant to Section 67-5708, Idaho Code.

F. The Authority will enter into an agreement with Ada County, Idaho (the "County") providing for the Authority to acquire from the County that certain Civic Plaza Condominium Unit No. 101 ("Unit No. 101") under that certain Declaration of Covenants and Restrictions Establishing a Plan of Ownership For Civic Plaza Condominiums recorded on October 9, 2002 as Instrument No. 102116495 (the "Civic Plaza Condominium Declaration"), such Unit No. 101 constituting the site upon which the Authority will undertake the construction of a building known as the "Idaho Water Center;" and

G. The University will enter into a Parking Access Agreement (the "Parking Access Agreement"), with the Urban Renewal Agency of the City of Boise, also known as Capital City Development Corporation ("CCDC") providing for parking access for the use of the State in certain public parking facilities operated and to be operated by CCDC.

H. The Authority will enter into a sublease agreement (the "Fleet Space Sublease") with CCDC providing for the lease of those certain Civic Plaza Condominium Unit Nos. 302A and 302B ("Unit Nos. 302A and 302B") under the Civic Plaza Condominium Declaration, such Units Nos. 302A and 302B constituting the site of secure fleet parking and related facilities.

I. The Authority intends to finance the cost of acquisition of the Facilities (as defined herein) and related costs by the issuance of bonds or other evidences of indebtedness as authorized by the Act; and

J. The State will lease the Facilities from the Authority to be used and occupied upon the terms and conditions set forth in this Facilities Lease.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and covenants set forth herein, the parties agree:

## ***ARTICLE 1 FINDINGS AND DECLARATION***

**Section 1.1 Findings.** The Authority has found and declared, in accordance with Section 67-6410(c), Idaho Code, that the Facilities will be of public use and will provide a public benefit to the people of the State of Idaho.

**Section 1.2 Declaration.** The parties agree and acknowledge that the Recitals contained in this Facilities Lease are true and are incorporated into this Facilities Lease as if set forth in full. This Facilities Lease shall constitute the agreement of the Authority to provide the Facilities as required by Section 67-6410(b), Idaho Code.

## ***ARTICLE 2 DEFINITIONS***

The terms used herein shall have the following meanings:

A. "**Act**" shall mean Chapter 64, Title 67, Idaho Code, as it now exists and as it may hereafter be amended and supplemented.

B. "**Annual Rent**" shall mean, with respect to the initial term of this Facilities Lease and each renewal term thereof, the Basic Rent and Additional Rent determined in accordance with Article 6 hereof due and payable by the State to the Authority with respect to the Facilities for such lease term.

C. "**Authority**" shall mean the Idaho State Building Authority, an independent public body corporate and politic of the State of Idaho, created by and existing under the Act.

D. "**Bonds**" shall mean the portion of any bond or bonds, note or notes, or other evidences of indebtedness, including the State Building Revenue Bonds, Series 2003A (the "Series 2003A Bonds") and the State Building Revenue Bonds (Taxable) Series 2003B (the "Series 2003B Bonds") issued by the Authority for the purpose of financing the Cost of Acquisition and Construction and bonds or notes issued to refinance all or any part thereof and any bonds or notes issued to finance any additions, modifications or replacements of the Facilities from time to time hereafter.

E. **"Bond Resolution"** shall mean the resolution or resolutions of the Authority, as amended and supplemented, authorizing the issuance of Bonds.

F. **"Civic Plaza Condominium Declaration "** shall mean the Declaration of Covenants and Restrictions Establishing a Plan of Ownership for Civic Plaza Condominiums recorded on October 9, 2002, as Instrument No. 102116495, records of Ada County, Idaho.

G. **"Code"** means the Internal Revenue Code of 1986, as amended, regulations thereunder and rulings and judicial decisions interpreting or construing the Code.

H. **"Cost of Acquisition and Construction"** shall mean any proper and reasonable cost, whether or not specifically mentioned herein, of acquisition, development and design and construction of the Facilities, including fixtures and machinery, apparatus and equipment; of engineering and architectural services, designs, plans, specifications and surveys; planning, analysis, project management, administration, inspection and similar services in connection with the Facilities; acquisition or lease of any land or interest therein for use in connection therewith; preparation of the sites thereof and of any land to be used in connection therewith; any indemnity and surety bonds and insurance premiums; allocable administrative and general expenses of the Authority; allocable portions of legal fees, audits, fees and expenses of any trustees, depositories and paying agents, financial advisors, underwriters and others for the Bonds; issuance of the Bonds, interest on and other financing charges, and fees and expenses of other advisors and consultants necessary or appropriate in connection therewith; the payment of any Bonds of the Authority (including any interest and redemption premiums) issued to temporarily finance the payment of any item or items of cost of the Facilities; expenses necessary or incidental to determining the feasibility or practicability of the Facilities; and all other reasonable expenses not specified herein as may be necessary or incidental to the development, design, construction and acquisition of the Facilities, the financing thereof, and the placing of the same in use and operation.

I. **"Facilities"** shall mean Unit No. 101, Unit Nos. 302A and 302B, and any limited common area related to such units further described in Exhibit A hereto and the building and facilities to be built on Unit No. 101 which Facilities shall be commonly known as the "Idaho Water Center," together with the parking and related facilities to be constructed on Unit Nos. 302A and 302B and all equipment, fixtures, improvements, appurtenances, and other facilities to be designed and constructed thereon or installed therein. This definition of Facilities is intended to refer at all times to the real and personal property interests leased by the Authority to the State hereunder. Accordingly, if at any time Option Space is acquired through the exercise of an option to purchase granted hereunder, such portion of the Facilities comprising the Option Space will thereupon cease to be included in the definition of Facilities.

J. **"Facilities Lease"** shall mean this Facilities Lease, including any amendments or supplements thereto.

K. **"Fiscal Year"** shall mean the twelve-month period of each year beginning July 1 and ending on the following June 30.

L. **"IDWR Rent"** shall mean the portion of the Annual Rental IDWR is obligated to pay as provided in the Operating Agreement.

M. **"Insurer"** shall mean XL Capital Assurance Inc., a New York stock insurance company, as insurer of the Bonds.



N. ~~M.~~—“**Operating Agreement**” shall mean the operating agreement, dated as of December 17, 2002, between the IDWR, the Water Board and the University, which shall provide for the division between the IDWR and the University of all rights and obligations of the State as the lessee under this Facilities Lease.

O. ~~N.~~—“**Operating Costs**” shall mean the Authority's expenses (including reasonable reserves for such expenses) for condominium assessments, allocable administration and general expenses of the Authority, expenses for maintenance and repairs, insurance premiums, utility charges, legal, financial, architectural and engineering expenses, fees and expenses of fiduciaries under the Bond Resolution, bond insurance, guaranty and/or letter of credit fees, interest and finance charges, and any other expenses or contingencies to be paid or provided for by the Authority, all to the extent properly attributable to the Facilities and payable by the Authority. Operating Costs shall not include any Cost of Acquisition and Construction or any provision for depreciation, amortization or similar charges or any expenses for maintenance and repairs, utility services or insurance paid for or provided by the State pursuant to this Facilities Lease.

P. ~~O.~~—“**Option Space**” shall mean a portion of the Facilities not to exceed twelve percent (12%) of the “Net Rentable Square Footage” (as determined under standards established by the Building Owner Managers Association) of the Facilities to be conveyed to the State upon exercise of an option under Article 11 hereof.

Q. ~~P.~~—“**Unit No. 101**” shall mean Civic Plaza Condominium Unit No. 101 under the Civic Plaza Condominium Declaration on which the Facilities shall be constructed, as further described in Exhibit A hereof.

R. ~~Q.~~—“**Unit Nos. 302A and 302B**” shall mean Civic Plaza Condominium Unit No. 302A and Unit No. 302B under the Civic Plaza Condominium Declaration on which secure fleet parking and related facilities shall be built, as further described in Exhibit A hereof.

S. ~~R.~~—“**University**” shall mean the Regents of the University of Idaho, a body politic and corporate organized under the Constitution and laws of the State of Idaho.

T. ~~S.~~—“**University's Rent**” shall mean the portion of the Annual Rent the University is obligated to pay as provided in the Operating Agreement.

### **ARTICLE 3** **LEASE OF PROJECT; TERM OF LEASE**

#### **Section 3.1 Lease of Facilities.**

(1) The Authority hereby leases the Facilities to the State for its use in furtherance of the public benefit, and the State hereby leases the Facilities from the Authority on the terms and conditions set forth herein. Through the Operating Agreement, IDWR and the University have allocated between each other the rights and obligations of the State as the lessee under this Facilities Lease. The State shall provide notice of such allocation to the Authority consistent with the Operating Agreement, and the Authority agrees to abide by such allocation for all purposes hereunder, except that in the absence of such notification, the Authority may treat the University as the primary contact for all issues relating to this Facilities Lease.

(2) The DOA is a party to and approves this Facilities Lease solely pursuant to Section 67-5708, Idaho Code. Nothing in this Facilities Lease, nor the DOA's being a party to it, shall obligate nor shall be deemed to obligate the DOA to make any payment of Annual Rent or any other payment related to the Facilities resulting from or related to this Facilities Lease. Annual Rent is to be paid solely in the manner described in Section 6.2 hereof.

**Section 3.2 Term of Lease.** This Facilities Lease shall be in full force and effect from the effective date hereof. The initial term of this Facilities Lease shall extend from the effective date hereof through June 30, 2004. The State shall have the option to renew this Facilities Lease in accordance with the provisions hereof for successive Fiscal Years thereafter and each such renewal of this Facilities Lease shall be deemed to be exercised, automatically and without further action by the State, unless the State shall notify the Authority in writing of its intent not to renew this Facilities Lease not later than ten (10) months prior to the expiration of any lease term.

**Section 3.3 Compliance with the Fleet Space Sublease.** The State hereby agrees that it will comply with the Fleet Space Sublease.

#### ***ARTICLE 4 ACQUISITION, DEVELOPMENT AND FINANCING***

**Section 4.1 Acquisition and Development of Facilities.** The Authority agrees to acquire real property by purchase or lease for use as the site of the Facilities and to diligently undertake development of the Facilities and to enter into agreements for project management, design, construction, and installation of improvements, fixtures and equipment of the Facilities.

**Section 4.2 Idaho Water Center Condominium.** The Authority agrees to use its best efforts to cause Unit No. 101 to be subdivided as a condominium into separate condominium units. Within a reasonable time following substantial completion of the construction of the Facilities, the Authority will create a condominium of Unit No. 101, including the platting thereof and the preparation of a condominium declaration to be approved by the Authority, the State and the State Insurer, which will, upon the proper recording thereof, create the Idaho Water Center Condominiums (the "IWC Condominiums") and the separate units therein.

**Section 4.3 Financing of Facilities by the Authority.** The Authority agrees to finance the Cost of Acquisition and Construction of the Facilities by the issuance of Bonds as authorized by the Act. The Authority may from time to time refinance or refund such Bonds as the Authority may deem appropriate; provided the Authority shall not refinance or refund such Bonds without the written consent of the State if to do so would increase the Basic Rent due hereunder. The Authority shall give written notice to the State of its intent to refinance or refund such Bonds.

**Section 4.4 Bond Anticipation Notes.** The Authority may issue bond anticipation notes payable from proceeds of Bonds.

#### ***ARTICLE 5 USE OF FACILITIES***

##### **Section 5.1 Use of Facilities**

~~(1)~~—With the written consent of the Authority and the Insurer, which shall not be unreasonably withheld, the State may enter into agreements with other entities including private entities and federal and local government entities ("Other Entities") for the operation and/or maintenance of the Facilities or for the sublease, use or occupancy of portions of the Facilities by Other Entities upon the following conditions:

(a) the nature and extent of the proposed agreements with Other Entities shall not, either collectively or individually, adversely affect the tax-exempt status of the Series 2002A Bonds;

(b) such proposed agreements, subleases, users or uses, both collectively and individually, shall be compatible with, and complementary to, the interests in, and uses of, the Facilities by the State; and

(c) such proposed agreements, subleases, users or uses do not violate or contravene any term or provision of this Facilities Lease and are subject to the terms of this Facilities Lease, including without limitation, the provision that the term of any sublease shall expire at the end of the term of this Facilities Lease.

In the event the State desires to enter into agreements with Other Entities relating to the Facilities, the State shall request the Authority's and the Insurer's consent thereto by written notice to the Authority and the Insurer setting forth a complete description of (a) the Other Entity, (b) the proposed services or uses to be provided by or made available to the Other Entity, (c) the proposed agreements or subleases, and (d) the proposed compensation or benefit to be provided to the Other Entity. The Authority and the Insurer shall approve such requests in accordance with the provisions of Section 5.1~~(1)~~(a) through (c) above, and subject to such additional terms as shall be agreeable by the Authority, the State and the Other Entity.

## **ARTICLE 6**

### **RENT**

**Section 6.1 Payment of Annual Rent.** In consideration of the lease of the Facilities, the State shall pay to the Authority, in advance and without any set off or deduction whatsoever, the following Annual Rent:

(1) For the period of the initial term of this Facilities Lease in the Fiscal Year ending June 30, 2004, the State shall pay no Annual Rent.

(2) For the renewal term of this Facilities Lease commencing July 1, 2004 and for each annual renewal term thereafter, the State shall, within 30 calendar days following the commencement of such renewal terms, pay in advance:

(a) As and for Basic Rent, an amount for such term which shall equal the principal installments, including sinking fund deposits, and interest payable in the corresponding Fiscal Year in accordance with the Bond Resolution with respect to the Bonds; and

(b) As and for Additional Rent as follows:

(i) the amount estimated by the Authority to be sufficient to provide the Authority with adequate monies to pay all Operating

Costs attributable to the Facilities for the applicable term of this Facilities Lease, plus

(ii) the amount, if any, of deposits to any debt service reserve account, any operating fund, and any other reserve or expense accounts required to meet all terms and conditions of the Bond Resolution.

The Authority will provide to the State an estimate of Operating Costs attributable to the Facilities, which estimate shall accompany its statement for Additional Rent.

(3) Annual Rent payable for any renewal term shall not be deferred or abated because of delays in completion of the construction of the Facilities or delays in completion of any repair or replacement of damage to the Facilities.

(4) Any installment of Annual Rent which is not paid by the State on or before the due date thereof shall, from and after said due date, bear interest until paid at the highest rate per annum borne by any of the Bonds then outstanding; time being of the absolute essence of this obligation.

(5) The Authority and the State hereby agree that the Basic Rent in any lease term shall be reduced by any amounts on deposit with the Authority legally available for and allocated by the Authority to the payment of principal and interest on the Bonds including, without limitation, capitalized interest deposited from the proceeds of the Bonds and funds on deposit in the debt service fund for the Bonds established under the Bond Resolution.

(6) Basic Rent shall be increased or decreased as appropriate to reflect the issuance by the Authority of Bonds bearing interest at a variable rate and issuance of any additional Bonds issued to refinance the Facilities, in whole or in part, or any additional Bonds issued for the purposes set forth in Section 9.1 hereof or issued to finance additions, modification or replacement of the Facilities or any part thereof.

(7) Annual Rents shall be payable in lawful money of the United States of America, which shall be legal tender for public and private debts under the laws of the United States at the time of payment, provided that, upon prior written approval of the Authority, the State may transfer funds through electronic funds transfer. Payment shall be made at the office of the Authority or such other place or places as may be designated in writing by the Authority.

(8) The State and the Authority have agreed and determined that such Annual Rent represents the fair market rental value of the Facilities. In making such determination, consideration has been given to the Cost of Acquisition and Construction, and the costs of financing of the Facilities and the Operating Costs thereof, and the uses and purposes of the Facilities which will accrue to the State and the Authority and the general public by reason of the use and occupancy thereof by the State and ownership by the Authority.

## **Section 6.2 Sources of Payment of Rentals.**

(1) The University may apply any general account appropriated funds of the State of Idaho or any non-appropriated funds under the supervision of the University, including but not limited to funds derived by the University from subleases or portions of the Facilities discussed under Section 5.1 hereof, to the payment of Basic Rent and Additional Rent

hereunder. The parties hereto acknowledge that the Board of Regents of the University of Idaho and State Board of Education (the "Board") allocates a lump sum appropriation of general account funds of the State of Idaho to the University of Idaho separately from other lump sum appropriations that the Board allocates to other institutions under its supervision, and that the President of the University (the "University President") includes such appropriated funds in the operating budget of the University. In order to effectuate payment of the University's Rent hereunder from appropriated funds, the University President agrees to submit to the Board an operating budget that provides for the University's Rent to be paid from the general account appropriated funds allocated as a lump sum to the University, provided that the operating budget may also indicate the replacement of such funds from other University sources.

(2) IDWR will apply general account appropriated funds from its departmental operating budget to the payment of the IDWR Rent. Nothing hereunder shall obligate the Water Board to use any funds other than funds in IDWR's departmental operating budget from general account appropriated funds to pay IDWR Rent.

**Section 6.3 Application of Rent.** The Authority covenants to use and apply Annual Rent to payment of debt service of the Bonds, Operating Costs, deposits to required reserve accounts and other appropriate purposes pertaining to the Facilities and/or the Bonds all as provided in the Bond Resolution.

## ***ARTICLE 7 OPERATION AND MAINTENANCE OF THE FACILITIES***

**Section 7.1 Operation, Repairs, and Maintenance.** The State shall, throughout the term of this Facilities Lease and each renewal term thereof, at the cost and expense of the State, keep and maintain or cause to be kept and maintained, the Facilities and all equipment, fixtures, additions and improvements thereof, in good order and condition, and shall, at the cost and expense of the State, make or cause to be made all necessary repairs, renewals, and replacements with respect to the Facilities. To the extent repairs or replacements are insured under policies maintained by the Authority and insurance proceeds are paid to the Authority, the State shall be entitled to such insurance proceeds to the extent of the actual costs incurred by the State and except to the extent the insurance proceeds are required to be otherwise applied in accordance with the terms of the Bonds. Subject to Section 10.1, in the event the Facilities or any part thereof are damaged or destroyed by uninsured or partially uninsured casualty of any kind, the State shall either replace or rebuild the Facilities in equal value, or pay such sums to the Authority as may be required to fully pay and discharge the Bonds.

**Section 7.2 Utilities.** The State shall pay or cause to be paid all costs, expenses and charges for water, electricity, lights, heat, power, sewage, telephone, and other utility services, rendered or supplied upon or in connection with the Facilities during the term of this Facilities Lease and each renewal term.

### **Section 7.3 ~~Insurance~~Insurance**

~~-(1)~~ The State shall maintain or cause to be maintained with responsible insurers or under an established program of self-insurance (as considered to be adequate by an Insurance Consultant as defined in and pursuant to the Bond Resolution) the following kinds and amounts of insurance acceptable to the Authority with respect to all existing buildings, improvements, equipment and other property comprising any part of the Facilities and/or the use of the Facilities at all times throughout the initial term and each renewal term of this Facilities Lease:

(a) Commercial general liability insurance (CGL) and, if necessary, commercial umbrella insurance and property damage liability, and errors and omissions liability as shall afford protection to the Authority in an amount of not less than \$1,000,000 per claim, and \$2,000,000 per occurrence. The commercial general liability insurance shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. Such insurance shall protect the Authority to the same extent as the State is protected from claims, demands, causes of actions, penalties, including costs and attorney fees, arising out of the use or occupancy of the Facilities. From time to time during the term of this Facilities Lease and each renewal term, if, in the opinion of the Authority and based on local standards, the amount of CGL insurance is not adequate, upon written request of the Authority, the State will increase the amount of CGL insurance to the amount determined adequate by the Authority.

(b) Commercial property insurance in the amount of the full replacement value of the completed Facilities or any portion thereof, including fixtures, equipment, lessee improvements and betterments. Commercial property insurance shall, at a minimum, cover the perils insured under the ISO special causes of loss form CP 1030 and, if reasonably available, earthquake and flood insurance, debris removal, operation of building laws, extra expense, consequential loss, loss of rents and/or business interruption. Such loss of rents or business interruption insurance shall be in an amount equal to Annual Rent payable to the Authority by the State with respect to the Facilities during such time or times as the use of the Facilities may be totally or partially interrupted or the construction thereof delayed as a result of damage or destruction resulting from perils insured against pursuant to subsection (b) of this Section 7.3.

(c) Owner's title insurance policy in the amount of the Bonds insuring the Authority, and lender's title insurance policy in the amount of the Bonds insuring the Authority and trustee of the Bonds, as their interests appear of record.

(d) ~~(e)~~ All insurance required by this Section shall be carried for the benefit of the Authority and each policy therefor, or contract thereof, shall contain a loss payable clause providing for the proceeds thereof to be payable to the Authority and to the trustee of the Bonds to the extent of their interest therein, and the Annual Rent otherwise payable by the State with respect to the Facilities shall be reduced by the amount of business interruption or loss of rents insurance payments, if any, made to the Authority and/or the trustee of the Bonds.

(e) ~~(d)~~ Workmen's Compensation Insurance in the amount and in the form which the State is required by law to maintain.

(f) ~~(e)~~ Any other insurance agreed to in writing by the State and the Authority.

(g) ~~(f)~~ Any other insurance required by the terms and conditions of the Bonds.

(2) All insurance procured and any self-insurance plan maintained by the State shall comply with the following requirements:

(a) Each policy or policies of insurance shall be written by insurance companies authorized to do business in the State of Idaho and furnished through an insurance

carrier or carriers satisfactory to the Authority or through a self-insurance plan satisfactory to the Authority and an Insurance Consultant pursuant to the Bond Resolution.

(b) True, correct and complete copies of all insurance policies or self-insurance plan and all endorsements, changes, amendments and supplemental provisions thereto shall be continually maintained by the State and shall be available for inspection and copying by the Authority at all times during the regular office hours of the State.

(c) All such insurance shall provide that coverage shall not be canceled or amended except upon sixty (60) calendar days prior written notice to the Authority. The Authority shall be furnished current certificates upon the commencement of the initial term and each renewal term of this Facilities Lease showing that all such insurance fully complies with the terms of this Facilities Lease, and current certificates shall be furnished at any other time or times as may be reasonably requested.

