



**NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
SPECIAL MEETING
June 6, 2025 at 3:00 PM**

Online and livestreamed at: <https://nmsu.zoom.us/j/82240874731>

Regents of New Mexico State University

Chair Ammu Devasthali, Vice Chair Deborah Romero, Secretary/Treasurer Christopher T. Saucedo, Marisol Olivas, Ricardo Gonzales

Non-Voting Advisory Members - ASNMSU President Wyatt Ziehe, Faculty Senate Chair Vimal Chaitanya, Ph.D., Employee Council Chair Donna Johnson

University Officials - President Valerio Ferme, Ph.D., Interim Provost Lakshmi Reddi, Ph.D., General Counsel Lisa Henderson, J.D.

AGENDA

A. Call to Order, Chairwoman Ammu Devasthali

- 1. Confirmation of Quorum, Chairwoman Ammu Devasthali**
- 2. Approval of the Agenda, Chairwoman Ammu Devasthali**

B. Consent Items, Chairwoman Ammu Devasthali

- 1. Ground Lease for Aggie Uptown (Blake's Lotaburger), President of Aggie Development Incorporated Scott Eschenbrenner**

C. Action Items

- 1. Alumni Pond Reconstruction, University Architect Berta Zubiarte**
- 2. Aquatics Center Renovation, University Architect Berta Zubiarte**

D. Informational Items

- 1. None.**

E. Announcements and Comments, Chairwoman Ammu Devasthali

F. Adjournment, Chairwoman Ammu Devasthali



Board of Regents Meeting
Meeting Date: June 6, 2025
Agenda Item Cover Page

Agenda Item # B-1

- ☐ Action Item
☒ Consent Item
☐ Informational Item

Presented By:

Scott Eschenbrenner
President – Aggie Development Inc.

Agenda Item:

Ground Lease for Aggie Uptown (Blake's Lotaburger)

Requested Action of the Board of Regents:

Approval of the Ground Lease

Executive Summary:

Terms of the Agreement

- First Years Rental Rate - \$80,000 (Years 1-5)
 - 10% increases every 5 years
 - 35-year total term
 - 8% return for Aggie Development on \$1,000,000 land value
 - \$20.57 per square foot land value
 - 1.116-acre site or 48,612 square feet
 - Net Present Value of 20-year cash flow discounted at 5% = \$1.6m
 - Rent Commencement Date – 300 days after lease is executed
-
- ADI to deliver water line, 3-phase electrical service, natural gas, telephone to support internet service to the property line. These services are in place and will be confirmed with the tenant.
 - ADI to pay the cost of tenant's leasehold title insurance policy. Tenant will pay for survey and geotechnical testing.
 - Future Exclusive – None
 - Easement and Access – Landlord and tenant to have easement agreements supporting utilities and access to and from the parcel.
 - Right of First Offer – Tenant will have an on-going right of first offer to purchase the Property should the Landlord decide to sell the property. The Right of First Offer does not apply if the Regents of NMSU choose to sell the property as part of a larger sale of university property.
 - Real Estate Commission – Landlord to pay SVN, Walt Arnold Commercial Brokerage, Inc. a 3% commission based on the first 15-years of the lease term for a total of \$39,720 plus NMGRT. Commission to be paid upon rent commencement.

GROUND LEASE AGREEMENT

between

AGGIE DEVELOPMENT, INC.,
a New Mexico Nonprofit Corporation,
as “Landlord”

and

BLAKE’S LOTABURGER, LLC,
DBA as Blake’s Lotaburger
a Delaware Limited Liability Company,
as “Tenant”

SWC of University Avenue & Telshor Boulevard

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT is made and entered into as of the Effective Date (defined in Exhibit A), by and between AGGIE DEVELOPMENT, INC., a New Mexico nonprofit corporation, as Landlord, and BLAKE'S LOTABURGER, LLC, a Delaware limited liability company, as Tenant.

1. DEFINITIONS. Capitalized terms used in this Lease have the meanings ascribed to them on the attached Exhibit A or as defined herein.

2. BASIC LEASE TERMS. The following Basic Lease Terms are hereby incorporated into the Lease:

2.1 Premises: That certain real property located in the County of Dona Ana, State of New Mexico, consisting of approximately 1.116 acres, with an address of SWC of University Avenue & Telshor Boulevard, as more particularly described on Exhibit B and depicted on the Site Plan on Exhibit C, both attached hereto and incorporated herein.

2.2 Commencement Date: The earlier of (i) the date that Tenant opens for business to the public as a fast food chain restaurant on the Premises; or (ii) three hundred (300) days after the Effective Date.

2.3 Length of the Initial Term: Fifteen (15) years from Commencement Date.

2.4 Expiration Date: The last day of the month in which the fifteenth (15th) annual anniversary of the Commencement Date occurs.

2.5 Extension Options: Four (4) options to extend the term of the Lease for a period of five (5) years each.

2.6 Feasibility Period: One hundred twenty (120) calendar days from and after the Effective Date.

2.7 Rent: Tenant will pay Rent to Landlord from the Commencement Date and thereafter throughout the Term, as follows:

Period	Annual Rent	Monthly Rent
Years 1-5	\$80,000.00	\$6,666.67
Years 6-10	\$88,000.00	\$7,333.33
Years 11-15	\$96,800.00	\$8,066.67
(First Extension Period)		
Years 16-20	\$106,480.00	\$8,873.33
(Second Extension Period)		
Years 21-25	\$117,128.00	\$9,760.67
(Third Extension Period)		
Years 26-30	\$128,840.80	\$10,736.73
(Fourth Extension Period)		
Years 31-35	\$141,724.88	\$11,810.41

2.8 Landlord's Address for Notices:

Aggie Development, Inc.
MSC 30RE, PO Box 30001
Las Cruces, New Mexico 88003
Attn: Scott Eschenbrenner
Email: sbrenner@nmsu.edu
Phone: 575-646-2356

2.9 Tenant's Address for Notices:

Blake's Lotaburger, LLC
3205 Richmond Drive NE
Albuquerque, NM 87107
Attn: Ross Brown, VP of
Facilities & Development

With copies to:

Attn: Legal Department

And:

Attn: Chief Financial Officer

2.10 Tenant's Broker:

Steve Lyon, CCIM
Senior Advisor
SVN Walt Arnold Commercial
Brokerage, Inc.
Phone: 505-934-9994

2.11 Exhibits: The following Exhibits are attached hereto and incorporated herein by this reference:

Exhibit A:	Defined Terms
Exhibit B:	Legal Description of the Premises
Exhibit C:	Site Plan of the Premises
Exhibit D:	Memorandum of the Lease
Exhibit E:	Confirmation of Lease Terms

3. PREMISES. For the Rent and subject to the terms and conditions hereinafter set forth, Landlord hereby leases to Tenant the Premises, together with the non-exclusive use of all rights, privileges, easements and appurtenances belonging or in any way pertaining to the Premises, but not to exceed Landlord's corresponding use of the rights, privileges, easements and appurtenances.

4. TERM.

4.1 Preliminary Period. The Preliminary Period is composed of a Feasibility Period and a Construction Period. The Feasibility Period will commence as of the Effective Date and will expire upon the commencement of the Construction Period, unless this Lease is otherwise terminated. The Construction Period will begin upon Tenant delivering the Feasibility Notice to Landlord and will expire upon the Commencement Date. All the terms and conditions of this Lease will become effective as of the Effective Date, provided Tenant has no obligation to pay Rent or any other charges or additional rent until after the Commencement Date.

4.2 Term. The Term of this Lease is composed of (i) the Initial Term; and (ii) any applicable Extension Periods. Provided the Lease has not been terminated, the Term will commence on the Commencement Date, and expire on the Expiration Date (subject to Tenant's right to extend the Term as hereinafter described). Once the Commencement Date has been determined, the parties will confirm in

writing the actual Commencement Date and Expiration Date, and the actual dates of the Extension Periods (as hereinafter defined) and the exercise dates therefor, by entering into a Confirmation of Lease Terms in the form attached hereto as Exhibit E.

4.3 Options to Extend. Tenant will have four (4) options (each, an “**Extension Option**”) to extend the Term for consecutive periods of five (5) additional years each (each additional five (5) year period is hereinafter referred to as an “**Extension Period**” and are collectively known as “**Extension Periods**”) with respect to the Premises so that Tenant may extend the Term for a total of twenty (20) additional years after the Initial Term. All provisions of this Lease will remain in full force and effect during each Extension Period, except that the annual Rent during each Extension Period will be as described in Section 2.7. Tenant may exercise an Extension Option by delivery of written notice to Landlord of Tenant’s intent to extend the Initial Term or then current Extension Period, as applicable, which written notice Tenant will deliver to Landlord no less than ninety (90) days prior to the expiration of the then current Initial Term or Extension Period, as applicable. In the event Tenant fails to give Landlord written notice of Tenant’s intent not to extend the Term of this Lease at least ninety (90) days prior to the expiration of the Initial Term or then current Extension Period, as applicable, this Lease will automatically expire upon the expiration of the Initial Term or Extended Term, as applicable. Tenant’s extensions of the Term will not be effective if the Tenant is in any actual default of this Lease beyond any applicable notice and cure periods.

5. FEASIBILITY REVIEW.

5.1 Access; Landlord’s Delivery. As of the Effective Date, Tenant will have a license to enter the Premises and conduct its due diligence activities as set forth herein. Landlord will deliver to Tenant actual and exclusive possession of the Premises, without delay, including but not limited to any delay resulting from an event of force majeure, beginning on the Effective Date.

5.2 Premises Information. Within fifteen (15) calendar days after the Effective Date, Landlord will deliver to Tenant originals or copies, as and to the extent in Landlord’s possession or control, of any studies and information relating to (a) all agreements, contracts, warranties relating to the ownership and use of the Premises; (b) the most recent ALTA survey of Premises; and (c) title to the Premises (as evidenced by a preliminary title report or title commitment and copies of all exceptions listed thereon in form and substance acceptable to Tenant; (d) Conditions, Covenants, and Restrictions (CCR’s) related to the Premises; and (5) any reports and/or studies performed on the Premises; (6) a Leasehold Title Commitment from the Title Company (the foregoing, collectively, the “**Premises Information**”). The Premises Information will be furnished without any representation or warranty whatsoever as to the truth, accuracy or completeness of such information and Tenant will rely on such information at its sole risk and expense with no recourse against Landlord; provided, however, Landlord represents and warrants that it has provided all of the Premises Information in Landlord’s possession or control.

