

RESOLUTION NO. R-08-02

WHEREAS, the Board of County Commissioners (the "Board") of Grant County, New Mexico (the "County") deems it to be in the best interest of the County to lease and grant an option to purchase a parcel of undeveloped real property (the "Land") in Santa Clara, New Mexico owned by the County to the New Mexico Department of Health ("NMDOH"); and

WHEREAS, the Agreement provides that NMDOH will cause a healthcare facility (the "Facility") to be acquired, constructed and equipped on the Land, financed with the proceeds from the County's Project Revenue Bonds (Ft. Bayard Project), Series 2008 (the "Bonds") to be issued pursuant to a Ordinance No. O-07-01 adopted by the Board on August 23, 2007, as the same may be amended in accordance with its terms, and that NMDOH will have the option to purchase the Land and the Facility during the term of the Agreement, at a price equal to the amount necessary to pay the Bonds plus the value of the Land, with title to be conveyed to the Property Control Division of the New Mexico General Services Department; and

WHEREAS, under the Agreement, and subject to its terms and conditions, NMDOH will be obligated to make payments, among others, in the amounts and at the times necessary to allow for the timely payment of the principal of and interest on the Bonds,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GRANT COUNTY, NEW MEXICO:

Section 1. All actions not inconsistent with this resolution heretofore taken by the Board, its members, and the officers, employees and agents of the County with respect to the Agreement are ratified, approved and confirmed.

Section 2. The form, terms and provisions of the Agreement are in all respects approved, authorized and confirmed. The Chairman of the Board and each other officer of the County is authorized and directed, singly or together, as they may deem appropriate, to execute and deliver the Agreement in a substantially similar form as presented and with such changes not inconsistent with this resolution as he or she may approve, such approval to be conclusively evidenced by his or her execution of the same.

Section 3. Notwithstanding the generality of the foregoing, the Agreement shall not be effective until the last to occur of: (a) the execution and delivery of the Agreement by the County and NMDOH; (b) the ratification or approval of the Agreement by the New Mexico State Legislature pursuant to Section 15-3-15 NMSA 1978; and (b) the approval of this Agreement by the New Mexico State Board of Finance pursuant to Section 13-6-2.1 NMSA 1978.

STATE OF NEW MEXICO)
) ss.
COUNTY OF GRANT)

The Board of County Commissioners (the "Board") of Grant County (the "County"), in the State of New Mexico, met in open special session in full conformity with law and the ordinances and rules of the County, in the Conference Room of the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, in the County, being the regular meeting place of the Board, at 3:00 p.m., on Thursday, February 14, 2008 at which time there were present and answering the roll call the following members:

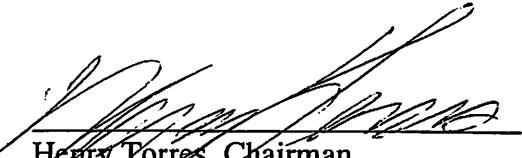
Chairman: **Henry Torres**
Commissioners: **Mary Ann Sedillo**
Jovita Gonzales

Absent: None

Thereupon the following proceedings, among others, were had and taken, to wit:

There was officially filed with the County Clerk, the Chairman and each Commissioner, a copy of a resolution in final form, which is as follows:

PASSED, ADOPTED, SIGNED AND APPROVED THIS 14th DAY OF FEBRUARY 2008.



Henry Torres, Chairman
Board of County Commissioners

(SEAL)

Attest:



Robert Zamarripa, County Clerk

GRANT COUNTY, NEW MEXICO

and

NEW MEXICO DEPARTMENT OF HEALTH

LEASE-PURCHASE AGREEMENT

Dated as of Effective Date as shown herein

GRANT COUNTY, NEW MEXICO (together with its successors and assigns, the "Issuer") and the NEW MEXICO DEPARTMENT OF HEALTH (together with its successors, the "Lessee"), agree:

ARTICLE I RECITALS

The Issuer is issuing its Project Revenue Bonds (Ft. Bayard Project), Series 2008 in the aggregate principal amount not to exceed \$60,000,000 (the "Bonds") to finance the design, acquisition, construction and equipping by the Issuer of the Project (defined below). The Bonds are to be issued under an ordinance adopted by the Board of County Commissioners on August 23, 2007 (as supplemented by the resolution adopted by the Board of County Commissioners on September 27, 2007, and as further amended or modified from time to time, the "Bond Ordinance"). The Project is to be leased by the Issuer, as lessor, to the Lessee under this Lease-Purchase Agreement (together with any amendments and exhibits, this "Agreement"). This Agreement grants the Lessee the option to purchase the Project.

ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

Section 2.1 Definitions. Except as provided in this Section 2.1, all words and terms defined in the Bond Ordinance have the same meanings when used in this Agreement. In addition:

"Additional Payments" has the meaning assigned in Section 5.3(b).

"Basic Rent" has the meaning assigned in Section 5.3(a).

