

## AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE, hereinafter referred to as the "Lease," made and entered into as of the 26 day of July, 2007 (the "effective date"), at Albuquerque, New Mexico, is made by and between The Regents of the University of New Mexico, hereinafter referred to as the "Lessor" or "UNM," and Guillermina G. Engelbrecht, hereinafter referred to as the "Lessee."

### I. RECITALS:

WHEREAS, the Regents of the University of New Mexico, as Lessor, have entered into a certain Lease and Supplemental Agreement, hereinafter referred to as the "Original Lease," dated October 1, 1949, which is filed in Book D-127, Pages 655-666 in the Office of the County Clerk of Bernalillo County, New Mexico, with George Warren and Elizabeth T. Arms, as the original lessee; and

WHEREAS, the Lease is a ground lease of a platted lot, hereinafter referred to as the Lot, described as Lot 24, Block B, Campus of the University of New Mexico, as shown by the official replat filed in the office of the County Clerk of Bernalillo County on November 1, 1947, subject to all easements and restrictions, for the purposes of erecting and maintaining a residence located at 607 Vassar NE, Albuquerque, New Mexico; and

WHEREAS, the Lease of this Lot is one of twenty-three (23) similar ground leases between lessees and UNM and the platted lots are within an area known as the Campus Neighborhood; and

WHEREAS, the Original Lease has been assigned to Guillermina G. Engelbrecht, as assignee and current Lessee, under an Assignment of Lease dated February 28, 1991; and

WHEREAS, the Original Lease has been further amended by through First Amendment to Lease dated December 23, 1999, which is filed in Book A2, Page 5458 in the Office of the County Clerk of Bernalillo County, New Mexico (the "First Amendment"), and which granted among other provisions, an extension of the lease term of the Lease and established a common expiration date of all ground leases within the Campus Neighborhood; and

WHEREAS, Lessor and Lessee have both recognized the need to amend and restate the Original Lease and First Amendment, as heretofore amended;

WHEREAS, Lessor and Lessee both recognize that clearly defined and acknowledged interests and intentions, and honesty in communication serve the interests of each; and

WHEREAS, Lessor and Lessee each intend to maintain and enhance the residential character, value and marketability of the Lot and the improvements thereon; and

WHEREAS, Lessor and Lessee each desire to create a more mutually advantageous, and cooperative landlord/tenant relationship;

THEREFORE, the Regents of the University of New Mexico and Lessee agree to amend and restate the Original Lease and First Amendment as follows, which shall hereinafter be referred to as the "Lease;"

That the Lessor does hereby lease, demise and let unto the Lessee the Property as hereinafter described, for the term and in accordance with the conditions herein set forth, viz:

## II. TERMS

### 1. DESCRIPTION

The real estate (the "Lot") that is the subject of this Lease is commonly described as 607 Vassar NE, Albuquerque, New Mexico and is described legally as follows:

Lot 24, Block B, Campus of the University of New Mexico

The foregoing description is referable to a replat of the Block B Campus of University of New Mexico, as recorded in the office of the County Clerk and Recorder of Bernalillo County, New Mexico on November 1, 1947. The Lot described in this Section 1 together with all improvements located thereon, is sometimes hereinafter referred to as the "Property."

### 2. TITLE

The Lessor covenants that it has lawful title to the Lot, and has full authority to make this Lease on the terms herein set forth.

### 3. TERM

This Lease shall commence as of the effective date hereof and shall continue until June 30, 2082.

### 4. QUIET ENJOYMENT

Lessor hereby covenants with Lessee that upon observance and performance by Lessee of Lessee's obligations under this Lease, that Lessee shall peaceably hold and enjoy the Lot and improvements thereon, peaceably and quietly, for the term of this Lease without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through or under Lessor except as herein expressly provided.