5.3 Feasibility Period. Tenant will have the Feasibility Period to complete its due diligence investigations with respect to the Premises, including, but not limited to, inspections, tests and/or studies required, in Tenant’s sole discretion and at its sole cost, to ensure the suitability of the Premises for Tenant’s intended use as a restaurant facility (the “**Feasibility Investigations**”), including, without limitation, the following:

5.3.1 Environmental Conditions. Tenant may (at its sole cost and expense) complete a Phase I Environmental Site Assessment and Tenant may, at Tenant’s option from time to time complete one or more Phase II Environmental Site Assessments (at Tenant’s sole cost and expense), regarding the environmental condition of the Premises (collectively, the “**ESAs**”) during the Feasibility Period. Tenant will promptly provide notice to Landlord when any such assessments are completed and

provide Landlord, without representation or warranty and without Landlord relying thereon, with copies of any studies or reports associated with the ESAs. Tenant will give Landlord written notice (a “**Preexisting Condition Notice**”) of the presence of any Preexisting Hazardous Materials identified on the Premises. If Preexisting Hazardous Materials are discovered on the Premises, and if compliance with applicable environmental law requires remediation or removal of such Preexisting Hazardous Materials, Landlord may terminate this Lease without incurring any additional liability, or at Landlord's sole expense, remediate, remove, and dispose of such Preexisting Hazardous Materials in accordance with applicable environmental laws. In the event Landlord elects to terminate this Lease, Landlord will reimburse Tenant for the actual, reasonable costs of Tenant's Feasibility Investigations. In the event Landlord performs remediation activities and as a result Tenant is delayed in opening for business from the Premises, the Commencement Date will be postponed for a period of time equal to the days of delay resulting from such remediation activity. If such Landlord remediation is required after Tenant opens for business and Landlord's remediation efforts materially and adversely interfere with Tenant's business operations, then Rent will abate in proportion to the percentage of business that is impacted by the material and adverse interference with Tenant's business operations resulting from such remediation activity;

5.3.2 Survey. Tenant may obtain, at Tenant's sole cost and expense, an updated ALTA survey of the Premises.

5.3.3 Utilities. Tenant is solely responsible to confirm, during the Feasibility Period, that any and all utilities (public or otherwise) necessary or appropriate for Tenant's development and use of the Premises and the Improvements, including, without limitation, electrical power as may be required by the City and/or any other Governmental Authorities, are or will be sufficient and stubbed to the Premises; and

5.3.4 Governmental Approvals. Tenant is solely responsible to confirm, during the Feasibility Period, the presence or availability of any and all required land use, construction and building permits and Governmental Approvals (as hereafter defined), in form and substance acceptable to Tenant in its sole and absolute discretion, which are necessary and desirable for Tenant's construction, development, use, occupancy and/or operation of the Premises. As used herein, “**Governmental Approvals**” will mean all permits, variances, licenses, certificates, consents, governmental land use and other permits and approvals, building, zoning, subdivision, plat, site plan and architectural approvals, and any other discretionary permit or approval necessary for Tenant's construction, development, use, occupancy and/or operation of Tenant's intended use required pursuant to any Applicable Laws of any Governmental Authority.

5.4 Title Insurance. Within fifteen (15) calendar days after the Effective Date, Landlord will deliver to Tenant a commitment (the “**Title Commitment**”) for an owner's policy of title insurance with standard coverage with a leasehold endorsement (the “**Title Policy**”) from the Title Company, the cost and expense of which Title Policy, to the extent based only on the value of the unimproved Premises, will be the sole responsibility of Landlord; provided that, if such Title Policy will provide coverage for any Improvements of Tenant, Tenant will be responsible for the cost of such Title Policy to the extent the Title Policy exceeds the cost of the leasehold policy of title insurance insuring only the value of the unimproved Premises. As part of its Feasibility Investigations, Tenant may determine whether, and to what extent, any of the exceptions and/or encumbrances shown in the Title Commitment are acceptable to Tenant or, alternatively, must be removed. In the event that Tenant objects to any exceptions or encumbrances shown in the Title Commitment by delivering written notice to Landlord at any time during the Feasibility Period, and Landlord elects, by written notice to Tenant within ten (10) days after receiving Tenant's notice of objections, not to remove such exception or encumbrance, Tenant will have the option, on or prior to the expiration of the Feasibility Period and by written notice to Landlord,

either to terminate this Lease or waive such objection. Landlord will have no obligation to remove any exceptions or encumbrances to which Tenant objects.

5.5 Landlord Cooperation. Landlord will cooperate with Tenant in all respects in connection with its Feasibility Investigations. Landlord will cooperate with Tenant in obtaining any and all entitlements required in connection with the Improvements and Tenant's intended use and will execute such applications and other instruments reasonably necessary to satisfying the requirements of the applicable Governmental Authorities, provided that Landlord will not be required to pay any application fees or incur any other costs or liability in connection with receiving the necessary approvals and permits for the Project beyond Landlord's fees for any professional advice Landlord desires. Upon reasonable advance notice, Landlord will appear as a witness in any legal or administrative proceedings to the extent reasonably necessary to satisfy the condition and will support the Project and application.

5.6 Due Diligence Notice. Notwithstanding any provision hereof, if Tenant fails to deliver to Landlord, on or prior to the expiration of the Feasibility Period, written confirmation from Tenant that the Feasibility Investigations have been completed, satisfied and/or waived, without reservation or condition except as may be otherwise specified in this Lease (the "***Feasibility Notice***"), this Lease will automatically terminate and be of no further force or effect from and after the expiration of the Feasibility Period. Notwithstanding the foregoing, nothing herein will constitute an obligation by Tenant to initiate or complete, or to cause to be initiated or completed, any report, evaluation, analysis or testing of the Premises during the Feasibility Period or otherwise. Landlord agrees and acknowledges for the benefit of Tenant that the rights and remedies of Landlord set forth in Section 18 of this Lease are only available to Landlord after receipt by Landlord from Tenant of the Feasibility Notice indicating that the Feasibility Investigations have been completed, satisfied and/or waived, without reservation or condition.

6. CONSTRUCTION OF THE PROJECT.

6.1 The Project. Tenant intends to construct the Building and related facilities on the Premises and may install and/or construct all other Improvements and the Equipment on, under, and over the Premises. The site plan and preliminary elevation of the Project are attached as Exhibit C and incorporated in this Lease by this reference. The size, design and manner of construction of the Project will be determined by Tenant, subject to compliance with Applicable Laws and subject to Landlord approval, which approval will not be unreasonably withheld, conditioned or delayed, and provided in the event Tenant has not received such Landlord approval (or written notice of Landlord's disapproval specifying the reasons for such disapproval and any required criteria for approval) within fifteen (15) days of Tenant's request, such request will be deemed approved by Landlord.

6.2 Construction. If Tenant elects to construct any Improvements, Tenant will construct the Improvements at Tenant's sole cost and expense and in accordance with Applicable Laws in effect at the time of construction. In the event any mechanics or materialman's lien is filed against the Premises as a result of any construction undertaken upon the Premises by Tenant, then Tenant will cause said lien to be discharged within thirty (30) days of written notice from Landlord, provided, however, if Tenant desires to contest the validity or amount of any such lien, it may do so without payment of disputed amounts.

6.3 Signage and Security. Tenant, at its own expense, will have the right, subject to Landlord approval, which approval will not be unreasonably withheld, conditioned or delayed, and provided in the event Tenant has not received such Landlord approval (or written notice of Landlord's disapproval specifying the reasons for such disapproval and any required criteria for approval) within fifteen (15) days of Tenant's request, such request will be deemed approved by Landlord, to install and maintain identification signs on the Premises and such other signs. Necessary security cameras, security

related equipment or both, may be installed as determined by Tenant in Tenant's sole and absolute discretion, for security purposes.

6.4 Easements/Other Documents. Landlord will grant, execute and duly acknowledge and deliver to Tenant, or cause to be granted, executed and duly acknowledged and delivered to Tenant, within ten (10) Business Days of written request therefor, in recordable form acceptable to Dona Ana County and in a form reasonably acceptable to both Landlord and Tenant, any and all utility, sanitary sewer, storm drainage, detention, retention, access, ingress and egress, sign, parking, slope, grading and other easements necessary or desirable, as well as such lot consolidation and/or other required roadway dedications, for Tenant to construct, or cause to be constructed, the Project upon the Premises and for the use and enjoyment by Tenant and Tenant's guests and invitees of the Premises for the Permitted Use, as necessary.

6.5 Landlord's Work. Landlord will install (at Landlord's sole cost and expense) prior to the expiration of the Feasibility Period, all of the following improvements (collectively, the "**Infrastructure Improvements**"), at and/or to the property line of the Premises as requested by Tenant, and all such Infrastructure Improvements will have been completed and constructed to the satisfaction and specifications of Tenant and in compliance with all Applicable Laws, and where applicable fully connected in and to the local municipality and/or Tenant approved service provider, but in all events to allow full buildout and development of the Property:

Infrastructure Improvements		Yes	No	N/A
1.	A below ground power line with 3 phase power	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	A below ground sanitary sewer line	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	A below ground natural gas line	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	A below ground water line (1.5")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	A below ground telecommunications line to support telephone and internet service	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Off-site improvements, including sidewalks, curbing, paved shared drive aisles, paved ingress/egress points, traffic signals and other infrastructure required for approval by the applicable Governmental Authorities of a final subdivision plat for the Premises	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Rough grading of the Premises in accordance with the grading and drainage plan approved by the City	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

In the event Landlord constructs or installs a shared pylon sign for the development in which the Premises is located, Tenant will have the right to use one panel on each side of such pylon sign. Tenant will be responsible for the cost of preparation, installation and maintenance of any panels installed by Tenant on the pylon sign.

7. RENT.

7.1 Rent. Tenant will pay Rent commencing on the Commencement Date in equal monthly installments as set forth in Section 2.7. Rent will be payable by Automated Clearing House (ACH) payment to the following:

Account number: 4121379762

Account type: Checking

ACH routing number: 121000248

Wire routing number: 121000248

SWIFT/BIC code: WFBIUS6S

Banks name and address: Wells Fargo Bank, 464 California Street, San Francisco, CA 94104

All Rent payments will be payable to Landlord or such other name as Landlord may in writing designate to Tenant. Tenant will pay Rent for any partial month at the beginning of the Term at the same rate as the Rent for the first calendar month. The amount of Rent for any partial month at the beginning of the Term will be prorated based on the actual number of days in the month.

