



CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Office of the Mayor


EC-19349

Mayor Timothy M. Keller

February 5, 2019

INTER-OFFICE MEMORANDUM

TO: Klarissa Peña, City Council President

FROM: Timothy M. Keller, Mayor 

SUBJECT: Lease Agreement between the City of Albuquerque, a New Mexico municipal corporation, and Youth Development Incorporated, a New Mexico nonprofit corporation.


The City owns property known as the Tim M. Gallegos Center, Health and Social Service Center located at 6900 Gonzales Road SW. Youth Development Incorporated (YDI) currently leases 770 sq. ft. of the property owned by the City for the purpose of providing self-sufficiency, mentoring, training and educational programs to low-income youth and families. YDI wishes to continue its tenancy and is willing to enter into a new lease based upon an increased rent amount.


The proposed Lease Agreement is for a five (5) year period. The lease will generate \$4,620.00 in revenue the first year and escalate 3.5% annually over the term of the lease. The initial five (5) year term will generate \$24,778.60 in revenue for the City. The proposed lease also provides for two (2) three (3) year extension options so long as the tenant is not in default and if properly exercised.

This Lease Agreement is forwarded to City Council for approval.

Title/Subject of Legislation: Lease Agreement between the City of Albuquerque, a New Mexico municipal corporation, and Youth Development Incorporated, a New Mexico nonprofit corporation.

Approved:



Sarita Nair 3/3/19
Date
 Chief Administrative Officer

Recommended:



Carol Pierce 2-15-19
Date
Director, Family and Community Services  2-15-2019

Cover Analysis

1. What is it?

Lease Agreement between the City of Albuquerque, a New Mexico municipal corporation, and Youth Development Incorporated (YDI), a New Mexico nonprofit corporation.

2. What will this piece of legislation do?

Generate revenue for the City and continue the lease presence of YDI at the Ted M. Gallegos Center.

3. Why is this project needed?

Revenue generating lease that provides needed services to the community.

4. How much will it cost and what is the funding source?

N/A

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

The lease will generate \$4,620.00 in revenue the first year and escalate 3.5% annually over the term of the lease. The initial five (5) year term will generate \$24,778.60 in revenue for the City.

6. What will happen if the project is not approved?

Loss of current and future revenue. Loss of self-sufficiency, mentoring, training and educational programs to low-income youth and families currently provided at this center.

7. Is this service already provided by another entity?

Not at this facility.

LEASE AGREEMENT
Non-Government Lease

THIS LEASE AGREEMENT ("Lease") between the City of Albuquerque ("City"), a New Mexico municipal corporation, and Youth Development Incorporated, a New Mexico nonprofit corporation, ("Tenant") on the date set forth below.

RECITALS

WHEREAS, the City owns the real estate and building known as the Ted M. Gallegos Center, Health and Social Service Center ("Center") located at 6900 Gonzales Road S.W., Albuquerque, New Mexico 87121 ("Property"); and

WHEREAS, the Tenant wishes to provide self-sufficiency, mentoring, training and educational programs to low-income youth and families; and

WHEREAS, the parties wish to enter into a lease.

NOW THEREFORE, for mutual consideration, and on the terms and subject to the conditions set forth herein, The City and Tenant hereby agree as follows:

I. BASIC LEASE PROVISIONS.

A. The Premises. The total leased space includes 770 square feet of the Center as shown on Exhibit A, attached here to (hereafter, the "Premises"). The Tenant may use the common areas, including the conference rooms, common restrooms, parking areas and common waiting rooms ("Common Areas") in the Center in common with the City, its officials, employees, agents, invitees, and other tenants of the City, subject to the rules imposed by the City.

B. Terms.

1. Effective Date: This Lease will not be binding upon the parties until it is approved by the Albuquerque City Council, signed by Tenant and signed by the Chief Administrative Officer or her designee ("Effective Date").
2. Lease Commencement Date: Upon full execution of Lease by the City and Tenant.
3. Rent Commencement Date: March 1, 2019
4. Term Commencement Date: March 1, 2019
5. Expiration Date: April 30, 2024

6. Rent:

- a. Rental payments shall commence on the Rental Commencement Date and shall be due at a total monthly rental amount of \$385.00 (\$6.00/square foot at 770 square feet) for the initial year of this lease. Monthly Base Rent shall be paid in advance without notice, due on the first day of the month.
- b. The Base Rent shall be increased annually effective on the first day of March of each year by an amount equal to three and a half (3.5%) over the Base Rent paid during the previous lease year.
- c. Base Rent Schedule.

| Period | Annual Base Rent per square foot | Annual Base Rent | Monthly Payments |
|---|----------------------------------|------------------|------------------|
| Lease Year 1 | \$6.00 | \$4,620.00 | \$385.00 |
| Lease Year 2 | \$6.21 | \$4,781.70 | \$398.46 |
| Lease Year 3 | \$6.43 | \$4,951.10 | \$412.59 |
| Lease Year 4 | \$6.65 | \$5,120.50 | \$426.71 |
| Lease Year 5 | \$6.89 | \$5,305.30 | \$442.11 |
| FOR RENEWAL PERIODS (if properly exercised) | | | |
| Lease Year 6 | \$7.13 | \$5,490.10 | \$457.51 |
| Lease Year 7 | \$7.38 | \$5,682.60 | \$473.55 |
| Lease Year 8 | \$7.64 | \$5,882.80 | \$490.23 |
| Lease Year 9 | \$7.90 | \$6,083.00 | \$506.92 |
| Lease Year 10 | \$8.18 | \$6,298.60 | \$524.88 |
| Lease Year 11 | \$8.47 | \$6,521.90 | \$543.49 |

d. Time, Place and Manner of Payments.

- i. All rent shall be paid to the City of Albuquerque, Central Accounts Receivable and Billing Division, PO Box 27780, Albuquerque, NM 87125, or at such other place as the City may designate from time to time for this purpose.
 - ii. Rent shall be paid by check.
 - iii. COA Customer Number shall be referenced on all checks.
- e. In the event Tenant fails to pay Base Rent within fifteen days of the due date, Tenant shall pay City a late payment charge equal to five percent (5%) of the Base Rent.

- f. Base Rent and all other consideration to be paid or provided by Tenant to City shall constitute Rent and shall be paid or provided without offset.
 - g. FUNDING AUTHORITY. Tenant's obligations under this Lease shall be subject to availability of funding for the program identified on the first page of this Lease. In the event that funding is terminated, Tenant must provide documentation acceptable to the City and may cancel this Lease with 90 days written notice to Landlord.
 - h. City and Tenant acknowledge that the rent charged to Tenant is below market rents in exchange for Tenant providing self-sufficiency, mentoring, training and educational programs to low-income youth and families. Should Tenant cease to provide those services and support programs and modifies the use of the Premises without prior written approval of the City, Tenant will be in default under this Lease and will surrender the property to City or pay the then fair market rents for the Premises, based on the fair market value of the rents as determined by an appraisal, prepared by an appraiser approved by the City and commissioned at Tenant's sole cost and expense. Fair market rents shall commence from the earlier of the date of the change of use, the date the new use is approved by the City pursuant to this subsection or the date of the appraisal.
 - i. Subject to the provisions as set forth in this Lease, requiring Additional Rents, Tenant is obligated to pay to the City all monetary obligations ("Additional Rents") owed by Tenant to City under this Lease, including but not limited to taxes, liens, insurance premiums incurred by the City on behalf of Tenant, and the interest upon unpaid obligations, which shall all be deemed to be "Additional Rent," and in the event of nonpayment by Tenant, City shall have all the rights and remedies set forth in this Lease.
7. Extension Option: So long as the Tenant is not in default (beyond the applicable period of notice and cure) at the time of any extension, and upon written notice at least ninety (90) days prior to the expiration of the current Term, Tenant shall have the right to extend the term for two (2) three (3) year terms upon the same terms and conditions as are in effect under this Lease immediately preceding the commencement of such Extended Term, except that the Base Rent due from Tenant shall be increased as provided in Section 1.6.c of this Lease. If Tenant fails to deliver to City written notice of exercise of an Option within the prescribed time period, such Option and any succeeding Options shall lapse, and there shall be no further right to extend the Lease Term.
8. Holding Over: Holding over by the Tenant after the expiration of this Lease, whether with or without the consent of the City, shall not operate to extend or renew this Lease. Any such holding over shall be construed as a tenancy from month to month and Tenant shall be bound by all terms and conditions of this Lease but only

as they are applicable to a month-to-month tenancy, provided however, that if the Holding Over is without consent of the City, all rents and charges shall be in an amount equal to one hundred fifty percent (150%) of the rates and charges required in this Lease. Nothing in this Lease shall be construed to grant Tenant the right to hold over at any time, and City shall be entitled to exercise any and all remedies at law or in equity to recover possession of the Premises, as well as any damages incurred by City, including attorneys' fees.

