



**Aubrey Dunn, Commissioner of Public Lands
State of New Mexico**

BUSINESS LEASE

Lease No. BL-2351

THIS LEASE, dated **January 9, 2017** is made and entered into by and between the Commissioner of Public Lands, hereinafter referred to as "Lessor", and **Santa Fe County**, whose address is **107 Grant Avenue, Santa Fe, NM 87501**, hereinafter referred to as "Lessee".

Lessor and Lessee agree and covenant as follows:

1. **LEASE.** For and in consideration of and subject to the terms, conditions, covenants and reservations contained herein, Lessor leases to Lessee the following described tract of land, hereinafter referred to as the "leased premises":

A tract of land containing 320 acres, more or less, and allocated by forties as follows: N2NE4, NE4NW4, S2N2, NW4SW4, Section 32, Township14N, Range 09E, in Santa Fe County, New Mexico (320 acres).

The rights granted herein are subject to all valid existing rights in the leased premises.

2. **WATER RIGHTS.** No water rights shall be used, placed or developed on the leased premises without the express, written consent of Lessor. All water appropriated shall be pursuant to state law and regulations. Any water rights used, placed or developed on the Lease Premises are herein and hereby deemed to belong to the Lessor, and all such rights shall be developed in the name of the Lessor.

3. **RESERVATIONS.** Lessor reserves the right to execute leases for the exploration, development and production of geothermal resources, oil and gas, sand, gravel, coal, shale, clay, rock, building stone or materials, potassium, sodium, phosphorus, salt or any other minerals or deposits of whatsoever kind located in, under or upon the leased premises and all rights of access, ingress and egress through or across the leased premises that are necessary or convenient to such exploration, development or production. Lessor further reserves the right to grant rights-of-way and easements over, upon, or across the leased premises for public highways, railroads, tramways, telephone, telegraph and power lines, irrigation works, sewer lines, drainage ditches, mining, logging, and for other purposes.

4. **TERM.** The term of this lease shall begin on the date of this lease and end at midnight on **January 8, 2042** unless terminated or canceled earlier as herein provided. Nothing contained herein shall limit the right of Lessor to sell or exchange the leased premises during the lease term.

5. **RENT.** Lessee shall pay to Lessor as rent for the leased premises and for the rights and privileges granted hereunder annual base rental as designated in **Exhibit "A" attached hereto**, due and payable in advance **on or before the 9th day of January** each year during the term of this lease. Time is of the essence in the performance of this agreement. Interest on delinquent rent payments shall accrue from the date the payment becomes due at the rate of one percent a month or any fraction of a month. Lessee shall also pay a late processing fee of **\$50.00** for any delinquent payment of rent, in accordance with the Lessor's schedule of fees.

6. **PERMITTED USE.** Lessee shall use the leased premises for the sole and exclusive purpose of: **Open space for recreational trails.** No other uses shall be permitted.

7. **IMPROVEMENTS.** Lessee may place the following improvements on the leased premises:

No Improvements were identified

No other improvements shall be placed on the leased premises without the prior amendment of this lease pursuant to Paragraph 20 hereof to permit such improvement placement. Lessee shall maintain and protect from waste and trespass all improvements placed on the leased premises. In the event improvements other than those authorized herein are placed on the leased premises, Lessor may either declare title to such improvements in Lessor without payment of compensation to Lessee or Lessor may order the removal of such improvements and the restoration of the leased premises to their condition existing prior to the placement of said improvements at Lessee's expense. The foregoing rights of Lessor shall be cumulative to Lessor's right to cancel this lease as herein provided.

8. **LIEN.** To secure the payment of any rent amount that becomes due, and to satisfy all reasonable costs incurred by Lessor in recovering said rent amount, Lessor shall have a first and prior lien on any and all improvements, fixtures and equipment placed on the leased premises.

