

COPY

**AGREEMENT TO EXCHANGE LAND
("EXCHANGE AGREEMENT")**

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**AGREEMENT TO EXCHANGE LAND
("EXCHANGE AGREEMENT")**

THIS EXCHANGE AGREEMENT is entered into by the City of Albuquerque, a New Mexico municipal corporation (the "**City**"), and the Regents of the University of New Mexico, a body corporate, (the "**Regents**") for and on behalf of the University of New Mexico, a constitutionally created educational institution of the State of New Mexico (each individually a "**Party**" and collectively, the "**Parties**") as of the date of the last signature affixed hereto (the "**Effective Date**").

RECITALS

The Parties enter into this Exchange Agreement in reliance upon the following Recitals, which are material to this Exchange Agreement and which are incorporated into and made a part of this Exchange Agreement for all intents and purposes:

A. The City is the owner of the real property described in Exhibit A, attached hereto. The City is authorized to exchange real property owned by the City.

B. The Regents are the owners of the real property described in Exhibit B, attached hereto. The Regents are authorized to exchange real property owned by the Regents.

C. The City wishes to acquire the real property described in Exhibit B from the Regents.

D. The City has represented to the Regents that the City intends to use the real property described in Exhibit B for the construction and operation of a prototype fire station (the "**Fire Station Site**").

E. The Regents wish to acquire the real property described in Exhibit A from the City.

F. The Regents have represented to the City that the Regents intend to use the real property described in Exhibit A for the construction and operation of a prototype community-based outpatient health clinic (the "**Health Clinic Site**").

G. The City and the Regents have further determined that completion of the proposed exchange of the Fire Station Site for the Health Clinic Site as provided for herein will be of substantial benefit to the City and to the Regents.

H. The City and the Regents have agreed upon the terms of an exchange (the "**Exchange**") which they desire to complete, and the City and the Regents desire to enter into this Exchange Agreement to provide for the consummation of the Exchange.

AGREEMENT

A. Recitals. The provisions of the Recitals are a material consideration in this Exchange Agreement and are hereby and herein incorporated into this Exchange Agreement.

B. Exchange of Real Property. The City and the Regents agree to initiate and close an exchange of their respective properties, with the use of Boot, hereinafter defined, if necessary to equalize values.

1. The City will have the market value of the Health Clinic Site estimated on a per square foot basis by an appraiser, who is a Member of the Appraisal Institute (“MAI”), which estimate shall be based on the valuation conclusion derived from a market value appraisal (the “**Health Clinic Site Appraised Value**”).

2. The Regents will have the market value of the Fire Station Site estimated on a per square foot basis by a MAI appraiser, which estimate shall be based on the valuation conclusion derived from a market value appraisal (the “**Fire Station Site Appraised Value**”).

3. The Health Clinic Site Appraised Value and the Fire Station Site Appraised Value must be acceptable to both Parties. In the event either Party challenges the appraised value of either of the sites, the Exchange will not proceed further until the matter of the valuation of both sites is resolved to the mutual satisfaction of the Parties.

4. To the extent there is a difference in the Health Clinic Site Appraised Value and the Fire Station Site Appraised Value, with the understanding that the final square footage of both parcels remains to be confirmed and/or determined and the appraised value calculated upon final square footage determinations, the Party whose real property has the lesser value will contribute additional value (“**Boot**”), in a form acceptable to the Party whose real property has the higher value, sufficient to equalize the value of the exchange.

C. Exchange of Documents. The City and the Regents each agree to provide the other with all documentation and information, in the actual or constructive possession of the Party, pertaining to the land which the Party owns, including, but not limited to, title information (including title commitments and policies), surveys, environmental information (including environmental site assessments), permits, governmental reservations, restrictions, or requirements, governmental notices, citations, and litigation (the “**Exchange Documents**”).

D. Due Diligence.

1. City Access; Responsibility. The City, and its employees, agents, contractors, and their subcontractors, shall have the right to enter the Fire Station Site for the purpose of conducting any and all inspections, assessments, surveys, tests, and other due diligence activities (collectively, the “**Due Diligence Activities**”) it considers

necessary and prudent, acting in its sole discretion, for ninety (90) days from and after the Effective Date (the “**Due Diligence Deadline**”). Upon completion of the Due Diligence Activities, the City shall restore the Fire Station Site to its pre-Due Diligence Activities condition, ~~and shall defend and hold the Regents harmless from any loss arising out of the exercise of the Due Diligence Activities by the City or the failure of the City to perform its obligations with respect thereto, and shall be responsible to the Regents for failure to do so.~~

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2. Regent Access; Responsibility. The Regents, and their employees, agents, contractors, and their subcontractors, shall have the right to enter the Health Clinic Site for the purpose of conducting any and all Due Diligence Activities they consider necessary and prudent, acting in their sole discretion, until the Due Diligence Deadline. Upon completion of the Due Diligence Activities, the Regents shall restore the Health Care Clinic Site to its pre-Due Diligence Activities condition, ~~and shall defend and hold the City harmless from any loss arising out of the exercise of the Due Diligence Activities by the Regents or the failure of the Regents to perform their obligations with respect thereto, and shall be responsible to the City for failure to do so.~~

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E. Limitation on Liability Exposure. The City and the Regents covenant that each and all of their agents and personnel will use due care and diligence in all of their activities and operations. ~~However, notwithstanding any provision in this Exchange Agreement inconsistent or to the contrary, the City and the Regents agree to the defend and hold harmless provisions in this Exchange Agreement, only to the extent permitted by law and to the extent not prohibited by law and without waiving any limitation of liability or protection from liability provided by law.~~ The Parties are government entities governed by the New Mexico Tort Claims Act, NMSA 1978, Sections 41-41-1 41-4-1, et seq., and any amendments thereto, and their respective liabilities shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-41-1 41-4-1, et seq., and any amendments thereto.