### 5. RENT RESERVED

A. Initial monthly ground rent ("Rent") for Lessee and for all current ground lessees (both UNM related and non-UNM related persons or parties as defined below) shall be as follows:

September - December 2007	\$30.00 per month
January - December 2008	\$40.00 per month
January - December 2009	\$50.00 per month
January - December 2010	\$65.00 per month
January - December 2011-2068	\$65.00 per month plus 4% annual increase
January - December 2069-2082	\$684.00 per month

In the event of a transfer from Lessee to a non-UNM related person or party, the non-UNM related person or party, as defined below, shall pay monthly ground rent according to the following schedule, beginning on January 1<sup>st</sup> of the first calendar year following the transfer:

September - December 2007	\$36.00 per month
January - December 2008	\$48.00 per month
January - December 2009	\$56.00 per month
January - December 2010	\$78.00 per month
January - December 2011-2068	\$78.00 per month plus 4% annual increase
January - December 2069-2082	\$820.00 per month

B. As of the effective date, the Lessee, regardless of affiliation, shall be considered to be University of New Mexico related (“UNM related”). “UNM related” is defined as current or retired UNM faculty or staff, including current or retired UNM Health Sciences faculty or staff and current or retired UNM Hospital staff. “Non-UNM related” are all persons other than those defined as “UNM related”.

C. Subsequent transfers from non-UNM related to UNM related parties shall be entitled to match the existing ground rent that would be paid as if the Lease had been held by a UNM related person or party for the entire term (see Section 3.).

D. Any time the Lease is transferred, the new lessee pays the same ground rent until the end of the calendar year in which the transfer occurred. The new adjusted Rent per the schedule in Section 5.A. begins January 1st of the first calendar year following the transfer.

E. Lessee may elect to pay Rent monthly, annually or defer Rent payments until the transfer of the ground lease. Any deferred amounts shall be subject to an interest charge of 6% per annum.

F. EXAMPLES:

	<b>UNM Lessee Transfers to Non-UNM Lessee</b>	<b>Non-UNM Lessee Transfers to UNM Lessee</b>
<b>Transfer Date</b>	August 1, 2009	August 1, 2009

	<b>UNM Lessee Transfers to Non-UNM Lessee</b>	<b>Non-UNM Lessee Transfers to UNM Lessee</b>
<b>Example Monthly Ground Rent Before Transfer</b>	\$50.00 per month	\$56.00 per month
<b>New Monthly Ground Rent During Year of Transfer</b>	\$50.00 per month	\$56.00 per month
<b>New Monthly Ground Rent Beginning January 1 in Year After Transfer</b>	\$78.00 per month	\$65.00 per month

#### 6. LESSOR'S LIEN FOR RENT

The Lessor shall have a lien on the Property, including Lessee's leasehold interest therein, which lien is granted for the purpose of securing the payment of rents, taxes, assessments, charges, liens, penalties and damages herein covenanted to be paid by the Lessee, and for the purpose of securing the performance of all and singular the covenants, conditions and obligations of this Lease.

#### 7. USE OF PROPERTY

Lessee and UNM acknowledge that a single family residence has been erected upon the Lot. The Lessee shall use the Property for the purpose of a residence only, and shall not at any time use or occupy, nor permit any other person to use or occupy the Property in such a way as to violate any law, regulation or ordinance of the State of New Mexico, the City of Albuquerque, the County of Bernalillo or the United States of America. The residence and any other structure hereafter erected upon the Lot shall conform in architectural style to the general type and style of the buildings upon the Campus of the University of New Mexico. Plans for any proposed structures to be erected upon said Lot must be submitted to the Lessor for approval in advance of any construction. No other structures shall be erected upon said Lot and no additions or major alterations shall be made to the approved structures, except upon the submission of the plans for such proposed additions or alterations to the Lessor and its approval of the same.

