

**TENANT'S SPACE LEASE**

This Lease is made and entered into this \_\_ day of \_\_, 2003, between Benefis Healthcare ("Landlord") and \_\_\_\_\_, ("Tenant"), who agree as follows:

**1. GRANT OF LEASE**

1.1. Grant of Lease. Landlord hereby demises and leases to Tenant, and Tenant hereby leases and accepts from Landlord, those certain Premises consisting of office space located in an office building commonly known as the North Central Montana Professional Office Building located at 400 15<sup>th</sup> Avenue South, Great Falls, MT 59405. The Premises consist of \_\_\_ square feet located in Suite \_\_ of the Building, more particularly described in Exhibit "A," attached hereto. The Building, together with the Land is hereinafter referred to as the "Project."

1.2. Quiet Enjoyment. Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Term, subject to the terms and conditions of this Lease.

1.3. Covenants of Landlord and Tenant. Landlord covenants to observe and perform all of the terms and conditions to be observed and performed by Landlord under this Lease. Tenant covenants to pay the Rent when due under this Lease, and to observe and perform all of the terms and conditions to be observed and performed by Tenant under this Lease.

**2. TERMS AND POSSESSION**

2.1. Term. The term of this Lease (the "Term") shall begin upon possession and shall continue for sixty (60) consecutive months unless terminated earlier as provided herein. This Lease shall then automatically renew for one (1) year periods unless either party gives the other ninety (90) days written notice prior to the end of the term that this Lease will not renew.

2.2. Rent Payments. Rent payments will begin on \_\_\_\_\_, 2003, and shall continue throughout the remainder of the lease (60 months).

**3. RENT**

3.1. Rent. Tenant shall pay to Landlord as Rent for the Premises the sums listed in the following Lease Payment Table, payable in advance in monthly installments.

LEASE PAYMENT TABLE					
Initial Cost	\$12.00	X	sq.ft. =	\$	Annual Cost
				\$	<b>Total Monthly Rent Payment</b>

A rent adjustment will occur at the beginning of each year (years two through five and beyond). Rent will be adjusted up at the rate of ½ of the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics for the previous year. In no case will this calculation reduce lease payments. (See attached worksheet for the **North Central Montana Professional Office Building**).

3.2. Security Deposit. Tenant has deposited with Landlord the sum of \$0.00, which is the equivalent of one (1) month's rent as security for the faithful performance by Tenant of the terms of this Lease. It is agreed that if Tenant defaults in Tenant's performance of any of the terms of this Lease, Landlord may use, apply, or retain the whole or any part of the security so deposited to the extent required for the payment of any rent or any other sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default, or to any damage or deficiency in the reletting of the Premises, whether such damages or deficiency accrued before or after summary proceedings or other reentry by Landlord. If Tenant fully and faithfully complies with all of the terms of this Lease, the security shall be returned to Tenant within thirty (30) days after the date fixed as the end of the Lease and after the delivery of the entire possession of the Premises by Landlord. In the event of a sale of the land and building or lease of the Building of which the Premises form a part, Landlord shall have the right to transfer the security to the vendee, and Landlord shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Landlord solely for the return of said security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Landlord. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignments or attempted encumbrance.

3.3 Payment of Rent - General. All monies due hereunder shall be paid to Landlord in lawful money of the United States of America, with no rights of deduction or set-off, at such address as Landlord may from time to time designate in writing.

3.4. Rent - Partial Month. If the Term ends on a day other than the last day of a calendar month, the installment of Rent payable on the first day of the last calendar month of the Term shall be that proportion of the Rent for the previous calendar month which the number of days from the first day of such partial month through the last day of the Term bears to 30. If the obligation to pay Rent starts on a day other than the first day of a calendar month, Rent shall be payable in advance without notice on such date and shall equal that proportion of the Rent for that calendar month of the Term which the number of days from the commencement of the obligation to pay Rent to the last day of the month bears to 30.

3.5. Rent for Additional Years. Rent for any additional years shall be negotiated in good faith.

3.6. Late Payment of Fee. Any payment of Rent due hereunder which is not received

on the date upon which it is due will be subject to a late payment fee of 5% of the amount of the late payment and will also bear interest at 1.5% per month.

#### **4. HOLDING OVER**

4.1. Occupation after Term Expires. If Landlord allows Tenant to continue to occupy the Premises after the expiration of the primary term or any renewal term, without any express agreement as to such occupancy, then such holding over shall be considered as a month-to-month tenancy subject to all terms and conditions of this Agreement, as long as Tenant continues to pay rent on the first day of each month in advance and in an amount equal to the last monthly rental required by this Agreement, as increased by the formula set forth in Section 3.1. However, nothing in this Section shall be considered as an assurance to Tenant that it may continue occupancy of the Premises after the expiration of the term of this Lease by Landlord on any basis, nor as a waiver of any of Landlord's rights to terminate immediately this Lease and reenter the Premises. Other than the nonpayment of rent or additional violations of defaults previously cured, Landlord shall give Tenant thirty (30) days notice to vacate.

