

LEASE OF REAL PROPERTY

Between

The Regents of the University of New Mexico, Landlord

And

, Tenant

Date:

Note: Form Approved, February, 1996
This Lease Agreement may not be modified in any manner without prior approval of the Director of Real Estate, UNM or University Counsel.

UNIVERSITY OF NEW MEXICO
LEASE OF REAL PROPERTY

This lease is entered into as of _____ between **The Regents of the University of New Mexico**, a body Corporate of the State of New Mexico, Landlord, and _____, Tenant.

WITNESSETH:

Landlord and Tenant agree as follows:

1. **PROPERTY LEASED.** In consideration of the conditions and agreements in this lease (the "Lease"), Landlord leases to Tenant, and Tenant hires from Landlord, the real property situated in Albuquerque, County of Bernalillo, New Mexico, described as:

(a) Street address of property, including room or suite number(s) if applicable:
_____ (the "Building")

(b) Square footage: _____

(c) Parking facilities and capacity: None

Attach as exhibits:

- "A" Scaled floor plan showing leased premises;
- "B" Inventory of Landlord's property, if any;
- "C" Tenant's improvements provided by Landlord, if any
- "D" Legal description.
- "E" Insurance certificates.

The leased property is referred to herein as the "Premises" or "Leased Premises."

2. **TERM.** The initial term of this Lease is for _____ months commencing _____ ("Commencement Date") and expiring _____ ("Expiration Date").

3. **OPTION TO RENEW.** In partial consideration for the rent paid under this Lease, Landlord grants Tenant, its successors and assignees an option to renew this Lease. The Renewal shall be for _____ consecutive term of _____ months each, and shall be subject to the same conditions and agreements set forth in the Lease for the initial term, except as follows:

[specify or state none

4. **DELIVERY OF POSSESSION AND CONDITION.** Tenant has been in possession of the premises and accepts the condition of the premises. Tenant accepts the premises and the building as is, with all faults.

4.1 **COMPLIANCE.** Tenant acknowledges if the improvements on the Premises do not comply with all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances ("Applicable Requirements") in effect on the Commencement Date or if the Applicable Requirements are hereafter changed, so as to require during the term of this Lease the construction of an addition to or an alteration of the Building, or the reinforcement or other physical modification of the Building, Tenant shall be responsible for and pay the cost of Tenant's share of compliance amortized over the Lease term and the useful life such addition, alteration or physical modification.

4.2 **ACKNOWLEDGEMENT.** Tenant acknowledges that: (a) it has been advised by Landlord to satisfy with respect to the condition of the Premises (including but not limited to the electrical, HVAC, and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements, and their suitability for Tenant's intended use; (b) Tenant had made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefore as the same relate to its occupancy of the Premises; and (c) neither Landlord nor Landlord's agents has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease.

5. **COMMON AREAS.** None

6. HOLDING OVER. Tenant's holding over or continued use or occupancy shall be construed as a tenancy from month to month at 125 percent of the monthly rent and subject to the same conditions set forth in this Lease.

7. RENT. In consideration of this lease, Tenant shall pay rent in the amount of _____ (\$ _____) per month, payable in advance on the first day of each month. Tenant shall mail all payments to Landlord at the address specified in Paragraph 31 herein, unless advised otherwise in writing by Landlord.

7.1 SECURITY DEPOSIT. Tenant shall deposit with Landlord upon execution hereof Two Hundred and Fifty Dollars (\$250.00) the "Security Deposit" as security for Tenant's faithful performance of its obligations under this Lease. If Tenant fails to pay Rent, or otherwise defaults under this Lease, Landlord may use, apply or retain all or any portions of said Security Deposit for the payment of any amount due Landlord or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord uses or applies all or any portion of the Security Deposit, Tenant shall within 10 days after written request therefore deposit monies with Landlord sufficient to restore said Security Deposit to the full amount required by this Lease. If a change in control of Tenant occurs during this Lease and following such change the financial condition of Tenant is, in Landlord's reasonable judgment, significantly reduced, Tenant shall deposit such additional monies with Landlord as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Landlord shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Landlord elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated, Landlord shall return that portion of the Security Deposit not used or applied by Landlord. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Tenant under this Lease.