Lessee covenants at the Lessee's sole cost and expense to make all repairs, alterations and/or additions, whether ordinary or extraordinary, that may be required by any present or future law, ordinances, regulations or statutes in connection with the occupation and use of the Property and all repairs which may be necessary to prevent the Lot and any improvements thereon from falling into a state of ill repair. The term "ill repair" means such a state of repair that the failure to cure it would constitute waste. Lessee further covenants and agrees that Lessee will, during the term of this lease, keep and maintain, at Lessee's expense, such grounds and shrubbery upon the leased Lot as may, in the judgment of the Lessor, reasonably conform with the grounds and shrubbery of other lots in the same block and with the general maintenance of

grounds and landscaping on the campus of the University of New Mexico. Xeric landscaping is specifically allowed.

## 8. MORTGAGES

Lessee may make one or more mortgages covering up to 95% of the value of its interest in this Lease without approval of Lessor or such greater amount as approved by Lessor. Lessor's fee interest in the Lot shall not be subordinated to any mortgage.

Upon foreclosure by a mortgagee, or upon an assignment in lieu of foreclosure, and if the mortgagee shall become the owner of the leasehold interest involved, the mortgagee shall become liable for any obligations under the Lease, provided, however, that mortgagee's obligation to pay Rent shall be suspended until such time as the ownership of the leasehold interest is transferred by mortgagee to a new Lessee, provided further that such suspension of Rent shall in no event exceed a period of eight months. Such mortgagee may thereafter assign its interest or leasehold interest involved in accordance with the terms of this Lease and provided assignee assumes all obligations under this Lease. Upon such assignment, the assignee shall be liable for and shall be deemed to have personally assumed all applicable obligations under this Lease relating to or measured by periods of time commencing after such assignment, and the assigning mortgagee shall not be liable for such obligations. The assignee (new Lessee) assumes liability for ground rent per the requirements and definitions of Section 5.

## 9. ASSIGNMENT: RIGHT OF FIRST REFUSAL

(a) Lessee may bargain, sell and assign (an "Assignment and Sale") Lessee's interest in this Lease to any person, without the consent of Lessor, provided that each of the following terms and conditions shall have been fulfilled and complied with:

1) At the time of the Assignment and Sale, the Lease shall be in good standing and not in default.

2) Except as permitted by Section 9(a)(5), in the event Lessee should desire to make an Assignment and Sale to any third party, Lessee shall advertise or announce or provide notice of said offer to sell in a newspaper, publication, media or communication source directed or available to the University campus community, particularly its faculty and staff; it being the intent of Lessor and Lessee that faculty and staff of the University shall have prompt and widely distributed notice of the prospective Assignment and Sale by Lessee. Lessor shall provide guidelines for Lessee that define reasonable and appropriate notice venues available to meet the requirements of this paragraph when requested by Lessee.

3) Prior to placing the Lease on the market for Assignment and Sale to a third party, Lessee shall give Lessor written notice that the Lease will be offered for Assignment and Sale. Lessor shall have 45 days to decline to purchase or to make an offer to purchase. Should Lessor make an offer to purchase Lessee's interest in the Lease, both parties shall negotiate the price, terms and conditions of the purchase in good

faith. If the parties fail to agree upon and/or execute a purchase agreement on or before the expiration of the 45 day notice period, Lessee shall have the right of Assignment and Sale to a third party. Lessee may elect to market its interest in this Lease simultaneously with the 45 day notice period described above; however, Lessee agrees not to accept any third party offer to purchase until Lessor notifies Lessee in writing that it has declined to purchase with said 45 day notice period or Lessor and Lessee fail to agree upon the purchase price, terms and conditions of the purchase within said 45 day notice period.

Lessee shall have nine months from the end of the 45 day notice period to consummate the Assignment and Sale to any third party for an amount that is 85% or greater than the Lessor's best offer, after which, a new 45-day notice period shall be required. Should Lessee wish to accept an offer to purchase for an amount that is less than 85% of Lessor's best offer, Lessee shall notify Lessor of the existence of the offer and Lessor shall have 10 days to match or exceed that offer.