9. **IMPROVEMENT REMOVAL AND RECLAMATION.** Before relinquishment or termination of this lease without re-lease to Lessee, or upon Lessor's cancellation of this lease as provided herein, Lessee shall remove all improvements placed on the leased premises and shall restore the leased premises to their condition existing prior to the placement of said improvements; provided, however, if any rent amount is due and unpaid at the time of lease cancellation or termination, Lessee shall remove improvements and restore the leased premises as herein provided only at such

time, in such manner and under such conditions as Lessor may in writing demand. Lessee hereby waives, and shall not assert, any right to compensation for improvements on the leased premises under Section 19-7-14, NMSA 1978. This paragraph shall survive termination of this lease.

10. **RELINQUISHMENT.** Lessee, if not in default under this lease, may at any time apply to relinquish the lease to Lessor and be relieved of further obligations under the lease, provided, however, such relinquishment shall not be valid or effective until approved in writing by Lessor. Lessee must file an application to relinquish the Lease at least 30 days prior to the date on which the Lessee requests the relinquishment to go into effect. Lessor may condition relinquishment on any terms he deems reasonable. Relinquishment shall be made on a form prescribed by Lessor and shall be accompanied by the required relinquishment fee as set forth in Lessor's schedule of fees. Upon relinquishment Lessee shall not be entitled to the refund of any rent previously paid.

11. **ASSIGNMENT.** Lessee shall not assign this lease, any part thereof, or assign any improvements located on the leased premises without the prior amendment of this lease pursuant to Paragraph 20 hereof to permit such assignment. Any lease assignment without lease amendment shall be null and void. Lessor may condition such lease amendment upon an increase in the rent amount and the modification or addition of other lease provisions.

12. **SUBLEASE.** Lessee shall not sublease the rights granted hereunder, any part thereof, any portion of the leased premises or any improvements located on the leased premises without the prior amendment of this lease pursuant to Paragraph 20 hereof to permit such sublease. Any sublease without lease amendment shall be null and void. Lessor may condition such lease amendment upon an increase in the rent amount and the modification or addition of other lease provisions.

13. **COLLATERAL ASSIGNMENT.** Lessee shall obtain approval of Lessor in accordance with State Land Office Rule 19.2.9.15 NMAC before making any collateral assignment or mortgage of its interest in this Lease or its improvements, and any such collateral assignment or mortgage shall be subject to the conditions, limitations and requirements set forth in the State Land Office rules. Lessor's approval of a collateral assignment or mortgage shall not release Lessee from any of its obligations under this Lease, except as agreed to in writing by Lessor. If Lessor gives Lessee a notice of default, Lessor shall simultaneously provide a copy of the notice to an approved collateral assignee or mortgagee, which shall have the right to cure the default within the time provided, subject to the requirements of State Land Office rules. An approved collateral assignee or mortgagee may succeed to the rights and duties of Lessee, and it may assign the lease in accordance with Paragraph 11, above, and State Land Office rules governing assignments.

14. **DEFAULT AND CANCELLATION.** Upon Lessee's violation of any of the terms, conditions or covenants contained herein, ~~including the failure to pay the rent~~ when due, Lessor may cancel this lease after providing Lessee thirty (30) days notice of

the default by registered mail. The mailing of such notice as herein provided shall constitute notice of Lessor's intention to cancel the lease and no proof of receipt of such notice shall be necessary in order for Lessor to enter lease cancellation thirty days after the mailing of the notice if Lessee has not cured the default to Lessor's satisfaction within said thirty day period. Lessee agrees that if a court of competent jurisdiction determines that Lessee has breached any of the terms, conditions or covenants of this lease, Lessee shall pay the costs incurred by Lessor in litigating the default, including reasonable attorney fees. In the event of a breach of the terms of this Lease by the Lessee, the Lessor also shall have all remedies available at law or equity.

15. **WAIVER.** No employee or agent of Lessor has the power, right or authority to orally waive any of the terms, conditions, or covenants hereof and no waiver by Lessor of any of the terms, conditions or covenants hereof shall be effective unless in writing and executed by Lessor. Lessor's waiver of Lessee's breach or default of any of the terms, conditions or covenants hereof shall not constitute or be construed as a waiver of any other or subsequent breach or default by Lessee. The failure of Lessor to enforce at any time any of the terms, conditions or covenants hereof or to exercise any option herein provided, or to require at any time performance by Lessee of any of the terms, conditions, or covenants hereof shall not constitute or be construed to be a waiver of such terms, conditions, or covenants, nor shall it affect the validity of this lease or any part thereof, or Lessor's right to thereafter enforce each and every such term, condition and covenant.

16. **COMPLIANCE WITH LAWS.** Lessee shall fully comply with all federal and state laws, regulations, rules, ordinances and requirements, applicable to the leased premises or to Lessee's operations thereon, including but not limited to all applicable laws governing water; endangered or threatened species; hazardous materials; environmental protection; land use; health and safety; cultural, historic or archeological / paleontological properties; waste; trespass; and all New Mexico State Land Office Rules and Regulations, including those that may be hereafter promulgated. Lessee's obligations under this paragraph include but are not limited to compliance with NMSA 1978 Section 19-6-5, requiring a lessee of State Trust Land to protect the leased premises from waste or trespass. Lessee's compliance with all laws, regulations and policy shall be at its own expense.

17. **WAIVER, RELEASE AND PROTECTION OF THE LEASED PREMISES.** Lessee is leasing the leased premises based on Lessee's own inspection and investigation of and judgment regarding the leased premises. Lessor makes no warranties or representations of any kind or nature with regard to the leased premises or with regard to this transaction.

If accidental discharge, release, spill, or fire or any other event having environmental consequence occurs, Lessee agrees to provide notice to Lessor at the same time and in the same manner as Lessee is required to provide to the federal, state or local agency having responsibility for enforcing compliance with environmental laws, regulations and policy. Lessee agrees that, upon request by Lessor, Lessor shall have

access to all reports, documents, test data and all other materials provided by Lessee to or received by Lessee from a governmental agency having responsibility for enforcing compliance with environmental or other laws.

18. INDEMNIFICATION; INSURANCE.

The parties shall not be jointly liable. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred by either party in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-4-1, et seq., NMSA 1978, as amended.

19. SCOPE OF AGREEMENT. This lease incorporates all the agreements, covenants and understandings between Lessor and Lessee concerning the subject matter hereof and all such agreements, covenants and understandings are merged into this written lease. No prior agreement or understanding between Lessor and Lessee shall be valid or enforceable unless expressly embodied in this lease.

20. AMENDMENT. This lease shall not be altered, changed or amended except by an instrument executed by both Lessor and Lessee.

21. APPLICABLE LAW. This lease shall be governed by the laws of the State of New Mexico.

22. EXHAUSTION OF ADMINISTRATIVE REMEDIES. In the event that Lessee is aggrieved by a decision of Lessor to cancel this Lease, Lessee shall within thirty (30) days after the date of such decision file an administrative contest pursuant to NMSA 1978, § 19-7-64 and State Land Office Rule 15 (19.2.15 NMAC). Lessee shall initiate no court action regarding this Lease except to appeal a final decision of the Commissioner of Public Lands rendered pursuant to such a contest proceeding, and as provided by NMSA 1978, § 19-7-64.

23. SUCCESSORS IN INTEREST; THIRD PARTIES. All terms, conditions and covenants of this lease and all amendments thereto shall extend to and bind the heirs, successors and assigns of Lessee and Lessor. There are no third party beneficiaries of this Lease.

24. RE-LEASE. At the expiration of the term of this lease, Lessee may re-lease the leased premises provided Lessor has determined to offer the leased premises for the same uses as permitted herein, Lessee is not in default under this lease, Lessee agrees to the terms offered by Lessor, and Lessee has bettered any offer to lease the leased premises made by a third party.

