

Execution Version

**TRINITY SITE  
REAL ESTATE GROUND LEASE  
AND DEVELOPMENT  
AGREEMENT**

**Incorporated County of Los Alamos,  
New Mexico  
“County”**

**And**

**NA Los Alamos Trinity LP  
“Lessee”**

**TRINITY SITE  
REAL ESTATE GROUND LEASE AND DEVELOPMENT  
AGREEMENT**

**TABLE OF CONTENTS**

1.	LEASE OF LAND AND CONVEYANCE OF EXISTING FACILITIES .....	2
2.	TERM AND RENT .....	7
3.	EASEMENTS AND RIGHTS-OF-WAY .....	11
4.	CONDITION OF LEASED PREMISES .....	11
5.	USE OF LEASED PREMISES .....	11
6.	RESERVED.....	14
7.	DEVELOPMENT OF THE LEASED PREMISES .....	14
8.	OPERATION AND MAINTENANCE OF LEASED PREMISES .....	14
9.	DEFAULT AND TERMINATION.....	19
10.	TAXES AND COSTS OF DOING BUSINESS .....	26
11.	RESTORATION AND SURRENDER.....	27
12.	ENVIRONMENTAL MATTERS.....	27
13.	COMPLIANCE WITH APPLICABLE LAWS .....	29
14.	NOTICES .....	30
15.	ASSIGNMENTS, SUBLEASES AND LICENSES .....	31
16.	UTILITIES AND SERVICES.....	33
17.	REPRESENTATIONS, WARRANTIES AND COVENANTS .....	34
18.	DISPUTE RESOLUTION.....	36
19.	INDEMNIFICATION .....	36
20.	INSURANCE .....	37
21.	ACCESS AND INSPECTION .....	40
22.	LIENS AND MORTGAGES .....	41
23.	CASUALTY AT END OF TERM .....	45
24.	AMENDMENTS AND WAIVER .....	45
25.	RECORDS.....	45
26.	MISCELLANEOUS .....	46
27.	DEFINITIONS .....	49

**EXHIBIT LIST**

EXHIBIT A	PARCEL S-1 AND L-1 DESCRIPTION
EXHIBIT B	PARCEL S-1 AND L-1 LAND SURVEY
EXHIBIT C	MANAGEMENT PLAN
EXHIBIT D	LIST OF EXISTING ENCUMBRANCES
EXHIBIT E	RETAIL STRATEGY
EXHIBIT F	CONCEPTUAL SITE LAYOUT
EXHIBIT G	VIEW SPACE
EXHIBIT H	RESERVED
EXHIBIT I	FORM SUBORDINATION AND NON-DISTURBANCE AGREEMENT
EXHIBIT J	ANCHOR TENANT AND NON-ANCHOR TENANT LAND DESCRIPTION
EXHIBIT K	DISTRICT LEASE
EXHIBIT L	EXCEPTIONS TO GENERAL CONDITIONS REPRESENTATIONS
EXHIBIT M	LANDLORD'S WORK
EXHIBIT N	FORM OF ASSIGNMENT
EXHIBIT O	EASEMENT AREA

## Trinity Site Lease

**TRINITY SITE  
REAL ESTATE GROUND LEASE AND DEVELOPMENT  
AGREEMENT**

This **Trinity Site Real Estate Ground Lease and Development Agreement** (this "**Lease**") is made this 30<sup>th</sup> day of March, 2012 ("**Effective Date**") by and between the Incorporated County of Los Alamos, New Mexico (the "**County**") and NA Los Alamos Trinity LP, a Delaware limited partnership (the "**Lessee**"). The County and the Lessee may be referred to jointly as the "**Parties**" and each separately as a "**Party**."

**WITNESSETH**

**WHEREAS**, capitalized terms not otherwise defined in the following recitals and text of this Lease shall have the meanings assigned in Article 27, unless the context clearly requires otherwise; and

**WHEREAS**, the County has acquired and controls a leasehold interest in Parcel S-1 located in the County from the Los Alamos School Board District ("**District**") which is more particularly described in Exhibit A and depicted on the survey attached as Exhibit B pursuant to that certain District Lease, as defined below and attached hereto as Exhibit K; and

**WHEREAS**, the County owns and controls Parcel L-1 located in the County, which is more particularly described in Exhibit A, and attached hereto and made a part hereof and depicted on the survey attached as Exhibit B (collectively Parcel L-1 and Parcel S-1 are referred to as the "**Land**") to this Lease; and

**WHEREAS**, the Lessee submitted a proposal in response to the County's request for proposals to develop the Land, and the Lessee has represented and warranted to the County that the Lessee, based upon and subject to the market conditions that exist as of the Effective Date, has the necessary experience, expertise, capacity, and character to successfully complete the Development (as defined in Section 7.1); and

**WHEREAS**, the Lessee and the Anchor Tenant plan to develop a shopping center on the Leased Premises in accordance with the terms and conditions of this Lease; and

**WHEREAS**, the Lessee and the County entered into that certain Earnest Money Deposit Agreement dated effective January 11, 2011 (as amended, the "**Deposit Agreement**") which provided for a deposit in the amount of Two-Hundred and Fifty-Thousand Dollars (\$250,000.00) ("**Deposit**"); and

**WHEREAS**, the County and the Lessee have set out certain development responsibilities as part of this Lease (the "**Development Responsibilities**"), which requires the Lessee, as it relates to the Leased Premises, to, among other things, design, finance (through its own or outside resources), construct, renovate, own, lease, manage, operate, market, and maintain the Leased Premises; and

**Trinity Site Lease**

**WHEREAS**, the Lessee intends to develop the Leased Premises as part of a mixed use development project in accordance with the Development Responsibilities, which is intended to include commercial retail space, entertainment, restaurants, parking, retail use, and other similar uses; and

**WHEREAS**, to facilitate Lessee's development of the Land in accordance with the Development Responsibilities, the operation and management of the Leased Premises in accordance with the Management Plan, and the County's receipt of the Consideration, the County and the Lessee desire to enter into this Lease with respect to the Land all upon the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and covenants, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Lessee hereby agree as follows:

**1. LEASE OF LAND AND CONVEYANCE OF EXISTING FACILITIES**

- 1.1. Subject to the County's fee title and leasehold interests set forth in this Lease, upon the Effective Date, for and in consideration of the covenants and agreements hereinafter contained and to be kept and performed by the Lessee, the County hereby leases exclusively to Lessee, and Lessee hereby leases from the County, in accordance with the terms and conditions set forth herein, the Land, together with all and singular the appurtenances, rights, privileges and easements unto the Land belonging or in any way thereto appertaining including, but not limited to, the right of access to and use of the streets, roads, electric, gas, telephone, storm water, water and sewer facilities now or in the future appurtenant to, serving or benefiting the Land (collectively, the "**Appurtenances**").
- 1.2. This Lease shall be in full force and effect, and the County and Lessee shall be bound by the provisions of this Lease on the Effective Date.
- 1.3. The "**Development Period**" shall commence upon the expiration of the Feasibility Period and shall end upon the completion of the Subsequent Development Phase. The Development Period consists of an Initial Development Phase and a Subsequent Development Phase, as defined below.
  - 1.3.1. The "**Initial Development Phase**" shall consist of the Completion of the Anchor Tenant Building, at least one tenant building that includes a minimum of approximately 10,500 square feet of commercial retail space, in one or more buildings, as set forth in Section 5.2.2, all parking, and certain on and off-site improvements (including roads, sidewalks, landscaping, parks, and a ten (10) foot wide paved Canyon Rim Trail along the Land; provided, however, that Lessee shall not be required to spend in excess of Fifty Thousand Dollars (\$50,000.00) for such Canyon Rim Trail).

## Trinity Site Lease

- 1.3.1.1. During the Feasibility Period, the Lessee is required to use its reasonable best efforts to obtain (or cause the Anchor Tenant to obtain) all requisite building or other permits or approvals necessary for the construction of the Landlord's Work and the Initial Development Phase.
- 1.3.1.2. Construction of the Landlord's Work shall commence within a reasonable period of time after the expiration of the Feasibility Period, and the Lessee shall diligently prosecute the same to completion. The Lessee shall complete the Landlord's Work within six (6) months after expiration of the Feasibility Period; provided, however, if despite the Lessee's diligent prosecution to complete the Landlord's Work, the Landlord's Work is not complete within such six (6) month period, then the Lessee shall be permitted to extend the timeframe it has to complete the Landlord's Work for up to two (2) additional thirty (30) day periods by providing written notice to the County prior to the expiration of the then applicable completion date of the Lessee's election to exercise such extension(s). The Lessee shall provide a written notification to the County when the Landlord's Work is complete and the Anchor Tenant's development period commences in accordance with the terms of the Anchor Tenant Lease.
- 1.3.1.3. Construction of the Initial Development Phase shall commence within a reasonable period of time after the completion of the Landlord's Work, and the Lessee shall diligently prosecute the same to completion. The Lessee shall complete the Initial Development Phase within twenty (20) months after completion of the Landlord's Work.
- 1.3.1.4. Notwithstanding anything to the contrary contained herein, the Lessee shall not be responsible for the construction of the Anchor Tenant Building and failure by the Anchor Tenant to construct the Anchor Tenant Building shall not be deemed a default by the Lessee hereunder. The County acknowledges that the Anchor Tenant is solely responsible for the construction of the Anchor Tenant Building pursuant to the Anchor Tenant Lease.
- 1.3.2. The "**Subsequent Development Phase(s)**" shall consist of all buildings, parking, common area, and improvements not completed during the Initial Development Phase that are necessary to achieve the completion of the full development and construction of the entire Project in accordance with the Development Responsibilities. Construction of the Subsequent Development Phase may be constructed in phases, provided that the Lessee shall use commercially reasonable efforts to complete the full development within forty (40) months after completion of Landlord's Work.
  - 1.3.2.1. If at least 35,000 square feet of the Subsequent Development Phase, as identified in the Development Responsibilities, is not completed within sixty (60) months after the Effective Date ("**Critical Portion of Subsequent Development Phase**"), then, at the County's sole option, either:

## Trinity Site Lease

- 1.3.2.1.1. The County shall notify Lessee of a time period of at least an additional twenty-four (24) months under which Lessee must construct at least 35,000 square feet of the Subsequent Development Phase as identified in the Development Responsibilities ("**Extended Subsequent Development Phase Period**"); or
- 1.3.2.1.2. The County shall make written request to Lessee that Lessee has sixty (60) days to submit to the County amended plans for completion with respect to such portions of the Critical Portion of Subsequent Development Phase for which full development and construction has not occurred ("**Undeveloped Portion**").
  - 1.3.2.1.2.1. During such sixty (60) day period, the Lessee, in its sole option, shall submit to County amended plans for completion of the Undeveloped Portion and propose a date for completion of full development and construction of the Undeveloped Portion (the "**Amended Plan for Completion**").
  - 1.3.2.1.2.2. If (i) Lessee does not construct at least 35,000 square feet of the Subsequent Development Phase as identified in the Development Responsibilities during the Extended Subsequent Development Phase Period, or (ii) Lessee does not timely submit the Amended Plan for Completion to the County, or (iii) the County, in its sole option, rejects the Amended Plan for Completion submitted by Lessee, then the County, upon written notice to Lessee, shall have the right to develop, at its sole cost and expense, the Undeveloped Portion on the same terms and conditions as required of the Lessee hereunder (the "**County Development Option**").
  - 1.3.2.1.2.3. If the County elects to exercise the County Development Option, then the Lessee shall not be required to pay Basic Rent only for the Undeveloped Portion, as determined on a pro rata basis, during the period of time commencing on the actual date construction of the Undeveloped Portion is commenced by (or at the direction of) the County and continuing until such time that the County has received distributions in accordance with Section 1.3.2.1.2.3.1.1 and Section 1.3.2.1.2.3.1.2 below.
    - 1.3.2.1.2.3.1. The costs incurred by the County for the development of the Undeveloped Portion shall be repaid as follows:
      - 1.3.2.1.2.3.1.1. The County shall receive funds, which shall be obtained from the rents received by the tenants occupying such Undeveloped Portion ("**Undeveloped Portion Rents**") in an amount equal to the County's actual, third party out-of-pocket costs (hard and soft) incurred in connection with the County's development of the

Trinity Site Lease

Undeveloped Portion (“**County’s Development Costs**”);  
and

- 1.3.2.1.2.3.1.2. Once the County has received the County’s Development Costs, the County shall receive funds from the Undeveloped Portion Rents in an amount such that the County has earned a ten percent (10%) annual compounded return on the County’s Development Costs.
- 1.3.2.1.2.3.2. Any lease of building space constructed by the County on the Undeveloped Portion shall be managed by Lessee, and Lessee shall receive a management fee for providing such services in the amount of four percent (4%) of the Undeveloped Portion Rents. Lessee shall enter into sublease(s) identifying rental payments in accordance with Section 1.3.2.1.2.3.1.
- 1.3.2.1.2.3.3. Once the County receives the distributions described in Section 1.3.2.1.2.3.1.1 and Section 1.3.2.1.2.3.1.2 above, the County shall no longer be entitled to the Undeveloped Portion Rents, such Undeveloped Portion Rents being the sole and exclusive property of Lessee, at which point Lessee shall recommence paying the full Basic Rent in accordance with the terms of the Lease.
- 1.3.2.1.2.3.4. Notwithstanding anything to the contrary contained in this Lease, the County Development Option shall expire on the date that is the twelfth (12<sup>th</sup>) anniversary of the Effective Date (the “**County Development Option Termination Date**”). In the event the County has not exercised the County Development Option on or before the County Development Option Termination Date, then such right shall be null and void and no further action shall be required by either Party to formally release or terminate such right. In the event the County has timely exercised the County Development Option but has not completed the development in accordance with the terms and conditions contained herein, then the County shall have an additional sixty (60) days after the County Development Option Termination Date to complete such development, which shall be evidenced by a certificate of occupancy. If the County fails to complete the development within such sixty (60) day period, the County shall relinquish the property back to the Lessee, free and clear of any liens, and Lessee shall have the right to determine the appropriate use of such property given the economic environment at the time of relinquishment, including whether to continue with the development of such property.



## Trinity Site Lease

- 1.4. The County hereby grants, sells, transfers and conveys to the Lessee all existing improvements on the Land, including any alterations, additions, utilities, infrastructure, and fixtures located in, on and under the Land (the “**Existing Improvements**”). Title to the Existing Improvements, all improvements located in, on and under the Land and that are hereafter constructed on the Land by or at the request of the Lessee (the “**Additional Improvements**”) (and all replacements therefore) shall vest in and belong to the Lessee subject to the terms of this Lease. Collectively, the Existing Improvements and the Additional Improvements shall be referred to herein as the “**Improvements**.”
- 1.5. Collectively, the Land and the Improvements shall be referred to herein as the “**Leased Premises**.”
- 1.6. This Lease is subject to all encumbrances disclosed on Exhibit D attached hereto and all other matters of public record existing as of the date hereof (collectively, the “**Existing Encumbrances**”).
- 1.7. The Parties hereby agree that this Lease is and shall be an absolute net lease and, as such, the County shall have no liability or responsibility, financial or otherwise, with respect to the Leased Premises (including, without limitation, for taxes, insurance, utilities or maintenance) to the Lessee or any other Person, except as specifically set forth herein.
- 1.8. During the Feasibility Period, the Lessee and the County shall reach agreement on certain Improvements (i.e. sidewalks, the Canyon Rim Trail) that will be dedicated to the County (“**Dedication Property**”) upon Completion. When Complete, this Lease shall automatically terminate with respect to that portion of the Dedication Property (the “**Dedication Property Termination Date**”). Upon each Dedication Property Termination Date, all references to the Leased Premises shall be deemed to exclude the portion of the Dedication Property released to the County, and this Lease shall continue in full force and effect with respect to the remainder of the Leased Premises. The County and the Lessee shall execute a partial termination of this Lease to be recorded in the appropriate land records to evidence such termination. Upon each Dedication Property Termination Date, the Lessee shall not be responsible for the maintenance of such Dedication Property. Rent shall not be amended due to such partial termination of the Lease related to the Dedication Property.
- 1.9. Upon the Term Expiration Date, all Improvements shall revert to the County and upon request of the County, the Lessee shall confirm such reversion in writing, and the Lessee shall execute and deliver a sufficient bill of sale conveying any personal property located on the Leased Premises, if any, in its “as-is” condition.
- 1.10. To the extent requested by the Lessee or a sublessee of Lessee, the requesting party, the County and the District (along with the Lessee if it is not the requesting party) shall enter into a separate subordination and non-disturbance agreement (each, a “**SNDA**”) for a portion of the Leased Premises substantially in the form attached here to as Exhibit I (subject to reasonable amendments or modifications requested by a sublessee), subject to the County’s review of the sublease terms. The term of each SNDA may not exceed the Term.

## Trinity Site Lease

## 2. TERM AND RENT

- 2.1. Term. The “**Term**” shall begin on the Effective Date and shall expire on July 20, 2085, unless sooner terminated or extended in accordance with the provisions of this Lease (the “**Term Expiration Date**”).
- 2.2. Consideration. In consideration of the rights, benefits and privileges inuring to the benefit of the Lessee from this Lease and the Lessee’s right to use the Leased Premises and the County’s provision of certain obligations set forth in this Lease, the Lessee covenants and agrees as follows (the “**Consideration**”):
- 2.2.1. The Lessee shall execute and perform or cause to be performed all of the obligations under this Lease in accordance with the terms and conditions set forth herein.
- 2.2.2. The Lessee shall pay the County all amounts due hereunder by wire transfer, check, or automated clearing house so that funds are immediately available on the day such amount is due. Such payments shall be made to the depository agent identified by the County, or to such other person as the County from time to time may designate in writing to Lessee. All sums shall be payable to the County in lawful money of the United States of America without offset, abatement, counterclaim, or deduction.
- 2.3. Initial Rent. Provided the Lessee does not terminate this Lease during the Feasibility Period, the Lessee shall pay the County Ten Thousand Dollars (\$10,000.00) per month (“**Initial Rent**”) commencing one day after the expiration of the Feasibility Period and ending upon the first payment of Basic Rent, as defined below (the “**Initial Rent Period**”). The Initial Rent shall be paid to the County in accordance with the process described in Section 2.4.4.
- 2.4. Basic Rent. “**Basic Rent**” is comprised of two parts: (i) “**Basic Rent Anchor**,” which represents the portion of the rent for the portion of the Land identified as the Anchor Tenant Land, as set forth in Exhibit J, and (ii) “**Basic Rent General**,” which represents the portion of the rent for the portion of the Land identified as Non-Anchor Tenant Land, as set forth in Exhibit J. The initial Basic Rent equals Five Hundred and Eleven Thousand Dollars (\$511,000.00) per annum, which is \$42,583.33 per month, and shall be adjusted annually in accordance with Section 2.4.1 and Section 2.4.2.
- 2.4.1. Basic Rent Anchor. During the initial twenty-five (25) years of the Term, but starting payment after the end of the Initial Rent Period, the Basic Rent Anchor shall be Four Hundred and Fifty Thousand Dollars (\$450,000.00) per annum, which is \$37,500.00 per month. Beginning on the date that is the twenty-sixth (26<sup>th</sup>) anniversary of the Effective Date and continuing for each date that is sixty (60) months after the previous increase in the Basic Rent Anchor, the Basic Rent Anchor payment to the County shall increase by then current Basic Rent Anchor multiplied by the lesser of:

- (i) CPI over the term since the last increase in the Basic Rent Anchor,

**Trinity Site Lease**

which shall initially be: (a) the percentage change in Consumer Price Index over the term from the Effective Date to the twenty-sixth (26<sup>th</sup>) anniversary of the Effective Date and (b) thereafter, the change in the Consumer Price Index over the sixty (60) month term since the previous increase in the Basic Rent Anchor, as applicable; and

(ii) ten percent (10%).

The term “**Consumer Price Index**” shall, for the purpose of this Lease, be the “Consumer Price Index For All Urban Consumers, U.S. City Average, All Items, Not Seasonally Adjusted, 1982 – 1984 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor, or any successor or substitute index selected by the County, appropriately adjusted, if the Consumer Price Index is no longer published.

2.4.2. Basic Rent General. During the initial five (5) years of the Term, but starting payment after the end of the Initial Rent Period, the Basic Rent General shall be Sixty-One Thousand Dollars (\$61,000.00) annually. Beginning on the date that is the sixth (6<sup>th</sup>) anniversary of the Effective Date, the Basic Rent General shall increase by ten percent (10%) of the Basic Rent General. Subsequently, the Basic Rent General shall increase by ten percent (10%) of the then current Basic Rent General on each date that is sixty (60) months after the previous increase.

2.4.3. Payment of Basic Rent. The Basic Rent shall commence upon the earlier of (i) the date the Anchor Tenant opens for business, or (ii) twelve (12) months after the date that the Landlord’s Work is complete.

2.4.4. Payments.

2.4.4.1. Credits

2.4.4.1.1. The Deposit, together with accrued interest, if any, shall be applied toward the Initial Rent and Basic Rent payments payable by Lessee to the County pursuant to this Lease. Unless explicitly provided herein, the County shall retain the Deposit on the Term Expiration Date.

2.4.4.1.2. Beginning with the first Basic Rent Payment after the Anchor Tenant opens for business, the County shall provide a credit to the Lessee equal to Five Thousand Dollars (\$5,000.00) per month for each month that the Lessee paid Initial Rent to the County. For example, if the Lessee paid six (6) months of Initial Rent, the Lessee is entitled to a credit of Five Thousand Dollars (\$5,000.00) per month for the first six (6) months that Basic Rent is paid after the Anchor Tenant opens for business.

2.4.4.2. With the exception of the first Initial Rent and the first Basic Rent payments which are due on the dates specified in Section 2.3 and Section 2.4.3, respectively, all Initial Rent and Basic Rent payments shall be paid on the first day of each month (the said days being the “**Rent Payment Dates**”). Any

## Trinity Site Lease

Initial Rent or Basic Rent payments for partial months shall be prorated. If any Rent Payment Date falls on a day which is not a Business Day, the Initial Rent or Basic Rent, as applicable, due and payable on such date shall be due and payable on the next succeeding Business Day without interest or penalty if paid on such succeeding Business Day. A **"Business Day"** is defined as any day other than a Saturday or Sunday or other day on which the banks in Los Alamos, New Mexico are authorized or required to be closed. If any of the rent payable under the terms of this Lease shall be or become uncollectible, reduced or required to be refunded because of any legal restriction, the Lessee shall enter into such agreements and take such other steps as the County may reasonably request and as may be legally permissible to permit the County to collect the maximum sums that from time to time during the continuance of such legal restriction may be legally permissible (and not in excess of the amounts reserved therefore under this Lease). Upon the termination of such legal restriction, the rent shall become and thereafter be payable in accordance with provisions hereof for the periods following such termination.

2.5. Additional Rent.

2.5.1. All impositions, insurance premiums, and other costs and expenses which Lessee has agreed to pay under this Lease (other than Basic Rent) together with every fine, penalty, interest and cost which may be added for nonpayment or late payment thereof (including Basic Rent), shall constitute additional rent (**"Additional Rent"**). All Additional Rent shall be paid directly by Lessee to the party to whom such Additional Rent is due. Additional Rent to be paid by Lessee hereunder shall include the following:

2.5.1.1. Insurance premiums required to maintain the insurance policies described in Article 20 hereof;

2.5.1.2. Lessee's expenses of occupying, operating, altering, maintaining, repairing and restoring the Leased Premises throughout the Term, excluding any expenses that County is required to pay pursuant to this Lease;

2.5.1.3. All impositions which during the Term of this Lease shall be levied, assessed or imposed by any governmental authority upon or with respect to, or incurred in connection with the ownership, possession, occupation, operation, alteration, maintenance, repair or use of, the Leased Premises and are due and payable during the Term;

2.5.1.4. All sums payable by Lessee hereunder (including, without limitation, Basic Rent, Additional Rent and all other sums, all of which are herein sometimes collectively called **"Rent"**) shall be paid to County absolutely net without offset of any kind or deduction of any nature or to such party to whom the sums are due. Any payment or discharge by Lessee of any tax or excise on rents or other tax referred to in the preceding sentence shall not be deemed Additional Rent;

## Trinity Site Lease

2.5.1.5. Ground rent, taxes (excluding gross receipts taxes or sales taxes owed by a tenant or sublessee), insurance premiums, operating charges, costs and expenses and other sums required to be paid by Lessee under the Lease. Lessee shall not be in default under this Lease if a sublessee fails to pay gross receipts tax, sales tax, personal property tax or utilities; provided that Lessee is enforcing its sublease (which shall include a requirement to pay such taxes and utilities) with such sublessee to pay such taxes and utilities; and

2.5.1.6. Twenty-five percent (25%) of any “**Percentage Rent**” (or similar concept as percentage rent) paid by a sublessee and received by the Lessee. Lessee shall use commercially reasonable efforts to include the language in its retail, restaurant and other subleases as Lessee deems appropriate. Such twenty-five percent (25%) payment to the County shall be paid to the County on the last Business Day of each calendar year.