9. Termination: Notwithstanding any provision in this Lease to the contrary and without limitation, the City or the Tenant may terminate this Lease at any time without cause by giving the other party ninety (90) day's written notice. If either party terminates the Lease pursuant to this Section, rent shall abate at the end of the 90-day notice period.
10. Tenant will cooperate with any City, State or Federal program data collection and evaluation efforts by providing requested information regarding services delivered and population served in a timely manner (i.e. monthly client numbers, client characteristics data). Failure to do so may result in termination of this Lease if deemed by the City.
11. Tenant will provide copies of all Licensing, Permitting, Facility Audits, and Inspections to the Center Manager within three (3) business days of receipt.
12. Tenant will submit written request to Center Manager to change programs that will occupy the Premises. Request should include program information, client characteristic information and new staff listing. Tenant will not move in any programs without prior written consent from City.

II. USE OF THE PREMISES.

A. Tenant shall:

1. Use and operate the Premises only for the purposes of providing self-sufficiency, mentoring, training and educational programs to low-income youth and families, set forth herein, and for no other purpose whatsoever without the City's prior written consent.
2. Operate and maintain the Premises in a safe, sanitary and operable condition.
3. At Tenant's sole cost, comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws, rules and regulations, now or hereafter enacted or amended, affecting the Premises, or occasioned by or affecting the use thereof by Tenant, including, but not limited to, the Americans with Disabilities Act.

4. Properly handle and dispose of all Hazardous Substances pursuant to Environmental Laws. Tenant shall take all appropriate measures necessary to prevent the release on or from the Premises of any Hazardous Substances. Neither party shall create or bring on the Premises any Hazardous Substances or permit any third party to do so in violation of Environmental Laws. Should Tenant become aware of the existence of any Hazardous Substance on the Premises, Tenant shall immediately notify the City of such Hazardous Substance.
 5. Tenant shall and shall cause its agents, employees and contractors to comply with any rules and regulations for the Property promulgated by the Center. The City from time to time by notice to Tenant may amend such Rules in any manner not inconsistent with the express provisions of this Lease.
- B. Tenant shall not:
1. Use, occupy or permit the Premises to be used or occupied for any unlawful purposes or for purposes not specified in this Lease.
 2. Use, occupy or permit the Premises or any part of the Premises to be used or occupied, or do or permit anything to be done in or on the Premises in any manner which will:
 - a. Cause or be likely to cause structural damage to the Premises or any part thereof, or adversely affect the mechanical, electrical, plumbing or other base building systems.
 - b. Constitute waste or a public or private nuisance; or
 - c. Violate City rules, regulations or policies promulgated for the use and operation of City-owned property.
 - d. Cause, permit or suffer any waste or damage, disfigurement or injury to the Premises or the fixtures or equipment thereof or the Common Areas, other than due to normal wear and tear.
 - e. Cause the cancellation of any insurance policies related to the Property. Tenant shall reimburse the City for any increases in insurance premiums payable by the City as a result of Tenant's use of the Premises or the nature of Tenant's business. All property kept, stored or maintained by Tenant within the Premises or on any adjacent Common Areas shall be there at Tenant's sole risk, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft or from any other cause, no part of said loss or damage is to be

charged to or borne by the City, unless due to the negligence or willful misconduct of the City, its employees, agents or contractors.

- f. Place or install any signs, racks, stands, trade fixtures, pedestal signs or other displays of products or services, advertisement, notice, lettering or decoration on any part of the outside of the Premises or anywhere in the interior of the Premises that is visible from the outside of the Premises, on the outside of the building, the grounds of the Property, the right-of-way or adjacent properties, without the express prior written approval of the City. Tenant, at its expense, may install its standard signs and logos so long as they are in compliance with applicable signage codes and are approved in advance of fabrication and installation by the City. Tenant shall pay for all fees and costs associated with obtaining the approval of its sign package by the City of Albuquerque, including any necessary application for a variance or an appeal thereof. All signs shall be kept in good condition and in proper operating order at all times. The City reserves the right to designate a uniform type of sign for the Property to be installed and paid for by Tenant. Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs are attached, and this obligation shall survive the expiration or earlier termination of this Lease.

C. Tenant acknowledges and represents that it has examined the Premises and has determined by its own independent evaluation that the Premises are suitable and usable for the purposes, uses and activities intended by Tenant and contemplated by this Lease. Tenant acknowledges that the City has made no representation, warranty or guarantee, expressed or implied that the Premises are now, or during the Term of this Lease, suitable or usable for purposes or uses which Tenant intends to make of the Premises or which are contemplated by this Lease.

III. LEASE OF PREMISES. In consideration of the mutual covenants and agreements set forth herein, the City hereby leases to Tenant the Premises in the County of Bernalillo, State of New Mexico. The leasehold includes the right of ingress and egress to and from the Premises through and across property owned by the City that is adjacent to the Premises in a manner to be directed by the City.

A. The leasehold interest granted by this Lease shall be subject and subordinate to the right of the City and other owners of public utilities to operate, maintain, repair, modify, realign, replace and reconstruct all public utilities in, under, across and upon the Premises.

B. The City shall allow Tenant reasonable access to the building electric lines, feeders, wiring, telephone rooms, electrical closets and other conduits, pipes and facilities to accommodate Tenant's telecommunication systems. Tenant's right to the use of and access to the City's facilities shall be without charge other than the rent provided for herein. However, no installation of

telephone, computer or other telecommunication systems shall be made until the installation plan has been approved in writing by the City in advance of installation.

C. The Premises are located within a building designed for the occupancy of more than one Tenant; Tenant acknowledges that the building contains areas intended for the use in common by all occupants of the building Common Areas. As long as Tenant occupies the Premises, Tenant and its employees, agents, and invitees shall have the right to use, in common with the City, its successors, assigns and other Tenants, all of the Common Areas, except for areas reserved for the exclusive use of the City or other Tenants or occupants of the building. The City shall provide supplies only to the Common Area(s) of the Center and only those supplies that are normally found in said Common Areas, such as bathroom paper and soap. Tenant shall be solely responsible for providing and paying for supplies to meet their needs for the Premises, including but not limited to, all paper products and office supplies.

D. The Center Manager shall provide all keys and/or access cards for the Premises and gate. Keys and/or access cards lost by Tenant shall be duplicated by the City at Tenant's cost. At no time shall the Tenant duplicate keys. Locks shall not be altered unless approved by the Center Manager in advance in writing. Lock changes, if approved, shall be at the sole expense of Tenant. The Tenant is responsible for maintaining a Key Log and informing the Center Manager of key assignments. If at any time, a key is un-accounted for, the Premises and gate will be rekeyed at the Tenant's sole expense.