7.2 Interest. If any installment of Rent is not received by Landlord from Tenant within ten (10) days after it is due, interest will accrue thereon at the Interest Rate (See Exhibit A). Landlord and Tenant agree that any such default interest represents a reasonable estimate of the costs and expenses Landlord will incur and is fair compensation to Landlord for its loss suffered by reason of late payment by Tenant.

7.3 No Additional Fees or Expenses. Tenant will not be obligated to contribute any sums to promotional, marketing, or advertising programs or join any merchant's or development association or pay any fees or dues not expressly set forth in this Lease or pay other miscellaneous fees or expenses (including any common area maintenance and repair charges for common areas). Tenant will have no obligation to pay any additional rent or charges for any outside or patio seating utilized by Tenant for the conduct of its business.

8. USE.

8.1 The Permitted Use. Tenant may use the Premises for any lawful purpose (the "*Permitted Use*"). Landlord warrants to Tenant that Landlord has not granted or otherwise permitted any restriction and no other party has the exclusive right to sell breakfast, lunch or dinner in a fast food restaurant with drive through whose primary business is the sale of hamburgers, chicken sandwiches, fries, shakes, and breakfast burritos with related items. Nothing in this Lease will be construed to require Tenant to construct, open, or operate any business within or upon the Premises, provided Tenant will, at all times during the Term of this Lease, continue to pay Rent.

8.2 Maintenance and Utilities. Tenant will be solely responsible for the maintenance of the Premises to such standard as described in Section 8.3 or otherwise as required by any Applicable Laws. Tenant will pay all charges incurred for the use of utility services at the Premises, including without limitation, gas, electricity, water, sanitary sewer, storm sewer, cable, telephone, internet and any other utilities used upon or furnished to the Premises, as well as regular removal of trash from the Premises. Landlord agrees to grant appropriate utility rights of access to such providers as reasonably necessary to secure utility services and, notwithstanding anything herein to the contrary, Landlord will have no right to procure, perform or interrupt any utility services to the Premises or on behalf of Tenant. If Landlord causes any utility interruption, or such utility interruption is subject to Landlord's sole and reasonable control, Tenant may, at its sole option, take steps to cure such interruption, in which event Tenant will be entitled to recover from Landlord or offset Rent payments to recoup the amount reasonably necessary to cure, and all Rent will be abated from the date Tenant closes for business as a result of such utility interruption until such utility service is restored.

8.3 Maintenance Standard: (1) maintenance activities appear organized with direction; (2) equipment and building components are usually functional and in operating condition; and (3) service

and maintenance issues are responded to in a timely manner; and (4) buildings and equipment are regularly maintained in a condition consistent with the surrounding properties and developments.

8.4 Hazardous Substances. Tenant may not cause or permit any Hazardous Materials to be generated, released, produced, brought upon, used, stored, treated or disposed of in or about the Premises by Tenant its agents, employees, contractors, or invitees in violation of applicable Environmental Requirements. Tenant agrees to indemnify, defend and hold harmless Landlord, regents and employees, from all claims, demands, actions, liabilities, costs, removal, remediation, health assessments, transportation cost, expenses, attorney's fees damages and obligations of any nature arising from or as a result of Tenant's violation of this Section. The foregoing indemnification and the responsibilities of Tenant will survive the termination or expiring of this Lease.

9. TAXES.

9.1 Impositions. Landlord represents that the Premises are taxed as a separate parcel, separate and apart from any other building or parcel. Landlord shall provide to Tenant any tax bills and invoices received by Landlord with respect to the Premises promptly upon receipt by Landlord, but in any event no later than ten (10) after receipt thereof by Landlord. Beginning on the Commencement Date and throughout the remainder of the Term, Tenant will pay as and when due directly to the taxing authority each and every one of the following arising during the Term (collectively, the "*Impositions*"):

9.1.1 Real Property Taxes. All real property taxes or other ad valorem taxes, rollback taxes, assessments or payments or any other taxes levied as a substitute, in whole or in part, for any of the foregoing as and when due with respect to the Premises or any portion thereof that are levied against the Premises solely during the Term;

9.1.2 Leasehold Taxes. Taxes due or which may be due upon or with respect to the leasehold estate created by this Lease, but excluding any tax measured by or upon Landlord's net income;

9.1.3 Personal Property Taxes. All taxes imposed on or with respect to personal property and intangibles, if any, located in or used in connection with the Premises;

9.1.4 Additional Impositions and Charges. All other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, which during the Term may be assessed, levied, confirmed or imposed on or in respect of or right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof, expressly excluding, however, any such items arising directly or indirectly out of any neglect, fault or omission of Landlord, any of Landlord's predecessors in title or any other person occurring prior to the Commencement Date.

9.2 Landlord Taxes. Nothing contained in this Lease requires, or will be deemed to require, Tenant to pay, or be liable for, any franchise, estate, gift, settlement, inheritance, succession, capital levy, or transfer tax of Landlord, or any income, excess profit, or revenue tax, including any of the foregoing applicable to the Rent payable by Tenant under this Lease.

9.3 Impositions Prior to the Commencement Date and After the Term.

9.3.1 Impositions Prior to the Commencement Date. Any Imposition relating to a fiscal period of the taxing authority, a part of which is after the Commencement Date, but during the Term and a part of which is before the Commencement Date or after the Term, whether or not such

Imposition will be assessed, levied, imposed, or become a lien on the Premises or the Improvements, or will become payable after the Commencement Date and during the Term, will be apportioned and adjusted between Landlord and Tenant so that Tenant will pay only the portions that correspond with the portion of such fiscal periods included after the Commencement Date, but during the Term.

9.3.2 Impositions After the Term. Any Imposition relating to a fiscal period of the taxing authority, a part of which is during the Term and a part of which is after the Term, whether or not such Imposition will be assessed, levied, imposed, or become a lien on the Premises or the Improvements, or will become payable during the Term, will be apportioned and adjusted between Landlord and Tenant so that Tenant will pay only the portions that correspond with the portion of such fiscal periods included during the Term.

9.4 Installments. If by law any Imposition may at the option of the taxpayer be paid in installments, Tenant may exercise such option, and, if so exercised, will pay all such installments (and interest, if any) becoming due during the Term as the same become due (including any installment with respect to any assessment which may be payable following the Commencement Date) and will at the end of the Term deposit with Landlord an amount sufficient to pay Tenant's pro rata share of all Impositions for the calendar year in which this Lease expires.

9.5 Permitted Contests. Tenant will have the right at Tenant's expense to contest or review the amount or validity of any Impositions or to seek a reduction in the assessed valuation on which any Impositions are based, by appropriate legal proceedings. Tenant may defer payment of such contested Impositions.

9.6 Landlord Cooperation with Contests. Any contest as to the validity or amount of any Impositions, or assessed valuation on which such Impositions were computed or based, whether before or after payment, may be made by Tenant in the name of Landlord or of Tenant, or both, as Tenant will determine, and Landlord agrees that it will, at Tenant's expense, cooperate with Tenant in any such contest to such extent as Tenant may reasonably request, it being understood, however, that Landlord will not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant covenants to indemnify and save Landlord harmless from any such costs or expenses. Tenant will be entitled to any refund of any such Impositions and penalties or interest that have been paid.

10. INSURANCE. Commencing with the Commencement Date, Tenant will procure from an insurance company licensed in the State with an AM Best rating of no less than A-VII and continue in effect during the Term (a) fire and extended coverage insurance with a replacement insurance endorsement in an amount equal to at least ninety percent (90%) of the replacement value (exclusive of foundation and excavation costs) of the Building and other Improvements constructed by Tenant on the Premises and (b) commercial general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) annual general aggregate. The proceeds from Tenant's casualty insurance hereunder will be paid and applied only as determined by Tenant. Any insurance carried by Tenant hereunder, at Tenant's option, may be carried under one or more insurance policies, pursuant to a master policy of insurance or so-called blanket policy of insurance covering other locations of Tenant or its corporate affiliates, or any combination thereof. In addition, Tenant will keep in force workers' compensation or similar insurance to the extent required by law. Notwithstanding the foregoing, so long as Tenant will maintain a net worth of not less than Twenty Million Dollars (\$20,000,000.00), insurance required to be maintained pursuant to this section may be self-insured by Tenant. At all times during this Lease, Tenant will include Landlord and NMSU as additional insureds with respect to Tenant's casualty and commercial general liability insurance described herein, unless Tenant elects to self-insure. Notwithstanding the foregoing, if Tenant will have elected to self-insure, Tenant will provide Landlord a letter identifying Tenant's election to self-insure for the coverages otherwise required herein and certify that the minimum net worth requirement has been satisfied. Upon the

written request of Landlord, but no more often than once in any calendar year, Tenant will certify the minimum net worth requirement within thirty (30) days after such written notice. The foregoing will not require or obligate Tenant to insure or be liable for any claims, suits, occurrences or liability due to the negligence of Landlord or those acting on Landlord's behalf or at Landlord's direction.

11. APPLICABLE LAWS.

11.1 Compliance with Applicable Laws. From and after the Commencement Date, and except as provided in Section 11.2 of this Lease, Tenant will, in all material respects, comply with Applicable Laws that may apply to the Premises or to Tenant's use of the Premises or the Project. Subject to the participation of Landlord as provided below, Tenant will pay all costs of compliance with Applicable Laws, but Tenant will have the right to cease occupation or use of, or to demolish or remove all or any part of the Premises or the Improvements in lieu of compliance with any Applicable Laws that may require expenditures on behalf of Tenant for continued use or occupation of the Premises.

11.2 Contest Applicable Laws. Tenant will have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings, in the name of Tenant or Landlord or both, without cost or expense to Landlord, the validity or application of any Applicable Laws subject to the following:

11.2.1 Delay in Compliance. If, by the terms of any Applicable Laws, compliance may legally be delayed pending the prosecution of any such proceeding without the inurrence of any lien, charge, or liability of any kind against all or any part of the Premises or the Improvements and without subjecting Landlord to any liability, civil or criminal, for failure to comply, Tenant may delay compliance until the final determination of such proceeding; or

11.2.2 Lien, Charge or Civil Liability. If any lien, charge, or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest the matter and delay compliance, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant:

11.2.2.1 Security. Furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay; and

11.2.2.2 Reasonable Diligence. Prosecutes the contest with reasonable diligence.

11.3 Landlord Cooperation with Contest. Landlord will execute and deliver any appropriate papers that may be necessary or proper to permit Tenant to contest the validity or application of any Applicable Laws.