(d) All policies of insurance obtained by and any self-insurance plan maintained by the State shall include provisions that coverage shall not be affected, reduced or waived by any inaccurate or misleading statement or information furnished by the State in obtaining such insurance nor shall insurance under such policies furnished to the Authority be reduced by any actual or alleged breach of warranties made by the State in obtaining such insurance. All liability insurance furnished by the State shall include insurance covering the obligations of the State under Article 8 of this Facilities Lease.

(3) The Authority and the State hereby release each other from any and all liability or responsibility to the other as to any person claiming through or under either by way of subrogation or otherwise for any loss or damage to property caused by any casualty insured by the above-described coverages, even if the loss is caused by the fault or negligence of the other party or by any party for whom the other party is responsible.

(4) All insurance provided to the Authority by the State pursuant to this Facilities Lease shall name the Authority as additional insured and contain a loss payable clause providing for payment of proceeds to the Authority and the trustee of the Bonds.

(5) In the event the Authority is able to procure any or all of the insurance coverages herein required at a cost less than the cost incurred by the State thereof, the Authority agrees to do so and the cost thereof shall be included as Operating Costs of the Authority. In such event the obligation of the State to provide any such insurance shall continue until the insurance coverage procured by the Authority is actually in effect. Upon the expiration or termination of any insurance procured by the Authority hereunder, the State shall immediately, without any interruption in insurance coverage, procure and maintain such coverage.

## ***ARTICLE 8 INDEMNITY***

**Section 8.1 Indemnification of State.** The State hereby agrees to defend, protect, hold harmless and indemnify the Authority and its agents, employees, representatives, successors, and assigns, against all demands, claims, liabilities, causes of action or judgments, and all loss, expense and damage of any and every sort and kind, including, but not limited to, costs of investigations and attorneys' fees and other costs of defense, for:



(1) injury to person or property occurring in, upon or about the Facilities or any adjacent or related real property or improvements owned, occupied or controlled by the State or any agencies, departments, bureaus or subgovernmental entities of the State of Idaho;

(2) injury to person or property arising out of the use or occupancy of the Facilities or relating in any manner to operations conducted thereon;

(3) any other premises liability relating to the Facilities;

(4) any loss to person or property to the extent of its self-insurance, if any;  
and

(5) all liability whatsoever arising out of any public or governmental activities of the State of Idaho of any kind or nature whatsoever relating to the Facilities.

Nothing in this Article 8 shall be construed as the agreement of the State to indemnify the Authority from liability for damages arising out of personal injury or damage to property caused solely and exclusively by the negligence of the Authority.

**Section 8.2 Authority's Indemnification.** The Authority hereby agrees to defend, indemnify and save the State harmless from and against any and all liability, loss, damage, cost and expense, including court costs and attorney fees of whatever nature or type, whether or not litigation is commenced, that the State may incur, by reason of any act or omission of the Authority, its employees or agents or any breach or default of the Authority in the performance of its obligations under this Facilities Lease. The foregoing indemnity shall not apply to any injury, damage or other claim resulting solely from the act or omission of the State.

## ***ARTICLE 9 ALTERATIONS, ADDITIONS, AND IMPROVEMENTS***

**Section 9.1 Alterations, Additions, and Improvements.** The State shall have the right, with the consent of the Authority, which shall not be unreasonably withheld, at any time and from time to time during the term of this Facilities Lease, at the costs and expense of the State, to make such repairs, replacements, alterations, additions, expansions and improvements, structural or otherwise, to the Facilities, as the State shall deem necessary or desirable in connection with its use of the Facilities. Once commenced, all repairs, replacements, alterations, additions, expansions and improvements shall be diligently pursued to completion. All such repairs, replacements, alterations, additions and improvements shall be of such character as to not reduce or otherwise adversely affect the value of the Facilities or the rental value thereof and all the costs thereof shall be promptly paid or discharged so that the Facilities shall at all times be free of liens or claims for labor and materials supplied thereto. All repairs, replacements, alterations, additions, fixtures and permanent improvements to the Facilities shall be and become a part of the Facilities and shall become the property of the Authority.

**Section 9.2 Fixtures and Equipment.** The State shall maintain an inventory of all fixtures, equipment and other tangible personal property provided by the Authority with the Facilities and shall have the right to replace, at its expense, such tangible personal property as the State shall deem necessary or desirable in connection with its use of the Facilities.



**ARTICLE 10**  
**DAMAGE, DESTRUCTION, AND CONDEMNATION**

**Section 10.1 Damage, Destruction, and Condemnation.** Subject to the provisions of the Civic Plaza Condominium Declaration and the Bond Resolution, in the event of damage, destruction, or condemnation of the Facilities, or any part thereof, the net proceeds of any insurance or condemnation awards with respect to the Facilities and, to the extent necessary, the proceeds of any additional Bonds which may be issued by the Authority for such purpose pursuant to the terms and conditions of the Bonds, shall be used and applied by the Authority in accordance with the terms of the Bonds to repair, restore, rebuild, or replace the Facilities; provided, however, that, the Authority shall not be required to rebuild, replace, restore or repair the Facilities if (1) the Authority shall reasonably determine, as evidenced by a certificate of an independent consulting engineer, that not to do so would not materially adversely affect the operation of the Facilities, or (2)(a) the Authority shall reasonably determine, as evidenced by a certificate of an independent certified public accountant that the proceeds of any insurance or condemnation awards received by the Authority, together with other legally available money of the Authority, will be sufficient to pay the principal of, and premium and interest on the Bonds due up to and including such time as the Bonds may be called for optional redemption, and (b) the Authority irrevocably deposits such insurance proceeds or condemnation awards and other money into an escrow fund to redeem the Bonds on the first date such Bonds may be redeemed. In that event, excess insurance proceeds, if any, remaining after redemption of the Bonds shall be released from the escrow fund back to the Authority. Provided further, however, that notwithstanding the foregoing, the Authority must rebuild, replace, restore and repair the Facilities to the extent necessary to fulfill any duty of lateral and subjacent support imposed on the Facilities or any portion thereof pursuant to the Civic Plaza Condominium Declaration. Any repair, restoration, rebuilding, or replacement of the Facilities may be in accordance with such different design, plans, and specifications approved by the State as will or may provide facilities of the same or different nature or use, so long as any such change therein or thereof shall not reduce or otherwise adversely affect the value of the Facilities or the rental value thereof (except a repair, restoration, rebuilding or replacement performed solely to provide lateral and subjacent support). Notwithstanding any damage, destruction or condemnation of the Facilities, or any part thereof, the State shall continue to pay the Annual Rent due under this Facilities Lease, except to the extent the Authority actually receives proceeds of business interruption or loss of rents insurance described in Section 7.3 hereof.

**Section 10.2 Exercising Powers of an Owner.** The Authority and the State covenant and agree that in exercising any of the powers of an Owner pursuant to the Civic Plaza Condominium Declaration or any other condominium declaration which may be recorded affecting any part of the Facilities, they will cast their vote to build or rebuild, or not, following casualty, damage or destruction subject to the terms of, and consistent with, this Facilities Lease and the Bond Resolution. The parties further agree that all insurance proceeds and condemnation awards shall be dealt with and applied as provided in this Facilities Lease and the Bond Resolution. If any party to this Facilities Lease receives or is credited with any such proceeds or awards from any condominium declaration affecting any part of the Facilities, it shall receive all such funds and credits subject to its obligations under this Facilities Lease and the Bond Resolution.

## **ARTICLE 11**

### **OPTIONS TO PURCHASE**

**Section 11.1 Grants of Option to Purchase.** The Authority hereby grants to the State the rights to purchase the Option Space for the purchase price and upon the terms hereafter set forth (the "Options"). The State may exercise the Options at any time after the execution of this Facilities Lease in such increments as the State shall determine.

**Section 11.2 Exercise of Options.** Any Option may be exercised only by written notice from the State to the Authority and trustee of the Bonds specifying the desire to purchase all or a portion of the Option Space and such notice shall reasonably describe the portion of the Option Space to be purchased.

#### **Section 11.3 Purchase Price.**

A. The applicable purchase price under any Option shall be an amount reasonably acceptable to the Authority as a "fair price." The Authority shall be permitted to deem acceptable as a "fair price" for any Option Space an amount not less than either (i) the Cost of Acquisition and Construction of such Option Space, or (ii) the fair market value of such Option Space as established by an MAI appraisal rendered by an appraiser acceptable to the Authority.

B. Proceeds from the sale pursuant to exercise of any Option shall be applied in the following order: (1) first, to pay all costs and expenses to be reasonably incurred by the Authority in the sale pursuant to exercise of the Option; (2) second, to pay all costs and expenses in the redemption and/or defeasance, if any, of the Bonds, including costs of conveyance, closing, attorney fees, bond counsel fees, trustee fees and similar expenses; and (3) third, for deposit into the Bond Fund established by the Bond Resolution for payment of principal and interest on the Bonds at maturity, call for redemption or otherwise, in the amount equal to the remaining proceeds from the sale pursuant to exercise of the Option.

C. The applicable Closing of the purchases under any Option shall occur within a reasonable time after the receipt of a notice of exercise of option to purchase by the Authority. Upon closing, the Authority shall convey title to the portion of the Option Space purchased under the Option by Special Warranty Deed to the State, or another entity if so directed by the State, warranting only that the Authority has not encumbered the property except as specifically disclosed in such deed and subject to any encumbrances created by the State. The State shall be responsible for any title insurance relating to such purchases.

## **ARTICLE 12**

### **PARTICULAR COVENANTS**

**Section 12.1 Compliance with Laws and Regulations.** The State shall, at its own cost and expense, promptly comply with, or cause to be complied with, all laws and ordinances, rules, regulations and other governmental requirements, whether or not the same require structural repairs or alterations, which may be applicable to the State, the Facilities or the use or manner of use of the Facilities. The State shall also observe and comply with the requirements of all policies and arrangements of insurance at any time in force with respect to the Facilities.

**Section 12.2 Covenant Against Waste.** The State hereby covenants not to do or suffer or permit to exist any hazardous materials, contamination, waste, damage, disfigurement or injury to, or public or private nuisance, in or upon the Facilities in violation of any State of Idaho or federal laws or regulations and agree to pay all costs, charges, penalties or any other

expense reasonably incurred or to be incurred to remove, restore or reclaim the Facilities by reason thereof.

**Section 12.3 Right of Inspection.** The State hereby covenants and agrees to permit the Authority and the authorized agents and representatives of the Authority to enter the Facilities at reasonable times during usual business hours for the purpose of inspecting the same, subject to reasonable security requirements and procedures of the State.

**Section 12.4 Condition of Facilities.** The Authority makes no representation regarding the condition of the interest in real property represented by Unit No. 101 underlying or adjacent thereto and the Authority shall not be liable for any latent or patent defects therein. The Authority agrees to construct the Facilities in accordance with the plans and specifications approved by the State.

**Section 12.5 Assignment and Subletting.** The State shall not assign or mortgage this Facilities Lease or any right hereunder or interest herein and shall not sublease the Facilities or any portion thereof pursuant to Section 5.1, without prior written consent of the Authority and the Insurer (which consent shall not unreasonably be withheld); provided, that in no event shall the State assign this Facilities Lease or any right hereunder or interest herein or sublease the Facilities or any portion thereof unless the State shall continue to remain liable for the performance of all the terms, covenants, and conditions contained in this Facilities Lease and unless the proposed assignee or sublessee shall agree, in writing, to be bound by all of the terms, covenants, and agreements contained in this Facilities Lease and all other agreements related thereto.

**Section 12.6 Covenant of Quiet Enjoyment.** The Authority covenants that it has full right and lawful authority to enter into this Facilities Lease and that, so long as the State shall pay the Annual Rent and shall duly observe all of their covenants and agreements in this Facilities Lease, the State shall have, hold, and enjoy, during the initial term of this Facilities Lease and each renewal term thereof, peaceful, quiet, and undisputed possession of the Facilities.

**Section 12.7 Tax Covenant.** The State hereby covenants for the benefit of the holders of the Series 2002A Bonds and the Authority that during the term of this Facilities Lease, the State will not take any action or omit to take any action with respect to the Series 2002A Bonds, the proceeds thereof, any other funds of the State or any Facilities financed or refinanced with the proceeds of the Series 2002A Bonds if such action or omission (i) would cause the interest on the Series 2002A Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, (ii) would cause the Series 2002A Bonds to become "specified private activity bonds" with the meaning of Section 57(a)(5)(C) of the Code, or (iii) would cause interest of the Series 2002A Bonds to lose its exclusion from Idaho taxable income under present Idaho law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Series 2002A Bonds until the date on which all obligations of the State and the Authority in fulfilling the above covenant under the Code have been met.

## **ARTICLE 13 DEFAULT**

**Section 13.1 Events of Default.** The following shall be events of default under this Facilities Lease:

- (1) Failure by the State to pay the Annual Rent as the same shall become due, or
- (2) Failure by the State or anyone contracting with the State to observe and perform any other covenant, condition, or agreement to be observed or performed under this Facilities Lease for a period of ~~90~~30 calendar days after written notice, specifying such failure and requesting that it be remedied, given to the State by the Authority or trustee of the Bonds, unless the Authority or trustee shall agree in writing to an extension of such time prior to its expiration.

**Section 13.2 Remedies.** Whenever any event of default referred to in Section 13.1 hereof shall occur, the Authority may take any one or more of the following remedial steps:

- (1) Declare all Annual Rent payable for the applicable lease term then in effect to be immediately due and payable, together with applicable interest thereon.
- (2) Re-enter and take possession of the Facilities, exclude the State and their subtenants from possession thereof, and terminate this Facilities Lease.
- (3) Take such action at law or in equity as may appear necessary or desirable to collect all sums due and thereafter to become due, or to enforce performance and observation of any obligation, agreement, or covenant of the State under this Facilities Lease.

**Section 13.3 Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease, or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In the exercise of any remedy reserved to the Authority in this Article 13, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

## **ARTICLE 14 SURRENDER OF FACILITIES**

**Section 14.1 Surrender of Facilities.** In the event that the State elects not to renew or extend the term of this Facilities Lease or this Facilities Lease is otherwise terminated, the State shall immediately quit and surrender the Facilities to the Authority in the same condition in which it existed at the date the construction of all Facilities was completed by the Authority, ordinary wear and tear excepted.

**ARTICLE 15**  
***LIMITATION ON OBLIGATIONS***

**Section 15.1 Obligations of Authority and State Limited to Certain Resources.**

Notwithstanding any other provisions of this Facilities Lease, no obligation assumed by or imposed upon the Authority by this Facilities Lease shall require the performance of any act by the Authority except to the extent, if any, that the cost and expense of such performance may be paid from the proceeds of the Bonds issued by the Authority or from other funds legally available to the Authority to meet the cost and expense of such performance, and no obligation assumed by or imposed upon the State by this Facilities Lease shall require the performance of any act by the State, including, but not limited to, the payment of Annual Rent, except to the extent that funds may be available for such performance or payment from state general appropriations or, solely in the case of the University, from other funds legally available therefor. This Facilities Lease shall not be construed as obligating the Legislature of the State of Idaho to make future appropriations for the payment of Annual Rent or the performance of any other obligations under this Facilities Lease beyond the initial rental term or for any renewal term hereof. In the event that appropriated funds or, solely in the case of the University, other funds are not legally available for payment of Annual Rent or other obligations hereunder for any term, then this Facilities Lease shall be terminated. The liability of the State for payment of Annual Rent as it becomes due shall be in consideration of the right of the State, whether or not exercised, to occupy and/or use the Facilities for the then-current lease term.

**ARTICLE 16**  
***MISCELLANEOUS***

**Section 16.1 Pledge of Rent, Proceeds, and Lease.** It is expressly understood and agreed by the parties hereto that the Authority has the right to pledge and assign the Annual Rent, all proceeds receivable by the Authority from any sale of the Facilities, and its rights and interest under this Facilities Lease to secure: (i) the payment of the principal of and the interest on and redemption premium, if any, on the Bonds; and (ii) other obligations of the Authority under the terms and conditions of the Bonds.

**Section 16.2 Notices.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given on the second business day following the day on which the same are mailed by certified mail, postage prepaid, addressed as follows:

(1) If to the State, a copy of such notice shall be provided to:

(a) the University of Idaho, Vice President for Finance and Administration, Administration Building, Room 211, Moscow, Idaho 83844-3168; and

(b) the Idaho Department of Water Resources and the Idaho Water Resource Board, Attention Director, P.O. Box 83720-0098, Boise, Idaho, with a copy to Department of Administration, 650 West State Street, P.O. Box 83720-0098, Boise, Idaho 83720-0098.

(c) the Department of Administration, to the attention of Deputy Attorney General, Department of Administration, Post Office Box 83720, Boise, Idaho 83720-0003.

(2) If to the Authority, to the attention of Executive Director, Idaho State Building Authority, Post Office Box 2802, Boise, Idaho 83701.

The State or the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent. Notice may be also given by personal delivery of a written notice.

**Section 16.3 Severability.** In case any one or more of the provisions of this Facilities Lease shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Facilities Lease, but this Facilities Lease shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

**Section 16.4 Attorney Fees.** In the event either party to this Agreement is required to initiate or defend litigation with respect to the terms hereof or to enforce any of its rights hereunder, the prevailing party in such litigation shall be entitled to reasonable attorney's fees incurred in such litigation, including all discovery costs and costs of expert witnesses, together with all reasonable litigation expenses.

**Section 16.5 Headings.** The article and section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Facilities Lease.

**Section 16.6 Counterparts.** This Facilities Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 16.7 Amendments.** The Authority and the State shall not, without the written consent of the trustee of the Bonds or other legally-authorized representative of the interests of the owners of the Bonds, consent or agree to or permit any rescission of or amendment to or otherwise take any action under or in connection with this Facilities Lease which will reduce the payments required to be made by the State hereunder during the initial term or any renewal term hereof, or which will in any manner materially impair or adversely affect the rights of the Authority hereunder, and any action by the Authority or the State in violation of this covenant shall be null and void as to the Authority and the State. Furthermore, any voluntary amendment, modification or termination of this Facilities Lease shall require the written consent of all parties to this Facilities Lease.

**Section 16.8 Effective Date.** This Facilities Lease shall be effective as of the date stated above upon its execution.

IN WITNESS WHEREOF, the parties hereunto have caused this Facilities Lease to be executed as of the day and year first hereinabove set forth.

**AUTHORITY:**

**IDAHO STATE BUILDING AUTHORITY**

By: \_\_\_\_\_

\_\_\_\_\_  
V. L. Bud Tracy, Chairman

**ATTEST:**

By \_\_\_\_\_  
Wayne V Meuleman, Secretary

**STATE OF IDAHO**

**Acting Through:**

**IDAHO WATER RESOURCE BOARD**

By: \_\_\_\_\_  
Joseph L. Jordan, Chairman

**THE IDAHO DEPARTMENT OF WATER  
RESOURCES**

By: \_\_\_\_\_

\_\_\_\_\_  
Karl J. Dreher, Director

**DEPARTMENT OF ADMINISTRATION**

By: \_\_\_\_\_

\_\_\_\_\_  
Pamela Ahrens, Director

**BOARD OF REGENTS OF THE  
UNIVERSITY OF IDAHO**

By:

\_\_\_\_\_  
Blake Hall, President

**OF IDAHO**

**UNIVERSITY**

By:

\_\_\_\_\_  
Robert A. Hoover, President,  
University of Idaho



STATE OF IDAHO     )  
                                  ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared V.L. Bud Tracy and Wayne V Meuleman, known or identified to me to be respectively the Chairman and Secretary, respectively, of the IDAHO STATE BUILDING AUTHORITY, each of whom acknowledged to me that they executed the within Facilities Lease on behalf of the Idaho State Building Authority in their representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO     )  
                                  ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Joseph L. Jordan, known or identified to me to be the Chairman of the IDAHO WATER RESOURCE BOARD of the STATE OF IDAHO, who acknowledged to me that he executed the within Facilities Lease on behalf of the State in his representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO     )  
                                      ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Karl J. Dreher, known or identified to me to be the Director of the IDAHO DEPARTMENT OF WATER RESOURCES of the STATE OF IDAHO, who acknowledged to me that he executed the within Facilities Lease on behalf of the State in his representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO     )  
                                      ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Pamela Ahrens, known or identified to me to be the Director of the DEPARTMENT OF ADMINISTRATION of the STATE OF IDAHO, who acknowledged to me that she executed the within Facilities Lease on behalf of the State in her representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO     )  
                                      ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Blake Hall, known or identified to me to be the President of THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO (the "University"), who acknowledged to me that he executed the within Facilities Lease on behalf of the University in his representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO     )  
                                      ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert A. Hoover, known or identified to me to be the President of THE UNIVERSITY OF IDAHO (the "University"), who acknowledged to me that he executed the within Facilities Lease on behalf of the University in his representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**List of Exhibits:**

Exhibit A      Description of Civic Plaza Condominium Unit Nos. 101, 302A and 302B

Document comparison done by DeltaView on Friday, December 13, 2002 14:59:41

Input:	
Document 1	iManageDeskSite://IMANAGE/IMANAGE/662154/13
Document 2	iManageDeskSite://IMANAGE/IMANAGE/662154/14
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<u>Moved from</u>	
<u>Moved to</u>	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	27
Deletions	18
Moved from	0
Moved to	0
Format changed	0
Total changes	45

## **PARKING ACCESS AGREEMENT**

by and between

URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO aka  
CAPITAL CITY DEVELOPMENT CORPORATION,  
an independent public body politic and corporate  
constituting a public instrumentality of the State of Idaho

(“Agency”)

and

REGENTS OF THE UNIVERSITY OF IDAHO,  
a state educational institution and body politic and corporate organized and existing under  
the Constitution and laws of the State of Idaho

(the “University”).

