**PARK CITY COUNCIL WORK SESSION NOTES**
**SUMMIT COUNTY, UTAH**
**FEBRUARY 19, 2004**

**Present:** **Mayor Dana Williams; Council members Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier and Joe Kernan**

**Tom Bakaly, City Manager; Mark Harrington, City Attorney; Colin Hilton, Economic Development Director; Jerry Gibbs, Public Works Director, Jon Weidenhamer, Planner; Gary Hill, Analyst; Alison Butz, Special Events and Facilities Manager; Linda Tillson, Library Director; Myles Rademan, Public Works Director; Eric DeHaan, City Engineer**

**Closed Session – Executive Office Conference Room**
4:00 p.m. Personnel

**Work Session – City Council Chambers**

**Council questions/comments**
Jim Hier commented on the recent problems experienced by High Mountain and noted that the State does not require short-term rental management companies to use trust accounts. He suggested that Park City become involved cooperatively with the State and lodging community to restructure those regulations.

Mayor Williams thanked Myles Rademan for the Leadership Class and noted that all the participants did a great job. He received a letter from a group who has monitored the use of the Farm trails and wants the City to look at putting in trailhead parking. He met with two residents of Woodside (500 block) who were concerned about congestion. He personally could not travel up the road because cars were parked on both sides and the middle of the road. The residents suggested that Woodside be one-way up in the winter. Beverly Evans sent a note to thank Council for its expression of kindness following her spouse's surgery. He reported swearing-in reserve officers for the police department, which is now officially a full force, with a full set of reserves, for the first time in eight years.

Mayor Williams announced that the Canyons Resort was hosting a celebration of sustainable slopes. He noted they were one of 95% of nation-wide ski areas that agreed to participate in an environmental program in which CARG participated. He reported that PSA's for the Blue Sky program will begin airing on KPCW and suggested that he meet with the Park Record. At this point, Park City is doing relatively well with 1% participation in the Blue Sky Program. He asked the library director to explain our connection with a library in Nepal.

Library Director Linda Tillson reported that Jim Powell approached her to see if we would be interested in developing a partnership to provide assistant with a library in Nepal. This library serves 50,000 people, but does not have a computer, and only about 6,000 books. She reported she was exploring ways of providing assistance and will work with Friends of the Library about their interest in sharing donated books.

Marianne Cone stated she had tried out the heated sandstone bench near the front door.

**Legislative update**
Gary Hill presented an update on bills that Park City has been following. One significant bill that will have a fiscal impact on the City is HB-341 Children's Internet Protection Act, which will require libraries to install filtering software on all Internet accessible computers. He reported that SB-10 Amendments to Local Referendum Process had passed, and SB 23 Amendments to Municipal Governments, which included all three of Park City's amendments, passed. SB-120 Residential Property Tax Exemption passed with a narrowed definition of who is eligible for two primary residences. One bill they are watching now is SB 208 Funding for Tourism, which will create enhanced permanent funding sources for statewide tourism promotion. He reported they will be following three other bills which just started the process: RDA amendments, disposal of radioactive waste, and protection of private, lawfully obtained property.

**Neighborhood and business district request process**

Jon Weidenhamer presented an Administrative Policy on Providing Enhanced Levels of Service/Improvements for Neighborhoods and Business Districts. He requested input and asked for discussion as to what constitutes a representative sample of a neighborhood.

Staff has received requests neighborhoods and business districts for enhanced levels of service, above and beyond the basic levels of health, safety and welfare, and Staff believed it was important to establish a consistent process by which they could regulate the requests, perform cost benefit analysis and provide information to Council so they could make an informed decision for allocating funds that would be necessary to provide such enhanced services. Staff believes this policy is consistent with Council goals of being a great place for families to live, preservation of Park City's character, and of being an open and responsive government.

Planner Weidenhamer clarified for Kay Calvert that health and safety issues would be addressed immediately. Ms. Calvert expressed concern about setting a pre-determining number and felt it would depend on the nature of the neighborhood.

Candace Erickson asked whether defined time limits should be established for each step, so petitioners would know their concerns were being addressed. Jerry Gibbs cautioned that by including deadlines, they were identifying resources that would be pulled from other city priorities.

Jim Hier agreed that a definition of time frame for each major action should be established. Colin Hilton concurred and explained that dollar amounts would also dictate Staff's the ability to provide a quick response or require placement of the request on the CIP re-prioritization list. Tom Bakaly referred to the guidelines allowing expenditures without Council approval for items that are not in the budget, but are under $10,000. Mr. Hier noted he was concerned about getting information back to the petitioners in a timely manner.

Staff emphasized that Council would kept informed of requests via Manager's Reports and if they had concerns, they could request additional information.

Mayor Williams felt this was timely based on his request from the Woodside residents. He stressed the importance of people working in their neighborhoods and getting to know their neighbors. He expressed concern about Staff spending time on neighborhood issues that don't have support from a majority of the neighborhood.

Council requested that language be modified to require petitions to be submitted by a representative number of households or businesses in an area. They asked Staff to define response times to petitioners. It was agreed that Staff would advise Council via e-mail of the requested changes to the policy before it was adopted.

**Review of regular meeting**

**Leases**
Council Members had questions about lease language, and proposed construction in the library center, but made no revisions to the leases as presented by staff.

**PARK CITY COUNCIL MEETING**
**SUMMIT COUNTY, UTAH**
**FEBRUARY 19, 2004**

## I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, February 19, 2004. Members in attendance were Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Staff present were Tom Bakaly, City Manager; Mark Harrington, City Attorney; Colin Hilton, Economic Development Director; Alison Butz, Special Events and Facilities Manager; Lloyd Evans; Police Chief; Patrick Putt, Planning and Zoning Administrator; Eric DeHaan, City Engineer; Lieutenant Phil Kirk; and Matt Twombly, Trails Planner.

## II COMMUNICATIONS FROM COUNCIL AND STAFF

Swearing-in of Police Officers Michael Fierro and Chris Gebhardt

Lieutenant Phil Kirk thanked Council for this opportunity. He felt we should be proud as a community that we can attract such quality people, because these new officers were both here because of Park City's quality of life.

Lieutenant Kirk described his 20+ year working relationship with Michael Fierro and commented he was probably the finest sergeant the Salt Lake City Police Department ever had in their department. He is an excellent supervisor, very experienced, and is also fluent in Spanish, which is valuable for Park City's department with the growing Hispanic population.

Lieutenant Kirk received a call from a Police Academy associate about Chris Gebhardt, who was self-sponsoring his training at the academy. He had experience with the Washington DC Metro Department and possesses administrative, management, and leadership skills in addition to incredible computer skills.

Mayor Williams administered the oath of office to Officers Michael Fierro and Chris Gephardt.

## III PUBLIC INPUT (any matter of City business not scheduled on agenda)

Elizabeth Swank thanked the City for working with Brian Hess of the Arts Council in negotiating lease for space at Miners. She pledged, as Board President, that they would continue to work as an unbiased party supporting all of the arts.

Tina Smith addressed Council about her desire to start a campaign for awareness of wildlife. The Mayor suggested that she work with Mountain Trails Foundation, Friends of the Animals and the City's Trails Planner, Matt Twombly.

Troy Duffin introduced Carol Potter, new Director of Mountain Trails Foundation. They also thanked Council for the City's handling of their lease and move to Miners

## IV WORK SESSION NOTES AND MINUTES OF MEETING OF FEBRUARY 5, 2004 AND FEBRUARY 12, 2004

MOTION: Jim Hier, "I moved approval of the Work Session and Meeting Minutes of February 5 and February 12 as written". Kay Calvert seconded. Motion unanimously carried.

## V CONSENT AGENDA

Item 2 was removed from the agenda and will be heard at a future date.

**MOTION:** Joe Kernan, "I move approval of Consent Agenda Items 1, 3, and 4." Marianne Cone seconded. Motion was unanimously approved.

1. Amended lease and relocation agreement with the Park City Cooperative Preschool for space located at the Library and Education Center, 1255 Park Avenue - see staff report

2. Amended lease with the University of Utah for space located at the Library and Education Center, 1255 Park Avenue (continue to March 4, 2004)

3. Lease with the Summit County/Park City Arts Council for space located at the Miners Hospital Community Center, 1354 Park Avenue – see staff report

4. Lease with Mountain Trails Foundation for space located at the Miners Hospital Community Center, 1354 Park Avenue – see staff report

Dana announced that Council was reassembling at the Legacy Lodge and no business will be conducted.

## VI ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned.

**MEMORANDUM OF CLOSED SESSION**

The City Council met in closed session at approximately 4 p.m. Members in attendance were Mayor Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Staff present were Tom Bakaly, City Manager and Mark Harrington, City Attorney. Candace Erickson, "I move to close the meeting to discuss personnel". Marianne Cone seconded. Motion carried unanimously.

The meeting opened at approximately 4:30 p.m.

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Sharon Bauman

Sharon Bauman

Sharon Bauman, Secretary

PARK CITY SUMMIT COUNTY UTAH
CORPORATE Seal
MARCH 1, 1884

**City Council**
**Staff Report**

PARK CITY 1884

**Planning Department**

**Author:** Jonathan Weidenhamer
**Subject:** Administrative Policy on Providing Enhanced Levels of Service/ Improvements For Neighborhoods & Business Districts
**Date:** February 19, 2004
**Type of Item:** Informational update & request for direction

**Summary Recommendation:**
Review the proposed administrative policy and provide input.

**Description:**
**Topic:**
Requests from neighborhoods and business districts for enhanced levels of service and or improvements.