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F. Subdivision. It will apparently be necessary to subdivide a portion of Tracts 4 and 5 of Corrected Plat of Tracts 1 thru 5 of Gibson Tracts, recorded in the records of the Bernalillo County Clerk on January 23, 1996, in Volume 96C, at Folio 36, as Document No. 96008104, and, a portion of Tract A of Replat of Tracts A & B of 40/25 Associates Subdivision recorded in the records of the Bernalillo County Clerk on May 1, 1995, in Volume 95C, at Folio 149, as Document No. 95042667, to create a separate platted parcel for the Fire Station Site (the “**Fire Station Parcel**”).

1. Plat Preparation; Process. The Regents, at its sole cost, with the consent and cooperation of the City, will prepare the plat for the Fire Station Parcel and process the subdivision application for approval of the Fire Station Parcel.

2. Plat Conditions. The Regents shall be responsible, at its sole cost, for the satisfaction of any and all reasonable conditions to approval of the subdivision of the Fire Station Parcel, including a site development plan for subdivision and any and all infrastructure requirements reasonably required by the City approval authority. In no

event shall the City be responsible for satisfaction of conditions of plat approval. However, if the infrastructure requirements pertaining to the development of the Fire Station Parcel have not been installed by March 31, 2012, or later as approved by the City, the City may install the infrastructure required for development of the Fire Station Parcel, at the City's expense, in which event the City may then invoice the Regents for the City's actual reasonable costs in installing the infrastructure required for development of the Fire Station Parcel, which invoice the Regents agree to pay within thirty (30) days of receipt.

3. Final Approval. The Regents shall use reasonable and best efforts to accomplish final site development plan for subdivision approval and other necessary approvals sufficiently in advance of December 31, 2011 to allow the conveyance of the Fire Station Parcel to the City on or before December 31, 2011. However, City approval of the subdivision creating the Fire Station Parcel shall not be final until all appeals and appeal periods are exhausted.

4. Condition Precedent. Approval of the Fire Station Parcel, as a stand-alone subdivided parcel, shall be a condition precedent to the Closing of this Exchange Agreement.

G. Fire Station Site Plan and Architectural Review. The University of New Mexico (the "**University**") Executive Vice President for Administration or his designee ("**EVP**") shall have the right to review and approve the City's Fire Station site development plan for building permit, including grading, drainage, utilities, and landscaping plans and architectural elevations and materials prior to submission to: (1) the Development Review Board ("**DRB**"), Environmental Planning Commission ("**EPC**"), and any other City land use regulatory authority (collectively, the "**Regulatory Authorities**") for approval of the site development plan for building permit, zoning or other related land use or regulatory approvals, and (2) the Regulatory Authorities for building permit, or other regulatory permit or land use approval, which review shall additionally include building plans, elevations, site and building renderings. Materials to be submitted to the University EVP for review per (1) and (2) (the "**Submittal**") shall be provided to the University EVP, at the Regents Notice Address, not less than 10 days prior to the applicable submission dates for the particular approval sought from any of the Regulatory Authorities. The University EVP shall approve or disapprove each Submittal, in writing, within five business days of receipt of each Submittal at the Regents Notice Address (the "**Review Period**"). In the event that the University EVP does not act on a Submittal before the conclusion of the Review Period, the Submittal shall be deemed approved. In the event that the University EVP disapproves a Submittal before the conclusion of the Review Period, the reasons for the disapproval shall be set forth in writing, in which case the Submittal shall not be submitted to the Regulatory Authorities until the reason(s) for disapproval have been addressed to the reasonable satisfaction of the University EVP. In no event shall the University EVP unreasonably withhold approval of the Fire Station Site.

1. It is understood that review and approval of the site plan for building permit, the building permit, and the architectural drawings by the University EVP is required to ensure that development on the Fire Station Site will be consistent with and complimentary to the development of the remaining and adjacent properties of the Regents, more particularly shown on Exhibit C attached (the “**Adjacent Property**”).

H. Health Clinic Site Plan and Building Permit Review. The Regents of the University of New Mexico shall use the Health Clinic Site as a community-based outpatient health clinic. The Regents use of the property shall comply with and be entitled to the benefits of all City zoning and development regulations including but not limited to the North Fourth Street Rank III Corridor Plan.

Prior to submission for a building permit to the State Construction Industries Division and prior to any construction at the Health Clinic Site the Regents shall prepare a site development plan, which shall include a seven (7) foot landscape buffer at the west end of the Health Clinic Site, and a landscaping plan for submission to the City’s Zoning Enforcement Officer for approval. The site development plan and landscaping plan shall be in a form required by the City for approval of such documents pursuant to City Ordinances and the North Fourth Street Rank III Corridor Plan.

The University and City will present the proposed site development plan and landscaping plan for the Health Clinic Design to interested parties at no less than one neighborhood meeting and will consider any comments received.

The University shall not proceed to submit for a building permit to the State Construction Industries Division or proceed with any construction at the Health Clinic Site until the City’s Zoning Enforcement Officer has approved the site development plan and landscaping plan.

If there is an appeal of an approval by the City’s Zoning Enforcement Officer of the site development plan or landscaping plan the University shall not proceed with any construction at the Health Clinic Site until the appeal is resolved favorably to the University.