Upon the occurrence and continuation of an Event of Default hereunder, County may require Lessee to deposit with County in an escrow account bearing interest for the benefit of Lessee (i) an amount equal to (A) all taxes which are due and payable which Lessee is obligated to pay under this Section, including accrued ad valorem taxes, if any, with respect to the Leased Premises plus (B) any then delinquent insurance premiums with respect to the insurance required under Article 20 hereof, and (ii) thereafter, each month, an amount equal to one-twelfth (1/12th) of the annual charges for taxes to be paid under this Section and insurance premiums. Notwithstanding the foregoing, in the event the Lessee is depositing such amounts with a Leasehold Mortgagee or otherwise cures the Event of Default and delivers evidence of the same to the County, the County shall not require the Lessee to make the deposits required hereunder.

#### 2.5.2. Payment of Additional Rent.

2.5.2.1. Lessee shall pay each sum payable pursuant to this Section prior to the time that such sum becomes delinquent.

2.5.2.2. With the exception of Basic Rent, which shall be due and payable as set forth in Section 2.4.4.2, and any Percentage Rent, which shall be due and payable as set forth in Section 2.5.1.6, Lessee shall pay directly to the party to whom such payment is due, within ten (10) days after receipt of County’s written demand, all amounts which Lessee shall otherwise be obligated to pay by reason of the provisions of this Lease; provided, however (i) if such amounts are in dispute, then the Lessee shall cause such amounts to be paid within ten (10) days of resolution of such dispute, and (ii) the Lessee shall not be required to pay any amount prior to the date such amount is due and payable hereunder.

2.5.2.2.1. To the extent any such amount owed by Lessee in accordance with this Section is in dispute, Lessee shall commence the dispute process set forth in Section 18.1 within ten (10) days after receipt of County’s written demand and all amounts not in dispute shall be paid within the original ten (10) day period. Any amounts in dispute shall be paid by Lessee within ten (10) days of resolution of the dispute.

**Trinity Site Lease**

- 2.6. Late Payments. If Lessee fails to make any payment of the Basic Rent or Additional Rent or any other sum payable by Lessee hereunder to County is not made on or before the date on which such Basic Rent or Additional Rent is due (“**Due Date**”), then Lessee shall pay County interest on such overdue payment at the Agreed Interest Rate, accruing from the Due Date of such payment until the same is paid in addition to interest at the Agreed Interest Rate.

**3. EASEMENTS AND RIGHTS-OF-WAY**

- 3.1. The Leased Premises are subject to easements and rights-of-way included in the Existing Encumbrances. The Lessee shall accept and occupy the Leased Premises subject to and in compliance with the Existing Encumbrances, and the County shall have the further right to create and grant additional easements and rights-of-way over, across and through the Leased Premises, including, without limitation, the right to modify and relocate any of the Existing Encumbrances; provided, however, the County agrees that neither the relocation of Existing Encumbrances or creation or granting of new encumbrances shall (a) be inconsistent with or materially impair the rights and benefits of the Lessee under this Lease, or sublessee under its sublease, or under the Development Responsibilities with respect to the development, construction, ownership, leasing, use and operation of the Leased Premises by the Lessee or its permitted sublessee and assigns or (b) adversely affect the value or marketability of the Existing Improvements, Additional Improvements, or the Project. The County agrees to coordinate the relocation of any of the Existing Encumbrances with the Lessee so as to provide for and protect the mutual needs of the County and the Lessee.
- 3.2. During the Feasibility Period, the County shall execute a non-exclusive easement with Lessee which permits the Lessee to construct and maintain a two-lane road on the area set forth in Exhibit O.

**4. CONDITION OF LEASED PREMISES**

- 4.1. Lessee hereby agrees and acknowledges that as of the Effective Date, it has inspected, knows and accepts the condition and state of repair of the Leased Premises. Lessee agrees that the Leased Premises are leased in an “as is” condition without any representation or warranty by the County concerning their condition, except as otherwise expressly provided for herein, and without obligation on the part of the County to make any alterations, repairs or additions. The County shall not be liable for any latent or patent defects in the Leased Premises. The Lessee, for itself and its successors and assigns, acknowledges that, unless otherwise specifically and fully provided in this Lease, the County has made no representation or warranty concerning the condition and state of repair of the Leased Premises nor any agreement or promise to alter, improve, adapt or repair them.

**5. USE OF LEASED PREMISES**

- 5.1. The Leased Premises shall be used solely for commercial retail space (including related drive-thru facilities), entertainment, banks, restaurants, parking, medical, office uses, and other similar uses customarily found in similarly situated shopping centers (“**Permitted**

**Trinity Site Lease**

Uses”). Except as the County and Lessee may otherwise agree in writing, no other uses of the Leased Premises shall be permitted during the Term.

- 5.1.1. Unless otherwise agreed in writing by the County in its sole discretion, massage parlors (excluding Massage Envy or similarly situated tenants or any massage services that are considered an ancillary part of a tenant’s operations) and other adult-oriented entertainment businesses are not Permitted Uses. With respect to any alternate uses at the Leased Premises proposed by Lessee, the County agrees to act reasonably when considering whether to approve such proposed uses.
- 5.2. Unless otherwise mutually agreed by the County and Lessee, all Improvements on the Leased Premises shall be utilized in accordance with the following use allocation, based upon a minimum and maximum total square feet identified below of completed Improvements, at the end of the Development Period (collectively the “Use Allocation”):
  - 5.2.1. The Lessee shall use reasonable efforts to encourage Anchor Tenant to construct the Anchor Tenant Building to be a minimum of approximately 100,000 to 120,000 square feet and to have a significant amount of square footage for general merchandise.
  - 5.2.2. A maximum of 60,000 square feet of commercial retail space divided approximately as follows:
    - 5.2.2.1. Minor anchor(s) a maximum of 15,000 square feet;
    - 5.2.2.2. Sit-down restaurant(s) a maximum of 12,500 square feet;
    - 5.2.2.3. Quick service restaurant(s) a maximum of 12,500 square feet;
    - 5.2.2.4. General retail a maximum of 35,000 square feet (exclusive of Section 5.2.2.1);
    - 5.2.2.5. Office/medical uses a maximum of 10,000 square feet; and
    - 5.2.2.6. Financial institution uses a maximum of 10,000 square feet.
- 5.3. The total Use Allocation for the Leased Premises shall be a maximum of 170,000 square feet of leasable floor area, excluding mezzanine and reasonable storage areas.
- 5.4. The Lessee may amend the Use Allocation with County Approval, which approval shall not be unreasonably withheld to the extent such amendments are consistent with the Permitted Uses and Applicable Laws, including existing zoning regulations.
- 5.5. The Lessee shall comply with the Management Plan attached hereto as Exhibit C and the conceptual site layout attached hereto as Exhibit F (the “**Conceptual Site Layout**”) and amendments to such proposed Conceptual Site Layout approved by the County, such approval not to be unreasonably withheld or delayed (upon each written approval by County, this Lease shall automatically be amended to incorporate such approved version of the Conceptual Site Layout as Exhibit F, and the Lessee shall materially comply with

**Trinity Site Lease**

such amended Conceptual Site Layout). The Lessee shall notify the County, in writing, of any proposed material change to the Conceptual Site Layout for the Leased Premises that is attached as Exhibit F or any material change in the Improvements described in the County approved Management Plan, or any material change in the County approved Use Allocation, prior to undertaking any such proposed change, which notice shall include sufficient detail for the County to assess the impact of the change on the Project and value of the Project; provided, however, notwithstanding the foregoing, Lessee shall not be required to notify the County or obtain its approval of changes to the Conceptual Site Layout that involves a decrease in the Permissible Building Area as described on the Conceptual Site Layout attached as Exhibit F. For purposes of this Section, "material change" means any change in the improvements or building location or size, a change in the finished materials. Changes to the materials used for construction and finishes are considered material changes. If there is a Material Change, the County shall have the sole option of requiring the Lessee to commission an appraisal, with reasonable County Approval of the appraiser, to appraise, in accordance with appraisal instructions approved by the Parties, the actual increase of the value of the Land, if any, resulting from the proposed change to the Conceptual Site Layout or Use Allocation, which shall be determined by the value of the Land with the proposed change in the Use Allocation minus the value of the Land at the then current Use Allocation (which value shall be the "**Changed Value**"). The costs of such appraisal shall be paid fifty percent (50%) by the Lessee and fifty percent (50%) by the County. To the extent such appraisal determines that the Changed Value of the Land is more than one million dollars (\$1,000,000.00), the Lessee shall pay to the County, for the remainder of the Term, as an increase to Basic Rent (payable monthly), ten percent (10%) of the rental increases obtained by Lessee as a result of such change ("**Increased Basic Rent Payment**"). By way of example, if the proposed change to the Conceptual Site Layout is to increase the Permissible Building Area of a building from 25,000 square feet to 35,000 square feet, the County shall receive ten percent (10%) of any additional rent obtained by Lessee for the additional 10,000 square feet of Permissible Building Area.

- 5.6. Notwithstanding any other provisions of this Lease, the Lessee shall have no mineral, water, gas or other natural resource rights and no right to remove or disturb or cause or permit to knowingly be removed or disturbed, any historical, archaeological, or other cultural artifacts, relics, remains or objects of antiquity. The County agrees that it shall not exercise its right to excavate or withdraw minerals, gas, oil or other natural resources or material from, on, or under the Land if same would interfere with the Lessee's use of the Leased Premises under and in accordance with this Lease, and under no circumstances shall the County be permitted to conduct any drilling operations at the Leased Premises. For the Term of the Lease, the County agrees to waive any rights to the surface of the Leased Premises for purposes of mining minerals, gas, oil, or other natural resources.
- 5.7. The Lessee shall follow the "**Retail Strategy**" created by the Lessee and attached as Exhibit E, as Lessee amends from time to time taking into consideration current market conditions and other factors relevant to creating a retail strategy.



**Trinity Site Lease**

**6. RESERVED**

**7. DEVELOPMENT OF THE LEASED PREMISES**

- 7.1. The Lessee shall design, construct, own, manage, operate and maintain the development, and the associated Improvements on the Land ("**Development**") in accordance with the terms and conditions of this Lease.
- 7.2. The Lessee shall develop, construct and complete the Improvements (including alteration, repair, and remodeling) in accordance with the Development Responsibilities, and maintain and manage the Leased Premises in accordance with the Management Plan (as such plan may be amended or modified as set forth in this Lease) and in compliance with Applicable Laws.

**8. OPERATION AND MAINTENANCE OF LEASED PREMISES**

- 8.1. Lessee and its tenants or assigns shall make, or in the case of the Anchor Tenant Lessee shall cause the Anchor Tenant to make, the capital repairs and replacements necessary for the Leased Premises to be operated and maintained, over the Term, at levels of skill and care that will permit the Leased Premises to remain at a First-Class Standard and in accordance with the management provisions of the Management Plan.
- 8.2. The Lessee shall ensure that all subleases and contracts relating to the Development of the Leased Premises (including any construction activities thereon), shall contain clauses indemnifying and holding the fee owner of the Land harmless from any and all liabilities and losses (including without limitation attorneys' fees, disbursements and other charges) incurred as a result of any claim or cause of action arising as a result of any acts or omissions of any sublessee, any contractor, or any subcontractor unless such claims arise as a result of the County's negligent acts.
- 8.3. The Lessee shall provide the County with a complete copy of all architectural, engineering and other construction documents for planned improvements to be constructed on the Leased Premises and all payment and performance bonds (required by Section 8.9) or other acceptable guarantees (required by Section 8.9) at least ten (10) Business Days prior to undertaking such construction, and a copy of all necessary governmental permits, approvals, and certificates within ten (10) Business Days following their receipt.
- 8.4. Upon reasonable advance notice, the Lessee shall permit the County's representatives, agents and employees' reasonable access to and right of entry onto the Leased Premises before, during and after any construction for the purpose of monitoring, observing and making inquiries in order for the County to determine compliance with this Lease. It is understood by the Lessee that no such activity shall relieve the Lessee of its responsibility for managing or providing for management of any and all of the construction on the Leased Premises.
- 8.5. Within sixty (60) days of completing construction of a phase of Improvements costing in excess of one million dollars (\$1,000,000), as Adjusted, the Lessee shall provide the

## Trinity Site Lease

County with one (1) complete set of reproducible as-built drawings (all disciplines) illustrating the original and the then-current configuration of the Leased Premises. The as-built drawings will incorporate all changes made over the Term to date. The title block shall be dated and noted as "As-Built Drawings." At the same time, one (1) electronic copy of the "As-Built Drawings" in AUTOCAD 2006 (or later edition), read only format electronically shall also be transmitted to the County.

- 8.6. Within ninety (90) days after the filing thereof, the Lessee shall remove and discharge or cause to be removed and discharged fully any and all mechanic's, materialman's, laborer's and other similar liens filed against the Leased Premises for work or materials furnished to or on behalf of the Lessee or any of the Lessee's sublessees or occupants. Notwithstanding the foregoing, if the Lessee, its sublessee, or occupant, in good faith, disputes the validity or amount of any such claim of lien, and the Lessee, its sublessee, or occupant provides the County with a bond or other such security as the County may reasonably require to insure payment thereof and prevent any sale, foreclosure or forfeiture of the Leased Premises or any portion thereof by reason of such nonpayment, then so long as the Lessee or its sublessee is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute or, if litigation or arbitration results therefrom, the Lessee or its sublessee discharges said lien within ninety (90) days after the date such judgment is rendered or filed, then the Lessee shall not be in breach of its obligations in the first sentence of this Section. Nothing herein shall extend to or affect the fee, the remainder interest or the estate of the County or the District in the Leased Premises.
- 8.7. During the Term of this Lease, the Lessee, at no cost to the County, shall diligently preserve, protect, maintain, and repair or cause to be preserved, protected, maintained, and repaired the Land and Improvements, and shall keep or cause to be kept the same in a tenantable, safe, and sanitary condition in accordance with the Management Plan and recognized a First-Class Standard in the vicinity of the Leased Premises. The Lessee shall at all such times expend commercially reasonable efforts to protect the Leased Premises against damage or destruction by fire or other causes. The Lessee shall at all times maintain or cause to be maintained all non-County managed roads and streets and all curbing, sidewalks, parking areas, access drives, and appurtenant drainage thereto within the Land in good condition and keep them free of debris and obstructions of any kind. In furtherance of its maintenance, capital repair and replacement obligations, the Lessee shall establish and maintain "**Funded Accounts**" in accordance with the following requirements:
- 8.7.1. Funded Accounts. Commencing five (5) years following the end of the Initial Development Phase, Lessee shall establish and maintain the Funded Accounts for maintenance, capital repair and replacement in an interest-bearing account in a financial institution approved by the County. The Funded Accounts shall be funded with the greater of (i) Fifty Thousand Dollars (\$50,000.00) Adjusted, or (ii) an amount equivalent to one percent (1%) of gross income for all rentable space per year excluding the Anchor Tenant Building. Such amount should begin funding at the same rate any time the actual amount in such Funded Accounts drops below the allotted amount. The financial institution holding such Funded

**Trinity Site Lease**

Accounts shall include the County as a recipient of all account statements. The Funded Accounts shall be available for use by Lessee to make necessary non-routine capital repairs and replacements to Improvements throughout the term of this Lease, including repairs to, renovation or reconstruction of, the systems and structural elements of the building and related Improvements. Lessee shall provide an annual written summary of the use of the Funded Accounts which identifies the amount in the account, the deposits and the withdrawals in sufficient detail as to provide descriptions of the sources and uses of the account.

- 8.7.2. No funds shall be withdrawn from the Funded Accounts (or any other accounts permitted under Section 8.7.5) in connection with any building within the Leased Premises for which a Certificate of Completion has not been submitted to the County and which has not been made available for use and occupancy.
- 8.7.3. The Lessee shall not pledge or use any monies in the Funded Accounts (or any other accounts permitted under Section 8.7.5) as collateral. In addition, the establishment of the Funded Accounts and its use does not in any manner limit the Lessee's responsibilities under this Lease and the Lessee remains responsible for any costs and expenses in excess of the Funded Accounts necessary to fulfill its obligations hereunder.
- 8.7.4. Immediately upon termination or expiration of this Lease, provided the Lessee has (i) complied with its maintenance obligations on the Leased Premises as confirmed by an independent, licensed State inspector (who the Lessee shall hire at its own cost and expense and require to issue its written report and findings to the Lessee and the County), and (ii) is otherwise not in default under the Lease, the Lessee shall be entitled to recoup any balance remaining in the Funded Accounts.
- 8.7.5. Notwithstanding the foregoing of this Section 8.7, if in connection with any mortgages, deeds of trust, security agreements, and/or other debt instruments obtained by Lessee and with County Approval, the terms and conditions of such encumbrance documents require Lessee to create and maintain or cause to be created and maintained one or more accounts to be the functional equivalent of the Funded Accounts, and Lessee complies with such requirements, Lessee shall be deemed, while such instruments are in effect, to have fully complied with the requirements described under this Section 8.7, provided, however, that:
  - 8.7.5.1. If such accounts or any of them permit funding in an amount less than that required under Section 8.7.1, Lessee shall deposit additional funds into the Funded Accounts or other such accounts in order to fulfill the minimum funding requirements under Section 8.7.1.
  - 8.7.5.2. Lessee shall provide or cause to be provided to the County all periodic statements issued for each such account.
  - 8.7.5.3. Lessee shall inform the County of all such accounts.

**Trinity Site Lease**

- 8.8. The Lessee shall pay and discharge or cause to be paid and discharged the following during the Term of this Lease, punctually, as and when the same shall become due and payable:
- 8.8.1. Each and every operating cost, expense and obligation of every kind and nature for the payment of which the Lessee is or shall become liable by reason of its interests in the Leased Premises or any portion thereof, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Leased Premises or requirements of this Lease;
  - 8.8.2. Without limiting the requirements in Section 8.8.1, all taxes of every type or description, utility charges, assessments, and all other impositions and charges of every kind and nature, extraordinary or ordinary, general or special, which at any time during the Term shall be or become due and payable by the County or the Lessee, which shall be levied, assessed or imposed in connection with the Leased Premises or the signing and delivery of this Lease, including transfer taxes with respect to this Lease imposed by or payable to the State or any county or local governmental unit and all use and occupancy or similar taxes with respect to the Lessee's use or occupancy of the Leased Premises; and
  - 8.8.3. Without limiting the requirements in Sections 8.8.1 and 8.8.2, all charges for gas, water, sewer, electricity, light, heat, power, telephone, internet, and other utilities and services used, rendered, or supplied to or in connection with the Leased Premises, which are levied, assessed or imposed upon the Leased Premises and/or otherwise are required to be paid by the Lessee.
- 8.9. Not less than fifteen (15) Business Days prior to the commencement of any construction on the Leased Premises, excluding a Smith's store as the Anchor Tenant Building, Lessee shall provide the County with a performance and payment bond issued by a corporate surety and reasonably satisfactory to the County in all respects, unless waived by the County in its sole discretion; provided however, if an entity is publicly traded and rated by Standard & Poor's at or above AA.
- 8.10. At the County's option, to the extent at least fifty percent (50%) of the Anchor Tenant Building is not utilized for retail space for a period of forty-eight (48) consecutive months during the Term, the County can require at its sole option that the Lease terminate with respect to the Anchor Tenant Land. In the event the Anchor Tenant Building is not utilized for retail space (provided such period of time is less than forty-eight (48) consecutive months), then once the building is utilized for retail space, the timing requirements for failure to operate as retail space shall reset such that the County's option to terminate under this Section shall not be triggered unless such building is not utilized for retail space for a period of forty-eight (48) consecutive months. In the event that the County terminates the Lease pursuant to this Section, the Lessee shall not be required to pay Basic Rent Anchor.

**Trinity Site Lease**

8.11. Lessee shall comply with and perform the obligations set forth below:

8.11.1. Green Building Construction. To the extent feasible and reasonable, the Lessee shall use, and shall encourage the Anchor Tenant to use, environmentally friendly business practices in the design and construction of the Leased Premises.

8.11.2. Protection of View Spaces. The Parties have a mutual interest in protecting view spaces identified in Exhibit G (“**View Space**”) around the Land and to preserve a reasonable amount of the natural and scenic qualities on the southern edge of the Land. The Lessee shall manage all View Space and permitting and entitlement activities required on the Leased Premises. The County and the Lessee agree that upon the Effective Date, the Leased Premises may be subject to conservation easements or other enforceable mechanisms to develop those sections of the Leased Premises designated as View Space in perpetuity. The Lessee agrees to provide a mechanism, with County Approval, to provide for and fund the preservation of such View Space. Any development adjoining the View Space will recognize the scenic qualities intended of the View Space and will protect from view any visual obstructions or inconsistent items such as garbage, mechanical equipment, etc.

8.11.3. Drainage. Lessee shall provide all onsite and offsite storm water drainage areas for the Leased Premises reasonably determined necessary by the County, consistent with Applicable Laws. At such time as Lessee deems necessary for purposes of obtaining permits and required approvals, the County agrees to meet with the Lessee and the Department of Energy related to Lessee obtaining approval from the Department of Energy, to the extent any is required, to drain historical storm water flows into the canyon adjacent to the Leased Premises.

8.12. The Leased Premises shall be developed in accordance with, and subject to, the County’s Comprehensive Plan, the County’s then current zoning regulations, and the terms and conditions of this Lease.

8.13. Review for Compliance. The County’s community development director (the “**Community Development Director**”) shall have the option to conduct a review of this Lease (and any other agreements related to the Leased Premises) to ascertain the compliance by Lessee with its terms (the “**Optional Review**”) upon ninety (90) days advance written notice to Lessee. The Community Development Director shall conduct an Optional Review no more than once a year. To facilitate the Optional Review, within seventy-five (75) days of the County’s notice of the Optional Review, Lessee shall prepare and submit to the County a report detailing (i) the total number of units and square footage of building permits issued to such date, (ii) the number of certificates of occupancy issued, and (iii) such other information as the County may reasonably request. If the Community Development Director determines that Lessee is not in compliance with this Lease, which any such non-compliance must be substantiated by a written report sent to Lessee setting forth what the non-compliance issues are and how Lessee failed to comply with such requirements, the County may exercise its remedies in accordance with this Lease including Article 9 and the notice and cure provisions.

## Trinity Site Lease

Notwithstanding the foregoing, in the event Lessee disputes any claims of non-compliance filed by the Community Development Director, then any such dispute shall be resolved in accordance with Section 18.1. All remedies are cumulative, and the choice of any remedy shall not be deemed to preclude pursuit of a separate remedy. The burden of proof of compliance with this Lease is on Lessee.

**9. DEFAULT AND TERMINATION**

9.1. Event of Default. An “**Event of Default**” under this Lease means the occurrence of any of the following:

9.1.1. The Lessee breaches any provision (including any representation or warranty) of or defaults under this Lease, and such breach or default is not cured or remedied within thirty (30) days (for any monetary default) or ninety (90) days (for any other breach or default) after written notice of such breach or default (provided that such cure period shall, for any breach or default other than a monetary default, upon request, be extended by the County for up to an additional one-hundred and twenty (120) days if such breach or default cannot reasonably be cured within the initial ninety (90) days and the Lessee demonstrates to the County that the Lessee is diligently attempting to cure the same).

9.1.2. The Lessee files a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or State law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors except pursuant to Article 22 of this Lease.

9.1.3. A receiver, trustee or liquidator of the Lessee or of all or substantially all of the property of Lessee, including the Leased Premises, shall be appointed in any proceeding.