**Background**
Special interest groups often request the City to provide enhanced levels of services and or improvements. While many of their requests would be covered under "normal" or "basic" level of city services, some requests would be considered an "enhanced" level of services or improvements not currently budgeted in the capital improvements program. Basic City services are things directly related to health and safety, like police, snow removal, general maintenance and upkeep, and routine five year CIP and streets maintenance plans. Enhanced services would be things like plowing public sidewalks, under-grounding utilities, and pedestrian enhancements like bulb-outs. Long-term maintenance of such improvements is not contemplated in the approved operating budget.

Typically groups seeking assistance represent business districts or individual neighborhoods. Recently the Upper Park Avenue Property Owners Association, Prospector Square Property Owners Association, and the lower Deer Valley neighborhood have been working with staff to address specific requests and issues. Consistent with Council's goals of creating a "Great Place for Families to Live", "Preservation of Park City Character (neighborhood parks & improvements), and lastly of being an "Open and Responsive Government to the Community", staff proposes an administrative policy by which to process these requests. This policy will be adopted and administered by the City Manager.

**Analysis:**

The proposed policy will provide the Council with a consistent framework by which to fund neighborhood requests within the confines of the annual CIP (Capital Improvement Project) budget review. Failure of a group to follow the process would likely preclude Council consideration. This method would encourage applicants to use normal means within the public process to advocate their requests.

The following is the proposed administrative process:

*DRAFT*

**Administrative Policy for Business Districts and Neighborhoods Needs Assessments**

1) Submit a petition to the Executive Office
    a. Must be from a minimum of 5 individual residents, majority of a given subdivision, or a registered owners association. Accurate contact information must be provided.
    b. Define Boundary - Who does the petition represent? Is it inclusive to a specific neighborhood or business district? Explain why assessment area should be limited or expanded.
    c. Define issues - What is being requested (wish list)?
    d. Deadline – In order to be considered for upcoming fiscal year, the petition must be submitted by the end of the calendar year
2) Initial Presentation to Council (Managers Report)
    a. Inform Council of request for assistance - outlines specific issues/ requests.
    b. Define and initially identify appropriate basic level of services are being provided - Identify any gaps and provide.
    c. No input or direction from Council will be requested at this time.
3) Initial Internal Review
    a. Identify staff project manager
    b. Assemble background/history & existing conditions (Identify all participants, relevant City ordinances, approval timeline, other pertinent agreements/ studies & factors, etc.)
        i. Neighborhood meeting – clearly identify issues, discuss solutions, create active dialogue
    c. Criteria to analyze request - What should we do & with what rationale?
        i. Health, safety, welfare
            A. Define and verify appropriate, basic level of services are being
        ii. Consistency with Council goals and priorities
            A. Define enhanced level of services that are requested.
        iii. Cost/ Benefit Analysis - Define budgetary implications of providing Enhanced level of services
            A. Define initial capital improvement costs
            B. Define annual, ongoing maintenance and operational costs
            C. Gather input from city department identified as responsible for each individual item as listed
4) Initiate Public Forum (Applicant & Staff working together)
    a. Create consensus from petitioner and general public
        i. Neighborhood meeting(s)
    b. Use cost/benefit analysis to prioritize applicant's wish list

   c. Funding partner – any district that receives "enhanced" level of services should be an active participant in funding or, participate in identification of a funding source (other than City budget)

5) Presentation to Council (Work Session)
   a. Identify any gaps in provision of basic level of City services
   b. Receive authorization for technical review - using "outside" consultants if necessary
   c. Identify prioritized project wish list (unfunded)
   d. Identify funding source for each item; or
   e. Move to CIP committee review as "yet to be funded project" for prioritization comparison
6) Council decision whether to include in budget or not
   a. Spring of each year, consistent with budget policies of reviewing all new requests at once.

**D. Department Review:** The City Manager's Office, Planning, Engineering, Legal, Economic Development and Capital Projects, Budget and Grants, and Public Works Departments have reviewed this report.

**Issues for Discussion**

- What constitutes a representative sample of a neighborhood? Five people? A majority of lot owners in any given area or subdivision?

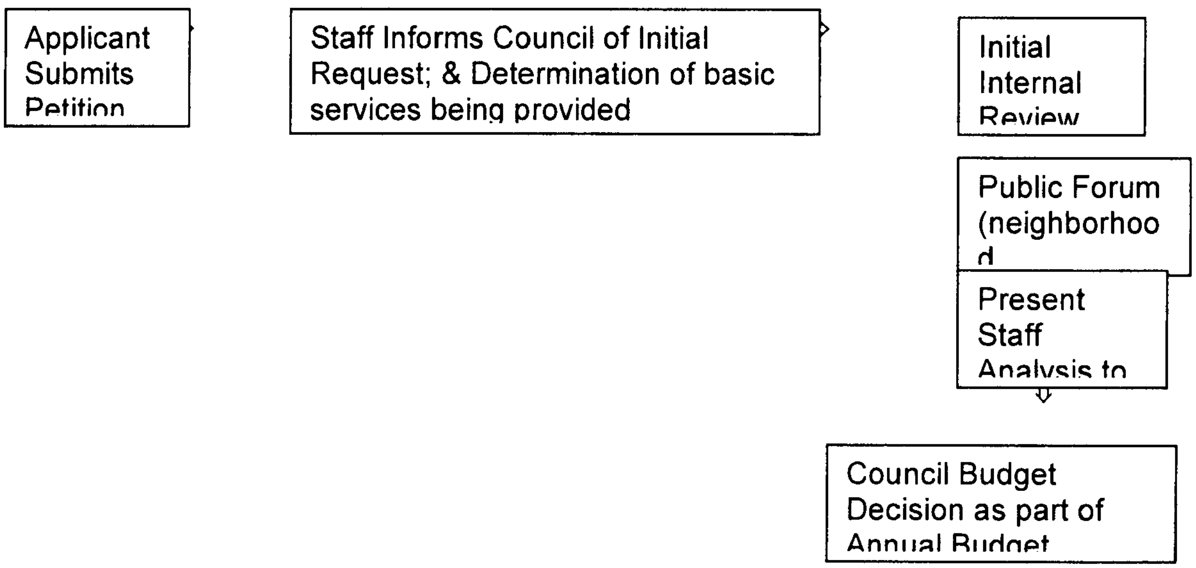
**Alternatives:**

- **Approve Staff's recommendation for the City Manager to to adopt the attached administrative policy**
- **Modify in some way the suggested Staff recommendation**
- **Deny approval to proceed with Staff's recommendation**

**Significant Impacts / Consequences of not taking the recommended action:**
If the City does not adopt this administrative policy, some other meaningful solution to processing requests for assistance from neighborhoods and business districts will need to reached.

**Recommendation:**
Review the proposed administrative policy and provide input.

**Exhibits**



# City Council Staff Report

PARK CITY 1884

Economic Development & Capital Projects

| | |
|---|---|
| **Author:** | **Colin Hilton** |
| **Subject:** | **Cooperative Preschool Relocation Agreement & Amended Lease** |
| **Date:** | **February 19, 2004** |
| **Type of Item:** | **Administrative – Relocation Agreement & Amended Lease** |

**Summary Recommendation:**
Staff recommends that:

1. Council approve the relocation agreement with the Cooperative Preschool
2. Council approve the amended lease with the Cooperative Preschool

**Description:**
**Topic:**

Relocation Agreement and amended lease to allow for preferred library expansion project option.

**Background:**

At the direction of City Council, Staff has worked with the building tenants on the first and second floors in order to pave the way for the preferred library expansion option.

The preferred library expansion option was derived through an extensive series of design workshops held in early December. Various stakeholders representing the Library Board, Friends of the Library, Library Staff, and the public at large all preferred and lobbied for a design option that requires a relocation of the tenants in Rooms 111 & 109 (Cooperative Preschool & Montessori School). The Montessori's lease currently expires in July. The City met and advised the Montessori School representatives that the option to renew a lease would not be offered due to the desired library expansion option. The school officials subsequently were kind enough to scale back the lease period to a proposed June 14th date, therefore assisting in the proposed construction scheduling.

The Cooperative Preschool's lease had been reworked in 2003 with a 2008 expiration. Discussions with the Cooperative Preschool have worked through a variety of issues that would allow the preferred library expansion to still occur in April 2004, while addressing concerns expressed by the Preschool over a second move within a year's time frame. Those relocation terms have been negotiated through the preparation of the attached "Relocation Agreement."

**Analysis:**

City staff is appreciative of the Cooperative Preschool's actions in offering to move again in such a short period of time. Without their willingness to relocate, the preferred library expansion option would not have been able to occur.

The forecasted expenses to relocate the Cooperative Preschool can be accommodated given the current project cost estimates for the entire expansion project budget. They are outlined below:

| Summary-forecasted library expansion project budget: | Original Forecast (Current) |
| --- | --- |
| a. Estimated Construction Budget | = $280,000 ($260,000) |
| b. Design & Engineering costs | = $30,000 ($30,000) |
| c. Contingency (10%) | = $30,200 ($26,400) |
| d. Advertisements / Admin. / Inspection | = $ 2,000 ($2,000) |
| e. FF&E | = $40,000 ($40,000) |
| f. Tenant Relocations | = ($24,000) |
| g. 1% Arts Component | = $ 2,800 ($2,600) |
| Total project cost | = $385,000 ($385,000) |

Under the process that has allowed this preferred library expansion to occur, the following positives have occurred:

- The library expansion has added an additional 1342 sq' of usable space.
- The preferred design of the expanded library eliminates the need to spend upwards of $25-$35,000 on a second set of ADA ramps & restrooms or compromising access corridors or two-door entry ideas.
- The layout of the Children's section of the library can now be done under the optimal design and desired function adjacencies.
- The estimated need for future library expansions has been extended for an additional 3-4 years (now 10-13 years as opposed to 7-10 years as previously reported).

The current plan would be to renovate Room 209 in March for an April move-in by the Cooperative Preschool. This would allow for the major expansion construction to occur from April through July 2004.

**Alternatives:**

- Authorize execution of the proposed Relocation Agreement & amended lease
- Modify terms of the proposed Relocation Agreement & amended lease
- Denial of the proposed Relocation Agreement & amended lease
- The City Council may continue the discussion in order to receive additional information.

**Significant Impacts:**

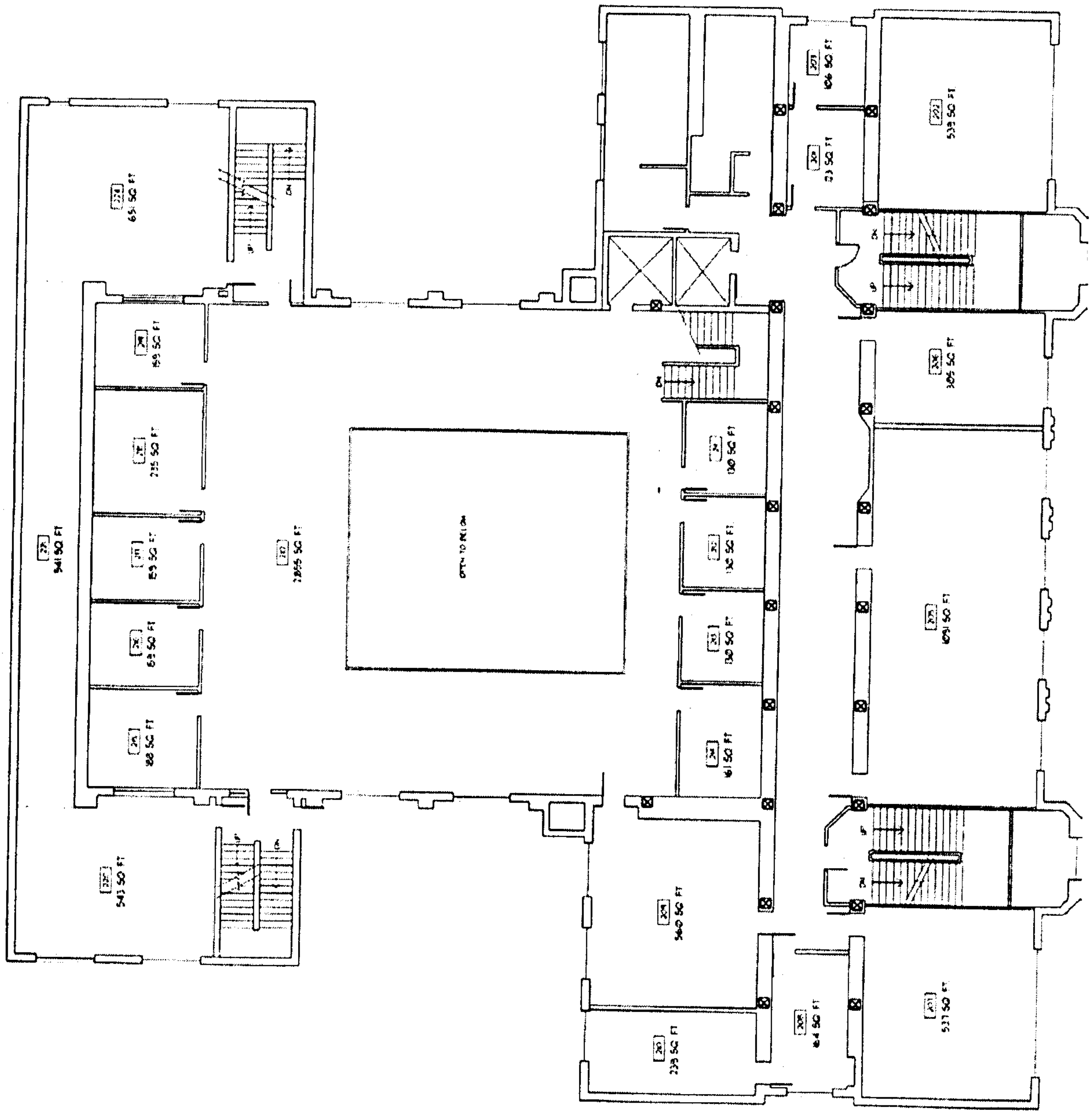
The costs associated with the Cooperative Preschool's relocation allow for the preferred library expansion project to occur. The incurred costs would come from the Library expansion budget and are broken down in roughly three categories:

1. Structural / Mechanical – estimated at $13,500
2. Finishes - $7,000
3. Design/Moving Costs/Contingency - $3,500

**Recommendation:**
Staff recommends that:
1. Council approve the relocation agreement with the Cooperative Preschool
2. Council approve the amended lease with the Cooperative Preschool

**Exhibits:**
Exhibit A – Second Floor of Library & Education Center
Attachment B - Relocation Agreement
Attachment C – Amended Lease

**Exhibit A**



**Attachment B**
**Relocation Agreement Between Park City Municipal Corporation and Park City Cooperative Preschool**

1. Park City Municipal Corporation ("Park City") entered into a lease dated June 17, 2003 ("2003 Property Lease") with Park City Cooperative Preschool ("Preschool") regarding the rental of Room 111 in the Carl Winters Building located at 1255 Park Avenue, Park City, Utah.

2. In order to accommodate an expansion of the library located within the Carl Winters Building, Park City has requested that the Preschool relocate to other space within the Carl Winters Building identified as Rooms 208, 209 and 210 as more particularly described at Exhibit A, attached hereto and incorporated by reference herein. These rooms collectively constitute approximately Nine Hundred Sixty Three (963) square feet and are hereinafter collectively referred to as "Room 209."

3. Pursuant to the 2003 Property Lease, Park City has leased to the Preschool Room 111 of the Carl Winters Building through June 30, 2008. Nevertheless, in an effort to cooperate with Park City with respect to the desired expansion of the library, the Preschool has agreed to enter into this Relocation Agreement with Park City whereby the Preschool and Park City agree to explore and negotiate the remodeling of Room 209 pursuant to the terms of this Relocation Agreement.

4. The Preschool is not obligated in any manner to actually approve any proposed design, finishes and furnishings of the remodeled Room 209, and if the Preschool does not agree to any such proposed remodeling, then upon written notice to Park City from the Preschool of such lack of agreement by the Preschool this Relocation Agreement shall terminate and be of no further force or effect, and the 2003 Property Lease shall remain in full force and effect as currently constituted, including the ongoing use of Room 111 by the Preschool.

5. If the Preschool and Park City mutually agree (in a written document dated and signed by each party) upon the design, finishes and furnishings of the remodeled Room 209 as set forth in this Relocation Agreement, then Park City shall proceed to remodel Room 209 at the sole expense of Park City, and at absolutely no cost to the Preschool, including all finishes and furnishings, as set forth in this Relocation Agreement. Any and all changes to the mutually agreed upon design, finishes and furnishings must be agreed to in advance by both the Preschool and Park City (in a written document dated and signed by each party).

6. Upon completion of the remodeling of Room 209 in accordance with the mutual written agreement of the Preschool and Park City pursuant to this Relocation Agreement, and further upon acceptance of such work by the Preschool as set forth in this Relocation Agreement, the Preschool and Park City shall execute the "First Addendum to 2003 Property Lease Between Park City Cooperative Preschool and Park City Municipal

Corporation" in the form attached hereto, and the Preschool shall relocate from Room 111 to Room 209 as set forth in this Relocation Agreement.

7. Upon the execution of this Relocation Agreement by both the Preschool and Park City, the Preschool will identify through its attorney which individuals shall constitute the "Design Subcommittee" on behalf of the Preschool for purposes of negotiating with Park City the actual design, finishes and furnishings of the remodeled Room 209. Park City, including, but not necessarily limited to, any architects or other design professionals working on the library expansion, shall communicate only with the individuals on the Design Subcommittee concerning the design, finishes and furnishings of the remodeled Room 209, and shall not make any direct contact with any other individuals associated with the Preschool with respect to any aspect of the remodeling of Room 209 during such remodeling, including, but not limited to, its Board of Trustees, officers, teachers and parents of students.

8. Absolutely no work (including, but not limited to, demolition and/or construction) shall be done on the first floor of the Carl Winters Building with respect to the library expansion until after the Preschool vacates Room 111 and relocates to Room 209 as set forth in this Relocation Agreement, with the sole exception of connecting plumbing to Room 209 through Room 111, which work shall be scheduled in advance with the Preschool over one or more weekends when the Preschool is not in session.