Dated: December 17, 2002

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## **Exhibits**

Exhibit A – Legal Description of the Corridor Site



## **PARKING ACCESS AGREEMENT**

THIS PARKING ACCESS AGREEMENT (“Agreement”) is made as of this 17th day of December, 2002 (“Effective Date”) by and between the URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO aka CAPITAL CITY DEVELOPMENT CORPORATION, an independent public body politic and corporate constituting a public instrumentality of the State of Idaho (“Agency”), and the REGENTS OF THE UNIVERSITY OF IDAHO, a state educational institution and body politic and corporate organized and existing under the Constitution and laws of the State of Idaho (the “University”).

### **RECITALS**

A. Ada County owns that certain 14-acre parcel of land in the City of Boise City, Idaho legally described on Exhibit A, attached hereto and made a part hereof (the “Corridor Site”).

B. Pursuant to that certain Master Ground Lease, by and between the Agency and Ada County, dated December 1, 1999, as amended, and that certain Amended and Restated Surplus Ground Lease, by and between Agency and Ada County, dated October 1, 2002, as amended (“Surplus Ground Lease”), Agency has ground leased the entire Corridor Site until February 7, 2098.

C. Agency recognizes that the provision of adequate, convenient and available parking for the owners, tenants and users of the Corridor Site is a critical component of developing the Corridor Site into a commercially viable project. Therefore, Agency has:

(1) Secured ownership and/or control of certain Public Parking Facilities (as defined herein) to serve the Corridor Site;

(2) Entered into certain Parking Covenants (as defined herein) for the Public Parking Facilities to be operated and managed generally in accordance with a public, shared parking regimen, even if Agency no longer owns, leases, licenses or operates the Public Parking Facilities; and

(3) Adopted a Parking Management Plan (as defined herein) that sets certain policies concerning Agency’s parking facilities, identifies general parking operations for Agency’s parking operator, identifies various types of parking available (short-term, long-term, validated parking, etc.) and the process by which the Agency establishes parking rates.

D. Agency's ability to finance, construct and operate the Public Parking Facilities derives from (i) revenue from tax-increment generated from taxes assessed on real and personal property located on the Corridor Site and other properties in the River Street-Myrtle Street Urban Renewal Area, and (ii) revenue from parking charges paid by users of the Public Parking Facilities.

E. Pursuant to that certain Acquisition Agreement, dated December 1, 2002, the Idaho State Building Authority, an independent public body corporate and politic of the state of Idaho ("ISBA"), has purchased Unit 101 from Ada County (including the right to use certain limited common area appurtenant to Unit 101) and, pursuant to that certain Fleet Parking Sublease, dated December 1, 2002, ISBA has subleased Units 302A and 302B from Agency.

F. ISBA intends to develop Units 101, 302A and 302B into a research and education facility containing a 216,000 square foot (approximately) office and laboratory building, fleet parking and storage (the "Idaho Water Center") and related improvements.

G. Pursuant to that certain Facilities Lease, dated December 1, 2002, ISBA has leased the Idaho Water Center to the State of Idaho (the "State") acting through the Department of Water Resources ("IDWR") and the University, each of which are state bodies as defined in the Idaho State Building Authority Act (the "Act").

H. The property of ISBA is exempt from taxation or assessment upon any property acquired or used by ISBA under the provisions of the provisions of the Act.

I. The Agency is not financially able to finance, construct or operate the Public Parking Facilities for the benefit of the owners and tenants of the Idaho Water Center and their employees, visitors and customers ("IWC Users") without a capital contribution to help cover the cost of the Public Parking Facilities.

J. To provide adequate parking for the IWC Users, the University desires to secure from Agency, for the benefit of the IWC Users:

(1) A commitment from the Agency that the Public Parking Facilities will have sufficient capacity to serve the commercially reasonable long-term, short-term and visitor parking needs of the Idaho Water Center; and

(2) The right to access and use the Public Parking Facilities upon payment of the Agency's customary parking charges; and

(3) The right to purchase a certain number of annual parking passes (initially 200) for the employees of state and local governmental entities occupying the Idaho Water Center to access the Public Parking Facilities on a shared parking basis, including, but not limited to, the 2B Garage and 3B Garage, for one (1) Fiscal Year (the "Annual Passes").

K. Agency has agreed to provide the University with the rights set forth in Recital J above in exchange for a payment of \$350,000 per year for thirty years, subject to deductions set forth in this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

### • DEFINITIONS.

“2B Garage” will be located on Units 201B, 201C and 301 of the Civic Plaza Condominiums, and contains approximately 332 parking spaces. The 2B Garage does not include the Fleet Parking.

“3B Garage” is located on the 3A Expansion Parking and Parcel 3B (as defined in the Parking Covenants) and will contain approximately 424 parking spaces.

“Bond Covenants” means those covenants of the Agency regarding the tax exempt financing of the Public Parking Facilities referenced in Article VI of the Parking Management Plan, and the advice of Agency’s bond counsel in the interpretation of applicable tax exempt covenants and restrictions.

“Civic Plaza Condominiums” means the condominium regime which has been created by that certain Plat of the Civic Plaza Condominiums and that certain Declaration of Covenants and Restrictions establishing a plan of condominium ownership for the Civic Plaza Condominiums, recorded in the real property records of Ada County, Idaho on October 9, 2002 as Instrument Nos. 102116493 and 102116495, respectively.

“Corridor Site” shall mean that certain 14-acre parcel of land in the City of Boise City, Idaho legally described on Exhibit A.

“Default Rate” shall have the meaning set forth in Section 6.18.

“Effective Date” shall be the closing of the currently contemplated bond financing for the Idaho Water Center.

“Fleet Parking” will be located in Units 302A and 302B (which will be physically integrated into the same structure as the 2B Garage) and will contain approximately 36 parking spaces.

“Fiscal Year” shall mean the twelve-month period of each year beginning July 1 and ending on the following June 30.

“Forest Service” shall mean United States of America, acting by and through the Forest Service, Department Of Agriculture.

“Idaho Water Center” shall mean that certain research and education facility containing a 216,000 square foot (approximately) office and laboratory building, fleet parking and storage to be constructed on Units 101, 302A and 302B of the Civic Plaza Condominiums, and certain utility facilities, storage and related improvements to be constructed in the limited common area appurtenant to Unit 101 and common area adjacent to Unit 101.

“IDWR” means the Idaho Department of Water Resources, an department of the State of Idaho.

“ISBA” means the Idaho State Building Authority, a public body corporate and politic of the State of Idaho.

“IWC Users” means the owners and tenants of the Idaho Water Center and their employees, visitors and customers.

“Parking Covenants” shall mean those certain Ada County Courthouse Corridor Parking Covenants Encumbering the West Corridor Site and Avenue A Site, dated October 1, 2002, and recorded in the real property records of Ada County, Idaho, on October 8, 2002 as Instrument No. 102115915, as it may be amended from time to time.

“Parking Management Plan” means the Agency’s parking management plan for the Civic Plaza District of the River Street-Myrtle Street Urban Renewal Area adopted by the Agency on April 8, 2002, through the passage of Agency Resolution No. 883.

“Public Parking Facilities” means (i) all parking facilities now or hereafter located on the Corridor Site, including, but not limited to, the 2B Garage, 3B Garage, and interim surface parking lots (to the extent such interim surface lots are owned or controlled by Agency, and subject to County’s existing rights under that certain Agreement Relating to Operation, Maintenance and Management of the Public Parking Facilities, dated May 15, 2002), as they may exist from time to time, (ii) all parking facilities now or hereafter owned, operated or controlled by Agency that are located within 600 feet of the Corridor Site, (iii) and all parking facilities now or hereinafter owned, operated or controlled by Agency that are located in downtown Boise and provided with a shuttle service that transports users of such parking facility to within 600 feet of Unit 101 and back to such parking facility at a convenient frequency (not greater than 15 minute intervals from the hours of 7:00 am to 6:00 pm on business days).

“Unit” means a condominium unit in the Civic Plaza Condominiums, as shown on the plat thereof.

#### • **BASIC TERMS.**

- Agency’s Covenants. Agency, for itself and its successors and assigns, covenants that during the term of this Agreement:
- The Public Parking Facilities will have sufficient capacity to serve the commercially reasonable long-term and transient parking needs of the Idaho Water Center.

- The IWC Users shall be entitled to utilize the Public Parking Facilities on a nonexclusive, shared parking basis in accordance with the terms and conditions of the Parking Covenants and Parking Management Plan, as they may be amended from time to time, and subject to the payment of (i) the Agency's customary parking charges, and (ii) the Annual Contribution set forth in Section 2.2 below.
- The University, or its assignee, shall have the right to purchase from Agency a certain number of annual parking passes for employees of state and local governmental entities occupying the Idaho Water Center to use the Public Parking Facilities, which shall include the right to use the 2B Garage and 3B Garage, on a shared parking basis for one (1) Fiscal Year (the "Annual Passes"). For the term of this Agreement beginning on July 1, 2004, Agency shall make 200 Annual Passes available for purchase. Not less than 60 days prior to the beginning of each Fiscal Year, the University shall notify Agency of (i) the number of Annual Passes requested by the University for the following Fiscal Year, and (ii) the name, license plate number and employment number of the state and local governmental employee for each Annual Pass requested. Not less than 30 days prior to the beginning of the Fiscal Year, the Agency shall notify the University of the number of Annual Passes available, which shall in no event be less than the number of Annual Passes provided to the University during the previous Fiscal Year; provided, however, Agency shall be under no obligation to provide the University with more than 200 Annual Passes. The purchase price for each Annual Pass shall be Agency's then current standard monthly rate multiplied by 12, less a 10% discount if the Annual Passes are paid in full prior to the beginning of the Fiscal Year. The Annual Passes shall not be transferred by the holder thereof, except to other state and local governmental employees provided that (i) no surcharge or markup is charged, and (ii) the Agency is first notified of the name, license plate number and employment number of the transferring user and receiving user. The University acknowledges and agrees that the transfer of an Annual Pass to a person other than a state or local governmental employee may be a default under the Bond Covenants, and, if so, shall be a default under this Agreement.
- To the extent spaces are available, the operator(s) of the Public Parking Facilities shall sell monthly parking passes to IWC Users for use anywhere within the Public Parking Facilities, on a first come first served basis, at the Agency's then current standard rates.
- Annual Contribution. For the rights secured under this Agreement, the University shall pay to Agency, subject to deductions and offsets set forth in this Agreement, in lawful money of the United States of America, at 805 W. Idaho Street, Suite 403, Boise, Idaho 83702, or to such other person or at such other place as provided herein or as Agency may from time to time designate by notice in writing to the University, the sum of Three Hundred Fifty Thousand Dollars (\$350,000) per year, commencing on July 31, 2004 and for each Fiscal Year this Agreement is renewed, ending on July 31, 2033 (the "Annual Contribution"). If the Forest Service (or other tax-paying owners or tenants) occupies the currently contemplated approximately 24,000 net leasable square feet (measured in accordance with BOMA's Standard Method for Measuring Floor Area in Office Buildings — ANSI/BOMA 265.1-1996) ("NLSF") in Unit 101, the Annual Contribution shall be Three Hundred Seventeen Thousand Dollars

(\$317,000). The amount of the reduction of the Annual Contribution in the preceding sentence shall be adjusted, *pari passu*, in the event the Forest Service (or other tax-paying owners or tenants) occupies more or less space in Unit 101 than the 24,000 NLSF currently contemplated. The Annual Contribution for any year shall also be reduced, *pari passu*, if tax-paying entities occupy space in Unit 101 based on the proportion of Unit 101 (excluding the currently contemplated ground floor retail (approximately 8,800 NLSF) and currently contemplated Forest Service space (approximately 24,000 NLSF)) occupied by such tax paying entity in calendar year in which the Annual Contribution is due. Upon payment of the final Annual Contribution in 2033, the University shall be entitled to enjoy the rights secured under this Agreement for the remainder of the term of this Agreement, and all renewals thereof, without any payment to Agency other than Agency's customary parking charges as otherwise set forth in this Agreement.

- Term of Agreement. This Agreement shall be in full force and effect from the Effective Date. This Agreement shall terminate if the currently contemplated bond financing for the Idaho Water Center has not closed by January 31, 2003. The initial term of this Agreement shall extend from the Effective Date through June 30, 2004. The University shall thereafter have the option to renew this Agreement in accordance with the provisions hereof for successive Fiscal Years until July 1, 2097 (with this Agreement terminating on February 7, 2098), and each such renewal of this Agreement shall be deemed to be exercised, automatically and without further action by the University, unless the University shall notify the Agency in writing of its intent not to renew this Agreement not later than six (6) months prior to the expiration of any annual term.

- **USE, OPERATION AND MAINTENANCE.**

- Use and Operation – Generally. Agency, for itself and its successors and assigns, covenants that during the term of this Agreement, the Public Parking Facilities will remain open to the public, and the University shall enjoy the use of the Public Parking Facilities as described in this Agreement, even if the Agency no longer owns, leases, licenses or operates the Public Parking Facilities.

- Parking Covenants/Parking Management Plan. The Agency agrees that Public Parking Facilities shall at all times be operated and managed in compliance with the Parking Covenants and Parking Management Plan, as they may be amended from time to time (even if the Agency no longer owns, leases, licenses or operates the Public Parking Facilities). The Agency agrees to provide the University with not less than thirty (30) days' prior written notice of any proposed amendments to the Parking Covenants or Parking Management Plan that would materially impair the University's enjoyment of the rights secured under this Agreement in order to allow the University to express comments on the proposed amendments. Nothing herein, though, shall limit the discretion and authority of Agency to adopt changes to the Parking Covenants and Parking Management Plan (not inconsistent with the terms of this Agreement) and to establish parking rates.

- Shared Parking Regimen. The Public Parking Facilities shall be operated as a shared parking regimen, rather than as individual units. Parking rates will be uniformly controlled to

reflect market conditions and to meet any contractual or debt service requirements. The operator of the Public Parking Facilities shall make optimum use of the Public Parking Facilities by making provision for shared off-peak combinations of uses, such as office/residential, hospitality or event/retail when appropriate.

- Public Parking. The Public Parking Facilities shall be operated in such a manner as to provide adequate public parking for the various uses located on the Corridor Site. Except for special arrangements for residential parking or for qualified governmental users granted under this Agreement, the Parking Covenants and Parking Management Plan, parking will be provided to users of the Corridor Site and members of the general public (monthly, hourly, or otherwise) on a first come first served basis.

- Security. The operator(s) of the Public Parking Facilities will provide adequate security.

- Hours of Operation. The Public Parking Facilities will be operated to provide access to users with monthly or annual parking passes on a 24-hour basis, and will be otherwise be open for transient, daily and event parking as set forth in the Parking Management Plan.

- Parking Validations. The IWC Users shall be entitled to participate in any validation or other parking program of Agency.

- Parking Facility Maintenance and Repair. Agency shall maintain and repair, or cause to be maintained and repaired, the Public Parking Facilities in a safe, attractive and clean condition and consistent with the provisions of Section 3(f) of the Parking Management Plan. Such services shall also include cleaning, snow removal, elevator maintenance, and parking control equipment maintenance. The Agency will use the most current *Parking Garage Maintenance Manual* (1996) published by the Parking Consultants Council of the National Parking Association, as a guide in providing such services.

- Future Parking Facilities. The parties acknowledge that with each new parking facility developed on the Corridor Site there will be certain financing (tax exempt bonds, for example) and economic requirements specific to the project to be developed. The parties agree that financing and economic requirements may place additional restrictions or requirements on the use and operation of specific parking facilities developed on the Corridor Site. With respect to future Public Parking Facilities, the parties agree that Agency shall be allowed to identify specific parking rights or uses and allow limited private or governmental parking uses in a Public Parking Facilities, so long as such uses are permitted by the applicable financing; provided, however, in no event shall any such uses materially impair the management and operation of all the Public Parking Facilities as a whole as a public shared parking system, as described in this Agreement, the Parking Covenants and Parking Management Plan.

#### • **DEFAULT, REMEDIES; CURE**

- Default. If either party fails to perform or observe any of the covenants or provisions contained in this Agreement within thirty (30) days after written notice from the other party

specifying the particulars of such default or breach of performance, or in the case of any curable failure which cannot with diligence be cured within such thirty (30) day period, if the defaulting party shall fail to commence to cure within such specified cure period and thereafter prosecute and complete the curing of such failure with diligence, it being intended, in connection with a curable failure not susceptible of being cured with diligence within such cure period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence, then in that event defaulting party shall be responsible to non-defaulting party for any and all actual damages sustained by non-defaulting party, either directly or indirectly, as a result of such default.

- Remedies. In addition to collecting damages as set forth above, in the event of a default, the non-defaulting party shall be entitled to seek an injunction or specific performance to cause the other party to comply with the terms of this Agreement. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

- Rights of ISBA and IDWR in Case of Default.

- Notice of Default to be Served on ISBA. Agency, upon serving the University with any notice required under the provisions of, or with respect to any default or dispute arising from or related to, this Agreement shall concurrently also serve a copy of such notice upon ISBA and IDWR at the addresses provided for in Section 6.5.3 and 6.5.4, respectively, and no notice by Agency to the University shall affect any rights of ISBA and IDWR unless and until a copy thereof has been received by ISBA or IDWR, as applicable.

- Right to Cure University Default. If the University defaults under this Agreement, ISBA and IDWR shall, within sixty (60) days following the expiration of the period provided for the University to cure such default, have the right (but not the obligation), exercisable jointly or severally, to remedy such default under this Agreement, and Agency shall accept such performance by ISBA and/or IDWR as if the same had been made by the University. Such additional sixty (60) day period shall be extended if the breach is other than for the non-payment of money and is such that it is not practicable to cure such default within such sixty (60) day period, provided that ISBA and/or IDWR commences such cure within said sixty (60) day period and diligently prosecutes such cure to completion.



- Rights of ISBA and IDWR to Renew Agreement. If the University fails to renew the term of this Agreement, the Agency shall immediately notify ISBA and IDWR of such nonrenewal in writing at the addresses provided for in Section 6.5.3 and 6.5.4, respectively. ISBA and IDWR shall, within sixty (60) days following notification of such nonrenewal, have the right (but not the obligation), exercisable jointly or severally, to renew this Agreement upon the same terms and conditions as the University could have renewed this Agreement by assuming this Agreement in writing and performing all of the University's obligations under this Agreement, and Agency shall accept such renewal by ISBA and/or IDWR as if the same had been made by the University. Upon ISBA's and/or IDWR's renewal of this Agreement, ISBA and/or IDWR shall be entitled to all rights of the University under this Agreement.

#### **• RESOLUTION OF DISPUTES.**

In the event that a dispute arises between the parties concerning (i) the meaning or application of the terms of, or (ii) an asserted breach of this Agreement, the parties shall meet and confer in a good faith effort to resolve their dispute. The first such meeting shall occur within thirty (30) days of the first written notice from either party evidencing the existence of the dispute. The Executive Director of the Agency and the Vice President of Finance and Administration of the University shall both be included among the individuals representing the parties at the first such meeting. If the parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the parties may mutually agree before resorting to litigation or to arbitration. Should the parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process of structured negotiation, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

#### **• MISCELLANEOUS**

- Recitals. The parties agree that the recitals to this Agreement are not mere recitations, but are covenants of the parties and binding upon them as may be appropriate. In the event of a conflict between any recital and the body of this Agreement, the body of the Agreement shall control.
- Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect to which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- Gender and Number. Words used herein shall include the plural as well as the singular, as required by the context. Words used in the masculine gender include the feminine and neuter.

- Captions. All captions, titles or headings in this Agreement are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

- Notices. All notices required or permitted pursuant to this Agreement shall be in writing. All notices between the parties shall be deemed received when personally delivered or when deposited in the United States mail postage prepaid, registered or certified, with return receipt requested, or by recognized courier delivery (e.g. Federal Express, Airborne, Burlington, etc.) addressed to the parties, as the case may be, at the address set forth below or at such other addresses as the parties may subsequently designate by written notice given in the manner provided in this section:

- If intended for Agency shall be addressed to:

Executive Director  
CAPITAL CITY DEVELOPMENT CORPORATION  
805 West Idaho, Suite 403  
Boise, Idaho 83701

- If intended for the University shall be addressed to:

Vice President of Finance and Administration  
UNIVERSITY OF IDAHO  
Moscow, Idaho 83844

- If intended for ISBA shall be addressed to:

Executive Director  
IDAHO STATE BUILDING AUTHORITY  
960 Broadway Avenue, Suite 500  
PO Box 2802  
Boise, Idaho 83701

- If intended for IDWR shall be addressed to:

Director  
IDAHO DEPARTMENT OF WATER RESOURCES  
1301 North Orchard Street  
Boise, Idaho 83706

- No Partnership. Neither anything contained in this Agreement, nor any acts of the parties, shall be deemed or construed by any person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties or between any of the parties.

- No Third Party Benefited. This Agreement is not intended nor shall it be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein, and no rights, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed a third party beneficiary of any of the provisions herein, except as expressly provided herein.

- Governing Law. This Agreement shall be construed in accordance with the laws of the State of Idaho.

- Venue and Jurisdiction. As a material part of the consideration for this Agreement, each of the parties hereto agrees that in the event any legal proceeding shall be instituted between them, such legal proceeding shall be instituted in the courts of the District Court for the Fourth Judicial District, State of Idaho or the United States District Court, District of Idaho, and each of the parties hereto agrees to submit to the jurisdiction of such courts.

- Successors and Assigns. This Agreement shall, except as otherwise provided herein, be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The University may assign its rights and obligations under this Agreement, in whole or in part, to any state or local governmental entity, including, but not limited to, ISBA or IDWR. Partial assignments shall be subject to the consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement shall not be assigned, in whole or in part, to any entity that is not a state or local governmental entity.

- Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

- No Waiver. No waiver of any default by any party shall be implied from any omission by any other party to take any action in respect of such default, whether or not such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any such party to or of any act or request by any other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests.

- Interpretation. This Agreement shall be construed in accordance with its fair meaning and not strictly for or against any party.