The Regents use of the Health Clinic does not and will not include treatment for methadone drug rehabilitation.

I. Replat. Should it be necessary to combine portions of separate tracts, lots and/or parcels on the Health Clinic Site to create a single separate parcel for the Health Clinic (the “**Health Clinic Parcel**”) by replat or other appropriate document(s), the Parties agree to proceed as follows:

1. Replat Preparation; Process. The City, at its sole cost, with the consent and cooperation of the Regents, will prepare the replat or other appropriate document(s) to create the Health Clinic Parcel and process the appropriate application for approval of the Health Clinic Parcel.

2. Replat or Other Conditions. The City shall be responsible, at its sole cost, for the satisfaction of any and all reasonable conditions to approval of the subdivision of the Health Clinic Parcel, including a site development plan for subdivision and any and all infrastructure requirements reasonably required by the City approval authority. In no event shall the Regents be responsible for satisfaction of conditions of plat approval. However, if the infrastructure requirements pertaining to the development of the Health Clinic Parcel have not been installed by March 31, 2012, or later as approved by the Regents, the Regents may install the infrastructure required for development of the Health Clinic Parcel, at the Regent's expense, in which event the Regents may then invoice the City for the Regent's actual reasonable costs in installing the infrastructure required for development of the Health Clinic Parcel, which invoice the City agrees to pay within thirty (30) days of receipt.

3. Final Approval. The City shall use reasonable and best efforts to accomplish final replat approval and other necessary approvals sufficiently in advance of December 31, 2011 to allow the conveyance of the Health Clinic Parcel to the Regents on or before December 31, 2011. However, City approval of the replat or other appropriate documentation shall not be final until all appeals are exhausted.

4. Condition Precedent. Approval of the Health Clinic Parcel, as a stand-alone subdivided parcel, shall be a condition precedent to the Closing of this Exchange Agreement.

J. Zoning. It will be necessary to zone the Fire Station Parcel to allow fire station use on the Fire Station Parcel.

1. Application Preparation; Process. The Regents, with the cooperation and assistance of the City, will prepare and process the zone change application for the Fire Station parcel. The Regents agree to execute all documents and consents reasonably required by the City to process the zone change application.

2. Application Conditions. The Regents shall be responsible, at its sole cost, for the satisfaction of any and all reasonable conditions to approval of the zone change application. In no event shall the City be responsible for satisfaction of conditions of zone change approval.

3. Final Approval. City approval of the zoning necessary for fire station use on the Fire Station Parcel shall not be final until all appeals and appeal periods are exhausted.

4. Condition Precedent. Approval of appropriate zoning for the Fire Station Parcel shall be a condition precedent to the Closing of this Exchange Agreement.

K. Title Insurance: Encumbrances.

1. Title Insurance Commitment. The Regents will direct Stewart Title Insurance Company (Sue Dunworth) (the “**Title Company**”) to provide to the City and the Regents, within fifteen (15) days after the Effective Date, separate commitments for a standard owner’s title insurance policy or policies for the Fire Station Site and the Health Clinic Site (the “**Title Insurance Commitment**”) in a form acceptable to the City and the Regents naming the City and the Regents, respectively, as the insureds. The title insurance coverage provided for in the Title Insurance Commitment shall be as follows:

a. The total amount of coverage provided for the Fire Station Site shall be the Fire Station Site Appraised Value.

b. The total amount of coverage provided for the Health Clinic Site shall be the Health Clinic Site Appraised Value.

2. Additional Documents Accompanying Title Insurance Commitment. Each Title Insurance Commitment shall be accompanied by legible copies of all documents establishing title in the Fire Station Site and the Health Clinic Site (the “**Vesting Documents**”) and of all documents creating reservations, restrictions, servitudes or conditions upon such properties, including all documents referred to in the special exceptions to the Title Insurance Commitment (the “**Encumbrances**”). Delivery of the Title Insurance Commitment shall not be considered complete until legible copies of all Vesting Documents and Encumbrances are received. A copy of the Title Insurance Commitment delivered to each Party shall simultaneously be delivered to the other Party.

3. Additional Encumbrances and Restrictions. Within thirty (30) days after delivery of the Title Insurance Commitment to the other Party, each Party shall provide the other Party with a written description of all encumbrances and restrictions, recorded or unrecorded, known to the Party, to which the lands proposed to be exchanged by the Party are subject, in addition to those identified by the Title Insurance Commitment, if any, including, but not limited to, leases, permits, licenses, easements, reservations, restrictions and rights-of-way (the “**Additional Encumbrances**”).

4. Objections to Encumbrances and Additional Encumbrances. Within sixty (60) days after delivery of the Title Insurance Commitment, the City and the Regents shall communicate to the Title Company and such representatives of the City and the Regents as the City and Regents may designate to deal with any issues with respect to the Title Insurance Commitment and related matters, which Encumbrances and/or Additional Encumbrances either Party or both Parties require to be resolved prior to Closing. The satisfaction or waiver of the Encumbrances and the Additional Encumbrances shall be a condition of Closing as to the Fire Station Site and as to the Health Clinic Site.