"Default" means an event or condition that, with the giving of notice or the passage of time or both would constitute an Event of Default.

"Effective Date" means the later of the date of (1) the execution and delivery of this Agreement; (2) ratification or approval of this Agreement by the State Legislature; and (3) approval of this Agreement by the State Board of Finance.

"Eminent Domain" means the taking of title to, or the temporary use of, all or any part of the Project pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project during the pendency of, or as a result of a threat of, such proceedings.

"Environmental Law" means any federal, state or local statute, ordinance, rule or regulation, any judicial or administrative order, judgment and any provision or condition of any permit, license or other operating authorization, primarily relating to: (i) protecting the environment, including without limitation, protection of the environment, persons or the public welfare from any actual potential exposure to or any

actual or potential release, discharge or emission of any Hazardous Materials, or regarding the manufacture, processing, importation, use, transportation, generation, treatment, storage, disposal or handling of any Hazardous Materials; (ii) occupational or public health or safety; or (iii) land use, all as now in effect or hereafter amended.

“Event of Default” has the meaning assigned in Section 7.1.

“Hazardous Materials” means any hazardous substance, hazardous waste, hazardous material, toxic substance, hazardous air-pollutant, pollutant or contaminant, including petroleum and petroleum-derived products, as those terms are defined pursuant to any Environmental Law, and any other substance or material which would constitute or cause a health, safety or environmental hazard on, in or under the Project or require remediation.

“Improvements” means all improvements constructed or installed and to be constructed or installed on the Land, including all buildings, equipment, furniture, fixtures, furnishings, machines and other systems and all other personal property of any kind.

“Land” means the real property in Grant County, New Mexico more particularly described on Exhibit A.

“Management Agreement” means an agreement with a private operator of the Facility under which such private operator operates the Project for the Lessee.

“Official Statement” means the Official Statement of the Issuer dated _____, 2008 with respect to the Bonds.

“Parties” means the Issuer and the Lessee.

“Party” means any one of the Parties.

“Permitted Encumbrances” means, as of any particular time: (i) liens for taxes and assessments not then delinquent, or which the Lessee may, pursuant to Section 4.4, permit to remain unpaid; (ii) any mechanic’s, laborer’s, materialmen’s, supplier’s or vendor’s lien or right, which do not in the aggregate materially impair the use of the Project incurred in the construction of the Project or incurred in the ordinary course of the Lessee’s business, which are not filed or perfected in the manner prescribed by law, or which the Lessee may, pursuant to Section 4.9, permit to remain unpaid; (iii) minor defects and irregularities in the title to the Project which do not in the aggregate materially impair the use of the Project for the purposes for which it is or may reasonably be expected to be held; (iv) easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not in the

aggregate materially impair the use of the Project for the purposes for which it is or may reasonably be expected to be held; (v) present and future valid zoning laws and ordinances which do not and shall not in the aggregate materially impair the use of the Project for the purposes for which it is or may reasonably be expected to be held; and (vi) liens securing the Bonds or additional debt issued in accordance with the Bond Ordinance.

“Project” means the Land and the Improvements.

“Rent” means Basic Rent, any Additional Payments and any other amount payable by the Lessee under this Agreement.

“State” means the State of New Mexico.

“Term” means the period from the Effective Date to the earlier of the date of the payment or deemed payment in full of the Bonds in accordance with the Bond Ordinance or the date of termination of this Agreement pursuant to Section 5.9 or 7.2(b).

“Trustee” means the Trustee appointed and serving as such from time to time under the Bond Ordinance.

Section 2.2 Rules of Construction.

(a) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(b) All references in this Agreement to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Agreement unless some other reference is established.

(c) Any inconsistency between the provisions of this Agreement and the provisions of the Bond Ordinance will be resolved in favor of the provisions of the Bond Ordinance.

ARTICLE III REPRESENTATIONS

Section 3.1 Issuer Representations. The Issuer represents that, as of the date of the execution and delivery of this Agreement:

(a) The Issuer is a county, duly organized and validly existing under the laws of the State, and has the power and authority to own its property and to carry on its business in each jurisdiction where it does business.

(b) The Issuer has full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided for herein, all of which

have been duly authorized by all proper and necessary action on the part of the Issuer. No consent or approval of any public authority or third party is required as a condition to the validity of this Agreement except for such consents and approvals as have already been obtained.

(c) This Agreement has been duly authorized, executed and delivered by the Issuer and is the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency and similar laws governing creditors' rights generally and general equitable principles.

(d) The execution, delivery and performance by the Issuer of this Agreement will not conflict with, contravene, violate or constitute a breach of or default under any law, rule, regulation, ordinance, order, consent, decree, agreement or instrument to which the Issuer is a party or by which it or its properties or the Project is bound.