4) Any third-party transferee pursuant to an Assignment and Sale shall assume all of Lessee's duties and obligations under the Lease from and after the effective date of the Assignment and Sale and shall duly execute and deliver to Lessor an instrument reasonably satisfactory to Lessor evidencing such assumption.

5) Lessee shall have the right of Assignment and Sale of Lessee's interest in the Lease to an immediate relative, meaning: mother, father, sister, brother, son, daughter, spouse or domestic partner, freely and without complying with Sub-sections 9(a)(1) through 9(a)(4).

6) Lessor agrees that upon written request of the Lessee, the Lessor will furnish a written statement to any proposed transferee, setting forth that the Lease is or is not in good standing, as the case may be, which written statement shall be furnished within five (5) days from such written request.

7) If Lessee makes an Assignment and Sale to a third-party in conformance with the provisions of Section 9(a), Lessor shall affirm in writing within ten days that the Assignment and Sale complies with Section 9(a) of the lease

8) The original executed instrument evidencing the Assignment and Sale shall be filed by Lessee of record in the real estate records of Bernalillo County, New Mexico, and an executed copy thereof shall be delivered to the Lessor within ten (10) days from the recording of the original thereof.

9) In the event Lessee purports or attempts to make an Assignment and Sale and the terms and conditions of Section 9(a) shall not have been fulfilled or complied with, the purported Assignment and Sale shall have no force, effect or validity unless the Lessor consents to the Assignment and Sale.

(b) No Lessee will sublet the residence erected upon the Lot to any person other than a UNM-related person, for a period in excess of twelve months, except upon the written consent

and approval of the Lessor. Any attempted subletting of the Property, except as herein provided, shall operate to work a forfeiture of any interest of the Lessee therein, and the interest of such Lessee shall thereupon revert to the Lessor, subject only to the lien of any mortgagee upon Lessee's leasehold interest in said Property.

#### 10. INSURANCE

Lessee shall maintain fire and extended coverage insurance, and such flood or earthquake insurance in an amount equal to the full replacement value of such residence, together with such endorsements as may be commercially reasonable. All such insurance policies shall be issued by insurance companies duly licensed and authorized to do business in New Mexico and must provide at least thirty (30) days prior written notice of cancellation to Lessee and any mortgagees named as coinsureds or loss payees.

#### 11. TAXES

Lessee shall timely pay all property taxes, assessments and impositions which may be lawfully levied and assessed against the Property during the term of this Lease.

#### 12. SPECIAL ASSESSMENTS AND STREET IMPROVEMENTS

Lessor shall assume and pay all special assessments for alley or street improvements, including sewers, curbing, paving, streets maintenance and any and all other special assessments on alleys and streets contiguous to the Lot. The Lessee shall be under no obligation to pay for any street improvement or street maintenance, which shall be an obligation of the Lessor.

#### 13. EASEMENT

No general dedication to public use of the streets or alleys contiguous to the Lot is made by the Lessor, but the Lessee is granted an easement, during the term of this lease, for use of such streets and alleys by the Lessee, his successors and assigns, and for the use of the public for social and business purposes as may afford reasonable and proper use of the Lot for residential purposes. The Lessee further covenants and agrees that the execution and acceptance of this Lease shall not be deemed to constitute any dedication to general public use of any streets, avenues, rights-of-way, roads, lanes, alleys or passage ways upon, across or through any lands of the Lessor, and agrees that the Lessor may from time to time make, after consultation with Lessee, reasonable regulations concerning the use of any and all such streets, avenues, rights-of-way, roads, lanes, alleys or passage ways.

#### 14. LESSOR'S INTEREST NOT SUBJECT TO LIENS

There shall be no liens or encumbrances placed upon the Lessor's interest arising through the act or omission of the Lessee, or any person claiming under, by or through the Lessee.

