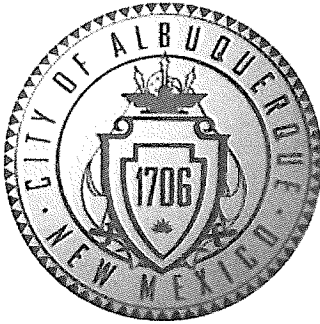


EC-20-231



**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

December 9, 2020

**TO:** Pat Davis, President, City Council

**FROM:** Timothy M. Keller, Mayor

A handwritten signature in black ink, appearing to be 'TK' or a stylized 'K', is placed next to the name Timothy M. Keller.

**SUBJECT:** Ground Lease Agreement between the City of Albuquerque and the New Mexico BioPark Society

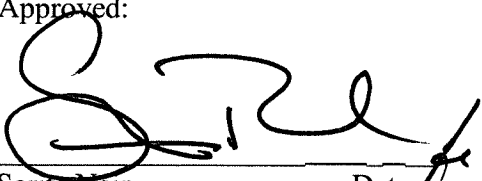
The City owns the land located at 1320 Iron Ave. SW/903 Tenth St. SW and the New Mexico BioPark Society currently owns the building located on the property to provide services and for the operation of the BioPark's Carousel, duck feeding program, membership office at the Zoo main gate and special fundraising activities. The New Mexico BioPark Society will also be overseeing Admission. The current location of the building is essential for the New Mexico BioPark Society to continue to provide these services.

The proposed Lease Agreement is for a five (5) year period with the option to renew for an additional five (5) year period, if lessee is in compliance with the lease and if properly exercised. Proposed annual rent is \$4,274.00 and the initial five (5) year term will generate \$21,370.00 in revenue for the City.

This Lease Agreement is forwarded to City Council for approval.

TITLE/SUBJECT OF LEGISLATION: Ground Lease Agreement between the City of Albuquerque and the New Mexico BioPark Society

Approved:

  
\_\_\_\_\_  
Sarita Nair Date  
Chief Administrative Officer 12/21/20

Approved as to Legal Form:

DocuSigned by:  
\_\_\_\_\_  
Esteban A. Aguilar, Jr. 12/9/2020 | 6:21 PM MST  
\_\_\_\_\_  
Esteban A. Aguilar, Jr. Date  
City Attorney

Recommended:

DS  
ml  
DocuSigned by:  
\_\_\_\_\_  
Shelle Sanchez 12/9/2020 | 6:20 PM MST  
\_\_\_\_\_  
Shelle Sanchez Date  
Director, Cultural Services Department

## **Cover Analysis**

### **1. What is it?**

Lease Agreement between the City's Cultural Services Department and the New Mexico BioPark Society, a New Mexico nonprofit corporation.

### **2. What will this piece of legislation do?**

Enter into a new ground lease between the City and the New Mexico BioPark Society.

### **3. Why is this project needed?**

Revenue generating lease that provides services and operations to the City's Cultural Services Department BioPark and Zoo.

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

\$0.00

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

Five (5) year lease will generate \$4,274.00 annually and total \$21,370.00 for the term of the lease.

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

Loss of revenue and future revenue, and loss of services and operations provided to the BioPark and Zoo.

### **7. Is this service already provided by another entity?**

No.

**GROUND LEASE AGREEMENT**  
**CITY OF ALBUQUERQUE AND NEW MEXICO BIOPARK SOCIETY**

THIS GROUND LEASE AGREEMENT ("Lease") made and entered into by and between the City of Albuquerque ("City"), a New Mexico municipal corporation, and the New Mexico BioPark Society ("Tenant"), a New Mexico nonprofit corporation.

**I. MISCELLANEOUS REPRESENTATIONS.**

- A. WHEREAS, the City is the owner of a certain tract of land located at 1320 Iron Ave. SW/903 Tenth St. SW within Bernalillo County, New Mexico, as shown on Exhibit A attached hereto; and
- B. WHEREAS, the Tenant wishes to continue occupying the Premises for full market rent; and
- C. WHEREAS, the City considers the Tenant as an extension of and a compliment to the Department of Cultural Services work and mission; and
- D. WHEREAS, the City and Tenant wish to enter into a lease.

**II. BASIC LEASE PROVISIONS.**

For mutual consideration, and on the terms and subject to the conditions set forth herein, City hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from the City. City and Tenant agree as follows:

**A. Definitions.**

- 1. "Land" means that certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, located at the address specified in paragraph I(A), above, and as more specifically described on Exhibit A, attached hereto.
- 2. "Building" or "Buildings" means the building(s) and other improvements constructed or placed on the Land and situated thereon at any time prior to or during the term of this Lease.
- 3. "Premises" means the approximate .2453 acres of land located within the identified tract of Land, as specifically shown on Exhibit A attached hereto, and which includes a portion a Building.

**B. Terms.**

- 1. Effective Date: This Lease will not be binding upon the parties until it is signed by Tenant and approved by the Albuquerque City Council and signed by the Chief Administrative Officer or authorized designee ("Effective Date").
- 2. Lease Commencement Date: Upon full execution of Lease by City and Tenant, the "Lease Commencement Date" shall be the first day of the following month.