- Integration. This Agreement shall constitute the entire agreement between the parties, and there are no agreements or representations between the parties except as expressed herein. Except as otherwise provided herein, no subsequent change or addition to this Agreement shall be binding unless in writing and signed by the parties hereto.

- Counterparts. This Agreement may be executed in any number of counterparts, and once so executed by all parties hereto, each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one (1) agreement.

- Attorneys' Fees. In the event of any controversy, claim or action being filed or instituted between the parties to this Agreement to enforce the terms and conditions of this Agreement or arising from the breach of any provision hereof, the prevailing party will be entitled to receive from the other party all costs, damages, and expenses, including reasonable attorneys' fees, incurred by the prevailing party, whether or not such controversy or claim is litigated or prosecuted to judgment. The prevailing party will be that party who was awarded judgment as a result of trial or arbitration, or who receives a payment of money from the other party in settlement of claims asserted by that party.

- Amendments to this Agreement. Agency and the University agree to mutually consider reasonable requests for amendments to this Agreement, which may be made by any of the parties hereto, lending institutions, bond counsel, or financial consultants to Agency or the University, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

- Default Rate. Any sums owing hereunder and not paid within ten (10) calendar days after the date when such sums are due shall bear interest at the rate set forth in Idaho Code Section 28-22-104(2) or any successor section (the "Default Rate"). Payment of such interest shall not excuse or cure any default by Agency or the University under this Agreement.

DATED effective as of the year and day first written above.

“Agency”

URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO aka  
CAPITAL CITY DEVELOPMENT CORPORATION, an  
independent public body politic and corporate constituting a  
public instrumentality of the State of Idaho

By:

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

“University”

REGENTS OF THE UNIVERSITY OF IDAHO, a state  
educational institution and body politic and corporate organized  
and existing under the Constitution and laws of the State of

Idaho

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                        )

On this \_\_\_\_\_ day of December, in the year 2002, before me, a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me to be the Chairman of the URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO aka CAPITAL CITY DEVELOPMENT CORPORATION, that executed the said instrument, and acknowledged to me that such URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO aka CAPITAL CITY DEVELOPMENT CORPORATION executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF IDAHO                    )  
  ) ss.  
County of \_\_\_\_\_                )

On this \_\_\_\_\_ day of December, in the year 2002, before me, a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_, authorized representative of the REGENTS OF THE UNIVERSITY OF IDAHO, that executed the said instrument, and acknowledged to me that such REGENTS OF THE UNIVERSITY OF IDAHO executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

## **EXHIBIT A**

Legal Description of the Corridor Site

**INCLUDED FOR INFORMATION – NO BOARD ACTION  
NECESSARY ON THIS SUBLEASE**

**FLEET PARKING SUBLEASE**

by and between

URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO  
aka  
CAPITAL CITY DEVELOPMENT CORPORATION  
(Agency)

and

IDAHO STATE BUILDING AUTHORITY  
(ISBA)

with respect to the

**Units 302A and 302B of Civic Plaza Condominiums**



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### **Exhibits**

Exhibit A	Condominium Plat Map
Exhibit B	Legal Descriptions of the Fleet Parking Units
Exhibit C	Approved Title Exceptions
Exhibit D	Part I – Form of Agreement of Nondisturbance
	Part II – Form of Estoppel Certificate
	Part III – Form of Tenant Estoppel Certificate

## FLEET PARKING SUBLEASE

This Fleet Parking Sublease is made as of the 17th day of December, 2002, by and between the URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO, aka CAPITAL CITY DEVELOPMENT CORPORATION, an independent public body politic and corporate constituting a public instrumentality of the State of Idaho ("Agency") and IDAHO STATE BUILDING AUTHORITY, an independent public body corporate and politic of the State of Idaho ("ISBA").

WHEREAS, Agency now desires to sublease to ISBA, and ISBA desires to sublease from the Agency, the Fleet Parking Units under the terms and conditions set forth hereinafter;

NOW, THEREFORE, the parties hereto agree as follows:

### **I. DEFINITIONS**

The following terms, except where the context indicates otherwise, shall have the respective meanings set forth below.

"Agency" means the Urban Renewal Agency of Boise City, Idaho, also known as the Capital City Development Corporation, an independent public body politic and corporate, constituting a public instrumentality of the State of Idaho or any public corporation succeeding to its rights and obligations as permitted under this Fleet Parking Sublease.

"City" means the City of Boise City, Idaho.

"Civic Plaza Condominiums" means the condominium regime which has been created in accordance with the Condominium Documents.

"Commencement Date" means the date of the closing of the currently contemplated bond financing for the Idaho Water Center Project.

"Commissioners" means the Board of Commissioners of County.

"Condominium Documents" means the Plat of the Civic Plaza Condominiums and the Declaration of Covenants and Restrictions establishing a plan of condominium ownership for the Civic Plaza Condominiums, recorded in the real property records of Ada County, Idaho, as Instrument Nos. 102116493 and 102116495, respectively.

"County" means Ada County, Idaho.

"Covenants" means (i) the Condominium Documents, (ii) the Memorandum of Agreement regarding Storm Water Discharge by and between County, Agency and Boise City, dated November 8, 2000, (iii) the Memorandum of Agreement regarding Ground Water Discharge by and between the Foundation, Civic Plaza LP and Boise City, dated November \_\_\_\_, 2002, and (iv) any easements or license agreements which have been filed of record in the real

property records of Ada County, Idaho prior to the Commencement Date and which encumber some or all of the Fleet Parking Units.

"Default Rate" means the rate set forth in Section 14.10 herein.

"Environmental Law" means any federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time, including but not limited to the statutes listed below:

Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq.;

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq.;

Clean Air Act, 42 U.S.C. § 7401, et seq.;

Federal Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. § 1251, et seq.;

Federal Insecticide, Fungicide, and Rodenticide Act (Federal Pesticide Act of 1978), 7 U.S.C. § 136, et seq.;

Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; and

Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.

"Fleet Parking Sublease" means this sublease agreement, dated December 1<sup>st</sup>, 2002, by and between the Agency and ISBA, pursuant to which the Agency has subleased to ISBA a leasehold interest in the Fleet Parking Units.

"Fleet Parking Units" means Units 302A and 302B of the Civic Plaza Condominiums.

"Hazardous Substances" means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic, or radioactive substance, or other similar term, by any Environmental Law.

"ISBA" means the Idaho State Building Authority, an independent public body corporate and politic of the state of Idaho.

"Idaho Water Center Project" means the facility or facilities intended to be located on Units 101, 302A and 302B, and related improvements.

"Owner" means an Owner of a Unit as defined in the Condominium Documents.

"Sub-sublease" means those sub-subleases of the Fleet Parking Units, or portions thereof, entered into between ISBA as the Sub-lessor to Sub-lessees, and any further sublease of

the Fleet Parking Units or a portion thereof between a Sub-sublessee, as sublessor, and further sublessees of the Fleet Parking Units.

"Sub-sublessee" means those persons or entities who sublease the Fleet Parking Units or portions thereof from ISBA or another Sub-sublessee pursuant to a Sub-sublease.

"Surplus Ground Lease" means that Amended and Restated Surplus Ground Lease, dated October 1, 2002, and recorded in the real property records of Ada County on October 9, 2002 as Instrument No. 102116885, as it may be amended from time to time pursuant to which County has conveyed to Agency a leasehold estate in and development rights for the redevelopment of the Units in the Civic Plaza Condominiums.

"Term" means generally the entire term of this Fleet Parking Sublease as defined in Section 3.2 hereof.

"Termination Date" means the date upon which this Fleet Parking Sublease may be terminated as set forth in this Fleet Parking Sublease.

"Unit" means a condominium unit in the Civic Plaza Condominiums, as described in the Condominium Documents.

"University of Idaho Foundation" or the "Foundation" means the University of Idaho Foundation, Inc., an Idaho non-profit corporation.

## **II. SUBJECT OF LEASE**

### ~~Section 2.1.~~ Overview

The purpose of this Fleet Parking Sublease is to lease the Fleet Parking Units to ISBA to be used for parking and storage for the Idaho Water Center Project.

### ~~Section 2.2.~~ The Surplus Ground Lease

The Surplus Ground Lease was approved and adopted by Agency and County.

### ~~Section 2.3.~~ Conflicts

The parties do not intend or expect the provisions of the Surplus Ground Lease and this Fleet Parking Sublease to conflict. The Surplus Ground Lease and this Fleet Parking Sublease shall be construed harmoniously so as to give effect to all of the terms, covenants and conditions of such documents. In the event of any conflict between the provisions of the Surplus Ground Lease and this Fleet Parking Sublease, the terms of the Surplus Ground Lease shall control.

### ~~Section 2.4.~~ Covenants

Agency and ISBA acknowledge receipt of the Covenants and agree to be bound by the Covenants and to develop the Fleet Parking Units in compliance therewith.

Σεχτιον 2.5: • Correction

ISBA and Agency agree that either party shall have the ability to present revised pages of this Fleet Parking Sublease to correct typographical errors, incorrect references to attachments to this Fleet Parking Sublease, and any other internal inconsistency within this Fleet Parking Sublease or between the other documents referenced herein; provided, however, neither party shall present any revisions which change the meaning, substance, or intent of this Fleet Parking Sublease.

Σεχτιον 2.6: • Reliance

No amendment to this Fleet Parking Sublease will be effective against County without County's prior written consent. No amendment to the Surplus Ground Lease will be effective against ISBA without ISBA's prior written consent.

### **III. BASIC LEASE TERMS**

Pursuant to the Surplus Ground Lease, County leased to Agency the Fleet Parking Units.

Σεχτιον 3.1: • Lease of Fleet Parking Units

Agency hereby leases and demises to ISBA, and ISBA hereby leases and takes from Agency, the Fleet Parking Units. It is mutually agreed that the leasing hereunder is upon and subject to the terms, covenants and conditions hereof, that Agency and ISBA covenant, as a material part of the consideration of this Fleet Parking Sublease, to keep, perform and observe each and all of said terms, covenants and conditions by each of them to be kept, performed or observed, and that this Fleet Parking Sublease is made upon the condition of such performance.

Σεχτιον 3.2: • Term

The Term of this Fleet Parking Sublease shall be for the period commencing on the Commencement Date and terminating on February 7, 2098; provided, however, ISBA may at any time, upon written notice to the Agency, terminate this Fleet Parking Sublease effective not less than 90 days after said written notice, and upon such termination ISBA shall surrender the premises in accordance with Section 6.1 hereof. This Fleet Parking Sublease shall terminate if the currently contemplated bond financing for the Idaho Water Center has not closed by January 31, 2003.

Σεχτιον 3.3: • Assignment of Owner Rights

Under the Condominium Documents, the County is the Owner of the Fleet Parking Units. The Condominium Documents contemplate that any Owner can assign all, or any part of, its contractual rights and obligations as Owner under the Condominium Documents to a lessee of any of the Units. The County has assigned to Agency, in Section 3.3 of the Surplus Ground Lease, all of the County's contractual rights and obligations as an Owner under the Condominium Documents of all of the Units in the Civic Plaza Condominiums. Agency hereby



assigns to ISBA all of the contractual rights and obligations under the Condominium Documents as an Owner of the Fleet Parking Units through the Term of this Fleet Parking Sublease. ISBA shall be entitled to vote as an Owner, and shall be required to pay assessments as an Owner, and to exercise all other rights and obligations under the Condominium Documents as the Owner of the Fleet Parking Units.

~~Σεχτιον 3.4.~~ Delivery of Possession of the Fleet Parking Units

ISBA shall be entitled to exclusive possession of the Fleet Parking Units upon the Commencement Date.

~~Σεχτιον 3.5.~~ Intentionally Omitted

~~Σεχτιον 3.6.~~ Rent

ISBA shall pay to Agency, without deduction or offset whatsoever except as otherwise provided in this Fleet Parking Sublease, in lawful money of the United States of America, at 805 West Idaho, Suite 403, Boise, Idaho 83702, rent in the total amount of Ninety-Five Dollars (\$95.00) as rent for the full Term of this Fleet Parking Sublease. Agency acknowledges receipt of the full amount of such rent as of the Commencement Date.

~~Σεχτιον 3.7.~~ Additional Assessments and Maintenance Costs.

ISBA agrees to pay any and all assessments on the Fleet Parking Units assessed under the Condominium Documents upon written notice of such assessments from the Agency. ISBA further agrees to pay a pro-rata per share of all costs associated with maintenance and repair for any parking control equipment, drive aisles, etc., including those located on Unit 301 serving the Fleet Parking Units. This pro-rata share shall be based on the square footage of the Fleet Parking Units relative to the square footage of Unit 301.

#### **IV. USE, CHARACTER, AND OPERATION OF IMPROVEMENTS**

~~Σεχτιον 4.1.~~ Quality of Operations

Agency and ISBA agree that at all times during the term of this Fleet Parking Sublease, Agency and ISBA will use their best efforts, consistent with good urban development practices, to maintain a level of quality of character and operation which is at least comparable to the level of quality of character and operation of similar parking facilities in similar sized cities in the Western United States and which is in compliance with the Covenants.

~~Σεχτιον 4.2.~~ Limitations and Obligations on Use

The only allowed use under this Fleet Parking Sublease is the use of the Fleet Parking Units for parking, storage and similar uses.

#### **V. LIENS, ENCUMBRANCES AND MAINTENANCE**

#### ~~Σεξτιον 5.1.~~ • Liens and Encumbrances

Neither ISBA nor any person claiming under or through ISBA shall engage in any financing or other transaction placing any mortgage or deed of trust upon ISBA's leasehold estate in the Fleet Parking Units or the improvements constructed thereon. Neither ISBA or Agency create, permit, or suffer to be created or to remain, and will discharge, any lien, encumbrance or other charge upon the Agency's leasehold or the County's fee interest in the Fleet Parking Units. Agency shall have the obligation to enforce the corresponding provisions of the Surplus Ground Lease against County.

#### ~~Σεξτιον 5.2.~~ • Protection of County.

Nothing in this Fleet Parking Sublease shall be construed as constituting the consent of County, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Fleet Parking Units or the improvements thereon, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving Agency, ISBA or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the fee of the Fleet Parking Units or the improvements thereon. County shall have the right at all reasonable times to post, and keep posted, on the Fleet Parking Units any notices which County may deem necessary for the protection of County and of the Fleet Parking Units and the improvements thereon from mechanics' liens or other claims.

#### ~~Σεξτιον 5.3.~~ • Maintenance of Improvements

During the term of this Fleet Parking Sublease, ISBA shall operate and maintain (or cause to be operated and maintained), the Fleet Parking Units, as provided herein and in the Covenants.

### **VI. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY**

#### ~~Σεξτιον 6.1.~~ • Ownership of Improvements During Term

All improvements constructed on the Fleet Parking Units by ISBA (or Sub-sublessees), shall, during the Term, be and remain the property of ISBA and/or such Sub-sublessees who, respectively, construct the same or as otherwise may be provided in any applicable Sub-sublease or assignment. ISBA and Agency covenant for themselves and all persons claiming under or through them (including Sub-sublessees as to the Fleet Parking Units) that the right, title and interest in such improvements (excluding fixtures and other tangible personal property that can be removed without damaging the structure of the Fleet Parking Units) shall revert to and become the property of County on the expiration of the Term or earlier termination of this Fleet Parking Sublease (subject to the rights of non-disturbance granted to Sub-sublessees pursuant to this Fleet Parking Sublease).

### **VII. SUBLETTING AND TRANSFERS**

~~Section 7.1~~ • Subletting

~~(a)~~ • Generally. ISBA and any Sub-sublessees shall have the right, at any time, and all times during the Term, without County's consent, or Agency's consent, to sublet any part of the Fleet Parking Units and/or any improvements thereon, provided such Sub-subleases contain provisions which satisfy the requirements of the following sections of this Fleet Parking Sublease: (i) Sections 9.1, 9.2, 14.16(l) and 14.16(m) (anti-discrimination and compliance with laws), (ii) Article X (insurance), (iii) Articles XII (condemnation) and (iv) Article XI (damage and destruction).

~~(b)~~ • Attornment and Nondisturbance

~~(i)~~ • Notwithstanding any termination of this Fleet Parking Sublease or any default by ISBA hereunder, and provided that all conditions for Sub-subleases set forth in Section 7.1(a) above have been satisfied, or the Agency and County have otherwise approved such Sub-sublease, Agency covenants and agrees to recognize and to not disturb the right of any Sub-sublessees, third party user or their respective lenders, to use and possess all or any portion of the Fleet Parking Units, provided that:

~~(A)~~ • the Sub-sublessee or third party user (or their respective lenders) shall not then be in default under its Sub-sublease or other applicable agreement beyond any period for cure of such default (except as otherwise provided in Subsection 7.2(b)(iii) hereof);

~~(B)~~ • the Sub-sublessees shall have attorned to Agency; and

~~(X)~~ • Agency shall not be obligated as the lessor under such Sub-subleases to such Sub-sublessee except for obligations arising subsequent to the date of such attornment.

~~(ii)~~ • Agency shall have the right to require any and all Sub-sublessees to attorn to Agency, in which event Agency shall perform all of the lessor's obligations under such Sub-sublease arising after the date of such attornment. In the event Agency elects to terminate this Fleet Parking Sublease, Agency shall deliver copies of its notice of intention to terminate to all Sub-sublessees, which have otherwise previously furnished Agency and County with written notice of their interest and address. Agency shall accompany the copy of said notice delivered to ISBA and each such Sub-sublessee with a written declaration which states whether Agency exercises its right to require said Sub-sublessee to attorn to Agency effective on the termination date. If the declaration delivered to a Sub-sublessee contains a demand for said Sub-sublessee to attorn, said Sub-sublessee shall be deemed to have attorned to Agency effective on the termination date.

~~(iii)~~ • If any Sub-sublessee otherwise entitled to nondisturbance hereunder is in default under its Sub-sublease as of the date of termination of this Fleet Parking Sublease, and if it is not in receipt of a written notice of default as provided in such Sub-sublease, Agency shall give written notice of said default to such Sub-sublessee on or as soon after the date of termination of this Fleet Parking Sublease as is reasonably possible. If such Sub-sublessee cures said default within thirty (30) days following

the date of such notice or, if the nature of said default is such that it cannot, with the exercise of reasonable diligence, be cured within said 30-day period, such Sub-sublessee commences the cure within said 30-day period and thereafter diligently and continuously prosecutes such cure to completion and completes such cure within a reasonable time, then Agency shall be deemed to have recognized the Sub-sublease as of the date of termination of this Fleet Parking Sublease. Agency's recognition shall be terminable at the option of Agency upon notice to such Sub-sublessee if the cure is not completed or being continuously and diligently prosecuted as aforesaid, but any such termination shall not affect the rights of any other Sub-sublessee.

~~(10)~~• Agency agrees to execute, acknowledge and deliver, and to cause County to execute, acknowledge and deliver, not later than ten (10) business days following each written request therefore:

~~(A)~~• reasonable written agreements of nondisturbance and attornment confirming the right of nondisturbance of ISBA under this Fleet Parking Sublease and the right of non-disturbance of Sub-sublessees, such third party users and their respective lenders, so long as such nondisturbance and attornment agreement satisfies the requirements of this Section 7.1(b), conditional on the affirmation and agreement to attorn by ISBA, the Sub-sublessee, such third party users or the relevant lender, as the case may be; and

~~(B)~~• written estoppel certificates confirming ISBA's rights to the leasehold interest created hereby and such other information as is reasonably and customarily requested by lenders in connection with commercial projects of this type located on property which is covered by ground lease, pursuant to this Section 7.1(b).

The form of such estoppel certificates and non-disturbance and attornment agreements shall be substantially in the form of those attached hereto as Exhibit D, or otherwise as may be reasonably approved by County and Agency.

#### ~~Section 7.2~~• Other Transfers

~~(a)~~• No Transfer without Consent; Exception. Neither Agency nor ISBA shall transfer its interest in the Fleet Parking Units without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, either party may transfer its interest in the Fleet Parking Units to any governmental entity without the other party's consent

Any Transfer made in contravention of this Section 7.2(a) shall be void and shall be deemed to be a default under this Fleet Parking Sublease; provided, however, the sole remedy for such default shall be for non-transferring party to seek a judicial determination to invalidate such transfer and to seek recovery of its reasonable costs and attorneys' fees incurred in connection with such judicial determination.

~~(B)~~• Notice of Transfer. Agency and ISBA shall give or cause to be given to the other party written notice of any transfer permitted pursuant to Section 7.2(a) above within ten (10) days after any such transfer has occurred.

~~Σεξτιον 7.3:~~• Release in the Event of Transfer

In the event of a transfer by Agency or ISBA of the Fleet Parking Units or any interest(s) therein permitted by Section 7.2 above, the same shall operate to release the transferring party from any future liability hereunder accruing subsequent to the date of such transfer upon any of the covenants or conditions of this Fleet Parking Sublease, expressed or implied, in favor of the non-transferring party (or any person claiming under or through the non-transferring party) provided that such successor in interest agrees in writing to be bound by all of the terms and conditions hereof. From and after the date of such transfer, the non-transferring party (and any person claiming under or through the non-transferring party) shall look solely to such successor in interest. This Fleet Parking Sublease shall not be affected by any such transfer, and the non-transferring party (for itself and any person holding an interest in the Fleet Parking Units claimed under or through the non-transferring party) agrees to attorn to any such successor in interest.

~~Σεξτιον 7.4:~~• Successors and Assigns

Subject to the provisions of this Fleet Parking Sublease, the terms, covenants and conditions contained in this Fleet Parking Sublease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties hereto.

## **VIII. INTENTIONALLY OMITTED**

## **IX. COMPLIANCE WITH LAWS**

~~Σεξτιον 9.1:~~• Compliance With Laws

ISBA shall, at its sole cost and expense, comply with and shall cause Sub-sublessees to comply with: (i) all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances of general applicability affecting the Fleet Parking Units or the improvements thereon, or any part thereof, or the use thereof, including those which require the making of any structural, or extraordinary changes; and (ii) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Fleet Parking Units and the improvements constructed thereon.