9.2. Actions Upon Event of Default. Upon the occurrence of any Event of Default, but subject to the rights of the Leasehold Mortgagee as set forth herein:

9.2.1. The County may (but shall not be obligated to), upon ten (10) Business Days prior written notice to the Lessee, without waiving or releasing the Lessee from any obligations or defaults hereunder, perform any such act for the account of the Lessee and, at the Lessee’s expense, may enter upon the Leased Premises for that purpose and take all such action thereon as may be reasonably necessary therefore; provided, however, that no such entry shall be deemed an eviction of the Lessee or termination of this Lease; and provided, further, that all sums paid by the County and all necessary and incidental third party costs and expenses (including reasonable attorneys’ fees, disbursements and other charges) incurred in connection with the performance of any such act by the County, together with interest at the Agreed Interest Rate from the earlier of the date of payment of such sums or the incurring of such costs and expenses by the County, shall be due and payable, upon demand, by the Lessee to the County, and the Lessee covenants to pay any such sum or sums with interest at the rate stated above; and

**Trinity Site Lease**

- 9.2.2. The County may terminate this Lease and the Term hereof without any right on the part of the Lessee to waive the forfeiture by payment of any sum due or by performance of any other condition, term or covenant broken or in any other manner to reinstate this Lease; upon such termination, the County shall be entitled to retain the Deposit and to recover: (i) all Basic Rent or Additional Rent that shall have accrued through the date of termination, plus (ii) any other reasonable amount necessary to compensate the County for all damages, if any, caused by the Lessee's failure to perform its obligations under this Lease (including, without limitation, reasonable attorneys' fees, disbursements and other charges, costs of alterations of the Leased Premises, interest costs and brokers' fees incurred upon any re-letting of the Leased Premises for the remainder of the Term if the Event of Default had not occurred); and
- 9.2.3. The County shall have the right to continue the Lease in effect after the Lessee's breach and abandonment and recover Basic Rent and Additional Rent as it becomes due; and acts of maintenance or preservation, efforts to re-let the Leased Premises or the appointment of a receiver upon the County's initiative to protect its interest under this Lease shall not of themselves constitute a termination of the Lessee's right to possession; and
- 9.2.4. The County may terminate the Lessee's right of possession and may repossess the Leased Premises by legal proceedings or otherwise by terminating the Lease. After reentry or retaking or recovering of the Leased Premises, the County may re-let the same or a portion thereof for such rent and upon such terms as are commercially reasonable and be deemed advisable by the County; and whether or not the Leased Premises are re-let, the Lessee shall be liable for the losses and damages provided for and pursuant to this Lease; provided however, if the County seeks to recover lost rent from the Lessee, the County shall attempt to mitigate its losses by using good faith efforts to re-let the Leased Premises; and
- 9.2.5. The County may accelerate the whole or any part of the Additional Rent, charges, expenses and all other sums payable hereunder that will be incurred by the County as a result of Lessee's actions or have been incurred by the County whether or not payable as Additional Rent, herein agreed to be paid by the Lessee, and also all or any costs and sheriff's, marshal's, constable's or other official's commissions, whether chargeable to the County or the Lessee, including watchman's wages, which amounts shall be taken to be due and payable from the Lessee and in arrears as if by the terms of this Lease said balance of Additional Rent, charges and other costs, expenses and sums were on that date payable in advance; and
- 9.2.6. The County may exercise any other right, remedy, or privilege that may be available to it under this Lease or under applicable federal, State, or local law, or in equity.
- 9.3. All remedies of the County shall be cumulative and the election of one shall not preclude the exercise of another, at the same time or subsequently. The County shall be required

**Trinity Site Lease**

hereby to mitigate any of its damages hereunder. No termination of this Lease, cure by the County of any Event of Default hereunder, repossession or re-letting of the Leased Premises, exercise of any remedy or collection of any damages shall relieve the Lessee of any of its obligations hereunder.

- 9.4. In the event that the County terminates this Lease, the County may, without an additional prior notice beyond the notices required in Section 9.1, enter upon and repossess the Leased Premises and may remove the Lessee and all other Persons, and any and all of the property from the Leased Premises; provided, however, that such remedies shall be exercised lawfully and in a manner which is not in contravention of the laws of the State.
- 9.5. Lessee shall not be in default of this Lease for failure to obtain a permit required by Applicable Law that the County grants pursuant to the County's powers (excluding rights granted pursuant to this Lease) for so long as the County does not grant the Lessee such County granted permit required by Applicable Law where the Lessee: (i) applied to the County for the permit in a timely manner and (ii) met the requirements for obtaining such permit pursuant to Applicable Law and County procedures.
- 9.6. In the case of a default by Lessee, even if cured, the Lessee agrees to pay to the County, from time to time upon demand and within thirty (30) days of receipt of such demand, all third party costs, expenses, losses and damages (including reasonable attorneys' fees, disbursements and other charges) incurred by the County (with reasonable documentation as to the costs incurred) arising from, due to or with respect to such default. In addition, the Lessee agrees to pay to the County, from time to time upon demand, all other reasonable losses and damages (including without limitation all costs and expenses incurred in re-letting the Leased Premises in accordance with this Article 9) incurred by the County arising from, due to or with respect to any Event of Default resulting in the termination of this Lease.
- 9.7. To the extent not provided elsewhere in this Lease, any and all sums payable to the County hereunder shall bear interest at the Agreed Interest Rate from and after the date first due and payable or, if same is to reimburse or repay the County for a sum paid or incurred by it, the date earlier paid or incurred until the date payment is received by the County.
- 9.8. The Lessee agrees that the County would not have an adequate remedy at law for money damages in the event of certain breaches of or defaults or anticipated defaults (except for specific monetary payments) under this Lease by the Lessee and, therefore, the Lessee agrees that the County shall be entitled to specific performance, injunctive relief and other equitable relief (including, without limitation, a restraining order) in addition to any other remedy to which it may be entitled in this Lease, at law or in equity (without the necessity of proving the inadequacy as a remedy of money damages) with respect to any breach, default or anticipated default hereunder.
- 9.9. In the event the Lessee remains in possession of any part of the Leased Premises after the Term Expiration Date or the Leased Premises are not in the condition required herein on the Term Expiration Date, (a) the Lessee shall indemnify and hold harmless the County



**Trinity Site Lease**

from any and all costs, expenses, claims, losses, liabilities and damages (including reasonable attorneys' fees, disbursements, and other charges) that the County may incur as the result of or otherwise relating to same, (b) the County shall be entitled to exercise all rights and remedies available to a landlord against a tenant holding over after the expiration of the term of its lease, and (c) without creating a tenancy or giving the Lessee any occupancy rights, the Lessee shall pay, for each day until the later of the day the Leased Premises are, if previously vacated by the Lessee, in the condition required herein on the Term Expiration Date or, if not previously vacated, vacated by the Lessee in the condition required herein on the Term Expiration Date one-hundred and fifty percent (150%) of the fair market value of rent ("**Holdover Rent**"), based upon a comparable property in the area at the time of the valuation, for the Leased Premises. If the Parties are unable to agree on the fair market value of rent within thirty (30) days after the Term Expiration Date, the Lessee shall be required to hire an appraiser, with County Approval and at no cost to the County, to provide an appraisal of such fair market value of rent. Furthermore, if the highest court of competent jurisdiction determines that Lessee's payment of Holdover Rent to the County is impermissible, inequitable, or otherwise unjustified, then Lessee shall to the extent permitted by Applicable Laws, owe and pay the County the maximum amount otherwise allowable.

- 9.10. County Event of Default. In the event that the County fails to perform or observe any obligations under this Lease, and any such failure is not cured or remedied within thirty (30) days (for any monetary default) or ninety (90) days (for any other breach or default) after written notice of such breach or default (provided that such cure period shall, for any breach or default other than a monetary default, upon request, be extended by the Lessee for up to an additional one-hundred and twenty (120) days if such breach or default cannot reasonably be cured within the initial ninety (90) days and the County demonstrates to Lessee that the County is diligently attempting to cure the same), then such failure shall, unless and until cured or remedied, constitute a "**County Event of Default**" under this Lease; provided that any such breach or default shall not be on account of any action or inaction on the part of another party. The Lessee shall have no claim or rights against the County with respect to any failure by the County unless an uncured County Event of Default shall exist. During an ongoing County Event of Default, the Lessee shall be relieved of liability for failure to perform its obligations under this Lease, to the extent the County Event of Default and the effects thereof are not the result of the Lessee's actions or failure to perform under this Lease. Lessee shall use reasonable efforts to comply with its obligations under the Lease during an ongoing County Event of Default. If the County commits a County Event of Default, Lessee, in addition to any remedies available under the law, may, without being obligated and without waiving the County Event of Default, cure the County Event of Default. If Lessee elects not to cure the County Event of Default, Lessee shall have the right to terminate this Lease upon written notice to the County after the expiration of any applicable cure period (in which event the Parties shall have no further rights or liabilities under this Lease (except for any that expressly survive termination of the Lease)). The provisions of this Section shall survive the expiration or sooner termination of this Lease.

## Trinity Site Lease

9.10.1. Lessee's exercise of any right or remedy due to a County Event of Default shall not be deemed a waiver of or to alter, affect, or prejudice any right or remedy which Lessee may have under this Lease or at law or in equity.

9.11. Force Majeure.

9.11.1. Neither Lessee nor the County shall be in default under this Lease if such performance of any obligation, duty or act is delayed or prevented by or due to events of Force Majeure.

9.11.2. Notwithstanding any other provision herein, the term "Force Majeure" shall mean any delay in completing or performing any obligation under this Lease which arises from acts of God, labor disputes, fire, freight embargos, unavoidable casualty, flood (assuming the Lessee has taken reasonable precautions), unusual weather events, earthquake, epidemic, civil disturbance, terrorism, war, riot, sabotage (by persons other than the Lessee or the County, as applicable, their agents, employees or assigns), the discovery of archeological remains or objects of antiquity, the discovery of Hazardous Materials in, on or under the Land other than those (i) identified in the Environmental Reports or (ii) that were brought to the Land by the Lessee, its subcontractors, invitees or tenants, or other similar acts or conditions, each case only to the extent the event in question is beyond the reasonable control and without the fault or negligence of the delayed party or its respective agent, employee or assign.

9.11.3. In the case of delay due to Force Majeure, the time within which the Party must comply with any of the terms, covenants and conditions of this Lease shall be extended by a period of time equal to the period of time that performance by the Party is delayed or prevented by the causes specified above, provided that within thirty (30) days of the commencement of the cause of delay the Party shall have notified the other Party of the existence of such cause of delay.

9.11.4. The occurrence of a Force Majeure shall relieve the County and Lessee of liability for breach for failing to perform obligations under this Lease, but only for the period of time during which such Force Majeure continues in effect and only if (a) the Force Majeure is the cause of the County's or Lessee's, as applicable, failure to perform such obligations, (b) the Force Majeure and the effects thereof are not the result of the County's or Lessee's, as applicable, negligence, wrongdoing or failure to perform under this Lease, and (c) the County or Lessee, as applicable, use their best efforts under the circumstances to overcome the Force Majeure and minimize the resulting adverse effects as rapidly and effectively as reasonably possible. The County or Lessee, as applicable, shall notify the other party as promptly as practicable, in writing, of the occurrence of a Force Majeure meeting the foregoing conditions and the cause and likely effect of such Force Majeure. At such time as the County or Lessee, as applicable, is able to resume performance, the County shall so notify the Lessee.

## Trinity Site Lease

9.12. Other Termination Rights.9.12.1. Anchor Tenant Lease Termination.

9.12.1.1. The Anchor Tenant may terminate the Anchor Tenant Lease during the Feasibility Period if either Lessee or the Anchor Tenant, as applicable, do not cause any of the following to occur, in accordance with the terms and conditions of the Anchor Tenant Lease: (A) acquire all government approvals which permit (i) the development in accordance with the Conceptual Site Layout, (ii) the sale of alcoholic beverages for off-premises consumption, and (iii) the construction and operation of retail facilities and parking have been finally adopted; (B) Lessee has good and insurable leasehold title, obtains title insurance, and prepares surveys; (C) vehicular access is permitted consistent with the access described in the Anchor Tenant Lease; (D) a reciprocal easement agreement and development agreement are executed and recorded, as applicable; (E) adequate utilities are/will be available; and (F) environmental due diligence determines that the Land (i) does not contain hazardous materials in levels that violate environmental laws, and (ii) is suitable for the Anchor Tenant Building. If the Anchor Tenant terminates the Anchor Tenant Lease during the Feasibility Period, then (i) Lessee shall immediately notify the County of such termination, and (ii) both the County and the Lessee have the right within fifteen (15) days of such notice to terminate this Lease by providing written notice to the other Party of such termination.

9.12.1.2. The Lessee and the County each have the right to terminate this Lease by providing notice to the other Party if the Anchor Tenant does not execute the Anchor Tenant Lease within forty-five (45) days of the Effective Date. The Lessee shall notify the County upon the execution of the Anchor Tenant Lease.

9.12.1.3. Upon a termination under this Section 9.12.1, the Deposit shall be promptly returned to the Lessee without deduction or offset.

9.12.2. County Termination for Lessee Failure to Begin Vertical Construction. If the Anchor Tenant fails to commence vertical construction of the Anchor Tenant Building by the earlier of ninety (90) days following the completion of the Landlord's Work or March 1, 2013, then the County, in its sole discretion, may terminate this Lease after notifying Lessee that the County intends to terminate the Lease in thirty (30) days.

9.12.2.1. During such thirty (30) day period, the Lessee, in its sole discretion, may provide a detailed plan to the County which identifies an amended vertical construction schedule for the Anchor Tenant Building, and, the County, in its sole discretion, may withdraw or suspend its notice to terminate.

9.12.2.2. Within sixty (60) days of any termination by the County pursuant to Section 9.12.2, the Lessee shall provide an itemized listing to the County of all actual, third-party out-of-pocket design and construction costs, including costs

## Trinity Site Lease

associated with legal fees and off-site improvements, incurred by the Lessee for the actual construction, design and other third-party costs of the Leased Premises for which the Lessee did not receive payment from the Anchor Tenant or any third party and requests reimbursement from the County. The County shall reimburse the Lessee for such hard costs within ninety (90) days of receipt of the Lessee's listing, including a return of any unused portion of the Deposit. To the extent any such amount requested for reimbursement is in dispute, the County shall commence the dispute process set forth in Section 18.1 within forty-five (45) days after receipt of Lessee's written demand and all amounts not in dispute shall be paid within the original ninety (90) day period.

9.12.3. County Termination for Lessee Failure to Complete Anchor Tenant Building. If vertical construction commences on the Anchor Tenant Building, but the Anchor Tenant stops diligently proceeding with construction for a period of three (3) consecutive months, then the County, in its sole discretion, may terminate this Lease after notifying Lessee that the County intends to terminate the Lease in thirty (30) days. This provision shall expire upon the opening of the Anchor Tenant Building for business.

9.12.3.1. During such thirty (30) day period, the Lessee, in its sole discretion, may provide a detailed plan to the County which identifies a schedule for completion of the Anchor Tenant Building, and, the County, in its sole discretion, may withdraw or suspend its notice to terminate.

9.12.3.2. Within sixty (60) days of any termination by the County pursuant to Section 9.12.3, the Lessee shall provide an itemized listing to the County of all actual third-party out-of-pocket design and construction costs incurred by the Lessee for the actual construction or design of the Leased Premises for which the Lessee did not receive payment from the Anchor Tenant or any third party and requests reimbursement from the County, which shall include the following third-party costs and expenses incurred by Lessee and other similar third-party costs and expenses incurred by Lessee: construction costs, costs for building(s) and improvements, tenant improvement allowances, costs for site work and paving, lighting, utilities, costs for other actual site improvements, costs for off-site improvements, costs for infrastructure, costs for utility work, costs for on-site construction, costs for landscaping, costs for pedestrian and other improvements, capitalized soft costs, deposits or other deposited collateral, architectural expenses, engineering expenses (civil and mechanical), insurance, engineering expenses, expenses for all tests, inspections, studies and reports, survey expenses, travel and lodging, marketing, legal fees, paid Rent, financing fees, forfeited deposits, permit fees, leasing commissions, and leasing administration fees. The County will not provide any reimbursement for costs paid by the Anchor Tenant or any third party. The County shall reimburse the Lessee for such amounts within ninety (90) days of receipt of the Lessee's listing. To the extent any such amount requested for reimbursement is in dispute, the County shall commence the dispute process set forth in

**Trinity Site Lease**

Section 18.1 within forty-five (45) days after receipt of Lessee's written demand and all amounts not in dispute shall be paid within the original ninety (90) day period.

- 9.12.4. Lessee Termination for Difficulty Securing Tenants. The Lessee shall have the right to terminate this Lease by providing the County with written notice within ninety (90) days of the Effective Date, if the Lessee determines, in its sole and absolute discretion, that Lessee has experienced difficulty securing tenants for the Leased Premises such that the preleasing activity has been unsatisfactory for the Lessee's intended use in Lessee's sole and absolute discretion. Upon a termination under this Section 9.12.4, the Deposit shall be promptly returned to the Lessee without deduction or offset and neither party shall have any further obligations pursuant to this Lease.
- 9.13. No failure by either Party to insist upon the strict performance of any covenant, agreement, term or condition of this Lease on the part of the other Party to be performed, or to exercise any permitted right or remedy consequent upon a default therein, and no acceptance of partial performance during the continuance of any such default shall constitute a waiver by the non-defaulting Party of such default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either Party, and no default therein, shall be waived, altered, modified or terminated except by written instrument executed by the non-defaulting Party. No waiver of any default shall otherwise affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default therein.

**10. TAXES AND COSTS OF DOING BUSINESS**

- 10.1. During the Term, Lessee shall be solely responsible to pay all applicable taxes affecting the Leased Premises, including (i) any taxes which may be assessed against leasehold improvements or personal property located on the Leased Premises, (ii) any taxes which may become due on the respective interests of the District or the County as a result of the District Lease, and (iii) gross receipt tax or other sales tax incurred by Lessee, but excluding gross receipts taxes or sales taxes owed by a tenant or sublessee. During the Term, Lessee shall be solely responsible to pay all applicable assessments, insurance expenses, licensing fees, and other costs of doing business at the Leased Premises, prior to such amounts becoming delinquent. Lessee shall not be in default under this Lease if a sublessee fails to pay gross receipts tax, sales tax, personal property tax or utilities; provided that Lessee is enforcing its sublease (which shall include a requirement to pay such taxes and utilities) with such sublessee to pay such taxes and utilities.
- 10.2. Lessee shall not purport to bind the County, and its employees and elected officials, to any obligation not expressly authorized herein.
- 10.3. The Lessee may in good faith and at its sole cost and expense, contest the validity or amount of any taxes, assessments and similar charges, in which event the payment thereof may be deferred during the pendency of such contest, if diligently prosecuted, and

**Trinity Site Lease**

if such contest does not place the Leased Premises in imminent danger of being lost or forfeited.

- 10.4. The Lessee shall have the right, at its own cost and expense, to seek to contest or have reviewed, reduced, equalized, or abated any assessment related to taxes payable by the Lessee. The Lessee shall post security in the amount of such contested taxes or assessments, plus estimated costs, penalties and interest, or post a bond of a responsible corporate surety in such amount or such higher amount as is required to stay the obligation to pay such taxes and prevent any penalty. Notwithstanding anything to the contrary contained in this Section, Lessee shall be deemed to have satisfied the requirement of posting the security required under this Section if such security is posted with the County or the taxing authority. Upon the termination of such proceedings, the Lessee shall pay the amount of such taxes or part thereof as finally determined in such proceedings, together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, the Lessee may cause the release of any bond or other security given in connection with such contest. If at any time payment of the whole or any part of such tax or assessment shall become necessary in order to prevent the termination by sale or otherwise of the right of redemption of the Leased Premises, or to prevent eviction of the Lessee because of nonpayment, then the Lessee shall timely pay to the taxing authority the amount necessary to prevent such termination or eviction.

**11. RESTORATION AND SURRENDER**

- 11.1. On or before the Term Expiration Date, in accordance with and subject to the terms of this Lease, the Lessee shall discontinue its operations on the Leased Premises and deliver to the County the Leased Premises in its "AS-IS" condition, subject to the requirements of Section 20 to restore the Leased Premises. Notwithstanding the foregoing, upon expiration or earlier termination of this Lease, the Anchor Tenant shall have the right to remove all Anchor Tenant installed trade fixtures, equipment and personal property from the Anchor Tenant Land, but not fixtures such as pipes, ductwork, wiring and HVAC equipment.
- 11.2. On or before the Term Expiration Date, the Lessee shall: (a) surrender the Improvements, in their "AS-IS" condition, (b) promptly surrender to the County possession of the Leased Premises, (c) remove from the Leased Premises all of the Lessee's personal property, and (d) repair and restore any damage to the Leased Premises caused by the removal of such personal property (ordinary wear and tear excepted).

**12. ENVIRONMENTAL MATTERS**

- 12.1. Commencing on the Effective Date and continuing through the Term, the Lessee, its agents, employees, contractors, sublessees, assignees, and invitees, shall comply with and shall not violate or cause to be violated any Applicable Laws relating to the environmental conditions on, in, under, or about the Leased Premises. The Lessee shall not cause or permit any Hazardous Materials to be generated, produced, brought upon, used, stored, treated, discharged, released, spilled or disposed of on, in, under, or about the Leased Premises, by the Lessee, its agents, employees, contractors, sublessees,

**Trinity Site Lease**

assignees, or invitees in violation of any Applicable Laws relating to Hazardous Materials.

- 12.2. The Lessee shall obtain or cause to be obtained, at no cost to the County, any environmental permits (including air permits) or authorizations required for Lessee's operations under this Lease or Applicable Laws. No existing permit(s) issued to the County shall be used by the Lessee, without the express written permission of the County. Copies of all environmental permits obtained by the Lessee shall be provided to the County, upon the request of the County.
- 12.3. Except to the extent the County is responsible for Hazardous Materials as set forth in Section 12.4, after the Effective Date, the Lessee shall be responsible for the remediation of Hazardous Materials on the Leased Premises to the extent required by the State regulators and Applicable Laws. Except to the extent the County is responsible for Hazardous Materials as set forth in Section 12.4, after the Effective Date, the Lessee shall be responsible for, and indemnify, defend and hold harmless the County, its agents, employees, contractors, subcontractors, officers, successors, and assigns from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), operations, claims for damages (including attorneys', consultants', and experts' fees, court costs and amount paid in settlement of any claims or actions and also including a third party claims or actions) or other costs, expenses, liabilities, fines, forfeitures, or other civil, administrative, or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), or penalties whether brought during or after the Term, arising out of or related to the generation, manufacture, presence, release, discharge, use, storage, handling, or disposal of any Hazardous Materials on the Leased Premises during the Term, giving rise to any type of liability, fine, or responsibility under Applicable Laws, including CERCLA. The Lessee, at no cost to the County, shall clean up, remediate, and remove or cause to be cleaned up, remediated, and removed from, on, under, or about the Leased Premises, any Hazardous Materials it or any of its agents, employees, contractors, sublessees, assignees, or invitees have or have caused to be released or introduced on the Leased Premises to the extent required by all governmental regulators and Applicable Laws and shall ensure that such cleanup, remediation, or removal is conducted in compliance with Applicable Laws.
- 12.4. The County shall be responsible for the remediation of Hazardous Materials on the Leased Premises existing prior to the Effective Date, to the extent required by the State regulators and Applicable Laws, except to the extent the Lessee causes a release or exacerbates a release of such Hazardous Materials.
- 12.5. This Article shall survive the expiration or termination of the Lease for a term of two (2) years, and the Lessee's and County's obligations hereunder shall apply whenever the County or Lessee incurs costs or liabilities of the types described in this Article.
- 12.6. As among the Parties, the Lessee does not assume liability to third parties for environmental impacts and damage caused by the County's use of Hazardous Materials

**Trinity Site Lease**

on any portion of the Leased Premises. The Lessee has no obligation under this Lease to undertake the defense of any third party claim or action, whether in existence now or brought in the future, alleging environmental impacts and damage solely arising out of the use of or release of any Hazardous Materials on or from any part of the Leased Premises, occurring prior to the Effective Date.

- 12.7. The Lessee will use all reasonable means available to protect the environment and natural resources. Where damage nevertheless occurs, arising from Lessee's activities, the Lessee shall be fully liable for any such damage.
- 12.8. If the Lessee defaults in any of its respective obligations under this Article, upon the expiration of the applicable notice and cure periods set forth in this Lease, in addition to the rights and remedies set forth in this Lease, the County shall be entitled to recover any and all damages associated with the default including, but not limited to, cleanup costs and charges, civil and criminal penalties and fees, any and all damages and claims asserted by third parties and the County's reasonable attorney's fees and costs.
- 12.9. To the extent the Lessee undertakes environmental investigations or develops environmental reports related to the Leased Premises, Lessee shall provide a copy of such report to the County. The County shall have the right, after reasonable notice, to enter the premises and conduct environmental investigations on the Leased Premises at the County's own expense. The County shall use reasonable efforts to not interfere with Lessee's (or its sublessees) operations on the Leased Premises.
- 12.10. The Lessee shall not knowingly remove or disturb, or knowingly cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity located on the Land in violation of Applicable Laws. In the event any such items are discovered on the Land, the Lessee shall immediately notify the County and protect the Land in the immediate affected area and material from further disturbance until the County provides the Lessee with instructions as to how to proceed. The County shall use reasonable efforts to take such actions to minimize delays related to such issues identified in this Section.
- 12.11. Lessee acknowledges receipt of the Environmental Reports and has undertaken an independent review of the environmental condition of the Leased Premises.
- 12.12. The County shall have the right, upon reasonable notice to Lessee, to access the Leased Premises to address any environmental regulatory issues.

