



THE CITY OF SAN DIEGO

June 15, 2006

Dear Lessees:

Effective immediately please make a correction to the General Provisions section of your lease outline with the City of San Diego.

Under the NOTICES section there is a paragraph informing lessees where to mail any written notices. This needs to be changed to the following address:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700 (M. S. 51A)
San Diego, CA 92101-9586

Sincerely,

James Barwick
Real Estate Assets Director

KC/cj

I:\WPO\2006\LESSEES.doc



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

DUPLICATE

DUPLICATE ORIGINAL



THE CITY OF SAN DIEGO

and

SAN DIEGO FAMILY CARE d.b.a
MID-CITY COMMUNITY CLINIC

FIFTEEN-YEAR LEASE

DOCUMENT NO. RR-299359

FILED JUN 21 2004

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

RECEIVED
CITY CLERK'S OFFICE

04 JUN 29 AM 11:59 *g*

SAN DIEGO, CALIF.

LEASE OUTLINE

SECTION 1: USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Related Council Actions</u>	1
1.4 <u>Quiet Possession</u>	2
1.5 <u>Easements and Reservations</u>	2
1.6 <u>Competent Management</u>	2
1.7 <u>Operation of Facilities</u>	3
1.8 <u>CITY Use</u>	3
1.9 <u>Political Activities</u>	3
1.10 <u>Public Use</u>	3
1.11 <u>Parking</u>	3
SECTION 2: TERM	3
2.1 <u>Commencement</u>	3
2.2 <u>Right to Extend</u>	4
2.3 <u>Holdover</u>	4
2.4 <u>Surrender of Premises</u>	4
SECTION 3: CONSIDERATION AND ADMINISTRATIVE FEE	5
3.1 <u>Time and Place of Payment</u>	5
3.2 <u>Consideration and Administrative Fee</u>	5
3.3 <u>Delinquent Fees</u>	7
3.4 <u>Inspection of Records</u>	7
SECTION 4: ASSIGNMENT	8
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	8
4.2 <u>Assignment and Subletting</u>	8
4.3 <u>Encumbrance</u>	9
4.4 <u>Defaults and Remedies</u>	9
4.5 <u>Eminent Domain</u>	10
SECTION 5: INSURANCE RISKS/SECURITY	11
5.1 <u>Indemnity</u>	11
5.2 <u>Insurance</u>	11
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	14
6.1 <u>Acceptance of Premises</u>	14
6.2 <u>Entry and Inspection</u>	14
6.3 <u>Maintenance</u>	15

6.4	<u>Five-Year Maintenance Plans and Schedules</u>	15
6.5	<u>Improvements/Alterations</u>	15
6.6	<u>Utilities</u>	15
6.7	<u>Construction Bond</u>	15
6.8	<u>Liens</u>	16
6.9	<u>Taxes</u>	16
6.10	<u>Signs</u>	16
6.11	<u>Ownership of Improvements and Personal Property</u>	16
6.12	<u>Development Plan</u>	18
6.13	<u>Facilities Program Plan</u>	18
6.14	<u>Unavoidable Delay</u>	18
6.15	<u>Hazardous/Toxic Waste</u>	18
6.16	<u>Asbestos Disclosure</u>	19
SECTION 7:	GENERAL PROVISIONS	20
7.1	<u>Notices</u>	20
7.2	<u>Compliance with Law</u>	20
7.3	<u>CITY Approval</u>	20
7.4	<u>Nondiscrimination</u>	20
7.5	<u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	21
7.6	<u>Partial Invalidity</u>	21
7.7	<u>Legal Fees</u>	21
7.8	<u>Number and Gender</u>	22
7.9	<u>Captions</u>	22
7.10	<u>Entire Understanding</u>	22
7.11	<u>CITY Employee Participation Policy</u>	22
7.12	<u>Drug-free Workplace</u>	22
7.13	<u>Disabled Access Compliance</u>	23
7.14	<u>Additional Consideration to CITY</u>	24
7.15	<u>Water Quality - Best Management Practices and Storm water Pollution Prevention Plan</u>	24
7.16	<u>Annual Budget and Programs</u>	25
SECTION 8:	SPECIAL PROVISIONS	25
8.1	<u>Corporate Authority</u>	25
8.2	<u>CITY Option to Purchase</u>	25
8.3	<u>Supersedure</u>	25
8.4	<u>Relocation Payments</u>	26
8.5	<u>Noxious Weeds, Pests, and Erosion</u>	26
8.6	<u>No Warranty</u>	26
SECTION 9:	SIGNATURES	27
9.1	<u>Signature Page</u>	27