## **X. INSURANCE AND INDEMNITY REQUIREMENTS**

~~Σεξτιον 10.1:~~• Insurance on the Fleet Parking Units

~~(α)~~• ISBA's Insurance. During the Term, ISBA shall, without cost to Agency, maintain, or cause to be maintained, in full force and effect the following insurance covering the Fleet Parking Units and the improvements located thereon; provided, however, all such insurance

requirements set forth herein may be fulfilled by ISBA obtaining proof of insurance for these policies and coverages from Sub-sublessees in compliance with Sub-subleases:

~~(t)~~• Liability Insurance. Commercial general public liability insurance, including coverage for any accident resulting in personal injury, bodily injury or death of any person and property damage arising therefrom, in an amount not less than \$1,000,000 per claim and \$2,000,000 per occurrence.

~~(tt)~~• Fire and Miscellaneous Coverage. Insurance against loss or damage to the improvements located on the Fleet Parking Units by fire, lightening, vandalism, malicious mischief and other casualty with uniform extended coverage endorsement limited only as may be provided in the standard form of such endorsement in use in Idaho at the relevant time, in amounts equal to the replacement cost of the insured improvements; provided, however, this insurance will not be required if it is otherwise provided in the Condominium Documents.

~~(ttt)~~• Replacement Cost. The term "replacement cost" as used in this Section shall mean the actual cost of replacing the buildings or portions thereof on the Fleet Parking Units excluding concrete slabs, foundations, and footings.

~~(ttt)~~• Named Insureds. All insurance provided for under this Section shall be for the benefit of ISBA, Agency and County as named insureds. ISBA shall furnish to Agency at any time that Agency shall reasonably request, evidence satisfactory to Agency that the insurance referred to in this Section shall be in force and effect and that the premiums therefore have been paid.

~~(ttt)~~• Periodic Review. All insurance provided under this Section shall be periodically reviewed by ISBA and Agency (but not less frequently than once every five (5) years) for the purpose of mutually agreeing to increase the minimum limits of such insurance, deductibles, requirements for self-insurance and any other applicable amounts from time-to-time to amounts which may be reasonable and customary for similar facilities of like size and operation. ISBA or Agency may retain an insurance consultant for purposes of such review.

~~(ttt)~~• Notice to Cancel. All policies or certificates provided for under this Section for insurance shall provide that such policies or certificates shall not be canceled or materially changed without at least thirty (30) days prior written notice to ISBA, Agency and County.

~~(ttt)~~• Waiver of Subrogation. ISBA hereby expressly waives on behalf of its insurers hereunder any right of subrogation against Agency, and Agency likewise waives on behalf of its insurers any right of subrogation against ISBA, which any such insurers may have against ISBA or Agency by reason of any claim, liability, loss or expense arising under this Fleet Parking Sublease. The foregoing mutual waivers of subrogation are conditioned upon such waivers being available from the insurers of each party with the payment of reasonable additional insurance premiums. In the

event that either party at any time determines that such waiver is not or is no longer so available, it shall promptly notify the other party in writing of that fact.

~~(B)~~• Agency's Insurance. During the Term, Agency shall, without cost to ISBA, maintain, or cause to be maintained, in full force and effect the following insurance:

~~(t)~~• Liability Insurance. Commercial general public liability insurance, including coverage for any accident resulting in personal injury, bodily injury or death of any person and property damages arising therefrom, in an amount not less than \$1,000,000 per claim and \$2,000,000 per occurrence.

~~(tt)~~• Named Insureds. All insurance provided for under this Section shall be for the benefit of ISBA, Agency and County as named insureds. Agency shall furnish to ISBA at any time that ISBA shall reasonably request, evidence satisfactory to ISBA that the insurance referred to in this Section shall be in force and effect and that the premiums therefore have been paid.

~~(ttt)~~• Periodic Review. Public liability insurance provided under this Section shall be periodically reviewed by ISBA and Agency (but not less frequently than once every five (5) years) for the purpose of mutually agreeing to increase the minimum limits of such insurance from time-to-time to amounts which may be reasonable and customary for similar facilities of like size and operation. ISBA or Agency may retain an insurance consultant for purposes of such review.

~~(ttt)~~• Notice to Cancel. All policies or certificates provided for under this Section for insurance shall provide that such policies or certificates shall not be canceled or materially changed without at least thirty (30) days prior written notice to ISBA, Agency and County.

~~(e)~~1.1.3 \_\_\_\_\_[Intentionally Omitted]

~~(e)~~• Cooperation. Agency and ISBA shall cooperate to coordinate insurance coverage, insurance benefits, forms of policies (including obtaining condominium policies where it is commercially reasonable to do so) and insurers, to the extent it is commercially reasonable to do so, to reduce potential conflicts among insurers.

~~(e)~~• Insurance Options. All insurance required in this Section 10.1 to be provided by ISBA (or a Sub-sublessee) may be provided under (i) an individual policy covering the applicable Unit, or portion thereof, (ii) a blanket policy or policies which includes other liabilities, properties and locations, (iii) a plan of self-insurance, provided that any person or entity so self-insuring, except the State of Idaho providing insurance through its self-insurance program, notifies ISBA, County and Agency of its intent to self-insure and agrees that upon request it shall deliver to ISBA, County and Agency each calendar year a copy of its annual report which discloses that such person has \$100,000,000 of both net worth and net current assets, or (iv) a combination of any of the foregoing insurance programs.



~~Section 10.2~~•

Hold Harmless and Indemnification

~~(a)~~• ISBA's Obligation. ISBA shall indemnify and hold Agency and County, and their officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorneys' fees (collectively referred to in this section as "claim") arising out of ISBA's operations under this Fleet Parking Sublease (including, without limitation, operations of Sub-sublessees or any subtenant or occupant) which may be imposed upon or incurred by or asserted against Agency or County, or any of their officers, agents, and employees by reason of any of the following occurrences during the term of this Fleet Parking Sublease (provided, however, ISBA shall have no obligation to indemnify and hold Agency or County, or any of their officers, agents, and employees harmless from and against any matter to the extent it arises from the active negligence or willful act of Agency or County, or any of their officers, agents, or employees or from conduct resulting in an award of punitive damages against Agency or County, or any of their officers, agents, and employees) for:

~~(i)~~• Any work or thing done in, on or about the Fleet Parking Units, and the improvements thereon or any part thereof, including, without limitation, the construction of the initial improvements, any subsequent improvements or any sublessee improvements; or

~~(ii)~~• Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Fleet Parking Units and the improvements thereon or any part thereof; or

~~(iii)~~• Any negligence on the part of ISBA or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or

~~(iv)~~• Any accident, injury, or damage to any person or property occurring in, on, or about the Fleet Parking Units and the improvements thereon or any part thereof; or

~~(v)~~• Any failure on the part of ISBA to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Fleet Parking Sublease to be performed or complied with on its part.

If any action or proceeding is brought against Agency or County, or any of their officers, agents, or employees by reason of any such claim, ISBA, upon written notice from Agency or County, shall at ISBA's expense, resist or defend such action or proceeding by counsel selected by ISBA or ISBA's insurance carrier.

ISBA may assign some or all of its responsibility under this Section 10.2 to Sub-sublessees, and if so, include this obligation in such Sub-sublease, and in that event Agency or County may directly demand performance of the indemnity and hold harmless obligations of this Section from such assignee. No such assignment, except to Agency, shall relieve ISBA of its obligations under this Section, however.

~~(b)~~• Agency's Obligation.



Agency shall indemnify and hold ISBA, and its officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorneys' fees (collectively referred to in this section as "claim") arising out of Agency's operations under this Fleet Parking Sublease, which may be imposed upon or incurred by or asserted against ISBA or its officers, agents, and employees by reason of any of the following occurrences during the term of this Fleet Parking Sublease (provided, however, Agency shall have no obligation to indemnify and hold ISBA or its officers, agents, and employees harmless from and against any matter to the extent it arises from the active negligence or willful act of ISBA or its officers, agents, or employees or from conduct resulting in an award of punitive damages against ISBA or its officers, agents, and employees) for:

- (i) Any work or thing done in, on or about the Fleet Parking Units, and the improvements thereon or any part thereof, including, without limitation, the construction of the initial improvements (except to the extent constructed by ISBA), any subsequent improvements or any sublessee improvements; or
- (ii) Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Fleet Parking Units and Unit 301, and the improvements thereon or any part thereof; or
- (iii) Any negligence on the part of Agency or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or
- (iv) Any accident, injury, or damage to any person or property occurring in, on, or about the Fleet Parking Units and the improvements thereon or any part thereof; or
- (v) Any failure on the part of Agency to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Fleet Parking Sublease to be performed or complied with on its part.

If any action or proceeding is brought against ISBA or its officers, agents, or employees by reason of any such claim, Agency, upon written notice from ISBA, shall at Agency's expense, resist or defend such action or proceeding by counsel selected by Agency or Agency's insurance carrier.

#### Section 10.3. Waste

ISBA covenants that it will not commit or permit waste upon the Fleet Parking Units other than to the extent necessary to undertake the alteration of any building or other improvements on the Fleet Parking Units, or for the demolition and removal of any buildings or structures on any portion of the Fleet Parking Units for the purpose of constructing and erecting other improvements upon the Fleet Parking Units, all as and to the extent required or permitted in accordance with this Fleet Parking Sublease.

Agency covenants that it will not commit or permit waste upon the Fleet Parking Units other than to the extent necessary to undertake the alteration of any building or other improvements thereon, or for the demolition and removal of any buildings or structures on the

Fleet Parking Units for the purpose of constructing and erecting other improvements thereon, all as and to the extent required or permitted in accordance with this Fleet Parking Sublease.

~~Section 10.4.~~ • ISBA's Environmental Covenant

~~(a)~~ • Hazardous Substances. ISBA will not cause or permit any Hazardous Substance to be brought upon, kept, used or generated by ISBA, its agents, employees, contractors or invitees, in the operation of the Fleet Parking Units, unless the use or generation of the Hazardous Substance is necessary for the prudent operation of the Fleet Parking Units and no functional and reasonably economic nonhazardous substance or process which does not generate Hazardous Substances can be used in place of the Hazardous Substance or the process which generates the Hazardous Substances.

~~(b)~~ • Environmental Laws. ISBA will, with respect to the Fleet Parking Units, at all times and in all respects comply with all Environmental Laws. ISBA's duty of compliance with Environmental Laws includes, without limitation, the duty to undertake the following specific actions:

~~(i)~~ • ISBA will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including, without limitation, permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Fleet Parking Units; and

~~(ii)~~ • except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated and/or disposed by ISBA from the Fleet Parking Units will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

~~Section 10.5.~~ • ISBA's Environmental Indemnity

To the extent permitted by law, ISBA shall indemnify and hold Agency harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorneys' fees and disbursements), which accrue to or are incurred by Agency and arise directly or indirectly from or out of, or are in any way connected with the following as they relate to time periods after, and actions after, ISBA's possession of the Fleet Parking Units:

~~(i)~~ • any activities on the Fleet Parking Units during ISBA's possession or control of the Fleet Parking Units which directly or indirectly result in the Fleet Parking Units becoming contaminated with Hazardous Substances;

~~(ii)~~ • the discharge, spill, release, threatened release or presence in, on, to, under, from or about the Fleet Parking Units of any Hazardous Substance as a result of the acts or omissions of ISBA;

- ~~(iii)~~• the use, generation, storage, treatment, transportation, disposal, release, threatened release or discharge by ISBA of any Hazardous Substances;
- ~~(iv)~~• any personal injury (including wrongful death) or damage to real or personal property arising from or related to Hazardous Substances which occurs as a result of the acts or omissions of ISBA;
- ~~(v)~~• the failure or alleged failure of ISBA to comply with any Environmental Laws;
- ~~(vi)~~• the discovery of Hazardous Substances on the Fleet Parking Units (caused by ISBA); and
- ~~(vii)~~• the cleanup of Hazardous Substances from the Fleet Parking Units which Hazardous Substances are located on the Fleet Parking Units resulting from time periods and actions which are the subject of the indemnity of this Section.

ISBA may assign some or all of its responsibility under this Section 10.5 to Sub-sublessees, and if so, include this obligation in such Sub-sublease, and in that event Agency may directly demand performance of the foregoing environmental indemnity obligations of this Section from such assignee. No such assignment, however, shall relieve ISBA of its obligations under this Section 10.5.

#### ~~Section 10.6~~• Agency's Environmental Representations

- ~~(i)~~• Neither Agency nor, to the best knowledge of Agency, any other person, has stored, disposed or released in, on or about the Civic Plaza Condominiums any Hazardous Substances the removal or remediation of which is or could be required, or the maintenance of which is prohibited or penalized, by any applicable Environmental Laws, and any such real property is free from all such Hazardous Substances;
- ~~(ii)~~• Agency has not at any time disposed or caused to be disposed at any location any Hazardous Substances generated or existing as a result of Agency's leasehold interest in the Civic Plaza Condominiums in a manner which will or could cause ISBA to be or become liable for a fine or penalty or a monetary or performance obligation arising from or related to such disposal;
- ~~(iii)~~• to the best knowledge of Agency in connection with its lease of the Civic Plaza Condominiums, Agency has no contingent liability in connection with the release of any Hazardous Substances into the environment;
- ~~(iv)~~• Agency has not given any release or waiver of liability that would waive or impair any claim based on Hazardous Substances to (a) a prior owner or occupant of the Civic Plaza Condominiums, or (b) any party who may be potentially responsible for the presence of Hazardous Substances on any such real property;
- ~~(v)~~• Agency has not made any promises of indemnification to any party regarding Hazardous Substances which may be located on the Civic Plaza Condominiums;

~~(vi)~~• no asbestos-containing materials are present in or on the Civic Plaza Condominiums; and

~~(vii)~~• no in-service underground storage tanks are located on the Civic Plaza Condominiums.

Section 10.7.• Agency's Environmental Indemnity

To the extent permitted by law, Agency shall indemnify and hold ISBA harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorneys' fees and disbursements), which accrue to or are incurred by ISBA and arise directly or indirectly from or out of, or are in any way connected with the following as they relate to any period prior to the Commencement Date and for actions prior to the Commencement Date;

~~(i)~~• the inaccuracy of the certifications contained herein;

~~(ii)~~• any activities on the Civic Plaza Condominiums during Agency's possession or control of the Civic Plaza Condominiums which directly or indirectly resulted in the Civic Plaza Condominiums becoming contaminated with Hazardous Substances;

~~(iii)~~• the discharge, spill, release, threatened release or presence in, on, to, under, from or about the Civic Plaza Condominiums of any Hazardous Substance as a result of the acts or omissions of Agency;

~~(iv)~~• the use, generation, storage, treatment, transportation, disposal, release, threatened release or discharge by Agency of any Hazardous Substances;

~~(v)~~• any personal injury (including wrongful death) or damage to real or personal property arising from or related to Hazardous Substances which occurred as a result of the acts or omissions of Agency;

~~(vi)~~• the failure or alleged failure of Agency to comply with any Environmental Laws;

~~(vii)~~• the discovery of Hazardous Substances on the Civic Plaza Condominiums; and

~~(viii)~~• the cleanup of Hazardous Substances from the Civic Plaza Condominiums.

Agency acknowledges that it will be solely responsible for all such costs and expenses relating to the cleanup of Hazardous Substances (resulting from time periods and actions which are the subject of the indemnity of this Section) from the Civic Plaza Condominiums.

~~Σεξτιον 10.8.~~ Agency's Environmental Covenant

~~(α)~~• Hazardous Substances. Agency will not cause or permit any Hazardous Substance to be brought upon, kept, used or generated by Agency, its agents, employees, contractors or invitees, in the operation of the Fleet Parking Units, unless the use or generation of the Hazardous Substance is necessary for the prudent operation of the Fleet Parking Units and no functional and reasonably economic nonhazardous substance or process which does not generate Hazardous Substances can be used in place of the Hazardous Substance or the process which generates the Hazardous Substances.

~~(β)~~• Environmental Laws. Agency will, with respect to the Fleet Parking Units, at all times and in all respects comply with all Environmental Laws. Agency's duty of compliance with Environmental Laws includes, without limitation, the duty to undertake the following specific actions:

~~(γ)~~• Agency will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including, without limitation, permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Civic Plaza Condominiums; and

- except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated and/or disposed by Agency from the Civic Plaza Condominiums will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

~~Σεξτιον 10.9.~~ County Warranties and Indemnity

Pursuant to Sections 10.2 and 10.3 of the Surplus Ground Lease, County has provided Agency with certain covenants, warranties and indemnities with respect to the environmental condition of the Civic Plaza Condominiums. Agency hereby agrees to enforce such covenants, warranties and indemnification obligations against County on ISBA's behalf. ISBA shall be entitled to reimbursement from Agency, to the extent collected from County, for all costs and expenses incurred by ISBA or any Sub-sublessees (including, without limitation, reasonable attorneys' fees and any costs, and any costs and expenses incurred to remediate or remove Hazardous Substances from the Civic Plaza Condominiums) in connection with (i) the breach by County of any warranties or covenants contained in Section 10.2 of the Surplus Ground Lease, or (ii) the discovery of any Hazardous Substances on the Civic Plaza Condominiums which are covered by County's indemnity obligation in Section 10.3 of the Surplus Ground Lease.

## **XI. DAMAGE AND DESTRUCTION**

#### Σεξτιον 11.1.●

#### Obligation to Restore

Except as provided in the Condominium Documents with respect to the requirements to provide subjacent and lateral support, ISBA shall have no obligations to restore any improvement which is damaged by fire or other casualty, whether partial or total. No loss or damage by fire or any other cause resulting in either partial or total destruction of any buildings or improvements now or hereafter located in, upon or on the Fleet Parking Units, or any fixtures, equipment or machinery used or intended to be used in connection with the Fleet Parking Units or the improvements thereon, shall operate to terminate this Fleet Parking Sublease or to relieve or discharge ISBA from the payment of any amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by ISBA, nor shall such loss operate to relieve or discharge Agency from the performance or observance of any of the agreements, covenants, conditions herein contained to be performed or observed by Agency. In the event the Condominium Documents obligate ISBA or Agency or any subtenant of ISBA or Agency to restore an improvement which is damaged or destroyed by fire or other casualty, Agency and ISBA hereby covenant to repair and/or reconstruct any improvements so damaged or destroyed to the extent required by the Condominium Documents, assuming full compliance with this Fleet Parking Sublease. Agency's or ISBA's failure to make such full repair and restoration under any conditions in which such party is required so to do shall constitute default hereunder. In the event a damaged or destroyed building is not restored, the Fleet Parking Units shall be cleared as required in the Condominium Documents. Any insurance proceeds payable on account of damage or destruction of the Fleet Parking Units and not used to repair or restore the Fleet Parking Units shall be payable to ISBA.

## **XII. EMINENT DOMAIN**

#### Σεξτιον 12.1.●

#### Definition of Taking

The term "taking" as used herein means the exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power and any purchase or other acquisition by such governmental or other permitted authority in lieu of condemnation, including, but not limited to, a voluntary sale, assignment or conveyance of an estate or interest in property in lieu of condemnation, provided that such purchase or other acquisition in lieu of condemnation shall not constitute a taking unless consented to by Agency and ISBA, which consent may be withheld for any reason or without reason.

#### Σεξτιον 12.2.●

#### Total Taking - Fleet Parking Units.

In the case of a taking of the fee of the Fleet Parking Units or the improvements thereon, this Fleet Parking Sublease shall terminate as of the date on which such taking shall be effective. In case of a taking of such substantial part of the Fleet Parking Units or the improvements thereon as shall result, as determined by an independent member of the American Institute of Real Estate Appraisers (or if such organization or any successor or organization no longer exists, any person having knowledge and experience in valuing properties similar to the Fleet Parking Units and the improvements thereon, selected by Agency and approved by ISBA and County), in



the Fleet Parking Units and the improvements thereon remaining after such taking (even if restoration were made) being not economically feasible for the use being made of the Fleet Parking Units and the improvements thereon at the time of such taking, ISBA, at its option, may terminate this Fleet Parking Sublease by written notice given to Agency and County within sixty (60) days after such taking. Any taking of the Fleet Parking Units or the improvements thereon of the character referred to in this Section which results in the termination of this Fleet Parking Sublease is referred to as a "total taking."

#### Σεχτιον 12.3.: Partial Taking

In the event of a taking of a portion of the Fleet Parking Units or the improvements thereon which is not a total taking (a "partial taking"), then:

(α). Lease to Remain in Effect. This Fleet Parking Sublease shall remain in full force and effect as to the portion of the Fleet Parking Units and the improvements thereon remaining immediately after such partial taking and

(β). Restoration on Partial Taking. ISBA or Sub-sublessees will promptly commence and complete restoration of all portions of the Fleet Parking Units and the improvements thereon as nearly as possible to its condition and character immediately prior to such partial taking, except for any reduction in area caused thereby and otherwise in compliance with the provisions of the Condominium Documents with respect to restoration after a taking.

#### Σεχτιον 12.4.: Application of Awards

Agency and ISBA agree (and County agrees pursuant to the Surplus Ground Lease) to cooperate to insure that each of Agency, ISBA and County receives the full fair market value of their interest on account of a taking. Awards and other payments on account of a taking of the Fleet Parking Units or the improvements thereon (less costs, fees and expenses incurred by County, Agency, ISBA in connection with the collection thereof) shall be allocated and paid, subject to the Condominium Documents and Surplus Ground Lease, to Agency and ISBA (and to any Sub-sublessees to the extent allowed pursuant to the applicable Sub-sublease) in equal priority, in the ratio as nearly as practicable which values their respective leasehold interests, including, but not limited to, good will, future cash flow and future development opportunities.