The mere fact of the existence of a lien or encumbrance on the Lessee's leasehold

interest, however, shall not, of itself, operate as a forfeiture or termination of this Lease, provided that the Lessee, within sixty (60) days after receiving actual notice of the recording of such a lien in the real estate records of Bernalillo County, New Mexico shall cause the same to be cancelled, released and extinguished or the property released therefrom by the posting of a bond, or by any other method prescribed by law, and proper evidence thereof be furnished to the Lessor. If such lien or liens appear of record, the Lessee shall cause the same to be cancelled, satisfied and discharged of record.

If the Lessee shall dispute the amount or validity of any lien claimed, or any other claim asserted, and shall, with all due diligence institute or defend an appropriate action or proceeding in a court or courts of competent jurisdiction upon the cause of action and shall, by injunction, due defense of the suit, or otherwise prevent any sale or impairment of the title of the Lessor, and shall prosecute or defend such action or proceeding with reasonable diligence to a final determination, and if such suit or defense shall be instituted within the period of sixty (60) days after the time when the lien shall have been filed, then, in such case, the time reasonably required in the litigation of such cause of action shall be added to that sixty (60) days time.

It shall, in any event, be the duty of the Lessee, after contesting such lien, to cause the lien to be cancelled, released, extinguished or adjudicated not to exist, or to cause the property to be released therefrom by the posting of bond or by any other method prescribed by law, before the time when the property or any interests therein, or the Lessee's interest therein, might otherwise be offered for sale by reason of the lien, or any court decree or order arising by reason thereof or in connection with the enforcement of the lien; and promptly upon relieving the property of such claim, the Lessee shall then have the duty of furnishing the evidence thereof unto the Lessor.

#### 15. INDEMNIFICATION

Lessee, at its own expense, shall keep the Lot and all improvements situated on the Lot in good order, condition and repair, and shall, at all times, save and keep the Lessor free and harmless from any and all damage and liability occasioned by the use of the Lot and improvements, and shall indemnify and keep harmless the Lessor from and against any loss, cost, damage and expense arising out of or in connection with any act or omission of Lessee or Lessee's agent or contractor. The foregoing notwithstanding, Lessee's indemnification of Lessor shall not extend to any loss, cost, damage and expense proximately caused by any negligent act or omission of Lessor or the compliance by Lessee with any requirement of the Lessor.

#### 16. CONDEMNATION

If at any time during the term of this Lease, the Lot or the improvements located thereon or any portion thereof be taken or appropriated or condemned by any third-party governmental authority by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of rent and other adjustments made as Lessor and Lessee shall mutually agree upon.

If the Lessor and the Lessee are unable to agree upon division of the proceeds and award



within thirty (30) days after such award has been made, then the matters in dispute shall be submitted to good faith mediation prior to submitting the matters in dispute by appropriate proceedings to a court having jurisdiction of the subject matter in Bernalillo County, New Mexico, for its decision and determination of the matters in dispute.

#### 17. DEFAULT

Nothing herein contained shall be construed as authorizing the Lessor to declare this Lease in default where the default consists in the non-payment of rent or taxes, until such non-payment, in violation of the terms of this Lease shall have continued for a period of thirty (30) days beyond the time when such items should have been paid by the Lessee. Where the alleged default consists in some violation other than the non-payment of rent or taxes, Lessor shall not declare this Lease in default until such violation shall have continued uncured for thirty (30) days after the Lessor shall have given the Lessee written notice of such violation, and Lessee shall have failed within said period of notice to cure such default, or shall have commenced or taken such steps as are necessary to cure such default, which once commenced the Lessee agrees and shall pursue continuously, with dispatch and diligence, until the default is promptly finally cured. Nothing herein set forth shall, however, require the Lessor to declare any such default, except at its election.

#### 18. EFFECT OF TERMINATION

In the event of the termination of this Lease at any time before the expiration of the term hereof for the breach of any of the covenants herein contained, then, in such case, Lessor shall have the right to procure and hold possession of said property in the manner hereinabove specified, subject to all rights of the mortgagee in the leasehold interest of Lessee and its assigns under said lien instrument. Lessor's right to terminate this Lease and hold possession of the herein described real property subject to all rights of all mortgages shall not establish, be deemed to establish or be construed to establish in mortgagee any lien priority rights superior to the lien created by this Lease.