12. ALTERATIONS, ADDITIONS AND NEW IMPROVEMENTS. At any time during the Term and at Tenant's sole cost and expense, Tenant may make or permit to be made any non-structural modifications or alterations to the Project, including, without limitation, modifications to the size or scope of the Project, with contractors, vendors, consultants or architects that Tenant may select from time to time, without the prior written consent of Landlord, provided there is no existing and unremedied default on the part of Tenant, of which Tenant has received notice of default, under any of the terms, covenants, and conditions of this Lease and such alterations are consistent with Tenant's design standards. Interior modifications and alterations do not require Landlord approval. If Landlord's prior written consent is required under this Section 12, such consent will not be unreasonably withheld, conditioned or delayed, and provided in the event Tenant has not received such Landlord consent (or written notice of Landlord's

disapproval specifying the reasons for such disapproval and any required criteria for approval) within fifteen (15) days of Tenant's request, such request will be deemed approved by Landlord.

13. TITLE TO THE PROJECT. Title to the Project will be and remain in Tenant. Unless otherwise agreed to by the parties, Tenant may remove the Improvements, Building and/or Equipment, at any time during the Term, upon expiration of the Term or upon any earlier termination of this Lease by the parties. During the Term, Tenant will be entitled for all taxation purposes to claim cost recovery deductions and the like on the Project. Notwithstanding anything to the contrary set forth herein, the Equipment will remain the sole property of Tenant after the expiration or termination of this Lease, provided the Equipment is removed no later than ninety (90) days after expiration or earlier termination of this Lease as set forth in Section 21. In the event the Equipment is not removed it will be deemed abandoned.

14. LIABILITY; LIMITATION OF LIABILITY.

14.1 Extent of Liability. Landlord and Tenant will each be solely responsible for the liability arising from personal injury, including death, or damage to property arising from the acts or failure to act of the respective party or of its officials, and employees pursuant to this Lease. Landlord liability will be strictly limited by and this Agreement will give full effect to the intent of the Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, and any amendments thereto.

14.2 Indirect, Special or Consequential Damages. In no event will Landlord or Tenant be liable to the other party for any indirect, special or consequential damages of any kind, whether in contract, tort or otherwise, and whether or not the party has been advised of the possibility of such damages.

15. CONDEMNATION; DESTRUCTION OF THE PREMISES.

15.1 Valuation Date and Methodology. All awards for compensation issued as a result of a condemnation or purchase in lieu of condemnation of all or any portion of the Premises, the Improvements and/or the Equipment will be calculated as of the day immediately preceding the date the condemning authority obtains possession of the Premises, Improvements and/or Equipment or on the date otherwise set forth in the Eminent Domain Code, Section 42A-1-1 et seq., NMSA 1978 ("**Valuation Date**") and will be based upon Tenant's leasehold estate for the remainder of the Term, including all exercisable options without taking into account any abatement or reduction of Rent contemplated herein.

15.2 Notice and Negotiation with Condemning Authority. To the extent a condemning authority does not provide notice to both Landlord and Tenant of a potential condemnation, either party so notified will immediately provide the other with such notice. Further, to the extent local law does not permit Tenant to seek independent payment of just compensation from the condemning authority, Landlord will not engage in any negotiation with the condemning authority without involving Tenant.

15.3 Total Taking. If (1) all the Premises, the Improvements and/or the Equipment are taken or condemned by right of eminent domain or by purchase in lieu of condemnation, or (2) such portion of the Premises or the Improvements or the Equipment will be so taken or condemned such that the portion remaining compromises in any material way Tenant's operations and/or use of the Premises, the Improvements or the Equipment as determined by Tenant in its commercially reasonable judgment, or (3) a temporary taking of the kind described below occurs such that the Premises is rendered unusable by Tenant for at least sixty (60) consecutive days, as determined by Tenant in its commercially reasonable judgment (each a "**Total Taking**"), then Tenant's right to possession of the Premises and Tenant's obligation for Rent will be suspended from the date the condemning authority obtains possession until the date a total award for such Total Taking is issued, at which time this Lease and the Term will cease and terminate. In such event, (a) Landlord will have the right to and will be entitled to receive directly from the

condemning authority an award equal to the value of Landlord's fee estate and the value of any Improvements and/or Equipment installed by and/or belonging to Landlord as of the Valuation Date, and (b) Tenant will have the right to and will be entitled to receive directly from the condemning authority the value of its leasehold estate, including all exercisable options, and the value of any Improvements and/or Equipment installed by and/or belonging to Tenant as of the Valuation Date.

15.4 Partial Taking. If during the Term there is a taking or condemnation of the Premises or the Project that is not a Total Taking as set forth above, and is not a temporary taking of the kind described below, or in the event of the change in the grade of the streets or avenues on which the Premises abuts or a material change from the Premises to the public right of way (each a "***Partial Taking***"), then Tenant's right to possession of the Premises so affected and Tenant's obligation for Rent as to the affected Premises will be suspended from the date the condemning authority obtains possession until the date an award for such Partial Taking is issued, at which time this Lease and the Term will cease and terminate as to the Premises so taken and thereafter Rent for the remainder of the Term will be equitably adjusted taking into account the relative values of the portion taken as to the portion remaining. In such event, (a) Landlord will have the right to and will be entitled to receive directly from the condemning authority an award equal to the value of Landlord's fee estate for that portion of the Premises so taken and the value of any Improvements and/or Equipment installed by and/or belonging to Landlord as of the Valuation Date, (b) Tenant, at its discretion, will have the right as of the Valuation Date to receive directly from the condemning authority the value of its leasehold estate, including all exercisable options, as to the Premises so taken, and (c) Tenant will have the right to and will be entitled to receive directly from the condemning authority the value of any Improvements and/or Equipment installed by and/or belonging to Tenant as of the Valuation Date.

15.5 Temporary Use Taking. In the event of a taking of all or a part of the Premises or the Project for temporary use, or access to the Premises or Project is temporarily taken, then this Lease will continue without modification, as between Landlord and Tenant, and Tenant will be entitled to the entire award made for such use. Tenant will further be entitled to file and prosecute any claim against the condemning authority for damages and to recover the same, for any negligent use, waste, or injury to the Premises or the Project throughout the balance of the then-current Term. The amount of damages so recovered will exclusively belong to Tenant.

15.6 Dispute. In the event of any dispute between Tenant and Landlord with respect to any issue of fact arising out of a taking mentioned in this Section 15, such dispute will be resolved by the same court in which the condemnation action is brought, in such proceedings as may be appropriate for adjudicating the dispute.

15.7 Destruction of the Premises. If the Project is materially destroyed or damaged at any time during the Term then in effect, Tenant will, at its sole option, and at its sole cost and expense, either (i) repair, alter, restore, replace or rebuild the Project to such extent and in such manner as Tenant may deem appropriate and this Lease will continue; or (ii) demolish the remaining portions of the Project and pave, landscape or place gravel on the Premises at which point this Lease will automatically terminate and the Rent will be apportioned and paid to the date of such damage or destruction. Tenant will have the right to receive the entire amount of the insurance proceeds. There will be no abatement of Rent while the Project is repaired, altered, restored, replaced, rebuilt or demolished.

16. ASSIGNMENT AND SUBLEASE.

16.1 Assignment and Subletting. Tenant may transfer or assign any interest in this Lease or sublet the whole or any part of the Premises, from time to time, but only for a term or terms that

will expire upon or before the expiration of the Term; with Landlord's written approval that will not be unreasonably withheld, conditioned or delayed.

17. LEASEHOLD MORTGAGES

17.1 Leasehold Mortgage. Tenant will have the right, in addition to any other rights granted and without any requirement to obtain Landlord's consent as long as the Tenant is not in default of the terms of this Lease, to mortgage or grant a security interest in Tenant's interest in this Lease and the Premises, the Project and any subleases, under one or more Leasehold Mortgages, and to assign this Lease and any subleases as collateral security for such Leasehold Mortgages, on the condition that all rights acquired under such Leasehold Mortgages will be subordinate and subject to each and all of the covenants, conditions, and restrictions set forth in this Lease. If Landlord is provided written notice of such Leasehold Mortgage, Landlord will provide written notice of any Tenant Event of Default simultaneously to Leasehold Mortgagee and Leasehold Mortgagee may within thirty (30) days after receipt of Notice of Tenant Event of Default cure any such default.

17.2 Agreement. Landlord, within thirty (30) days of request, will execute, acknowledge, and deliver to each Leasehold Mortgagee an agreement prepared at the sole cost and expense of Tenant, in form reasonably satisfactory to Landlord, Tenant, and the Leasehold Mortgagee.

18. DEFAULT; REMEDIES.

18.1 Landlord's Remedies. Upon the occurrence of an Event of Default by Tenant, Landlord may exercise any of the following remedies:

18.1.1 Cure and Collect as Additional Rent. Landlord may elect to cure an Event of Default on Tenant's behalf, and at Tenant's expense, and the actual, reasonable cost thereof, including interest thereon at the Interest Rate, will be collected as additional rent under this Lease, as the same will next accrue.

18.1.2 Repossession. Landlord may in accordance with applicable law and by any suitable action or proceeding at law, at its option, terminate this Lease and re-enter the Premises and repossess and enjoy the same as in its first and former estate and thereupon this Lease and the obligations set forth herein will cease; provided, however, such termination will be without prejudice to the rights of Landlord to recover from Tenant all Rent due hereunder up to the time of such re-entry and termination. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the worth at the time of such termination of the excess, if any, of the amount of rents and other charges equivalent to rents reserved in this Lease for the remainder of the stated Term over the then reasonable rental value of the Premises for the remainder of the Term (absent any unexercised Extension Options), all of which amounts will be immediately due and payable from Tenant to Landlord. Landlord or Landlord's agents and employees may, in accordance with applicable law and by any suitable action or proceeding at law, repossess the same, and may remove any person from the Premises, to the end that Landlord may have, hold, and enjoy the Premises.

18.1.3 Waiver of Jury Trial. LANDLORD AND TENANT IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT REGARDING THE PREMISES, ENFORCEMENT OF THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE

ARISING BETWEEN LANDLORD AND TENANT, OR ANY ACTIONS OF LANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS LEASE.

18.1.4 Mitigation of Damages. Landlord agrees to use reasonable efforts to mitigate its damages in the event of a default by Tenant.