5. Issuance of Title Insurance Policy (Fire Station Site). At Closing, or as soon thereafter as reasonably available, the Regents shall provide the City an owner's title insurance policy for the Fire Station Site in accordance with the Title Insurance Commitment, except as modified following objection by the City. As a condition precedent to the City's obligation to accept conveyance of the Fire Station Site, the Title Insurance Commitment for the Fire Station Site shall be updated through the Closing Date and shall not show, nor shall there exist, any liens, Encumbrances, Additional Encumbrances or other defects in title for such land, except as are acceptable to the City ("**Permitted Fire Station Site Encumbrances**"). Standard exceptions 1, 2, 3, 4, 5, and 6 will be deleted in the owner's title policy.

6. Issuance of Title Insurance Policy (Health Clinic Site). At Closing, or as soon thereafter as reasonably available, the City shall provide the Regents an owner's title insurance policy for the Health Clinic Site in accordance with the Title Insurance Commitment, except as modified following objection by the Regents. As a condition precedent to the Regents' obligation to accept conveyance of the Health Clinic Site, the Title Insurance Commitment for the Health Clinic Site shall be updated through the Closing Date and shall not show, nor shall there exist, any liens, Encumbrances, Additional Encumbrances or other defects in title for such land, except as are acceptable to the Regents ("**Permitted Health Clinic Site Encumbrances**"). Standard exceptions 1, 2, 3, 4, 5, and 6 will be deleted in the owner's title policy.

L. Environmental Hazards. For the purpose of illustration, and without limiting the scope of its meaning, the term "environmental hazards" includes the presence of any hazardous materials, as defined below, on the exchange property of either or each of the Parties. Hazardous materials include without limitation any oil, petroleum products, explosives, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, or contaminated materials, substances or wastes, including any substance, waste or material which is defined or listed as a "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "medical waste," "regulated substance," or which is otherwise controlled or regulated because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, under any federal, state, or local government statute, regulations, or ordinances, including but not limited to the federal Clean Water Act, the federal Solid Waste Act, the federal Clean Air Act, the federal Comprehensive Environmental Response, Compensation and Liability Act, FIFRA, and the New Mexico Environmental Protection Act (collectively, "**Environmental Laws**"), relating to landfills, medical waste, industrial hygiene, environmental protection or the manufacture, use, generation, presence, analysis, transportation, handling, storage, treatment or disposal of any such material, substance, or waste. Each of the Parties represents that it has no knowledge of, or cause to believe there is, any pollutant or toxic or hazardous material or substance as defined in, or covered by, any Environmental Law in, on or under their respective land, nor is that Party aware any potential environmental liability concerning, or in any way related to, their respective land.

M. Environmental Inspections and Assessments (Fire Station Site). Within sixty (60) days after the Effective Date, the City may, at its expense, obtain a Phase I Environmental Site Assessment (“**Phase I**”) for the Fire Station Site. In the event the Phase I for the Fire Station Site identifies one or more environmental issues, recommends further testing for a specified environmental condition, or results in the contractor recommending actions be taken to remediate any environmental condition, the City may decline to accept the Fire Station Site in the exchange unless the Regents are able and willing to address the situation and, if necessary, remediate the condition, at their expense, to a degree and in a manner acceptable to the City prior to Closing.

N. Environmental Inspections and Assessments (Health Clinic Site). Within sixty (60) days after the Effective Date, the Regents may, at their expense, obtain a Phase I for the Health Clinic Site. In the event the Phase I for the Health Clinic Site identifies one or more environmental issues, recommends further testing for a specified environmental condition, or results in the contractor recommending actions be taken to remediate any environmental condition, the Regents may decline to accept the Health Clinic Site in the exchange unless the City is able and willing to address the situation and, if necessary, remediate the condition, at its expense, to a degree and in a manner acceptable to the Regents prior to Closing.

O. Representations. The Parties make the following representations relative to this Exchange Agreement, with the understanding that each is relying on the accuracy of the representations of the other as a condition precedent to the Closing of this transaction:

1. Authority. Each Party is duly authorized under law to enter into and perform this Exchange Agreement, and to make the representations ~~and warranties~~ contained herein, and to perform hereunder, including the authority to convey its interest in the Fire Station Site and the Health Clinic Site.

2. Documents True and Complete. To each Party’s knowledge, all of the Exchange Documents to be given or made available from one Party to the other will be true, accurate, and complete originals or copies thereof.

3. No Knowledge of Adverse Condition. Neither Party has any knowledge of (a) any existing violations of applicable law with respect to their respective land, (b) any contract, agreement, understanding, covenant, reservation or restriction, written or unwritten, recorded or unrecorded, that would preclude or hinder the use of either the Fire Station Site or the Health Clinic Site for the intended purposes, (c) any existing, pending, or threatened litigation which could effect title to, or the present or future use of, their respective land, or (d) any existing, pending, or threatened litigation that does or would challenge or effect their authority to perform under this Exchange Agreement, including their authority to execute any documents necessary to effectuate the proposed exchange, or that would effect the validity of any such documents once executed, including the quitclaim deeds.

4. Health Clinic Site Zoning. The City represents to the Regents that the Health Clinic Site is presently zoned C-3 (Heavy Commercial Zone) and that C-3 zoning permits the use of the Health Clinic Site for its intended purpose as a Health Clinic.

5. No Federal Restriction on Health Clinic Site. The City represents to the Regents that there is no federal government (U.S. Department of Housing and Urban Development or other department or agency) restriction on the Health Clinic Site, restricting or limiting the use of the Health Clinic Site, in whole or in part, to housing use or any other use which would preclude the use of the Health Clinic Site, in whole or in part, for a Health Clinic.

P. No Representation as to Condition of the Land. Except as otherwise provided herein, each Party is acquiring the land it wishes to acquire based, in part, on the information acquired during its Due Diligence Activities and otherwise. Neither Party is making any representation as to the physical condition of the land it owns. Each property is being conveyed and, upon Closing, accepted "as is" and "where is."

Q. Regents' Resolution. The Regents shall provide to the City and to the Title Company, which shall insure title to the Fire Station Site upon its conveyance to the City, a copy of a Regents resolution or other satisfactory Regent document, which may include properly adopted and certified copies of minutes of a Regents' meeting(s) held in compliance with applicable New Mexico law (1) authorizing the conveyance of the Fire Station Site to the City and completion of the proposed exchange pursuant to this Exchange Agreement, and (2) designating and authorizing named officer(s) of the Regents or the University of New Mexico to take all action on behalf of the Regents necessary to complete this transaction, including the execution of this Exchange Agreement and any other necessary documents, and authorizing any necessary payments of funds. The Regents' Resolution or equivalent documentation is a condition precedent to the Closing of this Exchange Agreement.

R. City Council Resolution. The City shall provide to the Regents and to the Title Company, which shall insure title to the Health Clinic Site upon its conveyance to the Regents, a copy of a City Council resolution or other satisfactory City Council document, which may include properly adopted and certified copies of minutes of a City Council meeting(s) held in compliance with applicable New Mexico law, (1) declaring that the Health Clinic Site is not essential for municipal purposes, (2) authorizing the conveyance of the Health Clinic Site to the Regents and completion of the proposed exchange pursuant to this Exchange Agreement. The City Council Resolution or equivalent documentation is a condition precedent to the Closing of this Exchange Agreement. The delegation of signature authority is set forth in the City Charter and Administrative Instructions.

1. Notice of Council Approval; Exchange Agreement. Within five (5) days after City Council approval of the City Council Resolution, the City will send the Regents notice of such approval and a fully-signed original copy of this Exchange

Agreement with the date of City Council approval inserted in the space provided under the signature of the Chief Administrative Officer of the City at the end of this Exchange Agreement.

S. On-Site Costs. Each Party shall be responsible for any and all on-site costs expended, incurred, or likely to be expended or incurred in the development and use of the land acquired in this exchange.

T. Closing. Subject to satisfaction of the conditions precedent for the exchange, which shall include the receipt by both Parties of all governmental and regulatory approvals necessary to construct the respective improvements (the “**Necessary Approvals**”), (collectively, the “**Exchange Closing Conditions**”) set forth in this Exchange Agreement, the closing of the proposed exchange (the “**Closing**”) shall take place on or before December 31, 2011 (the “**Closing Date**”), provided however, that the Parties may postpone the Closing Date by written agreement. Closing shall occur at a time and location agreed to by the City and the Regents. In the event the Exchange Closing Conditions have not been satisfied for the Fire Station Site and/or the Health Clinic Site as of the Closing Date, or such extended date as is mutually agreed upon by the Parties, unless the Party which was to accept the site for which the Exchange Closing Conditions have not been satisfied (the “**Non-Compliant Site**”) affirmatively expresses, in writing, its intention to accept the Non-Compliant Site, that Party shall have no further obligation to accept the Non-Compliant Site, whether as consideration for the site to be conveyed or otherwise, pursuant to this Exchange Agreement and all rights and obligations of the Parties as to conveyance and acceptance of the Non-Compliant Site shall be terminated and of no further force or effect.

1. City Cash in Lieu of Property. Notwithstanding any other provisions in this Exchange Agreement, in the event that (1) the City is not able to satisfy all of the conditions precedent to delivery of the Health Clinic Site to the Regents on the date of Closing or (2) the Regents are unable to obtain the Necessary Approvals for the Health Clinic Site, the City may still obtain the Fire Station Site on the date of Closing by the payment of the Fire Station Site Appraised Value or other agreed value in cash or cash equivalent to the Regents on the date of Closing.

2. Regent Cash in Lieu of Property. Notwithstanding any other provisions in this Exchange Agreement, in the event that (1) the Regents are not able to satisfy all of the conditions precedent to delivery of the Fire Station Site to the City on the date of Closing or (2) the City is unable to obtain the Necessary Approvals for the Fire Station Site, the Regents may still obtain the Health Clinic Site on the date of Closing by the payment of the Health Clinic Site Appraised Value or other agreed value in cash or cash equivalent to the City on the date of Closing.

U. Closing Documents; Closing Instructions; Recording.

1. Closing Documents. The Parties shall provide the following documents to the Title Company:

a. Quitclaim Deed (Fire Station Site). A quitclaim deed substantially in the form of **Exhibit D** attached hereto conveying fee simple title to the Fire Station Site, with Permitted Fire Station Site Encumbrances acknowledged.

b. Quitclaim Deed (Health Clinic Site). A quitclaim deed substantially in the form of **Exhibit E** attached hereto conveying fee simple title to the Health Clinic Site, with Permitted Health Clinic Site Encumbrances acknowledged.

c. Closing Instructions. Instructions jointly formulated by the Parties to the Title Company (the “**Closing Instructions**”) regarding the date, time and place of Closing, representation of the Parties, delivery and recording of the quitclaim deeds, and such other matters as the Parties deem necessary for inclusion in the Closing Instructions, signed by the Regents and the City, or their authorized representatives.

d. Other Documents. Such other documents as are agreed to, or required by, the Parties to complete the transaction contemplated by this Exchange Agreement.

V. Costs Associated with Exchange and Closing.

1. Regents Costs. The Regents shall pay (a) the basic premium and the cost of the deletion of the standard exemptions set forth at Paragraph II(D)(5) for the Title Policy for the Fire Station Site; (b) the fee for recording the Health Clinic Site quitclaim deed; (c) the fees of any counsel representing it in connection with this transaction; (d) any additional premium chargeable for extended coverage under the Title Policy for the Health Clinic Site, if such modification is desired by the Regents, and any other endorsements attached to the Title Policy for the Health Clinic Site, (e) one-half (1/2) of any escrow fee which may be charged by the Title Company; and (f) such other fees, in whole or in part, as are customary in an exchange transaction.

2. City Costs. The City shall pay (a) the basic premium and the cost of the deletion of the standard exemptions set forth at Paragraph II(D)(5) for the Title Policy for the Health Clinic Site; (b) the fee for recording the Fire Station Site quitclaim deed; (c) the fees of any counsel representing the City in connection with this transaction; (d) any additional premium chargeable for extended coverage under the Title Policy for the Fire Station Site, if such modification is desired by the City, and any other endorsements attached to the Title Policy for the Fire Station Site; (e) one-half (1/2) of any escrow fees charged by the Title Company; and (f) such other fees, in whole or in part, as are customary in an exchange transaction.

3. Other Costs. All other costs and expenses incident to this transaction and the Closing thereof shall be paid by the Party incurring same.

W. Possession of the Exchanged Land. The City and the Regents shall be entitled to and shall have possession of the Fire Station Site and the Health Clinic Site, respectively, upon recording of the quitclaim deeds.

X. Termination. Notwithstanding any other provision of this Exchange Agreement, if the Exchange Closing Conditions have not been satisfied by March 31, 2012, or by such other later date as the Parties may agree upon, then either Party may, at its election, upon not less than forty-five (45) days' prior written notice to the other Party, terminate this Exchange Agreement (the "**Exchange Termination Notice**"). The Exchange Termination Notice shall specify the date on which the Party giving notice desires to terminate the Exchange Agreement and shall specify the Exchange Closing Condition(s) remaining to be satisfied. The other Party shall then have thirty (30) days to satisfy the specified Exchange Closing Condition(s) and provide evidence thereof to the other Party. If specified Exchange Closing Condition(s) is not satisfied, this Exchange Agreement shall terminate upon the date specified in the Exchange Termination Notice, unless the Party giving notice extends the date of termination specified or withdraws said Notice. If either Party terminates this Exchange Agreement as provided in this paragraph, it shall have no further rights, obligations or liabilities pursuant to this Exchange Agreement, and any escrow for the exchange shall be terminated and the Exchange Closing Documents returned to the Parties, provided that if either Party has caused damage to the property of the other Party, which has not been restored and/or rectified, during the course of the Due Diligence Activities, the Party causing damage to the property of the other Party shall be liable for the amount of the damages caused to the property of the other Party and provided further that each Party shall remain responsible to the other for the accuracy of the representations made herein upon which the other Party is relying in entering into and closing this exchange.

Y. Default.

1. City Default. If City defaults in the observance or performance of the covenants and obligations hereunder, and such default continues for thirty (30) days after the date of receipt of written notice from the Regents demanding cure of such default, the Regents shall be entitled either, at the Regents' sole option, (i) to sue the City for specific performance of this Exchange Agreement, or (ii) to terminate this Exchange Agreement, provided, however, if the remedy of specific performance is not available as a result of City intentional wrongful acts or omissions, then the Regents shall have the right to terminate this Exchange Agreement and sue the City for damages which damages shall be limited to reasonable costs paid to third parties in furtherance of this Exchange Agreement including, but limited to, legal, appraisal, surveying and title fees ("**Regents Damages**"). Except with respect to any right, obligation or liability which survives Closing or termination of this Exchange Agreement, and except for liability for breach of any representations of this Exchange Agreement (as to which matters the Regents shall be entitled to exercise any and all rights and remedies at law or in equity), the Regents' rights to sue for specific performance or to terminate this Exchange Agreement as provided hereinabove, or, in the event specific performance is not available for the

reasons indicated herein, the Regents' right to receive Regents Damages, are the Regents' sole and exclusive remedies hereunder in the event of default hereunder by City.

2. Regents Default. If Regents default in the observance or performance of the covenants and obligations hereunder, and such default continues for thirty (30) days after the date of receipt of written notice from the City demanding cure of such default, the City shall be entitled either, at the City's sole option, (i) to sue the Regents for specific performance of this Exchange Agreement, or (ii) to terminate this Exchange Agreement, provided, however, if the remedy of specific performance is not available as a result of the Regents' intentional wrongful acts or omissions, then the City shall have the right to terminate this Exchange Agreement and sue the Regents for damages which damages shall be limited to reasonable costs paid to third parties in furtherance of this Exchange Agreement including, but limited to, legal, appraisal, surveying and title fees ("**City Damages**"). Except with respect to any right, obligation or liability which survives Closing or termination of this Exchange Agreement, and except for liability for breach of any representations of this Exchange Agreement (as to which matters the City shall be entitled to exercise any and all rights and remedies at law or in equity), the City's rights to sue for specific performance or to terminate this Exchange Agreement as provided hereinabove, or, in the event specific performance is not available for the reasons indicated herein, the City's right to receive City Damages, are the City's sole and exclusive remedies hereunder in the event of default hereunder by Regents.

ADDITIONAL PROVISIONS

A. Execution in Counterparts. This Exchange Agreement may be executed in one or more identical counterparts, which when assembled together, shall constitute one Agreement which shall be binding on the Parties, their successors and assigns.