9. The Preschool will not vacate Room 111 and relocate to Room 209 until such time as Room 209 has been remodeled in accordance with the mutually agreed upon design, finishes and furnishings pursuant to this Relocation Agreement, and a walk-through of Room 209 by Park City and the Preschool has been completed at least twenty-four (24) hours in advance of the date that the Preschool is to commence its physical relocation, whereby the Preschool confirms that Room 209 has indeed been remodeled and completely finished in accordance with the mutually agreed upon design, finishes and furnishings (including, but not limited to, all walls must be freshly painted and dry, all flooring and carpet must be installed, all electrical, heating, plumbing, etc. must be finally completed and have received final written approval by a city building inspector, etc.). In other words, all punch list items must be completed at least twenty-four (24) hours prior to the date that the Preschool is to commence its physical relocation. Assuming that the targeted date for the relocation is 9:00 a.m. on Tuesday, April 6, 2004, then the walkthrough and all punch list items must all be completed no later than 9:00 a.m. on Monday, April 5, 2004. Under no circumstances shall the Preschool be required to physically relocate prior to the week of April 5, 2004 (which is the Preschool's Spring Break).

10. Park City shall pay any and all costs and expenses for the remodeling of Room 209 in accordance with the mutually agreed upon design, finishes and furnishings, including, but not not necessarily limited to, new carpet, new flooring, new paint, all structural modifications, plumbing, electrical and wiring, phone jacks, appliances, etc.

11. Park City shall pay any and all costs and expenses related to physically moving the Preschool to the remodeled Room 209, including, but not limited to, professional movers (not city employees), all packing, unpacking, removing all debris (such as boxes and packing materials), re-keying the new locks for Room 209 as well as any exterior doors that connect to Room 209, etc.

12. Park City shall pay the Preschool's two teachers for two eight-hour work days (in the total amount of $487.52)) to cover the cost of them having to put the new classroom back together during off-hours when the Preschool is not in session. The payments shall be made directly to the teachers by Park City no later than thirty calendar days after the Preschool actually moves into Room 209.

13. In the event that Room 209 is not ready for the Preschool to move-in pursuant to Paragraph 9 herein (i.e., final walk-through and all punch list items completed to the reasonable satisfaction of the Preschool based upon the mutually agreed upon design, finishes and furnishings) on or before 9:00 a.m. on Wednesday, April 7, 2004, then the the Preschool shall postpone its physical relocation from Room 111 to Room 209 until late the week of August 13-20, 2004 when all Preschool summer camps have been completed, but before the start of the 2004-2005 school year. Park City shall not be allowed to cause the Preschool to relocate to other temporary space pending completion of Room 209, and Park City hereby covenants not to even ask the Preschool to do so. The physical relocation by the Preschool from Room 111 to Room 209 shall occur during regular business hours Monday through Friday, and Park City hereby covenants not to even ask the Preschool to physically relocate over a weekend.

14. The parties hereby agree that Park City's aggregate costs for relocating the Preschool from Room 111 to Room 209 pursuant to this Relocation Agreement, including the remodel of Room 209 (includes design and engineering costs), payment of costs and expenses related to physically moving the Preschool to the remodeled Room 209 pursuant to Paragraph 11 herein, and payment of two Preschool teachers pursuant to Paragraph 12 herein, shall not exceed Twenty Four Thousand Dollars ($24,000.00), provided however, that once the Park City and the Preschool have mutually agreed in writing upon the design, finishes, and furnishings as set forth in this Relocation Agreement—including an agreed upon itemized written budget for all aspects of the remodeling project—any additional and/or unforeseen costs incurred in the remodeling process shall be paid by Park City.

15. Park City hereby acknowledges and agrees that in the event of a breach by Park City (and/or any of its employees, representatives, contractors, or other agents) of the terms set forth at Paragraph 8 in this Relocation Agreement, the Preschool will be irreparably harmed and it will be extremely difficult if not impossible to ascertain with any degree of certainty the damages that the Preschool will suffer as a result of such breach, and Park City further acknowledges and agrees that the disruption of the Preschool classes cannot be adequately compensated for in the form of money damages. Therefore, Park City hereby acknowledges and agrees that in addition to, and without limiting any other remedy or right that the Preschool may have, the

Preschool shall have the absolute right to obtain injunctive relief against Park City (and/or its offending employee, representative, contractor, or other agent), issued by a court of competent jurisdiction enjoining any such breach of Paragraph 8, including temporary, preliminary and/or permanent injunctive relief, without the need for the Preschool to further establish the existence of irreparable harm over and above the agreed upon irreparable harm set forth in this Agreement, and without the need for the Preschool to post any amount of security as a condition of such relief.

16. This Relocation Agreement, or any provision thereof, shall not be construed against any party due to the fact that this Relocation Agreement, or any provision thereof, was drafted by that party or that party's agent, but rather shall be construed and interpreted as if it was the product of the joint efforts of all parties, with all parties having equal input thereto.

17. Should any litigation, action, arbitration, or other proceeding be commenced between the parties to this Relocation Agreement arising from this Relocation Agreement, or concerning the rights or duties of either party under this Relocation Agreement, in addition to any other relief which may be granted, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees incurred therein.

18. The parties agree that this Relocation Agreement, or a photocopy thereof, may be used in evidence in a subsequent proceeding in which any of the parties seeks an interpretation or enforcement of any term or provision of this Relocation Agreement.

19. This Relocation Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

20. Each party to this Relocation Agreement, by execution of the Relocation Agreement, consents and submits to personal jurisdiction over the party by, and venue in, the courts of the State of Utah in and for Summit County, Utah, regarding any legal action arising from, or otherwise related to, this Relocation Agreement.

21. This Relocation Agreement and the attached First Amendment to 2003 Property Lease Between Park City Cooperative Preschool and Park City Municipal Corporation constitute the entire agreement between the parties, and the parties declare that there is no promise or agreement relating to the subject matter of this Relocation Agreement which is not expressly set forth in this Relocation Agreement and the attached First Amendment to 2003 Property Lease Between Park City Cooperative Preschool and Park City Municipal Corporation.

22. No amendment, change or modification of this Relocation Agreement shall be valid unless set forth in writing, signed by all parties hereto and expressly stating that the parties specifically intend to amend, change or modify this Agreement thereby.

23. Any individual executing this Relocation Agreement on behalf of an entity hereby individually represents and warrants that they are duly authorized to execute this

Relocation Agreement on behalf of the entity and to cause the entity to be bound thereby.

Effective as of the _____ day of February, 2004.

**Attachment C**
**FIRST ADDENDUM TO 2003 PROPERTY LEASE BETWEEN PARK CITY MUNICIPAL CORPORATION AND PARK CITY COOPERATIVE PRESCHOOL**

THIS FIRST ADDENDUM is made and entered into in duplicate this ____ day of February, 2004, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah (hereinafter "Landlord"), and PARK CITY COOPERATIVE PRESCHOOL, a Utah nonprofit organization (hereinafter "Tenant") to amend the 2003 Property Lease signed and executed by the Parties on June 17, 2003.

WITNESSETH:

WHEREAS, the parties entered into a Property Lease on June 17, 2003 (hereinafter "2003 Property Lease") whereby Tenant leased Room 111 of the Carl Winters Building; and

WHEREAS, Landlord desires to expand the Park City Library, currently located in the Carl Winters Building, utilizing Room 111; and

WHEREAS, Tenant has agreed to accommodate Landlord's desire to expand the Library by relocating to Room 209 of the Carl Winters Building;

WHEREAS, the parties have signed and executed a Relocation Agreement governing the process of remodeling Room 209 and the relocation of Tenant thereto;

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, the parties hereto now amend the 2003 Property Lease as follows:

1. <u>**PROPERTY**</u>. Any and all references to Room 111 in the 2003 Property Lease are hereby replaced by Room 209. As used herein, Room 209 is defined as the three rooms on the second floor of the Carl Winters Building currently identified as Rooms 208, 209 and 210, consisting of approximately nine hundred sixty-three (963) square feet, as more particularly described in Exhibit A, attached hereto and incorporated by reference herein. The parties hereby acknowledge and agree that although the actual square footage of the leased space increases as a result of this First Addendum, the amount of rent paid pursuant to Paragraph 3 of the 2003 Property Lease shall remain the same.

2. <u>**OTHER TERMS**</u>. All other terms and conditions of the 2003 Property Lease shall continue to apply.

3. **FUTURE RELOCATION**. Landlord hereby covenants to never even ask Tenant to relocate for any reason for the duration of the term of the 2003 Property Lease.

4. **ENTIRE AGREEMENT**. This First Addendum is a written instrument pursuant to Paragraph 31 of the 2003 Property Lease between the parties and cannot be altered or amended except by written instrument, signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this First Addendum to be executed the day and year first herein above written.

# City Council Staff Report

| | |
|---|---|
| **Author:** | **Alison Butz** |
| **Subject:** | **Lease Authorizations for Arts Council, Mountain Trails & U 0f U** |
| **Date:** | **February 17, 2004** |
| **Type of Item:** | **Administrative – Lease Authorizations** |

PARK CITY 1884

Special Events and Facilities Department

**Summary Recommendations:**
Staff recommends that:

(1) Council approve the lease for the Park City/Summit County Arts Council;
(2) Council approve the lease for Mountain Trails Foundation; and
(3) Council approve the Sixth Addendum to the U of U Lease, thereby allowing for the Library expansion.