**13. COMPLIANCE WITH APPLICABLE LAWS**

- 13.1. Each Party shall perform its obligations hereunder in accordance with all Applicable Laws, rules, and regulations now or hereafter in effect.
- 13.2. The Lessee shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to the Lessee's use and occupation of the Leased Premises, except to the extent such costs arose out of actions of the County or existed prior to the Effective Date.



**Trinity Site Lease**

- 13.3. The Lessee shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to the County, the validity of application of any Applicable Laws.
- 13.4. Prior to actual construction on the Leased Premises, all plans, permits, inspections, and approvals required by Applicable Laws shall first be provided or obtained by the Lessee. Lessee shall promptly pay all applicable fees and charges related to such plans, permits, inspections and approvals.

**14. NOTICES**

- 14.1. All notices, approvals, consent and communications required or permitted under this Lease (including change of address or telephone number set forth below) shall be in writing and shall be deemed given to, and received by, the receiving party: (i) when hand-delivered to the street address of the receiving party set forth below; (ii) when sent by facsimile transmission to the facsimile number of the receiving party set forth below; or (iii) one (1) day after deposit with a national overnight courier addressed to the receiving party at the street address set forth below:

Lessee: North American Development Group  
Attn: Gilbert J. Weiss, LL.B.  
Vice President and General Counsel  
Suite One, 2851 John Street  
Markham, Ontario, L3R 5R7  
Telephone No: (905) 968-3206  
Facsimile No: (905) 477-7390

And: North American Development Group  
Attn: Stephen SB Preston  
6210 Campbell Road, Suite 140  
Dallas, TX 75248  
Telephone No: (214) 850-5186  
Facsimile No: (214) 368-2625

With a copy to: Chris Fuller  
Wick Phillips Gould Martin  
2100 Ross Avenue  
Suite 950  
Dallas, Texas 75201  
Telephone No: (214) 740-4023  
Facsimile No: (214) 692-6255

If to the County: Incorporated County of Los Alamos  
Attn: County Administrator  
133 Central Park Square  
Los Alamos, New Mexico 87544  
Telephone No.: (505) 663-1750

**Trinity Site Lease**

Facsimile No: (505) 662-8079

With Copies to: Los Alamos County Attorney  
County of Los Alamos  
475 20th Street, Suite D  
Los Alamos, New Mexico 87544  
Telephone No.: (505) 662-8020  
Facsimile No.: (505) 662-8019

and Los Alamos Public Schools  
Director of Business Services  
Post Office Box 90  
Los Alamos, NM 87544  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

and Kutak Rock LLP  
Attn: Seth Kirshenberg  
1101 Connecticut Avenue, NW  
Suite 1000  
Washington, DC 20036  
Telephone: 202-828-2400  
Facsimile: 202-828-2488

All requests for approval or consent of the County must be given to all of the County addresses set forth above.

**15. ASSIGNMENTS, SUBLEASES AND LICENSES**

15.1. In accordance with the Management Plan set forth on Exhibit C, the Lessee anticipates subleasing portions of the Leased Premises to sub-lessees, in order to achieve the economic development purposes of the Management Plan. Therefore, notwithstanding Section 15.3, the Lessee may, without the prior written consent of the County, sublease portions of the Leased Premises to any sublessee whose use of the Leased Premises will be of a type permitted by and consistent with Applicable Laws, this Lease and the Management Plan.

15.2. Lessee hereby agrees that all of the covenants, conditions, obligations and liabilities contained in this Lease shall be binding upon and inure to the benefit of any successors and assigns of the Lessee, including, without limitation, a Leasehold Mortgagee or purchaser in foreclosure, to the same extent as if the successors and assigns were in each case named as a party to this Lease.

**15.3. Assignments.**

15.3.1. Except as set forth in this Section 15.3, and except with respect to the rights of a Leasehold Mortgagee, during the Initial Development Period, Lessee may not

## Trinity Site Lease

convey, transfer, or assign this Lease or any interest therein, or otherwise grant an interest, privilege, or license in connection with the Lease, without the prior written consent of the County, which consent shall be in the County's sole discretion. Notwithstanding the preceding sentence, Lessee may assign this Lease to a parent entity to Lessee or majority owned subsidiary of the Lessee or to any entity (including a limited partnership, the general partner of which is an affiliate or controlled by Lessee) that controls, is controlled by, or is under common control with Lessee after providing the County with written notice of such assignment which includes the ownership interest of all parties in the entity, the date and place of incorporation, the date of the assignment, a copy of the assignment document that clearly identifies that this Lease cannot be further assigned and that the acquiring entity will comply with the terms of this Lease, and the full contact information of the entity (an "Affiliated Transfer"). No further assignments of this Lease shall be permitted without the consent of the County.

15.3.2. After the Initial Development Phase, Lessee shall be permitted to convey, transfer, or assign this Lease or any interest therein, or otherwise grant an interest, privilege, or license in connection with the Lease (a "Qualified Transfer") so long as:

15.3.2.1. The Lessee provides at least thirty (30) days prior written notice to the County of the proposed transfer;

15.3.2.2. The proposed transferee or its designated manager owns, manages, or operates at least four million square feet of gross leasable retail area;

15.3.2.3. The proposed transferee has sufficient financial strength and experience, to be determined in the Lessee's reasonable discretion, to competently (i) manage, and (ii) develop (but only to the extent the Project is not fully developed or completed) the Development in a first-class manner and as required under this Lease; and

15.3.2.4. Any proposed transferee, by instrument in writing, for itself and its successors and assigns, and for the benefit of the County, shall expressly assume all the obligations of Lessee under this Lease.

15.3.3. Other than an Affiliated Transfer or a Qualified Transfer, Lessee shall not assign or transfer any rights, obligations, duties or other interest in this Lease without the prior written consent of the County, which consent will not be unreasonably withheld or delayed. Any denial of consent by the County shall be in writing specifying the reasons therefore. The County will not approve any proposed assignment that violates any Applicable Laws. A change in the control of ownership of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of fifty percent (50%) or more of the voting control or a majority of the voting control of Lessee shall constitute a change of control for this purpose. In the absence of satisfaction of the conditions for an

**Trinity Site Lease**

Affiliated Transfer, a Qualified Transfer, or specific County Approval, no assignment or approval by the Lessee shall be deemed to relieve Lessee or any other party from any obligations under this Lease.

15.3.4. Before any assignment is carried out as described in this Article, the prospective assignee shall covenant in writing, in the form set forth in Exhibit N, that it shall assume, respect and fully honor all covenants, conditions, obligations and liabilities of the Lessee contained in this Lease.

15.3.5. Any attempted transfer, assignment or conveyance in violation of this Article shall be void and of no force or effect, and the County shall not be obligated to recognize any right of any Person to an interest in this Lease or to own or operate any facilities and/or improvements or conduct any other activity or activities on the Land otherwise authorized under the Lease that was acquired in violation of this Article.

15.3.6. Any attempted transfer, assignment or conveyance of this Lease by the Lessee, including their respective successors or assigns, must include the provisions of this Article.

**16. UTILITIES AND SERVICES**

16.1. The Lessee, at no cost to the County, shall commence and complete the Development on the Leased Premises in accordance with the Development Responsibilities. All final design drawings shall be consistent with the Development Responsibilities.

16.2. The Lessee shall, at its sole cost, prior to the commencement of construction on the Land, procure or cause to be procured all necessary and required approvals of the plans and specifications for the Development (or the applicable part thereof) by all applicable federal, State, and local authorities, agencies, officers, having jurisdiction thereof, and obtain or cause to be procured any and all required building, construction, or other licenses, permits, or approvals regarding such construction. Lessee shall, prior to commencing construction, deliver all such approvals to the County and certify to the County that Lessee has acquired all governmental approvals and permits to begin and proceed with construction.

16.3. Prior to occupancy of any building constructed on the Land after the Effective Date, the Lessee shall at its sole cost and expense obtain (or cause to be obtained) a certificate of occupancy.

16.4. Any and all general construction contracts for construction on the Leased Premises shall contain clauses indemnifying and holding the County harmless for any causes of action or damages arising as a result of any actions of the contractor(s).

16.5. The Lessee will be responsible for the cost to the extent such cost is not paid by its sublessees of all utilities for the Leased Premises.

**Trinity Site Lease**

- 16.6. The Lessee shall be responsible for assuring adequate security, fire protection and inspection, and emergency services on and to the Leased Premises during the Term, without cost or expense to the County beyond normal municipal services provided by the County.
- 16.7. The utilities shall be constructed to the specifications and standards enumerated in the Los Alamos County Utility Standards and Specifications. Except for test wells, no water or other wells shall be drilled on the Leased Premises without written County Approval, which approval shall not be unreasonably withheld or delayed.
- 16.8. The Lessee shall construct the roads and the utilities identified in and in accordance with the Development Responsibilities and dedicate such roads and utilities identified in the Development Responsibilities to the County prior to the end of the Development Period.
- 16.9. As of the Effective Date, the utilities are available at the boundary of the Leased Premises.

**17. REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 17.1. The Lessee's Representations, Warranties, and Covenants. The Lessee hereby makes the following representations, warranties and covenants, solely for the benefit of the County, as of the Effective Date:
  - 17.1.1. Use of Leased Premises. During the Term of this Lease, the Lessee shall use the Leased Premises solely for Permitted Uses of the Leased Premises or for any other lawful purpose agreed to by the Lessee and the County.
  - 17.1.2. Organization. The Lessee is a duly organized and validly existing limited partnership in good standing under the laws of the State of Delaware and duly qualified as a foreign limited partnership in the State of New Mexico.
  - 17.1.3. Power and Authority. The individuals(s) signing this Lease on behalf of the Lessee represent and warrant that they have the power and authority to bind the Lessee, and that no further action, resolution, or approval from Lessee is necessary to enter into a binding contract.
  - 17.1.4. Valid and Binding. This Lease is a legal, valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with its terms, except to the extent such enforcement may be limited by (i) the effect of applicable bankruptcy, fraudulent transfer, moratorium, insolvency, reorganization, or other similar laws affecting the rights of creditors generally, and (ii) the effect of Applicable Laws and general principles of equity, whether applied by a court of equity or law.
  - 17.1.5. No Conflict. The execution and delivery of this Lease by the Lessee will not result in a breach of the terms or provisions of, or constitute a default (or a condition that, upon notice or lapse of time, or both, would constitute a default) under its organizational documents or any indenture, agreement or obligation by

**Trinity Site Lease**

which the Lessee is bound, and will not constitute a violation of any Applicable Laws.

17.2. The County's Representations and Covenants. The County hereby makes the following representations and covenants, solely for the benefit of the Lessee and its respective successors and assigns hereunder, as of the Effective Date:

17.2.1. Authority. (i) The County has full right, power and lawful authority to enter into this Lease in accordance with the terms hereof and to grant the estate demised hereby, (ii) the person(s) executing this Lease on behalf of the County have the full right, power and authority to execute and deliver this Lease as the County's act and deed and to bind the County hereto, and (iii) the County has obtained all necessary authorizations and consents to enter into and perform its obligations under this Lease.

17.2.2. Valid and Binding. This Lease is a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

17.2.3. No Conflict. The award, execution and delivery of this Lease by the County has been authorized by all necessary actions on the County's part and will not result in a breach of the terms or provisions of, or constitute a default (or a condition that, upon notice or lapse of time, or both, would constitute a default) under its authorizing or other legislation or regulations, or any agreement or obligation by which the County is bound, and will not constitute a violation of any Applicable Laws.

17.2.4. Quiet Enjoyment. So long as no Event of Default has occurred and is continuing hereunder, the Lessee shall and may, at all times during the Term hereby granted, peaceably and quietly have, hold, and enjoy the Leased Premises, subject to this Lease and the Development Responsibilities and the Existing Encumbrances.

17.2.5. General Condition of the Leased Premises. To the best of the County's knowledge, as of the Effective Date, and except as set forth in Exhibit L: (i) the County has good, indefeasible, and marketable fee simple title to Parcel L-1 and good, indefeasible, leasehold interest in Parcel S-1; (ii) other than those items that would appear in a title commitment obtained by Lessee regarding the Leased Premises or matters filed of record in the real property records of Los Alamos County, New Mexico, the Leased Premises are free and clear of and from all liens, restrictions, leases, encumbrances, title restrictions, governmental regulations, or other matters which would materially and adversely restrict or prevent Lessee's operation of the Project; (iii) except for those parties described in section (ii), no other party has any right or option with respect to the Leased Premises; (iv) there are no pending or, to the County's best knowledge, threatened condemnation proceedings or other governmental, municipal, administrative or judicial proceedings affecting the Leased Premises; (v) there are no pending or, to the County's best knowledge, threatened actions or legal proceedings affecting the Leased Premises; (vi) there are no unpaid special assessments for sewer,

## Trinity Site Lease

sidewalk, water, paving, gas, electrical or power improvements or other capital expenditures or improvements, matured or unmatured, affecting the Leased Premises; (vii) there are no outstanding notices of, nor, to the County's best knowledge, are there, any violations of any applicable governmental regulation with respect to the Leased Premises; and (viii) the County is not obligated upon any contract, lease, or agreement, whether written or oral, with respect to the ownership, use, operation, or maintenance of the Leased Premises other than the District Lease.

**18. DISPUTE RESOLUTION**

- 18.1. If any claim, controversy, dispute, or disagreement arising out of, or relating to, this Lease, the breach thereof, the subject matter thereof, or any legal duty incident thereto, whether stated in tort, contract, or otherwise (collectively "**Dispute**") should arise between the Parties to this Lease, both Parties agree to meet and confer in good faith to resolve the Dispute. The Parties shall meet and confer within fifteen (15) days of any Dispute in an effort to resolve the Dispute. If the Dispute is not resolved through such meeting, both Parties shall retain all rights and remedies in law or in equity.
- 18.2. If the Lessee or the County do not agree with the results of an appraisal, the Lessee and/or the County may contest the results of such appraisal. In such case, the Lessee and the County shall each select one appraiser (collectively, the "**Secondary Appraisers**"). If either Party fails to elect a Secondary Appraiser within fifteen (15) days after upon request from the other, then the appraisal from the Party that selected a Secondary Appraiser shall be final and binding upon the Parties. If each Party timely selects a Secondary Appraiser, then the Secondary Appraisers shall each conduct an independent appraisal of the subject Land. If the Secondary Appraisers do not agree on the appraisal value of the subject Land, the Secondary Appraisers shall jointly select a third appraiser (the "**Independent Appraiser**"). The Independent Appraiser shall engage the Secondary Appraisers in a discussion regarding the Secondary Appraisers' appraisals of the subject Land, and the Secondary Appraisers and the Independent Appraiser shall work together to reach an agreement on the appraisal value of the subject Land. In the event such an agreement cannot be obtained, the Independent Appraiser shall make a determination of the appraisal value of the subject Land based upon the Independent Appraiser's review of the Secondary Appraisers' appraisals. The determination by the Independent Appraiser shall be final and binding upon the Parties. Each Party shall pay the fees and other costs of the Secondary Appraiser appointed by such Party, and the fees and other costs of the Independent Appraiser shall be shared equally by both Parties.

**19. INDEMNIFICATION**

- 19.1. Lessee shall indemnify, defend, and hold harmless the County and the District, and their employees and elected officials, from and against any and all loss, cost, liability, or expense (including attorneys' fees incurred in connection with, and/or staff attorneys' salaries allocable to, any action the County takes to enforce this Lease) for injury (bodily or otherwise) or damage to any person or organization directly or indirectly caused by

**Trinity Site Lease**

any action or omission of Lessee pursuant to or in furtherance of the tasks to be performed under this Lease.

- 19.2. After the Effective Date, except as expressly provided in this Lease, the County and the District, except to the extent caused by the negligence of the County or the District, shall not be responsible for damages to property or injuries or death that may arise from or be attributable or incident to the condition or state of repair of the Leased Premises or the use and occupation of the Leased Premises, or for damages to the property of the Lessee, or for damages to the property or injuries or death to the person of the Lessee's officers, agents, servants, employees, or sublessees, or others who may be on the Leased Premises at their invitation or the invitation of any one of them.
- 19.3. After the Effective Date, the Lessee agrees to assume all risks of loss or damage to property and bodily injury or death to persons by reason of or incident to the possession of the Land and/or use of the Leased Premises, or the activities conducted by the Lessee under this Lease. The Lessee expressly waives all claims against the County and the District for any such loss (including lost profits, revenues, and income), damage, bodily injury or death caused by or occurring as a consequence of such possession of the Land and/or use of the Leased Premises or the conduct of activities or the performance of responsibilities under this Lease. The Lessee shall indemnify and hold harmless the County, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon bodily injury, death or property damage resulting from, related to, caused by or arising out of the possession of the Land and/or use of the Leased Premises or any activities conducted or services furnished in connection with or pursuant to this Lease, any breach or default on the part of the Lessee in the performance or observance of any covenant or agreement to be performed or observed by it under this Lease, any materially false representation or warranty of the Lessee made in this Lease, and all claims for damages by the Lessee's sublessees against the County arising out of or related to their subleases; provided, however, that the foregoing shall not extend to any damages or injuries resulting or arising from the negligent acts of the County. The County will give the Lessee notice of any claim covered by this indemnity as soon as practicable after becoming aware of its applicability. Nothing in this Lease shall be deemed or construed to waive any right, privilege, or immunity granted County pursuant to the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.*
- 19.4. The representations, warranties, covenants, and indemnifications of the Lessee contained in this Lease shall survive for a period of two (2) years after the latest to occur of: (i) the consummation of the transactions contemplated by this Lease; and (ii) the expiration or earlier termination of this Lease.

**20. INSURANCE**

- 20.1. From and after the Effective Date, the Lessee, at its expense, shall, for the benefit of the County in its capacity as a lessor hereunder (and all successor lessors, and the term "County" shall include same) and the District as lessor to the County pursuant to the



**Trinity Site Lease**

District Lease, and, if required by the Leasehold Mortgage, the Leasehold Mortgagee, maintain or cause to be maintained insurance with terms and coverages in the following amounts:

- 20.1.1. Business income or rent loss insurance in an amount equal to one year's Basic Rent;
- 20.1.2. Workers' compensation insurance to the fullest extent required by Applicable Laws;
- 20.1.3. Commercial general liability insurance (including coverage for bodily injury, property damage, personal injury and broad form contractual liability coverage) in a form acceptable to the County. The certificate must establish that Lessee has obtained general liability insurance in the amount of not less than five million dollars (\$5,000,000) combined single limit, or such other minimum amount as may be established from time to time under the New Mexico Tort Claims Act, § 41-4-1 *et seq.*, NMSA 1978, for accidents or occurrences which cause bodily injury, death, or property damage as a result of any condition of the Development, the Improvements, or Lessee's construction activities related to the Development;
- 20.1.4. A policy or policies insuring loss or damage to the Leased Premises (unless otherwise insured by the sublessees);
- 20.1.5. "Builders risk insurance" during such periods when construction activities and improvements are being undertaken on the Land; and
- 20.1.6. Umbrella (excess) liability insurance in the minimum amount of \$10,000,000.00.
- 20.1.7. Public liability insurance in the amount of \$2,000,000.00, or such higher amount as may be required under the District Lease.
- 20.2. The amount of all insurance specified in Section 20.1.5 above shall be equal to the full replacement cost of the improvements on the Land, as the same shall exist from time to time. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage. The deductible amount shall not exceed an amount that is customary in the situation and the Lessee shall be liable for any deductible amount in the event of a loss otherwise covered by such insurance. All policies of insurance that this Lease requires the Lessee to carry and maintain or cause to be carried or maintained pursuant hereto shall be issued by an insurer authorized to do business in the State and having an A.M. Best Company rating of A-X or better. All policies shall provide by appropriate language that the County and the District, and, if required by the Leasehold Mortgage, are an additional insured or joint loss payee, as applicable, that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution or otherwise from the County or other insurers of the County are waived. Each policy shall contain an endorsement that will prohibit its cancellation or material modification prior to the expiration of thirty (30) days after notice of such proposed cancellation or material modification to the County.

## Trinity Site Lease

- 20.3. Certificates of insurance (in a form satisfactory to the County) evidencing the effectiveness of the insurance coverage that the Lessee is required hereunder to maintain or cause to be maintained shall be delivered to the County prior to the Effective Date and not less than thirty (30) days prior to the expiration or termination thereof. Duplicate or certified copies of such policies shall be delivered to the County within fifteen (15) Business Days of demand. In the event copies of any policy or a certificate reasonably satisfactory to the County is not delivered when first required, or any insurance is not in effect or does not comply with the requirements hereof, without affecting the obligations of the Lessee or the rights of the County, and, only if the insurance required hereby is not in effect, the County may cause to be purchased insurance complying with the provisions hereof, and the Lessee agrees to pay all expenses of the County in connection therewith, from time to time on demand.
- 20.4. The Lessee shall pay or cause to be paid all premiums and other charges with respect to all insurance required hereby when first due or payable and, at the request of the County, shall provide proof of such insurance.
- 20.5. The Lessee's maintenance of the insurance required in accordance with this Article shall effect no limitation on the Lessee's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of the Lessee or any of its officers, agents, servants, employees, sublessees, licensees, or invitees or by any failure on the part of the Lessee to fully perform its obligations under this Lease. The Lessee shall, without prejudice to any other rights of the County, bear all risk of loss or damage or destruction to the Leased Premises arising from any causes whatsoever, except those caused by County personnel.
- 20.6. In the event that any item or part of the Leased Premises shall be damaged (except *de minimis* damage of \$25,000 or less (or such greater amount as the County shall from time-to-time establish)) or destroyed (the "**Casualty Property**"), the Lessee shall promptly give notice or cause notice to be given thereof to the County.
- 20.7. Unless otherwise provided herein, to the extent of insurance proceeds received, the Lessee shall as soon as practicable after the casualty, restore or cause to be restored the Casualty Property as nearly as possible to the condition that existed immediately prior to such loss or damage.
- 20.8. In the event that the County and the Lessee agree that the magnitude of the damage and destruction to the Leased Premises renders the Leased Premises incapable of use by the Lessee for its purposes under the Management Plan and the repairs, rebuilding, or replacement of the Casualty Property cannot reasonably be expected to be substantially completed within one (1) year of the occurrence of the casualty, the Lessee or the County may terminate this Lease upon written notice to the other party of the termination (the "**Termination Notice**") (provided, however, the County shall not accept termination of the Lease from the Lessee unless agreed to in writing by each previously identified Leasehold Mortgagee). Unless the County and the Lessee agree otherwise, the Termination Notice shall be effective thirty (30) days after receipt (or refusal) of the Termination Notice by the other party. In the event that the Lease is terminated pursuant

## Trinity Site Lease

to this Section, the Lessee shall be required to remove or cause to be removed debris from and restore the damaged area of the Leased Premises to a reasonably clean and safe condition subject to Lessee's receipt of sufficient insurance proceeds for such purpose. Subject to the other provisions of this Lease and the terms of the Leasehold Mortgage, the Lessee may retain any remaining balance of the insurance proceeds.

- 20.9. Subject to the rights of the Leasehold Mortgagee, absent an agreement in writing by the County and the Lessee, if the Lessee refuses, or fails promptly to repair, restore, or rebuild or cause the repair, restoration, or rebuilding of the Leased Premises or any part thereof so damaged or destroyed, to the reasonable satisfaction of the County, the County may, by one hundred and eighty (180) days' written notice to the Lessee, terminate this Lease. In such event, title to the Leased Premises shall vest in the County without notice or further action being required on the County's part, and the County may undertake the rebuilding or restoration of the Project and any other improvements placed on the Land or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the Land necessary for completing the work. In the event the County elects to rebuild or restore the Project, all applicable insurance proceeds relative to the Casualty Property shall be applied first to complete such rebuilding or reconstruction. Subject to the other provisions of this Lease, the County may retain any remaining balance of the insurance proceeds.
- 20.10. Subject to the rights of the Leasehold Mortgagee in Section 22, if all or any portion of the Leased Premises or Improvements shall be acquired for any public or quasi-public use through taking by condemnation, eminent domain or any like proceeding, or purchase in lieu thereof ("**Taking**"), such that Lessee reasonably determines that the Leased Premises cannot, at reasonable cost, continue to be operated for its then current use, with sufficient parking for such use, then the Term shall cease and terminate as of the date the condemning authority takes title or possession, whichever first occurs, and all rentals shall be paid up to that date.