B. Governing Law; Compliance with Applicable Law. This Exchange Agreement is subject to, and shall be interpreted in accordance with, the applicable laws and related regulations of the State of New Mexico and the agencies, boards, and departments through which it acts, and both Parties shall be bound thereby. Venue for any litigation that might arise in connection with this Exchange Agreement shall be in Bernalillo County in the District Court for the Second Judicial District.

C. Entire Agreement, Merger, Amendment. This Exchange Agreement incorporates all the agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Exchange Agreement. This Exchange Agreement shall not be modified, altered, changed or amended except by written instrument executed by the Parties hereto.

D. Further Assurances. Each Party agrees to execute and deliver to the other such further documents or instruments as may be reasonable and necessary in furtherance of the performance of the terms, covenants and conditions of this Exchange Agreement. This covenant shall survive the Closing.

E. Calculation of Time. Any time period herein calculated by reference to “days” means calendar days unless expressly otherwise stated; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be first day following that is not a Saturday, Sunday, or such observed holiday.

F. Notices; Contact Persons.

1. Required Notices. All notices and other communications under this Exchange Agreement shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the third day after mailing if mailed by certified mail, return receipt requested, (iii) the day of transmission, if sent by facsimile or telecopy during regular business hours or the day after transmission, if sent after regular business hours, provided that, in either event, the completed transmission is electronically verified, or (iv) the day of transmission, if sent electronically, if there is proof of receipt on the day of transmission or the first day thereafter on which receipt can be verified, to the Parties at the following addresses, telecopy numbers, or e-mail addresses (or to such other address, telecopy number, or e-mail address as a Party may hereafter specify by notice given to the other Party pursuant to this provision):

<u>To the City:</u>	Robert J. Perry, Esq. Chief Administrative Officer City of Albuquerque, Mayor's Office
<i>Mailing:</i>	P.O. Box 1293 Albuquerque, NM 87103
<i>Delivery:</i>	One Civic Plaza, 11 th Floor Albuquerque, NM 87102
<i>E-mail:</i>	rjperry@cabq.gov
<u>and to:</u>	Robert D. Kidd, Jr. Interim City Attorney City of Albuquerque, Office of the Mayor
<i>Mailing:</i>	P.O. Box 1293 Albuquerque, NM 87103
<i>Delivery:</i>	One Civic Plaza, 11 th Floor Albuquerque, NM 87103
<i>E-mail:</i>	ghennessy@cabq.gov

With additional copies separately addressed and delivered to the attention of:

Mailing: Michael J. Riordan, P.E.
Director, Municipal Development
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

Delivery: One Civic Plaza, 7th Floor
Albuquerque, NM 87103

E-mail: mriordan@cabq.gov

To the Regents: President, Board of Regents
Regent's Office, University of New Mexico
123 Scholes Hall

Mailing: MSC 05 3300, 1 University of New Mexico
Albuquerque, NM 87131-0001

Delivery: 123 Scholes Hall
Albuquerque, NM 87131

E-mail: ewenzel@unm.edu

and to: UNM Real Estate Department
c/o Kim D. Murphy, Director of Real Estate
University of New Mexico

Mailing: MSC 3595, 1 University of New Mexico
Albuquerque, NM 87131-0001

Delivery: 2811 Campus Boulevard NE
Albuquerque, NM 87106

E-mail: kmurphy@unm.edu

With additional copies separately addressed and delivered to the attention of:

Mailing: University Counsel
University of New Mexico
MSC05 3310, 1 University of New Mexico
Albuquerque, NM 87131-0001

Delivery: Scholes Hall, Room 208
Albuquerque, NM 87131

E-mail: lpeifer@salud.unm.edu

and to: John P. Salazar, Esq.
Rodey Law Firm
P.O. Box 1888
Albuquerque, NM 87103-1888

Mailing: 201 Third Street NW, Suite 2200
Albuquerque, NM 87102

Delivery: jsalazar@rodey.com

E-mail:

2. Contact Persons. Each Party has designated a contact person to coordinate communication for ordinary activities carried out to complete the transaction contemplate by this Exchange Agreement. The contact persons shall be:

For the City:

Name: Michael J. Riordan, Director of Municipal Development
Phone: (505) 768-3830
Fax: (505) 768-2310
E-mail: mriordan@cabq.gov

For the Regents:

Name: Kim D. Murphy, Director of Real Estate
Phone: (505) 277-4622
Fax: (505) 277-6290
E-mail: kmurphy@unm.edu

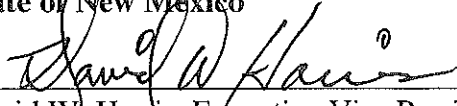
G. Severability. The unenforceability or invalidity of any provision of this Exchange Agreement as to any person or circumstance shall not render that provision or any other provision of this Exchange Agreement unenforceable or invalid as to any other persons or circumstances, and all provisions of this Exchange Agreement, in all other respects, shall remain valid and enforceable. If any provisions of this Exchange Agreement shall be held to be unenforceable or invalid under any applicable law or rule, such provision shall be ineffective only to the extent of such unenforceability or invalidity, without invalidating the remaining provisions of this Exchange Agreement. The Parties shall endeavor in good faith to replace any unenforceable or invalid provision with a valid provision, the economic or legal effect of which comes as close as possible to that of the unenforceable or invalid provision.

H. Successors and Assigns. This Exchange Agreement is binding on the City and the Regents and their respective successors and assigns. Notwithstanding the foregoing, neither Party may assign its interests in this Exchange Agreement or delegate its duties under this Exchange Agreement to any other person or entity without the prior written consent of the other Party.