**Description:**

**Topic:**
Review the draft leases for the rental of office space in Miners Hospital, and the Sixth Addendum to the lease agreement between the City and the U of U.

**Background:**
On April 24, 2003, Council received a presentation in public session from the Library regarding an expansion, and at that time seemed positive regarding the proposed budget option. Staff moved forward with the negotiations to take effect as of July 1, 2003. The FY 2004 budget, approved by Council, allocated money for the Library expansion. Plans for the expansion focused on extending the Library across the first floor hallway into Room 105 and 106.

After an extensive series of design workshops, held in December 2003, a preferred Library expansion option was settled on. Various stakeholders representing the Library Board, Friends of the Library, Library Staff, and the public at large all preferred and lobbied for a design option that will require the relocation of several tenants. This relocation will allow for an expansion that does not isolate any particular area.

**Analysis:**
The City will need to free up leased space on the first floor in order to expand the Library per the preferred design. By moving the Park City/Summit County Arts Council and the Mountain Trails Foundation from their current location (Room 208), the tenant in Room 111 will be able to relocate to the second floor (Rooms 208 and 209). Room 111 will then become part of the new Library expansion. Additionally, the U of U will release Rooms 208 and 301 in order to accommodate the relocation of other existing Tenants within the Library. The U of U will also forgo future restricted use of Room 209 in exchange for conditional use of Room 109 once the

Library expansion is completed. Approval of the attached leases and the lease addendum will allow the Library to expand and to increase its services and offerings to accommodate the growing needs of the community.

The attached leases will be in effect upon execution, and the addendum will become effective on March 1, 2004. Staff anticipates that the Tenants will be able to move from the Library to the new leased spaces at Miners Hospital during the first week of March.

Duration of the Leases
Both leases will have an expiration date of June 30, 2005, which coincides with the City's fiscal year. The lease addendum will not alter the current lease term.

Copies of the draft leases and the Sixth Addendum are attached.

**ALTERNATIVES**

**A.** Recommend the draft leases and the lease addendum, thereby allowing the Park City/Summit County Arts Council and Mountain Trails Foundation to move from the Library to Miners Hospital, which will allow for the Library expansion, be approved.
**B.** Modify terms of the leases and the addendum and approve in order to allow for the Library expansion.
**C.** Recommend denial of the new leases and the addendum thereby preventing the expansion of the Library.
**D.** The City Council may continue the action for more information and discussion.

**RECOMMENDATION:**

Staff recommends that Council approve the leases for the two offices in Miners Hospital and the Sixth Addendum thereby allowing for the Library expansion.

**Exhibits**

Exhibit A - Park City Arts Council 2004 Property Lease
Exhibit B - Mountain Trails Foundation 2004 Property Lease
Exhibit C – Sixth Addendum to the Lease Agreement Between the University of Utah and Park City Municipal Corporation

**EXHIBIT A**
**PARK CITY ARTS COUNCIL**

**Park City Municipal Corporation**
**2004 Property Lease**

THIS AGREEMENT is made by and between Park City Municipal Corporation (hereinafter referred to as "Landlord") and the Park City Foundation for the Arts & Humanities d/b/a/ Park City/Summit County Arts Council (hereinafter referred to as "Tenant") to set forth the terms and conditions under which Landlord will lease space in Miners Hospital at 1354 Park Avenue, Park City Utah (hereinafter referred to as "Miners Hospital") to Tenant. The parties agree as follows:

1. Property. The property leased is within Miners Hospital as described in Exhibit A (attached and hereafter referred to as Premises). The leased space includes the following property on the first floor of Miners Hospital: 1st floor office (Room 11) as is. The Premises contains approximately one hundred (100) square feet.

2. Term. The Lease term shall commence upon execution, and shall expire on June 30, 2005. The property being leased is currently surplus municipal space, but may be required for municipal purposes by Landlord at the conclusion of the lease term. Landlord may terminate this lease upon three (3) months prior written notice if the leased space is required for municipal purposes. No option of first refusal is granted to Tenant.

3. Rent. The rent for the leased space shall be as follows:

(1) Rate: One Thousand Five Hundred Seventy-Five Dollars ($1575.00) annually.

(2) Payments: Rent shall be paid in equal monthly installments of One Hundred Thirty-One Dollars and Twenty-Five Cents ($131.25). Rent shall be due on the first of each month, and past due if not paid by the tenth (10th) of the month.

(3) Credit for Relocation: Landlord agrees to waive the first monthly installment due following execution of the Lease.

(4) Deposit: No Deposit is required.

(5) Credit for Early Payment. Beginning in Calendar Year 2004, if Tenant pays Landlord the annual rent in full by July 15, then rent will be reduced by four percent (4%).

4. Utility Service. Landlord shall be responsible for natural gas, electricity, sewer, refuse collection and water for the leased space. Tenant will be responsible for any other utilities such as telephone and cable television and shall establish an account with each of these utilities in its own name.

5. Use of the Premises. The premises shall be used only for quasi-public administrative use.

6. Telephone, Cable and Microwave. The Tenant will install its own

telephone, television, computer and other communication equipment in the leased space. The remodeled space will include wiring, cables or chases for a wide variety for communications between spaces within the building and externally. Any specialized communication facilities, equipment, wiring, cables or installations will be the Tenant's responsibility.

7. Insurance. The Tenant will provide insurance at its expense covering its contents against loss through theft, fire, vandalism or similar casualties. The Landlord will maintain insurance on the structure for the replacement of the building itself, and the contents of the building owned by Landlord. The Landlord also carries a public liability policy insuring it against claims of personal injury on Landlord's property. The Landlord's policy does not cover the Tenant's employees or patrons who are on Landlord's property exclusively for the purpose of doing business with the Tenant. The Tenant agrees to maintain a comprehensive property liability policy in the amount of Five Hundred Thousand Dollars ($500,000) (each person and each occurrence) and to obtain a certificate of insurance naming Park City Municipal Corporation and the Municipal Building Authority of Park City as additional insured and evidencing coverage as to any person on the Premises as a result of Tenant's programs or activities. The Landlord is protected by the Utah Governmental Immunity Act, and nothing herein is intended to waive or limit the protection of the Act in behalf of either entity, but to the extent it is consistent with this intent, it is the purpose of this provision to protect the Landlord for liability or allegations arising out of the Tenant's use of Landlord's property.

8. Payment of Taxes and Other Assessments. As a tax exempt entity, the Landlord does not expect to be assessed real estate and personal property taxes and other related assessments or taxes on the Premises. However should the Tenant change the tax status or should other circumstances cause taxes or assessments to be imposed on the Premises, then Tenant shall pay real estate and personal property taxes and other related assessments or taxes on the Tenant's Premises during the term of this lease.

9. Liens. Tenant shall not permit any liens to attach to the property for work done at Tenant's request or for Tenant's benefit. If Landlord received notice of any such against the property, Tenant shall promptly discharge the lien at Landlord's request, or post fund sufficient to satisfy the lien during any period of good faith contest of the lien by Tenant. In the event Landlord reasonably feels its title to the property is in jeopardy because of any lien Tenant has elected to attach to the property, Landlord may discharge the lien and collect the amount paid from the Tenant. The Tenant agrees to pay all reasonable costs incurred by the Landlord in the defense or discharge of any liens on the property.

10. Tenant Improvements. The Premises are being leased to Tenant in as-is condition. Any additional interior finish or furnishings desired by the Tenant must be approved in advance by the Landlord and Owner in writing and are the

responsibility of the Tenant, with no allowance made for the costs of the Tenant improvements unless agreed to by Landlord in writing. At the expiration or termination of the Lease, all Tenant improvements become property of the Landlord unless specifically exempted in writing prior to installation.

11. Signs. Landlord reserves the right to specifically review and approve or reject proposed signs on or in the building. Landlord's approval for signs will not be unreasonably withheld, so long as the sign is directional rather than promotional, meets the requirements of the Park City Sign Code, and conforms with the historic nature and architectural detailing of the building. Signs shall be removed and any damage resulting from removal shall be repaired at the termination of the Lease.

12. Assignment/Sublease. The Lease may not be assigned or the Premises sublet without the advance written consent of Landlord except that any space within the building may be sublet to any other tenant within the building. Landlord's consent to assignment or sublease will not be unreasonably withheld.

13. Remedies. In the event the Tenant fails to pay monthly installment payments when due, or violates or reaches any other term or condition of the Lease, Landlord shall have the right to exercise the following remedies, and any other remedies available at law or equity:
(1) Landlord may, by written notice to Tenant, demand that Tenant either pay rental installments due within ten (10) days, or quit the premises within fifteen (15) days;
(2) Landlord may permit the Tenant to remain in possession and sue for the installments that are past due;
(3) Landlord may re-let the premises for Tenant's account at the rate and on such terms as are commercially reasonable at the time and under the circumstances, and charge Tenant for any difference in the rental received and the rental agreed to herein, provided that any re-letting shall be done in good faith under the circumstances;
(4) Landlord may agree to a payment of damages in such amount as the parties then agree, and release the Tenant from obligations under this Lease entirely. Unless Landlord has released Tenant's continued performance under this Lease, Tenant is deemed to be in possession of the Premises, and any re-letting by Landlord in on Tenant's account. Tenant is responsible for all payments and obligations under the Lease until Landlord releases Tenant.

14. Covenant of Quiet Possession. Landlord covenants with Tenant that Landlord owns or controls the Premises and that Tenant's possession will not be disturbed by acts or omissions of the Landlord so long as Tenant faithfully performs the obligations of this Lease.

15. Maintenance. The Landlord shall be responsible for all structural maintenance of the Premises, including the roof, foundation, structural members,

and exterior wall surfaces. The Landlord will be responsible for janitorial service in areas used in common with the library and other tenants and cleaning the outside of the glass and replacement in the event of damage from an outside source. Tenant shall be responsible for all interior maintenance, including mechanical and electrical fixtures to the extent that they are located within and exclusively benefit the Premises, janitorial service, and glass maintenance (both cleaning the inside and replacement in the event of damage from an inside source) which is within the leased premises or solely serves the Premises. Landlord shall be responsible for mechanical systems, which serve space as reasonably necessary to maintain the structure and to service common utility facilities. Exterior maintenance of the site and snow removal shall be Landlord's responsibility.

16. Access to Other Spaces. Tenant shall not interfere with the access to other spaces within the building or obstruct the entrances to those other spaces in any way. Landlord shall have such access through Tenant's space as reasonably necessary to maintain the structure and to service common utility facilities. Landlord shall have the right to inspect the leased space during the Tenant's normal business hours.

17. Force Majeure. This Lease Agreement shall automatically terminate upon any holding, interpretation, or determination by a court, legislative, or administrative body that Landlord may not lease to a private educational entity or similar establishment or that the Landlord may not lease to a private entity either under existing state and federal law regulation or future state and federal law regulation.

18. Increased Insurance Risk. Tenant will not permit said premises to be used for any purpose which would render the fire insurance on the building or the premises void or cause cancellation thereof or increase the insurance risk or increase the insurance premium in effect at the time of the terms of this Lease. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Premises any article or materials which are prohibited by law or by standard fire insurance policies of the kind customarily in force with respect to the Premises of the same general type as those covered by this Agreement.

19. Care and Repair of Premises by Tenant. Tenant will inspect and accept the Premises for the purposes of this agreement prior to taking occupancy. Tenant will not commit any waste on Premises nor shall it use or permit the use of the Premises in violation of any state law or county or municipal ordinance or regulation applicable thereto. Tenant may, with the prior written consent of the Landlord, but at its own cost and expense, in a good workmanlike manner, make such alterations and repairs to the leased space as Tenant may require for the conduct of its business without, however, materially altering the basic character for the building or improvements or weakening the structure on the leased premises. Any permanent alterations or improvements to the Premises shall

become the property of the Landlord upon expiration or termination of this Lease unless specifically exempted in writing prior to commencing work.

20. Damage or Destruction. If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Landlord shall promptly repair all such damage and restore the premises without expense to the Tenant subject to delays due to adjustment in insurance claims, strikes and other causes beyond the Landlord's control. If such damage or destruction shall render the Premises uninhabitable in whole or in part, the rent shall be abated wholly or proportionately until the damage shall be repaired and the premises restored. If the damage or destruction shall be of which may require removal of Tenant's operations from the Premises, either Landlord or Tenant may elect to terminate this lease by written notice to the other within thirty (30) days after the occurrence of such damage or destruction.

21. Surrender of Premise. Tenant agrees to surrender the Premises at the expiration or sooner termination of this Agreement or any extension thereof in the same condition or as altered pursuant to the provisions of this Agreement. Ordinary war, tear and damage by the elements or other acts of God excepted.

22. Hold Over. Should Tenant hold over the Premises or any part thereof after the expiration of the term of this Lease unless otherwise agreed in writing, such holding over shall constitute a tenancy from month to month only, and Tenant shall pay as monthly rental the same monthly rental provided for herein.

23. Available Space. If additional space becomes available in Miners Hospital, Landlord agrees to offer such space to tenants in Miners Hospital before making it available to non-tenants. Landlord reserves the right to use space that becomes available and to assign the space through a competitive bid process with tenants of Miners Hospital who have been in the building for one (1) year or more, at the time the space becomes available.

24. Indemnity. The Tenant covenants and agrees to indemnify, hold Landlord harmless from all claims, loss damage, injury or liability (hereafter "Liability") resulting from Tenant's use and occupancy of the Premises to the full extent provided in the Utah Governmental Immunity Act, including reasonable attorney's fees, but excluding any Liability resulting from acts or omissions of Landlord, its officers, employees or agents. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. Sections 63-30-1, et seq), as amended. The obligations hereunder shall be determined under principles of tort law including, but not limited to, the Governmental Immunity Act.

Landlord will indemnify and hold tenant and its employees harmless to the full extent provided in the Utah Governmental Immunity Act, and limited by Paragraph 25 of this lease, from claims, loss, damage, injury, or liability resulting from Landlord's use and occupancy of the Premises or from the conduct of Landlord's operations; including, but not limited to, Landlord's negligence or intentional acts. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. Sections 63-30-1, et seq.), as amended.

25. Landlord Liable only for Negligence. Except where caused by Landlord's negligence, Landlord shall not be liable for any failure of water supply, natural gas supply or electrical supply; or for any injury or damage to persons or property caused by gasoline, oil, steam, gas or electricity; or hurricane, tornado, flood, wind or similar storms or disturbances; or water, rain or snow which may leak or flow from the street, sewer, gas mains or any subsurface area or from any part of the building or buildings or for an interference with light.

26. Nondiscrimination. Tenant agrees not to discriminate against anyone on the basis of race, color, national origin, age, sex or handicap in its hiring practices, services or operation of its business hereunder.

27. Waiver of Covenants. It is agreed that the waiver of any of the covenants of this Lease Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provisions herein.

28. Rights of Successors and Assigns. The covenants and agreements contained within the Lease shall apply to the benefit of successors in interest and legal representatives, except as expressly otherwise hereinbefore provided.

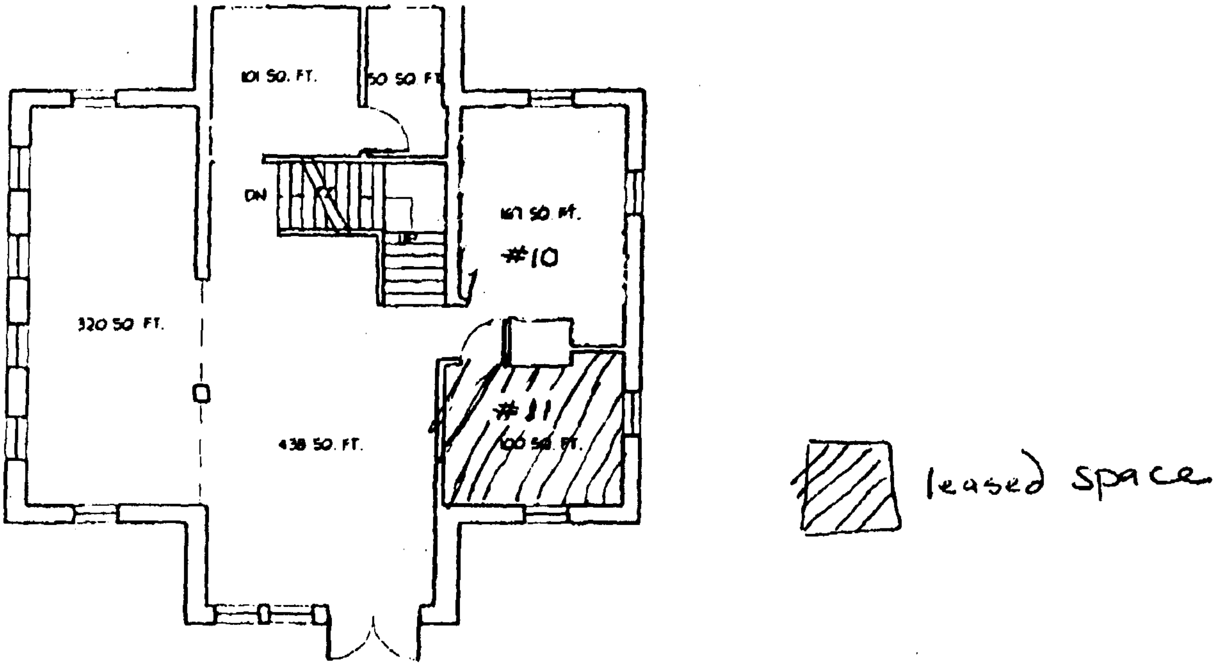
29. Security. The Landlord will install doors with locking hardware. The Tenant is entitled to put locks on the doors to its space, provided the Landlord is given keys for reasonable access and building maintenance. Both parties will attempt to keep the exterior doors locked after their use of the building is completed for the day, and the Tenant shall have the obligation of checking all exterior doors at the conclusion of each day to make sure that they are locked, and that windows in the rooms used by the Tenant are secured. Lights and radiators should be turned off at the conclusion of the Tenant's use each day.

30. Notice Provision. Any and all notices required by this Lease Agreement shall be in writing and delivered personally to the party to whom the notice is to be given, or mailed by certified mail, postage prepaid, and addressed as follows:
If to Landlord:
Alison Butz
Facilities Manager
Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060

If to Tenant:
Park City Arts Council
1255 Park Ave.
P.O. Box 4455
Park City, Utah 84060

31. Entire Agreement. This agreement constitutes the entire and only agreement between parties and it cannot be altered or amended except by written instrument, signed by both parties.