#### **5. PAYMENTS AFTER NOTICE OF TERMINATION**

5.1. Payments after Notice. No payment of money by Tenant to Landlord subsequent to the termination of this Lease for any reason, or after the giving of any notice (other than a demand for payment of money) by Landlord to Tenant, shall reinstate, continue, or extend the terms of this Lease, or affect any notice given to Tenant prior to the payment of such money. Landlord shall have the right to receive and collect any sum or rent or other sums due under the terms of this Lease without waiving, changing, or affecting in any manner the effect of a notice previously given, any pending suit or judgment previously entered.

#### **6. CONDITIONS OF PREMISES**

6.1. Conditions of Premises. Tenant shall notify Landlord in writing within thirty (30) days after Tenant takes possession of the Premises of any defects in the Premises claimed by Tenant. Except for defects stated in such notice, and latent defects discovered within one (1) year after Tenant takes possession, Tenant shall be conclusively presumed to have accepted the Premises in the condition existing on the date when Tenant takes possession, and to have waived all claims relating to the condition of the Premises. Except to the extent that Landlord is

responsible therefore under this Lease, Tenant shall maintain the Premises and all improvements therein in good order and condition.

#### **7. USE OF PREMISES**

7.1. Use. The premises shall be used and occupied by Tenant for a medical office and traditionally related uses. The laboratory and x-ray facilities of Benefis Healthcare will be

available to Tenant, so no commercial laboratory services and/or radiology services may be offered by Tenant; however, this does not prevent Tenant from providing laboratory and/or radiology services on the Premises for Tenant's own patients if Tenant should choose to do so. Tenant shall not provide any of these services or any other diagnostic service offered by Landlord, on referral from another provider for diagnostic purposes, without the written consent of Landlord.

7.2. Ethical and Religious Directives. Tenant covenants and agrees to use the Premises in accordance with the Ethical and Religious Directives of the Catholic Health Care Services described in Exhibit "C" attached hereto.

7.3. Compliance with Laws. Tenant shall use and occupy the Premises in a safe, careful, and proper manner so as not to contravene any present or future governmental or quasi-governmental laws in force or regulations or orders.

7.4. Normal Business Hours. Tenant shall maintain normal business hours for Tenants Premises, except that the Tenant may maintain additional hours after obtaining the approval of the Landlord, which approval shall not be unreasonably withheld. Landlord shall have the sole authority to close/lock the Project after normal business hours subject to admission by Tenant under the applicable Rules and Regulations provided for in Section 16 hereunder.

## **8. SERVICES, MAINTENANCE, REPAIR AND ALTERATIONS BY LANDLORD**

8.1. Operation of Project. During the Term, Landlord shall operate and maintain the Project in accordance with all applicable laws and regulations and with standards from time to time prevailing for first-class professional office buildings in the area in which the Project is located and shall provide the services set out in Section 8.2, 8.3, and 8.4.

8.2. Services to Premises. Landlord shall provide in the Premises:

- a. Replacement of Building fluorescent tubes, light bulbs and ballasts as required from time to time as a result of normal usage, such replacement shall not include specialty lighting which Tenant feels is essential to Tenant's business, and
- b. Heat ventilation and air conditioning as required for the comfortable use and occupancy of the Premises during normal business hours, and
- c. Maintenance, repair, and replacement as set out in Section 8.4, and
- d. Electrical service for the normal usage of a medical office.

8.3. Building and Project Services. Landlord shall provide in the Building and the Project:

a. Parking lot lighting, towing of unauthorized vehicles, sweeping and snow plowing, normal non-medical trash disposal, landscaping maintenance, security system and fire system maintenance, and janitorial services in common areas of the Project, and

b. Maintenance, repair, and replacement as set out in Section 8.4.

8.4. Maintenance, Repair and Replacement. Landlord shall operate, maintain, repair, and replace the systems, facilities, and equipment necessary for the proper operation of the Project and for provision of Landlord's services under Section 8.2 and 8.3 (except as such may be installed by or be the property of Tenant), and shall be responsible for and shall expeditiously maintain and repair the foundations, structure, mechanical, electrical, and plumbing systems, facilities and equipment and roof of the Building (except as such may be installed by or be the property of Tenant) and repair damage to the Project. Tenant shall immediately notify Landlord of any damage or malfunction of Landlord's equipment, e.g. electrical system, heating system. Landlord shall repair the damage or malfunction and be responsible for the cost, unless the damage or malfunction is due to Tenant's negligence, or that of Tenant's agents, employees, visitors or patients, and then Tenant shall be responsible for the costs.

8.5. Additional Services. Tenant may obtain housekeeping services (at Tenant's cost and discretion) but in any case Tenant shall keep the Premises clean and neat, and shall leave the Premises in a reasonably tidy condition at the end of each business day. If Tenant elects to use the Benefis contracted housekeeping service, the dollar amount for the service will be added into Tenant's monthly rent payment so that one check will pay for both rent and housekeeping services.

8.6. Alterations by Landlord. Landlord may from time to time:

a. Make repairs, replacements, changes, or additions to the structure, systems, facilities, and equipment in the Premises where necessary to serve the Premises or other parts of the Project, and

b. Make modifications in or additions to any part of the Project not in or forming part of the Premises, and

c. Change or alter the location of common areas of the Project, providing that in doing so Landlord shall not disturb or interfere with Tenant's use of the Premises and operation of its business any more than absolutely necessary

in the circumstances and shall promptly repair at Landlord's expense any and all damage to the Premises caused thereby.