#### Σεχτιον 12.5.: Notice of Taking; Single Proceeding

In case of a taking of all or any part of the Fleet Parking Units or the improvements thereon or the commencement of any proceeding or negotiations which might result in such taking, the party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party. Upon receipt of such notice, Agency shall immediately give notice (or cause County to give notice) of such proceeding or negotiations to all interested parties. County, Agency and ISBA shall jointly prosecute their claims for an award in a single proceeding, in which any Sub-sublessee (to the extent permitted pursuant to the applicable Sub-sublease) may join. County and Agency shall not prosecute separate claims for an award, except that Agency, ISBA and any Sub-sublessee (subject to the provisions of the applicable Sub-sublease) may prosecute separate claims for

awards for moving expenses or on account of the taking of any removable trade fixtures or for the unamortized portion of any leasehold improvements made by any Sub-sublessee for loss of goodwill of Sub-sublessee's business and for a relocation allowance, but only to the extent that any such separate award shall not diminish the award made to County, ISBA and Agency with respect to their joint claim.

~~Σεχτιον 12.6.~~ • Disbursement of Awards on Partial Taking

All awards or other payments received on account of a partial taking shall be held and disbursed in the same manner as insurance proceeds, except that any portion of such award(s) remaining after completion of any restoration shall be disbursed to the parties pursuant to Article XI.

### **XIII. DEFAULT**

~~Σεχτιον 13.1.~~ • Default by ISBA

~~(α)~~ • Events of Default. Any of the following occurrences or acts shall constitute an event of default:

~~(i)~~ • If ISBA at any time during the term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings in law, in equity or before any administrative tribunal which have or might have the effect of preventing ISBA from complying with the terms of this Fleet Parking Sublease) shall fail to observe or perform any of ISBA's covenants, agreements or obligations hereunder. If an event of default has occurred by ISBA and is continuing under the Condominium Documents with respect to the Fleet Parking Units. If ISBA transfers or suffers an involuntary transfer of this Fleet Parking Sublease or the Fleet Parking Units or any part thereof or of any improvement thereon in violation of this Fleet Parking Sublease, and

~~(ii)~~ • if such failure is not cured within thirty (30) days after receipt of written notice thereof by ISBA, or

~~(iii)~~ • if this Fleet Parking Sublease specifies a period for cure, if such failure is not cured within such period, and as to which no period is otherwise specified and which is susceptible of cure, within thirty (30) days after Agency's written notice to ISBA specifying such failure except as provided in the following subsection; and

~~(iv)~~ • in the case of any curable failure referred to in clause (a)(i) which cannot with diligence be cured within the cure period therein specified, if ISBA shall fail to commence to cure within such specified cure period and thereafter to prosecute continuously and to complete the curing of such failure with diligence, it being intended, in connection with a curable failure not susceptible of being cured with diligence within such cure period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence.



~~(B)~~• Remedies.

~~(+)~~• Other Default. Subject to the rights of ISBA, its assignees, and any Sub-sublessees, so long as such parties are not in default, upon the occurrence of any default under this Fleet Parking Sublease, Agency may exercise any of the rights and remedies set forth in subsections (A), (B) and (C) below with respect to a default:

~~(A)~~• The right of Agency to seek an injunction or specific performance to cause ISBA to comply with the terms of this Fleet Parking Sublease;

~~(B)~~• The right of Agency to cure the default and to charge ISBA for Agency's cost for such cure, plus interest at the Default Rate, to be paid by ISBA; and

~~(X)~~• The right of Agency to sue ISBA for damages.

~~(+)~~• Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to ISBA or Agency is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

~~Σεχτιον 13.2.~~• Default by Agency

In the event Agency shall fail to perform or observe any of the covenants or provisions contained in this Fleet Parking Sublease on the part of Agency to be performed or observed within thirty (30) days after written notice from ISBA to Agency specifying the particulars of such default or breach of performance, or in the case of any curable failure which cannot with diligence be cured within such thirty (30) day period, if Agency shall fail to commence to cure within such specified cure period and thereafter prosecute and complete the curing of such failure with diligence, it being intended, in connection with a curable failure not susceptible of being cured with diligence within such cure period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence, then in that event Agency shall be responsible to ISBA for any and all actual damages sustained by ISBA and any Sub-sublessees, either directly or indirectly as a result of Agency's default.

In the event of an Agency default in addition to collecting damages as set forth above, ISBA shall be entitled to the following remedies:

~~(+)~~• The right of ISBA to seek an injunction or specific performance to cause Agency to comply with the terms of this Fleet Parking Sublease; and

~~(+)~~• The right of ISBA to cure the default and/or to sue Agency for damages.

~~Σεχτιον 13.3.~~• Abandonment

ISBA shall not vacate or abandon the Fleet Parking Units or the improvements thereon at any time during this Fleet Parking Sublease term, and if ISBA shall abandon, vacate or surrender the Fleet Parking Units or the improvements thereon or be dispossessed by process of law or otherwise, any furniture, trade fixtures, business equipment or other personal property belonging to ISBA and left on the Fleet Parking Units or any portion thereof which has been abandoned, shall, at the option of Agency, be deemed to be abandoned and title thereto shall thereupon pass to Agency without any payment or allowance whatever by Agency on account of such property. In such event, such property may be retained by Agency as Agency's property or be disposed of, without accountability, in such manner as Agency elects, or if Agency shall give written notice to ISBA to remove such property such property shall be removed by ISBA at ISBA's sole cost and expense.

Σεχτιον 13.4.: ADR Provision

In the event that a dispute arises between the parties concerning (i) the meaning or application of the terms of, or (ii) an asserted breach of this Fleet Parking Sublease, the parties shall meet and confer in a good faith effort to resolve their dispute. The first such meeting shall occur within thirty (30) days of the first written notice from either party evidencing the existence of the dispute. The Executive Director of the Agency and the Executive Director of the ISBA shall both be included among the individuals representing the parties at the first such meeting. If the parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the parties may mutually agree before resorting to litigation or to arbitration. Should the parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process of structured negotiation, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

Σεχτιον 13.5.: Limitation of Agency's Liability

ISBA agrees that it shall have no recourse with respect to the breach of any obligation of Agency under this Fleet Parking Sublease or for any claim based upon this Fleet Parking Sublease or otherwise against Agency or against any officer, employee, or attorney, past, present, or future, of Agency or against any person other than Agency, and against Agency, except only to the extent of the value of Agency's leasehold estate in, and revenues derived from, Units 301, 302A and 302B of the Civic Plaza Condominiums, whether by virtue of a constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Fleet Parking Sublease, or otherwise. Except as provided in the next paragraph, ISBA shall satisfy any judgment for any such breach only out of the value of Agency's leasehold estate in, and revenues derived from, Units 301, 302A and 302B of the Civic Plaza Condominiums, and by ISBA's execution and delivery hereof and as part of the consideration for Agency's obligations hereunder, ISBA hereby waives all liability other than that preserved by this section and waives any right to satisfy any judgment by resort to any asset other than the value of, or revenues derived from, Units 301, 302A and 302B of the Civic Plaza Condominiums.

Notwithstanding the foregoing, nothing contained in this section shall:

- (i) limit Agency's liability to an amount less than lawfully available funds from which to complete or pay its obligations hereunder, insurance proceeds received or receivable by Agency, or any funds received or receivable by Agency from Agency's right to recover from County or others for causing or contributing to such breach of any obligation of Agency under this Fleet Parking Sublease; or
- (ii) affect or diminish any rights of any person or entity against any other person or entity arising from acts of bad faith, or misappropriation or misapplication of any funds if such action constitutes fraud.

This section shall survive termination, cancellation, completion, or expiration of this Fleet Parking Sublease.

#### **XIV. GENERAL**

##### ~~Section 14.1.~~ Estoppel Certificates

Either party to this Fleet Parking Sublease shall, promptly upon the request of the other party (but in any event within five (5) business days), execute, acknowledge and deliver to or for the benefit of the other party, from time to time and without cost to the requesting party, its certificate certifying (1) that this Fleet Parking Sublease is unmodified and in full force and effect (or, if there have been modifications, that this Fleet Parking Sublease is in full force and effect, as modified, and stating the modifications), (2) the dates, if any, to which all rents due hereunder have been paid, (3) whether there are then existing any charges, offsets or defenses against the enforcement of any agreement, covenant or condition hereof on the part of the party requesting the certificate to be performed or observed (and, if so, specifying the same), (4) whether there are then existing any defaults known to the party delivering the certificate on the part of the party requesting the certificate in the performance or and (5) observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser, Sub-sublessee, or trustee or beneficiary under a deed of trust of the Fleet Parking Units or the improvements thereon or the leasehold estate hereunder or any part thereof. Upon the request of ISBA, Agency shall cause the County to deliver an estoppel certificate containing the foregoing information with respect to the Surplus Ground Lease.

##### ~~Section 14.2.~~ Waiver

No waiver of any default under this Fleet Parking Sublease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Fleet Parking Sublease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by ISBA or Agency shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by ISBA or Agency, as the case may be. The receipt

and acceptance by Agency of rent with knowledge of any default under this Fleet Parking Sublease shall not constitute or operate as a waiver of such default. Failure by ISBA or Agency, as the case may be, to enforce any of the terms, covenants or conditions of this Fleet Parking Sublease for any length of time or from time to time shall not be deemed to waive or decrease the right of Agency to insist thereafter upon strict performance by ISBA.

~~Section 14.3.~~      Notices

All notices required or permitted pursuant to this Fleet Parking Sublease shall be in writing. All notice between the parties shall be deemed received when personally delivered or when deposited in the United States mail postage prepaid, registered or certified, with return receipt requested, or by recognized courier delivery (e.g. Federal Express, Airborne, Burlington, etc.) addressed to the parties, as the case may be, at the address set forth below or at such other addresses as the parties may subsequently designate by written notice given in the manner provided in this section:

~~(i)~~ If intended for County shall be addressed to:

Chairman of Ada County Board of County Commissioners  
200 West Front Street, Third Floor  
Boise, Idaho 83702

~~(ii)~~ If intended for Agency shall be addressed to:

Executive Director  
805 West Idaho, Suite 403  
Boise, Idaho 83702

~~(iii)~~ If intended for ISBA shall be addressed to:

Executive Director  
960 Broadway, Suite 500  
P.O. Box 2802  
Boise, Idaho 83701

Notice personally delivered will be effective upon delivery to an authorized representative of the party at the designated address. Notice sent by mail or courier in accordance with the above will be effective upon receipt or upon the date the party refuses to accept receipt, or the date upon which such notice is returned to sender as undeliverable. The providing of copies of notices to the parties' respective counsel is for information purposes only and shall not constitute notice to the parties unless notice has also been given to the parties as above provided.

Whenever pursuant to a provision of this Fleet Parking Sublease the approval, consent or other action of a party will be deemed to be given or taken or a determination will become final and binding within a period of time, the item submitted or request for action shall be made in writing to such party and shall be accompanied by written notice stating prominently at the top of

the first page thereof that it is being submitted or requested pursuant to a provision of this Fleet Parking Sublease identified in such notice and stating that such item will be deemed approved or that a specified action will be deemed taken or a determination will become final and binding within an identified period of time (as specified by such Fleet Parking Sublease provision) unless objection is made or other action taken within the time stated in such notice. No approval, consent or other action of a party shall be deemed given or taken nor will a determination become final and binding under any term of this Fleet Parking Sublease providing therefore unless the requirements of this paragraph are met.

Σεχτιον 14.4.: Identity and Authority of Agency

Each of the persons executing this Fleet Parking Sublease on behalf of Agency does hereby covenant and warrant that Agency has full right, power and authority to enter into this Fleet Parking Sublease and to carry out all actions contemplated by this Fleet Parking Sublease, that the execution and delivery of this Fleet Parking Sublease were duly authorized by proper action of Agency and no consent, authorization or approval of any person, board or other entity is necessary in connection with such execution and delivery or to carry out all actions contemplated by this Fleet Parking Sublease, except as have been obtained and are in full force and effect, and that this Fleet Parking Sublease constitutes the valid, binding and enforceable obligation of Agency. Upon ISBA's request, Agency shall provide ISBA with evidence reasonably satisfactory to ISBA confirming the foregoing covenants and warranties.

Σεχτιον 14.5.: Identity and Authority of ISBA

Each of the persons executing this Fleet Parking Sublease on behalf of ISBA does hereby covenant and warrant that ISBA has full right, power and authority to enter into this Fleet Parking Sublease and to carry out all actions contemplated by this Fleet Parking Sublease, that the execution and delivery of this Fleet Parking Sublease were duly authorized by proper action of ISBA and no consent, authorization or approval of any person, board or other entity is necessary in connection with such execution and delivery or to carry out all actions contemplated by this Fleet Parking Sublease, except as have been obtained and are in full force and effect, and that this Fleet Parking Sublease constitutes the valid, binding and enforceable obligation of ISBA. Upon Agency's request, ISBA shall provide Agency with evidence reasonably satisfactory to Agency confirming the foregoing covenants and warranties.

Σεχτιον 14.6.: Attorneys' Fees

In the event of any action or proceeding at law or in equity between ISBA and Agency to enforce any provision of this Fleet Parking Sublease or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and court costs (including attorneys' fees and court costs on appeal) incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

Σεχτιον 14.7.: Agency's Covenant of Quiet Enjoyment

Agency hereby covenants to ISBA that Agency has a good and marketable leasehold interest in and to the Fleet Parking Units, free and clear of all claims, liens and encumbrances, except those claims, liens and encumbrances set forth in Exhibit C, to the extent such claims, liens and encumbrances constitute valid encumbrances on the Fleet Parking Units. Upon ISBA paying the rent as described in Section 3.6 and the amounts payable hereunder and observing and performing all of the covenants, conditions and provisions on ISBA's part to be observed and performed hereunder, Agency covenants to ISBA that ISBA shall peaceably hold and quietly enjoy, subject to claims, liens and encumbrances identified in Exhibit C (to the extent such claims, liens and encumbrances constitute valid encumbrances on the Fleet Parking Units), the Fleet Parking Units for the entire Term hereof and any extensions without hindrance, molestation or interruption by Agency or any party claiming through or under Agency.

~~Σεχτιον 14.8:~~ • No Joint Venture

It is agreed that nothing contained in this Fleet Parking Sublease shall be deemed or construed as creating a partnership or joint venture between ISBA and Agency or between ISBA and any other party or Agency and any other party or cause ISBA to be responsible in any way for the debts or obligations of Agency or any other party or cause Agency to be responsible in any way for the debts or obligations of ISBA or any other party.

~~Σεχτιον 14.9:~~ • Provisions Subject to Applicable Law

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Fleet Parking Sublease invalid, illegal or unenforceable under any applicable law. If any term of this Fleet Parking Sublease shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Fleet Parking Sublease shall in no way be affected thereby.

~~Σεχτιον 14.10:~~ • Default Rate

Any sums owing hereunder and not paid within ten (10) calendar days after the date when such sums are due shall bear interest at the rate set forth in Idaho Code Section 28-22-104(2) or any successor section (the "Default Rate"). Payment of such interest shall not excuse or cure any default by Agency or ISBA under this Fleet Parking Sublease.

~~Σεχτιον 14.11:~~ • Surrender; Holding Over

(α) • Surrender of the Fleet Parking Units. At the end of the term or other sooner termination of this Fleet Parking Sublease, ISBA shall surrender and deliver to Agency the Fleet Parking Units and the possession of the Fleet Parking Units, together with all improvements and personal property Agency elects to retain on the Fleet Parking Units pursuant to the terms of this Fleet Parking Sublease, in the condition required for the Fleet Parking Units and improvements to be maintained under this Fleet Parking Sublease, free and clear of all occupancies other than those granted nondisturbance pursuant to the provisions of this Fleet Parking Sublease, free and clear of all liens and encumbrances other than those, if any, presently existing or created by



Agency, without payment or allowance whatever by Agency on account of any such improvements and personal property.

Concurrently with the surrender of the Fleet Parking Units, as herein provided, ISBA agrees, if requested by Agency and for the benefit of Agency, to execute, acknowledge and deliver to Agency a quitclaim deed to the Fleet Parking Units and such other instruments as may be reasonably requested by Agency to evidence or otherwise effect such passage and vesting of title to the improvements and personal property, if any, retained on the Fleet Parking Units.

~~(B)~~ • Holding Over. If ISBA shall retain possession of the Fleet Parking Units or the improvements thereon or any part thereof without Agency's prior written consent following the expiration or sooner termination of this Fleet Parking Sublease for any reason, then ISBA shall pay to Agency for each day of such retention Agency's then current daily parking rate for each parking stall located in the Fleet Parking Units. These payments shall be applicable to a holding over of any kind by ISBA. ISBA shall also indemnify and hold Agency harmless from any loss or liability resulting from delay by ISBA in surrendering the Fleet Parking Units, including, without limitation, any claims made by any succeeding tenant founded on such delay. ISBA shall be only a tenant at sufferance, whether or not Agency accepts any rent from ISBA while ISBA is holding over without Agency's written consent.

~~Section 14.12~~ • Unavoidable Delay; Force Majeure

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (except for financial ability), shall excuse the performance, except for the payment of money, by such party for a period equal to any such prevention, delay or stoppage.

~~Section 14.13~~ • Inspection

Agency and its agents, upon reasonable notice and opportunity to be accompanied by ISBA's representatives, may enter and examine the Fleet Parking Units and the improvements thereon at all reasonable times in order to determine whether ISBA is in compliance with the provisions hereof.

Agency covenants and agrees to keep business or proprietary information of ISBA or its Sub-sublessees or occupants, delivered to or inspected by Agency pursuant to the terms of this Fleet Parking Sublease or in the course of the exercise by Agency of its rights and remedies under this Fleet Parking Sublease confidential (although non-confidential summaries of any such information prepared by Agency in consultation with ISBA may be publicly disclosed). Such information, which ISBA has identified in writing as confidential or proprietary, shall not be disclosed by Agency except to its authorized officers, agents and employees on a confidential basis, to the extent necessary in connection with any proposed transfer or assignment of any of Agency's interest, in connection with an adversary administrative or a judicial proceeding in which Agency is involved and in which Agency may be required to divulge such information, to

the extent required by the Idaho public records laws, and except as necessary by Agency to pursue and enforce its rights and remedies under this Fleet Parking Sublease.

~~Section 14.14.~~• County Approvals

Agency acknowledges that certain provisions in this Fleet Parking Sublease require County approval, and that the obligation of County to consider such matters and/or provide such approvals are set forth in the Surplus Ground Lease. Agency agrees in all such circumstances, and upon request of ISBA, to use its best efforts to cause County to comply with the terms of the Surplus Ground Lease and to respond to any requests for approval within the time frames set forth in the Surplus Ground Lease.

~~Section 14.15.~~• [Intentionally Omitted]

~~Section 14.16.~~• Miscellaneous

~~(a)~~• No Payment in Violation of Law. Agency and ISBA shall each not pay any money or provide any other consideration of any kind whatsoever or employ, contract with or sublease to or with any person or entity if such payment of money or provision of other consideration would violate or would have a reasonable likelihood of violating any law, statute, ordinance, directive, regulation, decision or opinion now or hereafter enacted or promulgated by County, Boise City, the State of Idaho, or any governmental, public or judicial body, agency or department relating in any manner to conflicts of interest or if such payment or provision of consideration is to a person or entity which has discretionary authority or power of any kind over the development, use or occupancy of the Fleet Parking Units or the improvements thereon or any part thereof or with respect to the enforcement or interpretation of this Fleet Parking Sublease.

~~(b)~~• Third Parties. Nothing in this Fleet Parking Sublease shall be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein, and no rights, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed a third party beneficiary of any of the provisions herein, except as expressly provided in Section 2.6 and in Subsection (k) below.

~~(c)~~• Singular and Plural. The words "ISBA" and "Agency" as used herein shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter.

~~(d)~~• [Intentionally Omitted]

~~(e)~~• Captions; Time. The captions used herein are for convenience of reference only and are not a part of this Fleet Parking Sublease and do not in any way limit or amplify the terms and provisions hereof. Time is of the essence of each and all of the agreements, covenants and conditions of this Fleet Parking Sublease.



~~(g)~~• Choice of Law. This Fleet Parking Sublease shall be interpreted in accordance with and governed by the laws of the State of Idaho. The language in all parts of this Fleet Parking Sublease shall be, in all cases, construed according to its fair meaning and not strictly for or against ISBA or Agency.

~~(g)~~• Entire Agreement. This Fleet Parking Sublease constitutes the entire agreement between ISBA and Agency with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Fleet Parking Sublease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by ISBA and Agency.

~~(g)~~• Counterparts. This Fleet Parking Sublease may be executed in any number of counterparts, and once so executed by all parties hereto, each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one (1) agreement.

~~(g)~~• Amendments to this Fleet Parking Sublease. ISBA and Agency agree, in addition to the error correction process in Section 2.5 herein, to mutually consider reasonable requests for amendments to this Fleet Parking Sublease which may be made by any of the parties hereto, lending institutions, bond counsel, or financial consultants to Agency or ISBA, provided such requests are consistent with this Fleet Parking Sublease and would not substantially alter the basic business terms included herein. No amendment to this Fleet Parking Sublease, except those permitted by Section 2.5 hereof, shall be effective without the consent of County, which consent shall not be unreasonably withheld.

~~(g)~~• Venue and Jurisdiction. As a material part of the consideration for this agreement, each of the parties hereto agrees that in the event any legal proceeding shall be instituted between them, such legal proceeding shall be instituted in the courts of the District Court for the Fourth Judicial District, State of Idaho or the United States District Court, District of Idaho, and each of the parties hereto agrees to submit to the jurisdiction of such courts. Further, Agency agrees (and County has agreed pursuant to the Surplus Ground Lease) that it will not object to any request or motion by ISBA for appointment of a judge with chambers outside of Ada County to preside over such legal proceeding.

~~(g)~~• Obligation to Refrain From Discrimination. ISBA covenants by and for ISBA and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Fleet Parking Units, nor shall ISBA or any person claiming under or through ISBA establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Fleet Parking Units. The foregoing covenants shall run with the land.