18.2 Landlord Default; Tenant Remedies. Upon the occurrence of an Event of Default by Landlord, Tenant will have the right (i) to perform the obligations of Landlord which are the subject of such default and have the right to be reimbursed for the sum Tenant actually expends in the performance of Landlord's obligations, together with interest at the Interest Rate from the date of payment by Tenant to the date of reimbursement by Landlord; (ii) to recover from Landlord the damages caused to Tenant by such default; or (iii) to seek any remedy at law or equity. If Landlord does not reimburse Tenant within thirty (30) days after demand from Tenant for payment pursuant to this Section 18.2, Tenant will have the right to offset the Rent next coming due equal to the sum Tenant has expended until Tenant has been reimbursed in full with interest accruing at the Interest Rate. In addition to the foregoing, Tenant will have the right without prior demand or notice, except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19. SUBORDINATION. Every Landlord Mortgage will be, and state that it is, subject and subordinate to this Lease and will only attach to Landlord's Estate. A foreclosure sale affecting Tenant's leasehold estate created by this Lease, will impair no estate or right under any Landlord Mortgage and will transfer only the Tenant's leasehold estate created by this Lease. In addition, Landlord agrees to subordinate any rights, interests or liens of Tenant's Equipment, personal property and trade fixtures to that of any bona-fide third party lender providing financing to Tenant which directly benefits Tenant's operations in the Premises.

20. LANDLORD'S WARRANTIES; QUIET ENJOYMENT.

20.1 Representations and Warranties. Landlord hereby represents and warrants to Tenant as of the Effective Date and again on the Commencement Date, as follows:

20.1.1 Ownership of the Premises. The Regents of NMSU own fee simple marketable and insurable title to the Premises, free and clear of all tenancies and other possessory interests, security interests, conditional sale, or other title retention agreements, liens, encumbrances, mortgages, deeds of trust, pledges, assessments, easements, rights-of-way, covenants, restrictions, reservations, options, rights of first refusal, defects in title, encroachments, and other burdens, other than the Master Ground Lease and the Permitted Exceptions. Landlord represents and warrants that said owner of the Premises has granted to Landlord full right and authority to enter into this Lease and said owner has agreed to be bound hereby.

20.1.2 Hazardous Materials. Landlord has not, nor, to the best of Landlord's knowledge, has owner (as identified above) engaged in or permitted any operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping, or disposal of any Hazardous Materials (whether legal or illegal, accidental or intentional), on, under, in, or about the Premises, or transported any Hazardous Materials to, from, or across the Premises, nor are any Hazardous Materials presently constructed, deposited, stored, or otherwise located on, under, in, or about the Premises, nor have any Hazardous Materials migrated from the Premises upon or beneath other properties, nor have any Hazardous Materials migrated or threatened to migrate from other properties upon, about, or beneath the Premises. There is not constructed, placed, deposited, stored, disposed of, or located

on the Premises any asbestos or material containing asbestos, nor insulating material containing urea formaldehyde, nor any polychlorinated biphenyls (PCBs), nor transformers, capacitors, ballasts, or other equipment containing or contaminated by PCBs. Within five (5) Business Days after the Effective Date, Landlord will deliver to Tenant copies of all assessments and reports regarding the environmental condition of the Premises in Landlord's possession or control. Landlord warrants that such assessments and reports are complete, and are all of the assessments and reports in the control or possession of Landlord concerning the previous or current environmental condition of the Premises.

20.1.3 Underground Improvements. No underground improvements, including but not limited to treatment or storage tanks, septic systems, or drain fields, sumps, or water, gas, oil, or underground injection wells are or have ever been located upon the Premises.

20.1.4 Environmental Requirements. Landlord has not received notice or other communication concerning any alleged violation of Environmental Requirements whether or not corrected to the satisfaction of the appropriate authority, in connection with the Premises, and there exists no writ, injunction, decree, order, lien, or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons, notice, or investigation, pending or, to the best knowledge of Landlord, threatened, relating to the ownership, use, maintenance, or operation of the Premises, by any person, or from alleged violation of Environmental Requirements, or from the suspected presence of Hazardous Material thereon, nor does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons, or investigation being instituted or filed.

20.1.5 Applicable Laws. The Premises, on the Effective Date, are in full compliance with all Applicable Laws.

20.1.6 Execution, Delivery and Performance of this Lease. The execution, delivery, and performance of this Lease by Landlord will not result in any breach of, or constitute any default under, or result in the imposition of, any lien or encumbrance on the Premises under any agreement or other instrument to which Landlord is a party or by which Landlord or the Premises might be bound, including but not limited to the Master Ground Lease. Landlord has no information or knowledge of any change contemplated in any Applicable Laws, or any action by adjacent landowners, or natural or artificial conditions on the Premises that would prevent, limit, impede, or render more costly the Project. To the best of Landlord's knowledge, there is no significant adverse fact or condition relating to the Premises or the Project that has not been specifically disclosed in writing by Landlord to Tenant, and Landlord knows of no fact or condition of any kind or character whatsoever that adversely affects such intended use of the Premises by Tenant.

20.1.7 Mechanic's Liens. No person has the right to claim any mechanic's or supplier's lien arising from any labor or materials furnished to the Premises before the Commencement Date.

20.1.8 No Violations and Actions. There is no legal or administrative action, suit, proceeding or investigation pending or, to the Landlord's knowledge, threatened, before any agency, court or other Governmental Authority which relates to the Premises or, to the Landlord's knowledge, the Tenant's use and occupancy of the Premises hereunder.

20.1.9 Condemnation. There is no condemnation proceeding affecting the Premises or any portion thereof, including without limitation, any grade change of any street adjacent to the Premises or any partial condemnation, or, to Landlord's knowledge, is any such proceeding threatened.

20.1.10 Rights of Third Parties. Landlord's entering into this Lease does not violate any rights of third-parties and Landlord has received any and all necessary third-party approvals to enter into this Lease.

20.1.11 Additional Encumbrances. From and after the Effective Date, (i) Landlord will not (1) enter into any contracts, leases, or agreements related to the Premises, nor take any action under any existing contract, lease or agreement which would materially and adversely affect Tenant's right or use of the Premises pursuant to this Lease, or (2) cause, permit, or allow any agreement, document, encumbrance or lien to be placed, or recorded against, the Premises; and (ii) Landlord will, in all respects, use its best efforts to preserve the Premises in its current state and not cause, permit, or allow any waste or deterioration of the Premises to occur.

20.1.12 Notice. Landlord has no notice (legal, recorded, or otherwise) of any facts or circumstances that would indicate or suggest that (i) the Premises cannot be developed in substantial accordance with its current entitlements, under the current zoning ordinances applicable thereto, and as a Blake's Lotaburger Restaurant; (ii) there will be, or could be, any material delays, conditions, prohibitions, restrictions or limitations in connection any such development; or (iii) there exists any approval rights, options, rights of first offer, rights of first refusal or other similar rights of third parties that would prevent or unreasonably delay Tenant from leasing the Premises and developing the same.

20.1.13 Misrepresentation and Adverse Facts. Landlord has made no untrue statements or representations in connection with this Lease and, to the Landlord's knowledge, Landlord has not failed to state or disclose any material fact in connection with the transaction contemplated by this Lease. Any false or misleading representations by Landlord as to any of the foregoing warranties will be subject to Section 14.

20.2 Covenant of Quiet Enjoyment. Landlord covenants that Tenant will peacefully have and enjoy the sole possession of the Premises, free from the adverse claims of any persons, firms or corporations whatsoever, and Landlord will fully protect Tenant in the full, complete and absolute possession of the Premises. Landlord also covenants that the Premises are not subject to any private restrictive covenants, easements or other encumbrances, except for the Permitted Exceptions. If the Premises are subject to any restrictive covenants, Landlord represents that those covenants permit the use and operation of the Premises as a Blake's Lotaburger Restaurant. Landlord agrees to execute any and all easements or rights of way on, over or under the Premises or any part thereof at Tenant's request which are or may be needed or required by Tenant in conjunction with Tenant's use and enjoyment of the Premises and operation of the Project. Landlord agrees not to file, support or cause any land use, zoning change or variance to be made that would affect the Premises without the prior written approval of Tenant, which approval may be withheld or delayed in Tenant's sole discretion.

21. SURRENDER

21.1 Surrender of Possession. Except as otherwise provided, Tenant, on the last day of the Term, will surrender and deliver up the Premises to the possession and use thereof to Landlord. Any holding over after the expiration of the Term (other than as set forth in Sections 21.2 below, which will not be considered holding over by Tenant) will be construed to be a tenancy from month to month at a monthly minimum rental rate equal to one hundred twenty-five percent (125%) of the minimum rental rate in effect on such expiration date (prorated on a monthly basis) and on the other terms and conditions herein set forth except for those terms which are inconsistent with a month to month tenancy.

21.2 Removal of the Improvements and Equipment. All of the Improvements and Equipment may be removed by Tenant upon the expiration or earlier termination of this Lease, or at any

time prior to the expiration or earlier termination of this Lease. Tenant will have the right to cause any and all Improvements and Equipment to remain on the Premises for a period of ninety (90) days after the expiration of the Term or earlier termination of this Lease. If the Improvements, Equipment or both remain on the Premises for more than ninety (90) days after the expiration or earlier termination of this Lease, Landlord may, at its option, either retain the Improvements and/or Equipment remaining on the Premises or dispose of the same in such manner as Landlord may see fit.

22. SEVERABILITY. If any provision of this Lease or the application thereof to any person or circumstances will to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

23. ESTOPPEL CERTIFICATE. Either party, within fifteen (15) days after a request from time to time made by the other party and without charge, will give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating (i) that this Lease is then in full force and effect and unmodified, or if modified, stating the modifications; (ii) that Tenant is not in default in the payment of Rent to Landlord, or if in default, stating such default; (iii) that to the actual knowledge of the maker of the certificate, neither party is in default in the performance or observance of any other covenant or condition to be performed or observed under this Lease, or if either party is in default, stating such default; (iv) that to the actual knowledge of the maker of the certificate, no event has occurred that authorized, or with the lapse of time will authorize, Tenant to terminate this Lease, or if such event has occurred, stating such event; (v) that to the actual knowledge of the maker of the certificate, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; (vi) the dates to which Rent have been paid; and (vii) any other matters that may be reasonably requested by the requesting party. Neither Landlord nor Tenant will have the obligation to comply with any request for an estoppel certificate more often than once per calendar year. Notwithstanding anything to the contrary set forth in this Lease or in any estoppel certificate, to the extent the terms of this Lease and any estoppel certificate conflict, the terms of this Lease will govern.