3. Rent Commencement Date: The "Rent Commencement Date" shall be the same as the Lease Commencement Date.

4. Expiration Date: This lease will terminate at midnight, FIVE (5) full years from the Lease Commencement Date. The time period between the Lease Commencement Date and the date on which the Lease terminates constitutes the "Term" of the Lease.

5. Base Rent:

a. Annual base rent for the Premises is FOUR THOUSAND TWO HUNDRED SEVENTY FOUR DOLLARS AND NO CENTS(\$4,274.00) (the "Base Rent") which shall be broken into twelve (12) monthly payments per year, each in the amount of THREE HUNDRED FIFTY SIX DOLLARS AND NO CENTS (\$356.00 ) and due on the first day of the month.

i. In the event that the Tenant fails pay monthly Base Rent within fifteen (15) days of the due date, Tenant shall pay the City a late charge equal to five percent (5%) of the monthly Base Rent.

ii. 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.

6. Place and Manner of Payments:

a. 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.

b. Rent shall be paid by check.

c. Tenant shall reference their Customer Number on all check payments. The Customer Number will be assigned by the City's Accounting Department, and will be on all invoices sent to the Tenant.

7. 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 and to all easements, licenses and restrictions now or hereafter granted by the City to third parties in the Premises.

8. Option to Extend Term. So long as the Tenant is not in Default (beyond the applicable period of notice and cure) at the time of an extension pursuant to this paragraph 8, and upon written notice at least ninety (90) days prior to the expiration of the current Term, Tenant may request City approval to extend the Term of the lease for one (1) five (5) year Term ("Option to Extend"). At the time of such request to extend, the City shall re-evaluate the Base Rent and may increase the Base Rent according to current market

ground lease rates and may likewise re-evaluate other terms of the Lease. If, however, Tenant fails to deliver to City written notice of Tenant's intent to exercise the Option to Extend within the prescribed time period, such Option to Extend shall lapse, and there shall be no further right to extend the Lease Term.

9. Holding Over.

a. With Consent. In the event Tenant remains in possession of the Premises after the expiration of this Lease with City's written consent, but without the execution of a new Lease, it shall be deemed to be occupying said Premises as a tenant from month-to-month at a rental equal to the rent for the previous annual period plus an additional three percent (3%) paid in monthly installments with the annual rent prorated monthly for the period of the hold over plus any additional charges called for under the terms of this Lease, including, without limitation, and shall otherwise be subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. Should the month-to-month hold over tenancy continue for more than a twelve (12) month period, the rent will increase three percent (3%) for each of the subsequent twelve (12) month periods. A holdover month-to-month tenancy may be terminated by either party upon at least a sixty (60) day prior written notice.

b. Without Consent. If Tenant remains in possession of the Premises after the expiration or earlier termination of the Lease without City's consent, Tenant shall be in Default (defined below) hereunder without notice or opportunity to cure, and, in addition to any other right or remedy of City, Tenant shall be a tenant at will. A holdover tenancy at will is terminable at any time by City without notice. In the event Tenant remains in possession of the Premises after the expiration of this Lease without City's consent, all other terms of this Lease shall continue to apply except that: (i) the Rent applicable during such tenancy shall be payable monthly in advance at a rate equal to 1.5 times the rate in effect immediately before the holdover began, plus any additional charges called for under the terms of this Lease, including, without limitation, those denominated in this Lease as "Additional Rent", and (ii) Tenant shall also pay to City all direct and consequential damages sustained by City resulting from retention of possession by Tenant, including without limitation the loss of any proposed subsequent tenant for any portion of the Premises.

10. Security Deposit. Tenant is not required to provide a security deposit to City. Notwithstanding the foregoing, upon three or more defaults 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, City may require a security deposit of no more than six months Base Rent ("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 within ninety (90) days, 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, City may apply the Security Deposit for the payment of any sum in Default, or for the payment of any other amount that City may spend or become obligated to spend by reason of Tenant's Default, or to compensate City for any loss or damage that City suffers from Tenant's Default. Application of the Security 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 (5) days after written demand therefor, deposit cash with City in the amount invoiced by the City, which amount shall be sufficient to restore the Security Deposit to its original amount. In the event of termination of City's interest in this Lease, City shall transfer said deposit to City's successor in interest and thereafter shall have no further liability for the return of such Security Deposit.

### III. LEASE EXEMPT FROM BATEMAN ACT; APPROPRIATIONS.

By virtue of the provisions of NMSA 1978, §6-6-12 (1999), this Lease is exempt from the Bateman Act, including, without limitation as set out in NMSA 1978, §6-6-12 (1968), and it does not constitute the creation of debt. Nonetheless, as a result of Tenant's requirements and demands, if in any fiscal year of the City of Albuquerque during the term of this Lease, sufficient appropriations and authorizations are not made by the City Council to fund the use of the Land and Premises or this Lease, this Lease may be terminated by the City at the end of the City's then current fiscal year, upon six (6) months' written notice given by the City to the Tenant. Such event shall not constitute an event of Default under this Lease. Upon termination of this Lease as provided in this Section III, the City and the Tenant shall have no further rights, obligations or liabilities as between the City and Tenant as provided in this Lease and all payments obligations and liabilities of the Tenant and of its interest in this Lease will cease upon the date of termination, except as otherwise provided in this Lease, including, without limitation, as to liabilities expressly stated to survive termination of the Lease

### IV. 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. Any entry by the City pursuant to the rights, terms, and conditions of this Lease shall not be deemed a constructive or actual eviction of Tenant and shall not be considered to be a breach of City's covenant of quiet enjoyment

### V. USE OF THE PREMISES.

#### A. Tenant shall:

1. Continuously (except for short term closures due to fire, casualty, condemnation, permitted or approved Tenant remodeling not exceeding thirty (30) days, or other causes beyond Tenant's control ("Permitted Closures")) use the leased Premises for the development of, procurement for and capital improvement of the ABQ BioPark and to (provide) a quality facility through the support of related conservation, education

and recreation programs of subject to the terms, conditions and limitations set forth in this Lease and for no other purpose whatsoever without City's prior written consent.