E. The City will administer the Center. The Center shall be open to the public/clients between 8:00 a.m. and 5:00 p.m., Monday through Friday. Tenant staff/employees may enter the Center at 7:00 a.m. and must leave no later than 6:00 p.m., Monday through Friday. The Center will be closed on all City holidays. City holidays are those days designated pursuant to City ordinance. The Tenant may request that the City open the Premises on City holidays, provided that the Tenant shall obtain advanced written approval from the City. Such requests shall be submitted in writing no less than (30) thirty days in advance of the holiday Tenant wishes to have its Premises open to the public. The Tenant shall provide the Center Manager written notice of the name and telephone number of the representative of the Tenant who shall be responsible for the use and security of the Premises. A City representative shall be present at the Center for the holidays Tenant requests the Premises be open to serve the public. The City may deny a request to open the Center on City holidays when no Center City staff is available for the holiday Tenant requests the Center to be open. The Center shall not be open to the public on Saturdays and Sundays unless approved by the Center Manager and Family and Community Services Department Division Manager in advance in writing. In the event of dangerous or adverse weather or other conditions, Tenant must adhere to the City's decisions regarding the closure of the Center for safety reasons. The City's determination that excessive snow and/or ice exist shall be a reason for closure of the Center.

F. Common Areas. All of the portions of the Property made available by the City for use in common by Tenants and their employees and invitees from time to time ("Common Areas") shall remain subject to the City's exclusive control at all times. Tenant shall not directly or indirectly conduct business in the Common Areas or make any use of the Common Areas that

interferes in any way with the use of the Common Areas by other parties. Tenant's use of the Common Areas shall be subject to the other provisions of this Lease. Tenant's right to use the Common Areas shall terminate upon the expiration or earlier termination of this Lease or Tenant's right to possession of the Premises. The City shall be entitled to make such changes in the Common Areas as it deems appropriate and to determine the nature and extent of all Common Areas. The City reserves the right to use or permit or deny the use of the Common Areas for any purpose that in the City's sole reasonable opinion may be in the best interests of the Property, including without limitation promotions, events, exhibits, displays, shows and other activities. The Common Area, at the City's election, may include areas in adjoining properties that are or become available to Tenants of the Property. If Tenant desires to operate the Premises or any portion of the Common Area during additional hours beyond the hours set forth in this Lease, Tenant shall first obtain the City's written approval 30 days prior to use and Tenant shall pay all actual out-of-pocket additional costs and expenses.

IV. REPAIRS AND MAINTENANCE, TENANT'S NEGLIGENCE AND SUBSTANTIAL DAMAGE.

A. Tenant Build-Out and Improvements. Subject to the requirements of Article XI (Alterations), Tenant may pay for any additional finishing and upgrades to the Premises, but such items, once affixed, shall become the sole property of the City and no reimbursement will be provided to Tenant at any time for such fixtures.

B. City Repairs and Maintenance. The City shall, at its sole cost and expense, make all necessary repairs and replacements to the Premises, including the heating system, air conditioning system, and any other fixtures owned by the City, except that City shall not be required to make any repairs occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires, which repairs shall be made by Tenant. City shall maintain all common areas of the Center. In the event that the Premises should become in need of repairs required to be made by City hereunder, Tenant shall give immediate written notice thereof to City and City shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after delivery of such written notice. City shall have no liability for any damages or injury arising out of any condition or occurrence causing a need for such repairs unless the damage results from the City's negligence or willful misconduct. City shall not be liable or responsible for breakdowns or temporary interruptions in access or utilities nor for interference with Tenant's business or Tenant's access to the Premises during the course of repairs or remedial work, unless resulting from the negligence or willful misconduct of City. Notwithstanding anything herein to the contrary, City shall not be liable for consequential, punitive or speculative damages.

C. Extermination services will be provided by the City.

D. Tenant Repairs and Maintenance. Tenant shall, at its sole cost and expense and with prior written Center Manager approval, repair or replace any damages caused by Tenant or its employees or invitees to the Premises promptly and when necessary. Any repairs or replacements shall be made in good condition and repair consistent with the quality of materials and workmanship of the original work. Upon completion of all maintenance repairs and/or

inspections/testing, a copy of such report shall be provided to the Center Manager within three (3) business days.

E. Tenant's Failure. If Tenant refuses or neglects to commence or complete any repairs or replacements or maintenance as required by this Lease, the City may, at its option, make or complete the repairs or replacements or maintenance and Tenant shall reimburse the City for such costs and expenses promptly upon receipt of an invoice. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

F. Supplies. The City shall provide supplies only to the Common Areas of the Center and only those supplies that are normally found in said Common Areas, such as paper products and soap. Tenant shall be solely responsible for providing and paying for supplies to meet their needs for the Premises, including but not limited to cleaning and office supplies.

G. Janitorial Services and Trash Removal. Landlord will discard trash daily. Premises will be swept, mopped and vacuumed each business day by Landlord. Tenant shall provide and pay for all janitorial services related to the cleaning of the Premises that are not the responsibility of the Landlord as otherwise set forth herein. There shall be no reduction of rent based on janitorial services provided or paid by Tenant. The City shall provide and pay for a common trash dumpster for use by all tenants at the Center. Tenant shall cause its employees to place all refuse and recyclables in appropriate containers. Trash must be contained and bagged so as to avoid unsightly or unsanitary conditions in the area of the refuse containers or anywhere around the Premises, and with the fitted lids of such containers kept closed and secured. Liquids should be disposed of in sinks and never in refuse containers. Boxes shall be broken down, loose paper bagged and lids of City provided shared recycle containers shall be kept closed. Tenant shall transport its refuse using a container with wheels so as to not drag bags of refuse along the hallways, sidewalks or parking lots. Tenant shall not permit offensive or strong odors of any kind to emanate from the Premises. If such odors are emanating from the Premises, then upon notice from City, Tenant shall, within ten (10) days, install devices or put in place procedures to eliminate or contain such odors within the Premises. Tenant shall not store any items, including, but not limited to, furniture, boxes, or cleaning supplies outside of its Premises without City's prior approval. Large items shall not be thrown into or placed near the dumpsters. Large items shall be disposed of as necessary. If the City determines that Tenant is responsible for inappropriately disposing of items, City will cure and charge the Tenant one hundred dollars (\$100.00) per item.

H. Substantial Damage: Tenant's Negligence. In the event the Premises are destroyed or so damaged and rendered un-tenantable so that they cannot reasonably be repaired within thirty (30) days and such damage is a result of the negligent act or omission of Tenant, its officers, agents, servants, employees, contractors, subcontractors, licensees or invitees, the rents and fees payable hereunder shall not abate and the City may, at its discretion require Tenant to complete repair and reconstruction of the Premises promptly and pay the costs, or the City may repair and reconstruct the Premises and Tenant shall be responsible for reimbursing City for the costs and expenses incurred in such repair and reconstruction, subject in all cases to the restrictions and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 to -30, NMSA 1978 and any amendments thereto. Failure to reimburse the City within 30 days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

I. **Substantial Damage: City's Responsibility.** If the damage to the Premises is not due to the negligent act or omission of the Tenant, its officers, agents, servants, employees, contractors, subcontractors, licensees or invitees, and if such repairs or rebuilding can, in the judgment of the City, be completed within ninety (90) consecutive calendar days from the date the damage occurred, the City, at its option may proceed promptly with such repairs, in which event abatement of the rental fees shall be allowed or the City may terminate this Lease. If such damages cannot be completed within ninety (90) consecutive calendar days from the date the damage occurred, as determined by the City, either the City or the Tenant may terminate the Lease. Neither Tenant nor City shall be deemed in default under this Lease in the event it elects to terminate, as described in this Section, the letting of the damaged or destroyed Premises for reasons described in this Section H.

J. **Requests.** All requests or complaints relating to the Center's operation shall be addressed to the Center Manager. If the Center manager is not available or not able to address complaints or questions regarding the Center operations, Tenant may contact the City's Department of Family and Community administration by calling 311.

K. **Adverse Conditions.** In the event of dangerous or adverse weather or other conditions, Tenant must adhere to the City's decision regarding the closure of the Center for safety reasons. Snow and ice removal shall be provided by the City depending on staff availability. The City of Albuquerque's determination that excessive snow and/or ice exist shall be a reason for closure of the Center.

V. **PARKING.** This Lease includes parking privileges on the Center's property for clients and staff as designated by the City.