(e) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the best of the knowledge of the Issuer, threatened against the Issuer, (i) which seeks to or does restrain or enjoin the issuance or delivery of this Agreement, (ii) which in any manner questions the validity or enforceability of this Agreement; (iii) which questions the authority of the Issuer to own the Project or to lease the Project to the Lessee; (iv) relating to or alleging any violation of any Environmental Law by the Issuer with respect to the Project; or (v) involving the Issuer pending or to the knowledge of the Issuer threatened before any court or governmental authority, agency or arbitration authority that is material with respect to the Bonds and has not been disclosed in the Official Statement.

(f) The Issuer has not received any notice of an alleged violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project.

Section 3.2 Lessee Representations. The Lessee represents that, as of the date of the execution and delivery of this Agreement:

(a) The Lessee is a governmental department of the State, duly organized and validly existing under the laws of the State, and has the power and authority to carry on its business in each jurisdiction where it does business.

(b) The Lessee has full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided for herein, all of which have been duly authorized by all proper and necessary action on the part of the Lessee. No consent or approval of any public authority or third party is required as a condition to the validity of this Agreement except for such consents and approvals as will have been obtained by the Effective Date or as set out herein.

(c) This Agreement has been duly authorized, executed and delivered by the Lessee and is the legal, valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency and similar laws governing creditors' rights generally and general equitable principles.

(d) The execution, delivery and performance by the Lessee of this Agreement will not conflict with, contravene, violate or constitute a breach of or default under any law, rule, regulation, ordinance, order, consent, decree, agreement or instrument to which the Lessee is a party or by which it or its properties or the Project is bound.

(e) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the best of the knowledge of the Lessee, threatened against the Lessee, (i) which seeks to or does restrain or enjoin the execution and delivery of any of this Agreement, (ii) which in any manner questions the validity or enforceability of this Agreement; (iii) which questions the authority of the Lessee to lease the Project; (iv) relating to or alleging any violation of any Environmental Law by the Lessee with respect to the Project; or (v) involving the Lessee pending or to the knowledge of the Lessee threatened before any court or governmental authority, agency or arbitration authority that is material with respect to the Bonds and has not been disclosed in the Official Statement.

(f) The Lessee has not received any notice of an alleged violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project.

ARTICLE IV THE PROJECT

Section 4.1 Design, Acquisition, Construction and Equipping. The Lessee will, with proceeds drawn by the Lessee from the Acquisition Account (as defined in the Bond Ordinance), on behalf of and as agent for the Issuer, design, acquire, construct and equip the Project to the extent not previously acquired by the Issuer, and will undertake the Project with all reasonable dispatch. Pursuant to the Bond Ordinance, disbursements from the Acquisition Account shall be made upon receipt by the Trustee of a Payment Approval Sheet, duly approved by authorized representatives of the Lessee, which shall be copied to the Issuer. The provisions of the procurement code shall not apply to the procurement by either the Issuer or Lessee or both, of services or construction deemed necessary by the Lessee to effectuate the Project on behalf of and as agent for the Issuer. Agreements related to the acquisition of the Project shall be subject to the provisions of state law regulating the acquisition and disposal of real property by governmental entities (SB258, 48th Legislature, Second Session, 2008).

Section 4.2 Compliance With Law. The Lessee has obtained, will obtain or cause to be obtained all necessary permits and approvals for the operation and maintenance of the Project and will comply with all lawful requirements of any governmental body, agency or department regarding the use or condition of the Project and will cause the Project to comply with all zoning and planning ordinances building codes, restrictive covenants, environmental laws and regulations, and all other applicable laws, ordinances, statutes, rules and regulations relating to the Project. The Lessee may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.2 will be deemed satisfied with respect to the requirement so contested.

Section 4.3 Nuisance Not Permitted. The Lessee will not permit or suffer others to commit a nuisance on or about the Project or itself commit a nuisance in connection with its use or occupancy of the Project.

Section 4.4 Taxes and Utility Charges. The Lessee will pay, as and when due, (i) all taxes (if any), assessments, governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project. The Lessee may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.4 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

Section 4.5 Operation and Maintenance. As between the Issuer and the Lessee, the Issuer will not be under any obligation to, and will not, operate, maintain or repair the Project. The Lessee will, at its own expense, operate the Project, keep the Project in safe repair and in such operating condition as is needed for its operations and make all necessary repairs and replacements to the Project (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen). The Lessee will also preserve and maintain all licenses, trademarks, privileges, permits, franchises, certificates and the like necessary for the operation of its business at and with respect to the Project. The County will make no modifications to the Project.

Section 4.6 Eminent Domain; Damage; Destruction. The Lessee will give prompt notice to the Issuer and the Trustee of any material damage to or destruction of the Project. If either the Issuer or the Lessee receives notice of the proposed taking of all or any part of the Project by Eminent Domain, it will give prompt notice to the other and the Trustee. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Net Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project will be paid to Trustee and applied as provided in the Bond Ordinance.