2. Operate and maintain the Premises in a safe, sanitary and operable condition.

3. Properly handle and dispose of all Hazardous Substances, pursuant to Environmental Laws, as defined in section XVA1 of this Lease. 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 City of such Hazardous Substance.

B. Go Dark (Cessation of Operation) and City's Right to Recapture. If, once operations begins, Tenant ceases to operate its business in the Premises for a period in excess of one hundred eighty (180) consecutive days and Tenant's cessation of operations is not due to remodeling, renovating, or reconstructing the improvements as a result of a casualty or condemnation or governmental regulatory requirements, City shall have the right to terminate this Lease and recapture the Premises by delivering a thirty (30) days written notice to Tenant of City's intent to terminate. Upon City's termination of the Lease, Tenant shall pay all Rent and Additional Rent accrued as of the date of such termination, Tenant shall Surrender (defined below) the Premises in accordance with this lease, and all obligations of Tenant and City under this Lease shall terminate, except for those which arise prior to the termination date, or which survive the expiration or earlier termination of this Lease.

C. 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. Cause the cancellation of any insurance policies related to the Premises. All property kept, stored or maintained by Tenant within the Premises 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 City, unless due to the negligence or willful misconduct of City, its employees, agents or contractors.



3. Allow smoking on the Premises at any time by any person in non-designated areas.

4. Allow political activities or campaigning by candidates for any elected office on the Premises, except as allowed.

D. All Tenant's standard signs and logos existing on the Premises on the Lease Commencement Date shall be in compliance with applicable signage codes. Tenant, at its expense, may install additional signs and logos so long as they are in compliance with applicable signage codes and are approved by the City in writing in advance of fabrication and installation. Tenant shall pay 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. City reserves the right to designate a uniform type of sign for the Premises to be installed and paid for by Tenant. If applicable, 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. Nothing in this Lease is intended to grant any license to Tenant for the use of any logo or service mark of the City of Albuquerque without first obtaining the express written permission of the City for the specific use.

E. 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.

## VI. COMPLIANCE WITH LAW, PERMITS AND LICENSES.

A. 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, 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.

B. 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 as they may be expanded and /or amended from time to time. Tenant shall immediately notify 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 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.

## VII. OWNERSHIP OF IMPROVEMENTS.

The Buildings and all other improvements placed upon the Premises by or on behalf of Tenant shall be and remain the property of the Tenant during the Term of this Lease. If Tenant ceases to operate as the New Mexico BioPark Society, providing services directly in support of the ABQ BioPark, and Tenant cessation of operation is not due to remodeling, renovating or reconstructing the improvements as a result of a casualty or condemnation or governmental regulatory requirements; or upon termination of this Lease due to Default by Tenant, the ownership of all improvements placed upon the Premises by or on behalf of Tenant shall automatically revert to City, except to the extent otherwise specifically set forth in this Lease. Upon expiration or earlier termination of this Lease, through no fault of the Tenant, Tenant shall remove Tenant's buildings and improvements and restore the Premises to the reasonable satisfaction of the City. Tenant may leave any and all building and improvements at the expiration or earlier termination of the Lease, only with express written approval of the City. As all improvements are the result of Tenant's fund raising and volunteer efforts, which Tenant has used previously and continuously in lieu of rents, the City will not compensate Tenant for any such improvements reverted to City.

## VIII. TENANT'S FIXTURES AND EQUIPMENT.

A. City acknowledges and agrees that all furniture, fixtures, equipment, machinery, signs and any personal property bearing any of Tenant's trade names or trademarks, whether registered or unregistered, and all other items of personal property which Tenant utilizes to conduct its business on the Premises, or which may be installed in or upon or incorporated into the Premises at Tenant's cost (collectively, "Trade Fixtures") shall not be deemed to become a part of the Premises, however attached to, or incorporated into the Premises, and whether or not they become a component part of the Premises, provided such Trade Fixtures are not paid for by City. The Trade Fixtures are and shall remain the property of Tenant and shall be treated as trade fixtures for the purposes of this Lease. Tenant may remove its Trade Fixtures from the Premises at any time prior to the termination of this Lease, so long as Tenant repairs any damage to the Premises resulting from such removal. Tenant, at its own cost and expense, may install, place, reinstall or replace upon the Premises, or remove from the Premises, any such Trade Fixtures so long as Tenant repairs any damage to the Premises resulting from such installation, reinstallation, replacement or removal. Any replacement Trade Fixtures shall not become the Premises of City but shall remain Tenant's personal property the same as the original Trade Fixtures. Notwithstanding anything in this Section VIII to the contrary, Tenant shall not repossess or remove any item of Premises constituting the structure, the front windows or doors, or any fixtures or otherwise incorporated into the improvements at the Premises, including, but not limited to, lighting, electrical, wiring, HVAC units, supply fans, exhaust fans, air ducts, electric and utility lines, pipes, pumps, water heaters, tanks, conduits, switchboards, elevators, fire prevention equipment, attached carpeting and

floor coverings, toilets, sinks, countertops, doors and windows, compressors, sign poles and lighting poles, and that such items shall remain at the Premises at the expiration or termination of this Lease without compensation, allowance, or credit to Tenant, in accordance with Section VII. Ownership of Improvements.