#### 19. NOTICE

In every case where, in the option of the Lessor, or under the conditions of this Lease, it shall be deemed necessary for the interest of the Lessor to serve a notice or demand on the Lessee concerning this Lease, or any of the provisions or conditions thereof, it shall be sufficient service of said notice or demand, or declaration to deliver a copy thereof to the Lessee or mail a copy thereof by registered mail, addressed to the Lessee at the property. Correspondingly, the Lessee may serve notice upon the Lessor by delivering or mailing the same to the Lessor at the place last designated by the Lessor as the place for the payment of rent, or, in the absence of such designation, at the last place at which rent was paid to the Lessor, or, if said place was not an actual address, then to the last known address of the Lessor.

#### 20. SUCCESSORS AND ASSIGNS

All covenants, promises, conditions, and obligations herein contained, or implied by law,

are covenants running with the land and shall be attached to and binding upon and inure to the benefit of the parties hereto, their successors, assigns, personal representatives, trustees and heirs.

21. SAVINGS CLAUSE

Lessor and Lessee each acknowledge and agree that circumstances may change during the term of this Lease that may induce the parties seek additions to, deletions from, or revisions to the terms, conditions, and covenants of this Lease. Each party shall, in the performance of its duties to act in good faith and to deal fairly with the other, meet with the other and give fair and due consideration to any additions, deletions, or revisions desired by the other.

22. MISCELLANEOUS

a) At the time this lease is signed in 2007, policies in effect for Lessee parking within the Campus Neighborhood on Vassar NE shall remain unchanged except that the fee for Lessee parking authorization stickers shall be nominal.

b. No waiver of a breach of any of the covenants of this lease contained shall be construed to be a waiver of any succeeding breach of the same covenant.

c. No modification, release, discharge, or waiver of any provisions hereof, shall be of any force, value or effect unless in writing, signed by the Lessor, or their duly authorized agent and the Lessee.


d. This instrument contains the whole agreement between the parties as of this date, and the execution thereof has not been induced by either party by any representations, promises or understandings not expressed herein, and there are no collateral agreements, stipulations, promises or undertakings whatsoever upon the respective parties in any way touching the subject matter of this Lease which are not expressly contained in this instrument.

e. Any use of pronouns in reference to the Lessor and Lessee respectively, means such Lessor and Lessee respectively, whether the personal or impersonal, singular or plural pronoun is used.

23. AUTHORITY FOR EXECUTION OF LEASE

This lease is executed by the Lessor pursuant to the delegated signature authority of The Regents of the University of New Mexico.

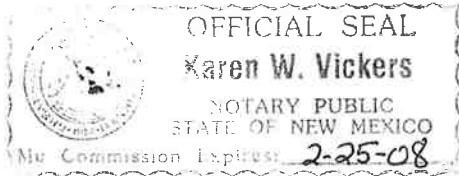
LESSOR: The Regents of the University of New Mexico

By:   
David W. Harris, Executive Vice President for Administration & COO / CFO

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

STATE OF NEW MEXICO            )  
  ) ss  
COUNTY OF BERNALILLO        )

This instrument was acknowledged before me on   JULY 26  , 2007, by David W. Harris, Executive Vice President for Administration & COO / CFO of the University of New Mexico, for the Regents of the University of New Mexico, a body corporate of the State of New Mexico.



Karen W. Vickers  
Notary Public

LESSEE:

By: Guillermina G. Engelbrecht  
Guillermina G. Engelbrecht

By: \_\_\_\_\_

Date: July 19, 2007

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

STATE OF NEW MEXICO            )  
  ) ss  
COUNTY OF BERNALILLO        )

This instrument was acknowledged before me on   July 19  , 2007, by Guillermina G. Engelbrecht.



Kim D. Murphy  
Notary Public