Section 4.7 Access and Inspection. Subject to reasonable restrictions related to safety and privacy, the Lessee will give the Issuer, the Trustee and their duly authorized agents during regular business hours the right of entry onto the Project and for any purpose contemplated by this Agreement or the Bond Ordinance. The Lessee will execute, acknowledge and deliver all such further documents, including any deed or easement, and do all such other acts and things as may be necessary in order to grant to the Issuer and the Trustee such rights of access and entry. Such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project by the Lessee to any other person or entity.

Section 4.8 Adverse Conditions or Events. The Lessee will advise the Issuer and the Trustee of (a) any condition, event or act that comes to the Lessee's attention that would or might materially adversely affect the Lessee's ability to perform its obligations under this Agreement or the Issuer's or the Trustee's rights under this Agreement or the Bond Ordinance, and (b) any event that has occurred that would constitute a Default or Event of Default.

Section 4.9 Environmental.

(a) To the extent that the Project will house petroleum or any petroleum products, asbestos, urea formaldehyde foam insulation or any other chemical, material or substance exposure to which may or could pose a health hazard, the Lessee will cause the possession and use of such materials to be in accordance with Environmental Law.

(b) To the extent that the use which the Lessee makes or intends to make of the Project will result in the manufacturing, treatment, refining, transportation, generation, storage, disposal, or other release or presence of any Hazardous Substance, the Lessee will cause such use to be in accordance with Environmental Law.

(c) The Lessee will promptly notify the Issuer and the Trustee of: (i) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state, or local laws, ordinances or regulations relating to any Hazardous Materials affecting the Lessee's business operations; and (ii) all claims made or threatened by any third party against the Lessee relating to damages, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials.

(d) To the extent permitted by applicable law, the Lessee will indemnify the Issuer and the Trustee and hold the Issuer and the Trustee harmless from and against any and all liabilities, damages, claims, losses, judgments, causes of action, costs and expenses (including reasonable fees and expenses of counsel) that may be incurred by the Issuer or the Trustee relating to or arising out of the generation, storage, manufacturing, refining, releasing, transportation, treatment, disposal or other presence of any Hazardous Materials on or about the Project by the Lessee.

Section 4.10 Zoning. The Lessee will ensure that the Project currently does, and will continue to, comply with all applicable zoning and planning ordinances, restrictive covenants, deed restrictions, and, in all material respects, with all applicable building codes, flood regulations and other laws, ordinances, rules and regulations relating to the Project.

Section 4.11 Bond Ordinance. Subject to Section 5.9, The Lessee will observe and perform each of the covenants and obligations of the Issuer in Sections 31(f) through 31(n) of the Bond Ordinance, as if those covenants and obligations were assigned to the Lessee and were set out in this Agreement. In case of any conflict between the provisions of this Section 4 and the Sections 31(f) through 31(n) of the Bond Ordinance, those of Sections 31(f) through 31(n) of the Bond Ordinance will control and prevail. So long as no Event of Default has occurred and is continuing, the County will take no action under Sections 25, 26, 28, 29, 33, 37, 38 or 48 of the Bond Ordinance and will not and will not permit any of its officials, employees or agents, other than the Lessee, to incur any Operating Expenses or other expenses with respect to the Facility or the Project without the prior written consent of the Lessee, and will take such actions under such Sections and with respect to such Operating Expenses and other expenses as the Lessee may from time to time direct in writing.

Section 4.12 Delegation. The Lessee may from time to time delegate any or all of its obligations under this Agreement to a manager of the Project or other third party, and the Issuer will accept performance by such delegatee as performance by the Lessee, provided that no such delegation will relieve the Lessee from primary responsibility to the Issuer for performance of such obligations.

Section 4.13 No Warranty. THE LESSEE ACKNOWLEDGES THAT PRIOR TO THE DATE OF THE EXECUTION AND DELIVERY OF THIS AGREEMENT, THE LESSEE HAS THOROUGHLY INSPECTED ALL ELEMENTS COMPRISING THE PROJECT, AND ALL FACTORS RELATED TO ITS USE, INCLUDING, WITHOUT LIMITATION, UTILITIES CONNECTIONS, PHYSICAL AND FUNCTIONAL ASPECTS OF THE PROJECT, THE CONDITION OF THE PROJECT, AND MUNICIPAL AND LEGAL REQUIREMENTS SUCH AS EARTHQUAKE COMPLIANCE, TAXES, ASSESSMENTS AND BONDS, ZONING, USE PERMITS, BUSINESS PERMITS AND SIMILAR ENTITLEMENTS. THE LESSEE RELEASES AND FOREVER DISCHARGES THE ISSUER AND THE TRUSTEE FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITY OR OBLIGATIONS ARISING OUT OF OR IN ANY WAY RELATED TO ALL OF SUCH ITEMS, WHICH RELEASE AND DISCHARGE FROM LIABILITY SHALL SURVIVE THE COMMENCEMENT AND TERMINATION OF THIS AGREEMENT. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE ISSUER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, NATURE OR SORT, EXPRESS OR IMPLIED, WITH RESPECT TO THE PHYSICAL OR ECONOMIC CONDITION OR VALUE OF THE PROJECT, THE CONDITION OF TITLE TO THE PROJECT, OR THE EFFECT OF THIS AGREEMENT WITH RESPECT TO THE PROJECT. THE ISSUER LEASES THE PROJECT TO THE