B. City acknowledges and agrees that Tenant's Trade Fixtures may be leased from an equipment lessor ("Equipment Lessor") and that Tenant may execute and enter into an equipment lease with respect to the Trade Fixtures ("Equipment Lease"). If and to the extent required by any Equipment Lease, City shall execute and deliver to the Equipment Lessor a commercially reasonable consent or acknowledgment, in recordable form and in scope and substance reasonably satisfactory to the Equipment Lessor and City, in which City acknowledges and agrees that the Trade Fixtures which are the subject of the Equipment Lease constitute the personal property of Tenant, and shall not be considered to be part of the Premises, regardless of whether or by what means they become attached thereto, agrees that it will not claim any interest in the Trade Fixtures, agrees that the Equipment Lessor may enter the Premises for the purpose of exercising any right it may have under the provisions of the Equipment Lease, including the right to remove the Trade Fixtures, provided that the Equipment Lessor:

1. will not take more than thirty (30) days to remove the Trade Fixtures and if Equipment Lessor does not remove the Equipment Fixtures within the thirty (30) day period, the Trade Fixtures will be deemed abandoned by the Equipment Lessor, and City may then dispose of the Trade Fixtures without liability to Equipment Lessor or Tenant;
2. agrees to repair any damage resulting from the removal of the Trade Fixtures or to pay City for the reasonable cost of removal of the Trade Fixtures plus the reasonable cost of repairing any damage to the Premises caused by the removal of the Trade Fixtures, plus fifteen percent (15%) of the total thereof;
3. will indemnify and hold City harmless from any claims and damages arising out of Equipment Lessor's entering the Premises to inspect or remove the Trade Fixtures;
4. will pay a daily use fee based upon Rent in effect at the time under the Lease, and Tenant's proportionate share of any additional costs owed under this Lease during the period of Equipment Lessor's use and/or occupation of the Premises, including any time that the leased equipment may remain on the Premises after lease termination;
5. will concurrently provide to City a copy of any notice of Default to Tenant, and City shall after written notice of Tenant's failure to cure such Default have the right, but not the obligation, for a period of sixty (60) days, in the case of a monetary Default, or thirty (30) days in all other cases, or except in the case of a monetary Default, such reasonable period of time to cure such Default provided City promptly commences the action necessary to cure the claimed Default within the thirty (30) day period and prosecutes the same to completion with diligence and continuity; and
6. will not hold any auction or secured Premises sale at the Premises except where such auction or sale is for the purpose of legitimate fundraising for Tenant. Notwithstanding anything in this Section VIII to the contrary, Tenant shall ensure that Equipment Lessor does not repossess or remove any item from Premises that constitutes

the structure, the front windows or doors, or any fixtures or which has otherwise been incorporated into the improvements at the Premises, including, but not limited to, lighting, electrical, wiring, HVAC units, supply fans, exhaust fans, air ducts, electric and utility lines, pipes, pumps, water heaters, tanks, conduits, switchboards, elevators, fire prevention equipment, attached carpeting and floor coverings, toilets, sinks, countertops, doors and windows, compressors, sign poles and lighting poles.

C. Tenant agrees that it will not cause or allow to occur any Default under an Equipment Lease and any amounts expended by City to cure such defaults shall be subject to reimbursement by Tenant.

#### IX. REPAIRS AND MAINTENANCE, TENANT'S NEGLIGENCE AND SUBSTANTIAL DAMAGE.

A. Routine Maintenance. The City shall perform and bear the cost of routine maintenance and repairs for the Premises where:

1. in the case of maintenance, Tenant will collaborate in good faith with the City to develop a regular schedule according to which such maintenance will be performed for the Building and Premises, including landscaping, which schedule shall be reviewed and updated annually; and
2. in the case of repairs, Tenant promptly notifies BioPark Maintenance Supervisor regarding the nature and degree of urgency of the need for repair; and
3. the total cost to the City of performing such routine maintenance and repairs shall not exceed NINE THOUSAND, NINE HUNDRED NINETY-NINE DOLLARS AND NO/100 (\$ 9,999.00) per year.
4. In the event the Routine Maintenance Maximum is reached, the City shall continue to perform the maintenance and repairs, but the costs associated with such performance in excess of the Routine Maintenance Maximum shall be billed to Tenant, and Tenant shall remit payment of the invoiced amount to City within thirty (30) days of receipt of such an invoice.

