

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.

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 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, or by mutual agreement of the Parties, 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. 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 deemed provided so long as the rent payable pursuant to the Development Sublease is fair market rent as determined by an appraiser selected by the County, acceptable to 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 for its review, 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. 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.

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. 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: _____
Its President and authorized representative Date _____

INCORPORATED COUNTY OF LOS ALAMOS, LESSEE

By: _____
Its _____ Date _____

NOTARY

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

The foregoing instrument was acknowledged before me this ____ day of _____,
200__ by _____, as authorized officer of Los Alamos Public Schools, Lessor.

Notary Public

My Commission Expires:

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 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.^a
- 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

^a 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.