7.2 COMMON AREA OPERATING EXPENSES. NONE

8. USE OF LEASED PREMISES. Tenant shall use and occupy the Premises only for _____ and for no other purpose. Tenant shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or nuisance, or that disturbs owners and/or occupants of, or causes damage to neighboring properties.

9. UTILITIES AND JANITORIAL SERVICES. Utilities, services and supplies, and taxes and assessments shall be paid for by the party indicated by an "X".

	LANDLORD	TENANT
	UNM	
(a) water	[]	[]
(b) sewer	[]	[]
(c) refuse disposal	[]	[]
(d) natural gas	[]	[]
(e) electricity	[]	[]
(f) janitorial service & supplies	[]	[]
(g) landscaping, grounds, and parking lot maintenance	[]	[]
(h) property taxes	[]	[]
(i) fire & extended coverage insurance	[]	[]
(j) general liability insurance	[x]each	[x]each
(k) other: NONE	[]	[]

9.1 UTILITIES. Tenant shall pay for all water, gas, heat, light, power, telephone, trash disposal, and other utilities supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of this Lease, if at any time in Landlord's sole judgment, Landlord determines that Tenant is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Tenant is generating such a large volume of trash as to require an increase in the size of the dumpster and/or an increase in the number of times per month that the dumpster is emptied, the Landlord may increase Tenant's Rent by an amount equal to such increased costs.

10. DUTY TO INSURE.

10.1 TENANT'S INSURANCE

(a) Liability Insurance. Tenant shall obtain and keep in force a Commercial General Liability policy of insurance protecting Tenant and Landlord as an additional insured against claims for bodily injury, personal injury, and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto including the Common Areas. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured Contract" for the performance of Tenant's indemnity obligations under this lease.

(b) Property Damage. Tenant shall obtain and maintain insurance coverage on all of Tenant's personal property, trade fixtures, and Tenant owned alterations and utility installation. Such Insurance shall be full replacement cost coverage with a deductible not to exceed \$1,000.00 per occurrence.

(c) Tenant's Insurance Policies. Insurance required herein by Tenant shall be by companies duly licensed or admitted to transact business in the state where the Premises are located and maintaining during the policy term a "General Policyholders Rating" of at least a B+, V, as set forth in the most current issues of "Best's Insurance Guide", or such other rating as may be required by a Lender. Tenant shall not do or permit to be done anything which invalidates the required insurance policies. Tenant shall, prior to the Commencement Date, deliver to Landlord certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Landlord. Tenant shall, at least 30 days prior to the expiration of such policies, furnish Landlord with evidence of renewals or "insurance binders" evidencing renewal thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant to Landlord upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

10.2 LANDLORD'S INSURANCE

(a) Tenant understands, agrees and consents and acknowledges that Landlord is self-insured through the State of New Mexico Risk Management Division, with limits on liability as established by the New Mexico Tort Claims Act. Tenant specifically consents to coverage of the type obtained by Landlord for its buildings through the State of New Mexico Risk Management Division. Landlord shall not carry insurance covering Tenant's property or improvements.

(b) During the term of this Lease and any extension thereof, Landlord shall provide coverage for liability of Landlord and its "public employees," as defined in the New Mexico Tort Claims Act.

10.3 GENERAL.

(a) Waiver of Subrogation. Without affecting any other rights or remedies, Tenant and Landlord each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance is not invalidated thereby.

(b) Tenant's Indemnity. Except for Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect defend and hold harmless the Premises, Landlord and its agents, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises, the Common Areas, or the Project by Tenant. If any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant shall upon notice defend the same at Tenant's expense by counsel reasonable satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be defended or indemnified.

(c) Exemption of Landlord from Liability. Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, including the Common Area, or the Project whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain,

or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord nor from the failure of Landlord to enforce the provisions of any other lease in the Project. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business or for any loss of income or profit therefrom.

11. IMPROVEMENTS BY LANDLORD. Landlord agrees to make the following improvements or alterations prior to the commencement date of the Lease:

[specify or state none

12. DUTY TO MAINTAIN PREMISES.

12.1 TENANT'S OBLIGATIONS.

(a) Tenant shall, at Tenant's sole expense, keep the Premises, and alterations in good order, condition and repair, including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Landlord pursuant to Paragraph 12.2. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) Failure to Perform. If Tenant fails to perform Tenant's obligations under this paragraph 12.1, Landlord may enter upon the Premises after 10 days prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf, and put the Premises in good order, condition and repair, and Tenant shall promptly reimburse Landlord for the cost thereof.