B. Substantive Repairs; Renovations. Tenant may perform substantive repairs or renovations ("Large Project(s)") to the Building or the Premises that are estimated to cost TWENTY FIVE THOUSAND DOLLARS AND NO/100 (\$25,000.00) or more with the prior written approval of the City and at the sole expense of the Tenant, pursuant to the following:

1. Tenant shall submit the Large Project request (the "Request") in writing to the BioPark Administrator, which Request must include at a minimum the scope, location, reason, anticipated project start date, proposed contractor for performance of work and estimated cost; and

2. City shall advise Tenant of a determination regarding the Request within fourteen (14) business days of its receipt of a properly submitted Request; and
3. If a Request is approved: (i) Tenant is responsible for contracting with and paying all contractors necessary for completing performance of the Large Project, unless otherwise arranged for and agreed to in writing with the City, and shall be responsible for engaging and paying all contractors engaged for the project and further, shall comply with the obligations set forth in Section X; (ii) Tenant shall ensure that all contracts with contractors performing Large Projects include language that require insurance of the types and in the amounts currently recommended by the City's risk department and further require that the City be listed as an additional insured; (iii) Tenant understands that Tenant is responsible for administering the contract with contractors and ensuring the project is completed as approved by the City.
4. Notwithstanding the above, some such Requests may be candidates for consideration by the City for City funding, in whole or in part ("City Funding"), in such case, City shall advise Tenant of approval for City Funding and shall specify amount of City Funding approved at the time Request is approved, or shall identify at the time of approval a date for such determination.

C. General Obligations of Tenant as to the Premises and Buildings.

1. Tenant shall not permit offensive or unreasonably strong odors of any kind to emanate from the Premises or Buildings. If such odors are emanating from the Premises, then upon notice from Lessor, Tenant shall, within ten (10) days, install devices or put in place procedures to eliminate or contain such odors within the Premises.
2. Upon Surrender of the Premises and subject to Section XII.B. "Surrender of Premises," Tenant will transfer to City or otherwise make available any titles to the buildings, if applicable, and any construction or equipment warranties related to the Building(s) and the Premises, including but not limited to warranties for the roof and for the heating and air conditioning systems. Notwithstanding anything herein to the contrary, as an alternative to assuming possession of the Building(s) and other fixtures (as applicable) on the Premises pursuant to this provision, City may, at its option, issue notice to Tenant to remove all improvements and restore the land to the original condition of the 1977 vacant land, and Tenant shall be so obligated to complete such restoration within thirty (30) days of the expiration or earlier termination of this Lease.
3. Also, notwithstanding anything herein to the contrary, in no event shall

Tenant be obligated by the provisions of this Section IX to repair, replace or restore the Land and the Building in a situation covered under the other Section in this Lease entitled "DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS", except as otherwise provided in such Section.

#### X. MECHANICS' AND MATERIALMEN'S LIENS

A. Tenant shall pay before delinquency all costs for alterations, maintenance, repair, replacement or other work done by or caused to be done by Tenant at the Premises and shall keep the Land and City's interest in the Premises and the Land free of mechanics' and materialmen's liens and other liens of like nature other than liens created or claimed by reason of any work done by or at the request of City or its agents. Tenant shall protect, defend and indemnify City against all such liens or claims which may ripen into such liens on the Land, or City's interest in the Premises, and against all attorney's fees and other costs and expenses caused by or incurred by reason of or on account of any such claim or lien.

B. Tenant shall immediately notify City of any such lien, claim of lien or other action of which it has knowledge that affects the title to the Premises, or any part thereof. Tenant shall cause the same to be removed within five (5) days. Notwithstanding the foregoing, if Tenant contests the correctness or validity of any such lien and if the laws of the State of New Mexico provide for the release of real Premises from such a lien by obtaining and/or recording a surety bond, then within twenty (20) days after written demand by City, Tenant shall obtain a surety bond and shall otherwise comply with the requirements of such laws, so as to effect the release of the Premises from such lien. If Tenant fails to timely cure such liens, or to provide a surety bond as provided herein, City, in addition to all other available remedies hereunder, may take such action as City deems necessary to remove same and the entire cost thereof shall be immediately due and payable by Tenant to City as Additional Rent.

#### XI. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

A. If the Land and/or the Building or any other improvements shall be partially or wholly damaged or destroyed by fire, windstorm, water, earthquake, flood or by any other means, Tenant may, at Tenant's option, to be evidenced by notice in writing given to City within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of such notice.

B. If Tenant does not elect to terminate this Lease, the Tenant shall commence to rebuild or repair any such damage at Tenant's sole cost and expense and restore the Premises to substantially the same condition that existed immediately prior to the damage. All insurance proceeds payable under any Premises insurance policies held by Tenant covering the Premises shall be paid into escrow to be held for payment towards the cost of rebuilding or repair and, should Tenant fail to perform its obligation to rebuild or repair, such proceeds, plus any amount necessary to rebuild or repair that is not covered by insurance, shall be paid to City. Except as provided below, no damage or destruction by fire or other casualty shall cause a termination of this Lease or any abatement of Rent or Additional Rent.

C. If Tenant elects not to restore the Premises to substantially the same condition that existed immediately prior to the damage, then Tenant shall, at City's election, either raze any remaining portion of the improvements and remove all debris or demolish only the damaged portions of the improvement and remove the debris, then grade and restore the land to its original condition if City elected to have all improvements razed and removed.