## 21. ACCESS AND INSPECTION

- 21.1. The County, its officers, agents, employees, and contractors may enter upon the Leased Premises at the times set forth below and for any purposes not inconsistent with the Lessee's and the Lessee's tenants' quiet use and enjoyment of the Leased Premises under this Lease, including, but not limited to, the purpose of inspection. Except with respect to any agency providing utilities, security, emergency, fire, police, or other similar services to the Leased Premises, or in the event the County reasonably determines that entry without prior notice is required due to an imminent threat of injury to person or property or for security purposes, entry to the Leased Premises will be made during regular business hours and with at least twenty-four (24) hours' prior written notice from the County of its intention to enter. The Lessee shall have no claim on account of any such entry on the Leased Premises against the County or any officer, agent, employee, or contractor to the extent such entry is consistent with the conditions set forth in this Article.

## Trinity Site Lease

**22. LIENS AND MORTGAGES**

- 22.1. The Lessee shall not have the authority to grant any lien or mortgage on its interest in the Leased Premises except to the extent provided in this Lease or the Development Responsibilities.
- 22.2. During the Term, the Lessee may encumber its interest in the Leased Premises by way of one or more loans secured by a mortgage or deed of trust (the "**Leasehold Mortgage**") subject to Section 22.3 below. The proposed holder of any mortgage shall be referred to herein as the "**Leasehold Mortgagee**". Any loan secured by Lessee's interest in this Lease and the Leased Premises may be further secured by a conditional assignment of this Lease. (Any Leasehold Mortgage, together with any promissory notes and other documents executed by Lessee with respect thereto shall be referred to as the "**Loan Documents**"). The County agrees to execute a consent to the conditional assignment of this Lease for financing purposes in a form reasonably acceptable to any Leasehold Mortgagee and from time to time to execute an estoppel certificate and any other similar documentation as required by the Leasehold Mortgagee. Without limiting the foregoing, the County approves any sale, transfer and/or assignment of this Lease and Lessee's interest in the Leased Premises which may result from the enforcement (or sale, transfer and/or assignment in lieu of enforcement) of any remedies contained in the Loan Documents.
- 22.3. The County shall not place any mortgage or other lien or encumbrance upon the County's fee interest in the Leased Premises, the County's leasehold interest in the District Lease or the County's interest in this Lease, without prior written notice to the Lessee and its Leasehold Mortgagee. Neither the Lessee's nor any sublessee's interest in this Lease shall under any condition be subordinate to, and in no event shall the Lessee or any sublessee be required to subordinate its interest in the Leased Premises, if any, to any mortgage, lien or other encumbrance placed upon the County's fee interest in the Leased Premises, the County's leasehold interest in the District Lease or the County's interest in this Lease. In no event shall the Lessee be required to consent to any subordination of this Lease to an encumbrance upon the County's fee interest in the Leased Premises, the County's leasehold interest in the District Lease or the County's interest in this Lease without the prior written consent of a Leasehold Mortgagee. If any such mortgage, lien or other encumbrance which purports to be superior to this Lease is filed against all or any portion of the County's fee interest in the Leased Premises, the County's leasehold interest in the District Lease or the County's interest in this Lease in violation of the provisions of this Section 22.3, the County shall cause the mortgage, lien or other encumbrance to be discharged, and shall initiate such discharge process within thirty (30) days of such mortgage, lien or other encumbrance being filed against the County's fee interest in the Leased Premises, the County's leasehold interest in the District Lease or the County's interest in this Lease, and shall diligently prosecute such process to completion.
- 22.4. No Leasehold Mortgage shall extend to or affect the fee, the remainder interest or the estate of the County in the Leased Premises, but may extend to or affect the leasehold

**Trinity Site Lease**

interest of the Lessee in the Leased Premises and the ownership interests of the Lessee in and to the Existing Improvements and Additional Improvements.

22.5. No Leasehold Mortgage shall be binding upon the County in the enforcement of its rights and remedies under this Lease and by law, unless and until a copy thereof shall have been delivered to the County and such Leasehold Mortgage is authorized in accordance with the provisions of this Article 22.

22.6. Rights of the Leasehold Mortgagee.

22.6.1. The County shall deliver to each Leasehold Mortgagee a notice of any default or Event of Default under this Lease simultaneously with the County delivering notice to the Lessee of the same. No notice of a default or an Event of Default shall be effective unless such notice is also delivered to each Leasehold Mortgagee. Each Leasehold Mortgagee shall have the same rights as Lessee, but not the obligation, to cure any such default or Event of Default, and the County shall accept such cure as if such cure were performed by the Lessee. In addition, each Leasehold Mortgagee shall also have an additional thirty (30) days to cure any monetary default, and an additional thirty (30) days to cure any non-monetary default; provided, however, if a non-monetary default is not reasonably capable of being cured within such thirty (30) day period, such period shall be extended for such additional time as is reasonably necessary to cure such default provided that such Leasehold Mortgagee commences the cure of such default within such thirty (30) day period and diligently prosecutes the same to completion. In the event a Leasehold Mortgagee is seeking to foreclose on such Leasehold Mortgagee's security interest in the property, the County shall not seek to terminate this Lease as a result of a default or Event of Default so long as such Leasehold Mortgagee is diligently seeking to foreclose on the Lessee's interest in the Leased Premises and has notified the County of the same.

22.6.2. In the event this Lease is terminated for any reason, including, without limitation, a rejection of this Lease in bankruptcy, the County shall give notice to each Leasehold Mortgagee of such termination. Within ninety (90) days after a Leasehold Mortgagee receives notice of such termination, a Leasehold Mortgagee may elect, by delivering written notice to the County within such ninety (90) day period, to enter into a new ground lease for the Leased Premises upon the same terms and conditions as this Lease, provided, that, (i) prior to entering into such new ground lease, such Leasehold Mortgagee shall have cured all monetary defaults and non-monetary defaults which are capable of being cured (or, with respect to non-monetary defaults only, has provided adequate assurances to the County, as determined by the County in its reasonable discretion that such non-monetary defaults which are capable of being shall be cured), and (ii) in the event there is more than one such Leasehold Mortgagee, the Leasehold Mortgagee with the prior perfected lien shall have the first option to enter into such new ground lease, provided, if such senior Leasehold Mortgagee fails or declines to enter into such new ground lease, the next most senior Leasehold Mortgagee shall have such

## Trinity Site Lease

right. Upon entering into any such new ground lease, all non-monetary defaults which are not capable of being cured shall be deemed waived by the County.

- 22.6.3. In the event a Leasehold Mortgagee or its affiliates succeed to Lessee's interest in the Leased Premises, the Leasehold Mortgagee and its affiliates shall have the right to transfer the Leased Premises to a third party without the prior written consent of the County. In no event shall the County's consent be required for any transfer as a result of a foreclosure, trustee's sale or delivery of a deed in lieu of foreclosure. Any purchaser at a foreclosure sale or transferee from or through a Leasehold Mortgage, shall assume this Lease and the Lessee's obligations hereunder and such purchaser shall have no right in respect to the Leased Premises unless such purchaser so assumes and delivers a duplicate original of the assumption agreement (in recordable form) within thirty (30) days after such purchaser acquires title to the Lessee's interest in this Lease.
- 22.6.4. Each person (a "**Successor Lessee**") who acquires an interest in the leasehold pursuant to foreclosure, deed in lieu of foreclosure or any similar exercise of remedies under a Leasehold Mortgage shall, as soon as reasonably practicable in accordance with and subject to the provisions of this Section, negotiate and enter into an agreement with terms substantially similar to those contained in the Development Responsibilities to the extent such Development Responsibilities are still relevant at the time (the "**Successor Development Responsibilities**"). The Successor Lessee shall not be in default of its obligations under this Section (i) so long as it negotiates in good faith to enter into the Successor Development Responsibilities described herein, (ii) if the County fails to tender a Successor Development Responsibilities meeting the requirements of this Section or (iii) if the Successor Lessee is not required to enter into a Successor Development Responsibilities pursuant to this Section.
- 22.6.5. In the event of any casualty or condemnation proceedings, each Leasehold Mortgagee shall have the right to participate in the adjustment of the insurance proceeds or condemnation awards, as applicable. In addition, the senior most Leasehold Mortgagee shall have the right to hold, control and disburse the insurance proceeds and Lessee's share in any condemnation award, so long as such proceeds are used as required by the provisions of this Lease.
- 22.7. Any Leasehold Mortgagee shall have the right to cure Lessee's failure to comply with this Lease on behalf of the Lessee. For any period of time during which the Leasehold Mortgagee and the County are attempting in good faith to resolve a dispute, pursuant to the procedures provided for in Article 18 of this Lease in relation to the actions, inactions or omissions which are the subject of the alleged failure to comply, no related default, breach or Event of Default shall be deemed to have occurred and all cure periods shall be tolled. If pursuant to dispute resolution, the alleged failure to comply is determined to have occurred, the Leasehold Mortgagee's period for cure on behalf of the Lessee shall not begin to run until the day after the final and unappealable decision on the dispute is issued.

**Trinity Site Lease**

- 22.8. The County acknowledges that the Leasehold Mortgages may contain a power of attorney from the Lessee in favor of a trustee pursuant to which the trustee and/or the Leasehold Mortgagees shall have the right to exercise certain of the Lessee's rights as tenant under this Lease, including the Lessee's cure rights under Section 9.1. The County agrees to recognize such power of attorney and any similar power of attorney granted to a future Leasehold Mortgagee, and to accept the performance by a Leasehold Mortgagee (or its assignee) as tenant under this Lease pursuant to such power of attorney; provided, however, the Leasehold Mortgagee or its assignee shall not be deemed to have assumed the Lessee's obligations as tenant under this Lease by virtue of the Leasehold Mortgagee or its assignee exercising its rights under such power of attorney unless and until such party has completed a foreclosure of the Leasehold Mortgage or accepted an assignment of this Lease and Lessee's rights and obligations hereunder in lieu of foreclosure. The County shall afford each Leasehold Mortgagee, (including a trustee and a credit provider) of whom it receives notice, an opportunity to cure an Event of Default, as set forth in this Lease.
- 22.9. The County shall accept payment or performance of any covenant, condition or agreement of the Lessee under this Lease from the Leasehold Mortgagee, or any nominee, designee or assignee of the Leasehold Mortgagee, with the same force and effect as though paid or performed by the Lessee. Subject to the terms of any financing documents, the Leasehold Mortgagee may, at its option, enter the Leased Premises to seek to cure a default or Event of Default by the Lessee, pursuant to and subject to the terms, conditions and restrictions of this Lease. This right or its exercise shall not be deemed to give a Leasehold Mortgagee possession of the Leased Premises or to make any Leasehold Mortgagee a mortgagee in possession.
- 22.10. Limited Liability of Leasehold Mortgagee. No Leasehold Mortgagee shall be liable to perform, or be liable in damages for failure to perform, any of the obligations of the Lessee, unless and until such Leasehold Mortgagee takes possession of or controls or manages any portion of the Leased Premises or is deemed a mortgagee in possession under Applicable Laws and in such event, a Leasehold Mortgagee shall only be liable for damages or failures to perform the obligations while such Leasehold Mortgagee is the "Lessee" under this Lease. Upon the assignment of this Lease by a Leasehold Mortgagee or its affiliates to a third party, such Leasehold Mortgagee shall have no further obligations under this Lease arising from and after the date of such transfer.
- 22.11. Upon the occurrence of a total or substantially total condemnation of the Leased Premises, all condemnation proceeds shall first be applied to the payment of the loans secured by a Leasehold Mortgagee, and the balance shall be divided between the County and the Lessee in accordance with the loss suffered by each. In the event of a partial condemnation of the Leased Premises, this Lease shall not be terminated, provided there shall be a pro rata reduction of the rent. In the event of a temporary taking, this Lease shall continue, and all proceeds payable as a result of such temporary taking shall belong to the Lessee.
- 22.12. If at any time during the Term of the Lease, the County shall determine to sell, convey, or otherwise transfer its fee title interest in all or any part of the Leased Premises

## Trinity Site Lease

("Conveying Portion"), then the County shall provide a notice to Lessee which identifies (i) the Conveying Portion, and (ii) the fair market value of the Conveying Portion as determined by an appraisal ("**Conveying Portion Fair Market Value**"). If Lessee, within thirty (30) days after receipt of the County's notice, indicates in writing its agreement to acquire the Conveying Portion for the Conveying Portion Fair Market Value and provides the County with a ten percent (10%) earnest money deposit, then the County shall sell, convey, or transfer the Conveying Portion to the Lessee for the Conveying Portion Fair Market Value within sixty (60) days upon such terms and conditions reasonably determined by the County. If Lessee does not indicate its agreement and provide the earnest money deposit within such thirty (30) day period, the County thereafter shall have the right to sell, transfer, or convey the Conveying Portion to a third party, but only for a price not less than the Conveying Portion Fair Market Value.

**23. CASUALTY AT END OF TERM**

- 23.1. If, during the last two (2) years of the Term, the Anchor Tenant Building is damaged by a casualty and the restoration costs exceed twenty percent (20%) of the total cost of replacing the Anchor Tenant Building as it was constructed immediately prior to the casualty, the Lessee may elect to terminate this Lease with respect to the Anchor Tenant Building as of the date of such damage. Also, notwithstanding the foregoing, if during the last year of the Term, the Anchor Tenant Building is damaged by any casualty to an extent that prevents the operation of the Anchor Tenant's business in the Anchor Tenant Building, the Lessee may elect to terminate this Lease with respect to the Anchor Tenant Building. Any such termination election, to be effective, must be made within thirty (30) days after the date of the casualty or the right to terminate shall be deemed unconditionally waived. Upon such termination, the Lessee must provide to the County any insurance proceeds received by the Lessee or the Anchor Tenant due to the casualty at the Anchor Tenant Building.

**24. AMENDMENTS AND WAIVER**

- 24.1. This Lease, including the Development Responsibilities, may be amended or modified, and the terms hereof may be waived, only by a written instrument signed by each Party, or, in the case of a waiver, by the Party waiving compliance.
- 24.2. No term of this Lease shall be deemed waived unless such waiver is in writing signed by the Party making the waiver. No delay or omission by either party in exercising or enforcing any right or power hereof shall impair such right or power or be construed to be a waiver thereof. No custom or practice that may evolve between the Parties shall be construed to lessen the right of a Party to require the performance of the other Party in strict accordance with the terms of this Lease. A waiver by one Party of a failure of the other Party to fully comply with any of the terms of this Lease shall not be construed to be a waiver of any subsequent failure to comply or any other failure to comply.

**25. RECORDS**

- 25.1. Lessee shall keep and maintain full, complete and appropriate books, records, and accounts relating to the Leased Premises. Books, records and accounts relating to



**Trinity Site Lease**

Lessee's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained, and shall be consistent with the requirements of this Lease. All such books, records and accounts (including computer databases and files) shall be open to and available for inspection by the County, its auditors and other authorized representatives at reasonable intervals during normal business hours.

**26. MISCELLANEOUS**

- 26.1. Time is of the Essence. Time is of the essence in connection with the Lessee's performance and observance of all of the terms and provisions of this Lease.
- 26.2. Estoppel Certificates. Within ten (10) calendar days after receiving a request of a Party, the other Party shall execute, acknowledge and deliver to or for the benefit of the requesting Party or to or for the benefit of any actual or prospective Leasehold Mortgagee, at the expense of the requesting Party, a certificate as described below. The certificate shall certify (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (ii) the dates, if any, to which all amounts due hereunder have been paid, (iii) whether there are then existing any charges, offsets or defenses against the enforcement of any agreement, covenant or condition hereof on the part of the Party requesting the certificate known to the Party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default which has not been cured (and, if so, specifying the same), and (iv) such other reasonable matters concerning this Lease or the Leased Premises as either Party may request. Any such certificate may be relied upon by a prospective purchaser or Leasehold Mortgagee.
- 26.3. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New Mexico and common law. This Lease may be recorded or a memorandum of lease may be prepared and, with County Approval, such approval not to be unreasonably withheld or delayed, recorded by the Lessee and all costs relating to such preparation shall be paid by the Lessee.
- 26.4. Expenditure of Funds. Nothing in this Lease shall require an obligation or expenditure of funds by the County in violation of the Bateman Act NMSA 1978, § 6-6-11.
- 26.5. Severability. If any terms of this Lease, or the application of such terms to any circumstance, person, or entity, shall be held illegal, invalid, or unenforceable, the remainder of this Lease, or the application of such terms to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected; provided, however, that the remainder of this Lease is still capable of performance in substantial accordance with the original intent of the parties.
- 26.6. Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to the County or the Lessee is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

**Trinity Site Lease**

- 26.7. Entire Agreement. This Lease (including the Exhibits hereto) contain the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersede all previous oral and written negotiations, commitments, writings, and understandings.
- 26.8. Interpretation. The captions and paragraph headings of this Lease are not necessarily descriptive, or intended or represented to be descriptive, of all the terms thereunder, and shall not be deemed to limit, define, or enlarge the terms of this Lease. Whenever used herein, unless otherwise indicated by the context, the singular shall include the plural, the plural shall include the singular, the use of any gender shall include all genders, and the use of the words “include” and “including” shall be construed as if the phrases “without limitation” or “but not limited to” were annexed thereafter. The Parties were, or had ample opportunity to be, represented by counsel, and as such this Lease shall not be interpreted for or against either Party based on authorship.
- 26.9. Benefit of the Parties. This Lease is intended and agreed to be solely for the benefit of the Parties and their permitted successors and permitted assigns and no other Person, other than the indemnified parties expressly identified in this Lease, shall be entitled to rely on or be deemed to accrue any benefit, claim or right of any kind whatsoever pursuant to, or be a third party beneficiary under, by or through, this Lease.
- 26.10. Counterparts. This Lease may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 26.11. Costs and Expenses. Except as provided herein, each Party shall bear its own costs and expenses incurred by it in connection with the preparation, negotiation and signing and delivery of this Lease.
- 26.12. No Joint Venture. Both the County and the Lessee agree that the only relationship intended to exist between them under this Lease shall be the relationship of landlord and tenant, and it is their express intent that nothing contained in this Lease is intended, nor shall anything herein be construed, to create or imply any partnership, joint venture or other similar or dissimilar relationship between them.
- 26.13. Notice to Quit. The Lessee expressly waives any rights it may have under any law or any judicial decision that would otherwise require notice to quit upon the expiration of the Term of this Lease or at the expiration of any extension or renewal thereof, or upon any earlier termination of this Lease, as herein provided.
- 26.14. Applicable Laws. A reference in this Lease to any Applicable Laws includes any amendment, modification or replacement thereto.
- 26.15. Time. Any time period herein calculated by reference to “days” means calendar days, *i.e.*, including Saturdays, Sundays, and holidays as observed by the State of New Mexico; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or such observed holiday, the day for such act shall be first day following such Saturday, Sunday, or observed holiday that is not a Saturday, Sunday, or such observed holiday.

## Trinity Site Lease

- 26.16. Survival. Terms of this Lease that provide for rights, duties, and/or obligations that expressly extend beyond the expiration or earlier termination of this Lease, including Lessee's indemnity obligations, shall survive such expiration or earlier termination of this Lease.
- 26.17. Incorporation. Each and all of the recitals set forth at the beginning of this instrument, and any exhibits referenced herein and attached hereto, are incorporated herein by this reference.
- 26.18. Police Power. Nothing contained in this Lease shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of, any laws of the County, its departments, commissions, agencies, and boards and the officers thereof, including, without limitation, any redevelopment or general plan or any zoning ordinances, or any of the County's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of the County in the furtherance of the public health, welfare, and safety of the inhabitants of the County, including, without limitation, the right under law to make and implement independent judgments, decisions, and acts regarding planning, development, and redevelopment matters (including, without limitation, approval or disapproval of plans and issuance or withholding of building permits) whether or not consistent with the provisions of this Lease, or any other documents contemplated hereby (collectively, "**Rules and Powers**"). The Lessee's actions under this Agreement shall be subject to all such lawfully adopted Rules and Powers. The County agrees that it shall act in good faith in its exercise of such Rules and Powers and to the extent the County violates such obligation and its exercise of such Rules and Powers places the Lessee in breach of this Lease without the fault or negligence of Lessee, such breach shall not constitute an Event of Default under this Lease.
- 26.19. So long as any Leasehold Mortgage is in existence, the fee title to the Leased Premises and the leasehold estate of the Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said leasehold estate by the County or by a third party, by purchase, pursuant to the cure provisions set forth in this Lease, or otherwise.
- 26.20. This Lease contains all the representations, promises, agreements, conditions, inducements and understandings between the County and the Lessee relative to the Leased Premises, and there are no promises, agreements, conditions, inducements, understandings, warranties, or representations, oral or written, express or implied, between the Parties other than as set forth in or expressly referenced in this Lease.
- 26.21. The Lessee shall have no recourse with respect to the breach of any obligation of the County under this Lease, or for any claim based upon this Lease, or otherwise, against any individual, including an elected official, employee, attorney or agent, past, present or future, of the County, or against any person other than the County.

## Trinity Site Lease

26.22. **Nondiscrimination.** The Lessee agrees that it shall comply with all federal and state non-discrimination laws, including Sections 28-1-1 through 28-1-15 NMSA 1978, in the use or occupancy of the Leased Premises.

**27. DEFINITIONS**

For purposes of this Lease, the following terms have the meanings specified in this Article.

**“Additional Improvements”** shall have the meaning set forth in Section 1.4.

**“Additional Rent”** shall have the meaning set forth in Section 2.5.1.

**“Adjusted”** shall mean three percent (3%) per year.

**“Affiliated Transfer”** shall have the meaning set forth in Section 15.3.1.

**“Agreed Interest Rate”** shall mean for any date one percent (1%) in excess of the 1 Year London Inter-Bank Offered Rate as published by Fannie Mae (if the 1 Year LIBOR ceases to be quoted, the County, from time to time, shall select a rate that the County reasonably believes represents a reasonable equivalent thereto). Each change in any interest rate provided for in this Lease based upon the Agreed Interest Rate shall take effect at the time of such change in the Agreed Interest Rate.

**“Amended Plan for Completion”** shall have the meaning set forth in Section 1.3.2.1.2.1.

**“Anchor Tenant”** shall mean the singular tenant that rents an Improvement for retail use that is greater than or equal to approximately 110,000 square feet.

**“Anchor Tenant Building”** shall mean the building of not less than approximately 110,000 square feet originally constructed for purposes of single occupancy on the Leased Premises by the Anchor Tenant.

**“Anchor Tenant Land”** means the portion of the Land identified as the Anchor Tenant Land on Exhibit J.

**“Anchor Tenant Lease”** means that certain Shopping Center Ground Lease entered into by North American Realty Acquisitions, Inc. and Smith’s Food & Drug Centers, Inc.

**“Applicable Laws”** shall mean all federal, State, and local laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which may be applicable from time to time, as the context may require, including CERCLA and RCRA and similar state laws.

**“Appurtenances”** shall have the meaning set forth in Section 1.1.

**“Basic Rent”** shall have the meaning set forth in Section 2.4.

**“Basic Rent Anchor”** shall have the meaning set forth in Section 2.4.

Trinity Site Lease

**“Basic Rent General”** shall have the meaning set forth in Section 2.4.

**“Business Day”** shall have the meaning set forth in Section 2.4.4.2.

**“Casualty Property”** shall have the meaning set forth Section 20.6.

**“CERCLA”** shall mean the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*

**“Certificate of Completion”** shall mean the certification provided by the Lessee under the Development Responsibilities to the County that the Lessee has completed its obligations under the Development Responsibilities including that: (i) all conditions of the Development Responsibilities have been satisfied, (ii) certificates of occupancy have been issued by the County for all Improvements requiring such certificates of occupancy pursuant to Applicable Laws and (iii) the Development has been completed.

**“Changed Value”** shall have the meaning set forth in Section 5.5.

**“Community Development Director”** shall have the meaning set forth in Section 8.13.

**“Completion”** or **“Complete”** shall mean the date that an improvement is available for occupancy in accordance with Applicable Laws and the certificate of occupancy, as required by New Mexico law, is obtained for such improvement, and the cost of such improvement has been paid in full. To the extent that an improvement is a road, park, sidewalk or other non-occupied improvement, the date shall be the date on which the improvement is available for use in accordance with the Management Plan and Applicable Law and to the extent such improvement is to be conveyed to the County, upon acceptance by the County, which acceptance shall not be unreasonably withheld.