LESSEE "AS IS AND WITH ALL FAULTS," AND THE LESSEE ACKNOWLEDGES THAT THE ISSUER MAKES NO REPRESENTATIONS, GUARANTIES OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE QUALITY, CHARACTER, PERFORMANCE, CONDITIONS OR SUITABILITY OF THE PROJECT, FOR ANY PURPOSE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE. THE LESSEE LEASES THE PROJECT SOLELY IN RELIANCE ON THE LESSEE'S OWN INSPECTION AND EXAMINATION. THE LESSEE, FOR ITSELF AND ITS OFFICERS, EMPLOYEES, SUCCESSORS AND ASSIGNS, RELEASES AND FOREVER DISCHARGES THE ISSUER AND ITS PAST, PRESENT AND FUTURE MEMBERS, COUNTY COMMISSIONERS, OFFICERS, AGENTS, EMPLOYEES, ATTORNEYS, ACCOUNTANTS, AND SUCCESSORS-IN-INTEREST FROM ALL PAST, PRESENT AND FUTURE CLAIMS, DEMANDS, OBLIGATIONS, LOSSES, CAUSES OF ACTION OF ANY NATURE WHATSOEVER, WHETHER NOW KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHICH ARE BASED UPON OR ARISE OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROJECT.

ARTICLE V LEASE; TERM; POSSESSION; RENT

Section 5.1 Lease of the Project; Term. In consideration of the payment of Rent, the Issuer leases the Project to the Lessee for the Term.

Section 5.2 Quiet Enjoyment. The Issuer will not take any action, other than pursuant to Section 4.8 and Section 7.2, to prevent the Lessee from having quiet and peaceable possession and enjoyment of the Project during the Term and will, at the request of the Lessee and at the Lessee's expense, to the extent that the Issuer may lawfully do so, join in any legal action in which the Lessee asserts its right to such possession and enjoyment.

Section 5.3 Rent and Other Payments.

(a) For the period from the written acceptance of the Certificate of Substantial Completion until the end of the Term, the Lessee will pay to the Trustee for the account of the Issuer and for deposit in the Revenue Fund, as rent (the "Basic Rent") such amounts and at such times as will permit the Trustee to make the payments from the Revenue Fund to the Bond Account (as defined in the Bond Ordinance) and the Reserve Account (as defined in the Bond Ordinance) at the times during such period and in the amounts required under the Bond Ordinance.

(b) The Lessee will pay, to the Trustee for the account of the Issuer all reasonable out-of-pocket costs and expenses (including, but not limited to, counsel fees and expenses) paid or incurred by the Issuer in connection with (i) the enforcement by the Issuer or the Trustee, during or after the Term of any of the rights or remedies of the Issuer or the Trustee under any of the foregoing documents, instruments or agreements

including without limitation, costs and expenses of collection, whether or not suit is filed, (ii) the periodic fees of the Trustee for its services under the Bond Ordinance, and (iii) the servicing and administration of the Bonds during the Term or thereafter, including without limitation bond insurance premiums, letter of credit fees and rating agency fees (collectively, "Additional Payments"). Additional Payments which are not paid when due will bear interest at a rate per annum equal to the prime rate (as most recently published in the "Money Rates" table of the Western Edition of *The Wall Street Journal*, or, if not so published, in a substitute publication reasonably designated by the Trustee or the Issuer, as the case may be), as in effect from time to time, plus 2%, from the date when due until paid in full. The obligation of the Lessee to pay Additional Payments will survive the Term.

(c) The Lessee will cause any amounts payable to the Lessee, whether before or during the Term, by the Provider pursuant to Section 10.04 of the Development Management Contract to be paid directly to the Trustee for deposit in the Bond Account as provided in Section 19(a) of the Bond Ordinance.

Section 5.4 Lessee's Obligations. Except as provided in Section 5.9, the obligation of the Lessee to pay Rent and to perform its other obligations under this Agreement is absolute and unconditional and will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project or any other event or condition. In the event the Issuer fails to perform any of its obligations under this Agreement, the Lessee may institute such action against the Issuer as the Lessee may deem necessary to compel such performance. The Lessee may also, at its own cost and expense and in its own name or, if necessary, in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving third parties which the Lessee deems reasonably necessary in order to secure or protect its title to or its right of possession, occupancy and use of the Project. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Lessee, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

Section 5.5 Net Lease. This Agreement will be deemed and construed to be a "net lease," and the Lessee will pay Rent, absolutely net, free of any deductions and without abatement, diminution or setoff.