## XII. SURRENDER UPON TERMINATION.

A. In the event that this Lease is terminated prior to the expiration of the Term hereof for any reason other than Default by Tenant, this Lease shall be of no further force or effect and all rights and obligations of the parties hereto shall cease and terminate concurrently with the effective date of such termination, subject, however, to the provisions of Section XII.B below. Nothing in this subsection A shall relieve any party from its obligations under the Sections of this Lease entitled "Rent and Term", "Holding Over", "COMPLIANCE WITH LAW", "TENANT'S FIXTURES AND EQUIPMENT", "OWNERSHIP OF IMPROVEMENTS", "REPAIRS AND MAINTENANCE", "MECHANICS' AND MATERIALMAN'S LIENS", "DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS", "SURRENDER UPON TERMINATION", "UTILITIES", "DEFAULT AND REMEDIES", "HAZARDOUS SUBSTANCES", "FIRE OR OTHER CASUALTY LOSS TO PERSONAL PROPERTY", "INDEMNIFICATION", "ASSIGNMENT AND SUBLETTING", "TAXES AND ASSESSMENTS", "INSURANCE", "BROKER", "RIGHT OF ENTRY", "CONDEMNATION", "Governing Law", "Surrender of Premises", "Attorneys' Fees", and "Security Deposit" with respect to any matter therein specified which occurred prior to the effective date of termination or that expressly survives the expiration or earlier termination of this Lease.

B. Surrender of Premises. Upon the expiration or any earlier termination of this Lease, Tenant, at Tenant's option, shall surrender to the City the Land, Building and Premises and all other improvements located thereon in good condition (subject to the provisions set forth in Section XI of this Lease entitled "DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS" and Section IX entitled "REPAIRS AND MAINTENANCE"), reasonable wear and tear excepted ("Surrender"), and the Building and all other improvements shall be the property of the City (specifically excluding all of Tenant's fixtures, machinery, interior and exterior signs and any other removable personal property placed upon the Premises by Tenant, provided that Tenant removes Tenant's Fixtures and Equipment and repairs any damage caused thereby) and all other fixtures and improvements shall remain at the Premises at the expiration or termination of this Lease. In the event the Tenant elects to remove any Tenant installed buildings and improvements, the Tenant shall remove all such buildings and improvements in their entirety and restore the Premises and Land to the reasonable satisfaction of the City. Notwithstanding the foregoing sentence, at least six (6) months prior to the expiration of the Lease or within thirty (30) days after the earlier termination of this Lease, City may notify Tenant in writing that City would like Tenant to remove the Tenant installed building(s) on the Premises, in its/their entirety, prior to Surrender of the Premises to City, and Tenant, at its sole expense, shall do as requested. If Tenant fails, to perform any repairs or restoration or fails to remove any of Tenant's property from the Premises as required hereunder, City may do so, and Tenant shall pay City the cost thereof upon demand. All of Tenant's property that remains on the Premises after the termination or expiration of the Lease,

shall be deemed abandoned by Tenant and City shall have the right to remove and dispose of such Tenant property at Tenant's expense, and City shall in no event be responsible for the value, preservation or safekeeping thereof. All such Tenant's property remaining on the Premises after the termination or expiration of the Lease, excluding any furniture, fixtures, equipment and personal property leased to Tenant shall, at City's option, be conclusively deemed to have been conveyed by Tenant to City as if by bill of sale without payment by City. If City arranges for storage of any of Tenant's property, City shall have a lien against such property for costs incurred in removing and storing the same. As of the later of the termination/expiration date or the date of Surrender, all obligations of City and Tenant under this Lease shall terminate, and this Lease shall be of no further force and effect, except for any liability or obligation arising out of any indemnification provision of this Lease, or any obligation or liability which accrued prior to the expiration or earlier termination of the Lease or which survive the expiration or earlier termination of this Lease.

### XIII. UTILITIES.

A. Telephone and cable utilities needed and/or desired by the Tenant for the Building and Premises shall be arranged directly by Tenant with each respective utility supplier, including the posting of any required deposits, and paid directly by Tenant to the applicable utility supplier when due.

B. The City shall be responsible for ensuring connection and continued service connections of water, gas and electric utility services to the Building and Premises with Tenant's payment obligations therefor being as set forth in paragraph "EG" below.

C. 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. City shall not be liable in damages or otherwise for any failure, variation, shortage or interruption of any 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.

D. Tenant shall also arrange directly for all refuse removal services from the Premises to the central dumpsters provided by City and shall cause all refuse to be removed with sufficient frequency to prevent odors or accumulation. The location of refuse containers outside the Premises shall be subject to City's approval.

E. Notwithstanding anything herein to the contrary, for those utilities for which a separate meter is not installed in the Premises, and for which the City receives the bill for services provided to the Premises and /or Building (the "Utilities"), then the City may bill the related Utilities charges to Tenant on an equitable basis based upon the area of the Premises in relationship to the leasable area of the building or buildings utilizing the same meter reflected on each such bill.

F. Failure to reimburse the City within thirty (30) days of presentation of any invoice for Utilities shall be deemed a material Default. Such unpaid obligations to the City are deemed Additional Rent.