24. MERGER. The fee title to the Premises and the leasehold estate of Tenant in the Premises created by this Lease will not merge but will remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

25. FORCE MAJEURE. If the performance by either of the parties of their respective obligations under this Lease is delayed or prevented in whole or in part by any Applicable Laws (and not attributable to an act or omission of the party), or by Force Majeure, the performance of the action in question will be excused for the period of delay and the period for the performance of such act will be extended for a period equivalent to the period of such delay. In no event will Force Majeure excuse either party's obligation to timely pay its monetary obligations under this Lease.

26. ADVERTISEMENT. Landlord will not post any "for rent," "for lease" or similar signs or advertisements on or about the Premises until the Term has actually expired or this Lease has actually been terminated. For a period of ninety (90) days following the expiration or earlier termination of this Lease, Tenant may install a sign directing customers to the Tenant's new location, if any.

27. NOTICES. All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, will be in writing and may be given personally or may be delivered by confirmed electronic mail or by depositing the same in the United States mails, certified, registered or equivalent, return receipt requested, or

nationally-recognized overnight courier service, in any case postage prepaid, properly addressed, and sent to the addresses set forth in Sections 2.8, 2.9 and 2.10, or to such other address as either party may from time to time designate by written notice to the other. Notices given by mail will be deemed received and effective on the third business day following deposit with the U.S. Postal Service or by overnight courier as aforesaid will be deemed received and effective on the first business day following such dispatch; provided, however, that if any such notice or other communication will also be sent by electronic mail, such notice will be deemed given at the time and on the date of transmittal if the sending party does not receive notice of failed delivery.

28. ATTORNEYS' FEES. In any proceeding or controversy associated with or arising out of this Lease or a claimed or actual breach thereof, or in any proceeding to recover the possession of the Premises, the prevailing party will be entitled to recover from the other party, as a part of the prevailing party's costs, all costs and expenses that may arise from enforcing this Lease, including reasonable attorneys' fees, the amount of which will be fixed by the court and will be made a part of any judgment rendered or otherwise included in any settlement agreement.

29. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Tenant and Landlord that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease.

30. APPLICABLE LAW. The laws of the State of New Mexico will govern this Lease and all claims arising out of or relating to this Agreement. Venue will be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1(G) NMSA 1978. By execution of this Lease, each Party irrevocably consents to the exclusive jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Lease.

31. BROKERAGE. Landlord will be solely responsible to pay any and all brokerage or real estate commission, finder's fee or similar fee or charge with respect to this Lease. Except for Steve Lyon, SVN Walt Arnold Commercial Brokerage (the "*Tenant's Broker*") who will be paid by Landlord pursuant to a separate written agreement between the Tenant's Broker and Landlord, Landlord and Tenant have not hired or involved any other brokers in this Lease. Landlord and Tenant will and do hereby each indemnify the other against, and agree to hold the other harmless from, any claim, demand or suit for any brokerage or real estate commission, finder's fee or similar fee or charge with respect to this Lease based on any act by or agreement or contract with the indemnifying party, and for all losses, obligations, costs, expenses and fees (including reasonable attorneys' fees) incurred by the other party on account of or arising from any such claim, demand or suit. This provision in no way creates any third-party beneficiary rights in any party nor does it create any liability on the part of Tenant to pay any or all of the commission due Tenant's Broker or Landlord's Broker.

32. COVENANTS TO BIND AND BENEFIT PARTIES. The covenants and agreements contained in this Lease will bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns.

33. CAPTIONS AND TABLE OF CONTENTS. The captions of this Lease are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease. The table of contents preceding this Lease but under the same cover is for the purpose of convenience and reference only, and is not to be deemed or construed in any way as part of this Lease, nor as supplemental or amendatory.

34. RECORDING THE LEASE. Tenant may record a Memorandum of Lease, executed and acknowledged by both parties, in the public records of Dona Ana County, New Mexico at any time after the Feasibility Period in the form set forth on Exhibit D hereto. Landlord will, upon request of Tenant, execute, acknowledge, and deliver to Tenant such Memorandum of Lease. Tenant will pay the recording costs.

35. PROOF OF AUTHORITY. The undersigned hereby acknowledged they have full authority to execute this Lease on behalf of the parties to this Lease.

36. VALIDITY OF LEASE. Landlord and Tenant each represents and warrants to the other that this Lease has been duly authorized, executed and delivered, and is valid, binding and enforceable against such representing party. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term, covenant or condition of this Lease will be valid and be enforced to the fullest extent permitted by law.

37. COUNTERPARTS. This Lease may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The counterparts of this Lease and all ancillary documents may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by any electronic means as if the original had been received.

38. PROPERTY ADDRESS UPDATE. At either party's request and at such time as Tenant has obtained an actual street address for the Premises, Landlord and Tenant agree to execute an amendment to the Lease memorializing the address of the Premises being leased by Tenant from Landlord.

39. ADVICE OF COUNSEL. Landlord and Tenant each respectively represent that they have the advice and counsel of their own attorneys and that no representation or statement made by any other party has influenced them in executing or induced them to execute this Lease.

40. TIME. Time is of the essence on this Lease and every term, covenant, and condition herein contained.

41. WAIVER. One (1) or more waivers of any covenant or condition by either party will not be construed as a waiver of a subsequent breach of the same covenant or condition and the consent or approval to or of any subsequent or similar act by either party. No breach of a covenant or condition of this Lease will be deemed to have been waived by either party, unless such waiver is in writing signed by both parties.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed by their duly authorized officers.

LANDLORD:

TENANT:

AGGIE DEVELOPMENT, INC.,
a New Mexico nonprofit corporation

BLAKE'S LOTABURGER, LLC,
a Delaware limited liability company

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

[Notary acknowledgments follow.]

STATE OF NEW MEXICO)
 :ss.
COUNTY OF DONA ANA)

 The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, the _____ of Aggie Development
Inc., a New Mexico nonprofit corporation.

NOTARY PUBLIC

[Seal]

STATE OF NEW MEXICO)
 :ss.
COUNTY OF BERNALILLO)

 The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, the _____ of Blake's Lotaburger,
LLC, a Delaware limited liability company.

NOTARY PUBLIC

[Seal]

EXHIBIT A DEFINED TERMS

“Applicable Laws” mean all laws, ordinances, codes, statutes, orders, rules, regulations, and requirements of federal, state, county, city, and municipal governments applicable to the Premises, or any portion thereof, including without limitation, zoning requirements and Environmental Requirements.

“Bankruptcy Law” means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

“Bankruptcy Proceeding” means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

“Basic Lease Terms” mean the basic lease terms set forth in Section 2—Basic Lease Terms of this Lease.

“Building” means the building(s) to be constructed by Tenant on the Premises as described in Section 6.

“Business Day” means any day except a Saturday, Sunday or national and/or State recognized holiday or holiday recognized by NMSU.

“City” means the City of Las Cruces, New Mexico.

“Condemnation” means (a) a taking pursuant to the exercise of the power of condemnation or eminent domain by any Condemnor, whether by legal proceedings or otherwise, or (b) a voluntary sale or transfer by Landlord to any such authority, either under threat of condemnation or while Legal Proceedings for condemnation are pending.

“Condemnor” means any public or quasi-public authority, private corporation or individual having the power of condemnation.

“Construction Period” means the period of time commencing as of the expiration of the Feasibility Period and expiring upon the Commencement Date.

“Effective Date” means the date this Lease is signed by both Landlord and Tenant as determined by the last date set forth on the signature page for Landlord’s and Tenant’s execution.

“Environmental Requirements” mean the regulation of Hazardous Materials by any federal, state or local law, rule or regulation pertaining to environmental matters, as now or hereafter enacted or amended, together with any other federal, state or local super lien or other statutes, rules or regulations, as now or hereafter amended in any way pertaining to clean-up; disclosure; water pollution control; air pollution control; regulation of solid waste; hazardous waste management; storage tanks; regulation of environmentally sensitive areas; hazardous and toxic substance reporting; and any other laws, including case law, which might be deemed or referred to as environmental common law.

“Equipment” means all equipment brought upon or installed on the Premises, including but not limited to: furniture, satellite dishes or other communication devices, refrigerators and other refrigerated cases, compressors, stoves, grills, ovens, exhaust equipment, grease traps, storage systems, displays, shelving, counters, and security/alarm systems, signs and sign structures, point of sale systems, computers and any future additions, replacements, or modifications to such items.

“ESAs” means the ESAs specified in Section 5.3.1.

“Event of Default” means: (i) the failure of either party to pay Rent or such other amounts when due and payable by such party, and such default continues for sixty (60) days after written notice from the other party; (ii) the failure of a party to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within One Hundred Twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of such party’s assets or such party’s interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and is discharged within One Hundred Twenty (120) days); and (iii) whether by action or inaction, a party’s default of any of its obligations under this Lease (other than a default in the payment of Rent by Tenant) and such default continues and is not remedied for a period of ninety (90) days after the non-defaulting party has given the defaulting party written notice specifying the same, or, in the case of a default that can be cured but not within a period of ninety (90) days, if the defaulting party has not (1) commenced curing such default within such ninety (90) day period; or (2) continuously and diligently pursued to completion the cure of the default.

“Expiration Date” means the Expiration Date specified in Section 2.4.

“Extension Options” means the Extension Options specified in Section 4.3.

“Extension Period” and **“Extension Periods”** mean the Extension Period or Extension Periods specified in Section 4.3.

“Feasibility Investigations” mean the Feasibility Investigations specified in Section 5.3.

“Feasibility Notice” means the Feasibility Notice specified in Section 5.6.

“Feasibility Period” means the Feasibility Period specified in Section 2.6.

“Force Majeure” means any delay caused by acts of nature, strikes, lockouts, other labor troubles, riots, civil commotion, insurrection, war, pandemics, epidemics or other health emergencies, governmental orders, decrees, or requirements, or other reason not the fault of the party delayed (financial inability excepted), in which case performance of the action in question will be excused for the period of delay and the period for the performance of such act will be extended for a period equivalent to the period of such delay. In order to claim Force Majeure, the claiming party must deliver notice to the other party within thirty (30) days following the occurrence of the Force Majeure event.

“Governmental Approvals” mean the Governmental Approvals specified in Section 5.3.3.

“Governmental Authorities” mean the City of Las Cruces, County of Dona Ana, State of New Mexico or any other applicable governmental or regulatory authority, agency or subdivision.