**“Conceptual Site Layout”** shall have the meaning set forth in Section 5.5.

**“Consideration”** shall have the meaning set forth in Section 2.2.

**“Consumer Price Index”** shall have the meaning set forth in Section 2.4.1.

**“Conveying Portion”** shall have the meaning set forth in Section 22.12.

**“Conveying Portion Fair Market Value”** shall have the meaning set forth in Section 22.12.

**“County”** shall have the meaning set forth in the Preamble.

**“County Approval”** shall mean the approval of the County Administrator of the County in writing.

**“County Development Option”** shall have the meaning set forth in Section 1.3.2.1.2.2.

**Trinity Site Lease**

**“County Development Option Termination Date”** shall have the meaning set forth in Section 1.3.2.1.2.3.4.

**“County Event of Default”** shall have the meaning set forth in Section 9.10.

**“County’s Development Costs”** shall have the meaning set forth in Section 1.3.2.1.2.3.1.1.

**“Critical Portion of Subsequent Development Phase”** shall have the meaning set forth in Section 1.3.2.1.

**“Dedication Property”** shall have the meaning set forth in Section 1.8.

**“Dedication Property Termination Date”** shall have the meaning set forth in Section 1.8.

**“Deposit”** shall have the meaning set forth in the sixth Recital.

**“Deposit Agreement”** shall have the meaning set forth in the sixth Recital.

**“Development”** shall have the meaning set forth in Section 7.1.

**“Development Responsibilities”** shall have the meaning set forth in the seventh Recital.

**“Development Period”** shall have the meaning set forth in Section 1.3.

**“Dispute”** shall have the meaning set forth in Section 18.1.

**“District”** shall have the meaning set forth in the second Recital.

**“District Lease”** shall mean the Master Ground Lease Agreement between the Board of Education of the Los Alamos Public School District and the Incorporated County of Los Alamos dated the 28 day of January, 2010, as may be amended.

**“Due Date”** shall have the meaning set forth in Section 2.6.

**“Effective Date”** shall have the meaning set forth in the Preamble.

**“Environmental Reports”** shall mean the Phase I Environmental Site Assessment Trinity Redevelopment Site, Los Alamos, New Mexico, dated May 8, 2006, and the Los Alamos County Characterization “Trinity Site”, dated January 16, 2007.

**“Event of Default”** shall have the meaning set forth in Section 9.1.

**“Existing Encumbrances”** shall have the meaning set forth in Section 1.6.

**“Existing Improvements”** shall have the meaning set forth in Section 1.4.

**Trinity Site Lease**

**“Extended Subsequent Development Phase Period”** shall have the meaning set forth in Section 1.3.2.1.1.

**“Feasibility Period”** shall mean the date that is one day after one hundred and eighty (180) days after the Effective Date; provided, the Lessee shall have the right to extend the Feasibility Period up to two (2) additional periods of thirty (30) days each so long as in each instance the Lessee notifies the County in writing at least one (1) business day prior to the expiration of the then current Feasibility Period or extension, as applicable, in which event the Feasibility Period will expire one day after any such extension(s).

**“First-Class Standard”** shall mean the standard for at a minimum a Class A building and office space and related improvements in the Los Alamos, New Mexico and Santa Fe, New Mexico areas. If the County and Lessee cannot agree on whether the Improvements meet a First-Class Standard, the Lessee shall hire and pay, at its own expense, an independent third party contractor, who is approved in writing by the County, to perform an independent analysis of the Improvements in dispute.

**“Force Majeure”** shall have the meaning set forth in Section 9.11.2.

**“Funded Accounts”** shall have the meaning set forth in Section 8.7.1.

**“Hazardous Materials”** shall mean any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “infectious wastes,” “hazardous materials,” or “toxic substances” now or subsequently regulated under any Applicable Laws including, without limitation, oil, petroleum based products, paints, solvents, lead, lead-based paint, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, friable or non-friable asbestos and any substance containing asbestos, PCBs and similar compounds, and including any different products and materials that are in violation of Applicable Law and subsequently found to have adverse effects on the environment or the health or safety of individuals. Hazardous Materials shall not include “household hazardous wastes” as defined by RCRA.

**“Holdover Rent”** shall have the meaning set forth in Section 9.9.

**“Improvements”** shall have the meaning set forth in Section 1.4.

**“Increased Basic Rent Payment”** shall have the meaning set forth in Section 5.5.

**“Independent Appraiser”** shall have the meaning set forth in Section 18.2.

**“Initial Development Phase”** shall have the meaning set forth in Section 1.3.1.

**“Initial Rent”** shall have the meaning set forth in Section 2.3.

**“Initial Rent Period”** shall have the meaning set forth in Section 2.3.

**“Land”** shall have the meaning set forth in the third Recital.

## Trinity Site Lease

**“Landlord’s Work”** shall mean that certain work to be performed by Lessee set forth in Exhibit M.

**“Lease”** shall have the meaning set forth in the Preamble.

**“Leased Premises”** shall have the meaning set forth in Section 1.5.

**“Leaschold Mortgage”** shall have the meaning set forth in Section 22.2.

**“Leaschold Mortgagee”** shall have the meaning set forth in Section 22.2.

**“Lessee”** shall have the meaning set forth in the Preamble (and shall include permitted successors and assigns).

**“Loan Documents”** shall have the meaning set forth in Section 22.2.

**“Management Plan”** shall mean the Lessee’s plan for managing, operating, and maintaining the Leased Premises set forth in Exhibit C.

**“Non-Anchor Tenant Land”** means the portion of the Land identified as the Non-Anchor Tenant Land on Exhibit J.

**“Optional Review”** shall have the meaning set forth in Section 8.13.

**“Parties”** shall mean the Lessee and the County, each a **“Party”**.

**“Percentage Rent”** shall have the meaning set forth in Section 2.5.1.6.

**“Permissible Building Area”** shall be the areas designated as such on the Conceptual Site Layout attached as Exhibit F.

**“Permitted Uses”** shall have the meaning set forth in Section 5.1.

**“Person”** shall mean any individual, corporation, partnership (general or limited), limited liability company, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity.

**“Project”** shall mean the Lessee’s development, management, and operation of the Leased Premises pursuant to this Lease (including the Management Plan contained in Exhibit C).

**“Qualified Transfer”** shall have the meaning set forth in Section 15.3.2.

**“RCRA”** shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*

**“Rent”** shall have the meaning set forth in Section 2.5.1.4.

**“Rent Payment Dates”** shall have the meaning set forth in Section 2.4.4.2.



Trinity Site Lease

**“Retail Strategy”** shall mean the Lessee’s strategy for retail operations on the Leased Premises as described in Exhibit E, and any amendments thereto.

**“Rules and Powers”** shall have the meaning set forth in Section 26.18.

**“Secondary Appraisers”** shall have the meaning set forth in Section 18.2.

**“SNDA”** has the meaning set forth in Section 1.10.

**“State”** shall mean the State of New Mexico.

**“Subsequent Development Phase”** shall have the meaning set forth in Section 1.3.2.

**“Successor Development Responsibilities”** shall have the meaning set forth in Section 22.6.4.

**“Successor Lessee”** shall have the meaning set forth in Section 22.6.4.

**“Taking”** shall have the meaning set forth in Section 20.10.

**“Term”** shall mean the term of this Lease, as set out in Section 2.1.

**“Term Expiration Date”** shall have the meaning set forth in Section 2.1.

**“Termination Notice”** shall have the meaning set forth in Section 20.8.

**“Undeveloped Portion”** shall have the meaning set forth in Section 1.3.2.1.2.

**“Undeveloped Portion Rents”** shall have the meaning set forth in Section 1.3.2.1.2.3.1.1.

**“Use Allocation”** shall have the meaning set forth in Section 5.2.

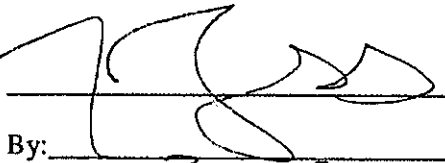
**“View Space”** shall have the meaning set forth in Section 8.11.2.

Trinity Site Lease

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

COUNTY:

INCORPORATED COUNTY OF  
LOS ALAMOS, NEW MEXICO

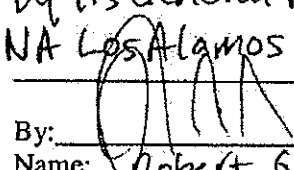


By: \_\_\_\_\_  
Name: Gary Burgess  
Title: County Administrator  
Date: 3/29/12

LESSEE:

NA LOS ALAMOS TRINITY LP,  
a Delaware limited partnership

By its General Partner,  
NA Los Alamos Trinity GP, LLC



By: \_\_\_\_\_  
Name: Robert Green  
Title: Manager  
Date: March 29, 2012

**Trinity Site Lease**

**EXHIBIT A**

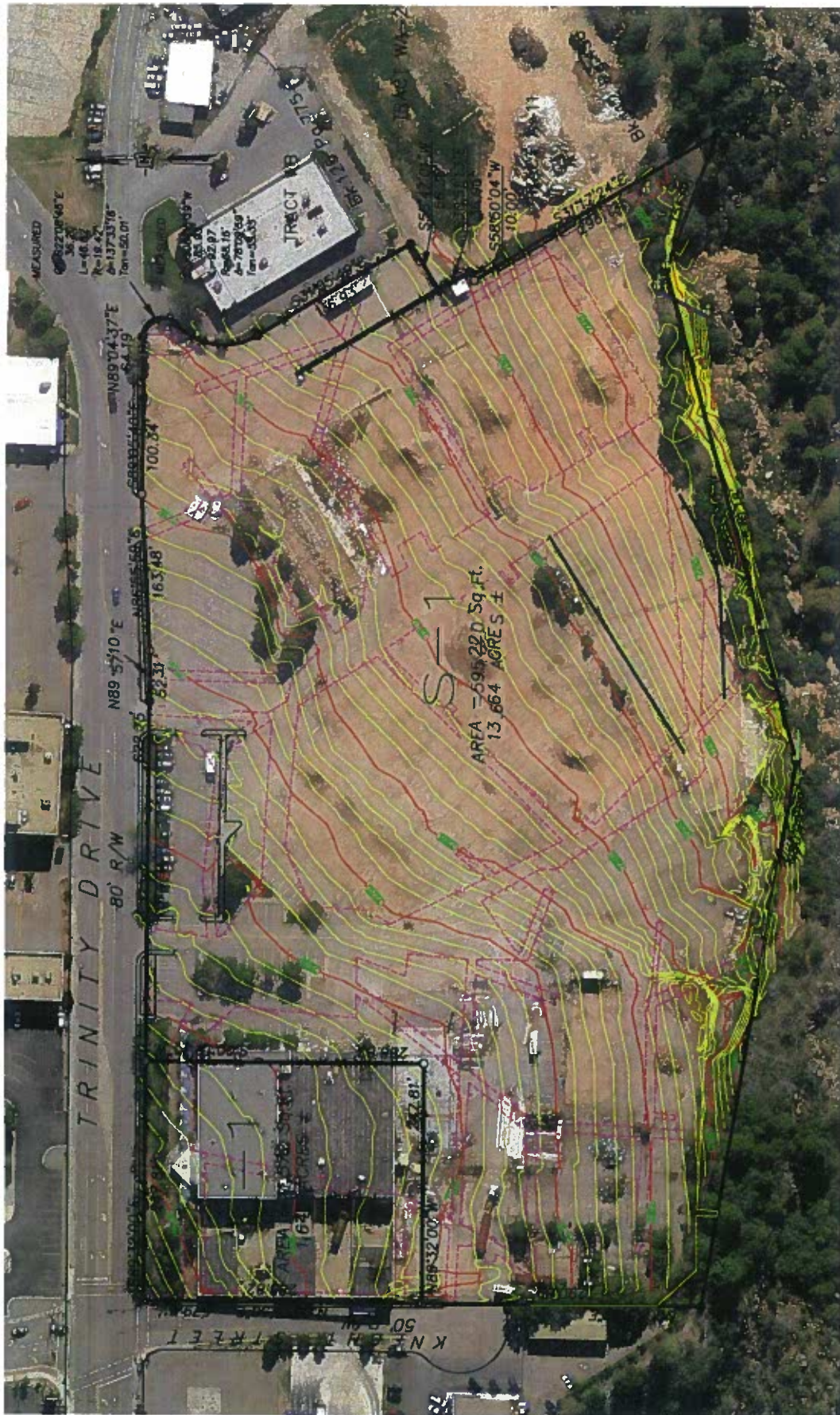
**TRINITY SITE LAND DESCRIPTION**



**Trinity Site Lease**

**EXHIBIT B**

**TRINITY SITE LAND SURVEY**





**Trinity Site Lease****EXHIBIT C****MANAGEMENT PLAN**

It is anticipated that North American Development Group (or an affiliate) ("NADG") will provide the property management function at the Project. NADG currently manages approximately 20,000,000 square feet of retail shopping centers in North America and intends to manage the Trinity Site in materially the same form and fashion as it manages its other portfolio assets.

NADG has over 30 years of successful ground up development experience in the United States and Canada. Much of that success can be derived from its tenant relationships and the ability to align itself with the top retailers, planners, architects and other consultants in each given market. For each project, NADG's goal is to deliver a functional and sustainable shopping center which incorporates the natural attributes and characteristics of that specific region coupled with the finest tenant mix. NADG's development programs with Publix Grocery Stores, Kroger, Safeway, Walmart, Target, Home Depot and Lowes, to name a few, are just a few examples of the company's experience developing quality shopping centers alongside the strongest retailers.

The company draws upon its' strong relationships with the national and regional retailers and combines these efforts with the local brokers that are experts in their given market. For example, we have retained Grubb & Ellis in Albuquerque, New Mexico to assist with the Trinity site project leasing. Grubb and Ellis has a long history of providing top retail services in New Mexico, focusing on the ground up development and leasing of lifestyle, neighborhood, community and power centers. The Grubb and Ellis team exclusively represent such tenants as Kroger (Smith's Food Stores), Staples, Lowes, CVS Pharmacy, and a host of other specialty retailers in the New Mexico market. More importantly, the founder of the New Mexico Grubb and Ellis office, Bob Feinberg, personally has over 4 years invested into the Trinity site and understands the goals and vision of both the County, NADG as developer, and Smith's as anchor tenant for the project. Bob and his team will be a tremendous asset to NADG and the County in landing the target tenant mix best suited for the Trinity development.

Lessee's management plan for the Project is to endeavor to deliver a functional and sustainable shopping center which incorporates the natural attributes and characteristics of that specific region coupled with the finest tenant mix. Lessee's goal is to construct a quality open-air food supermarket anchored retail shopping center that serves the shopping needs of the Los Alamos County, New Mexico residents while incorporating design features that are aesthetically compatible with the natural landscape.

Although subject to change based on market conditions, the project is currently contemplated to consist of approximately 160,000 square feet of retail/commercial space. The cornerstone of the development consists of a planned approximately 110,000 square foot Smith's Marketplace, and should also include approximately 30,000 SF (up to 60,000 SF) of other retail commercial, restaurant, medical and office uses along with multiple pad/out-lot w/drive thru facilities.

**Trinity Site Lease**

**EXHIBIT D**

**LISTING OF EXISTING ENCUMBRANCES**

- Reservations, restrictions and exceptions as contained in the Special Warranty Deeds from the United States of America, recorded in Misc. Book 6, Page 517 and in Misc. Book 8, Page 277, records of Los Alamos County, New Mexico.
- All easements and rights incident thereto, notes, reservations and all other matters as shown on the plat of surveys thereof filed for record in Plat Book 1, Page 57, Plat Book 1, Page 85 and in Book 151, Page 894, all in the records of Los Alamos County, New Mexico.
- Quitclaim Deed from the United States of America, acting by and through the United States Department of Energy to the Incorporated County of Los Alamos, for conveyance of easement for Los Alamos Water Production System, recorded in Misc. Book 55, Page 547, records of Los Alamos County, New Mexico.
- Agreements regarding Quitclaim Deeds, recorded in Misc. Book 30, Page 550 and in Misc. Book 36, Page 738, records of Los Alamos County, New Mexico.
- Master Ground Lease Agreement by and between the Board of Education of Los Alamos Public School District and the Incorporated County of Los Alamos, recorded on August 24, 2010, in Book 151, Page 895, records of Los Alamos County, New Mexico.
- Agreement regarding Leases and Conveyances of Real Property for the Trinity Revitalization Project, by and between the Incorporated County of Los Alamos and the Board of Education of Los Alamos Public Schools, recorded on August 24, 2010, in Book 151, Page 896, records of Los Alamos County, New Mexico.



**Trinity Site Lease**

**EXHIBIT E**

**RETAIL STRATEGY**

Although subject to change based on market conditions and other relevant factors, Lessee's retail strategy for the Project is currently contemplated to consist of approximately 160,000 square feet of retail/commercial space. The cornerstone of the development consists of a planned approximately 110,000 square foot Smith's Marketplace, and should also include approximately 30,000 SF (up to 60,000 SF) of other retail commercial, restaurant, medical and office uses along with multiple pad/out-lot w/drive thru facilities.

Complementing Smith's Marketplace should be a diverse mix of local, regional and national retailers. The target operator for the hard corner would be a tier one financial institution with drive-thru facilities providing a full scale of financial/banking services. Directly flanking the financial institution along Trinity Road would be a proposed quick-serve restaurant with drive-thru. The building backing up to the canyon along Knecht Street would be a proposed full service sit-down restaurant or tavern/bar. The remainder of the multi-tenant buildings could be occupied by a combination of retail commercial, fashion/boutique tenants, local service retailers, office, dental, medical, quasi office, personal service and restaurant type tenants.

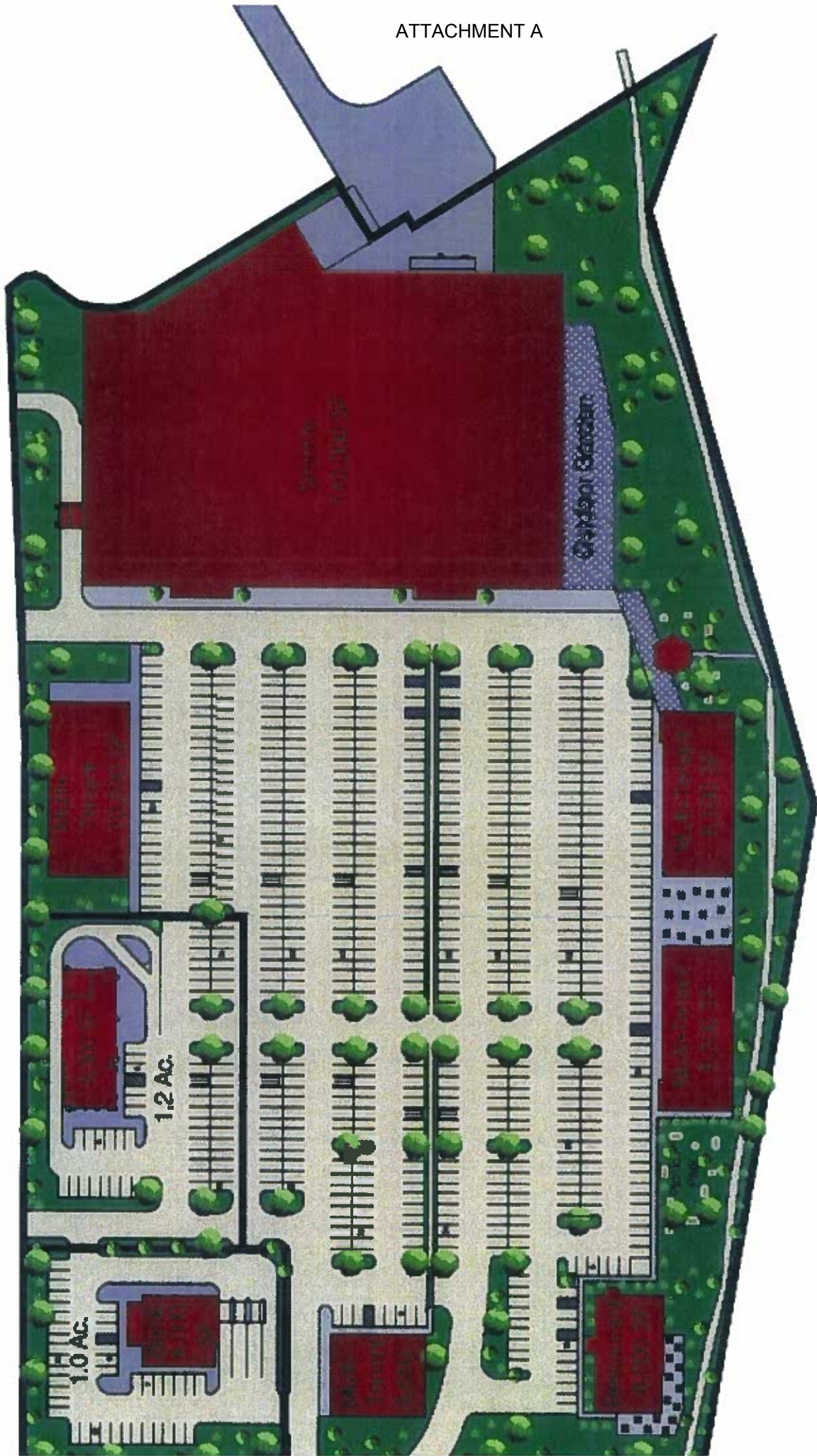
**Trinity Site Lease**

**EXHIBIT F**  
**CONCEPTUAL SITE LAYOUT**

TRINITY DR.

D P RD.

ATTACHMENT A



**Trinity Site Lease**

**EXHIBIT G**

**VIEW SPACE**

**Restriction:**

To protect the view of the Los Alamos Canyon at the Trinity site, the viewpoints along the proposed Canyon Rim Trail should be free of visual obstruction to the south of the trail identified on Exhibit F. Lessee shall be allowed to construct improvements, including visual obstructions, to the north of the trail.

ATTACHMENT A

**EXHIBIT H**  
**RESERVED**

**EXHIBIT I**

**FORM SUBORDINATION AND NON-DISTURBANCE AGREEMENT**

THIS SUBORDINATION AND NON-DISTURBANCE AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, an incorporated county of the State of New Mexico (the "County"), NA LOS ALAMOS TRINITY LP, a Delaware Limited Partnership ("Lessee"), and [SUB-TENANT] (the "Sublessee").

**RECITALS**

WHEREAS, pursuant to that certain Trinity Site Real Estate Ground Lease and Development Agreement, by and between the County, as lessor, and Lessee, as lessee, dated effective \_\_\_\_\_, 20\_\_ (the "Lease"), Lessee leased from the County the Leased Premises (as such term is defined in the Lease); and

WHEREAS, Lessee may sublease portions of the Leased Premises to sublessees whose use of the Leased Premises will be of a type permitted by and consistent with applicable laws and the Lease; and

WHEREAS, pursuant to that certain Sublease, by and between Lessee, as lessor, and Sublessee, as lessee, dated effective \_\_\_\_\_, 20\_\_ (the "Sublease"), Lessee subleased to Sublessee that certain portion of the Leased Premises more fully described in the Sublease (the "Subleased Premises"), attached hereto as Exhibit A; and

WHEREAS, the County desires to make certain representations and agreements to and for the benefit of the Sublessee, and its successors and assigns, all as more fully set out herein.

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Sublessee agrees that the Sublease is and shall be subject and subordinate to the Lease and to all renewals, amendments, modifications, consolidations, replacements and extensions thereof now or hereafter executed, said subordination to have the same force and effect as if the Lease, and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Sublease, and amendments or modifications or any notice thereof. Provided, however, that the foregoing subordination provision shall not be deemed or construed as limiting Sublessee's rights under the Sublease and/or Sublessee's obligations thereunder. Without limiting the generality of the foregoing sentence, Lessee specifically acknowledges and agrees to be bound by the provisions with respect to notices of default, cure periods and remedies contained in the Sublease if Sublessee defaults or is alleged to have defaulted in its obligations under the Sublease.

2. The County agrees and Lessee acknowledges that the Sublessee shall be named or joined as a party defendant in any action, suit or proceeding which may be instituted by the County to terminate the Lease or evict Lessee or seek other remedies under the Lease by reason

of a default or event of default under the Lease. The County agrees and Lessee further acknowledges further that, in the event of any entry by the County pursuant to the Lease, termination of the Lease or the exercise by the County or Lessee of any of its rights under the Lease or under the law of the State of New Mexico, the County and Lessee shall not disturb the Sublessee's right of possession of the Subleased Premises or any other of the rights benefiting the Sublessee under the terms of the Sublease so long as the Sublessee is not in default beyond any applicable grace period of any term, covenant or condition of the Sublease. Provided, however, that upon notice from the County of any default of Lessee under the Lease, the Sublessee shall pay all rent and other payments due under the Sublease (less any amounts incurred by Sublessee in performing obligations of Lessee on behalf of Lessee under the Sublease) directly to the County and Lessee hereby consents to such payments.

3. The Sublessee agrees that, in the event of termination of the Lease by the County or the County's exercise of any of its rights under the Lease or under the law of the State of New Mexico, the Sublessee will attorn to and recognize the County as its sublessor under the Sublease for the remainder of the term of the Sublease upon the same terms and conditions as are set forth in the Sublease, and the Sublessee hereby agrees to pay and perform all of the obligations of the Sublessee pursuant to the Sublease.

4. The Sublessee agrees that, in the event the County succeeds to the interest of Lessee under the Sublease:

(a) The County shall not be liable in damages for any act or omission of any prior sublessor (including Lessee); and

(b) Notwithstanding any provision to the contrary in this Agreement or otherwise, the County shall not be deemed to have assumed the obligations of Lessee under the Sublease, to the extent such obligations are greater than the obligations of the County under the Lease, including but not limited to any obligation to construct or modify any Improvements, to maintain, repair or replace the Leased Premises or any Improvements now or hereafter placed upon the Leased Premises; or otherwise to perform services or assume responsibilities for development of the Leased Premises not contemplated in the Lease.

5. The County hereby acknowledges the execution and existence of the Sublease. Notwithstanding anything to the contrary contained in the Lease, the Sublessee shall be entitled to use and occupy the Subleased Premises and exercise all its rights under the Sublease. The Sublessee agrees to give the County a copy of any notices of default under the Sublease served upon Lessee at the same time such notice is given to Lessee.

6. To the extent that the County has succeeded to the interest of Lessee under the Sublease, the County specifically acknowledges and agrees to be bound by the provisions with respect to notices of default, cure periods and remedies contained in the Sublease if the Sublessee defaults or is alleged to have defaulted in its obligations under the Sublease.

7. The County agrees to give the Sublessee a copy of any notice of default under the Lease served upon Lessee at the same time such notice is given to Lessee.

8. The terms and provisions of this Agreement, shall be automatic and self-operative without execution of any further instruments on the part of any of the parties hereto. Without limiting the foregoing, the County, Lessee and the Sublessee agree, within thirty (30) days after request therefor by the other party, to execute an instrument in confirmation of the foregoing provisions, in form and substance reasonably satisfactory to the County, Lessee and the Sublessee, pursuant to which the parties shall acknowledge the continued effectiveness of the Sublease in the event of a termination of the Lease, eviction by the County of Lessee or other exercise of rights by the County.

9. Any notice to be delivered hereunder shall be in writing and shall be sent registered or certified mail, return receipt requested, postage prepaid, or overnight delivery by Federal Express, United Parcel Service, U.S. Postal Service Express Mail, or similar overnight courier which delivers only upon signed receipt of the addressee, or its agent. The time of the giving of any notice shall be the time of receipt thereof by the addressee or any agent of the addressee, except that in the event that the addressee shall refuse to receive any notice, or there shall be no person available (during normal business hours) to receive such notice, the time of giving notice shall be deemed to be the time of such refusal or attempted delivery, as the case may be. All notices shall be delivered to the respective addresses set forth below, or such other addresses as they may hereafter specify by written notice delivered in accordance herewith:

To the County:	Incorporated County of Los Alamos Attn: County Administrator 133 Central Park Square Los Alamos, NM 87544 Telephone No.: (505) 663-1750 Facsimile No.: (505) 662-8079
With a copy to:	Los Alamos County Attorney County of Los Alamos 475 20 <sup>th</sup> Street, Suite D Los Alamos, NM 87544 Telephone No.: (505) 662-8020 Facsimile No.: (505) 662-8019
With a copy to:	Kutak Rock LLP Attn: Seth Kirshenberg 1101 Connecticut Avenue NW, Suite 1000 Washington, DC 20036 Telephone No.: (202) 828-2400 Facsimile No.: (202) 828-2488
To Lessee:	North American Development Group Attn: Gilbert J. Weiss, LL.B. Vice President and General Counsel Suite One, 2851 John Street Markham, Ontario, L3R 5R7 Telephone No: (905) 968-3206



Facsimile No: (905) 477-7390

And: North American Development Group  
Attn: Stephen SB Preston  
6210 Campbell Road, Suite 140  
Dallas, TX 75248  
Telephone No: (214) 850-5186  
Facsimile No: (214) 368-2625

With a copy to: Chris Fuller  
Wick Phillips Gould Martin  
2100 Ross Avenue  
Suite 950  
Dallas, Texas 75201  
Telephone No: (214) 740-4023  
Facsimile No: (214) 692-6255

To Sublessee: [       ]

9. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that in the event of the expiration of the Term of the Lease or the assignment or transfer of either the County or a party that assumes the County's obligations hereunder, all obligations and liabilities of the County under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the County's interest is assigned or transferred.

10. This Agreement (i) may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument and (ii) may not be amended or modified except in a writing signed by all of the parties hereto.

11. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of New Mexico and common law.

**[Signature Pages Follow]**

IN WITNESS WHEREOF, this Agreement has been duly executed by the County, Lessee and the Sublessee as of the Effective Date.

**County:**

**INCORPORATED COUNTY OF LOS  
ALAMOS**

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

**Lessee:**

**NA LOS ALAMOS TRINITY, LP**

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

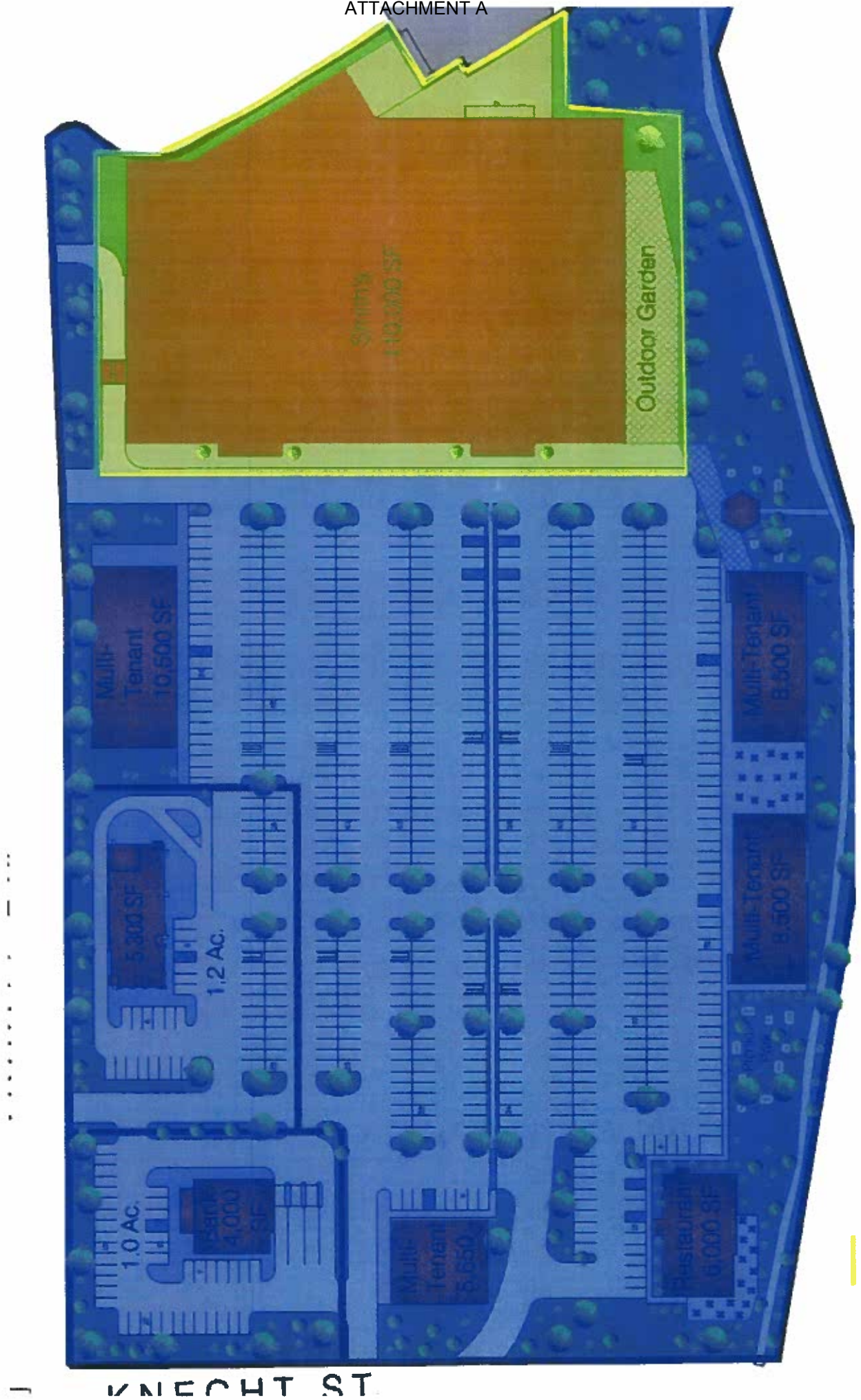
**Sublessee:**

**[TENANT]**

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

**EXHIBIT J**

**ANCHOR TENANT AND NON-ANCHOR TENANT LAND DESCRIPTION**



ATTACHMENT A

**EXHIBIT K**  
**DISTRICT LEASE**

MASTER GROUND LEASE AGREEMENT

This lease agreement (the "Master Ground Lease" or the "Lease Agreement") is entered into between the Board of Education of the Los Alamos Public School District, hereinafter called the "District" and the Incorporated County of Los Alamos, hereinafter called the "County" (together, the "Parties").

WHEREAS, the District has authority under Section 22-5-4(D) NMSA 1978 to acquire, lease and dispose of property; and

WHEREAS, the County seeks to enter into a ground lease with the District for the real property described in Section 1 of this Lease Agreement (the "Leased Parcel") and shown in Exhibit A to this Lease Agreement as Tract S-1; and

WHEREAS, the County intends to sublease the Leased Parcel, to one or more developers (each a "Sublessee/Developer" or collectively, "the Sublessee/Developer" which, for purposes of this Lease Agreement, may include the County, as provided in Sections 4 and 5 hereof) for the development of mixed commercial, retail, office or residential uses pursuant to a sublease agreement or agreements (each a "Development Sublease" and collectively, "the Development Sublease"), and to lease or convey other land owned by the County for development by the Sublessee/Developer; and

WHEREAS, the Parties recognize that it may be necessary to reconfigure the Leased Parcel and abutting County-owned land to be suitable for development under a Development Sublease, and intend to cooperate in such reconfiguration through replatting; and

WHEREAS, the Parties intend that the responsibility for and payment of the costs of site preparation, including the removal of existing District facilities and County facilities that are currently located on the Leased Parcel and any necessary replatting of the Leased Parcel or relocation of easements serving or benefitting the Leased Parcel and abutting Tract L-1 shall be paid by the County under this Lease Agreement; and

WHEREAS, the District will continue to occupy portions of the Leased Parcel until new facilities for certain operations of the District and the County (the "Airport Basin Facilities") have been completed by the County and are available to the District pursuant to an Airport Basin Facilities Lease (the "ABF Lease"), which the County anticipates will occur within the next year; and

WHEREAS, the District currently occupies administrative facilities located on a portion of the Leased Parcel (the "District Administrative Facilities") and the County currently occupies other office facilities located on a portion of the Leased Parcel (the "County Annex Building"), which District Administrative Facilities and County Annex Building, and the respective activities and personnel, will not be relocated to the Airport Basin Facilities; and

WHEREAS, the Parties intend that the District may, at its option, continue to occupy the District Administrative Facilities until the County has provided notice that demolition will commence, as provided in Section 4(E) of this Lease Agreement, and that the County may, at its option, continue to occupy the County Annex Building as provided in Section 4(F) of this Lease Agreement; and

WHEREAS, the District and the County intend that the source of funding to pay rent pursuant to this Lease Agreement will be the rent amounts paid by the Sublessee/Developer pursuant to a Development Sublease; that the rent payable by the District pursuant to the ABF Lease shall be offset by the rent amounts payable by the County to the District pursuant to this Lease Agreement, so that the District will not be required to make actual rent payments under the ABF Lease while this Lease Agreement is in effect; and that, in the event that the Sublessee/Developer does not timely pay rent due pursuant to the Development Sublease, the amounts due from the County to the District hereunder and by the District to the County pursuant to the ABF Lease shall be adjusted based upon the actual amounts received (including interest on late payments) from the Sublessee/Developer, as provided in this Lease Agreement and in the ABF Lease; and

WHEREAS, the rent payable pursuant to this Lease Agreement is calculated based on the fair market value of the Leased Parcel as determined by an appraisal; and

WHEREAS, this Lease Agreement will not be effective without the approval of the State Board of Finance, as required pursuant to Section 13-6-2.1 NMSA 1978, as amended.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Leased Parcel. The District, for and in consideration of the covenants and conditions herein contained to be kept, performed, and observed by the County, does hereby lease and demise to the County, and the County does hereby rent and accept from the District the following described real property located in the County of Los Alamos, State of New Mexico, described as follows:

Tract S-1, as more particularly described in the replat attached as Exhibit A to and hereby incorporated in this Lease Agreement

(the "Leased Parcel").

2. Effective Date; Term.

A. This Agreement shall be effective as of the later of (i) the approval by the State Board of Finance of this Master Ground Lease and the District's conveyances of Tract A-8-A to the County, as provided in Section 13-6-2.1 NMSA 1978, (ii) the effective date of County Ordinance No. 548 (the "Effective Date").

B. The term of this Lease Agreement shall commence on the Effective Date and shall be for seventy-five (75) years.

3. Representations and Warranties.

A. The County hereby represents and warrants that it is an incorporated county with municipal powers and is duly organized and existing under the statutes and laws of the State of New Mexico. Pursuant to the laws of the State, as amended and supplemented from time to time, the County is authorized to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder.

B. The District hereby represents and warrants that it is a local school district and local political subdivision, duly organized and existing under the statutes and laws of the State of New Mexico. Pursuant to the laws of the State, as amended and supplemented from time to time, the District is authorized to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder, pursuant to action taken by its governing body, the Board of Education.

4. Rent; Continued Use of Certain Existing Facilities by District and County; Further Cooperation. The County is hereby granted the right to occupy and use the Leased Parcel for the development of mixed commercial, retail, office or residential use and associated public uses such as walkways, parks and other public improvements and amenities (collectively, the "Permitted Uses"), subject to the District's right to occupy the District Administration Facilities as provided in Subsections (B) and (E) of this Section 4. The County shall be permitted to continue to occupy the County Annex Building, without any additional charge or rent, as provided in Subsection (F) of this Section 4.

A. The County shall pay to the District the following amounts as rent for the Leased Parcel:

(i) \$1.00 for the period from the Effective Date until the date on which the County initially receives revenues from developed use of the Leased Parcel ("Rent Commencement").

(ii) Upon Rent Commencement, annual rent shall be an amount equal to 52% of the revenue received by the County from a Sublessee/Developer or any other subtenant occupying all or part of the Leased Parcel (the "Master Rent Allocation"), and 48% of which revenue received shall be retained by the County as rent under the ABF Lease. The Master Rent Allocation shall be applied to all rent received by the County pursuant to a Development Sublease or any other sublease or subtenant. For illustration purposes only, if the annual rent payable to the County under a Development Sublease is \$770,070.00, then the annual rent due from the County to the District pursuant to this Lease shall be \$400,436.40, i.e. 52% of \$770,070.00, and \$369,633.60, i.e. 48% shall be retained by the County as rent payable under the ABF Lease.



(iii) In the event that the County has received less than the full amount of rent due under the Development Sublease for any applicable payment period, the rent due hereunder for that period shall be calculated by applying the Master Rent Allocation to the amount actually received by the County (e.g. if the County has received \$500,000.00 as partial rent, the County shall pay \$260,000.00, i.e. 52% of the amount received, as partial rent under this Master Ground Lease, and shall retain \$240,000.00, i.e. 48% of the partial amount received, as rent payable under the ABF Lease).

(iv) The Master Rent Allocation shall be applied to any deficiency payments, interest and penalties received by County under the Development Sublease (e.g. if the County receives a deficiency payment of \$270,000.00, the County shall pay \$140,400.00, i.e. 52% of the amount received, as deficiency rent under the Master Ground Lease, and shall retain as deficiency rent due under the ABF Lease \$129,600.00, i.e. 48% of the deficiency amount received).

(v) Annual rent shall be payable by the County in equal monthly installments, in advance, on the first day of each calendar month during the Term.

B. In addition to rent payable hereunder, the County shall pay to the District either Tenant Displacement Payments as provided in subparagraph (i) of this Section 4(B) or a Relocation Payment as provided in subparagraph (ii) of this Section 4(B), provided that said Tenant Displacement Payments or a Relocation Payment shall be due only if the District has vacated the District Administrative Facilities after either (1) receiving notification from the County of commencement of demolition on the tract designated as of September 1, 2009 as Tract WA-1, or (2) obtaining prior written consent of the County to vacate the District Administrative Facilities.

(i) In the event that the District incurs an actual loss of rent revenue from displacing a rent-paying tenant of the District in offsite facilities by relocating the personnel and activities relating to the District Administrative Facilities located, as of September 1, 2009, on Tract WA-1 to such offsite facilities, the County shall pay the District a Tenant Displacement Payment equal to the actual loss of rent revenue, not to exceed \$169,000.00 annually, for a maximum of two years. The actual amount of the Tenant Displacement Payment shall be net of rent actually received by the District pursuant to this Lease Agreement, and shall be paid in equal monthly installments (e.g. if rent received by the District hereunder is at least \$169,000, no Tenant Displacement Payment shall be owed; if \$100,000 is received by the District as rent, the Tenant Displacement Payment amount shall be \$69,000).

(ii) In the event that the District vacates the District Administrative Facilities without displacing a rent-paying tenant of the District, the County shall pay to the District an amount equal to the cost of renovating offsite replacement administrative facilities, not to exceed a one-time amount of \$169,000.00 (a "Relocation Payment").

C. The County shall be obligated to pay rent owed pursuant to this Lease Agreement solely from rents or revenues received by the County pursuant to a Development Sublease, which limitation shall apply to all provisions for the payment of rent by the County pursuant to this Lease Agreement, other than (i) Tenant Displacement Payments, (ii) Relocation Payment as provided in Subsection 4(B), and (iii) the special rent provisions in Section 5 hereof. The Development Sublease shall provide for rent due thereunder to be deposited when due with a depository agent (the "Depository"), the costs of which Depository shall be paid in equal amounts by the County and the District. The Depository shall remit monthly, from amounts received pursuant to the Development Sublease, to the District the rent owed under this Lease Agreement (i.e. 52% of the amount received) and to the County the rent owed by the District to the County under the ABF Lease (i.e. 48% of the amount received), within three (3) business days after receipt of such moneys. The agreement with the Depository shall provide that all amounts payable to the Depository thereunder shall be paid from rent received by the Depository under the Development Sublease or shall otherwise be subject to annual appropriation by the District and the County, and that the agreement shall be subject to termination in the event that sufficient funds are not appropriated by the District and the County.

D. In the event that the Development Sublease is terminated during the term of this Lease Agreement, the County shall not be obligated to pay rent pursuant to this Lease Agreement except from moneys received by the County from its own development activities as to the Leased Parcel, from a Sublessee/Developer as holdover rent, from subtenants of the Sublessee/Developer that have attorned to the County and are treating the County as landlord, from a new subtenant or subtenants of the Leased Parcel replacing the Sublessee/Developer, or as provided in Section 5 of this Lease Agreement.

E. The District shall vacate the Leased Parcel, other than District Administrative Facilities located on any portion of the Leased Parcel, thirty (30) days after delivery of the Notice of Completion of all facilities to be occupied by the District pursuant to the ABF Lease. The District shall vacate the District Administrative Facilities within 120 days after receiving written notification from the County of commencement of demolition of the District Administrative Facilities.

F. The County shall have the right to continue to occupy the County Annex Building as part of the Leased Parcel at its sole cost, at no additional rent amount or charge. The District shall not remove or otherwise interfere with the County's occupancy of the County Annex Building, which shall be demolished as and when determined by the County pursuant to the Site Preparation activities described in Section 7 of this Lease Agreement. The County shall be fully responsible for all costs of utilities, taxes, maintenance, insurance and other regular costs associated with the occupancy of the County Annex Building.

G. The District and the County shall cooperate in applying for and shall consent to such additional replatting of Tract S-1 and Tract L-1, and the granting, vacation or relocation of easements located on Tract S-1 and Tract L-1, as may be reasonably necessary, as determined by the County, to utilize those parcels as anticipated in the Development Sublease,

subject to the District's right to approve the Development Sublease as provided in Section 15(B) of this Lease Agreement, and subject to any approval by the State Board of Finance of the disposition of land by the District entailed by such additional replatting, or granting, vacation or relocation of easements affecting Tract S-1 that may be required pursuant to Section 13-6-2.1 NMSA 1978. The County shall pay the cost of surveys, preparation of documents and recording in connection with such additional replatting, or granting, vacation or relocation of easements. Any net change in the acreage of Tract S-1 or Tract L-1 that results from the replatting, granting, vacation or relocation of easements shall not affect the Master Rent Allocation as provided in Section 4(A)(ii) of this Lease Agreement.

5. Special Rent Provisions. In the event that the County develops, constructs, owns or occupies any building on the Leased Parcel for County purposes or operations, the County shall be obligated to pay the percentage of fair market rent, as determined by a current appraisal, that corresponds to the percentage of the Leased Parcel occupied by such building and associated parking areas, if any. The foregoing provision shall not apply to the County Annex Building, as provided in Section 4(F) of this Lease Agreement, or to streets, sidewalks, parks or other public improvements and amenities.

6. Failure to Develop Leased Parcel. In the event the Leased Parcel is not used for the development of one or more commercial, retail, office or residential uses pursuant to a Development Sublease within fifteen (15) years of the Effective Date, this Lease Agreement shall be renegotiated and, as such, shall be subject to approval by the State Board of Finance; or by mutual agreement of the Parties, this Lease Agreement shall be terminated and all real property exchanged pursuant to this Agreement and the Agreement Regarding Leases and Conveyances shall revert to the original parties in the proportion to the respective values of the parcels as of the date(s) of those exchanges; provided, that real property sold or leased to a third party, including real property subject to easements or parking rights, shall not be subject to reversion. The District and the County shall negotiate a fair and equitable recoupment of the costs of the reversion, site preparation and other costs incurred in connection with this Lease Agreement based on their respective contributions. Reversion pursuant to this Section 6 shall be deemed a termination of this Lease Agreement for purposes of Section 5(C) of the ABF Lease.

7. Preparation of Leased Parcel for Permitted Uses. Subject to the provisions of Section 4(F) of this Lease Agreement, the County shall be responsible for the preparation of the Leased Parcel for the Permitted Uses, including demolition and removal of existing improvements ("Site Preparation").

8. Quiet Enjoyment; Acknowledgement of Sublessee/Developer.

A. Subject to the District's right of occupancy as provided in Section 4(E) of this Lease Agreement, the County shall peaceably and quietly enjoy the Leased Parcel for the term hereunder, which peaceable and quiet enjoyment may include, without limitation, the subleasing of the Leased Parcel pursuant to the Development Sublease, as provided in Section 15 of this Lease Agreement.

B. Any Development Sublease executed by the County with a Sublessee/Developer shall recognize and acknowledge the interests of the District as specified herein and shall not be inconsistent with the terms hereof.

9. Dedication and Maintenance of Public Improvements. The District shall dedicate to the County streets, roads, public utilities and other improvements together with rights of way underlying such improvements, constructed for public use on the Leased Parcel by the County or a Sublessee/Developer. As between the District and the County, the County shall be solely responsible for any repair, replacement and maintenance of public improvements dedicated to the County; provided, that the County may impose upon the Sublessee/Developer requirements for repair, replacement and maintenance of public improvements in connection with the uses permitted under the Development Sublease.

10. Utilities; Other Costs. The County will provide utilities to the property line of the Leased Parcel from public rights of way in connection with the Development Sublease. The County shall be responsible for all costs associated with repairs, maintenance, insurance and utility charges in connection with the County Annex Building. The District shall be responsible for all costs of repairs, maintenance, insurance and utility charges in connection with the District Administrative Facilities.

11. Insurance Under Development Sublease. Public liability insurance shall be provided by the Sublessee/ Developer as provided in the Development Sublease, as amended, and shall provide coverage of the types and in the amounts required to be provided under the Sublease or available to the District through the New Mexico Public School Insurance Authority, whichever are greater. The Development Sublease shall include provisions requiring that the District be named an additional insured in all such public liability insurance policies and shall be notified of any anticipated cancellation or material modification of such coverage. In the event the County is the developer, it shall assure insurance coverage of its activities on the Leased Parcel is provided in accordance with the New Mexico Tort Claims Act.