### XIV. DEFAULT AND REMEDIES.

A. Default. The occurrence of any one or more of the following events shall constitute



a default by Tenant ("Default"):

1. Failure to make payment of Base Rent within fifteen (15) days of when due.
2. The abandonment of the Premises by Tenant for a period of sixty (60) 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 thirty (30) 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 thirty (30) 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 thirty (30) 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 City's prior written consent.
8. 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:
9. 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. 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 City, on demand, the following damages:

a. the 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 net present value of the balance of the Rent for the remainder of the term, less the net present value of the fair market value rental of the Premises for said period taking into consideration a reasonable lease up period and reasonable expenses that would be incurred by City in re-letting the Premises (spread evenly throughout the term of the new lease); however, this sum shall not be less than zero as in no event shall City be obligated to pay Tenant if the difference is a negative number. Both future payments computed in accordance with this provision shall be discounted to present value in accordance with accepted financial practices using a discount rate of 4% per annum.

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.

10. Continue this Lease in effect, and as long as the City does not terminate Tenant's right to possession, and City may enforce all of its rights and remedies under the Lease, including the right to recover the Rent. Actions to collect amounts due by Tenant to 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.

11. 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 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 City. 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, City may, at any time thereafter, elect to terminate the Lease as provided above.

12. 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.

13. Subject to any subordination of lien expressly granted by City in writing, enforce the statutory City's lien on Tenant's property.

14. 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.

15. In case of any event of Default or breach by Tenant, Tenant shall also be liable for and shall pay to City, at the address specified for notice to City herein, in addition to any sum provided to be paid above, 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 tenants and all reasonable expenses incurred by City in enforcing or defending City's rights and/or remedies, recovering possession, re-letting the Premises, or collecting amounts owed, (period).

16. 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 City for such purpose, plus 15% for special handling, supervision and overhead, which Tenant hereby acknowledges constitutes reasonable liquidated damages and not a penalty.

17. Alter all locks and other security devices at the Premises without terminating this Lease. 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.

18. In the event that City shall have taken possession of the Premises pursuant to the authority herein granted, then 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 City or repossession thereof by a lessor thereof or third party having a lien thereon. 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 City for costs incurred by City in connection with such removal and storage and shall indemnify and hold City harmless from all loss, damage, cost, expense and liability in connection with such removal and storage. 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 City a copy of any instrument represented to 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 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 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 City harmless from all cost, expense, loss damage and liability incident to City's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or

other property to Claimant. The rights of City herein stated shall be in addition to any and all other rights which City has or may hereafter have at law or in equity; and Tenant stipulates and agrees that the rights herein granted City are commercially reasonable.

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

20. Pursue any other remedies provided in specific provisions of this Lease, available at law, or provided in equity.

21. If Tenant fails more than twice within a twelve (12) month period to observe or perform any covenant, condition, or agreement of the Lease (including, without limitation, the payment of Rent and/or compliance with applicable laws, regulations, rules, ordinances or other federal, state or local governmental orders or directives), regardless of whether such failures have been cured by Tenant, the third failure will at the election of City, in its sole and absolute discretion, be deemed an automatic event of Default, without notice to Tenant or an opportunity to cure.

22. 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, City, in its sole discretion, may at any time require that all future payments from Tenant pursuant to this Lease be in certified funds or made by automatic electronic bank transfers.

23. All of the remedies provided in this Article XIV shall survive the termination of this Lease.

## XV. 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, 42 U.S.C. § 9601 et seq. (1980)), **RCRA** (Resources Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.(1976)) and **SARA** (Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.9601 et seq.(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.

3. 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 City. The City specifically exempts readily available art supplies used in the course of instruction (to include oil paints, pigments and solvents) as long as Tenant properly handles and properly disposes of all art supplies used in the course of instruction. 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 City of Tenant's intention to do so and affording City ample opportunity to appear, intervene or otherwise appropriately assert and protect City's interests with respect thereto.

B. Environmental Audit. At any time and from time to time, 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 City upon demand; otherwise all costs shall be borne by City. In addition, Tenant, at 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 City shall reasonably require.

C. 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 City of the release or discharge of the Hazardous Substance. Tenant shall defend, indemnify and hold City harmless from and against any and all costs, claims, demands and damages, related to any breach of this Article XV 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.

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. Any liability that may be incurred by the City or its employees or agents in connection with this Agreement is subject to the

immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

#### XVI. RIGHT OF ENTRY.

The City, 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, 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.

#### XVII. 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.

#### XVIII. INDEMNIFICATION.

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, reckless or intentional act(s), errors or omission(s) in the course of performance of Tenant's obligations and duties pursuant to 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. Any liability that may be incurred by the City or its employees or agents in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

#### XIX. ASSIGNMENT AND SUBLETTING.

A. 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 City, among other things, to withhold consent if City is not satisfied with the financial responsibility, identity, reputation or business character of the proposed assignee or subtenant.

B. Notwithstanding any consent by City, in the event Tenant does assign or sublease with the City's approval pursuant to this provision, 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 City shall be permitted to enforce the provisions of this Lease

directly against Tenant or any such assignee or sublessee without proceeding in any way against any other party.

C. In the event of an assignment or sublease, contemporaneously with the granting of City's consent, Tenant shall cause each such assignee or sublessee to confirm in writing that party's specific, express assumption of and agreement to perform all of the covenants, duties and obligations of Tenant hereunder to the extent being assigned or subleased, and each such assignee or sublessee shall further confirm that party's understanding of joint and several liability, together with Tenant.

D. Unless approved by City, no usage of the Premises, different from the usage provided for in Section I and V, above, shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease.

E. City shall have the right to assign or transfer, in whole or in part, 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. 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 City may reasonably require from time to time.

2. 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.