“Hazardous Materials” mean any (i) hazardous, harmful, dangerous, or toxic waste, item, substance, material, or product (including, without limitation, any and all petroleum based products) as defined by any federal, state, or local environmental and/or health law, act, edict, directive, decree, rule, statute, ordinance, or regulation, including without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et seq., (b) the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 5101, et seq., (c) the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et seq., (d) the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et seq., (e) the Federal Water

Pollution Control Act, 33 U.S.C.A. Section 1251, et seq., (f) all state or local environmental laws, and (g) any and all regulations related to any of the foregoing; or (ii) other item, substance, material, or product prohibited, limited, or regulated by or under any of the laws, acts, edicts, directives, decrees, rules, statutes, ordinances, or regulations described above.

“Impositions” means the Impositions specified in Section 9.1.

“Improvements” mean the Building and all improvements and facilities constructed, installed, placed, erected, located, modified, added to, removed, replaced or modified, as applicable, from time to time, on, in, under and above the Premises, including, but not limited to, any present or future alterations, additions, replacements, or modifications to the Project, excluding the Equipment.

“Initial Term” means fifteen (15) years from the Commencement Date.

“Interest Rate” means twelve percent (12%) per annum.

“Landlord” means the person or entity identified as the landlord in this Lease.

“Landlord Mortgage” means any mortgage, deed of trust, security agreement, or sale-leaseback instrument that encumbers all or a part of the Landlord’s Estate.

“Landlord’s Estate” means Landlord’s entire right, title, interest, and estate in and to Landlord’s leasehold interest in the Premises.

“Lease” means this Lease Agreement.

“Leasehold Mortgage” means a mortgage, deed of trust, financing statements, security agreements, sale-leaseback instrumentation, and other documentation that the Lending Institution may require.

“Leasehold Mortgagee” means the holder of or secured party under a Leasehold Mortgage.

“Lending Institution” means any commercial, national, or savings bank, savings and loan association, trust company, pension trust, foundation, or insurance company, and any other entity, person, corporation, partnership, or otherwise making a loan on the security of Tenant’s interest in the leasehold estate or all or any part of the Improvements or all or any part of the Equipment.

“Master Ground Lease” means that certain NMSU-ADI Ground Lease by and between the Regents of NMSU and Landlord, dated June 27, 2016, as it may be amended from time to time.

“NMSU” means New Mexico State University, a State institution of higher education established under Section 11 of Article XII of the Constitution of the State.

“Partial Taking” means the Partial Taking specified in Section 15.4.

“Preliminary Period” means Feasibility Period and the Construction Period.

“Permitted Exceptions” mean those exceptions and/or encumbrances approved by Tenant in writing (or deemed approved, as provided in this Lease) prior to the expiration of the Feasibility Period, other than those exceptions which Landlord may, in its discretion, elect to remove.

“Permitted Use” means the Permitted Use specified in Section 8.1.

“Premises Information” means the Premises Information specified in Section 5.2.

“Preexisting Condition Notice” means the Preexisting Condition Notice specified in Section 5.3.1.

“Preexisting Hazardous Materials” means Hazardous Materials present on or about the Premises on or before the Effective Date or discovered by Tenant during its Feasibility Investigations.

“Project” means the Building, the Improvements and the Equipment.

“Rent” means the amounts set forth in Section 2.7.

“State” means the State of New Mexico.

“Tenant” means Blake’s Lotaburger, LLC, a Delaware limited liability company, and its successors and assigns; provided, however, as used in this Lease, so far as covenants or agreements on the part of Tenant are concerned, the term Tenant will be limited to mean and include only the owner or owners of Tenant’s interest in this Lease at the time in question, and in the event of any transfer or transfers of such interest, Tenant herein named (and in case of any subsequent transfer, the then transferor) will be automatically freed and relieved from and after the date of the assumption of all responsibility on the part of Tenant contained in this Lease thereafter to be performed.

“Term” means the Initial Term and each Extension Period, if any.

“Title Commitment” means the Title Commitment specified in Section 5.4.

“Title Company” means a licensed title company selected by Tenant within Doña Ana County New Mexico.

“Title Policy” means the Title Policy specified in Section 5.4.

“Total Taking” means the Total Taking specified in Section 15.3.

EXHIBIT B
LEGAL DESCRIPTION OF THE PREMISES

EXHIBIT C
SITE PLAN OF THE PREMISES

EXHIBIT D

WHEN RECORDED, RETURN TO:

Blake's Lotaburger, LLC

Attn: Ross Brown, Vice President of Facilities & Development

3205 Richmond Drive, NE

Albuquerque, New Mexico 87107

[Space Above for Recorder's Use]

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is dated as of the ____ day of _____, 20__ by and between AGGIE DEVELOPMENT, INC., a New Mexico nonprofit corporation, ("**Landlord**"), and BLAKE'S LOTABURGER, LLC., a Delaware limited liability company ("**Tenant**").

RECITALS

A. Landlord owns certain real property located at _____ in Las Cruces, Dona Ana County, New Mexico, consisting of approximately _____ square feet of land, which is described more particularly on Exhibit A attached hereto (as more fully described in the Ground Lease, and hereinafter defined, the "**Premises**").

B. Landlord has leased the Premises to Tenant pursuant to a Ground Lease, dated _____, 20__ (the "**Lease**").

C. Pursuant to this Memorandum, Landlord and Tenant desire to confirm, ratify and give public notice of Landlord's lease of the Premises to Tenant pursuant to the Lease and of certain of the rights and interests of Tenant and Landlord under the Lease.

Notice is hereby given of the following:

1. Lease. The Lease pertains to real property located at _____ in Las Cruces, Dona Ana County, New Mexico, consisting of approximately _____ square feet of land, which is described more particularly on Exhibit A attached hereto.

2. Term. The Lease provides that the Initial Term of the Lease is fifteen (15) years commencing on _____, 20__ (the "**Commencement Date**"). The term of the Lease may be automatically extended for four (4) additional consecutive periods of five (5) years each, all on the terms and conditions in the Lease.

3. Addresses. The addresses of Landlord and Tenant are as follows:

Landlord's Address:

Aggie Development, Inc.
MSC 30RE, PO Box 30001
Las Cruces, New Mexico 88003
Attn: Scott Eschenbrenner

Tenant's Address: Blake's Lotaburger, LLC
3205 Richmond Drive NE
Albuquerque, New Mexico 87107
Attn: Ross Brown, VP of Facilities & Development

4. Memorandum. The foregoing represents only selected provisions of the Lease. Interested parties should contact Landlord or Tenant for more information. This Memorandum, and the rights and obligations of the parties hereunder, are subject to all of the terms and conditions of the Lease. This Memorandum does not add to, supersede, replace, amend or otherwise affect the Lease. To the extent of any conflict or inconsistency between any provisions of this Memorandum and the provisions of the Lease, the Lease, and not this Memorandum, will control and govern.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the date set forth above.

LANDLORD:

TENANT:

AGGIE DEVELOPMENT, INC., a New Mexico
nonprofit corporation,

BLAKE'S LOTABURGER, LLC, a
Delaware limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

[Notary acknowledgments follow.]

STATE OF NEW MEXICO)
 :ss.
COUNTY OF DONA ANA)

 The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, the _____ of Aggie Development
Inc., a New Mexico nonprofit corporation.

NOTARY PUBLIC

[Seal]

STATE OF NEW MEXICO)
 :ss.
COUNTY OF BERNALILLO)

 The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, the _____ of Blake's Lotaburger,
LLC, a Delaware limited liability company.

NOTARY PUBLIC

[Seal]

EXHIBIT A
TO
MEMORANDUM OF LEASE
PROPERTY DESCRIPTION

EXHIBIT E

CONFIRMATION OF LEASE TERMS

THIS CONFIRMATION OF LEASE TERMS (“**Confirmation of Lease Terms**”) is dated as of the ____ day of _____, 20____ (the “**Effective Date**”) by and between BLAKE’S LOTABURGER, LLC, a Delaware limited liability company (“**Tenant**”) and AGGIE DEVELOPMENT, INC., a New Mexico nonprofit corporation, (“**Landlord**”).

RECITALS

A. Landlord and Tenant are parties to that certain Ground Lease Agreement dated _____ (the “**Lease**”), regarding that certain real property located at _____, in Dona Ana County, New Mexico (the “**Premises**”), as such Premises are more fully described in the Lease.

B. Landlord and Tenant desire to confirm certain terms of the Lease, all subject to and based upon the following terms and conditions.

TERMS AND CONDITIONS

1. Term. The Lease provides that the Initial Term of the Lease is fifteen (15) years commencing on _____, 20____ (the “**Commencement Date**”). The term of the Lease will be automatically extended for four (4) additional consecutive periods of five (5) years each, all on the terms and conditions in the Lease, unless Tenant gives written notice to Landlord of Tenant’s intent not to have the term of the Lease so extended.

IN WITNESS WHEREOF, the parties have executed this Confirmation of Lease Terms as of the date set forth above.

LANDLORD:

TENANT:

AGGIE DEVELOPMENT, INC., a New Mexico
nonprofit corporation,

BLAKE’S LOTABURGER, LLC, a
Delaware limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____



Board of Regents Meeting
Meeting Date: June 6, 2025
Agenda Item Cover Page

Agenda Item # C-1

- ☒ Action Item
- ☐ Consent Item
- ☐ Informational Item

Presented By: Berta Zubiarte
University Architect, Facilities &
Services

Agenda Item:
Alumni Pond Reconstruction

Requested Action of the Board of Regents:
Approval of 4932 Alumni Pond Reconstruction

Executive Summary:

Plan and design the reconstruction Aggie Alumni Pond. The Aggie Alumni Pond lost 8' of water in 3 days which is approximately 750,000 gallons of water. The sudden loss of water is attributed to a breach in the existing pond liner and the water migrated through a previous soil. The pond will get reconstructed with imported engineered fill and grading for new pond liner, concrete pond lining, installation of water supply line with automatic fill system, installation of pond aeration system, fish habitats, and demo of pedestrian bridge.

References:

Presentation to Be Provided

Prior Approvals or Discussion:

Previously Considered by the Regents Financial Strategies, Performance, and Budget Committee 12 2 2024; Scheduled to be Discussed at the Regent's Audit Committee May 31, 2025.

Agenda Item Approved By:

Berta Zubiarte, University Architect, Facilities & Services

Board of Regents

ALUMNI POND RECONSTRUCTION

DATE 06/06/2025

Berta Zubiarte

University Architect, Facilities
& Services

Jose Loera

Executive Director

FACILITIES AND SERVICES



BE BOLD. Shape the Future.®
New Mexico State University

Facility Information

Current Use	Recreational
Year Built	Approx. 1970
Last Expansion	Unknown
Building Size	N/A
Construction Type	Concrete, Soil



Alumni Pond

Project Rationale

- New Mexico State University campus officials discovered a leak in the concrete lining of the Aggie Alumni Pond. The Alumni pond lost 8' of water in 3 days which is approximately 750,000 gallon of water. The pond was drained and closed off to give an opportunity for assessment of the issue, repair, and cleaning of the pond. Fish, turtles, and ducks were relocated to another area, by the New Mexico Game and Fish. The sudden loss of water is attributed to a breach in the existing pond liner and the water migrated through the previous soil.