VI. SECURITY DEPOSIT AND GUARANTY.

A. **Security Deposit.** Tenant is not required to provide a Security Deposit to the City. Notwithstanding the foregoing, upon any default in any twelve month period, or upon the assignment or sub-letting of the Premises to a party that is not an Affiliate of Tenant, the City may require a Security Deposit. In the event a Security Deposit is required, the deposit shall not bear interest, shall not be required to be maintained in a separate account, and shall be returned, less any unpaid claims against Tenant, upon the expiration of this Lease and the surrender of possession of the Premises, to Tenant or the last assignee of Tenant's interest. If Tenant fails to perform with respect to any provision of this lease, the City may apply the Security Deposit for the payment of any sum in default, or for the payment of any other amount that the City may spend or become obligated to spend by reason of Tenant's default, or to compensate the City for any loss or damage that the City suffers from Tenant's default. Application of the deposit is not a cure of the default by Tenant to which the application relates. If any portion of the Security Deposit is applied, Tenant shall, within five days after written demand therefor, deposit cash with the City in an amount sufficient to restore the Security Deposit to its original amount. In the event of the assignment or conveyance of the City's interest in this Lease, the City shall transfer said deposit to the City's successor in interest and thereafter shall have no further liability for the return of such Security Deposit.

B. Guaranty. Tenant is not required to provide a Guaranty to the City. Notwithstanding the foregoing, upon any default in any twelve month period, or upon the assignment or sub-letting of the Premises to a party that is not an Affiliate of Tenant, the City may require a Guaranty in the form required by the City from all persons identified by the City, and their spouses, if married, or from a firm or corporation other than Tenant, that is acceptable to the City. In the event of a default by the guarantors of this Lease, either under this Lease or the Guaranty, or upon an assignment or subletting of the Premises, the City may, at its option, require an additional or a replacement guaranty of the obligations of the Tenant hereunder by a person, and his or her spouse, if any, or a firm or corporation other than Tenant, acceptable to the City, in the form required by the City.

VIII. QUIET ENJOYMENT. Upon the performance of all terms, conditions, and covenants of this Lease, which the Tenant is required to perform, the Tenant shall, at all times during the Term peaceably and quietly enjoy the Premises without any disturbance from the City.

IX. PERMITS AND LICENSES. Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises and otherwise comply with all applicable laws, ordinances and governmental regulations. Tenant shall immediately notify the City in the event any permit, license or approval necessary for the operation of Tenant's business from the Premises is revoked or suspended. If such revocation or suspension is not corrected within twenty (20) days after notice to the City (or such longer period as is reasonable so long as Tenant initiates such correction within the twenty (20) day period and thereafter diligently and continuously works towards correcting the revocation or suspension) then it shall be an automatic event of Default under this Lease.

X. SURRENDER UPON TERMINATION. At the expiration of the Term of this Lease, Tenant shall surrender the Premises to the City in as good condition as it was in at the beginning of the Term; reasonable use, wear and tear accepted, clean and free of debris. Tenant shall remove Tenant's personal property from the Premises. Any and all improvements made to the Premises during the term hereof shall, unless the City requests their removal, belong to the City without compensation, allowance or credit to Tenant, except movable trade fixtures, furnishings and equipment of the Tenant, which can be removed without defacing the Premises or the Property. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Any of Tenants' personal property left by Tenant at the expiration of the Term of this Lease shall, at the option of the City, become the property of the City and the City shall be entitled to use, sell or otherwise dispose of such personal property.

XI. ALTERATIONS AND LIENS.

A. Alterations. Tenant shall not make any alterations, improvements, additions or changes to the Premises without the prior written consent of the City. All alterations will be made by a contractor licensed and insured in the State of New Mexico and performed in a good and workmanlike manner. All materials used shall be of a quality comparable to or better than those

in the Premises and shall be in accordance with plans and specifications approved by the City. Prior to the commencement of any repair, improvement, or alteration, Tenant shall give the City at least 5 business days written notice so that the City may post appropriate notices to avoid any liability for liens.

B. Liens: Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Property free and clear of all construction, mechanic's, materialman's, laborer's and supplier's liens, resulting from construction done by or for Tenant. The interest of the City in the Premises and the Property shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. If any construction, mechanic's, materialman's, laborer's or supplier's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Property in connection with any such Tenant work, Tenant shall, within 30 days after receipt by Tenant of notice of such lien, discharge same as a lien either by payment or by posting of any bond as permitted by law. If Tenant shall fail to discharge any such lien, whether valid or not, within 30 days after receipt of notice from the City, the City shall have the right, but not the obligation, to discharge such lien on behalf of Tenant and all reasonable and actual costs and expenses incurred by the City associated with the discharge of the lien, including, without limitation, reasonable attorneys' fees, which costs and fees shall constitute Additional Rent hereunder and shall be immediately due and payable by Tenant.

XII. UTILITIES. Normal and customary charges for water, gas and electric utilities shall be arranged and paid for by the City. Tenant shall not install any equipment or fixtures, or use the same, in any manner that exceeds the safe and lawful capacity of any utility equipment or lines serving the Premises. The City shall not be liable in damages or otherwise for any failure, variation, shortage or interruption of these utilities or services and Tenant shall not be entitled to terminate this Lease or abate any portion of the Rent as a result of such failure, variation, shortage or interruption. All other utilities for the Premises, including but not limited to telephone, and cable, shall be arranged directly by Tenant with the utility supplier, including the posting of any required deposits, and paid directly by Tenant to the utility supplier when due.

XIII. DEFAULT AND REMEDIES.

A. Default. The occurrence of any one or more of the following events shall constitute a default by Tenant:

1. Failure to make payment when due.
2. The abandonment of the Premises by Tenant for a period of thirty (30) consecutive calendar days.
3. The failure by Tenant to observe or perform any of the express covenants or provisions of this Lease, where such failure shall continue for a period of ten (10)

consecutive calendar days after written notice thereof from the City to Tenant, provided that if the nature of Tenant's default is such that more than ten (10) consecutive calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences to cure within the ten (10) day period, and thereafter diligently and continuously prosecutes such cure to completion.

4. Tenant (a) files, or consents by answer or otherwise to the filing against it, of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (b) makes an assignment for the benefit of its creditors; (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property; or (d) takes action for the purpose of any of the foregoing; or
5. A court or governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is filed against Tenant and such petition is not dismissed within 180 days; or
6. This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within 180 days; or
7. Tenant assigns this Lease or subleases all or any portion of the Premises without the City's prior written consent.

B. City's Remedies. In the event of Default by Tenant, as defined above, the City, in addition to any other remedies set forth in this Lease, may without further notice or demand, exercise any one or more of the following remedies concurrently or in succession:

1. Terminate this Lease, in which event this Lease and the leasehold estate hereby created shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice was the day originally fixed in this Lease for the expiration of the Lease Term. The City shall thereupon be entitled to take possession of the Premises, and Tenant shall immediately surrender the Premises to the City and agrees to pay to the City, on demand, the following damages:
 - a. any unpaid rent and other amounts due at the time of termination plus interest thereon at the maximum lawful rate per annum from the due date until paid;

- b. the present value of the balance of the rent for the remainder of the term;
 - c. any other amount arising out of Tenant's failure to perform its obligations under the Lease, or which in the ordinary course of events would be likely to result therefrom, including the cost of recovering the Premises, which costs shall not include the costs of demolition or remodeling the Premises for a new tenant, and brokerage commissions.
2. Continue this Lease in effect, and as long as the City does not terminate Tenant's right to possession, and the City may enforce all its rights and remedies under the Lease, including the right to recover the rent. Actions to collect amounts due by Tenant to the City as provided in this Section may be brought from time to time, on one or more occasions, without the necessity of waiting until expiration of the Lease term.
 3. Terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State in which the Property is located, without demand or notice of any kind to Tenant, in which event the City may, but shall be under no obligation to do so (except to the extent required by the laws of the State in which the Property is located), relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to the City. Tenant shall be responsible for rent for the period that the Premises are vacant and all direct and reasonable costs of recovering possession, re-letting the Premises, and collecting amounts owed, as provided below. Tenant shall be liable for any deficiency of such rental below the total rental and all other payments herein provided for the unexpired balance of the term of this Lease. The City may, at its discretion, elect to accelerate all future payments due in this paragraph and such future payments shall be discounted to present value in accordance with accepted financial practices using a discount rate of 4% per annum. If said breach of the Lease continues, the City may, at any time thereafter, elect to terminate the Lease as provided above;
 4. From time to time recover accrued and unpaid Rent and damages arising from Tenant's breach of the Lease, regardless of whether the Lease has been terminated, together with applicable late charges and interest at the rate of 18% per annum or the highest lawful rate, whichever is less.
 5. Subject to any subordination of lien expressly granted by the City in writing, enforce the statutory the City's lien on Tenant's property.
 6. With or without having terminated the Lease, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying or using said Premises or any part thereof, by force if necessary, without incurring

liability to Tenant or to any person occupying or using the Premises for any damage caused or sustained by reason of such entry or such removal.