Section 5.6 Recording and Filing; Further Assurances. The Issuer and the Lessee will, at the direction of the Trustee, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Trustee in and to the Rent, including, without limitation, the recordation of this Agreement or a memorandum hereof, the filing of financing statements and continuation statements and the execution, acknowledgement, delivery, filing and recordation of any other necessary agreements and instruments.

Section 5.7 Claims. To the extent permitted by applicable law, the Lessee will pay and discharge and will indemnify and hold harmless the Issuer and the Trustee from (a) any lien or charge upon payments by the Lessee to, or for the account of, the Issuer under this Agreement and (b) any taxes, assessments, impositions and other charges in respect of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Lessee, and the Lessee will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

Section 5.8 Release and Indemnification. To the extent permitted by applicable law, the Lessee will indemnify and hold the Issuer and its commissioners, members, officers, employees and agents (each an "Indemnitee") harmless from any loss, damage or liability (including without limitation litigation expense, counsel fees and expenses or court costs) to the Lessee or any third parties that may be asserted against any Indemnitee with respect to the Issuer's ownership of the Project or the issuance of the Bonds, arising from the condition of the Project (including specifically, but without limitation, the condition of the Project before, during and after the Issuer's ownership of the Project) or the design, acquisition, construction, equipping and operation of the Project by the Lessee, or in any way arising out of or in any way relating to this Agreement, the Bond Ordinance or any cause whatsoever pertaining to the financing of the Project, except to the extent any such loss or damage related to the condition of the Project or the installation and operation of the Project by the Lessee arises out of or results from the negligence or willful misconduct of any Indemnitee. Each Indemnitee will, promptly after receipt of notice of the existence of a claim in respect of which indemnity may be sought or of the commencement of any action against such Indemnitee in respect of which indemnity may be sought, notify the Lessee of the existence of such claim or commencement of such action. If any such action is brought against an Indemnitee, such Indemnitee will notify the Lessee of the commencement of such action and the Lessee will be entitled to participate in and, to the extent that the Lessee may wish, to assume the defense of such action, with counsel reasonably satisfactory to such Indemnitee, unless (i) such Indemnitee is advised by counsel that there may be legal defenses available to the Indemnitee which are different from or in addition to those available to the Lessee, in which case the Lessee will not have the right to assume the defense of such action on behalf of such Indemnitee or (ii) the Lessee does not assume the defense of such action or employ counsel reasonably satisfactory to such Indemnitee within a reasonable time after notice of commencement of such action, in which event the fees and expenses relating to the defense of such Indemnitee will be borne by the Lessee. In no event may an Indemnitee consent to a settlement effected without the prior written consent of the Lessee. The provisions of this Section 5.8 will survive the payment of the Bonds and the termination of this Agreement.

Section 5.9 Appropriations; Termination. The obligation of the Lessee to pay Rent is contingent upon sufficient appropriations and continuing authorization from the State Legislature. This Agreement will automatically terminate upon the date specified

in a notice from the Lessee to the Issuer and the Trustee specifying that the Lessee has reasonably determined that it no longer has or will not as of such date any longer have sufficient funds to meet its obligations under this Agreement.

ARTICLE VI ASSIGNMENT, LEASING AND SELLING

Section 6.1 Assignment of Rights by the Issuer. Except to the extent of any rights conferred on the Trustee under this Agreement, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Agreement or the Project, or its obligations under this Agreement.

Section 6.2 Assignment, Lease, Mortgage and Sale by the Lessee. The rights of the Lessee under this Agreement may be assigned, and the rights of the Lessee in the Project may be assigned, encumbered or sold as a whole or in part by the Lessee, only with the prior consent of the Issuer and the Trustee, which consent may be granted, withheld or conditioned as the Issuer and the Trustee, respectively may determine in its sole discretion. The Lessee may sublease all or any part of the Project to any sublessee, provided that such sublease will not cause a breach of Section 31(f) of the Bond Ordinance. No such subleasing will relieve the Lessee from primary responsibility to the Issuer for the performance of the Lessee's obligations under this Agreement.

Section 6.3 Management Agreement. The Lessee may enter into a Management Agreement (and, upon the termination thereof, renew the same or enter into another Management Agreement) under which the Lessee grants rights to operate the Project to a private operator. No Management Agreement will contain any provision that will cause a breach of Section 31(f) of the Bond Ordinance. The Lessee will make payments at such times and in such amounts as may from time to time be required under any Management Agreement then in force.

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default Defined. Each of the following events is an "Event of Default":

(a) The occurrence of an Event of Default, as defined in the Bond Ordinance.

(b) Subject to Section 5.9, failure by the Lessee to make any Rent payment when due.

(c) The representations of the Lessee in this Agreement or any document delivered to any of the other Parties or the Trustee in connection with the transactions contemplated hereby prove to have been incorrect in any material respect when made.