SECTION 10: EXHIBITS	28
10.1 <u>Parcel Map and Description of Premises - EXHIBIT "A"</u>	28
10.2 <u>Corporate Name</u>	29
10.3 <u>General Development Plan</u>	30
10.4 <u>Estimate and Scope of Work - Basement Repairs and Renovation- Exhibit "B"</u>	31
10.5 <u>Schedule of Days and Hours of Operation</u>	32

**CITY OF SAN DIEGO
NON-PROFIT LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and SAN DIEGO FAMILY CARE, d. b. a. MID-CITY COMMUNITY CLINIC, a private, nonprofit corporation for public benefit, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property consisting of a two-story brick building, a one-story office building containing a combined total of approximately 15,000 square feet, and parking for 10-12 vehicles, located on a .48 acre lot containing at 4290 Polk Avenue, in the City of San Diego, County of San Diego, State of California, which is further described and delineated in Section 10.1, Exhibit "A" hereof. Said real property is hereinafter called the "premises" or "leased premises."

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of managing and operating a health care clinic for low-income patients, and related non-profit social services and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue and purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other

governmental agency approvals which may be required for the development and operation of the leased premises.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom. , but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in managing and operating a health care clinic for low-income patients, and related non-profit social services and related activities in accordance with all applicable federal, state, and local regulations, and in a fiscally responsible manner.

- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 10.5, Schedule of Days and Hours of Operation, hereof. Any reduction in the schedule shall be subject to the prior written approval of the City Manager or his authorized representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.
- 1.8 CITY Use. LESSEE shall allow the CITY to use its conference room for meetings, free of charge, except when LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY'S use.
- 1.9 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by more than one candidate from different political parties, such as occurs at a "candidate forum" and similar events.
- 1.10 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.2, Uses, hereof.
- LESSEE shall, at all times during the lease term, maintain a CITY-approved sign identifying the property as CITY owned and available for public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location agreeable to CITY.
- 1.11 Parking. The parking lot on the premises shall be restricted to automobile parking for LESSEE'S employees, patients and visitors, and it shall not be used to store personal property.

SECTION 2: TERM

- 2.1 Commencement. The term of this lease shall be fifteen years (15) commencing on the first day of the calendar month following execution by the City Manager.

"Lease year" as used in this lease shall mean the twelve 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager or designee.

- 2.2 Right to Extend. LESSEE has the right to extend this lease for one additional ten (10) year term subject to all original agreements, considerations, covenants, and conditions hereof and upon the following additional terms and conditions:
- a. LESSEE shall give CITY written notice of its intention to extend the lease no less than one year prior to the lease expiration date;
 - b. LESSEE is not in default of this lease at the time the option is exercised; and
 - c. The City Manager shall have received and approved LESSEE'S most recent General Development Plan, as described in Section 6.12, Development Plan, hereof, requiring LESSEE to make additional substantial improvements to the premises, at its expense (including grant funds obtained by LESSEE) during the extension period. The City Manager shall, in his or her sole discretion, determine whether the proposed improvements are sufficient for extension of the lease.
- 2.3 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect.
- 2.4 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the premises.

SECTION 3: CONSIDERATION AND ADMINISTRATIVE FEE

- 3.1 Time and Place of Payment. The administrative fee defined in Section 3.2 below is due annually in advance on or before the first day of each lease year. All rents or fees required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, Suite 100, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Consideration and Administrative Fee.

- a. Consideration. LESSEE'S consideration to City for executing this lease is the public benefit LESSEE provides through operating a health care clinic for low-income patients, and related non-profit social services which greatly benefit the community. LESSEE shall also immediately expend approximately \$54,500 of its funds to make necessary repairs to the basement of the health clinic on the premises, as described in Attachment "B," Section 10.4 hereof, which by this reference is made part of this lease, and maintain the premises throughout the lease term, as provided in Section 6.3.
- b. Administrative Fee. LESSEE shall pay a fee of Two Thousand Six Hundred Twenty-One Dollars (\$2,621) per lease year ("Administrative Fee" or "Fee"), payable annually, to partially offset CITY'S costs of administering this lease. The Administrative Fee is subject to annual adjustments based on percentage increases in the Consumer Price Index ("CPI") as hereinafter provided.
- c. (1) CPI Adjustments. On the anniversary date of each lease year following the commencement date of this lease, the Fee shall be adjusted to reflect the percentage increase in the CPI based on the average of the indices for the third quarter (July, August, and September) of the calendar year prior to each adjustment.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If this index is no

longer published, the index for adjustment will be the U.S. Department of Labor's Comprehensive Official Index most comparable to the aforesaid index. If a Fee adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to CPI in any event.