7. In case of any event of default or breach by Tenant, Tenant shall also be liable for and shall pay to the City, at the address specified for notice to the City herein, in addition to any sum provided to be paid above, brokers' fees incurred by the City in connection with re-letting the whole or any part of the Premises; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenant's and all reasonable expenses incurred by the City in enforcing or defending the City's rights and/or remedies, recovering possession, re-letting the Premises, or collecting amounts owed, including reasonable attorneys' fees (including, but not limited to, the reasonable fees and disbursements of the City's legal counsel and the reasonable charges of the City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees).
8. Enter upon and/or take possession of the Premises and perform any obligation on Tenant's behalf and recover from Tenant, upon demand, the entire amount paid or incurred by the City for such purpose, plus 15% for special handling, supervision and overhead, which Tenant hereby acknowledges constitutes reasonable liquidated damages and not a penalty.
9. Alter all locks and other security devices at the Premises without terminating this Lease. The City shall not be obligated to provide a key or other means of ingress to the Tenant or Tenant's agents, or to pay for any damage to any security system, or to provide re-entry for any reason or under any circumstances whatsoever.
10. In the event that the City shall have taken possession of the Premises pursuant to the authority herein granted, then the City shall have the right to keep in place and use all of the furniture, fixtures and equipment at the Premises, including that which is owned by or Leased to Tenant at all times prior to any foreclosure thereon by the City or repossession thereof by a lessor thereof or third party having a lien thereon. The City shall also have the right to remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within the County in which the Premises is located; and in such event, Tenant shall be liable to the City for costs incurred by the City in connection with such removal and storage and shall indemnify and hold the City harmless from all loss, damage, cost, expense and liability in connection with such removal and storage. The City shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to the City a copy of any instrument represented to the City by Claimant to have been executed by Tenant (or any predecessor of

Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of the City to inquire into the authenticity of said instrument's copy of Tenant's or Tenant's predecessor's signature thereon and without the necessity of the City's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and Tenant agrees to indemnify and hold the City harmless from all cost, expense, loss damage and liability incident to the City's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property to Claimant. The rights of the City herein stated shall be in addition to any and all other rights which the City has or may hereafter have at law or in equity; and Tenant stipulates and agrees that the rights herein granted the City are commercially reasonable.

11. Landlord's Lien. To secure the payment of all rental and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to the City an express first and prior contract lien and security interest on all property (including fixtures, equipment, chattels and merchandise) which may be placed in the demised premises, and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed therefrom without the written consent of the City until all arrearages in rental and other sums of money then due to the City hereunder shall first have been paid. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in lieu of the landlord's statutory lien. Upon the occurrence of an event of default, this lien may be foreclosed with or without court proceedings by public or private sale, provided the City gives Tenant at least fifteen days' notice of the time and place of said sale, and the City shall have the right to become the purchaser, upon being the highest bidder at such sale. Contemporaneous with the execution of this Lease (and if requested hereafter by the City), Tenant shall execute and deliver to the City uniform commercial code financing statements in sufficient form so that when properly filed, the security interest hereby given shall thereupon be perfected. If requested hereafter by the City, Tenant shall also execute and deliver to the City uniform commercial code financing statement change instruments in sufficient form to reflect any property amendment of modification in or extension of the aforesaid contract lien and security interest hereby granted. The City shall, in addition to all of its rights hereunder also have all of the rights and remedies of a secured party under the uniform commercial code as adopted in the state in which the demised premises is located. Upon receipt of a commercially reasonable subordination agreement, the City shall subordinate its lien priority and security interest to Tenant's furniture, fixture and equipment institutional lender.

12. Seek injunctive relief, including, if applicable, a mandatory injunction.

13. Pursue any other remedies provided in specific provisions of this Lease, available at law, or provided in equity.
14. If Tenant fails more than twice within a twelve month period to observe or perform any covenant, condition, or agreement of the Lease (including, without limitation, the payment of Rent), regardless of whether such failures have been cured by Tenant, the third failure will at the election of the City, in its sole and absolute discretion, be deemed an automatic event of Default, without notice to Tenant or an opportunity to cure.
15. Once a failure to make a payment of Rent or a failure to perform or observe any other term or condition contained in this Lease has occurred, the City, in its sole discretion, may at any time require that all future payments from Tenant pursuant to this Lease be in cash or certified funds or made by automatic electronic bank transfers.
16. To secure the payment of all rental and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to the City, in addition to the rights created by this Lease and the laws of the State of New Mexico, a first and prior contract lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises, including, but not limited to, furniture, fixtures, equipment, inventory, chattel and merchandise and all accessories thereto and all proceeds thereof. Such property shall not be removed from the Premises without the written consent of the City until all arrearage in rental and other sums of money due to the City hereunder shall have first been paid. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in addition to the statutory or common law landlord's lien and shall be cumulative thereto, and nothing herein shall be deemed a waiver of the City's statutory or common law landlord's lien. Upon the occurrence of Tenant's default, this security interest may be foreclosed with or without court proceedings by public or private sale, provided the City gives Tenant at least fifteen (15) days' notice of the time and place of said sale, and the City shall have the right to become the purchaser, upon being the highest bidder at such sale.
17. All of the remedies provided in this Section shall survive the termination of this Lease.

XIV. HAZARDOUS SUBSTANCES.

- A. Definitions. For the purposes of this Lease, the following terms have the following meanings:

1. "Environmental Law" means any Federal, State or local law, statute, ordinance or regulation, rules or guidelines, now or hereafter in effect, pertaining to or governing Hazardous Substances or which relate to the protection of human health, safety, or that of the environment, including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980), RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).
2. "Hazardous Substance" means any substance, material, waste, pollutant, or oil, which is, or becomes designated, classified or regulated as being "toxic", "hazardous", "radioactive", "dangerous" or a "pollutant", or any similar term, which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products.

B. Tenant's Responsibilities. At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Property by Tenant, its agents, employees, contractors or invitees without the prior written consent of the City. Tenant will cause any and all Hazardous Substances brought upon the Premises by Tenant to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with and manage any and all Hazardous Substances in, on, under or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the term of the Lease, Tenant will cause all Hazardous Substances placed on, under or about the Premises by Tenant or at Tenant's direction to be removed and transported for use, storage or disposal in accordance and compliance with all applicable Environmental Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or the Property, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying the City of Tenant's intention to do so and affording the City ample opportunity to appear, intervene or otherwise appropriately assert and protect the City's interests with respect thereto.

C. Environmental Audit. At any time and from time to time, the City may retain an environmental consultant or engineer to conduct an environmental audit or environmental assessment of the Premises and Tenant's compliance with applicable laws, rules and regulations. Tenant shall extend its full cooperation with such audit or investigation. If Tenant is found not to be substantially in compliance with applicable law, then Tenant shall pay all reasonable costs associated with such audit or assessment to the City upon demand; otherwise all costs shall be borne by the City. In addition, Tenant, at the City's request from time to time, shall complete such questionnaires and provide such information with respect to Tenant's activities and operations on the Premises as the City shall reasonably require.