12.2 LANDLORD'S OBLIGATIONS. Landlord, subject to reimbursement pursuant to Paragraph 7.2, for Common Area operating expenses shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, (if any), fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 7.2. Landlord shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Landlord be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Tenant expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

13. RIGHT OF ENTRY. Landlord or his agent has a right to enter the premises to inspect, to make repairs, and for other reasonable purposes but only with Tenant's prior permission, which shall not be unreasonably withheld. In an emergency, such as fire, Landlord or his agent may enter the Premises without securing Tenant's prior permission, but shall give Tenant notice of entry as soon thereafter as practicable.

14. DAMAGE TO PREMISES. If all or any part of the Premises shall be so damaged or destroyed through any cause, other than Tenant's willful act, as to be rendered unfit for Tenant's occupancy, Tenant may declare this Lease terminated and rent shall be payable only to the date of the damage. Alternatively, Tenant in its sole discretion, may continue to occupy any portion useful to it, and the rent shall abate in proportion to the portions not useful to Tenant.

If all or any part of the Leased Premises shall be damaged through any cause (other than Tenant's willful act or ordinary wear and tear), but shall not be rendered unfit for Tenant's occupancy, Landlord shall repair the premises with all reasonable promptness at Landlord's expense, and the rent shall abate proportionately until repairs are completed. However, if Landlord fails to promptly commence or to expeditiously complete repairs necessary to restore the premises to their former condition, Tenant may declare this Lease terminated and Rent, including any fair abatement thereof, shall be payable only to the date of termination.

Landlord's decision as to whether all or any part of the Premises is unfit for occupancy shall be final, but Landlord's decision shall be reasonable in the circumstances.

15. ALTERATIONS. Tenant shall obtain the Landlord's prior written permission before making any

alterations or improvements which cannot be removed without damage to the premises.

16. **OWNERSHIP OF IMPROVEMENTS.** All alterations and improvements made to the premises by Tenant, which can be removed without damage to the Premises, are and shall remain the Tenant's property except as the parties mutually agree otherwise in writing. Such alterations and improvements shall be removed from the Premises at the termination of this Lease or any renewal thereof or within such additional time as granted by the Landlord in writing. Alterations and improvements of a permanent nature which cannot be removed without undue damage to the Premises shall immediately become Landlord's property except as the parties mutually agree otherwise in writing.

17. **CONDITION OF PREMISES UPON SURRENDER.** At the termination of this Lease, Tenant shall surrender the Premises in the condition in which they were on the Commencement Date of this lease, excepting:

- (a) Deterioration caused through reasonable use and ordinary wear and tear;
- (b) Alterations, improvements or additions made with Landlord's express approval;
- (c) Any change, damage or destruction not resulting from Tenant's negligent or willful act;
- (d) Conditions required to be repaired by Landlord or covered by insurance which

Landlord is required to carry under this Lease.

18. **HAZARDOUS WASTE.** Landlord warrants that to the best of Landlord's knowledge there are no hazardous waste substances, toxic waste substances, radioactive waste substances, regulated substances, asbestos, PCBs or other substances (the word "substance" includes liquids, solids and gases) potentially dangerous to human health or the environment or which may require remedy at the behest of any governmental authority located on, in or under the Premises and Landlord has received no notice and has no independent knowledge of the possible or actual disposal or use of any such substances on, in or under the Premises or any violation or claimed violation of the laws, rules and regulations relating to hazardous waste substances, toxic waste substances, radioactive waste substances, regulated substances, asbestos, PCBs or other similar substances; to the extent any of the above-mentioned substances are removed from or remediated at the Premises by the Landlord, Landlord will also provide verification of such removal or remediation. The Landlord warrants that the Premises do not contain any underground treatment or storage tanks or gas or oil wells.

19. **COMPLIANCE WITH ENVIRONMENTAL LAWS.** Tenant and Landlord mutually agree that individually they shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection of the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any oil, petroleum products, flammable explosives, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous toxins, contaminated or polluting materials, substances or waste, including, without limitations, any "hazardous substances", "hazardous materials", "toxic substances" or "regulated substance" under any such laws, ordinances or regulations (collectively, "Hazardous Materials").