In no event shall the adjusted Fee as established by the CPI be less than the Fee in existence immediately prior to the adjustment date. The failure of CITY to deliver timely notice of any Fee adjustment shall not constitute a waiver by CITY of its rights hereunder.

- (2) CPI Adjustment Computation. The Fee adjustment for each one (1) year period shall be calculated by CITY as follows:

The "adjustment multiplier" shall be established by dividing the "current index" by the "base index" as defined below.

The "base index" denominator for the calculation is 182.86. This is a fixed number representing the three (3) month average of index figures published by the CPI using the months of July, August, and September of 2002.

The "current index" numerator for the calculation is a variable number that shall be the three (3)-month average of index figures published by the CPI using the months of July, August, and September of the calendar year preceding the adjustment date.

The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of Two Thousand Five Hundred, Sixty-Two Dollars (\$2,562), which was the fee for 2003.

Example Calculation for Calendar Year 2004 Fee Adjustment

$$\begin{array}{rcl} \text{Current Index (Third Quarter 2003)} & 187.13 & \\ \text{-----} & = 1.023 & \text{(Adjustment Multiplier)} \\ \text{Base Index (Third Quarter 2002)} & 182.86 & \end{array}$$

The "base figure" is then multiplied by the adjustment multiplier to determine the new Fee. Using the foregoing example, the adjusted Fee is calculated as follows:

$$\begin{array}{rcl} \$2,562 & \text{(Base Figure)} & \\ \times 1.023 & \text{(Adjustment Multiplier)} & \\ \hline \$2,621 & \text{(Adjusted Fee, rounded up)} & \end{array}$$

- (3) Maximum Increase. Notwithstanding the foregoing, the Fee adjustments shall not increase the Fee in excess of six percent (6%) per calendar year.

3.3 Delinquent Fees. If LESSEE fails to pay the Administrative Fee when due, LESSEE will pay, in addition to the unpaid Administrative Fee, five percent (5%) of the delinquent amount due CITY. If the delinquent amount due in Fees is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) being a total of ten percent (10%), which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from the delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments be less than Twenty-five Dollars (\$25). LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

3.4 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this lease which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment that LESSEE pay additional consideration to CITY, as set forth in Section 7.14, Additional Consideration to CITY, hereof, commencing on the effective date of such proposed sublease of the entire or portion of the leasehold or assignment, and may further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.3 Encumbrance. LESSEE shall not encumber this lease, its leasehold estate, or its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security interest during the term of the lease.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty (30)-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Subsection 4.4a.(1) above is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty (30)-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the administration fee as it becomes due, plus damages.
- c. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any administrative fees is not a waiver of any default preceding the fee payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of

title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.

- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled but limited to any award attributable to the taking of, or damages, to LESSEE'S then-remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

- 5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability per claim, with a Six Million Dollar (\$6,000,000) aggregate limit. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
 - (2) The CITY shall provide Fire, extended coverage, and vandalism insurance policy on all insurable property, except personal property, on the premises in an amount to cover one hundred percent (100%) of the replacement cost, and LESSEE shall reimburse the CITY for its cost within 30 days after CITY requests reimbursement in writing. Any proceeds from a loss shall be payable to CITY, and the proceeds shall be placed in CITY'S trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
 - (3) Workers Compensation coverage on all LESSEE'S employees.
 - (4) Medical Liability Coverage, in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability per claim with a Six Million Dollar (\$6,000,000) aggregate limit. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insured. All insurance policies will name "The City of San Diego, its elected officials, officers, representatives, agents and employees" as additional insureds, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and

full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- c. Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- d. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.
- Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.
- e. Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer

to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenantable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that the premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to

keep the premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

- 6.3 Maintenance. LESSEE shall, prior to July 1, 2006, complete the repairs to the basement in the clinic building, at LESSEE'S cost of an approximately \$54,500, as further described in Exhibit "B," Section 10.4 hereof, which by this reference is made part of this agreement. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the lease term. LESSEE shall, at its expense, make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to CITY.
- 6.4 Five-Year Maintenance Plans and Schedules. At the end of the fifth lease year and at the end of each five year-term of the lease thereafter, LESSEE shall submit a Five Year Maintenance Plan and Schedule to the CITY for approval, which shall include LESSEE'S routine maintenance schedule, plus scheduled repairs, improvements and replacements LESSEE shall complete on the premises during the succeeding five year period, at no expense to CITY, to ensure good quality improvements are maintained on the premises and at all times.
- 6.5 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.6 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.