D. Indemnification. If the Premises or the Property become contaminated in any manner for which Tenant is legally liable or otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify the City of the release or discharge of the Hazardous Substance. Tenant shall defend, indemnify and hold the City harmless from and against any and all costs, claims, demands and damages, including attorneys' fees (including without limitation the reasonable fees and disbursements of the City's legal counsel and the reasonable charges of the City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees) and court costs and investigatory and laboratory fees, related to any breach of this Paragraph by Tenant, its agents, contractors, or employees, including, without limitation, any adverse health or environmental condition (including without limitation any violation of Environmental Laws) occurring during the term of this Lease. This indemnification obligation shall survive the expiration or earlier termination of this Lease;

XV. RIGHT OF ENTRY. The City, its agents and other representatives shall have the right to enter into and upon the Premises or any part thereof at reasonable times for the purpose of inspecting the Premises, making repairs, showing the Premises to prospective lenders or purchasers of the Property and prospective tenants during the six months preceding the expiration of the term. In the event of an emergency as determined by the City, the City, agents and other representatives may enter at any time, without notice and without the presence of Tenant. Tenant will permit the City at any time within 180 days prior to the expiration of this Lease, to place upon the Premises any usual "For Lease" signs, and permit potential tenants to inspect the Premises, provided that such inspections do not unreasonably interfere with the operations of Tenants business activities.

XVI. FIRE OR OTHER CASUALTY LOSS TO PERSONAL PROPERTY. The City shall not be liable for any damage or loss of the Tenant's personal property on the Premises from any cause, including, but not limited to, bursting or leaking of water pipes, leaking roof, fire, theft and negligence of co-Tenants. Tenant shall be solely responsible for obtaining and paying for insurance covering Tenant's personal property in the Premises, operations losses and liability insurance. Tenant shall not be insured for such losses by the City and shall not be entitled to make loss claims under the insurance coverage of the City.

XVII. INDEMNIFICATION. To the extent, if at all, the provisions of 56-7-1 NMSA 1978 as amended apply, Tenant agrees to defend, indemnify and hold harmless the City, its officers and employees against liability, claims, damages, losses or expenses arising out of bodily injury to person, including death or damage to property caused by or resulting from Tenant's and/or its employees and agents negligent act(s) or omission(s) while Tenant and/or its employees or agents perform(s) or fails to perform its obligations and duties under the terms and conditions of this Lease. Provided, however, Tenant is not required to indemnify the City for the negligence or intentional acts, errors, or omissions of the City or of its employees or agents.

XVIII. DAMAGES. Tenant agrees to pay for all damages to third parties from personal injury or property damage that occurs in the Premises caused by the negligence or willful misconduct of

Tenant or Tenant's employees, agents and invitee. The provisions of this paragraph shall survive the expiration or termination of this Lease.

XIX. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease or sublet the whole or any part of the Premises at any time for any reason without the City's prior written approval. Tenant acknowledges that the terms of this Lease are unique to Tenant and Tenant's situation, and that the City may not grant such terms to a potential assignee or sublessee. It being further understood that it shall be reasonable for the City, among other things, to withhold consent if the City is not satisfied with the financial responsibility, identity, reputation or business character of the proposed assignee or subtenant. Notwithstanding any consent by the City, Tenant and its Guarantor(s), if any, shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically become liable for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and the City shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sublessee without proceeding in any way against any other party. In the event of an assignment or sublease, contemporaneously with the granting of the City's consent, Tenant shall cause the assignee or sublessee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee or sublessee shall be jointly and severally liable therefore along with Tenant. Unless approved by the City, no usage of the Premises, different from the usage provided herein, shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease. Tenant shall not enter into, execute or deliver any financing or security agreement that can be given priority over any mortgage given by the City or its successors. The City shall have the right to assign or transfer, in whole or in part, the City's rights and obligations hereunder and in the Property and the Premises.

XX. TAXES AND ASSESSMENTS. Tenant shall promptly pay all taxes and other exactions assessed or assessable and pay all license and permit fees applicable to the Tenant's operation, and acquire and keep current all licenses, municipal, state or federal, required as a result of the Tenants' operation on the Premises and shall not allow any of said taxes, excises or fees to become delinquent.

XXI. INSURANCE.

A. At its expense, the Tenant shall procure and maintain, insurance in the kinds and amounts set forth below:

1. Special Form property insurance, including without limitation sprinkler leakage, in an amount equal to one hundred percent (100%) of the then full replacement cost of all property owned by Tenant or within the Premises, including, but not limited to, Tenant Improvements, contents, inventory, and all personal property within the Premises.
2. Comprehensive General Liability Insurance. Commercial general liability insurance applying to third party claims for bodily injury or property damage,

including coverage for “premises/operations”, “products and completed operations”, and “blanket contractual” liabilities, written on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$1,000,000 personal or advertising injury, \$2,000,000 products and completed operations aggregate, and \$2,000,000 general aggregate, or such higher amounts and additional coverages as the City may reasonably require from time to time.

3. The policies of insurance must include coverage for all operations performed by the Tenant and contractual liability coverage, which shall specifically insure the hold harmless provisions of the Lease.
 4. Workmen’s Compensation Insurance. Workmen’s Compensation Insurance for its employees in accordance with the provisions of the Workmen’s Compensation Act of the State of New Mexico, and employer’s liability insurance with a limit not less than \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease - each person and \$1,000,000 bodily injury by disease - policy limit, or such higher amounts and additional coverages as the City may reasonably require from time to time.
 5. Automobile Liability Insurance. A comprehensive automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy shall include coverage for the use of all owned, non-owned or hired automobiles, vehicles and other equipment both on and off-road, The City shall be named an additional insured.
- B. Policy Requirements. Tenant’s insurance policies shall:
1. Be issued by insurers reasonably acceptable to the City and rated A- VII or better by A.M. Best
 2. Cover all operations under this Lease, whether performed by Tenant, its agents, or its sublessee(s);
 3. As to liability policies, name the City, its property managers, and any mortgagee(s), and their respective directors, officers, partners, agents, employees, members, trustees, and shareholders as additional insureds, by endorsement approved by the City;
 4. Be non-contributing and apply as primary, and not as excess to, any other insurance available to the City;

5. Not be invalidated with respect to the interests of the City and the holder of any encumbrance on the Property by reason of any breach or violation by Tenant of any warranties, representations, declarations or conditions contained in the policies;
6. Contain a requirement by the insurer to notify the City and the holder of any encumbrance on the Property designated by the City, in writing not less than thirty days prior to any cancellation, termination, or non-renewal of the policy; and
7. Be reasonably satisfactory in form, substance, limits, deductibles and retentions to the City.

C. Evidence of Coverage. Tenant shall deliver to the City certificates of insurance or, if required by the City, certified copies of each such insurance policy as soon as practicable after the placing of the required insurance and periodically thereafter upon renewal or replacement of the policies then in force, which shall occur at least 30 days prior to the expiration or cancellation thereof. A certificate of insurance that states that the failure to give the City notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For example, certificates or policies stating that the insurance company shall “endeavor to notify” and that the “failure to give such notice imposes no obligation” on the insurance company are not in compliance with the insurance requirement of this Lease. All certificates of insurance shall provide that thirty (30) days written notice be given to the Director, Risk Management Department and the Real Property Manager, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. The City shall have the right to request current confirmation of insurance coverage from time to time. No review or approval of any such insurance certificate by the City shall derogate or diminish the City’s rights or Tenant’s obligations. Tenant shall not take possession of the Premises without having complied with the requirements of this Section. If at any time Tenant fails to provide satisfactory evidence of all required coverages, the City may but shall have no obligation to purchase such insurance for Tenant and at Tenant’s sole cost and expense, which shall be immediately due and payable by Tenant upon demand.

XXII. CONDEMNATION.

A. Automatic Termination. If during the Term all or any material part of the Premises is permanently taken for any public or quasi-public use under any statute or by right of eminent domain, or purchased under threat of such taking, this Lease shall automatically terminate on the date on which the condemning authority takes possession of the Premises.

