

MEMORANDUM OF AGREEMENT
BETWEEN
THE REGENTS OF THE UNIVERSITY OF NEW MEXICO
AND
LOBO DEVELOPMENT CORPORATION

RECITALS

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This MEMORANDUM OF AGREEMENT is made this 12th day of AUGUST, 2008, between the REGENTS OF THE UNIVERSITY OF NEW MEXICO, a public corporation of the State of New Mexico (the "University"), and LOBO DEVELOPMENT CORPORATION, a New Mexico non-profit corporation formed under the Research Park and Economic Development Act ("LDC").

RECITALS

WHEREAS, the University organized and established LDC as a non-profit corporation for the purpose of providing real estate management and development services to and in support of the University; and

WHEREAS, the services that the parties contemplate that LDC will provide to the University pursuant to the "Developer Agreements" (as defined below), which will be

entered into from time to time between the University and LDC and third party developers for the commercial development of particular parcels of University real estate holdings. will:

- (i) relieve the University of responsibilities to manage and develop University-owned real estate in a commercially reasonable manner and to maximize the University's return from these assets;
- (ii) provide net revenues to the University for the support of the teaching, research, and service mission of the University; and
- (iii) create learning opportunities for students in this development activity.

WHEREAS, it is understood by the University and LDC that in order for LDC to become self-supporting, the University will provide critical resources, both financial and administrative.

WHEREAS, it is understood by the University and LDC that the primary business of LDC is in support of the University and no activity or function shall be undertaken by LDC which would compromise or jeopardize the satisfaction of the University's real estate development activity, and therefore LDC shall be at all times accountable to the University for all its business activities undertaken to satisfy its obligations to the University.

TERMS OF AGREEMENT

THEREFORE, in consideration of the matters set forth herein, the University and LDC agree as follows:

LDC AGREEMENTS

1.0 LDC'S ORGANIZATION AND GENERAL FUNCTION

- 1.1 LDC agrees to operate according to its Articles of Incorporation and Bylaws, as initially approved by the University Board of Regents (“Regents”) or as subsequently amended with the approval of the Regents.
- 1.2 LDC agrees to organize and operate its business activities in such a manner that will qualify for and retain LDC’s legal status as a tax exempt, non-profit organization pursuant to Section 501(c)(3), or a successor statute.
- 1.3 It is understood that the activities of LDC are to be conducted for the benefit of the University and must be consistent with the University’s overall mission and long range plans. LDC, however, shall manage its business activities in a manner which provides the greatest net benefit to LDC’s operations on behalf of the University in the most fiscally advantageous fashion possible. To this end, LDC may plan, direct and coordinate its business activities in accordance with a mutually agreed upon development proposal (“Development Proposal”) and development agreement (“Development Agreement”) between LDC and the University, including employment of all human and capital resources necessary to fulfill its obligations, but shall at all times be required to be responsive to the requests and service requirements made by the University subject to the terms and conditions of any Development Proposal and Development Agreement that is then in effect.

Either the University or LDC may initiate a Development Proposal to the other party outlining in conceptual terms a real estate development or construction project, including the parties involved and their roles, and responsibilities, the project location, anticipated project costs and funding sources and projected revenue. Following acceptance and approval of a mutually agreed upon Development Proposal by the Regents and the LDC Board of Directors, the University and LDC will enter into Development Agreements between the parties for the real estate development or construction project between LDC and a third-party developer. Developer agreements shall be in substantial conformance with the approved Development Proposal.

- 1.4 Except as set forth in an approved Development Proposal and Development Agreement, LDC shall not enter into any commitment or contractual obligation which binds UNM without the express and specific approval of the Board of Regents.
- 1.5 LDC may procure goods and services exempt from the Procurement Code. However, LDC may not procure goods or services on behalf of the University except as approved by the Executive Vice President for Administration of the University. If such approval so provides, LDC shall retain ownership of all property, whether durable or not, which it procures in fulfillment of its obligations to the University.

2.0 MANAGEMENT OF LDC ACTIVITIES

- 2.1 The LDC Board of Directors shall be responsible to oversee activities necessary to provide the required services to the University. The LDC Board of Directors may organize itself in any manner it chooses to fulfill these responsibilities.
- 2.2 LDC accepts responsibility for prudent management and care of all facilities and assets to be operated, managed, acquired, or leased by it under a Development Proposal and Development Agreement or under this Agreement.
- 2.3 LDC may employ contract and permanent staff as it deems necessary.
- 2.4 LDC shall at all times maintain adequate insurance coverage for all property owned or leased by LDC, taking into account property insurance coverage provided by the New Mexico Risk Management Division. LDC shall also obtain and carry Workers' Compensation insurance as required by law and liability insurance in at least the amounts specified from time to time by the New Mexico Tort Claims Act. LDC shall obtain and carry such other insurance as may be reasonably required by the University from time to time.
- 2.5 LDC and the University agree, subject to the approval of the President of the University, that LDC shall establish budgeting and financial allocations which are sufficient to meet the obligations of LDC to the University. LDC operations will be funded by an administrative fee assigned to approved projects. If LDC revenues are more than sufficient

to meet the prudent anticipated financial obligations of LDC based on a mutually approved annual budget of operating accounts and project accounts related to each Development Agreement (“Annual Budget”), it is the intent of the parties that excess revenue shall be distributed by LDC to the University.

3.0 REPORTS AND ACCOUNTING

3.1 Within ninety days after the end of its fiscal year, LDC shall provide the University with a copy of its Annual Report of all significant business activities undertaken during the preceding year, including the current financial statement, report of contractual engagements, and performance of LDC in satisfaction of its obligations under the approved Development Proposals and Development Agreements.

3.2 LDC shall provide the University with a copy of an annual audit performed by **the same auditor who audits the University of New Mexico, as required by the State Audit Rule.**

3.3 LDC shall provide any information regarding the financial operations of LDC to the University’s internal audit staff upon written request to the LDC President.

3.4 LDC shall establish a financial accounting system following generally accepted accounting principles and which allows for required integration with the then effective accounting reporting system of the University.

3.5 LDC shall provide periodic financial statements to the Finance and Facilities Committee and the Board of Regents no less than annually.

UNIVERSITY AGREEMENTS

4.0 THE UNIVERSITY'S PRIORITIES AND LONG TERM OBJECTIVES

- 4.1 The University agrees to provide LDC with a clear statement of University long- and short-range real estate development and institutional planning goals and objectives, including University master plans, to enable LDC to operate, manage, maintain, and plan for future service requirements.
- 4.2 LDC will use competitive methods approved by the UNM Board of Regents to identify development opportunities and shall bring recommended development proposals to the Board of Regents for consideration prior to the completion of the negotiation with the proposed developer.
- 4.3 The Board of Regents agrees to consider development opportunities brought to it by LDC and to determine whether each recommended development proposal is in be in the best interests of the University.

5.0 STAFF AND FACILITIES SUPPORT

- 5.1 Pursuant to the terms of a staffing plan for LDC approved by the University President, the University agrees to provide the staff reasonably necessary to enable LDC to meet its obligations under this Agreement and each Development Proposal and Development Agreement until sufficient cash flow is available to LDC to support independent staff. It is understood that the formation, organization, and administration of service functions of LDC may result in reassignment of University staff and/or

changes to specific staffing and staff functions of the assigned personnel.

The parties to this Agreement intend to provide for as little disruption to

University staff assignments as possible. With respect to all University

staff assigned to LDC, the personnel policies and practices of the

University shall be applied by LDC. The President of LDC shall

coordinate and review all assigned staff activities with the University's

Human Resources Department. Any staff assigned by the University shall

be treated as contract staff of LDC.

5.2 The University Human Resources Department will assist the President of LDC in employment, benefits management, and training functions as needed.

5.3 The University agrees to make available general business office and associated work space on campus to LDC to the extent such space is available at no cost to LDC.

6.0 CASH AND INVESTMENT MANAGEMENT

6.1 The University will serve as the fiscal agent of LDC and shall establish agency accounts exclusively for the conduct of LDC business activities. LDC is authorized to establish a bank account for the purpose of paying LDC expenses. Cash and investment management of LDC project accounts shall be provided by the University at no cost to LDC. All interest earnings on LDC accounts or investments held by the University shall be retained by, and used for, the exclusive benefit of LDC.

6.2 Direction of cash and investment management of LDC operating accounts

shall be provided by the LDC Board of Directors, or their assignee, consistent with provisions of the Service Agreement.

7.0 TERMINATION AND DISSOLUTION

7.1 This Agreement may be terminated by the University, effective upon written notice to LDC at least thirty (30) days in advance thereof. Upon termination of this Agreement and subject to any prior rights of any creditors of LDC, all property of LDC shall be transferred to the University or other successor organization designated by a resolution of the Board of Regents of the University of New Mexico.

7.2 If LDC is dissolved or liquidated, all property of LDC shall, subject to any prior rights of any creditors of LDC, be transferred to the University.

8.0 MISCELLANEOUS

8.1 LDC and the University agree that, at all times and for all purposes of this Agreement, LDC, as an independent legal entity, shall act as an independent contractor of the University and not as the University's agent. Within the limits and restrictions of the New Mexico Tort Claims Act, Section 41-4-1 et seq. NMSA 1978, each party agrees to be responsible for its own negligent acts or omissions which may occur during the performance of this Agreement and which result in claims by individuals or entities not parties to this Agreement.

8.2 No amendment to this Agreement shall be valid unless made in writing

and signed by both parties. No oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof, unless made in writing between both parties, shall be binding on either of the parties.


8.3 All official notices required under this Agreement shall be given as follows:

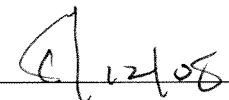
Notice to the University: EVP for Administration, COO & CFO
University of New Mexico
MSC05 3350
Albuquerque, NM 87131-0001

Notice of LDC: President
Lobo Development Corporation
University of New Mexico
Albuquerque, NM 87131

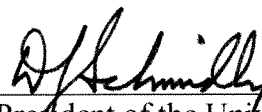
IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed.

LOBO DEVELOPMENT CORPORATION

BY: 
Chairman of the LDC Board

Date: 

THE REGENTS OF THE
UNIVERSITY OF NEW MEXICO

BY: 
President of the University

Date: 