- 6.7 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.8 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.
- If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:
- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.9 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any administration fee due CITY.
- 6.10 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signsdecorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24

hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.11 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

- 6.12 Development Plan. As a requirement for LESSEE to extend its lease term, as provided in Section 2.2 Right to Extend, herein, LESSEE agrees to make further substantial improvements to the premises in accordance with the General Development Plan to be submitted by LESSEE to the City Manager for review and approval, including review for compliance with the California Environmental Quality Act. The City Manager shall, in his or her discretion, determine whether the proposed improvements are sufficient for extension of the lease. The General Development Plan, upon approval by the City Manager, shall be attached hereto and made part of this lease. The general contents and provisions to be included in the General Development Plan are described in Section 10.3 hereof. The City Manager shall have the authority to authorize subsequent changes to the approved General Development Plan provided that the proposed changes are consistent with the terms and conditions of this lease. Failure by LESSEE to comply with the requirements of this section or with the approved General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for construction completion in the General Development Plan of up to one (1) year without further City Council approval.
- 6.13 Facilities Program Plan. At the end of the (5th) fifth lease year and at the end of each additional five year periods of the lease, including any extension to term, LESSEE shall submit a Five-Year Facilities Program Plan which shall contain a description of scheduled programs planned for the succeeding five-year period. Each Facilities Program Plan shall be subject to review and approval by the City Manager as to reasonable investment to ensure that LESSEE continues to provide quality health care to the community and to satisfy LESSEE'S program requirements and the terms of this lease
- 6.14 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay annual administration fee as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay
- 6.15 Hazardous/Toxic Waste. LESSEE will not allow the installation of underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying,

discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation

and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.16 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from LESSEE disturbing any existing asbestos on the premises. LESSEE shall have a qualified contractor test for asbestos in the area of any construction and LESSEE shall protect the public from exposure to asbestos during any construction in accordance with local, State and Federal laws and health and safety codes.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

San Diego Family Care, Inc.
Attention: Director
4290 Polk Avenue
San Diego, CA 92105

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal

governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by CITY'S Equal Opportunity Contracting Program staff.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or lessees shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve (12) months immediately preceding

such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations ("Building Code") as defined in Section 18910 of the California Health and Safety Code ("Title 24") and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language for each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

- 7.14 Additional Consideration to CITY. LESSEE and CITY agree that in the event of a subletting of the majority portion of the leasehold; LESSEE shall pay to CITY two percent (2%) of the amount paid LESSEE in consideration of such sublease. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearance regarding claims and judgements. Prior to CITY'S consent to any majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together an acknowledgment from the proposed sublease as the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction. Any subletting in violation of the terms and conditions of this section shall be void.
- 7.15 Water Quality - Best Management Practices and Storm water Pollution Prevention Plan. CITY and LESSEE are committed to the implementation of programs to

manage activities on the Leased Premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SWPPS") approved by CITY's Stormwater Management Program. LESSEE shall submit for review and approval by City Manager or its designee, within ninety (90) days of the execution of this Lease, BMP and SWPPS that will control erosion and reduce the amount of pollutants and other sediments discharged from the Leased Premises. The BMP and SWPPS will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SWPPS for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWPPS as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the BMP and SWPPS have been developed and implemented by the LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE's responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP and SWPPS.

The BMP and SWPPS will be filed with the lease.

- 7.16 Annual Budget and Programs. LESSEE shall submit to the City Manager by September 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the fiscal year commencing July 1. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE'S proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE; and (iii) an adequate reserve account, in the reasonable opinion of the City Manager, for maintenance and capital improvements to the premises.

SECTION 8: SPECIAL PROVISIONS

- 8.1 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

- 8.2 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease, together with any of its interest in improvements, trade fixtures, and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first re-offering to CITY the right to purchase at such lower price.
- 8.3 Supercedure. LESSEE is the successor in interest to Mid-City Community Clinic, and it is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed between CITY and Mid-City Community Clinic, filed in the Office of the City Clerk as Document RR-274565, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 8.4 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 8.5 Noxious Weeds, Pests, and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire leased premises.
- 8.6 No Warranty. CITY does not warrant that the premises are suitable for the purposes for which they are leased as stated herein.