(d) A decree or order for relief by a court of competent jurisdiction is entered in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Lessee or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days, or the commencement by the Lessee of a voluntary case under such law, or the consent by the Lessee either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Lessee or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Lessee to authorize or effect any of the foregoing.

(e) Failure by the Lessee to perform any of its obligations under this Agreement or the Bond Ordinance, other than the payment of Rent, for a period of 30 days after notice specifying such failure and requesting that it be remedied, is given to the Lessee by the Issuer or the Trustee, unless such failure cannot be remedied within 30 days and the Lessee has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied, and such failure is remedied within 90 days after such notice is given.

Section 7.2 Remedies on Default. If an Event of Default occurs and is continuing, the Trustee, on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

(a) Reenter and take possession of the Project without terminating this Agreement and sublease the Project for the account of the Lessee, crediting against the Rent required to be paid by the Lessee the amounts received by the Trustee for the account of the Issuer from any sublessee;

(b) Terminate this Agreement, hold the Lessee liable for all Rent due at the effective date of termination subject to Section 5.9, exclude the Lessee from possession of the Project and lease the Project to another; provided, however, that such termination and exclusion will not impair any remedy available to the Issuer or the Trustee under this Agreement; or

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Lessee under this Agreement or the Bond Ordinance.

In the enforcement of the remedies provided in this Section 7.2, the Trustee, on behalf of the Issuer will treat all expenses of enforcement, including, without limitation, legal, accounting and advertising fees, as Additional Payments then due and owing. As the assignee of the Issuer, the Trustee has sole responsibility for the exercise of any remedies if an Event of Default occurs and is continuing.

Section 7.3 Notice of Default. The Lessee will promptly give notice to the Trustee of the occurrence of any Event of Default or an event or condition (of which it has actual knowledge) which, with the passage of time or the giving of notice, or both, and in the absence of any corrective action, would result in an Event of Default.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses. Subject to Section 5.9, if an Event of Default, or an event which with the giving of notice or the passage of time, or both, would constitute an Event of Default, occurs, and the Issuer or the Trustee incurs expenses, including attorneys' fees, in connection with the enforcement of this Agreement, the Lessee will reimburse the Issuer or the Trustee for the expenses so incurred, upon demand.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Notices. Any notice, demand, direction, request, consent, report or other instrument authorized or required by this Agreement to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of this Agreement when delivered by hand delivery or on the third business day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:

Grant County
Grant County Administration Building
1400 Highway 180 East
Silver City, New Mexico 88062
Attn: County Manager

If to the Lessee:

If to the Trustee:

U.S. Bank National Association
950 17th Street, 3rd Floor
Mail Stop DN-CO-T3CT
Denver, Colorado 80202
Attn: Corporate Trust

Either Party may, by notice to the other Party, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent to such Party. The Trustee may, by notice to the Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent to the Trustee.

Section 8.2 Remedies. No right or remedy conferred on any Party or the Trustee in this Agreement is intended to be exclusive of any other right or remedy. Each such right or remedy is in addition to every other right or remedy provided in this Agreement or by law. No delay or omission of any Party or the Trustee to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party or the Trustee, as the case may be, may deem expedient. No waiver by any Party or the Trustee of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 8.3 Beneficiaries. Nothing in any of this Agreement expressed or implied is intended or is to be construed to confer upon any person or entity other than the Parties and the Trustee any right, remedy or claim, legal or equitable.

Section 8.4 Severability. In case any one or more of the provisions of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision hereof, but this Agreement will be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 8.5 No Pecuniary Liability of Issuer. No provision, covenant or agreement contained in this Agreement, and no obligation herein imposed upon the Issuer, or the breach thereof, will constitute an indebtedness of the Issuer within the meaning of any constitutional provision or statutory limitation of the State or will constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers. In making the agreements, provisions and covenants set forth in this Agreement, the Issuer has not obligated itself except with respect to the Project and the application of the revenues, income and all other property therefrom as hereinabove provided.

Section 8.6 No Violation of Public Policies Regarding Indemnity. If a court of competent jurisdiction determines that the provisions of Section 56-7-1 NMSA 1978, as amended, are applicable to this Agreement or any claim arising under this Agreement, then any agreement to indemnify contained in this Agreement will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents.

Section 8.7 Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument. Any Party may execute this Agreement by executing any such counterpart.

Section 8.8 Amendments. This Agreement may be amended only in a instrument duly executed by the party against whom enforcement of such amendment is sought and the written consent of the Trustee (which, unless such amendment or modification is to cure any ambiguity or to cure, correct or supplement any defect or

inconsistent provision contained herein, will be given only with the prior written consent of the holders of 75% of the Bonds then Outstanding (as defined in the Bond Ordinance). All amendments to this Agreement must receive prior approval from the New Mexico State Board of Finance.