25. HOLDING OVER. If Lessee enters upon the leased premises after the termination or cancellation of this lease for any purpose, or leaves any equipment, buildings, materials, property or debris on the leased premises after the termination or cancellation of this lease, the rent due Lessor for such entry or presence shall be \$111.38

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for each day or any part of a day. Nothing contained herein shall be construed as the grant to Lessee of the right to enter the leased premises for any purpose after the termination or cancellation of this lease without the prior written consent of Lessor.

26. LEASE ENTERED INTO UNDER STATE LAND OFFICE RULE 9.

This Lease is entered into pursuant to New Mexico State Land Office Rule 9, "Business Leasing" (19.2.9 NMAC), and the provisions of that rule control the interpretation and application of the terms of this Lease, except that in the event of a conflict between a provision of this Lease and a provision of Rule 9, the Lease provision controls.

Executed in duplicate.

LESSEE:

SANTA FE COUNTY

By: *H P R*

Name: Henry P. Roybal

Title: Chair, Board of County Commissioners
of Santa Fe County

LESSOR:

NEW MEXICO COMMISSIONER OF
PUBLIC LANDS

By: *[Signature]*

AUBREY DUNN

ATTESTATION
Geraldine Salazar
Geraldine Salazar Date
Santa Fe County Clerk



Approved as to form
Santa Fe County Attorney
By: *[Signature]*
Date: 2-7-14

Reviewed and Approved
for SIGNATURE
Don Moya *[Signature]* Date 2/9/17
SFC *[Signature]*

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ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY

State of New Mexico
County of Santa Fe.

This instrument was acknowledged before on Feb 28, 2017 (date) by
Henry P. Raybald (name).
(seal)



Estrella Martinez
(Signature of notarial officer)

My commission expires: 5/14/19

ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY

State of _____
County of _____

This instrument was acknowledged before on _____ (date) by
_____ (name) as _____ (title) of
_____ (name of party on behalf of whom instrument is
executed).

(seal)

(Signature of notarial officer)

My commission expires: _____

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EXHIBIT "A"

Rent Schedule for the Term of Base Lease

**BL-2351
Santa Fe County**

BASE LEASE TERM: January 9, 2017 – January 8, 2041

All rent is due and payable in advance on or before the 9th day of January

1st year	1-9-2017 – 1-8-2018	\$10,000.00
2 nd year	1-9-2018 – 1-8-2019	\$10,300.00
3 rd year	1-9-2019 – 1-8-2020	\$10,609.00
4 th year	1-9-2020 – 1-8-2021	\$10,927.00
5 th year	1-9-2021 – 1-8-2022	\$11,255.00
6 th year	1-9-2022 – 1-8-2023	\$11,593.00
7 th year	1-9-2023 – 1-8-2024	\$11,941.00
8 th year	1-9-2024 – 1-8-2025	\$12,299.00
9 th year	1-9-2025 – 1-8-2026	\$12,668.00
10 th year	1-9-2026 – 1-8-2027	\$13,048.00
11 th year	1-9-2027 – 1-8-2028	\$13,439.00
12 th year	1-9-2028 – 1-8-2029	\$13,842.00
13 th year	1-9-2029 – 1-8-2030	\$14,258.00
14 th year	1-9-2030 – 1-8-2031	\$14,685.00
15 th year	1-9-2031 – 1-8-2032	\$15,126.00
16 th year	1-9-2032 – 1-8-2033	\$15,580.00
17 th year	1-9-2033 – 1-8-2034	\$16,047.00
18 th year	1-9-2034 – 1-8-2035	\$16,528.00
19 th year	1-9-2035 – 1-8-2036	\$17,024.00
20 th year	1-9-2036 – 1-8-2037	\$17,535.00
21 st year	1-9-2037 – 1-8-2038	\$18,061.00
22 nd year	1-9-2038 – 1-8-2039	\$18,603.00
23 rd year	1-9-2039 – 1-8-2040	\$19,161.00
24 th year	1-9-2040 – 1-8-2041	\$19,736.00
25 th year	1-9-2041 – 1-8-2042	\$20,328.00

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