# EXHIBIT A




2A FIRST FLOOR - MAIN LEVEL

**PARK CITY ARTS COUNCIL**

**EXHIBIT B**
**Mountain Trails Foundation**
**Park City Municipal Corporation**
**2004 Property Lease**

THIS AGREEMENT is made by and between Park City Municipal Corporation (hereinafter referred to as "Landlord") and Mountain Trails Foundation (hereinafter referred to as "Tenant") to set forth the terms and conditions under which Landlord will lease space in Miners Hospital at 1354 Park Avenue, Park City Utah (hereinafter referred to as "Miners Hospital") to Tenant. The parties agree as follows:

1. Property. The property leased is within Miners Hospital as described in Exhibit A (attached and hereafter referred to as Premises). The leased space includes the following property on the second floor of Miners Hospital: 2nd floor office (Room 21) as is. The Premises contains approximately one hundred sixty three (163) square feet.

2. Term. The Lease term shall commence upon execution, and shall expire on June 30, 2005. The leased property is currently surplus municipal space, but may be required for municipal purposes by Landlord at the conclusion of the lease term. Landlord may terminate this lease upon three (3) months prior written notice if the leased space is required for municipal purposes. No option of first refusal is granted to Tenant.

3. Rent. The rent for the leased space shall be as follows:

(1) Rate: Two Thousand Five Hundred Sixty-Seven Dollars and Twenty-Five Cents ($2,567.25) annually.

(2) Payments: Rent shall be paid in equal monthly installments of Two Hundred Thirteen Dollars and Ninety-Four Cents ($213.94). Rent shall be due on the first of each month, and past due if not paid by the tenth ($10^{th}$) of the month.

(3) Credit for Relocation: Landlord agrees to waive the first monthly installment due following execution of the Lease.

(4) Deposit: No Deposit is required.

(5) Credit for Early Payment. Beginning in Calendar Year 2004, if Tenant pays Landlord the annual rent in full by July 15, then rent will be reduced by four percent (4%).

4. Utility Service. Landlord shall be responsible for natural gas, electricity, sewer, refuse collection and water for the leased space. Tenant will be responsible for any other utilities such as telephone and cable television and shall establish an account with each of these utilities in its own name.

5. Use of the Premises. The premises shall be used only for quasi-public administrative use.

6. Telephone, Cable and Microwave. The Tenant will install its own telephone, television, computer and other communication equipment in the leased space. The remodeled space will include wiring, cables or chases for a wide variety for communications between spaces within the building and externally. Any specialized communication facilities, equipment, wiring, cables or installations will be the Tenant's responsibility.

7. Insurance. The Tenant will provide insurance at its expense covering its contents against loss through theft, fire, vandalism or similar casualties. The Landlord will maintain insurance on the structure for the replacement of the building itself, and the contents of the building owned by Landlord. The Landlord also carries a public liability policy insuring it against claims of personal injury on Landlord's property. The Landlord's policy does not cover the Tenant's employees or patrons who are on Landlord's property exclusively for the purpose of doing business with the Tenant. The Tenant agrees to maintain a comprehensive property liability policy in the amount of Five Hundred Thousand Dollars ($500,000) (each person and each occurrence) and to obtain a certificate of insurance naming Park City Municipal Corporation and the Municipal Building Authority of Park City as additional insured and evidencing coverage as to any person on the Premises as a result of Tenant's programs or activities. The Landlord is protected by the Utah Governmental Immunity Act, and nothing herein is intended to waive or limit the protection of the Act in behalf of either entity, but to the extent it is consistent with this intent, it is the purpose of this provision to protect the Landlord for liability or allegations arising out of the Tenant's use of Landlord's property.

8. Payment of Taxes and Other Assessments. As a tax exempt entity, the Landlord does not expect to be assessed real estate and personal property taxes and other related assessments or taxes on the Premises. However should the Tenant change the tax status or should other circumstances cause taxes or assessments to be imposed on the Premises, then Tenant shall pay real estate and personal property taxes and other related assessments or taxes on the Tenant's Premises during the term of this lease.

9. Liens. Tenant shall not permit any liens to attach to the property for work done at Tenant's request or for Tenant's benefit. If Landlord received notice of any such against the property, Tenant shall promptly discharge the lien at Landlord's request, or post fund sufficient to satisfy the lien during any period of good faith contest of the lien by Tenant. In the event Landlord reasonably feels its title to the property is in jeopardy because of any lien Tenant has elected to attach to the property, Landlord may discharge the lien and collect the amount paid from the Tenant. The Tenant agrees to pay all reasonable costs incurred by the Landlord in the defense or discharge of any liens on the property.

10. Tenant Improvements. The Premises are being leased to Tenant in as-is

condition. Any additional interior finish or furnishings desired by the Tenant must be approved in advance by the Landlord and Owner in writing and are the responsibility of the Tenant, with no allowance made for the costs of the Tenant improvements unless agreed to by Landlord in writing. At the expiration or termination of the Lease, all Tenant improvements become property of the Landlord unless specifically exempted in writing prior to installation.

11. Signs. Landlord reserves the right to specifically review and approve or reject proposed signs on or in the building. Landlord's approval for signs will not be unreasonably withheld, so long as the sign is directional rather than promotional, meets the requirements of the Park City Sign Code, and conforms with the historic nature and architectural detailing of the building. Signs shall be removed and any damage resulting from removal shall be repaired at the termination of the Lease.

12. Assignment/Sublease. The Lease may not be assigned or the Premises sublet without the advance written consent of Landlord except that any space within the building may be sublet to any other tenant within the building. Landlord's consent to assignment or sublease will not be unreasonably withheld.

13. Remedies. In the event the Tenant fails to pay monthly installment payments when due, or violates or reaches any other term or condition of the Lease, Landlord shall have the right to exercise the following remedies, and any other remedies available at law or equity:
(1) Landlord may, by written notice to Tenant, demand that Tenant either pay rental installments due within ten (10) days, or quit the premises within fifteen (15) days;
(2) Landlord may permit the Tenant to remain in possession and sue for the installments that are past due;
(3) Landlord may re-let the premises for Tenant's account at the rate and on such terms as are commercially reasonable at the time and under the circumstances, and charge Tenant for any difference in the rental received and the rental agreed to herein, provided that any re-letting shall be done in good faith under the circumstances;
(4) Landlord may agree to a payment of damages in such amount as the parties then agree, and release the Tenant from obligations under this Lease entirely. Unless Landlord has released Tenant's continued performance under this Lease, Tenant is deemed to be in possession of the Premises, and any re-letting by Landlord in on Tenant's account. Tenant is responsible for all payments and obligations under the Lease until Landlord releases Tenant.

14. Covenant of Quiet Possession. Landlord covenants with Tenant that Landlord owns or controls the Premises and that Tenant's possession will not be disturbed by acts or omissions of the Landlord so long as Tenant faithfully performs the obligations of this Lease.

15. Maintenance. The Landlord shall be responsible for all structural maintenance of the Premises, including the roof, foundation, structural members, and exterior wall surfaces. The Landlord will be responsible for janitorial service in areas used in common with the library and other tenants and cleaning the outside of the glass and replacement in the event of damage from an outside source. Tenant shall be responsible for all interior maintenance, including mechanical and electrical fixtures to the extent that they are located within and exclusively benefit the Premises, janitorial service, and glass maintenance (both cleaning the inside and replacement in the event of damage from an inside source) which is within the leased premises or solely serves the Premises. Landlord shall be responsible for mechanical systems, which serve space as reasonably necessary to maintain the structure and to service common utility facilities. Exterior maintenance of the site and snow removal shall be Landlord's responsibility.

16. Access to Other Spaces. Tenant shall not interfere with the access to other spaces within the building or obstruct the entrances to those other spaces in any way. Landlord shall have such access through Tenant's space as reasonably necessary to maintain the structure and to service common utility facilities. Landlord shall have the right to inspect the leased space during the Tenant's normal business hours.

17. Force Majeure. This Lease Agreement shall automatically terminate upon any holding, interpretation, or determination by a court, legislative, or administrative body that Landlord may not lease to a private educational entity or similar establishment or that the Landlord may not lease to a private entity either under existing state and federal law regulation or future state and federal law regulation.

18. Increased Insurance Risk. Tenant will not permit said premises to be used for any purpose which would render the fire insurance on the building or the premises void or cause cancellation thereof or increase the insurance risk or increase the insurance premium in effect at the time of the terms of this Lease. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Premises any article or materials which are prohibited by law or by standard fire insurance policies of the kind customarily in force with respect to the Premises of the same general type as those covered by this Agreement.

19. Care and Repair of Premises by Tenant. Tenant will inspect and accept the Premises for the purposes of this agreement prior to taking occupancy. Tenant will not commit any waste on Premises nor shall it use or permit the use of the Premises in violation of any state law or county or municipal ordinance or regulation applicable thereto. Tenant may, with the prior written consent of the Landlord, but at its own cost and expense, in a good workmanlike manner, make such alterations and repairs to the leased space as Tenant may require for the conduct of its business without, however, materially altering the basic character

for the building or improvements or weakening the structure on the leased premises. Any permanent alterations or improvements to the Premises shall become the property of the Landlord upon expiration or termination of this Lease unless specifically exempted in writing prior to commencing work.