~~(g)~~• Form of Nondiscrimination and Nonsegregation Clauses. ISBA shall refrain from restricting the rental, sale, or lease of the Fleet Parking Units on the basis of age, race,

color, creed, religion, sex, marital status, disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i)• In deeds:

"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any age, race, color, creed, religion, sex, marital status, disability national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(ii)• In leases:

"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, religion, sex, marital status, disability national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

(iii)• In contracts:

"There shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, religion, sex, marital status, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

(tt)• Approvals by Agency and ISBA. Except as otherwise provided herein, neither Agency nor ISBA shall unreasonably withhold or delay any approvals or consents required by it to be given as provided in this Fleet Parking Sublease or the Covenants, or to effect the purposes of the Surplus Ground Lease. The standard for determining whether an action, a delay in action or a failure to act may be deemed "reasonable" or "unreasonable" for purposes of this Covenant shall be that of a reasonable and experienced person engaged in a commercial real property development or transaction.

(v)• Diligence Required. Wherever Agency or ISBA is required to take an action pursuant to this Fleet Parking Sublease or in furtherance of the Surplus Ground Lease, such party shall act in good faith and with the diligence of a reasonable and experienced person engaged in a commercial real property development or transaction to complete such action.

(w)• Exhibits Made a Part. All exhibits which are attached to this Fleet Parking Sublease are made a part hereof by this reference.

(x)• Effective Date. The effective date of this Fleet Parking Sublease shall be the date set forth on the first page of this Fleet Parking Sublease.

[end of text; signature page to follow]

IN WITNESS WHEREOF, Agency and ISBA have executed this Fleet Parking Sublease by proper persons thereunto duly authorized as of the date first hereinabove written.

AGENCY: URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO  
aka CAPITAL CITY DEVELOPMENT CORPORATION,  
an independent public body politic and corporate  
constituting a public instrumentality of the State of Idaho

By: \_\_\_\_\_  
Executive Director

ATTEST:

\_\_\_\_\_  
Secretary

ISBA: IDAHO STATE BUILDING AUTHORITY, an independent  
public body corporate and politic of the State of Idaho

By: \_\_\_\_\_  
Chairman

THIS FLEET PARKING SUBLEASE IS APPROVED AS TO FORM AND CONTENT BY:

COUNTY:

BOARD OF ADA COUNTY COMMISSIONERS

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

ATTEST:

\_\_\_\_\_  
J. David Navarro, Ada County Clerk

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                        )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2002, before me, a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me to be the Executive Director of the URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO aka CAPITAL CITY DEVELOPMENT CORPORATION, that executed the said instrument, and acknowledged to me that such URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO aka CAPITAL CITY DEVELOPMENT CORPORATION executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                        )

On this \_\_\_\_ day of \_\_\_\_\_, in the year of 2002, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the Chariman of the IDAHO STATE BUILDING AUTHORITY, and the who subscribed the name of said limited liability company to the foregoing instrument, and acknowledged to me that such limited liability company executed the same in the name of said limited liability company.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission expires \_\_\_\_\_

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                        )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2002, before me, a  
Notary Public in and for the State of Idaho, personally appeared  
\_\_\_\_\_, known or identified to me to be the Chairman of THE  
BOARD OF ADA COUNTY COMMISSIONERS OF ADA COUNTY, IDAHO, that executed  
the said instrument, and acknowledged to me that such Board executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the  
day and year first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT A  
CONDOMINIUM PLAT MAP  
(attached)



EXHIBIT B  
LEGAL DESCRIPTIONS OF THE FLEET PARKING UNITS

The East Fleet Parking Unit 302A and the West Fleet Parking Unit 302B, as shown on the Plat for Civic Plaza Condominiums recorded in Book 85 of Plats at Pages 9420 through 9432, Instrument No. 102116493 Records of Ada County, Idaho, and defined and described in the Declaration of Covenants and Restrictions Establishing a Plan of Condominium Ownership for Civic Plaza Condominiums, recorded in the Records of Ada County, as Instrument No. 102116495 (“Declaration”).

TOGETHER WITH the percentage of the common areas appurtenant to each such Unit as set forth in the Declaration, as supplemented from time to time, which percentage shall automatically change in accordance with supplemental declarations as the same are filed of record pursuant to the Declaration, and together with additional common areas in the percentages set forth in such supplemental declarations, which percentages shall automatically be deemed to be conveyed effective as of the date of each such supplemental declaration as though conveyed hereby.

## EXHIBIT C

### APPROVED TITLE EXCEPTIONS

1. Liens for taxes and special assessments on any leasehold interest or improvements on the Fleet Parking Units not then delinquent;

2. The Surplus Ground Lease and the Covenants;

3. mechanics' liens, security interests or other encumbrances only to the extent expressly permitted pursuant to this Fleet Parking Sublease;

4. such minor defects, irregularities, encumbrances, easements, encroachments, rights-of-way, and clouds on title as normally exist with respect to properties similar in character to the Fleet Parking Units and as do not individually or in the aggregate materially interfere with or impair use of the Fleet Parking Units by ISBA or any Sub-sublessee;

5. other encumbrances approved in writing by ISBA prior to the Commencement Date;  
and

6. the following title exceptions, and any other utility, access, and other easements and rights-of-way, mineral rights, restrictions, and exceptions that will not materially interfere with or impair use of the Fleet Parking Units by ISBA or any Sub-sublessee:

a. Minerals and mineral rights, as conveyed to Union Pacific Land Resources Corporation by Mineral Deed recorded and re-recorded October 31, 1990 as Instrument Nos. 9059024 and 9059121, records of Ada County, Idaho.

b. Easement in favor of Idaho Power Company for underground power distribution line recorded July 11, 2001, as Instrument No. 101068945, records of Ada County, Idaho.

c. Agreement between Idaho Power Company and the City of Boise for an underground pipeline crossing, recorded October 18, 2001, as Instrument No. 101108091, records of Ada County, Idaho.

d. Easement in favor of Idaho Power Company for overhead and underground power distribution and communication systems and high tension transmission lines recorded July 21, 2000, as Instrument No. 100056891, records of Ada County, Idaho.

e. Development Agreement between the City of Boise and Urban Renewal Agency of Boise City, aka and dba Capital City Development Corporation, recorded April 17, 2002, as Instrument No. 102044611, records of Ada County, Idaho.

f. Matters disclosed by Record of Survey recorded March 8, 2002, as Instrument No. 102028167, records of Ada County, Idaho.

g. Matters disclosed by Record of Survey No. 5939 recorded October 1, 2002, as Instrument No. 102113148, records of Ada County, Idaho.

h. Ada County Courthouse Corridor Parking Covenants Encumbering the West Corridor Property and Avenue A Site between Ada County, Idaho, the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation, and Civic Partners Idaho, LLC, recorded October 8, 2002, as Instrument No. 102115916, records of Ada County, Idaho.

EXHIBIT D  
PART I - FORM OF AGREEMENT OF NONDISTURBANCE

(attached)

EXHIBIT D

(attached)

PART II - FORM OF ESTOPPEL CERTIFICATE

EXHIBIT D

(attached)

PART III - FORM OF TENANT ESTOPPEL CERTIFICATE

## ASSIGNMENT AND ASSUMPTION OF

### CONTRACTS AND PERMITS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND PERMITS (this “Assignment”) is entered into the 17th day of December, 2002, by and between THE UNIVERSITY OF IDAHO FOUNDATION, INC., an Idaho nonprofit corporation (“Foundation”), and the IDAHO STATE BUILDING AUTHORITY, a public body corporate and politic of the State of Idaho (“ISBA”), who are sometimes collectively referred to as the “Parties.”

#### • RECITALS

A. The Foundation has acquired a long-term sublease of Units 101, 302A and 302B of the Civic Plaza Condominiums, as depicted on that certain Plat of the Civic Plaza Condominiums and that certain Declaration of Covenants and Restrictions establishing a plan of condominium ownership for the Civic Plaza Condominiums, recorded in the real property records of Ada County, Idaho on October 9, 2002 as Instrument Nos. 102116493 and 102116495, respectively.

B. The Foundation has entered into or acquired those certain agreements and permits set forth on Exhibit A, attached hereto (the “Contracts and Permits”), all of which are related to the development of a research and education facility to be constructed on Units 101, 302A and 302B of the Civic Plaza Condominiums, commonly known and the “Idaho Water Center” and which will contain an approximately 216,000 square foot office and laboratory building, fleet parking and storage, and certain utility facilities and related improvements.

C. Pursuant to other agreements of even date herewith and effective as of the Effective Date of this Agreement (as defined in Section 4 below), the Foundation has released in interest in Units 101, 302A and 302B of the Civic Plaza Condominiums, and ISBA has acquired a fee interest in Unit 101 and a long-term sublease to Units 302A and 302B for the purpose of developing the Idaho Water Center.

D. To facilitate the development and construction of the Idaho Water Center by ISBA, the Foundation desires to assign, and ISBA desires to assume, the Contracts and Permits under the terms and conditions set forth herein.

#### AGREEMENT

NOW, THEREFORE, in consideration of the above recitals which are incorporated below, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Foundation's Representations. The Foundation represents to ISBA that (i) the Foundation owns the applicable rights and obligations under the Contracts and Permits; (ii) the Foundation has the full legal right, power and authority to enter in and perform this Assignment; (iii) the Foundation have not assigned its rights and obligations under the Contracts and Permits to any person or entity, and (vi) there are no outstanding amounts due and unpaid under the Contracts and Permits, unless otherwise set forth on Exhibit A.

2. Assignment. As of the Effective Date (as defined in Section 4 below), the Foundation does hereby assign, transfer and convey to ISBA all of the Foundation's right, title and interest in and to, and does hereby delegate to ISBA all of the Foundation's rights, duties and obligations under, the Contracts and Permits. The Foundation agrees to defend, indemnify and hold ISBA harmless from any claims arising prior to the Effective Date of this Assignment under the Contracts and Permits as a result of the breach thereof by the Foundation.

3. Acceptance; Assumption. As of the Effective Date (as defined in Section 4 below), ISBA does hereby accept the assignment, transfer and conveyance by the Foundation of all of its right, title and interest in and to the Contracts and Permits, and does hereby assume and agree to perform the Foundation's duties and obligations under the Contracts and Permits that are attributable to the period of time from and after the Effective Date. Upon the acceptance and assumption set forth herein, ISBA agrees to defend, indemnify and hold the Foundation harmless from any claims arising from and after the Effective Date as a result of the breach thereof by ISBA.

4. Effective Date; Termination. This Assignment, and the assignment, acceptance and assumption set forth herein, shall become effective upon the closing of the currently contemplated bond financing for the Idaho Water Center (the "Effective Date"). This Agreement shall terminate if the currently contemplated bond financing for the Idaho Water Center has not closed by January 31, 2003.

5. Binding Effect. This Assignment shall be binding upon and shall inure to the benefit and detriment of the Parties and their respective successors and assigns.

6. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the Parties, the Parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, deeds and assurances as any party hereto may reasonably require to consummate the transaction contemplated hereunder, including, but not limited to, the assignment of any contracts or permits for the development of the Idaho Water Center not listed on Exhibit A.

7. Recitals; Exhibits. The recitals are incorporated into the body of this Assignment as if set forth at length. The exhibits attached hereto, together with all documents incorporated by reference therein or herein, form an integral part of this Assignment and are incorporated into this Assignment wherever reference is made to the them to the same extent as if they were set out in full at the point at which such reference.



8. General. Time is of the essence of this Assignment. This is the entire agreement between the Parties with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Assignment may be terminated or modified only in a writing signed by both Parties. Any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. The laws of the State of Idaho shall govern this Assignment. The invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of any other provision hereof. Headings in this Assignment are for convenience only and shall not affect its meaning. The Parties agree that it is a material consideration to both Parties that the terms of this Assignment be subject to specific performance. In the event of a default of either party to this Assignment, the other party shall have all remedies available at law or in equity, including specific performance.

9. Attorneys' Fees. In the event of any controversy or claim being instituted between the parties to this Assignment to enforce the terms and conditions of this Assignment or arising from the breach of any provision hereof, the prevailing party will be entitled to receive from the other party all costs, damages, and expenses, including reasonable attorneys' fees, whether or not such controversy or claim is litigated or prosecuted to judgment. The prevailing party will be the party awarded judgment as a result of trial or arbitration.

[end of text]

DATED effective as of the year and day first written above.

FOUNDATION, INC.,

The "Foundation"      THE UNIVERSITY OF IDAHO

an Idaho nonprofit corporation

By: \_\_\_\_\_  
Jerry Wallace, Treasurer

"ISBA"      IDAHO STATE BUILDING AUTHORITY,  
a public body corporate and politic of the State of Idaho

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### **[Contracts and Permits]**

1. AIA Document B141-1997, Standard Form of Agreement between Owner and Architect with Standard for of Architect's Services, by and between Civic Partners West, LLC (whose interest has been assigned to the University of Idaho Foundation, Inc.) and NBBJ West Limited Partnership, dated May 14, 2001 and in the original amount of \$4,410,000 (of which \$\_\_\_\_\_ has been paid for services rendered to date), and including all additional services performed to date.
2. State of Idaho Department of Water Resources Permit to Appropriate Water No. 63-31354, dated August 15, 2002 and issued to Civic Partners (whose interest has been assigned to the University of Idaho Foundation, Inc.).
3. State of Idaho Department of Water Resources Permits to Construct Injection Wells Nos. 63-W-176 and 63-W-177, and issued to Civic Partners (whose interest has been assigned to the University of Idaho Foundation, Inc.).
4. Joint Ground Water Discharge Agreement, dated February 8, 2002, by and between Civic Partners Idaho, LLC and the University of Idaho Foundation, Inc.
5. Ground Water Discharge Agreement, dated December 17, 2002, by and between the University of Idaho Foundation, Inc., Civic Plaza LP and the City of Boise City.



## **OPERATING AGREEMENT**

(Idaho Water Center)

THIS OPERATING AGREEMENT is dated and is effective as of the 17th day of December, 2002, by and between the **IDAHO DEPARTMENT OF WATER RESOURCES** (“IDWR”), the **IDAHO WATER RESOURCE BOARD** (“Board”) and the **REGENTS OF THE UNIVERSITY OF IDAHO** (“University”).

### ***RECITALS***

A. The Idaho Department of Administration, Division of Public Works issued a request for proposals dated September 24, 2001 (the “RFP”), requesting proposals to provide office space for IDWR.

B. Civic Partners West, LLC, as agent for the University of Idaho Foundation, submitted a proposal in response to the RFP dated November 2, 2001 (the “Proposal”). The Proposal offered to provide office space to IDWR located in a building to be constructed and known as the Idaho Water Center, as more particularly described in the Proposal.

C. Following the Proposal, the University and IDWR entered into discussions with Civic Partners West, LLC and the University of Idaho Foundation regarding the development of the proposed building.

D. The Second Regular Session of the Fifty-Sixth Legislature of the State of Idaho enacted House Concurrent Resolution No. 60, 2002 Idaho Session Laws 1085, wherein the Legislature authorized and approved IDWR and the University, separately or together, to enter into an agreement with the Idaho State Building Authority (the “Authority”) for the financing and development of the proposed building.

E. Pursuant to Idaho Code section 42-1734, the Board has the power and duty to enter into contracts to effect the purposes of Idaho Code, title 42, chapter 17.

F. IDWR, the Board and the University have entered into, or will enter into simultaneously with the execution of this Operating Agreement, an Agreement for Financing and Development of the Idaho Water Center (the “Development Agreement”) and a Facilities Lease (the “Facilities Lease”), both with the Authority and both involving and for the building to be known as the Idaho Water Center, and constructed on real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “Water Center”).

G. The University has entered into, or will enter into, a Parking Access Agreement (the “Parking Access Agreement”) with the Urban Renewal Agency of Boise City, Idaho, aka Capitol City Development Corporation, ensuring access to parking for tenants of the Water Center within the Corridor Property, as defined in those certain Parking Covenants Encumbering the West Corridor Property and Avenue A Site dated as of October 1, 2002 (the “Corridor Property”).

H. IDWR, the Board and the University desire to address between themselves certain issues related to the Development Agreement, the Facilities Lease and the Parking Access Agreement, upon the terms and conditions set forth below.

## **AGREEMENT**

NOW THEREFORE, in consideration of the above recitals, which are incorporated herein as if set forth in full, and the mutual promises and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Other Documents. The documents listed below are intended to co-exist with this Operating Agreement; provided however, in the case of any conflict between the terms of this Operating Agreement, as may be amended from time to time, and the documents listed below, as may be amended from time to time, the terms of this Operating Agreement shall control as between IDWR, the Board and the University.

- a. The Development Agreement.
- b. The Facilities Lease.
- c. The Parking Access Agreement.
- d. Declaration of Covenants and Restrictions for the Civic Plaza Condominiums, recorded October 10, 2002, in the official records of Ada County ("Civic Plaza Condominium Declaration").
- e. Declaration of Covenants, Conditions and Restrictions for the Idaho Water Center Condominium in substantially the form proposed by the Authority to the parties ("Idaho Water Center Condominium Declaration").

2. Term. The term of this Operating Agreement shall begin on its effective date and continue until the expiration or termination of the Facilities Lease; provided however, that the provisions of section 6.3 shall continue until the expiration or termination of the Parking Access Agreement.

3. IDWR Space Allocation.

3.1 Space Allocation. IDWR shall have the exclusive right to occupy and use office space and associated limited common area as set forth in the Design Documents to be approved by IDWR and the University. Such Design Documents shall be the Design Documents more particularly defined in the Development Agreement.

3.2 Completion of IDWR Space. The University shall take all reasonable steps within its control to ensure the IDWR space described in section 3.1 is substantially complete and available for occupancy on or before October 31, 2004. In the event the IDWR space is not substantially complete and available for occupancy before such date, the University

shall give the IDWR space priority for completion in all actions of the University affecting the completion of such space.

3.3 Expansion Space. The University recognizes that IDWR may have additional space needs in the Water Center. The parties intend to provide for such needs through the following provisions and, to the extent required, additional documents.

3.3.1 Right of First Opportunity and Refusal. With regard to any space in the Water Center controlled by the University, if the University elects to sublease such space and the University has received notice that IDWR seeks additional space, the University shall offer such space to IDWR on terms and conditions no less favorable than those offered to third parties. If, within thirty (30) days after receipt of such an offer, IDWR does not notify the University that IDWR elects to lease such space, then the University shall be relieved of any obligations to IDWR with regard to such offering. A failure by IDWR to lease any specific space when so offered by the University shall not relieve the University of its obligation to first offer IDWR any other space in the Water Center if the University elects to offer such other space to third parties or its obligation to first offer IDWR space previously offered to IDWR upon the expiration of any sublease of such space.

3.3.2 Notification of Sublease of Space Adjacent to IDWR. To allow for expansion by IDWR into other space in the Water Center, the University shall notify IDWR prior to leasing any space adjacent to IDWR space for a term of more than three (3) years (including term renewals or options to renew) and IDWR shall have the right of first opportunity and refusal set forth in section 3.3.1.

3.3.3 United States Forest Service Space. The University's obligations under this section 3 shall not apply to any space identified on the Design Documents to be occupied by the United States Forest Service.

#### 4. IDWR Costs.

4.1 Lease Rate Allocation. IDWR shall pay a lease rate allocation as set forth on Exhibit B attached hereto and incorporated herein by this reference (the "Schedule") as full payment for IDWR's use, occupancy, and enjoyment of the initial space allocation identified in section 3.1. The Schedule and any adjustments pursuant to section 4.2 shall be based upon the net rentable square feet occupied or allocated to IDWR up to a maximum of fifty thousand (50,000) net rentable square feet. If IDWR elects to lease additional space pursuant to section 3.3, IDWR and the University shall adjust the Schedule or make other provision for payment of the costs of such additional space.

4.2 Lease Rate Adjustment. IDWR and the University shall review the Schedule on July 1, 2009 and every five years thereafter (each a "Review Date"). One year prior to each Review Date, the University shall submit proposed Schedule adjustments to IDWR. The proposed adjustments shall be transmitted with, and cost projections based upon, documented increases or decreases in specific operating expenses. Operating expenses included in the Schedule that are subject to adjustment shall include the costs more particularly identified in

sections 4.4 and 6.1. The inclusion of any costs in addition to those specified in sections 4.4 and 6.1 in the Schedule shall require the prior written agreement of IDWR and the University. The costs for janitorial, security, insurance, utilities, snow removal, landscape maintenance, property management, facilities maintenance and repair, and parking (the “Fixed Items”) shall be documented by the University and such documentation supplied to IDWR. The lease rate allocation for the Fixed Items shall be adjusted and included in the adjusted Schedule based upon the proportion of all costs for such Fixed Items that is attributable to IDWR’s share of the Fixed Items.

4.3 Effective Date of Schedule Adjustments. The adjustment for Fixed Items shall be included in the Schedule and IDWR shall make its lease payments in accordance with such adjustments beginning on the applicable Review Date. With the written approval of IDWR, which shall not be unreasonably withheld, adjustments to the Schedule based on costs other than the Fixed Items shall also become effective on the applicable Review Date and IDWR shall pay lease payments in accordance with such adjusted Schedule.

4.4 Services Provided by the University to IDWR. The lease rate allocation set forth in section 4.1 is intended to cover all services associated with a full service lease, including janitorial, security, insurance, utilities, snow removal, landscape maintenance, property management, facilities maintenance and repair, parking and condominium assessments and fees under the Civic Plaza Condominium Declaration and the Idaho Water Center Condominium Declaration.

4.5 Lease Rate Allocation Subsequent to 2035. The parties intend that IDWR not pay rent pursuant to the Facilities Lease in excess of that portion of rent required to finance the IDWR space and the associated Additional Rent, as defined in the Facilities Lease. The Schedule, as amended from time to time, shall not include Basic Rent, as defined in the Facilities Lease, upon the earlier of IDWR’s payment of the lease rate allocation pursuant to the Schedule for each year of this Operating Agreement from the effective date of the Facilities Lease up to and including 2035 or the termination of financing for the IDWR space. Upon the removal of Basic Rent from the Schedule, the University shall indemnify, defend, and hold harmless IDWR from and against any obligation, duty, or covenant to pay Basic Rent and to pay any Additional Rent in excess of the Fixed Items and the costs approved by IDWR pursuant to section 4.3.