12. Hold Harmless; Sublessee/Developer Indemnity.

A. In addition to the public liability insurance required as set forth in Section 11 of this Lease Agreement, the County shall include in the Development Sublease indemnity provisions substantially in the form attached to this Lease Agreement as Exhibit B.

B. To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Lease Agreement or the Development Sublease, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the

indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be modified, if required, by the provisions of Section 56-7-1(B) NMSA 1978.

13. Access. Prior to the date on which the Sublessee/Developer begins development activities on the Leased Parcel pursuant to the Development Sublease, the District may request access to the Leased Parcel, which request shall not be unreasonably denied by the County. After the date on which the Sublessee/Developer may begin development activities on the Leased Parcel pursuant to the Development Sublease, the District shall have such access as the County retains pursuant to the Development Sublease.

14. Casualty or Condemnation. In the event of any damage to the Leased Parcel from fire or other casualty, or in the event of the taking of any portion of the Leased Parcel by the exercise of the power of eminent domain or condemnation or the taking for public use of any portion of the Leased Parcel, so long as such damage or taking materially interferes with the County's use of the Leased Parcel for the Permitted Uses, this Agreement shall be terminated at the County's option as of the date of the damage or the vesting of titles or the taking of possession by the condemnor, after prompt notice of termination by the County to the District. The County shall provide notice to the District of the occurrence of damage or the initiation of any proceedings which may result in a taking for public use within fifteen (15) days of the County's knowledge of such event. The exercise by the County of its option to terminate or its determination that damage or taking of the Leased Parcel materially interferes with the County's use shall be subject to the dispute resolution procedure specified in Section 35 below.

15. Assignment; Subleasing.

A. The District may sell or assign its interest in the Leased Parcel subject to the County's rights and interests pursuant to this Agreement and the Development Sublease, which sale or assignment shall be subject to approval by the State Board of Finance. Prior to any sale or assignment by the District, the District shall deliver to the County a written offer to sell the Leased Parcel to the County at a purchase price equal to the amount of any offer received by the District not exceeding the fair market value of the Leased Parcel at that time, minus the value of the improvements, which offer may be accepted by the County within ninety (90) days and which sale shall be closed within an additional ninety (90) days thereafter, or within such other time period as the County and District mutually agree. The fair market value of the Leased Parcel minus the value of the improvements shall be determined by an appraiser selected by the District, acceptable to the County, and paid for by the District. Sale or assignment of by the District of its interest in the Leased Parcel shall be deemed to be a termination of the District's interest in this Lease Agreement for purposes of Section 5(C) of the ABF Lease.

B. The County may sublease the Leased Parcel for the Permitted Uses pursuant to a Development Sublease, as the same may be amended or modified, and as further provided in Subsections B and C of this Section 15. In the event that the Development Sublease is terminated prior to the expiration of its term, including any applicable renewal, the County may sublease the Leased Parcel to the extent permitted by law. The District shall have the right

to approve the Development Sublease, which approval shall be provided so long as the Development Sublease is consistent with the terms of this Master Ground Lease, and the rent payable pursuant to the Development Sublease is fair market rent as determined by an appraiser jointly selected by the County and the District and paid for by the County. If the District has not responded in writing within thirty (30) days following receipt from the County of the proposed Development Sublease and appraisal, the District's approval of the proposed sublease shall be deemed granted.

C. In connection with the Leased Parcel, the District hereby agrees to execute nondisturbance agreements and estoppel certificates reasonably requested by the County, the Sublessee/Developer or its sublessees.

D. The County shall remain liable under this Lease Agreement for all the terms and conditions hereunder unless expressly released by the District.

16. Taxes. The County shall include in any Development Sublease provisions that any taxes which may be assessed against leasehold improvements or personal property located on the Leased Parcel and any taxes which may become due on the respective interests of the District or the County as a result of this Lease Agreement shall be paid by the Sublessee/Developer.

A. As used in this Lease Agreement, the term "Taxes" means, to the extent applicable, all taxes, assessments, impositions, and other governmental charges, and of any kind and nature whatsoever payable with respect to the Leased Parcel, including, without limitation, assessments for public improvements, public works, special improvement districts, and similar assessments (which the County acknowledges may be assessed to all property owners who enjoy the benefits of such projects). Taxes shall include, without limitation: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, penalty or tax imposed by any taxing authority against all or any part of the Leased Parcel; (ii) any tax imposed upon the leasehold interest of a Sublessee/Developer or other subtenant of the Leased Parcel, or rent paid thereunder; (iii) any charge or fee replacing, substituting for, or in addition to any tax previously included within the definition of Taxes; (vii) all new or increased taxes, assessments, charges, levies or fees which are in lieu of or imposed or increased as a result of or arising out of any changes in structure of the current tax system. The County shall have the right to dispute or protest any Taxes, and the County shall be entitled to payment of any refund of Taxes or a credit for any Tax Credit associated with amounts paid by the County.

B. The District shall forward to the County, and the County shall pay all such Taxes levied and assessed against the Leased Parcel. If the County has underpaid Taxes, as shown on the District's statement, the County shall pay the difference within thirty (30) days following delivery of such statement. If the County has overpaid Taxes, such overpayment shall be credited to the County's next estimated payment(s) of Taxes. Taxes payable by the County, if any, shall be pro-rated for any partial tax year during the Term.

C. The County shall at all times be responsible for and shall pay, before delinquent, all taxes levied or assessed on any leasehold interest, any right of occupancy, any investment of the County in the Leased Parcel, or any personal property of any kind owned, installed or used by the County in or about the Leased Parcel, including the County's leasehold improvements, equipment, and trade fixtures.

D. Anything in this Section or otherwise in this Lease Agreement to the contrary notwithstanding, nothing in this Lease is intended by the District or the County to admit or imply that the Leased Parcel is subject to Taxes.

17. Nondiscrimination. The County agrees that it shall comply and shall include in any Development Sublease a requirement that the Sublessee/Developer shall comply with all federal and state non-discrimination laws, including Section 28-1-1 through 28-1-15 NMSA 1978, or in the use or occupancy of the Leased Parcel.

18. Non-Waiver. The failure of the District or the County to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Lease Agreement shall not be construed as a waiver or relinquishment of the right to future performance of such term, covenant, or condition.

19. Disposition of Improvements Following Expiration. Upon expiration of this Lease Agreement in accordance with and subject to the terms of this Lease Agreement, the County shall discontinue its operations on the Leased Parcel, and the County shall, at the option of the District: (i) surrender the Leased Parcel and any improvements thereon, in good, clean order and repair (ordinary wear and tear excepted), (ii) promptly surrender to the District possession of the Leased Parcel, (iii) remove from the Leased Parcel all of the County's personal property, and (iv) repair and restore any damage to the Leased Parcel caused by the removal of such personal property. Except as otherwise provided in Section 6 of this Lease Agreement, any public roads or other public improvements, excluding public parks or other property within the Leased Parcel developed for public recreational use, that have not previously been dedicated to the County as of the expiration of this Lease Agreement shall be dedicated by the District to the County at that time.

20. Notices. Any notice under the terms of the Lease Agreement shall be in writing, signed by the duly authorized representative of the party giving such notice, and shall be either hand delivered or mailed by US certified mail, return receipt requested, to the parties at their respective addresses set out below. Notice will be deemed to have been received three (3) days after mailing, if mailed, or upon delivery if hand-delivered.

To the District:

Los Alamos Public Schools  
Attn: Superintendent  
Post Office Box 90  
Los Alamos, NM 87544

with copies to:

President, Board of Education (at the above address)

To the County:

Incorporated County of Los Alamos  
Attn: County Administrator  
Post Office Box 30  
Los Alamos, NM 87544

21. Liens. The County shall at all times keep the Leased Parcel free and clear of all liens except those liens that may be permitted pursuant to the Development Sublease, which shall be subordinate to the interests of the District and the County in the Leased Parcel. If any liens are filed due to the County's tenancy or any of its activities thereunder, the County shall promptly and fully pay and discharge any such claims of liens to the extent that such liens affect the District's title to the Leased Parcel. The County shall give to the District written notice not less than fifteen (15) days in advance of the commencement of any construction, alteration, addition, or improvement work on the Leased Parcel in order that the District may post appropriate notices of the District's non-responsibility on the Leased Parcel. The County shall incorporate corresponding provisions in the Development Sublease. Notwithstanding anything in this Section 21 to the contrary, nothing in this Lease Agreement shall be construed as waiving the provisions of Sections 13-4-18 through 13-4-20 NMSA 1978, as amended.

22. Invalidity. If any provision of this Lease Agreement shall be held invalid, illegal or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remainder of this Lease Agreement.

23. Compliance with Laws; Permits.

A. The County shall incorporate provisions in the Development Sublease requiring the Sublessee/Developer's compliance at all times with all applicable federal, state, and local laws, rules and regulations.

B. The County shall incorporate in the Development Sublease provisions requiring that the Sublessee/Developer will obtain any special use permit or other permits or approvals as may be required for the Leased Parcel for Permitted Uses, and provisions providing



that failure to remedy the revocation or termination of any necessary special use permit, other permit or approval for Permitted Uses shall constitute a default under the Development Sublease.

24. Cooperation; Further Assurances. The District and the County shall cooperate, as lessor and sublessor, with the Sublessee in obtaining all necessary licenses and permits for the Permitted Uses. The District and the County shall provide such further assurances and shall execute and deliver such further instruments and agreements as are necessary or reasonably requested to carry out the purposes of this Lease Agreement and the Development Sublease.

25. Events of Default. Each of the following events shall constitute an "Event of Default" under this Lease Agreement:

A. Failure by either party to pay any amount required to be paid under this Lease Agreement on the date on which it is due and payable and such delinquency continues for a period of thirty (30) days after written notice to the party in default; provided, that nonpayment of rent by the County due to the Sublessee/Developer's failure to pay rent due under the Development Sublease or as a result of the termination of the Development Sublease shall be governed by the provisions of Subsections 4(B) and 4(C) of this Lease Agreement;

B. Failure by either party to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease Agreement, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the party in default by the other party; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the other party but cannot be cured within the applicable 30-day period, the non-defaulting party will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the party in default within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure either party is unable to carry out the agreements on its part herein contained, that party shall not be deemed in default under this Subsection B during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

C. Any warranty, representation or other statement by or on behalf of either party contained in this Lease Agreement or in any instrument furnished in compliance with or in reference to this Lease Agreement is false or misleading in any material respect;

D. A petition is filed against either party under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the other party shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect its interests;

E. Either party files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency,

readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

F. Either party admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of that party for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the other party shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect its interests.

26. Remedies.

A. Whenever any Event of Default has occurred and is continuing, the non-defaulting party may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the other party in this Lease Agreement:

(i) by mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the non-defaulting party under this Lease Agreement against the defaulting party, and compel the defaulting party to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein, by specific performance or otherwise; or

(ii) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the non-defaulting party; or

(iii) intervene in judicial proceedings that affect this Lease Agreement;  
or

(iv) take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Lease Agreement or to enforce any other of its rights thereunder.

B. No remedy herein conferred upon or reserved to either party is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the parties to exercise any remedy reserved in this Section 26, it shall not be necessary to give any notice, other than such notice as may be required in Sections 25 and 26.

C. The parties may, in their discretion, waive any Event of Default hereunder and the consequences of such an Event of Default; provided, however, no such waiver shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

D. Anything to the contrary in this Lease Agreement notwithstanding, this Lease Agreement shall not be terminated by the District while a Development Sublease or a replacement lease is in effect; provided, that the provisions of Section 4 of this Lease Agreement shall govern the District's remedies in connection with nonpayment of rent due to the Sublessee's nonpayment of amounts due pursuant to the Development Sublease.

27. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the District and the County and their respective successors and assigns, if any.

28. Amendments. This Lease Agreement may be amended only with the written consent of the District and the County, and shall be subject to the approval of the State Board of Finance.

29. No Liability of Members of the Governing Bodies, Individual Officers, Employees or Agents. To the maximum extent permitted by law, between the parties hereto, no recourse under or upon any obligation, covenant or agreement contained in this Lease Agreement shall be had against any member of the governing body of either the County or the District, any official, employee, agent or officer, as such, past, present or future, of the District or the County, past, present or future, as an individual so long as such individual was acting in good faith.

30. Severability. In the event that any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof unless the material benefits of this Lease Agreement as a whole are impaired with respect to either party.

31. Execution in Counterparts. This Lease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

32. Applicable Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

33. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease Agreement.

34. Entire Agreement. This Lease Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and may be amended or modified only by an instrument in writing duly executed by each of the parties hereto.

35. Recording. This Lease Agreement shall be recorded in the Real Property Records of the Clerk of Los Alamos County.

36. Dispute Resolution. The parties shall seek the intervention of and select an independent third party mediator in order to resolve disputes arising as to the interpretation, implementation or compliance with the terms of this Lease Agreement. Cost of the mediation shall be shared equally by the parties, and payment for such costs by the District and the County shall be on condition that sufficient funds have been appropriated by each of the parties for that purpose. Disputes which cannot be resolved by mediation and negotiation shall be resolved by judicial action filed in District Court in Los Alamos County.

BOARD OF EDUCATION OF THE LOS ALAMOS PUBLIC SCHOOLS, LESSOR

By: [Signature]  
Its President and authorized representative

1/28/10  
Date

INCORPORATED COUNTY OF LOS ALAMOS, LESSEE.

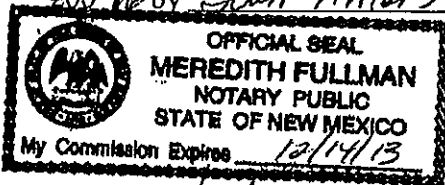
By: Michael E. Womer  
Its Council Chair

1-5-2010  
Date

NOTARY

STATE OF NEW MEXICO           )  
                                                  ) ss.  
COUNTY OF LOS ALAMOS       )

The foregoing instrument was acknowledged before me this 28 day of January, 2010 by Ken Ahlers, as authorized officer of Los Alamos Public Schools, Lessor.



Meredith Fullman  
Notary Public

12/14/13  
My Commission Expires

NOTARY

STATE OF NEW MEXICO )

) ss.

COUNTY OF LOS ALAMOS )

The foregoing instrument was acknowledged before me this 5th day of January, 2010 by Michael E. Weisman as authorized officer of the Incorporated County of Los Alamos.

Pauline W. Maister  
Notary Public

11-17-11  
My Commission Expires

ATTACHMENT A

List of Exhibits

Exhibit A      Replat of Tracts WA and WA-1 as Tracts L-1 and S-1

Exhibit B      Development Sublease Indemnity Provisions

**EXHIBIT A**

**Replat of Tracts WA and WA-1  
As  
Tracts L-1 and S-1**



**EXHIBIT B**

**Sublease Indemnity Provisions**

**1. INDEMNIFICATION**

- 1.1. Lessee shall indemnify, defend, and hold harmless the County and the District, and their employees and elected officials, from and against any and all loss, cost, liability, or expense (including attorneys' fees incurred in connection with, and/or staff attorneys' salaries allocable to, any action the County takes to enforce this Lease) for injury (bodily or otherwise) or damage to any person directly or indirectly caused by any action or omission of Lessee pursuant to or in furtherance of the tasks to be performed under this Lease.<sup>a</sup>
- 1.2. Except as expressly provided in this Lease, the County and the District, except to the extent caused by the negligence of the County or the District, shall not be responsible for damages to property or injuries or death that may arise from or be attributable or incident to the condition or state of repair of the Leased Parcel or the use and occupation of the Leased Parcel, or for damages to the property of the Lessee, or for damages to the property or injuries or death to the person of the Lessee's officers, agents, servants, employees, or sublessees, or others who may be on the Leased Parcel at their invitation or the invitation of any one of them.
- 1.3. The Lessee agrees to assume all risks of loss or damage to property and bodily injury or death to persons by reason of or incident to the possession or use of the Leased Parcel, or the activities conducted by the Lessee under this Lease. The Lessee expressly waives all claims against the County and the District for any such loss (including lost profits, revenues, and income), damage, bodily injury or death caused by or occurring as a consequence of such possession or use of the Leased Parcel or the conduct of activities or the performance of responsibilities under this Lease. The Lessee shall indemnify and hold harmless the County, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon bodily injury, death or property damage resulting from, related to, caused by or arising out of the possession or use of the Leased Parcel or any activities conducted or services furnished in connection with or pursuant to this Lease, any breach or default on the part of the Lessee in the performance or observance of any covenant or agreement to be performed or observed by it under this Lease, any materially false representation or warranty of the Lessee made in this Lease, and all claims for damages by the Lessee's sublessees against the County arising out of or related to their subleases; provided, however, that the foregoing shall not extend to any damages or injuries resulting or arising from the acts of County personnel properly cognizable under the applicable laws. The County will give the Lessee notice of any

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<sup>a</sup> By law, the County is prohibited from indemnifying any party.

claim covered by this indemnity as soon as practicable after becoming aware of its applicability. Nothing in this Lease shall be deemed or construed to waive any right, privilege, or immunity granted County pursuant to the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.*

- 1.4. The representations, warranties, covenants, and indemnifications of the Lessee contained in this Lease shall survive for a period of five (5) years after the latest to occur of: (i) the consummation of the transactions contemplated by this Lease; and (ii) the expiration or earlier termination of this Lease.

**EXHIBIT L**

**EXCEPTIONS TO GENERAL CONDITIONS REPRESENTATIONS**

The County received a Notice of Violation ("NOV"), dated December 14, 2009, which has been withdrawn by the New Mexico Environment Department contingent upon (i) the County building a retention pond or ponds of approximately 160,000 square feet on the site listed in the NOV as the Los Alamos County Municipal Annex, 901 Trinity Drive, and (ii) upon the existing asphalt on the Leased Premises being contained on the Leased Premises during and after construction. See attachment.



SUSANA MARTINEZ  
Governor

JOHN A. SANCHEZ  
Lieutenant Governor

**NEW MEXICO  
ENVIRONMENT DEPARTMENT**

***Surface Water Quality Bureau***

Harold Runnels Building, N2050  
1190 South St. Francis Drive (87505)  
P.O. Box 5469, Santa Fe, NM 87502-5469  
Phone (505) 827-0187 Fax (505) 827-0160  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)



DAVE MARTIN  
Secretary

BUTCH TONGATE  
Deputy Secretary

**Certified Mail - Return Receipt Requested**

December 20, 2011

Mr. Harry Burgess, County Administrator  
Los Alamos County  
1925 Trinity Drive  
Los Alamos, New Mexico 87544

**RE: Resolution of Notice of Violation (NOV) Incorporated County of Los Alamos**

Dear Mr. Burgess:

By notice of violation letter (NOV) dated December 14, 2009, the New Mexico Environment Department (Department) notified you that Los Alamos County (County) is in violation of the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 to 74-6-17, the *Ground and Surface Water Protection Regulations*, 20.6.2 NMAC, and the *Standards for Interstate and Intrastate Surface Waters*, 20.6.4 NMAC (Standards), issued by the Water Quality Control Commission pursuant to the Act. The water quality Standards are adopted to satisfy provisions of section 303 of the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* The violations occurred at the Los Alamos County Municipal Annex, and they affect natural watercourses that are surface waters of the State, which include an unnamed ephemeral tributary to Los Alamos Canyon. These violations were specified in the NOV.

To come into compliance with the Water Quality Act, the NOV specified several options for the County. One of these options was as follows:

No later than thirty (30) days after completion of the assessment, Los Alamos County must submit a plan for approval, and implement structural and non-structural controls such as covering, properly sized and operated containment ponds, berms, curbing, run-on diversion structures, oil/water separators, preventative maintenance, regular training, and inspections designed to prevent the pollution of surface waters of the State. The plans and specifications for the structural controls must be certified by a licensed New Mexico

Mr. Harry Burgess  
December 20, 2011  
Page 2

professional engineer. The plan must include one of the following structural control options, including an inspection and maintenance plan:

(1) Total onsite retention of runoff

The Department has reviewed your letter dated December 14, 2011 that responded to the NOV. The letter states that the County will conduct the following corrective actions to achieve compliance:

On or before July 1, 2012 complete construction of an unlined retention pond, or ponds, with a total capacity of not less than 162,715 cubic feet. The retention pond or ponds shall be constructed on the site listed in the NOV as the Los Alamos County Municipal Annex, 901 Trinity Drive in the Los Alamos County Townsite (Site). The retention pond or ponds shall accommodate a 100 year/24 hour storm event. The retention pond drainage area shall not include the undisturbed down-sloping portion of the Site immediately adjacent to the canyon. See Exhibit A for drainage area, proposed retention pond conceptual design.

Maintain the retention pond or ponds so that the average depth of the sediment in each retention pond is no greater than one foot and the aggregate accumulation of sediment is less than ten per cent of the total pond volume.

Report to the Department any retention pond design changes necessitated by development on the Site, other than that proposed development existing on December 12, 2011 as depicted on Exhibit B, prior to implementing those retention pond design changes. The Department may comment on any design changes, and any comments must be addressed.

In addition, the County must also provide to the Department a final report by July 15, 2012, which includes as-built drawings certified by a licensed New Mexico professional engineer. Provided that the corrective actions specified in your December 14, 2011 letter are fully implemented, and the final report is submitted, the Department has determined that the violations cited in the NOV will be adequately addressed. Upon implementation of these corrective actions, no further action relative to the NOV on the part of the County will be required. Failure to fully and adequately implement these corrective actions may result in additional enforcement actions against the County by the Department.

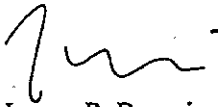
By separate letter, also dated December 14, 2009, the Department proposed a civil penalty in a settlement offer to settle claims for the violations described in the NOV. In this case, provided that the corrective actions are fully implemented by July 1, 2012, and the final report is submitted to the Department by July 15, 2012, the Department will use its discretion to waive this penalty.

ATTACHMENT A

Mr. Harry Burgess  
December 20, 2011  
Page 3

Any action taken in response to this letter does not relieve the County of its obligation to comply with any other applicable laws and regulations. If you have any questions regarding this letter, please contact Rich Powell of my staff at (505) 827-2798 or [richard.powell@state.nm.us](mailto:richard.powell@state.nm.us).

Sincerely,



James P. Bearzi  
Chief  
Surface Water Quality Bureau

cc: C. de Saillan, NMED OGC  
R. Powell, NMED SWQB

ATTACHMENT A

**EXHIBIT M**

**LANDLORD'S WORK**

To be completed and agreed upon by the Parties in writing within ninety (90) days of the Effective Date.

EXHIBIT N

FORM OF ASSIGNMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"). The parties hereby agree as follows:

1. Leases. The term "Leases" means those leases, tenancies and occupancy agreements (as amended, modified, or supplemented) pertaining to the real property located at \_\_\_\_\_, legally described on Exhibit A attached to this Assignment and which are described on Exhibit B attached to this Assignment.

2. Assignment. For good and valuable consideration received by Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby grants, transfers, conveys and assigns to Assignee the entire right, title and interest of Assignor in and to the Leases, including, without limitation, Assignor's right, title and interest to any rents and security deposits relating to such Leases.

3. Assumption. Assignee hereby accepts the assignment of the Leases and assumes the covenants, agreements and obligations of Assignor under the Leases which accrue from and after the date of this Assignment.

4. Power and Authority. Assignor and Assignee each represents and warrants to the other that it is fully empowered and authorized to execute and deliver this Assignment, and the individual signing this Assignment on behalf of such party is fully empowered and authorized to do so.

5. Mutual Indemnification. Assignor shall indemnify and defend Assignee from and against any claims, demands, losses, liabilities, damages, judgments, costs or expenses (including reasonable attorneys' fees and court costs) incurred or sustained by Assignee as a result of any breach by Assignor of the terms, covenants and provisions of the Leases which arose prior to the date of this Assignment. Assignee shall indemnify and defend Assignor harmless from and against any claims, demands, losses, liabilities, damages, judgments, costs or expenses (including reasonable attorneys' fees and court costs) incurred or sustained by Assignor as a result of any breach by Assignee of the terms, covenants and provisions of the Leases subsequent to the date of this Assignment.

6. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

7. Counterpart Execution. This Assignment may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

8. Governing Law. This Assignment shall be construed and enforced in accordance with the laws of the State of New Mexico, without regard to principles of conflict of law.



**IN WITNESS WHEREOF**, Assignor and Assignee have caused their duly authorized representatives to execute this Assignment as of the date first above written.

**ASSIGNOR**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTACHMENT A

**EXHIBIT O**

**EASEMENT AREA**

To be completed and agreed upon by the Parties in writing within ninety (90) days of the Effective Date.