B. Optional Termination. If during the Term any part of the Property is taken or purchased by right of eminent domain or in lieu of condemnation, whether or not any portion of the Premises is taken, and if in the reasonable opinion of the City substantial alteration or reconstruction of the portion of the Property is necessary or desirable as a result thereof, or the amount of parking available to the portion of the Property is materially and adversely affected, the

City shall have the right to terminate this Lease by giving Tenant at least thirty days written notice of such termination.

C. Award. The City shall be entitled to receive and retain the entire condemnation award or consideration for the affected lands and improvements and Tenant shall not have, or advance, any claims against the City for (i) the value of its property or its leasehold estate, (ii) the unexpired term of this Lease, (iii) costs of removal or relocation, or (iv) business interruption expense or any other damages arising out of the taking or purchase. Nothing herein shall give the City any interest in or preclude Tenant from seeking and recovering on its own account from the condemning authority any separate condemnation award of compensation attributable to the taking or purchase of Tenant's chattels or trade fixtures or attributable to Tenant's relocation expenses provided that any such separate claim by Tenant shall not reduce or adversely affect the amount of the City's condemnation award. If any such separate award made or compensation paid to Tenant specifically includes a condemnation award or amount for the City, Tenant shall promptly account therefor to the City.

XXIII. ETHICS AND CAMPAIGN PRACTICES BOARD, FAIR DEALING AND CONFLICT OF INTEREST.

A. Tenant agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Lease whenever such records or information are within Tenant's custody, are germane to an investigation authorized by the Board and are requested by the Board. Tenant further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Tenant agrees to require that all contractors, subcontractors, or sub-consultants employed by Tenant for any of the services performed under the terms of this Lease will agree in writing to comply with the provisions of this paragraph. Tenant, will not be compensated for its time or any costs it incurs in complying with the requirements of this paragraph.

B. Upon execution of this Lease, or within five days after the acquisition of any interest described in this Section during the Term of this Lease, the Tenant shall disclose in writing to the City whether any City Councilor or other officer or employee of the City has or hereafter acquires any direct, indirect, legal or beneficial interest in the Tenant or in any contract, Lease or agreement between the City and Tenant or in any franchise, concession, right or privilege of any nature granted by the City to the Tenant in this Lease.

C. Tenant covenants and warrants that the only person or firm interested in this Lease as principal or principals is named in this Lease, and that this Lease is entered into by the Tenant without collusion on the part of the Tenant with any person or firm, without fraud and in good faith. The Tenant also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Lease, will be offered or given by the Tenant or any agent or representative of the Tenant to any officer or employee of the City with a view towards

securing this Lease or for securing more favorable treatment with respect to making any determinations with respect to performing this Lease.

XXIV. DISCRIMINATION PROHIBITED. In the operation and use of the Premises, the Tenant shall not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Tenant agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

XXV. AMERICANS WITH DISABILITIES. Tenant agrees to meet all applicable requirements of the American with Disabilities Act of 1990, as amended, and all applicable rules and regulations, as amended, (the "ADA"), that are imposed directly on Tenant or that would be imposed on the City as a public entity. Tenant agrees to be responsible for knowing all applicable requirements of the ADA to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of Tenant or its agents in violation of the ADA.

XXVI. COUNCIL APPROVAL. Notwithstanding any other provisions in the Lease, the terms, conditions and covenants of this Lease are contingent upon the City Council of the City of Albuquerque approving the Lease and all provisions contained therein to allow the City to perform all its obligations and responsibilities under this Lease. If the City Council of the City of Albuquerque does not approve this Lease then the City and Tenant shall have no further rights, obligations or liabilities between them. Such event shall not constitute an event of default by the City. Furthermore, if, in any fiscal year during the term of this Lease, sufficient appropriations are not made by the City to fulfill the City's obligations and responsibilities under this Lease, this Lease may be terminated by the City with 30 day written notice to Tenant and the City shall have no further rights, obligations and liabilities thereto.

XXVIII. BROKER. Tenant warrants and represents that it has not consulted or negotiated with any broker or finder with regard to the Premises or this Lease. If Tenant shall be in breach of the foregoing warranty, Tenant shall indemnify the City against any loss, liability and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone having dealt with the Tenant.

XXVIII. RIGHTS RESERVED BY CITY. Except as expressly provided in this Lease, the City reserves all rights of ownership and control over all portions of the Premises and Property including without limitation the following:

A. Access. The City shall have free access to the Premises for purposes of showing the Premises to current or prospective lenders, to prospective purchasers of the Property, and, during the six-month period preceding the expiration of the Term of this Lease, to prospective tenants. The City shall also have access to the Premises for purposes of inspection and performing the City's obligations and exercising its rights under this Lease.

B. Use. The City reserves the right to use (or grant others the right to use) any portion of the Property other than the Premises, including without limitation the Common Area, the exterior of all buildings and improvements and air rights, surface rights and subsurface rights and water rights appurtenant to the Property.

C. Restriction of Access. The City reserves the rights to: (i) prevent or restrict access to any portion of the Property by such security procedures or devices as the City may consider necessary or appropriate; (ii) control or prevent access by and remove, any person who is loitering or whose presence in the judgment of the City's security or management personnel is prejudicial to the safety, character, reputation and interests of the Property or who in the judgment of such personnel is intoxicated or under the influence of liquor or drugs; and (iii) limit or prevent access to all or any portion of the Property, activate emergency controls or procedures or otherwise take such action or preventive measures deemed necessary by the City for the safety of Tenants or other occupants of the Property or the protection of the Property or other property located thereon or therein, in case of fire or other casualty, riot or other civil disorder, strike or labor unrest, public excitement or other dangerous condition or threat thereof.

D. Other Tenants. The City reserves the right to lease or sell any portion of the Property to such other Tenants, occupants or other parties and for such uses as the City, in the City's sole discretion, deems appropriate. Tenant acknowledges that the City has made no representations as to the City's continued ownership of all or any portion of the Property or the presence of any specific Tenant or number or types of Tenants at the Property as of or after the Rent Commencement Date, hours or days that such other Tenants shall or may be open for business or gross sales that may be achieved by Tenant or any other Tenants at the Property. Without limiting the foregoing, Tenant acknowledges that portions of the Property will not be used for retail purposes and that that City may in the future enlarge or diminish such non-retail areas.

E. Changes. The City reserves the right to: (i) change the name of the Property and the address or designation of the Premises; (ii) install, maintain, alter and remove signs on or about the Property; (iii) add land or other real property interests to or eliminate the same from the Property and grant interests and rights in the Property to other parties; (iv) add, alter, expand, reduce, eliminate, relocate or change the shape, size, location, character, design, appearance, use, number or height of any permanent or temporary buildings, structures, improvements, parking areas and structures, kiosks, planters, driveways, landscaped areas and other Common Areas,

change the striping of parking areas and direction and flow of traffic and convert Common Areas to leasable areas and leasable areas to Common Areas; (v) enclose any area, remove any such enclosure or add one or more additional levels or stories to the Property or any portion thereof other than the Premises and add structural supports that may be required within the Premises or Common Areas; and (vi) in connection with the foregoing matters or with any other inspections, repairs, maintenance, improvements or alterations in or about the Property or as a result of any casualty, incident, strike, condemnation, act of God, law or governmental requirement or request or other cause, erect scaffolding, barricades and other structures.

F. Limitations. In connection with exercising any rights reserved under this Section, the City shall: (a) take reasonable steps to minimize interference with access to the Premises except when necessary on a temporary basis; (b) take reasonable steps to avoid materially changing the configuration or reducing the square footage of the Premises unless required by law or other causes beyond the City's reasonable control (and in the event of any permanent material reduction in the area of the Premises the Base Rent and Tenant's Proportionate Share shall be proportionately reduced); and (c) if the City enters the Premises in connection with any of the foregoing matters, take reasonable steps to minimize any interference with Tenant's business, and following completion of the work, return Tenant's leasehold improvements, fixtures, property and equipment to the original locations and conditions to the fullest extent reasonably possible.