3. Business interruption insurance with a limit sufficient to cover not less than a six-month loss of income.

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 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 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 City-as additional insured.
4. Be non-contributing and apply as primary, and not as excess to, any other insurance available to City;
5. Not be invalidated with respect to the interests of 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 City and the holder of any encumbrance on the Property designated by 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 City.

C. Evidence of Coverage. Tenant shall deliver to City certificates of insurance or, if required by 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 (thirty) 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 Real Property Manager, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87102, before a policy is canceled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. 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 City shall derogate or diminish 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, 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. 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 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, City shall have the right to terminate this Lease by giving Tenant at least thirty days written notice of such termination.

B. Award. City shall be entitled to receive and retain the entire award or consideration for the affected lands and Tenant shall retain any award for improvements and Tenant shall not have, or advance, any claims against 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 City any interest in or preclude Tenant from seeking and recovering on its own account from the condemning authority any separate 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 City's award. If any such separate award made or compensation paid to Tenant specifically includes an award or amount for City, Tenant shall promptly account therefor to City.

## XXIII. RIGHTS RESERVED BY CITY

Except as expressly provided in this Lease, City reserves all rights of ownership and control over all portions of the Premises and Land including without limitation the following:

A. Access. Upon reasonable notice to Tenant, City shall have access to the Premises for purposes of inspection and performing City's obligations and exercising its rights under this Lease.

B. Restriction of Access. City reserves the rights to:

1. prevent or restrict access to any portion of the Property by such security procedures or devices as City may consider necessary or appropriate;
2. control or prevent access by and remove, any person who is loitering or whose presence in the judgment of City's security or management personnel is prejudicial to the safety, character, reputation and interests of the Land or Premises or who in the judgment of such personnel is intoxicated or under the influence of liquor or drugs; and
3. limit or prevent access to all or any portion of the Land or Premises, activate emergency controls or procedures or otherwise take such action or preventive measures deemed necessary by City for the safety of tenants or other occupants of the Land or

Premises or the protection thereof or other property located thereon or therein, or for the general health and safety of City residents; in case of fire or other casualty, riot or other civil disorder, strike or labor unrest, public health crises, pandemic, public excitement or other dangerous condition or threat thereof.

C. Changes. City reserves the right to end connection with the foregoing matters or with any other inspections, repairs, maintenance, improvements or alterations in or about the Land 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.

#### XXIV. ETHICS AND CAMPAIGN PRACTICES BOARD, FAIR DEALING AND CONFLICT OF INTEREST; RECORDS: AUDITS AND INSPECTIONS.

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.

C. Upon execution of this Lease, or within five (5) days after the acquisition of any interest described in this Section XXIV 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.

D. 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.

E. Establishment and Maintenance of Records. Records shall be maintained by Tenant in accordance with applicable law and requirements prescribed by the City of Albuquerque with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

F. Audits and Inspections. At any time during normal business hours and as often as

the City of Albuquerque may deem necessary, there shall be made available to the City for examination all of Tenant's records with respect to all matters covered by this Agreement. Tenant shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Tenant understands and will comply with 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, and also agrees to provide requested information and records and appear as a witness in hearings.

## XXV. DISCRIMINATION PROHIBITED.

In the operation and use of the Location, 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.

## XXVI. 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.

## XXVII. 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. 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 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 Land 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 City for any purpose whatsoever.

G. Non-Liability of City. 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. 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 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 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, City's Affiliates, or their successors or assigns, nor execute upon any judgment or place any lien against any property other than City's interest in the Premises.

H. Force Majeure. In the event 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, public health crisis or pandemic or other causes beyond the reasonable control of 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 and to the delivery of the Premises by City.

I. Contract Review. 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. 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 Article to the same effects as if each had received such notice or payment.

1. Notice to Tenant:

New Mexico BioPark Society  
Board and Executive Director  
903 10th Street SW  
Albuquerque, NM 87102

2. Notice to the City:

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

With a copy to:

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

K. 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.

L. 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

M. 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. 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.

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

O. Attorneys' 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.

P. 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. The parties further acknowledge that they have fully and fairly bargained for the terms of this Section XXVIII, paragraph P. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

Q. 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.

R. 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.

S. 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..

T. 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.

U. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this Lease may be electronically signed and that the electronic signatures appearing on the Lease are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**IN WITNESS WHEREOF**, the parties hereto have signed this agreement as of the date indicated by each signature, and the Lease is effective after approval by the City Council and then only upon the signature of the City’s Chief Administrative Officer or authorized designee.

**[SIGNATURE PAGES IMMEDIATELY FOLLOWING]**

**CITY:**  
**CITY OF ALBUQUERQUE**  
**A New Mexico Municipal Corporation**

\_\_\_\_\_  
Sarita Nair, Chief Administrative Officer

Date: \_\_\_\_\_

Recommended by:

\_\_\_\_\_  
Shelle Sanchez, Director  
Cultural Services Department

Date: \_\_\_\_\_



**TENANT:**  
**New Mexico BioPark Society**  
**A New Mexico nonprofit corporation**

\_\_\_\_\_  
Julie Miller Rugg, NMBS Executive Director

Date: \_\_\_\_\_

and

\_\_\_\_\_  
Albino Hernandez, NMBS President

Date: \_\_\_\_\_

**EXHIBIT “A”**  
**The Premises**