I. No Third Party Beneficiaries. This Exchange Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their respective permitted successors and assigns, and no other person or entity shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Exchange Agreement.

J. Brokers. The Regents and the City each hereby (a) represent to the other that it has not employed, retained or consulted any broker, agent, or finder in carrying on a negotiation in connection with this Exchange Agreement, and (b) agree to hold the other harmless from and against any and all loss arising by reason of breach of this representation.

**REGENTS OF THE UNIVERSITY
OF NEW MEXICO, a constitutionally
created educational institution of the
State of New Mexico**



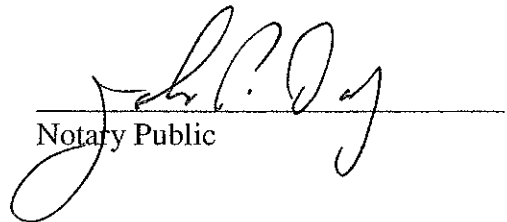
Date: 9/13/11

David W. Harris, Executive Vice President
for Administration, COO and CFO of the
University of New Mexico

ACKNOWLEDGMENT OF THE REGENTS

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

The foregoing instrument was acknowledged before me this 13th day of SEPTEMBER, 2011, by David W. Harris, Executive Vice President for Administration, COO and CFO of the University of New Mexico, on behalf of the Regents of the University of New Mexico.



Notary Public

My commission expires:
12/1/12

DESCRIPTION OF CITY PROPERTY
(Health Clinic Site)

Tract lettered "B-1", Northfields Addition (a replat of Tract B, Northfields Addition), Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the map thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 9, 2011, in Plat Book 2011C, Page 121, as Doc. No. 2011102249.

[Handwritten signature]
12/19/13

[Handwritten signature] 12/20/13
[Handwritten signature] 12/31/12

**DESCRIPTION OF REGENTS PROPERTY
(Fire Station Site)**

DRAFT

The subject property has not been replatted and is part of a larger ownership with the following legal description:

Tract A, a replat of Tracts A & B of 40/25 Associates Subdivision, as the same is shown and designated on the Plat filed in the Office of the County Clerk of Bernalillo County, on May 1, 1995, Volume 95C, Folio 149. The land area shown is 0.7047 acre.

Tracts 4 and 5, a replat of Corrected Tracts 1 thru 5 of Gibson Tracts, as the same is shown and designated on the Plat filed in the Office of the County Clerk of Bernalillo County, on January 23, 1996, Volume 96C, Folio 36. The land area shown is 3.0640 acres.

**[PLATTED PARCEL DESCRIPTION TO BE SUBSTITUTED,
ONCE SUBDIVISION PROCESS COMPLETE]**

**QUITCLAIM DEED
(Fire Station Site)**

DRAFT

QUITCLAIM DEED

The Regents of the University of New Mexico, a body corporate, for consideration paid, quitclaims to the City of Albuquerque, a New Mexico municipal corporation, whose address is P.O. Box 1293, Albuquerque, New Mexico 87103, the following described real estate in Bernalillo County, New Mexico:

The subject property has not been replatted and is part of a larger ownership with the following legal description:

Tract A, a replat of Tracts A & B of 40/25 Associates Subdivision, as the same is shown and designated on the Plat filed in the Office of the County Clerk of Bernalillo County, on May 1, 1995, Volume 95C, Folio 149. The land area shown is 0.7047 acre.

Tracts 4 and 5, a replat of Corrected Tracts 1 thru 5 of Gibson Tracts, as the same is shown and designated on the Plat filed in the Office of the County Clerk of Bernalillo County, on January 23, 1996, Volume 96C, Folio 36. The land area shown is 3.0640 acres.

**[PLATTED PARCEL DESCRIPTION TO BE SUBSTITUTED,
ONCE SUBDIVISION PROCESS COMPLETE]**

WITNESS ____ hand and seal this _____ day of _____, 20____.

**THE REGENTS OF THE UNIVERSITY OF
NEW MEXICO**, a body corporate

By: _____
David W. Harris
Executive Vice President for Administration
University of New Mexico

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me this _____ day of _____, 20____, by David W. Harris, Executive Vice President of Administration, University of New Mexico, on behalf of The Regents of the University of New Mexico.

Notary Public

My commission expires:

**QUITCLAIM DEED
(Health Clinic Site)**

QUITCLAIM DEED

The City of Albuquerque, a New Mexico municipal corporation, for consideration paid, quitclaims to the Regents of the University of New Mexico, a body corporate, whose address is c/o Director of Real Estate, the University of New Mexico, MSC 3595, 1 University of New Mexico, Albuquerque, New Mexico 87131-0001, the following described real estate in Bernalillo County, New Mexico:

Tract lettered "B-1", Northfields Addition (a replat of Tract B, Northfields Addition), Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the map thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 9, 2011, in Plat Book 2011C, Page 121, as Doc. No. 2011102249.

WITNESS ___ hand and seal this ___ day of ___, 20 ___.

CITY OF ALBUQUERQUE, a New Mexico
municipal corporation

By: _____
Robert J. Perry
Chief Administrative Officer

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me this ___ day of ___, 20___, by Robert J. Perry, Chief Administrative Officer of the City of Albuquerque, a New Mexico municipal corporation, on behalf of said municipal corporation.

Notary Public

My commission expires:

[Handwritten signatures and dates]
12/19/13
12/30/13