20. **PAYMENT OF ASSESSMENTS, ETC.** Landlord shall pay as they become due all assessments, charges, mortgages, liens and taxes payable in respect to the leased premises during the initial term of this Lease, and any renewal or extension thereof. If Landlord defaults in paying any such amounts, Tenant, in its sole discretion, may pay any such assessment, charge, mortgage, lien or tax. Upon doing so, Tenant shall be subrogated to the creditor's rights and may deduct the cost of such payment from rent.

21. **RIGHT TO ASSIGN OR SUBLEASE.** Tenant has the right to assign or sublease the leased premises or any part to any other University administered programs including without limitation, any University auxiliary, collaboration or joint venture, for any remaining term of this Lease or extension thereof. Tenant shall not otherwise assign or sublease the leased premises without first obtaining the written consent of Landlord, which shall not be unreasonably withheld.

22. **LIABILITY.** As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees or agents. The liability of the University of New Mexico shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

23. **DEFAULT; BREACH: REMEDIES.**

23.1 DEFAULT; BREACH. A "Default" is defined as a failure by the Tenant to comply with or perform any of the terms, covenants, conditions or rules under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Tenant to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 10 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Tenant to make any payment of Rent, Common Area Operating Expense or any Security Deposit required to be made by Tenant hereunder, whether to Landlord or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) business days following written notice to Tenant.

(c) The failure of Tenant to provide:

- (i) reasonable written evidence of compliance with Applicable Requirements,
- (ii) the rescission of an unauthorized assignment or subletting,
- (iii) a requested subordination,
- (iv) evidence concerning any guaranty and/or Guarantor,
- (v) any other documentation or information which Landlord may reasonable require of Tenant under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Tenant.

(d) A Default by Tenant as to the terms, covenants, conditions or provisions of this Lease other than those described in subparagraphs 23.1 (a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Tenant's Default is such that more than thirty (30) days are reasonable required for its cure, then it shall not be deemed to be a Breach if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events:

- (i) the making of any general arrangement or assignment for the benefit of creditors;
- (ii) becoming a "debtor" as defined in 11 U.S.C. section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days);

- (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days;

- (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Tenant or of any Guarantor given to Landlord was materially false.

(g) the performance of Tenant's obligations under this Lease is guaranteed:

- (i) the death of a Guarantor;
- (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty;

- (iii) guarantor's becoming insolvent or the subject of a bankruptcy filing;
- (iv) a guarantor's refusal to honor the guaranty;
- (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Tenant's failure, within sixty (60) days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Tenant, equals or exceeds the combined financial resources of Tenant and the Guarantors that existed at the time of execution of this Lease.

23.2 REMEDIES. If Tenant fails to perform any of its affirmative duties or obligations, within thirty (30) days after written notice (or in case of an emergency, without notice), Landlord may, at its option, perform such duty or obligation on Tenant's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Landlord shall be due and payable by Tenant upon receipt of invoice therefore. If any

check given to Landlord by Tenant shall not be honored by the bank upon which it is drawn, Landlord, at its option, may require all future payment to be made by cashier's check. In the event of a Breach, Landlord may, with or without further notice or demand, and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Breach:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession to Landlord. In such event Landlord shall be entitled to recover from Tenant:

(i) the unpaid rent which had been earned at the time of termination;
(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided;

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided;

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with this lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent (1%). If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 23.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Tenant under the unlawful detainer statute shall also constitute the notice required by Paragraph 23.1. In such case, the applicable grace period required by Paragraph 23.1 and the unlawful detainer statute shall run concurrently, and the failure of Tenant to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of the Lease entitling Landlord to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Tenant's right to possession and recover the Rent as it becomes due, in which event Tenant may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Landlord's interests, shall not constitute a termination of the Tenant's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Tenant's occupancy of the Premises.

23.3 INDUCEMENT RECAPTURE. Any agreement for free or abated rent or other charges, or for the giving or paying by Landlord to or for Tenant of any cash or other bonus, inducement or consideration for Tenant's entering into this Lease, all of which concession are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Tenant's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of the Lease by Tenant, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration therefore abated, given or paid by Landlord under such an Inducement Provision shall be immediately due and payable by Tenant to Landlord, notwithstanding any subsequent cure of said Breach by Tenant. The acceptance by Landlord of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Landlord of the provisions of this paragraph unless specifically so stated in writing by Landlord at the time of such acceptance.