8.7. Access by Landlord. Tenant shall permit Landlord to enter the Premises outside normal business hours, and during normal business hours where such will not unreasonably disturb or interfere with Tenant's use and occupation of the Premises to provide services or make repairs, replacements, changes, or alterations as set out in this Lease, and to take such steps as Landlord may deem necessary for the safety, improvement, or preservation of the Premises or the Building. Landlord shall, whenever possible, consult with and give reasonable notice to Tenant prior to such entry.

8.8. Signs and Directory. Landlord has an existing directory located upon the property. Tenant shall pay any costs associated with changing the directory to include Tenant's listing, but Tenant shall not be financially responsible for Tenant's initial listing. All signage through the Premises will be coordinated by the Landlord. Landlord will retain absolute discretion regarding signage. Any signage other than the aforementioned directory requested by Tenant and allowed by Landlord shall be at Tenant's expense.

## **9. MAINTENANCE, REPAIR, ALTERATIONS, AND IMPROVEMENTS BY TENANTS**

9.1. Alterations by Tenant. If Tenant desires to make certain alterations or improvements to the Premises prior to occupancy or after, Tenant agrees that all improvements shall be approved by Landlord, which approval shall not be unreasonably withheld. Tenant's improvements shall be paid for by Tenant and shall meet any and all applicable governmental and/or quasi-governmental authority having jurisdiction. Tenant agrees to use a builder suitable to Landlord to make such modifications or improvements. Tenant shall cause the prompt repair of any damage to any portion of the Property which results from the construction of Tenant's improvements.

9.2. Mechanics Liens. Tenant shall not permit mechanics', materialmen's or other liens against the Project in connection with any labor, materials, equipment or services furnished or claimed to have been furnished. Tenant agrees to indemnify and hold Landlord harmless from any such lien. If any such lien shall be filed against the Project, Tenant shall cause it to be discharged at its sole cost and expense; provided, however, that if Tenant desires to contest any such lien, it may do so, so long as the enforcement thereof is stayed. In the event such a stay is obtained, Tenant shall obtain title insurance in the amount of the lien or liens (including interest and costs) for the benefit of Landlord should Landlord desire the same for any period during which a lien or liens exist on the Project. In such event, Tenant shall, if necessary, pay required title insurance premiums, post bond sufficient to satisfy the title insurer's requirements, pay escrow costs and fees, pay the attorney's fees of Landlord, and sign indemnity agreements in favor of the title insurer.

9.3. Trade Fixtures and Personal Property. Tenant may from time to time install in the Premises trade fixtures and personal property Tenant deems desirable. Tenant may also from time to time remove from the Premises any trade fixtures and personal property. Tenant shall be responsible, upon such removal, to replace all carpeting and drapes or blinds in the Premises, and

to leave the Premises in the same condition, which existed prior to installation, normal wear and tear excepted.

9.4. Telephone. Tenant shall pay for all telephone and intercom fees attributable to the Premises. Tenant may not use any telephone or communication equipment which interferes with the Projects electrical system or any other Tenants telephone or communication equipment.

## 10. COMMON AREAS

10.1. Definition. "Common Areas" means all areas, improvements, space and equipment in the Building provided by Landlord for the common or joint use and benefit of all tenants and their employees, agents, licensees and invitees, and not leased or held for lease to tenants, including without implied limitation, all entrances, exits, pedestrian walkways, walls, concourses, stairs, ramps, sidewalks, hallways, lobbies, elevators, common window areas, walls and ceilings in common areas, trash and rubbish areas, and public washrooms. Maintenance, utility rooms and closets are specifically excluded.

10.2. Use of Common Areas. Tenant shall be entitled to use, in common with others entitled thereto, so long as Tenant is not in default under this Lease, the common areas as designed from time to time by Landlord, subject to the terms of this Lease and the Rules and Regulations prescribed from time to time by Landlord.

10.3. Alteration of Common Areas. Landlord covenants that no alteration or diminution of the common areas shall be made that materially adversely affects Tenants ingress or egress of the location of the Premises with respect to the elevators, stairways and restrooms.

## 11. TAXES

11.1. Landlord's Taxes. Landlord shall pay before delinquent every real estate and personal property tax, assessment, license fee, and other charge, excepting Tenant's Taxes under Section 11.2. which is imposed, levied, assessed, or charged by any governmental or quasi-governmental authority having jurisdiction and which is payable in respect of the Term upon or on account of the Project, including any improvements, fixtures, and equipment and all other property of Landlord, real or personal, located in the Project and used in connection with the operation of the Project.

11.2. Tenant's Taxes. Tenant shall pay before delinquency every tax, assessment, license fee, and excise and other charge, however described, which is imposed, levied, assessed, or charged by any governmental or quasi-governmental authority having jurisdiction and which is payable in respect of the Term upon or on account of:

- a. Operations at, occupancy of, or conduct of business in or from the Premises by or with the permission of Tenant, and

b. Fixtures, equipment, improvements or personal property in the Premises which belong to Tenant.

11.3. Right to Contest. Landlord and Tenant shall each have the right to contest in good faith the validity or amount of any tax, assessment, license fee, excise fee, and other charge which it is responsible to pay under this Article 11, provided that no contest by Landlord may involve the possibility of forfeiture, sale, or disturbance of Tenant's interest in the Premises and that, upon the final determination of any contest by Landlord involving Tenant's interests, Landlord shall immediately pay and satisfy the amount found to be due, together with any costs, penalties, and interest.

## 12. INSURANCE

12.1. Landlord's Insurance. During the Term, Landlord shall maintain liability insurance, fire insurance with extended coverage, boiler and pressure vessel insurance, and other insurance on the Project with coverage and in amounts not less than those which are from time to time acceptable to a prudent owner in the Great Falls metropolitan area.

12.2. Tenant's Insurance. During the Term, Tenant shall maintain, at its own expense, comprehensive general public liability insurance and property damage insurance and such other insurance in type and coverage as Tenant deems desirable to satisfy Tenant's obligations contained in this Lease. Said public liability coverage shall not be less than \$1 million each person and \$3 million each occurrence, and property damage liability shall not be less than \$100,000 per occurrence. Landlord shall be named as an additional insured with respect to such public liability insurance. Tenant shall insure with a carrier acceptable to Landlord and Tenant shall provide Landlord proof of such coverage upon written request.

## 13. INJURY TO PERSON OR PROPERTY

13.1. Indemnity by Tenant. Tenant shall indemnify and hold harmless Landlord from and against every demand, claim, cause of action, judgment and expense, and all loss and damage arising from:

a. Any injury or damage to the person or property of Landlord, any other tenant in the Building or to any other person rightfully in the Project, where the injury or damage is caused by simple negligence or misconduct of Tenant, its agents, servants or employees, or of any other person entering upon the Premises under express or implied invitation of Tenant, or results from the violations of laws or ordinances, governmental orders of any kind or of the provisions of this Lease by any of the foregoing, and

b. Any loss and/or damage resulting from interference with or obstruction of deliveries to or from the Project, and

c. Any injury or damage not specified above to the person or property of Tenant, its agents, servants or employees, or any other person entering upon the Premises under express or implied invitation of Tenant, where the injury or damage is caused by any reason other than the simple negligence or misconduct of Tenant, its agents, servants, or employees.

#### **14. ASSIGNMENT AND SUBLETTING**

14.1. Assignment and Subletting. The Tenant shall not assign, sell, pledge, mortgage, encumber or in any manner transfer this Lease or any interest therein, nor sublet the Premises or any part or parts thereof, nor permit occupancy by anyone with, through or under it, nor allow the sale or transfer of any of its capital stock (in the case of a corporation) or partnership interests (in case of a partnership), which would result in another entity having Tenant's rights under this Lease, without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to an assignment or subletting.

14.2. Sublease. Any sublease of the Premises executed by Tenant shall incorporate this Lease (the "Underlying Lease") in its entirety and be subject to its terms. The sublease shall also require the sublessee to attorn to Landlord at Landlord's option in the event of default by Tenant under the terms of the Underlying Lease, and Tenant does hereby grant Landlord the irrevocable power of attorney to effect the same. Consent by Landlord to one or more assignments of this Lease or to one or more sublettings of the Leased Premises shall not operate as a waiver of Landlord's rights under this Article as to any subsequent assignment or subletting, nor release Tenant or any guarantor of Tenant of any of its obligations under this Lease, nor be construed or taken as a waiver of any of Landlord's rights or remedies under this Lease.

14.3. Bankruptcy. No interest in this Lease shall pass to any trustee or receiver in bankruptcy, to any estate of the Tenant, to any assignee of the Tenant for the benefit of creditors, or to any other party by operation of law or otherwise without Landlord's consent.

14.4. Consent to Assignment. No consent to assignment or subletting shall be granted if Tenant is then in default under this Lease.

14.5. Tenant's Obligations Continue. No subletting which is permitted under this Article 14 shall in any way release or relieve Tenant of its obligations under this Lease unless such release or relief is specifically granted by Landlord to Tenant in writing.

#### **15. SURRENDER**

15.1. Possession. Upon the termination of this Lease prior to the expiration of the Term, Tenant shall quit and surrender possession of the Premises in substantially the condition in which Tenant is required to maintain the Premises.

15.2. Fixtures and Improvements. After the expiration or other termination of the Term, all fixtures and improvements installed by Tenant shall become the property of the Landlord.

15.3. Merger. The voluntary or other surrender of this Lease by Tenant or the cancellation of this Lease by mutual agreement of Tenant and Landlord shall not work a merger, and shall not terminate all or any subleases and subtenancies or operate as an assignment to Landlord of all or any subleases or subtenancies.

15.4. Payments After Termination. Full payment by Tenant of monies due and owing from Tenant to Landlord after the expiration or other termination of the Term or after the giving of notice by Landlord to Tenant, shall not reinstate and continue the Term and shall not make ineffective any notice given to Tenant prior to the payment of such money.

## 16. RULES AND REGULATIONS

16.1. Purpose. The Rules and Regulations in Exhibit "B" attached hereto have been adopted by Landlord for the safety, benefit and convenience of all tenants and other persons in the Project. The Landlord reserves the right to adopt additional rules and regulations in its sole discretion. Tenant agrees to comply with all rules and regulations adopted by Landlord.

16.2. Observance. Tenant shall at all times comply with, and shall cause its employees, agents, licensees and invitees to comply with, the Rules and Regulations from time to time in effect.

16.3. Modification. Landlord may from time to time, for the purposes set out in Section 16.1, amend, delete from, or add to the Rules and Regulations, provided that any such modification:

- a. Shall not be repugnant to any other provision of this Lease, and
- b. Shall be reasonable and have general application to all tenants in the Building, and
- c. Shall be effective only upon delivery of a copy thereof to Tenant at the Premises.

16.4. Non-Compliance. Landlord shall use its best efforts to secure compliance by all tenants and other persons with the Rules and Regulations from time to time in effect, but shall not be responsible to Tenant for failure of any person to comply with such Rules and Regulations.

**17. EMINENT DOMAIN**

17.1. Taking of Premises. If, during the Term, all of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, or purchased under threat of such taking, this Lease shall automatically terminate on the date on which the condemning authority takes possession of the Premises (hereinafter called the "date of such taking").

17.2. Partial Taking of Project. If, during the Term, only part of the Project is taken or purchased as set out in Section 17.1, then

a. If, in the reasonable opinion of Landlord, substantial alteration or reconstruction of the Project is necessary or desirable as a result thereof, and the Premises are affected, Landlord shall have the right to abate this Lease by giving Tenant at least thirty (30) days written notice of such abatement, and

b. If more than one-third ( $\frac{1}{3}$ ) of the number of square feet in the Premises is included in such taking or purchase, Landlord and Tenant shall each have the right to terminate this Lease by giving the other at least thirty (30) days written notice thereof.

17.3. Abatement. If either party exercises its rights of abatement or termination hereunder, this Lease shall abate or terminate on the date stated in the notice, provided, however, that no abatement or termination pursuant to notice hereunder may occur later than sixty (60) days after the date of such taking.

17.4. Surrender. On any such date of termination under Sections 17.1 or 17.2, Tenant shall promptly surrender the Premises to Landlord. The Rent shall abate on the date of abatement or termination, except that if the date of such taking differs from the date of abatement or termination, Rent shall abate on the former date in respect to the portion taken. After such abatement or termination, and on notice from Landlord stating the Rent then owing, Tenant shall forthwith pay Landlord such Rent.

17.5. Partial Taking of Premises. If any portion of the Premises (but less than the whole thereof) is so taken, the Term of this Lease shall expire with respect to the portion so taken on the date of such taking. In such event, the Rent payable hereunder with respect to such portion so taken shall abate on such date, and the Rent thereafter payable with respect to the remainder not so taken shall be adjusted pro rata by Landlord in order to account for the resulting reduction in the number of square feet in the Premises.

17.6. Awards. Upon any such taking or purchase, Landlord shall receive the entire award or consideration for the affected lands and improvements. Nothing herein shall give Landlord any interest in or preclude Tenant from seeking and recovering on its own account

from the condemning authority any award or compensation attributable to the taking or purchase of the value of its property or its leasehold estate or the unexpired Term of the Lease, Tenant's improvements, chattels or trade fixtures, or the removal or relocation of its business and effects, or the interruption of its business. If any such award made or compensation paid to either party specifically includes an award or amount for the other, the party first receiving the same shall promptly account therefore to the other.

## **18. DAMAGE BY FIRE OR OTHER CASUALTY**

18.1. Limited Damage to Premises. If all or part of the Premises are rendered untenable by damage from fire or other casualty which, in the reasonable opinion of an architect acceptable to Landlord and Tenant, can be substantially repaired using the insurance proceeds received under Section 12.1 under applicable laws and governmental regulations within 180 days from the date of such casualty (employing normal construction methods without overtime or other premium), Landlord shall forthwith repair such damage. Landlord in its sole discretion may agree to contribute additional funds for this repair.

18.2. Major Damage to Premises. If all or part of the Premises are rendered untenable by damage from fire or other casualty which, in the reasonable opinion of an architect acceptable to Landlord and Tenant, cannot be substantially repaired using the insurance proceeds received under Section 12.1 and any amounts contributed by Landlord under applicable laws and governmental regulations within 180 days from the date of such casualty (employing normal construction methods without overtime or other premium), then Tenant may elect to terminate this Lease as of the date of such casualty by written notice delivered to the other not more than ten (10) days after receipt of such architect's opinion, failing which, Landlord shall forthwith at its own expense repair such damage other than damage to improvements, furniture, chattels or trade fixtures which do not belong to Landlord.

18.3. Abatement. If Landlord is required to repair damage to all or part of the Premises under Section 18.1 or 18.2, the Rent payable by Tenant hereunder shall be proportionately reduced to the extent that the Premises are thereby rendered unusable by Tenant in its business, from the date of such casualty until five (5) days after completion by Landlord of the repairs to the Premises (or the part thereof rendered untenable) in its business, whichever first occurs.

18.4. Major Damage to Project. If all or a substantial part (whether or not including the Premises) of the Project is rendered untenable by damage from fire or other casualty to such a material extent that, in the reasonable opinion of an architect or engineer chosen by Landlord and Tenant, the Project must be totally or partially demolished, whether or not to be reconstructed in whole or in part, Tenant may elect to terminate this Lease as of the date of such casualty (or on the date of notice if the Premises are unaffected by such casualty) by written notice delivered to Landlord not more than sixty (60) days after the date of such casualty.

## 19. TRANSFERS BY LANDLORD

19.1. Sales, Conveyance, and Assignment. Nothing in this Lease shall restrict the right of Landlord to sell, convey, or otherwise deal with the Project or any part thereof, subject only to all rights of Tenant under this Lease.

19.2. Effect of Sale, Conveyance, or Assignment. A sale, conveyance, or assignment of the Project shall release Landlord from liability from and after the effective date thereof, upon all of the covenants, terms, and conditions of this Lease, express or implied, except as such may

relate to the period prior to such effective date. This Lease shall not be affected by any such sale, conveyance, or assignment, and Tenant shall attorn to Landlord's successor in interest thereunder.

19.3. Subordination. This Lease shall be subject and subordinate to: (1) any reciprocal easement agreements or any other easements and (2) the lien of any mortgagee which Landlord may now or hereafter place upon the Premises and the Project, and to all terms, conditions, and provisions thereof, to all advances made, and to any renewals, extensions, modifications or replacements thereof. Provided, however, that if the Lease is in full force and effect, the right of possession of Tenant to the Premises and Tenant's rights arising out of this Lease shall not be affected or disturbed by the mortgagee in the exercise of any of its rights under the mortgage or the note secured thereby, nor shall Tenant be named as a party defendant to any foreclosure of the lien of mortgage, nor in any other way to be deprived of its rights under this Lease. This Lease has been, may be, and/or may hereafter be subject and subordinate to a ground lease.

19.4. Attornment.

a. Leases. Tenant agrees that Tenant shall attorn to any new owner of the Project, and if requested by said owner, enter into a new lease with said owner for the balance of the Term then remaining hereunder upon the same terms and conditions as those herein provided.

b. Mortgages. In the event of foreclosure or exercise of power of sale under any mortgage or deed of trust now or hereafter affecting the real property of which Premises forms a part, the holder of such mortgage or deed trust (or purchaser at any sale pursuant thereto) shall have the option, subject to Section 19.3, to require Tenant to attorn to such holder or purchaser and to enter into a new lease with such holder or purchaser (as Landlord) for the balance of the Term then remaining hereunder upon the same terms and conditions as those herein provided, or to elect that this Lease become or remain in full force and effect, Tenant shall, upon request by any such holder or purchaser, execute and deliver any and all instruments desired by such holder or purchaser evidencing the

subordination of this Lease to any said mortgage or deed of trust.

19.5. Nondisturbance. In the event of any attornment by Tenant pursuant to this Article 19, it is understood and agreed that this Lease and Tenant's rights hereunder shall continue undisturbed while Tenant is not in default hereunder, subject, however, to the provisions of Section 19.6.

19.6. Limitation. In the event of any attornment by Tenant pursuant to Article 19 of the Lease, such lessor, holder, purchaser or successor in interest shall not be:

- a. Liable for any act or omission of Landlord, or
- b. Subject to any offsets or defenses which Tenant might have against Landlord, or
- c. Bound by any prepayment by Tenant of more than one month's installment of Rent plus interest as provided hereinabove in Section 3.2, page 2, or by any modification of this Lease unless in existence at the time of any attornment.

19.7. Execution of Instruments. The subordination and attornment provisions of this Article 19 shall be self-operating and no further instrument shall be required. Nevertheless, Tenant, on request by and at Landlord's cost, shall execute and deliver any and all instruments further evidencing such subordination and (where applicable hereunder) attornment.

19.8. Attorney in Fact. Tenant agrees to and does hereby appoint Landlord as its attorney-in-fact to execute or obtain execution of such instruments as may be necessary to effectuate said subordination, sale, foreclosure, and attornment.

**20. NOTICES, ACKNOWLEDGMENTS, AUTHORITIES FOR ACTION**

20.1. Notices. Any notice from one party to the other hereunder shall be in writing and shall be deemed duly served if delivered personally to a responsible employee of the party being served, or if mailed by registered or certified mail addressed to Tenant at the Premises (whether or not Tenant has departed from, vacated, or abandoned the same) or to Landlord at the place from time to time established for the payment of Rent. Any notice shall be deemed to have been given at the time of personal delivery or, if mailed, three days after the date of mailing thereof. Either party shall have the right to designate by notice, in the manner above set forth, a different address to which notices are to be mailed.

20.2. Acknowledgments. Tenant shall at any time and from time to time, upon not less than ten (10) days prior notice from Landlord, execute, acknowledge, and deliver a written statement certifying that:

- a. This Lease is in full force and effect, subject only to such modifications (if any) as may be set out therein, and
- b. Tenant is in possession of the Premises and paying Rent as provided in this Lease, and
- c. The dates (if any) to which Rent is paid in advance, and
- d. That there are not, to Tenant's knowledge, any uncured defaults on the part of any other party hereunder, or specifying such defaults if any are claimed.

Any such statement may be relied upon by any prospective transferee or encumbrancer of all or any portion of the Project, or any assignee of any such persons. If Tenant fails to timely deliver such statement, Tenant shall be deemed to have acknowledged that this Lease is in full force and effect, without modification except as may be represented by Landlord, and that there are no uncured defaults in Landlord's performance.

20.3. Authorities for Action. Landlord may act in any manner provided for herein by any person who shall from time to time be designated by Landlord by notice to Tenant. Tenant shall designate in writing one or more persons to act on its behalf in any matter provided for herein and may from time to time change, by notice to Landlord, such designation. In the absence of any such designation, the person or persons executing this Lease for Tenant shall be deemed to be authorized to act on behalf of Tenant in any matter provided for herein.

## 21. DEFAULT

21.1. Event of Default. This Lease is made on the condition that, if any one or more of the following events shall happen:

- a. Tenant shall default in the timely payment of the Rent or any other amounts payable hereunder, and such default shall continue for three (3) days following the receipt of written notice from Landlord; or
- b. Tenant shall neglect or fail to perform or observe any of the other covenants herein contained on Tenant's part to be performed or observed, and Tenant shall fail to remedy the same within fifteen (15) days after Landlord shall have given to Tenant written notice specifying such neglect or failure (or within such period, if any, as may be reasonably required to cure such default), if it is of such nature that it cannot be cured within said 15-day period, provided that Tenant shall have commenced to effect such cure and shall proceed with due diligence to complete such cure; or

c. Tenant shall: (1) be adjudicated a bankrupt or insolvent, or (2) file, or threaten to file, a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Act (as now or in the future amended), or (3) make an assignment of its property for the benefit of its creditors; or

d. Tenant shall vacate or abandon the Premises; then in any one or more of such events, Landlord shall have the right, at its election, provided

Landlord had given prior written notice to Tenant then or at any time thereafter and while such event of default shall continue, either:

(1) To give Tenant written notice of Landlord's intention to terminate this Lease on the date of such given notice or any later date specified herein, and on such specified date Tenant's right to possession of the Lease Premises shall cease, and this Lease shall thereupon be terminated; or

(2) Without further notice, to reenter and take possession of the Premises, or any part thereof, and repossess the same as Landlord's former estate, and expel Tenant and those claiming through or under Tenant, and remove the effects of either or both (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants. Should Landlord elect to reenter as provided in this Section (2), or should Landlord take possession pursuant to legal proceedings or any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet the Premises, or any part thereof, on behalf of Tenant for such term or terms, and at such rent or rents, and upon such other terms and conditions as Landlord may deem advisable (which may include concessions and free rent) with the right to make alterations and repairs to the Premises. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease, unless a written notice of termination be given to Tenant.

21.2. Repossession. In the event Landlord does not elect to terminate this Lease, but on the contrary, elects to take possession, then such repossession shall not relieve Tenant of its obligations and liability under this Lease, all of which shall survive such repossession. In the event of such repossession, Tenant shall pay to Landlord as rent:

a. The rent and other sums as hereinbefore provided, which would be payable hereunder if such repossession had not occurred; less

b. The net proceeds, if any, of any reletting, or the value of Landlord's use, if any, of the Premises after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, necessary alteration costs, and expenses of preparation for such reletting.

21.3. Rent Due. Tenant shall pay such rent to Landlord on the days on which the rent would have been payable hereunder if possession had not been retaken, and Landlord shall be entitled to receive the same from Tenant on each such day. If Landlord shall be required to commence any action or proceeding to collect the foregoing amounts, or to enforce any other obligation of Tenant under this Lease, Landlord shall be entitled to a reimbursement of all costs and expenses incurred in said matter, including reasonable attorney's fees.

21.4. Termination by Default. If, however, this Lease is terminated by Landlord, by reason of any default by Tenant, or terminated by a court of lawful jurisdiction, Landlord shall be entitled to recover as damages from Tenant the excess, if any, of the minimum rent reserved in this Lease for the balance of the term hereof over the then reasonable rental value of the Premises for the same period, plus all of Landlord's costs of reletting the Premises, including, but not limited to, repair, alteration and preparation of said Premises for reletting, and any brokerage commission paid or due to any agent of Landlord, which amounts shall be immediately due and payable by Tenant to Landlord. It is agreed that the then "reasonable rental value" shall be the amount of rent, which Landlord may then reasonably obtain as rent for the remaining balance of the term. In addition, all costs incurred in connection with collecting such sum, including reasonable attorney's fees and costs, shall be recoverable by Landlord from Tenant.

21.5. Summary Proceedings. In the event that Landlord commences summary proceedings in the nature of a forcible entry and detainer or unlawful detention for nonpayment of minimum rent, percentage rent, additional rent, or for Tenant's failure to perform its other obligations hereunder, Tenant agrees not to file a counterclaim against Landlord in the summary proceedings, nor to consolidate claims against Landlord in said proceedings; however, Tenant does not waive its right hereunder to bring any later action against Landlord for damages. The commencement of such proceedings (including but not limited to the delivery of notice and process thereof), regardless of whether such proceedings are actually commenced, shall not be deemed to terminate the Lease. If Tenant should contest such summary proceedings, it shall post a bond in favor of Landlord for the amount of rent due for future damages upon termination of this Lease.