20. Damage or Destruction. If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Landlord shall promptly repair all such damage and restore the premises without expense to the Tenant subject to delays due to adjustment in insurance claims, strikes and other causes beyond the Landlord's control. If such damage or destruction shall render the Premises uninhabitable in whole or in part, the rent shall be abated wholly or proportionately until the damage shall be repaired and the premises restored. If the damage or destruction shall be of which may require removal of Tenant's operations from the Premises, either Landlord or Tenant may elect to terminate this lease by written notice to the other within thirty (30) days after the occurrence of such damage or destruction.

21. Surrender of Premise. Tenant agrees to surrender the Premises at the expiration or sooner termination of this Agreement or any extension thereof in the same condition or as altered pursuant to the provisions of this Agreement. Ordinary war, tear and damage by the elements or other acts of God excepted.

22. Hold Over. Should Tenant hold over the Premises or any part thereof after the expiration of the term of this Lease unless otherwise agreed in writing, such holding over shall constitute a tenancy from month to month only, and Tenant shall pay as monthly rental the same monthly rental provided for herein.

23. Available Space. If additional space becomes available in Miners Hospital, Landlord agrees to offer such space to tenants in Miners Hospital before making it available to non-tenants. Landlord reserves the right to use space that becomes available and to assign the space through a competitive bid process with tenants of Miners Hospital who have been in the building for one (1) year or more, at the time the space becomes available.

24. Indemnity. The Tenant covenants and agrees to indemnify, hold Landlord harmless from all claims, loss damage, injury or liability (hereafter "Liability") resulting from Tenant's use and occupancy of the Premises to the full extent provided in the Utah Governmental Immunity Act, including reasonable attorney's fees, but excluding any Liability resulting from acts or omissions of Landlord, its officers, employees or agents. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. Sections 63-30-1, et seq), as amended. The obligations hereunder shall be determined under principles of tort law including, but not limited to, the Governmental Immunity Act.

Landlord will indemnify and hold tenant and its employees harmless to the full extent provided in the Utah Governmental Immunity Act, and limited by Paragraph 25 of this lease, from claims, loss, damage, injury, or liability resulting from Landlord's use and occupancy of the Premises or from the conduct of Landlord's operations; including, but not limited to, Landlord's negligence or intentional acts. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. Sections 63-30-1, et seq.), as amended.

25. Landlord Liable only for Negligence. Except where caused by Landlord's negligence, Landlord shall not be liable for any failure of water supply, natural gas supply or electrical supply; or for any injury or damage to persons or property caused by gasoline, oil, steam, gas or electricity; or hurricane, tornado, flood, wind or similar storms or disturbances; or water, rain or snow which may leak or flow from the street, sewer, gas mains or any subsurface area or from any part of the building or buildings or for an interference with light.

26. Nondiscrimination. Tenant agrees not to discriminate against anyone on the basis of race, color, national origin, age, sex or handicap in its hiring practices, services or operation of its business hereunder.

27. Waiver of Covenants. It is agreed that the waiver of any of the covenants of this Lease Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provisions herein.

28. Rights of Successors and Assigns. The covenants and agreements contained within the Lease shall apply to the benefit of successors in interest and legal representatives, except as expressly otherwise hereinbefore provided.

29. Security. The Landlord will install doors with locking hardware. The Tenant is entitled to put locks on the doors to its space, provided the Landlord is given keys for reasonable access and building maintenance. Both parties will attempt to keep the exterior doors locked after their use of the building is completed for the day, and the Tenant shall have the obligation of checking all exterior doors at the conclusion of each day to make sure that they are locked, and that windows in the rooms used by the Tenant are secured. Lights and radiators should be turned off at the conclusion of the Tenant's use each day.

30. Notice Provision. Any and all notices required by this Lease Agreement shall be in writing and delivered personally to the party to whom the notice is to be given, or mailed by certified mail, postage prepaid, and addressed as follows:

If to Landlord:
Alison Butz

Facilities Manager
Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060

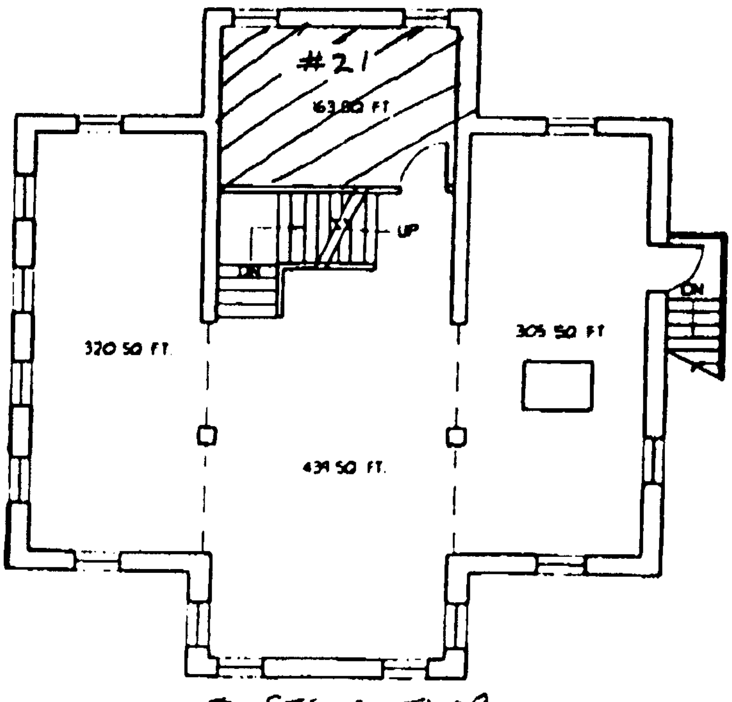
If to Tenant:
Mountain Trails Foundation
1255 Park Ave.
P.O. Box
Park City, Utah 84060

31. Entire Agreement. This agreement constitutes the entire and only agreement between parties and it cannot be altered or amended except by written instrument, signed by both parties.

# EXHIBIT A

**MOUNTAIN TRAILS FOUNDATION**

leased Space




3A SECOND FLOOR

**EXHIBIT C**
**SIXTH ADDENDUM TO THE LEASE AGREEMENT BETWEEN THE UNIVERSITY OF UTAH AND PARK CITY MUNICIPAL CORPORATION**

THIS SIXTH ADDENDUM is made by and between Park City Municipal Corporation ("Landlord") and the University of Utah ("Tenant") to amend the Lease Agreement signed and executed by the parties on May 7, 1992 ("Lease") as amended and to set forth the terms and conditions under which Tenant will release to Landlord certain areas of the property in the Carl Winters Building (hereinafter referred to as the "CW Building") subject to the Lease, as amended. The parties agree as follows:

1. <u>Released Space</u>. Tenant, pursuant to the schedule provided below, hereby releases to Landlord the following property on the second and third floor of the CW Building: Room 208, and Room 301 as described in Exhibits A and B (attached and hereinafter referred to as "Released Space"). The Released Space contains a total of five hundred forty-six (546) square feet. The release of Room 208 and Room 301 shall occur on March 1, 2004.

2. <u>Rent</u>. The rent for the remaining leased space shall be as follows:

(A) Rate: Tenant has pre-paid the rent for Calendar Year 2003 (July 1, 2003 – June 30, 2004). Tenant is due Two Thousand, Five Hundred Seventy-Seven Dollars and Fourteen Cents ($2,577.14) as a refund for the released space. Landlord will apply this refund to Tenant's July 1, 2004 rental obligation. Beginning July 1, 2004, Tenant's annual rental obligation shall be Fifty Thousand Seven Hundred Forty-Six Dollars and Fifty-Six Cents annually ($50,746.56) for the remaining leased space.

(B) Payments: Beginning July1, 2004, rent shall be paid in equal monthly installments of Four Thousand Two Hundred Twenty-Eight Dollars and Eighty-Eight Cents ($4,228.88). Rent shall be due on the first of each month, and past due if not paid by the tenth of the month.

(C) Deposit: No additional deposit shall be required.

(D) Rent Adjustment: The annual rent for the remaining leased Rooms shall increase Three Thousand Two Hundred Twenty-Two Dollars ($3222.00) per year at the beginning of each two-year term with the next term beginning on July 1, 2006. For example, monthly rent payments shall increase to Four Thousand Four Hundred Ninety-Seven Dollars and Thirty-Eight Cents ($4,497.38) on July 1, 2006.

(E) Credit for Early Payment: For Calendar Year 2004, if Tenant pays Landlord the annual rent in full by July 15, then rent will be reduced by four percent (4%). Beginning in Calendar Year 2005, if Tenant pays Landlord the annual rent in full by July 15 of each year, then rent will be reduced by four percent (4%).

3. Use of Room 209. Once remodeling begins on Room 209, Tenant shall no longer have the right to use Room 209 for evening and weekend classes. Once Room 109 has been remodeled, Tenant shall have the right to use Room 109 for evening and weekend classes based on availability with prior notice by Tenant.

4. Other Terms: All other terms and conditions of the Lease, as amended, shall apply.

5. Effective Date: The terms of this Sixth Addendum to the Lease shall be effective upon execution.

6. Entire Agreement: This Sixth Addendum is a written instrument pursuant to Paragraph 31 of the Lease between the parties and it cannot be altered or amended except by written instrument, signed by both parties.