23.4 LATE CHARGES. Tenant hereby acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by any Lender. Accordingly, if any Rent shall not be received by Landlord within five (5) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a one-time late charge equal to ten percent (10%) of each such overdue amount. The parties hereby agree that such late charges represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Acceptance of such late charge by Landlord shall in no

event constitute a waiver of Tenant's Default or Breach with respect to such overdue. Amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base rent shall, at Landlord's option, become due and payable quarterly in advance.

23.5 INTEREST. Any monetary payment due Landlord hereunder, other than late charges, not received by Landlord, when due as to scheduled payments or within thirty (30) days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the thirty-first (31st) day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be equal to the prime rate reported in the Wall Street Journal as published closest prior to the date when due plus four percent (4%), but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in paragraph 23.4.

23.6 BREACH BY LANDLORD.

(a) Notice of Breach. Landlord shall not be deemed in breach of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord. For purposes of this paragraph, a reasonable time shall in no event be less than thirty (30) days after receipt by Landlord; of written notice specifying wherein such obligation of Landlord has not been performed; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its performance, then Landlord shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

(b) Performance by Tenant on Behalf of Landlord. In the event that Landlord has not cured said breach within thirty (30) days after receipt of said notice, or if having commenced said cure Landlord diligently pursue it to completion, then Tenant may elect to cure said breach at Tenant's expense and offset from Rent an amount equal to the greater of one month's Rent or the Security Deposit, and to pay an excess of such expense under protest, reserving Tenant's right to reimbursement from Landlord. Tenant shall document the cost of said cure and supply said documentation to Landlord.

24. LANDLORD'S RIGHT TO MORTGAGE, SELL OR ASSIGN; ATTORNMENT. Throughout the term of this Lease, and any extension thereof, Landlord shall have the right to mortgage, assign, sell or otherwise convey its interest in the Leased Premises and Tenant shall, at the request of Landlord, subordinate its interest to that of any mortgagee or other lender of Landlord; provided, however, that Tenant's quiet enjoyment of the premises shall not be disturbed so long as Tenant pays the rent and fulfills the other obligations imposed upon it by this Lease. Upon request of Landlord, Tenant will execute any document reasonably required to give effect to this paragraph. In the event of a transfer or mortgage of Landlord's interest in the premises, or upon Landlord's written request, Tenant agrees to execute, acknowledge and deliver to Landlord, within ten (10) days after written request, in recordable form, a certificate certifying that the rights of Tenant in the premises are subordinate to and inferior to those of the mortgage lender and certifying, among other things, that this Lease is in full force and effect; that there are no deficiencies or offsets thereto, or stating those claimed by Tenant, as the case may be; that there are no uncured defaults in Landlord's performance thereunder; and that not more than the current month's rent has been paid in advance as of the date the written request was delivered. Tenant agrees that failure by Tenant to deliver such statement within such time shall be deemed conclusively to mean that this Lease is in full force and effect without modifications except as may be represented by Landlord and that the requested representations are true and correct. In the event any proceedings are brought for foreclosure under any mortgage or deed of trust made by the Landlord or any predecessor or any successor covering the Premises, the Tenant shall attorn to the purchaser upon any foreclosure sale and recognize such purchaser as the Landlord under this Lease.

25. QUIET ENJOYMENT. Landlord covenants that if and so long as Tenant pays the rent and performs the covenants hereof; Tenant shall peaceably and quietly have, hold and enjoy the premises for the term herein mentioned, subject to the provisions of this Lease.

26. LEASE BINDING ON HEIRS, ETC. This Lease is binding upon the heirs, executors, administrators, personal representatives, assignees and successors in interest of the parties.

27. AMENDMENTS TO BE IN WRITING. This Lease shall not be altered or amended except by instrument in writing executed by the parties.

28. MERGER OF PRIOR AGREEMENTS. This Lease incorporates all of the conditions, agreements and understandings between the parties concerning the subject matter of this Lease, and all such

conditions, understandings and agreements have been merged into this written Lease. No prior condition, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Lease.

29. ADDRESS FOR NOTICES, PAYMENT OF RENT, ETC. Notices require Under this Lease and rental payments shall be made at the following addresses, except as changed by written notice to the opposite party:

(a) Landlord: **Real Estate Office
ATTN: Kim D. Murphy, Director
MSC01 1030
1 University of New Mexico
Albuquerque, NM 87131**

(b) Tenant:

