

**LUNA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**Barbara L. Reedy**  
Member

**Linda M. Smrkovsky**  
Chairperson

**John S. Sweetser**  
Member

**Thursday, February 22, 2018  
4:00 p.m.  
Special Meeting  
Luna County Courthouse**

1. **Call to Order:** Chair Smrkovsky to commence meeting (At this time, please silence your cell phones and any other electronic devices) Pledge of Allegiance, State Pledge
  
2. **Roll Call:**
  
3. **Approval of Agenda:**
  
4. **Public Comment:** The Public has the opportunity to provide comment at this time pertaining to items on the agenda only. Please be advised that this is not a question and answer period. Your comments specific to the agenda items will be limited to three minutes unless the Board of County Commissioners requests more information. The time limit and opportunity to speak is given in an effort to allow public input on business matters of the County to move the agenda forward in a prompt yet efficient manner. Comment will not be allowed on individual agenda items as they are discussed by the Commissioners during new business.
  
5. **New Business:**
  - a. Resolution 18-12 Authorizing a Lease Agreement between Luna County and Mimbres Memorial Hospital and delegating authority to the County Manager to revise the lease agreement as may be required by the State Board of Finance.  

**MOTION AND VOTE          ROLL CALL**
  
6. **Discussions:**
  - a. Chamber of Commerce Presentation and Discussion of Funding  

**DISCUSSION ONLY**
  
6. **Adjourn:**

*Be it remembered that at a regular meeting of the Luna County Board of County Commissioners in Deming New Mexico, on the 22nd day of February 2018, the following proceedings were had and entered of record.*

**RESOLUTION #18-12**

**AUTHORIZING A LEASE AGREEMENT BETWEEN LUNA COUNTY AND  
MIMBRES MEMORIAL HOSPITAL**

**WHEREAS**, the County owns a commercial building at 1510 S. Slate Street, Deming, New Mexco; and

**WHEREAS**, the Deming Hospital Corporation d/b/a Mimbres Memorial Hospital, a New Mexico Corporation, wishes to the lease the aforementioned property for use as the Mimbres Memorial Hospital Outpatient Rehabilitation.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Board of County Commissioners of Luna County has determined that it is in the best interests of Luna County to lease the commercial building at 1510 S. Slate Street, Deming, New Mexico on the terms and conditions contained in the Lease Agreement.
2. An appraisal having been prepared and indicating the fair market value rental price which the parties have accepted as the appropriate rental fee.
3. The County Manager is authorized and directed to submit the Lease Agreement to the State Board of Finance, along with such other documents as may be required by the State Board of Finance in order to secure approval in accordance with state law. The County Manager is further authorized and directed to take such other actions consistent with the intent of this Resolution to complete the real property lease to Deming Hospital Corporation d/b/a/ Mimbres Memorial Hospital.
4. The County Manager shall be authorized, and the Commission hereby delegates to the County Manager the authority to execute and deliver on behalf of the Board of County Commissioner of Luna County Lease Agreement with any revisions thereto that the State Board of Finance may require or that the County Manger determines is necessary or appropriate in order to permit the parties to proceed to a closing of the real property lease, provided that any revisions of the Lease Agreement or other requirements for proceeding with the execution mandated by the State Board of Finance are approved by the County's Attorney.
5. This Resolution shall be in full force and effect immediately upon passage and approval by the Board of County Commissioners of Luna County.

**Done at Deming, New Mexico this 22nd day of February, 2018**

**Luna County Board of County Commissioners**

**ATTEST:**

\_\_\_\_\_  
**Barbara L. Reedy, Member**

\_\_\_\_\_  
**Andrea Rodriguez, County Clerk**

\_\_\_\_\_  
**Linda M. Smrkovsky, Chair**

\_\_\_\_\_  
**John S. Sweetser, Member**

## LEASE AGREEMENT

**THIS AGREEMENT** made this \_\_\_\_ day of February, 2018, but effective March 1, 2018, by and between the Board of County Commissioners of Luna County, New Mexico, hereafter referred to as Lessor and Deming Hospital Corporation d/b/a Mimbres Memorial Hospital, hereafter referred to as Lessee and whose address is 1510 S. Slate St., Deming, New Mexico 88030.

### RECITAL

**WHEREAS**, the Lessor owns a commercial building business at 1510 S. Slate St., Deming, New Mexico and the owner desires to contract with Lessee for the operation of the Mimbres Memorial Hospital Outpatient Rehabilitation business and to lease the building in which said business is being conducted.

### **IT IS THEREFORE MUTUALLY AGREED AS FOLLOWS:**

**1.0**            **Lease and Term.** Lessor, in consideration of full performance by Lessee of the terms and conditions herein contained, grants and leases to Lessee the right to use the commercial building at 1510 S. Slate St, Deming, New Mexico to operate the Mimbres Memorial Hospital Outpatient Rehabilitation for a period of three (3) years commencing March 1, 2018, and terminating February 28, 2021.

**2.0**            **Renewal.** Unless sooner terminated as herein provided and provided Lessee is not in default, the parties shall have the right and option to continue it in full force and effect as to all its terms, provisions and conditions for two additional three (3) year terms by both parties signing a written notice thereof not less than thirty (30) days prior to the expiration of the initial term.

**3.0**            **Payment.** For consideration of this lease, Lessee agrees as follows:

**3.1.** To pay to Lessor the base annual sum of Fifty One Thousand Eight Hundred Forty Dollars (\$51,840.00) without notice or demand by the payment of monthly installments of Four Thousand Three Hundred Twenty Dollars (\$4,320.00) in advance on the first day of each month during the term hereof or any renewal term, commencing March 1, 2018.

**3.2**            In addition to the base annual sum in Section 3.1, the Lessor shall construct improvements to said property at the request and expense of the Lessee in the amount of Forty-six Thousand Eighty Dollars (\$46,080.00) payable as an Improvement Surcharge over the initial term of this lease without notice or demand by monthly installments of One Thousand Two Hundred Eighty Dollars (\$1,280.00) with no pre-payment penalty and the outstanding balance due in full in the event this Lease is terminated prior to natural end of the initial term of this lease on February 28, 2021.

**3.3**            Unless the Improvements Surcharge is pre-paid, the total monthly lease payment for the initial term of this lease shall be Five Thousand Six Hundred Dollars

(\$5,600.00) without notice or demand in advance on the first day of each month during the term hereof or any renewal term, commencing March 1, 2018.

**3.4** In the event this Lease is renewed as provided herein, the Payment shall be set in accordance with a Market Lease Appraisal performed by a certified Appraiser chosen by the Lessor and at the Lessor's expense.

**3.5** TIME IS OF THE ESSENCE HEREIN.

**4.0** **Termination.**

**4.1** Either party hereto may terminate the Lease Agreement with written notice to the other party no less than six (6) months in advance, provided that no termination shall be effective unless and until the Improvement Surcharge is paid in full by the Lessee.

**4.2** Upon the termination or expiration of this Lease Agreement, the Lessee shall quit and deliver up the premises, peaceably and quietly, in as good order and condition as the same now are or may be put into, reasonable use and wear and damage by the elements excepted, to Lessor or Lessor's heirs, personal representatives, assigns, successors in interest, agents, or attorneys, at the expiration of the term of this lease.

**4.3** That no holding over after the expiration of this Lease Agreement, whether with or without the consent of Lessor shall operate to extend or renew this Lease Agreement, and that any such holding over shall be construed as a tenancy from month to month at the rental which shall have been payable immediately prior to commencement of such holding over and shall not exceed six (6) months.

**5.0** **Use of Premises.** The Lessee shall have the right to use the premises for any lawful purpose, including but not limited to the operation for the provision of medical, healthcare or rehabilitation provided such use complies with all laws and lawful ordinances applicable to the premises. Lessee shall use and occupy the premises in a careful, safe and proper manner for the specified services or other lawful uses and shall not commit any waste or nuisance thereon, and will maintain the premises in a clean, neat and orderly condition. Lessee acquires no interest in any of the premises, equipment, appliances, furniture, fixtures or other property now on the premises or which may be hereafter placed thereon by Lessor, except the right to use same, and will return same at the termination or cancellation of this agreement in as good a condition as at the commencement of this agreement, normal wear and tear incident to proper use thereof and damage by the elements excepted. In the event Lessee is unable to return any such personal property, it shall replace same with similar property of like value or pay owner the market value therefor. Lessee shall conduct no other business at the premises.

**6.0** **Medical Waste and Environmental Indemnification.**

**6.1** The Lessee shall be responsible for the storage, proper disposal and clean-up of any contamination resulting from hazardous substances or medical waste generated as

a result of the Lessee's occupation of and operation on the leased premises. The Lessee shall not burn or incinerate any rubbish, garbage, or debris at, in, or about the leased premises, and shall cause all hazardous substance and medical waste containers, rubbish, garbage, and debris accumulated therein to be stored within the demised premises, to be hauled away therefrom for disposal prior to the accumulation of any substantial quantity to be disposed of in accordance with applicable standards.

**6.2** Notwithstanding any other provision of this Lease Agreement to the contrary, Lessee agrees to indemnify and hold Lessor, its successors and assigns, free and harmless against all demands, claims, losses, damages, costs (including reasonable attorney's fees) as a result of any environmental impairment, losses, liability, clean up responsibility or obligation of any nature, relating to hazardous substances and medical waste or otherwise on said property as a result of the Lessee's occupation or and operation on the leased premises, whether to private parties, governmental authorities or otherwise. Lessee shall furnish Lessor with true and correct copies of all closure procedures and any clearance certificates issued by the Environmental Improvement Division of the State of New Mexico or any other environmental authority after any environmental incident and showing no contamination or pollution.

**7.0** **Repairs, Maintenance and Improvements to Real Property.** With respect to the repairs, maintenance and improvements to the real property leased hereunder, the parties agree:

**7.1** Lessor agrees to pay the costs and expenses for certain construction and improvements and to promptly to make application for all permits necessary for the construction on the leased premises, said construction and improvements as shown on Exhibit A attached hereto. Lessor, after obtaining the necessary permits, shall proceed with all diligence to attempt to have said construction and improvement completed within sixty (60) days from the date said permits are obtained.

**7.2** The Lessee shall keep the interior of the leased premises in as good order and repair as it is at the date of the commencement of this lease, reasonable wear and tear and damage by accidental fire or other casualty excepted.

**7.3** The Lessee may install or cause to be installed such equipment and trade and other fixtures as are reasonably necessary for the operation of its business. Such equipment and trade and other fixtures shall remain the personal property of the Lessee, and title thereto shall continue in the owner thereof, regardless of the manner in which same may be attached or affixed to the demised premises. In the event such equipment and trade or other fixtures are subject to a lien or title retention instrument at the time of attachment, Lessor agrees that the holder of any such lien or title retention instrument shall have the right and be able to enforce the same as stated therein.

**7.4** The Lessee shall not permit the leased premises or any part thereof to be used in any manner that will impair the structural strength thereof or permit the installation of any machinery or apparatus the weight or vibration of which may tend to injure or impair the foundations or structural strength thereof.

7.5 The Lessor shall be responsible for repairing and maintaining the ceiling and interior and exterior walls, keeping all glass, light bulbs or lighting tubes, all plumbing and toilet facilities and other fixtures installed for the general supply of hot and cold water, heat, air-conditioning, and electricity in good order and repair.

7.6 The Lessee shall not make any alterations, additions or improvements whatsoever in or about the premises without first obtaining the written consent of Lessor therefor, and if consent shall be obtained therefor, all such alterations, additions, and improvements shall immediately merge with and become a part of the realty; it is understood, however, that Lessee may remove from the premises upon the expiration of this term all personal property belonging to it which can be removed without materially damaging the premises.

7.7 In the event Lessee shall make any such improvements or repairs, it shall not allow nor permit any lien for labor or materials to be imposed against the property, and shall at all times after the execution of this lease, keep the premises posted of the non-liability of the Lessor by posting a NOTICE OF NON-LIABILITY in a conspicuous place before any labor or materials are furnished.

7.8 The Lessee, at its cost and expense, shall be responsible for security services or protection for the leased premises, provided that the introduction or connection to electrical wiring is only allowed with the advance written permission of the Lessor and in accordance with the Lessor's terms, conditions and standards.

## **8.0 Other Obligations of Lessor.**

8.1 The Lessor shall pay all ad valorem (property taxes) and assessments on the land, buildings and personal property therein owned by Lessor and being leased herein.

8.2 The Lessor shall be responsible for repairs and maintenance of the roof and exterior walls of the premises not caused by the negligent or intentional acts or omissions of the Lessee, the Lessee's employees or agents. The Lessee shall give prompt notice to the Lessor of the necessity for any repairs and maintenance that is the responsibility of the Lessor hereunder. Lessor shall not be responsible for any damages to any person or property of the Lessee, Lessee's employees, agents or patrons resulting because of Lessee's failure to give such prompt notification.

8.3 The Lessor shall maintain fire and extended coverage on the building, fixtures and equipment used in the business and owned by Lessor but shall not be required to maintain such insurance on trade fixtures or equipment of the Lessee.

9.0 **Expenses, Fees, and Assessments.** The Lessee shall be liable and agrees to pay all license, permit and inspection fees, if any, occupation and personal property taxes, and all water, sewer, trash, gas, telephone and electric light and power charges assessed on or charged against the premises or the use thereof and shall be liable for and agrees to pay all business

expenses incurred in the operation of said business and the use of the premises except such expenses that have been agreed herein to be paid by Lessor. Janitorial services are at the expense of the Lessee.

**10.0**            **Compliance with Laws.** Lessee shall comply with and obey all laws, ordinances, rules, regulations and requirements of the federal, state, city, county or other governmental subdivision in which the business and premises are located, so far as same affect the use and occupancy of the premises and the operation of the business, and shall use or allow the premises to be used in any way so as not to create any nuisance or increase the existing rate of fire insurance. The Lessee shall not make or permit any noise, odor or act that is objectionable or that emanates from the lease premises which creates or causes a nuisance on the lease premises.

**11.0**            **Indemnity.**

**11.1** By entering into this Lease Agreement, 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 in connection with this agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and is not intended to modify, in any way, the parties' liabilities as governed by the federal, state, local, or common law of New Mexico Tort Claims Act. The Lessor and its "public employees" as defined in the New Mexico Tort Claims Act, does not waive sovereign immunity, does not waive any defense, and does not waive any limitation of liability pursuant to law. No provision in this Lease Agreement modifies or waives any provision of the New Mexico Tort Claims Act. Any privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, and relief, disability, workers' compensation and other benefits which apply to the activity of the officers, agents or employees of the Lessor when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially.

**11.2** The Lessee, for itself, and its heirs, personal representatives and assigns, hereby releases, relinquishes, discharges, and agrees to indemnify Lessor, its Commissioners, agents, heirs, personal representatives and assigns, against all claims, demands, and liability for any loss, damage, injury or other casualty to property, whether it be that of either of the parties hereto or of third persons, and to persons, whether they be third persons or employees of either of the parties hereto, caused by, growing out of, or happening in connection with Lessee's use, operation and occupancy of the lease premises or any buildings, structures, equipment, or appliances located or to be located thereon, or by reason of any other casualty.

**11.3** Lessee agrees to obtain and maintain in force for all terms of this Lease Agreement the following coverages naming both the Lessor and Lessee as additional insureds:



**11.3.1** Public or general liability insurance policy in the sum of \$1,000,000 minimum coverage for any single injury or death and \$3,000,000 for annual aggregate claims for injury of death;

**11.3.2** Property damage coverage in the amount of \$100,000 per occurrence and said policy shall insure both Lessee and Lessor;

**11.3.3** Casualty insurance insuring the Lessee against loss or damage to its equipment and all other personal property in the leased premises, typically called an "all risk" policy.

**11.4** Lessee shall carry at all times during the terms of this Lease Agreement, with a first line insurance carrier, adequate workmen's compensation insurance as may be required by law.

**11.5** Lessee shall, at the request of the Lessor, furnish or cause to be furnished to Lessor, copies of said policies and endorsements thereto evidencing compliance with this paragraph, and will promptly pay all premiums on said policies. Notwithstanding anything contained herein, Lessee's obligation to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy; provided however, the coverage afforded Lessor shall not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting the requirements hereof.

**11.6** In the event the demised premises shall be damaged or destroyed by fire, or other casualty so insured against, Lessee shall claim no interest in any insurance settlement arising out of any such loss where premiums are paid by Lessor, or where Lessor is named as the sole beneficiary, and shall execute any and all documents required by Lessor or the insurance company or companies that may be reasonably necessary for use in connection with settlement of any such loss.

**12.0** **Right of Entry.** Lessor reserves the right of entry for itself, its representatives, agents, and employees for the purpose of examination and inspection of the premises and any property of Lessor located thereon.

**13.0** **No Transfer or Assignment.** This Lease Agreement is personal to Lessee and shall not be assigned in whole or in part, nor shall any rights or privileges herein granted be sold, transferred or assigned without the written consent of Lessor.

**14.0** **No Warranties.** The property being leased hereunder is conveyed and Lessee agrees to take same "as is" and without any warranties, either express or implied, and Lessee declares that it is leasing said business and premises on its own examination and judgment and not through any representations made by Lessor or any agent for Lessor as to physical condition, location, value or earning capacity or potential.

**15.0** **Notice.** All notices to be given hereunder or otherwise shall be in writing. Any such notice shall be sufficient if it is deposited in the United States mail, postpaid, certified, return receipt requested, and addressed to the party to whom it is directed at the address specified

below:

LESSEE:  
Deming Hospital Corporation d/b/a  
Mimbres Memorial Hospital

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LESSOR:  
Board of County Commissioners of  
Luna County New Mexico  
Attn: County Manager  
700 S. Silver Ave.  
Deming, NM 88030

**16.0**            **Relationship of Parties.** The parties hereto are independent public agencies and will not be deemed to be partners, joint ventures or agents of each other for any purpose. The parties intend that a Lessor - Lessee relationship will be created by this contract.

**17.0**            **Third-Party Beneficiary.** It is specifically agreed between the parties executing this Lease Agreement that it is not intended by any of the provisions of any part of the Lease Agreement to create in the public or any member thereof a third-party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), injury(ies) to person(s), damage(s) to property(ies) and/or any claim(s) and/or cause(s) of action whatsoever pursuant to the provisions of this agreement.

**18.0**            **Casualty Damage.** If, in the opinion of Lessee, the leased premises are rendered substantially unfit for the occupancy or use herein contemplated by any casualty or peril insured against in a standard fire and extended coverage insurance policy of the type then commonly purchased by the Lessor (such a casualty or peril being hereinafter referred to as an insurable casualty or peril), Lessee at its option may require the Lessor to promptly and diligently restore the leased premises to the condition existing prior to the occurrence of the insurable casualty or peril or may cancel and terminate this lease. If, in the opinion of the Lessee, the leased premises are rendered substantially unfit for the occupancy or use herein contemplated by any casualty or peril other than an insurable casualty or peril, or by any casualty or peril whatever, the Lessee may either restore the leased premises at its expense or Lessee may terminate this lease effective as of the date of occurrence of the casualty or peril. If, in the opinion of Lessee, the leased premises are not thereby rendered substantially unfit for the occupancy or use herein contemplated, Lessor shall promptly and diligently restore the leased premises at Lessor's expense to the condition existing prior to the occurrence of the casualty or peril; provided, however, in the event the destruction or casualty is the proximate result of the negligent acts or omissions of the Lessee's employees, agents or sublessees, then said restoration shall be at the expense of the Lessee to the extent not otherwise covered by existing insurance policy proceeds.

**19.0**            **Default.**

**19.1** In the event Lessee shall default in the payment of the monthly rental as provided herein, Lessor shall promptly so notify Lessee in writing, and failure of Lessee to cure such default within ten (10) days after receipt of such notice shall, at the option of the Lessor work as a forfeiture of this lease, or Lessor may enforce performance in any manner provided by law, and Lessor's agent or attorney shall have the right without further notice or demand to re-enter and remove all persons from Lessor's property

without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or breach of covenant, or Lessor's agent or attorney may resume possession of the property and may relet the same for the remainder of the term at the best rental such agent or attorney can obtain for the account of Lessee, who shall pay any deficiency, and Lessor shall have a lien as security for such rental upon the fixtures and equipment belonging to Lessee which are on the demised premises.

**19.2** In the event Lessee shall default in the performance of any of the terms or provisions of this lease other than the payment of monthly rent, Lessor shall promptly so notify Lessee in writing. If Lessee shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such character as to require more than thirty (30) days to cure and Lessee shall fail to commence to do so within thirty (30) days after receipt of such notice and thereafter diligently proceed to cure such default, then in either such event Lessor may cure such default and such expense shall be added to the rent otherwise due, or Lessor may cancel this lease and be entitled to the rights and remedies stated herein. Any such amount paid by Lessor shall accrue interest at the rate of eighteen percent (18%) per annum until paid.

**19.3** In the event Lessor shall default in the performance of any of the terms or provisions of this lease, Lessee shall promptly so notify Lessor in writing. If Lessor shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such character as to require more than thirty (30) days to cure and Lessor shall fail to commence to do so within thirty (30) days after receipt of such notice and thereafter diligently proceed to cure such default, then in either such event Lessee may cure such default and such expense plus interest at the rate of eighteen percent (18%) per annum shall be deducted from the rent otherwise due or cancel and terminate this lease.

**19.4** No re-entry, repossession, or reletting of the demised premises shall be construed as an election by Lessor to terminate this Lease unless a written notice of such intention is given by Lessor to Lessee, and notwithstanding any such operation or reletting without terminating this Lease, Lessor may at any time thereafter elect to terminate this Lease in the event at such time Lessee remains in default hereunder.

**19.5** In the event the premises are relet by the Lessor as specified herein, the Lessee shall remain liable for the unpaid balance of the lease rental for the remainder of the lease term to the extent of any deficiency resulting from the reletting including reasonable attorneys' fees and other costs of reletting.

**19.6** That all remedies of Lessor hereunder are cumulative and are not exclusive of any other remedy to which Lessor may be lawfully entitled. Lessor's failure to require strict performance of any agreement, covenant, or condition of this Lease, or Lessor's receipt of any lease installment with knowledge or the breach of any agreement, covenant, or condition hereof, shall not be deemed a waiver of such breach and shall not prevent Lessor from thereafter terminating this Lease or otherwise demanding strict performance of its terms either for such breach or for prior or subsequent breaches hereof.

**19.7** No waiver by either party of any breach of any of the covenants or conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenants or conditions.

**20.0** **Breach.** In the event Lessee be adjudicated a bankrupt or becomes insolvent, or if a receiver, whether permanent or temporary, of the Lessee's property, or any part thereof, shall be appointed by a court of competent authority, or if Lessee shall make a general assignment for the benefit of its creditors, or if any judgment against Lessee remains unsatisfied or unbonded of record for thirty (30) days or longer, or in the event Lessee defaults in the performance of any of the terms and conditions of this Lease Agreement on its part to be kept and performed including but not limited to payment of the monthly lease installments, and said default be not cured within ten (10) days after service of written notice of default upon Lessee, then Lessor at its option, and without prejudice to any and all remedies which it may otherwise have, may forthwith terminate this Lease Agreement and said lease by service of written notice of intention so to do upon Lessee and in such event Lessee agrees to immediately vacate the premises. No waiver by Lessor of any default in performance on the part of Lessee, time being of the essence hereof and of performance hereunder, or like waiver by Lessor of any breach or a series of breaches, of any of the terms, covenants, and conditions of this Lease Agreement shall constitute a waiver of any subsequent breach of waiver of said terms, conditions, or covenants.

**21.0** **Sufficient Appropriations.** In accordance with NMSA Section 6-6-11 and the New Mexico Constitution, Article IX, Section 11, if the performance of any of Landlord's obligations under this Lease, whether conditional or unconditional, require the expenditure of funds those obligations are contingent upon sufficient appropriations and authorization being made by the Legislature for the performance of this Lease. Nothing in this Article XXI shall be interpreted as imposing any obligation on Landlord to expend funds.

**22.0** **Miscellaneous.**

**22.1** In the event it becomes necessary for Lessor or Lessee to institute any action at law or in equity against the other to secure or protect right under this Agreement, the prevailing party shall be entitled to recover in any judgment entered therein in its favor such reasonable attorneys' fees as may be allowed by the court, together with such court costs and damages as provided by law.

**22.2** The Lessee has been advised to seek its own independent legal counsel.

**22.3** The validity, construction and effect of this Lease Agreement will be governed by the laws of the State of New Mexico and subject to litigation only in the Sixth Judicial District of the State of New Mexico.

**22.4** Should any part of this Lease Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Lease Agreement has been executed with the invalid portion thereof eliminated and it is hereby declared the

intention of the parties hereto that they would have executed the remaining portion of this Agreement without including therein any such part, parts, or portion which may for any reason be hereafter declared invalid.

**22.5** This Lease Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the said parties with respect to said matter.

**22.6** This Lease Agreement, and any term hereof, can only be amended by a document in writing signed by the party sought to be charged. This Lease Agreement and any amendment to this Lease shall be subject to approval by the State Board of Finance.

**22.7** This Lease Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives and assigns of the parties hereto.

**22.8** The paragraph captions as headings appearing herein are for convenience only and are not part of this lease and do not in any way limit or amplify the terms and provisions of this lease.

**22.9** The Lessor makes no representations or warranties, express or implied, of any kind whatsoever regarding the condition of the premises and Lessee acknowledges his inspection of same and acceptance thereof in and "AS IS" condition.

**22.10** If this Lessee executed this lease as a corporation, each of the persons executing this lease on behalf of the Lessee covenants and warrants that the Lessee has qualified to do business in the State of New Mexico; the corporation has the full right and authority to enter into this lease agreement and each person signing on behalf of the corporation was authorized to do so.

**22.11** The shall defend the Lessee in the quiet enjoyment and possession of the leased premises during the initial term and any renewal terms of this Lease Agreement.

**22.12** The leased premises and all improvements thereto comply with the provisions of the Americans with Disabilities Act in all material respects.

**22.13** With the exception of the Lessee's payment obligations, if either party shall be delayed or hindered by reason of any matters beyond the reasonable control of such party (force majeure), then such party shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be extended for a period equivalent to the period of such delay. In such event, this Lease Agreement and the obligations of both parties to perform and comply with all of the other terms and provisions of this Lease Agreement shall in no way be affected, impaired or excused.

**IN WITNESS WHEREOF**, the parties have hereunto signed and sealed this

Lease Agreement the day and year first above written.

**LESSOR:**  
Deming Hospital Corporation d/b/a  
Mimbres Memorial Hospital

**LESSEE:**  
Board of County Commissioner of  
Luna County, New Mexico

By \_\_\_\_\_  
<Name><Title>

By \_\_\_\_\_  
Ira T. Pearson,  
County Manager