Scope of Work

- Excavation and removal of previous soils
- Demolition and removal of pedestrian bridge
- Import engineered fill and grading for new pond liner
- Construct concrete pond lining
- Installation of water supply line with automatic fill system
- Installation of pond aeration system
- Construct fish habitats
- Construct ADA compliant shade structures around pond with solar powered lighting
- Installation of tables and benches around the pond

Proposed Project Schedule

Start of Design	March 2024
Completion of Design	December 2024
Start of Construction	July 2025
Completion of Construction	November 2025

Funding Source

- **Project Funding - \$1,308,909.02**
- FY24 Building Renew and Replacement -\$308,909.02
- Instruction and General -\$1,000,00.00



Project Enhancements

- Project Enhancements are not included within the \$1.3 M:
 - New Bridge
 - Landscaping Elements
 - Lighting
 - Benches
 - Brick Walkway
- Following approval by the Board of Regents, the Foundation will embark on a fund raising campaign this summer seeking donations for these elements.

Approvals

- Board of Regents 06/06/2025
- Higher Education Department 07/09/2025



Budget Breakdown

	Funding Total	Percentages
Design		
Geotechnical Investigation	\$3,863.22	0.3%
Design Fees	\$106,925.13	8.2%
Construction		
Maximum Allowance Construction Cost (MACC)	\$990,000.00	75.6%
Construction Contingency	\$99,000.00	7.6%
Construction Testing	\$19,500.00	1.5%
Integration to Campus Controls	\$7,000.00	0.5%
Shop Support	\$4,000.00	0.3%

Budget Breakdown (Continued)

	Funding Total	Percentages
Other Costs		
Project Administration Fees	\$84,534.54	6.0%
Total	\$1,308,909.02	100%



Contact

Berta Zubiate
*University Architect,
Facilities & Services*

facilities.nmsu.edu
575.646.2199
bzubiate@nmsu.edu

Jose Loera
Executive Director

facilities.nmsu.edu
575.646.5013
jloera@msu.edu



Supplemental Information

Alumni Pond Reconstruction



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Existing Conditions



Existing Conditions



NEW MEXICO HIGHER EDUCATION DEPARTMENT

FORM 6: CERTIFICATION BY GOVERNING BOARD

Institution:

New Mexico State University

Original:

☒

Date:

07/09/2025

Project title:

Alumni Pond Reconstruction

Revision:

☐

Date:

ORIGINAL

CERTIFICATION

I hereby certify, on the basis of the information contained in Forms 1 through 5 of this capital project submittal and all attached supporting documentation, if appropriate, that the Governing Board _____ the original submission of this project at its meeting on _____.

CERTIFIED:

Printed Name of

Signature

~~President/Chancellor~~

REVISED SUBMISSION

CERTIFICATION

I hereby certify that the Governing Board approved this Revised Subm _____; on _____.

CERTIFIED:

Printed Name of

Signature

President/Chancellor



BE BOLD. Shape the Future.®

Thank you!

Questions?



BE BOLD. Shape the Future.®



Board of Regents Meeting
Meeting Date: June 6, 2025
Agenda Item Cover Page

Agenda Item # C-2

- ☒ Action Item
- ☐ Consent Item
- ☐ Informational Item

Presented By: Berta Zubiate
University Architect, Facilities &
Services

Agenda Item:

Aquatics Center Renovation

Requested Action of the Board of Regents:

Approval of Aquatics Center Renovation

Executive Summary:

The Aquatics Center Renovation includes the planning, design, demolition, construction, renovation, and equipping of the facility to support safe, compliant, and long-term operation. Improvements will focus on correcting life safety concerns, enhancing accessibility, and upgrading core infrastructure systems. These efforts will ensure the facility continues to serve students and the broader community in a safe and effective manner.

References:

Presentation to Be Provided

Prior Approvals or Discussion:

Scheduled to be Discussed on the May 31, 2025 Regent's Audit Committee agenda

Agenda Item Approved By:

Berta Zubiate, University Architect, Facilities & Services

Board of Regents

AQUATICS CENTER RENOVATIONS

JUNE 06, 2025

Berta Zubiate
FS University Architect

Jose Loera
Executive Director

FACILITIES AND SERVICES



BE BOLD. Shape the Future.®
New Mexico State University

Facility Information

Current Use	Aquatics Center
Year Built	1961
Last Expansion	2012
Building Size	14,365 sq ft
Construction Type	Concrete & CMU Block



**NMSU
NATATORIUM / AQUATICS CENTER**

Project Rationale

- Address critical life safety deficiencies identified by the State Fire Marshal and State Pool Inspector
 - Fire resistance-rated walls, ceilings, and barriers
 - Non-Working Filtration Systems
- Support long-term facility use by planning, designing, demolishing, constructing, renovating, and equipping infrastructure upgrades
- Upgrade and verify safety-related signage, including pool rules, depth markers, and emergency instructions
- Ensure ADA compliance through the evaluation and servicing of pool entry systems for accessibility

Scope of Work

- Plan, design, demolish, construct, renovate, and equip critical infrastructure improvements for the facility
- Replace roofing and address associated structural or ceiling deficiencies to meet fire and building code compliance
- Replacement of non-working pool filtration systems for indoor and outdoor pools

Scope of Work (Continued)

- Inspect, test, and replace emergency lighting and exit signage to ensure safe egress during emergencies
- Evaluate and service ADA-compliant pool entry systems, ensuring accessibility for all users
- Verify that all chemical storage areas are properly ventilated, secured, and meet hazardous material safety standards

Proposed Project Schedule

Start of Design	June 2025
Completion of Design	September 2025
Start of Construction	September 2025
Completion of Construction	June 2026



Funding Source

- **Project Budget - \$2,325,000**
- (ZJ5275 General Fund) FY 26 Non-Recurring Building Renewal and Replacement - \$5,299,208.56 (pending)
- Departmental Funds - \$375,000
A departmental match will be required to support the project

FY26 NEW MEXICO HIGHER EDUCATION DEPARTMENT - HIGHER EDUCATION INSTITUTIONS AND SPECIAL SCHOOLS - BUILDING RENEWAL AND REPLACEMENT DISTRIBUTION		
APPROPRIATION ID: ZJ5275 - GENERAL FUND		
Institution / Program	FY26 Final HB2 Total Sec 4-8	BR&R Distribution
SUMMARY BY INSTITUTION (DFA Code)		
University of New Mexico (952)	\$285,341.80	\$8,494,448.36
Gallup Branch	\$11,812.60	\$351,653.77
Los Alamos Branch	\$2,547.20	\$75,828.56
Valencia Branch	\$7,673.90	\$228,447.24
Taos Branch	\$5,204.30	\$154,928.78
UNM Health Sciences Center (952)	\$97,941.30	\$2,915,651.74
New Mexico State University (954)	\$178,008.70	\$5,299,208.56
Dona Ana Branch - I&G	\$32,138.00	\$956,728.32
Grants Branch - I&G	\$4,613.20	\$137,332.10
New Mexico Highlands University (956)	\$41,324.60	\$1,230,207.70
Western New Mexico University (958)	\$30,194.30	\$898,865.58
Eastern New Mexico University (960)	\$46,919.60	\$1,396,767.38
Roswell Branch	\$16,204.00	\$482,383.03
Ruidoso Branch	\$2,679.90	\$79,778.96
New Mexico Institute of Mining & Technology (962)	\$40,593.40	\$1,208,440.33
Northern New Mexico College (964)	\$14,296.80	\$425,606.87
Santa Fe Community College (966)	\$14,970.30	\$445,656.54
Central New Mexico Community College (968)	\$85,154.00	\$2,534,981.75
Luna Community College (970)	\$9,383.20	\$279,332.04
Mesalands Community College (972)	\$5,347.80	\$159,200.69
New Mexico Junior College (974)	\$7,962.70	\$237,044.64
Southeast New Mexico College (975)	\$5,439.70	\$161,936.49
San Juan College (976)	\$33,574.60	\$999,495.01
Clovis Community College (977)	\$13,536.40	\$402,970.23
Subtotal - Universities and Community Colleges (HEI)	\$992,862.30	\$29,556,894.69
New Mexico Military Institute (978)	\$4,709.70	\$140,204.85
New Mexico School for the Deaf (980)	\$6,723.30	\$200,148.47
NM School for the Blind & Visually Impaired (979)	\$3,451.60	\$102,751.99
Subtotal - Special Schools	\$14,884.60	\$443,105.31
Subtotal - University, Community Colleges, Special Schools	\$1,007,746.90	\$30,000,000.00



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Approvals

- Board of Regents – June 06, 2025
- Higher Education Department - July 9, 2025
- State Board of Finance – September 16, 2025

Budget Breakdown

	Funding Total	Percentages
Category		
Maximum Allowance Construction Cost (MACC)	\$1,800,000	77.4%
Integration with Campus Controls	\$42,000	1.8%
Contingency	\$180,000	7.7%
Shop Support	\$5,000	0.2%
Other Costs		
Project Design	\$200,000	8.60%
Project Administration Fees	\$98,000	4.2%
Total	\$2,325,000	100%

Contact

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Supplemental Information

NMSU NATATORIUM / AQUATICS CENTER



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Existing Conditions



Outdoor Pool Filter Room



Indoor Pool Filter Room

Existing Conditions



Wood Ceiling in Filter Room



Wood Ceiling in Filter Room

NEW MEXICO HIGHER EDUCATION DEPARTMENT
FORM 6: CERTIFICATION BY GOVERNING BOARD

Institution: New Mexico State University Original: ☒ Date: 06/06/2025
Project title: Aquatics Center Renovation Revision: ☐ Date: _____

ORIGINAL CERTIFICATION

I hereby certify, on the basis of the information contained in Forms 1 through 5 of this capital project submittal and all attached supporting documentation, if appropriate, that the Governing Board approved the original submission of this project at its meeting on _____.

Certified:

Printed Name of President/Chancellor

Signature

REVISED SUBMISSION CERTIFICATION

I hereby certify that the Governing Board approved this Revised Submission at its meeting on _____.

Certified:

Printed Name of President/Chancellor

Signature



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Thank you!

Questions?



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