5. IDWR Tenant Improvement Allowance. The University shall ensure IDWR receives a tenant improvement allowance of up to the IDWR tenant improvement allowance specified on the Project Budget attached to and a part of the Development Agreement. If IDWR desires to include in its initial space tenant improvements that exceed the amount provided in the Project Budget, such tenant improvements will be the sole financial responsibility of IDWR. The parties acknowledge that the Development Agreement limits the application of the tenant improvement allowance.



6. IDWR Parking.

6.1 Minimum Parking Access. Subject to the terms of the Parking Access Agreement, the University shall provide IDWR with up to one hundred fifty (150) parking passes providing access to parking spaces within the Corridor Property. The cost of such parking passes shall be included within the lease rate allocation set forth in section 4.1 until the termination of the Facilities Lease.

6.2 Additional Parking Access. If desired by IDWR and available under the Parking Access Agreement, the University shall provide IDWR access to additional parking passes at the then current rate paid by the University pursuant to the Parking Access Agreement.

6.3 Parking Access Following Termination of the Facilities Lease. If IDWR continues to occupy the Water Center following termination of the Facilities Lease or beyond 2034, whichever date is later, the University shall provide access to parking under the Parking Access Agreement for IDWR. Such access shall be for at least the number of parking spaces for which IDWR had access during the final term of the Facilities Lease.

6.4 Parking Agreement Enforcement. The University shall take all reasonable steps to enforce the provisions of the Parking Access Agreement to ensure that the number of parking spaces to which IDWR has access are available for use by IDWR.

6.5 Assignment of Parking Access Agreement. The University shall assign the Parking Access Agreement to IDWR if the University ceases to occupy the Water Center.

7. Notice of Facility Lease Non-Renewal; Other Notices. In the event that either party fails to receive an appropriation for payment of rent under the Facilities Lease and lacks other funds sufficient to satisfy its obligations pursuant to the Facilities Lease, such party shall immediately notify the other party of its intent to terminate the Facilities Lease. In the event that either party receives any notice related to the Development Agreement, the Facilities Lease, the Civic Plaza Condominium Declaration or the Idaho Water Center Condominium Declaration that could impact the other, the receiving party shall immediately notify the other party of the receipt and substance of such notice.

8. Decision-making Authority. Except as otherwise specifically agreed herein or otherwise specifically agreed between the Authority and the parties, the University shall make all decisions regarding building management for the Water Center. The University and IDWR shall use their best efforts to comply with all federal, state and municipal laws, ordinances, regulations and orders and any contractual obligations relative to the leasing, use, operation, repair and maintenance of the Water Center. The University shall consult with IDWR on all issues concerning the construction, operations and maintenance of the Water Center and voting pursuant to the Civic Plaza Condominium Declaration or the Idaho Water Center Condominium Declaration. Prior to occupancy of the Water Center, the parties shall establish procedures for consultation concerning and resolution of disputes regarding such issues.

9. IDWR Payments.

9.1 Lease rate allocations shall be paid as one payment each year as provided by Exhibit B of this Operating Agreement and shall include any adjustments as provided in Section 4.1 of this Operating Agreement.

9.2 For the term of this Operating Agreement commencing July 1, 2004 and for each annual renewal term thereafter, IDWR shall, within 30 calendar days following the commencement of such renewal terms, pay in advance the appropriate annual lease rate allocation.

9.3 The University of Idaho shall, at least 30 days prior to each annual payment due date, mail an invoice for the appropriate payment to:

Idaho Department of Water Resources  
ATTN: Financial Manager  
PO Box 83720  
Boise ID 83720-0098

or such different address or person as IDWR shall provide to the University by written notice.

9.4 Lease rate allocations shall be made payable to "Bursar, University of Idaho" and mailed to:

General Accounting  
University of Idaho  
Moscow, ID 83844-3166

or such different address or person as the University shall provide to IDWR by written notice.

9.5 Annual lease rate allocations for any renewable term shall not be deferred or abated because of delays in completion of the construction of the facilities or delays in completion of any repair or replacement of damage to the facilities.

9.6 Any annual lease rate allocation which is not paid by IDWR on or before the due date thereof shall, from and after said due date, bear interest until paid at the highest rate per annum borne by any of the Bonds then outstanding; time being of the absolute essence of this obligation.

9.7 Annual lease rate allocations shall be payable in lawful money of the United States of America, which shall be legal tender for public and private debts under the laws of the United States at the time of payments, provided that, upon prior written approval of the University of Idaho, IDWR may transfer funds through electronic funds transfer.

10. Indemnification. The University shall indemnify, defend and save harmless IDWR, its officers, agents and employees from and against any liability, claim, damages, losses, costs, expenses or actions (collectively, "liability") to which IDWR is or could be subject arising from or related to the Facilities Lease, the Civic Plaza Condominium Declaration, the Parking Access Agreement, the Idaho Water Center Condominium Declaration, or any sublease entered by the University for space in the Water Center where the nature or the amount of such liability is not contemplated by or exceeds that amount regularly owing by IDWR pursuant to the lease rate allocation set forth in Exhibit B, as amended.

11. Cooperation Between the Parties. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against either party which arise out of any matters relating to the Water Center, the other party shall give all pertinent information and reasonable assistance in the defense or other disposition thereof.

12. Division of Condominium Units. As soon as practical, the parties shall endeavor to separate the space within the Water Center leased to the parties pursuant to the Facilities Lease into separate condominium units. Such units shall represent the space occupied by IDWR and the Space occupied or subleased by the University.

13. Notices. All notices, demands, consents and reports provided for in this Operating Agreement shall be in writing and shall be given to the University or IDWR at the address set forth below or at such other address as they individually may specify thereafter in writing:

University: University of Idaho  
Attention: Vice President for Finance and Administration  
Administration Building, Suite 211  
Moscow, Idaho 83844-3168.

IDWR and the Board: Idaho Department of Water Resources  
Attention: Director  
P.O. Box 83720  
Boise, Idaho 83720-0098

With a Copy to: Department of Administration  
Attention: Deputy Attorney General  
650 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0003

Such notices or other communications may be mailed by United States registered or certified mail, return receipt requested postage prepaid or delivered by a recognized courier delivery service (e.g. Federal Express, Airborne etc.). Such notices, demands, consents and reports may also be delivered by hand. For purposes of this Operating Agreement, notices will be deemed to have been "given" upon personal delivery thereof or 72 hours after having been deposited in the United States mail at a United States Post Office or a depository for the receipt

of mail regularly maintained by the post office or deposited with a recognized courier delivery service.

14. Survival. Any termination, cancellation or expiration of this Operating Agreement notwithstanding, provisions which are intended to survive and continue shall so survive and continue, including, but not limited to, the provisions of sections 7, 10, 15 and 17.

15. No Third Party Rights. Nothing in this Operating Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the parties hereto.

16. Governing Law. The Contract shall be governed by and construed under the laws of the State of Idaho and the parties hereto consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to the Operating Agreement.

17. Officials Not Personally Liable. In no event shall any official, officer, employee or agent of the State of Idaho or of the University or IDWR be liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Operating Agreement, express or implied.

18. Complete Statement of Terms. This Operating Agreement constitutes the entire agreement between the parties hereto and shall supersede all previous proposals, oral or written, negotiations, representations commitments, and all other communications between the parties.

19. Written Modification. This Operating Agreement may be modified or amended only by an agreement in writing signed by a duly authorized representative of the University and IDWR.

20. Counterparts. This Operating Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have entered this Operating Agreement as of the date first set forth herein.

**REGENTS OF THE UNIVERSITY OF IDAHO**

Dated: \_\_\_\_\_, 2002

By: \_\_\_\_\_  
Its \_\_\_\_\_

**IDAHO DEPARTMENT OF WATER RESOURCES**

Dated: \_\_\_\_\_, 2002

By: \_\_\_\_\_  
Karl J. Dreher, Director

**IDAHO WATER RESOURCE BOARD**

Dated: \_\_\_\_\_, 2002

By: \_\_\_\_\_  
Joseph L. Jordan, Chairman

## **EXHIBIT A**

### Description of the Water Center

#### Unit 101:

Unit 101, as shown on the Plat for Civic Plaza Condominiums appearing in the Records of Ada County, Idaho, in Book 85 of Plats, Pages 9420 to 9432 as Instrument No. 102116493 and defined and described in the Declaration of Covenants and Restrictions Establishing a Plan of Condominium Ownership for Civic Plaza Condominiums ("Declaration"), recorded in the Records of Ada County, Idaho as Instrument No. 102116495.

TOGETHER WITH the percentage of the common areas appurtenant to each such Unit as set forth in the Declaration, as supplemented from time to time, which percentage shall automatically change in accordance with supplemental declarations as the same are filed of record pursuant to the Declaration, and together with additional common areas in the percentages set forth in such supplemental declarations, which percentages shall automatically be deemed to be conveyed effective as of the date of each such supplemental declaration as though conveyed hereby.

#### Unit 302A:

Unit 302A, as shown on the Plat for Civic Plaza Condominiums appearing in the Records of Ada County, Idaho, in Book 85 of Plats, Pages 9420 to 9432 as Instrument No. 102116493 and defined and described in the Declaration of Covenants and Restrictions Establishing a Plan of Condominium Ownership for Civic Plaza Condominiums ("Declaration"), recorded in the Records of Ada County, Idaho as Instrument No. 102116495.

TOGETHER WITH the percentage of the common areas appurtenant to each such Unit as set forth in the Declaration, as supplemented from time to time, which percentage shall automatically change in accordance with supplemental declarations as the same are filed of record pursuant to the Declaration, and together with additional common areas in the percentages set forth in such supplemental declarations, which percentages shall automatically be deemed to be conveyed effective as of the date of each such supplemental declaration as though conveyed hereby.

Unit 302B:

Unit 302B, as shown on the Plat for Civic Plaza Condominiums appearing in the Records of Ada County, Idaho, in Book 85 of Plats, Pages 9420 to 9432 as Instrument No. 102116493 and defined and described in the Declaration of Covenants and Restrictions Establishing a Plan of Condominium Ownership for Civic Plaza Condominiums ("Declaration"), recorded in the Records of Ada County, Idaho as Instrument No. 102116495.

TOGETHER WITH the percentage of the common areas appurtenant to each such Unit as set forth in the Declaration, as supplemented from time to time, which percentage shall automatically change in accordance with supplemental declarations as the same are filed of record pursuant to the Declaration, and together with additional common areas in the percentages set forth in such supplemental declarations, which percentages shall automatically be deemed to be conveyed effective as of the date of each such supplemental declaration as though conveyed hereby.

## EXHIBIT B

### Lease Rate Allocation

<u>Fiscal Year</u>	<u>Payment Date</u>	<u>Payment Amount</u>
<u>2005</u>	<u>July 31, 2004</u>	
<u>2035</u>	<u>July 31, 2035</u>	
<u>2036 and Thereafter</u>	<u>July 31 of Each Year</u>	



**AGREEMENT FOR  
FINANCING AND DEVELOPMENT  
OF THE  
IDAHO WATER CENTER**

This Agreement, entered into and effective as of the 17th day of December, 2002, is made and entered into between the Idaho State Building Authority (the “**Authority**”); the State of Idaho, acting through the Idaho Department of Water Resources (“**IDWR**”), the Idaho Water Resource Board (the “**Water Board**”), and the Regents of the University of Idaho (the “**University**”) (the IDWR, the Water Board and the University are collectively referred to as the “**State**”); and the University of Idaho Foundation, Inc. (“**UIF**”) relating to the financing and development of office, education, laboratory facilities and related parking and storage facilities to be known as the Idaho Water Center (the “**Project**”) in Boise, Idaho.

WHEREAS, the Second Regular Session of the Fifty-Sixth Idaho Legislature adopted House Concurrent Resolution No. 60 (the “**Concurrent Resolution**”) authorizing the University and IDWR to enter into agreements with the Authority, under such terms and conditions as may be reasonable and necessary, to provide for the development and financing of the Project; and

WHEREAS, the Water Board is a party to this Agreement because of its power to contract on behalf of IDWR; and

WHEREAS, the Authority has the powers and authority, pursuant to the Idaho State Building Authority Act, Title 67, chapter 64, Idaho Code, (the “**Act**”) to undertake the development and financing of facilities for state governmental uses, to lease facilities to state bodies, and to perform all powers necessary or appropriate to carry out and effectuate the purposes of the Act; and

WHEREAS, for the benefit of the University, UIF undertook, performed and/or arranged for the performance of certain initial planning, design, and pre-construction services necessary for the Project and incurred and paid certain costs thereof; and

WHEREAS, the authorized cost of the Project in the Concurrent Resolution is \$48,000,000, including the costs of acquisition of the site, planning, design, construction, project management and other costs directly related to and reasonably necessary for completion of the acquisition, design and construction of the Project.

NOW THEREFORE, it is agreed as follows:

**Interim Funding of Costs.** In order to avoid unnecessary delays pending final agreements and financing of the Project, UIF entered into an agreement with the Authority whereby the Authority agreed to incur costs, not to exceed \$500,000, for services performed to date and to be performed prior to financing of the Project, including administrative and legal fees and costs, project management fees and costs, certain fees and costs for services of the Architect (as defined below), and certain estimating and related pre-construction services. Under such agreement, in the event the Project is not, for any reason, financed by the Authority, UIF agreed to reimburse all such costs incurred by the Authority. It is agreed hereby that all such costs

incurred or to be incurred by the Authority relating to the Project shall be reimbursed from the proceeds of bonds or notes issued by the Authority to finance the Project.

**Financing of the Project.** The Authority agrees to use its best efforts to issue its bonds or notes to finance (a) the costs of the Project as set forth in the Project Budget (as defined below), (b) all costs of the Authority incurred in the issuance of such bonds or notes, and (c) such other costs as may be reasonably and necessarily incurred by the Authority pertaining to the Project or the financing thereof.

**Completion of Design.** Among other things, UIF, acting through its agent, Civic Partners West, LLC, entered into a contract dated May 14, 2001, (the “**Design Contract**”) with NBBJ West Limited Partnership (the “**Architect**”), for the design of the Project and a two story ancillary building which is not a part of the Project. A substantial part of the design of the Project has been completed to date; such design is set forth in drawings and specifications (the “**Design Documents**”) dated March 20, 2002. The State and UIF hereby approve the Design Documents. The Authority and the State hereby agree to use their best efforts to make changes during construction to reduce construction costs.

The Authority agrees to use its best efforts to enter into an agreement with the Architect whereby the Architect agrees to complete all remaining services under the Design Contract for the Authority and agrees to provide additional services as may be necessary or appropriate to revise the Design Documents to reduce the costs of construction and to meet the needs of and be acceptable to the State. UIF agrees to cause its agreement with the Architect to be assigned to the Authority upon terms acceptable to the Authority.

**Construction.** It is understood UIF has selected Turner McAlvain Construction for the construction of the Project. The Authority agrees to use its best efforts to secure an acceptable contract with Turner McAlvain Construction for construction of the Project; provided however, the Authority shall have the right to solicit proposals from other qualified construction contractors and to enter into one or more contracts with other contractors for construction of all or any part of the Project.

**Project Management.** The Authority will enter into a Project Management Agreement (the “**Project Management Agreement**”) with Lemley/3D International to manage, coordinate and administer the completion of the design and construction of the Project. The Authorized Representatives designated below by IDWR and the University shall have full authority on behalf of the designating party with respect to decisions relating to design and construction of the Project.

#### **Changes During Construction.**

- In the event changes to the Project or to the approved design are necessary to comply with applicable building codes or other applicable governmental regulations during construction of the Project, the Authority may unilaterally initiate or implement any such changes. The Authority shall notify the State of such changes at the time it approves their initiation or implementation.

- **All other changes to the Project, including cost saving measures as described in Section 3 above and the IDWR tenant improvement set of the Design Documents, must be agreed to by the Authority and the State (by and through its Authorized Representatives).**

**Project Budget.** Attached hereto as Exhibit A is a budget dated \_\_\_\_\_, 2002, (the “**Project Budget**”) developed jointly by the Authority, the State and UIF based upon preliminary agreements for acquisition of the site, the design documents and the estimated cost of construction of the Project. It is agreed that the Authority may adjust, revise or modify the Project Budget as is necessary to make changes to the Project as provided in Section 5(a) herein. All other changes to the Project Budget must be agreed to by the Authority and the State. If there are unrestricted funds remaining in the Project Budget after completion of construction of the Project, the Authority may, upon request of the State, apply such funds to reimburse the UIF for the initial planning, development, design and pre-construction services not previously reimbursed as identified in Section 8.

**Furniture and Equipment Not Included in the Project Budget.** Except as specifically included in the Project Budget, the Authority, the State and UIF hereby recognize that furniture and equipment, including information technology equipment, is the sole responsibility of the State and/or each subtenant. The Authority shall not be responsible to provide or finance the costs of furniture, office equipment or other tangible personal property of any user of the Project, including, without limitation, the following:

- Office partition systems
- Office workstations
- Systems furniture
- Custom casework
- Filing cabinets
- Kitchen equipment
- Lab equipment
- Chairs, desks
- Conference room furniture
- Classroom furniture
- Classroom technology
- Security systems within tenant spaces
- Signage (above base and directional signage)

**Reimbursement to UIF.** Upon issuance of bonds or notes by the Authority to finance the Project, the Authority agrees to pay to UIF out of the Project Budget such sum as may be determined by the Board of Commissioners of the Authority as reimbursement for costs previously incurred and paid by UIF for the initial planning, development, design and pre-construction services. UIF shall provide such reports and information in a form acceptable to the Authority as shall be reasonably required to document such costs eligible for such reimbursement.

**Occupancy Plan.** The total useable space to be constructed in the Project is approximately 196,000 square feet. The State will provide to the Authority a detailed Occupancy Plan. The Occupancy Plan shall identify such factors as:

- **anticipated user(s);**
- **tenant improvement funding (with bond proceeds or future dollars);**
- **for non-University/IDWR space, relationship or relatedness to University/IDWR users; and**
- **such other data, all as shall be needed to enable Bond Counsel to the Authority to advise the Authority which spaces qualify for federal tax-exempt financing, and to enable the Authority to make a finding of public use and benefit under the Act with respect to such space that does not qualify for federal tax-exempt financing.**

With respect to the space identified in the Occupancy Plan expected to qualify for federal tax-exempt financing, the State will represent that it will not use such space in any manner as shall adversely affect the tax-exempt status of the tax-exempt bonds issued by the Authority for the Project.

**Additional Tenant Improvements.** The Project Budget does not include estimated costs of constructing tenant improvements in areas of the facilities designated as “**Expansion Space**” in the Occupancy Plan. The University agrees that it shall use its best efforts to facilitate funding, through credit secured by lease rate adjustments, identification of available funding from the University’s operating budget, or otherwise, of tenant improvements in all such Expansion Space, and to make such spaces suitable for occupancy.

#### **Miscellaneous.**

- **Successors of the Authority.** In the event of the dissolution or transfer of functions of the Authority, all the covenants, stipulations, promises and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the Authority, shall bind or inure to the benefit of the successors of the Authority from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Authority shall be transferred.
- **Parties in Interest.** Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the Authority, the State, and UIF

any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the Authority, the State, and UIF.

- **Severability.** In case any one or more of the provisions of this Agreement or of any Design Documents shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, this Agreement and the Design Documents shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

- **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.

- **Governing Law.** The laws of the State of Idaho shall govern the construction and enforcement of this Agreement and of all the Bonds issued in connection with the Project.

- **Authorized Representative.**

- The Authority hereby designates Wayne Meuleman, its Executive Director, as its Authorized Representative.

- The Water Board and IDWR hereby designate Karl Dreher as their Authorized Representative.

- The University hereby designates the Vice President for Finance and Administration, University of Idaho, as its Authorized Representative.

- The UIF hereby designates the Treasurer, University of Idaho Foundation, as its Authorized Representative.

- **Notices.** The Authorized Representative of the Authority, the State, and UIF shall be notified of any changes to the Design Documents, the Project Budget, and this Agreement, in writing, and such notice shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows:

To the Authority: Wayne V Meuleman  
Idaho State Building Authority  
960 Broadway Ave., Suite 500  
Boise, ID 83706  
Phone: (208) 345-6057  
Fax: (208) 336-9712

To the Water Board  
and IDWR: Karl J. Dreher  
Idaho Department of Water Resources  
1301 North Orchard Street  
Boise, ID 83706  
Phone: (208) 327-7900  
Fax: (208) 327-7866

To the University: Vice President for Finance and Administration  
University of Idaho  
Administration Building, Room 211  
Moscow, ID 83844-3168  
Phone: (208) 885-6174  
Fax: (208) 885-5504

To UIF: Treasurer  
University of Idaho Foundation, Inc.  
Administration Building, Room 211  
Moscow, ID 83844-3168  
Phone: (208) 885-6174  
Fax: (208) 885-5504

- **Access to Reports.** All parties agree to provide all information regarding the Project to all other parties upon reasonable request to the appropriate Authorized Representative.

STATE OF IDAHO  
Department of Water Resources

IDAHO STATE BUILDING AUTHORITY

By \_\_\_\_\_  
Karl J. Dreher  
Its Director

By \_\_\_\_\_  
V. L. Bud Tracy  
Its Chairman

AND

IDAHO WATER RESOURCE BOARD

By \_\_\_\_\_  
Joseph L. Jordan  
Its Chairman

AND

UNIVERSITY OF IDAHO

By \_\_\_\_\_  
Robert A. Hoover  
Its President

UNIVERSITY OF IDAHO FOUNDATION,  
INC.

By \_\_\_\_\_  
Patrick McMurray  
Its President