## **22. MOBILITY**

22.1. Tenant's Desire to Move. Landlord and Tenant agree that for any reason, should Tenant desire to move locations from the Premises to another building owned by Landlord,

Tenant may do so if Tenant gives written notice of Tenant's wishes, if Landlord has space in said other building, and Tenant and Landlord can agree on the terms of the new lease.

22.2. Termination of Old Lease. If Landlord and Tenant can agree on said move, this Lease shall terminate and the new Lease entered into shall replace this Lease.

22.3. Necessary Renovations. Any necessary renovation of the new space shall be at Tenant's expense.

### **23. EARLY TERMINATION AND ADJUSTMENT**

23.1. Tenant. After year one (1) of this Lease, Tenant may petition Landlord to terminate this Lease prior to the end of the term in the following instances:

a. The retirement of Tenant from the private practice of \_\_\_\_\_ (applicable only if Premises is occupied by only one practitioner who is also the Tenant and "private practice" shall not include teaching nor shall "retirement" include private practice to fill in for another \_\_\_\_\_ for up to three

months in any twelve month period beginning with the first month of fill in practice), or

b. Tenant's action of closing his entire practice in Great Falls, Montana, for purposes of moving the same to another community for the remainder of this Lease, or

c. Tenant's inability to conduct a profitable practice in a first-class office rent structure despite his best efforts, or

d. extraordinary financial hardship suffered on the part of Tenant as a result of events beyond his reasonable control that would make it unreasonably difficult for him to continue with this Lease.

23.2. Radiology Suite. If Landlord closes Doctors' Plaza Radiology Suite, Tenant may elect to terminate this lease prior to the end of the term. If Tenant elects to terminate lease and vacate premises they will not be liable for any remaining (Landlord financed) renovation costs for Suite 12.

### **24. MISCELLANEOUS**

24.1. Consent Not Unreasonably Withheld. Except as otherwise specifically provided, whenever consent or approval of Landlord or Tenant is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld or delayed. If Landlord

unreasonably withholds or delays consent or approval, Tenant shall be entitled to an action for specific performance damages. If either party withholds any consent or approval, such party shall, on written request, deliver to the other party a written statement giving the reason therefore.

24.2. Name of Building. Landlord shall have the sole discretion to name the building, and change said name upon thirty (30) days written notice.

24.3. Applicable Law and Construction. This Lease shall be governed by and construed under the laws of Montana, with venue in the Eighth Judicial District, Great Falls, Cascade County, Montana, and its provisions shall be construed as a whole according to their common meaning and not strictly for or against Landlord or Tenant. The words Landlord and Tenant shall include the plural as well as the singular, and if Tenant consists of more than one person, the obligation of all such persons shall be joint and several. Time is of the essence of this Lease and each of its provisions. The captions of the Articles are included for convenience only, and shall have no effect upon the construction or interpretation of this Lease.

24.4. Entire Agreement. This Lease, Exhibits A, B and C, and such other documents as referred to in this Lease contain the entire agreement between the parties hereto with respect to the subject matter of this Lease. Tenant acknowledges and agrees that Tenant has not relied upon any statements, representations, agreements, or warranties of Landlord except as are set out in the Lease.

24.5. Amendment or Modification. Unless otherwise specifically provided in this Lease, no amendment, modification, or supplement to this Lease shall be valid or binding unless set out in writing and executed by the parties hereto in the same manner as the execution of this Lease.

24.6. Construed Covenants and Severability. All of the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate Article hereof. Should any provision of this Lease be or become invalid, void, illegal, or not enforceable, it shall be considered separate and severable from the Lease, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such provision had not been included.

24.7. No Implied Surrender or Waiver. No provisions of this Lease shall be deemed to have been waived by Landlord, unless the waiver is in writing signed by Landlord. Landlord's waiver of a breach of any term or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a breach from having all the force and effect of any original breach. Landlord's receipt of Rent with knowledge of a breach by Tenant of any term or condition of this Lease shall not be deemed a waiver of such breach.

24.8. Successors Bound. Except as otherwise specifically provided, the covenants,

terms and conditions contained in this Lease shall apply to and bind the heirs, successors, executors, administrator, and assigns of the parties hereto.

24.9. Broker. Landlord and Tenant each warrant and represent to the other that it has not employed a broker in connection with this Lease, and each agrees to hold the other harmless from any and all claims of Broker on account of a brokerage commission in connection with the execution of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date first above written.

**Landlord**  
BENEFIS HEALTHCARE

**Tenants**  
MONTANA STATE UNIVERSITY  
COLLEGE OF TECHNOLOGY

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

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

**EXHIBIT "B"**

**RULES AND REGULATIONS**

1. Tenant agrees to spot clean any spills on the carpet in the Premises.
2. Tenant agrees to set the security system in the Building upon leaving the Building (if applicable).
3. No pets shall be allowed in the building.
4. No smoking shall be allowed in the building.

**EXHIBIT "C"**

*Ethical and Religious Directives for Catholic Health Care Services is available by request.*