Section 8.9 Applicable Law. This Agreement is governed by and is to be construed in accordance with the law of the State applicable to agreements made and to be performed in the State.

Effectiveness. This Agreement will be effective upon the last to occur of: (1) the execution and delivery of this Agreement; (2) ratification or approval of this Agreement by the State Legislature; and (3) approval of this Agreement by the State Board of Finance.

ARTICLE IX OPTION TO PURCHASE

Section 9.1 Grant of Option. The Issuer grants to the Lessee an option to purchase the Project (the "Option"), exercisable during the Term, upon the terms and conditions contained in this Article IX. The purchase price for the Project (the "Purchase Price") will be the value of the Land without the Improvements established by the Appraisal (defined below) and any amount necessary to defease the Bonds.

Section 9.2 Exercise. With the approval of PCD (defined below), if required by law at the time of the Exercise, the Lessee will exercise the Option by delivering written notice of the exercise of the Option to Issuer during the Term. The Lessee may exercise the Option and purchase the Project even if an Event of Default exists or would exist but for the giving of notice or the passage of time. If the Lessee exercises the Option, this Agreement will remain in effect until Closing (defined below), notwithstanding the payment in full of the Bonds.

Section 9.3 Approval of Purchase. The purchase of the Project must be approved prior to Closing by the New Mexico State Board of Finance (the "Board"), or successor organization as required by law at the time of the Exercise.

Section 9.4 Required Information. Within forty-five (45) days of the exercise of the Option by the Lessee, the Issuer will, at the Issuer's sole cost and expense, provide the following to the Lessee:

(a) A current appraisal of the Land performed by an appraiser properly licensed under the laws of the State and acceptable to the Issuer and the Lessee (the "Appraisal");

(b) An American Land Title Association survey of the Project certified to the Lessee, the Title Company (defined below) and the PCD (defined below);

(c) A commitment for an owner's policy of title insurance issued by a title company (the "Title Company") acceptable to the Issuer and the Lessee, naming the PCD as the proposed insured, covering the Project, providing for extended coverage and copies of all Schedule B-II exception documents; and

(d) A phase I environmental assessment of the Project addressed to Lessee and the PCD and performed to the then current ASTM standards by an environmental assessment company acceptable to the Issuer, the Lessee and the PCD.

Section 9.5 Closing. Closing of the purchase of the Project (the "Closing") will occur within thirty (30) days after approval of the purchase of the Project by the Board. At Closing:

(a) The Lessee will pay the Purchase Price, less prorations and adjustments shown on the Settlement Statement (defined below), to Issuer;

(b) The Issuer will convey title to the Project to the PCD by quitclaim deed (the "Quitclaim Deed") and bill of sale;

(c) The Issuer and the Lessee will sign and cause to be recorded a termination of this Agreement (the "Lease Termination") and terminations of any financing statements filed in connection with the Project;

(d) The Issuer will cause the Title Company, at the Issuer's sole cost and expense, to issue an owner's policy of title insurance in the amount of the Purchase Price insuring that fee simple title to the Project is vested in the PCD and subject only to subject only to such Schedule B-II exceptions as are acceptable to the PCD;

(e) The Issuer and the Lessee will sign the settlement statement (the "Settlement Statement") for the transaction;

(f) The Lessee will pay the cost of recording the Quitclaim Deed and the Lease Termination; and

(g) The Issuer and the Lessee will sign such other documents, agreements, certificates and instruments as may be necessary or required to complete the purchase of the Project by the Lessee as provided in this Agreement.

Section 9.6 Property Control Division. If required by law at the time of the Exercise, pursuant to Section 15-3B-1 *et. seq.*, NMSA 1978, title to the Project must be vested in the Property Control Division (the "PCD") of the General Services Department of the State. The Issuer agrees to convey title to the Project to the PCD and to cooperate with the Lessee and the PCD in satisfying the requirements of the PCD and the Board applicable to the purchase of the Project. The Lessee may assign the right to exercise the Option to the PCD without the prior consent of the Issuer.

Section 9.7 Funding Condition. The obligation of the Lessee to purchase the Project is conditioned upon the Lessee obtaining sufficient funding or appropriations, or both, to pay the Purchase Price. In the event the Lessee is unable to obtain sufficient funding or appropriations, the Lessee will not be obligated to purchase the Project despite having exercised the Option and may terminate the exercise of the Option by written notice to the Issuer. If the Lessee terminates the exercise of the Option pursuant to this paragraph and the Term has ended, the Issuer and the Lessee will sign and record the Lease Termination.

Dated as of the Effective Date.

GRANT COUNTY, NEW MEXICO

NEW MEXICO DEPARTMENT OF
HEALTH

By _____
Its Chairman

By _____
Its _____

STATE OF NEW MEXICO BOARD OF FINANCE

By _____
Its Director

EXHIBIT A

LAND LEGAL DESCRIPTION