XXIX. MISCELLANEOUS.

A. Waiver of Default. No failure by the City to insist upon the strict performance of any term, condition, or covenant of this Lease or to exercise any right or remedy available on the breach thereof, and no acceptance of full or partial rent during the continuance of any breach will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Lease that Tenant is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the City.

B. Relation to Other Leases. This Lease is separate and distinct from and shall be construed separately from any other agreement between the City and Tenant or the City and any other Tenant.

C. Time Is Of The Essence. Time is of the Essence in the performance of this Lease.

D. Governmental Right and Powers. Nothing in this Lease shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Premises or waiving or limiting the City's control over the management, operations or maintenance of the Premises except as specifically provided in this Lease, or impairing exercising or defining governmental rights and the police powers of the City.

E. Exhibits. All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Lease, including but not limited to the exhibits referred to in this Lease, are hereby incorporated into this Lease by reference and are made a part hereof as

though set forth in full in this Lease to the extent they are consistent with the terms and conditions of this Lease.

F. No Partnership or Agency. Nothing contained in this Lease is intended or shall be construed in any respect to create or establish any relationship other than that of City and Tenant, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Tenant the general representative or agent of the City for any purpose whatsoever.

G. Non-Liability of City. The City shall not in any event be liable for any acts or omissions of Tenant or its agents, servants, employees or independent contractors or for any condition resulting from the operations or activities of Tenant, its agents, servants, employees or independent contractors either as to Tenant or to any other person. The City shall not be liable for Tenant's failure to perform any of its obligations under this Lease, or for any delay in the performance thereof, nor shall any such delay, or failure, be deemed a default by the City. Notwithstanding anything to the contrary in this Lease, neither the City, nor City's administration, councilors, directors, employees, agents, representatives, successors or assigns (collectively, "City's Affiliates") shall be personally responsible or liable for any representation, warranty, covenant, undertaking or agreement contained in the Lease, and the sole right and remedy of Tenant or any subsequent sublessee or assignee shall be against the City's interest in the Premises. Neither Tenant nor any subsequent sublessee or assignee shall seek to obtain any judgment imposing personal liability against the City, its Affiliates, or their successors or assigns, nor execute upon any judgment or place any lien against any property other than the City's interest in the Premises.

H. Force Majeure. In the event the City or Tenant is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, acts of God, or other causes beyond the reasonable control of the City or Tenant, neither party shall be liable for the delay, and the period for the performance by either party shall be extended for a period equivalent to the period of such delay. The foregoing shall be inapplicable to the payment of rent by Tenant.

I. Contract Review. The City and Tenant acknowledge that they have thoroughly read this Lease including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The City and Tenant further acknowledge that this Lease is the result of negotiations between them and that this Lease shall not be construed against either party hereto by reason of that party's preparation of all or part of this Lease.

J. Notices. Any notice from one party to the other must be in writing and shall be deemed duly given three days after deposit in the United States Mail if mailed by registered or certified mail, return receipt requested, or upon receipt or refusal to accept if personally delivered or deposited with a national overnight deliver courier who obtains written confirmation of delivery, addressed to the other party at the address set below, or such other address as either party may

designate in writing. The parties shall be responsible for notifying each other of any change of address. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent.

If and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange amongst themselves and specify some individual at some specific address for the receipt of notices and payments to Tenant. All parties included with terms "City" and "Tenant" respectively, shall be bound by notices and payments given in accordance with the provisions of this Section to the same effects as if each had received such notice or payment.

Notice to Tenant: Youth Development, Inc.
Attn: Chief Operations Officer
6301 Central Ave. NW
Albuquerque, NM

Notice to City: City of Albuquerque
One Civic Plaza, 11th Floor
Attn: Chief Administrative Officer
P.O. Box 1293
Albuquerque, New Mexico 87103

And

Real Property Division Manager
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

K. Recording. Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of the City.

M. Estoppel Certificates. Tenant shall at any time within ten days after written request from the City execute, acknowledge and deliver to the City a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any; (b) confirming the commencement and expiration dates of the term; (c) confirming the amount of the Security Deposit held by the City; (d) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the City hereunder, or specifying such defaults if any are claimed; and (e) confirming such other matters as the City may reasonably request. A prospective purchaser or encumbrancer of the Premises or the Property may conclusively rely upon any such statement. If Tenant fails to respond within the required period, Tenant shall conclusively be deemed to have certified, confirmed and acknowledged all matters requested by the City. If the City desires to finance or refinance the

Property, Tenant hereby agrees to deliver to any lender designated by the City such financial statements of Tenant and any Guarantors named in this Lease as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Tenant and any Guarantors. All such financial statements shall be received by the City in confidence and shall be used only for the purposes herein set forth.

N. Binding Effect. Once this Lease is executed, the covenants, terms and conditions of this Lease will be binding upon and inure to the benefit of the parties, their successors, assigns, subtenants and subleases. This lease is not final or binding until approved by City Council and signed by the City Administrative Officer.

O. Entire Agreement and Modification.

1. Entire Agreement. This Lease, including the attached Exhibits, constitutes the full and final agreement of the parties and incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Lease. All prior negotiations and agreements are merged into this Lease. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Lease.
2. Modification. No subsequent agreement may modify this Lease unless it is in writing and signed by the parties or their authorized agents. This Lease represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

P. Further Actions. At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Lease.

Q. Severability. In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Lease shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Tenant in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Lease

R. Authorization. If Tenant executes this Lease as a corporation or partnership, then Tenant and the person(s) executing this Lease on behalf of Tenant, represent and warrant that such entity is duly qualified to do business in the State in which the Property is located and that the

individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on Tenant's behalf. The City represents and warrants that it is the fee simple owner of the Premises, and that it has all requisite authority and approval to enter into this Lease.

S. Headings and Captions. Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

T. Attorney's Fees. If either party to this Lease institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Lease, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each party shall be responsible for its own attorney's fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.

U. Governing Law and Venue. This Lease shall be construed under the laws of the State of New Mexico. The parties agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Bernalillo County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. In any litigation between City and Tenant, the matter shall be decided by a judge sitting without a jury, and accordingly each party hereby waives its right to a jury trial. The parties further acknowledge that they have fully and fairly bargained for the terms of this Section. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

V. City and Tenant acknowledge that this Agreement does not have a specific exemption within and may be subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and may be a "public record" within the meaning of said Act.

W. Compliance with Law. Tenant shall at all times during the term of this Lease at its own expense, comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws, rules and regulations, now or hereafter enacted or amended, affecting the Premises, or occasioned by or affecting the use thereof by Tenant, including, but not limited to, the Americans With Disabilities Act. Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to City, the validity of any law, ordinance, order, rule, regulation or requirement affecting Tenant's use and/or occupancy of the Premises. If compliance by Tenant may be legally held in abeyance during the contest without subjecting City or Tenant to any liability whatsoever for failure to so comply, Tenant may postpone compliance until the conclusion of the proceedings.

X. The Contractor understands and will abide by the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994.

Y. Final Dates. If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word “days” is used herein, it shall be considered to mean “calendar days” and not “business days” unless an express statement to the contrary is made.

Z. Multiple Counterparts. The Lease may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document.

(This space intentionally left blank- Signatures to follow)

IN WITNESS WHEREOF, the parties hereto have signed this Lease as of the date indicated by each signature, and being effective after approval by the City Council and upon the signature of the City's Chief Administrative Officer or her authorized designee.

CITY OF ALBUQUERQUE,
A New Mexico municipal corporation

Sarita Nair, Chief Administrative Officer

Date: _____

Recommended & Approved by:

Carol Pierce, Director
Family & Community Services Department

Date: _____

TENANT:
Youth Development, Inc.,
a New Mexico non-profit corporation

Robert Chavez, Chief Operations Officer

Date: _____

EXHIBIT "A"
The Premises

 **YOUTH DEVELOPMENT INC. :**
- TOTAL GROSS SQ. FOOTAGE = 770 SQ. FT