SECTION 9: SIGNATURES

9.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager pursuant to City Council Resolution No. R- 299359, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 6-25-04

By [Signature]

SAN DIEGO FAMILY CARE D.B.A.
MID-CITY COMMUNITY CLINIC

Date 4-5-04

By Roberta L. Feinberg, CEO

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15061 (b) (3).

Date 7/1/04

By [Signature]

APPROVED as to form and legality this 12th day of July, 2004.

CASEY GWINN, CITY ATTORNEY

By [Signature]
Deputy City Attorney

DLD/cj
3/29/04

A:\LEASE-SAN DIEGO FAMILY CARE\fnl.wpd

SECTION 10: EXHIBITS

10.1 Parcel Map and Description of Premises - EXHIBIT "A".

Building Area: 15,000 square feet

Land Area: .48 acres

1" = 100'



01-27-84/60

CHANGES

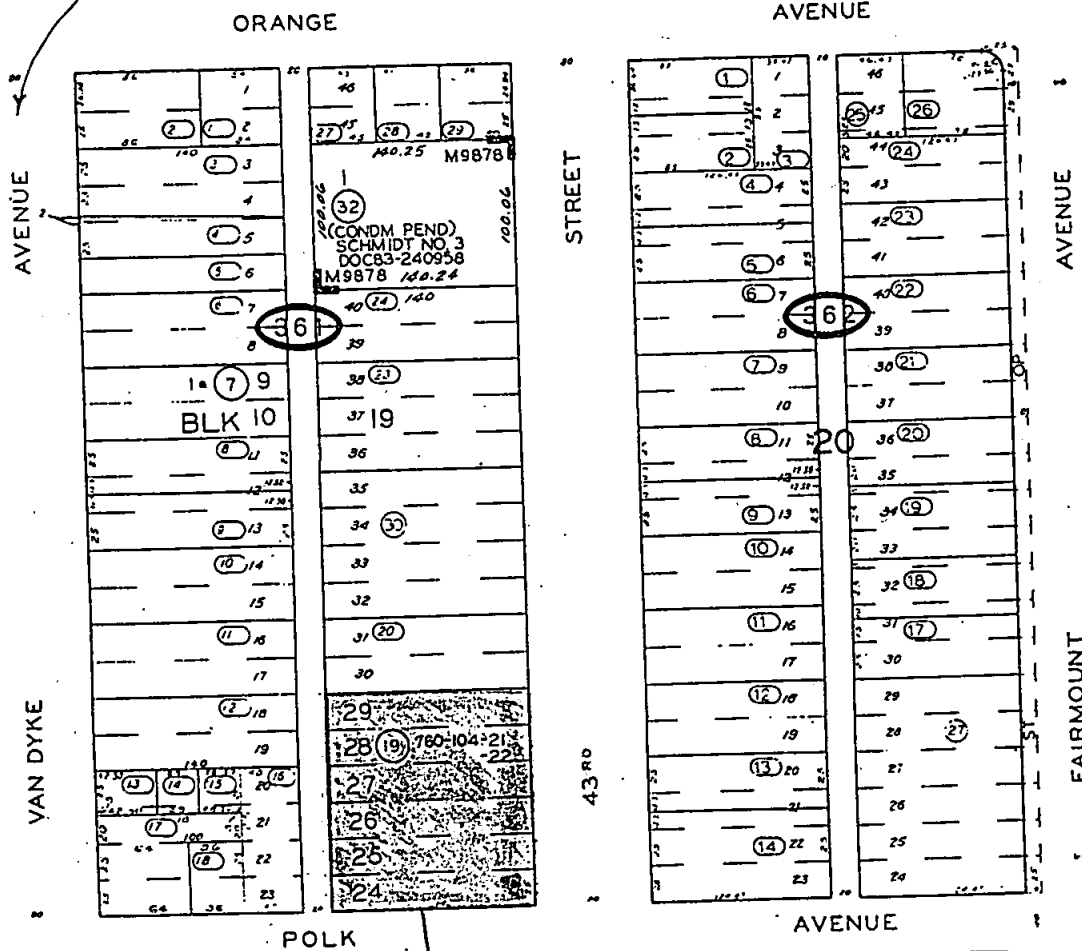
BLK	OLD	NEW	YR	CUT
362	1546	27	12	1931
361	2526	31	73	1933
361	31	32	81	285
361	07	CONDM	84	573 CC

1st CONDM.
VAN DYKE
DOC 63-141339
(SEE SHT. 2)

37

22

45

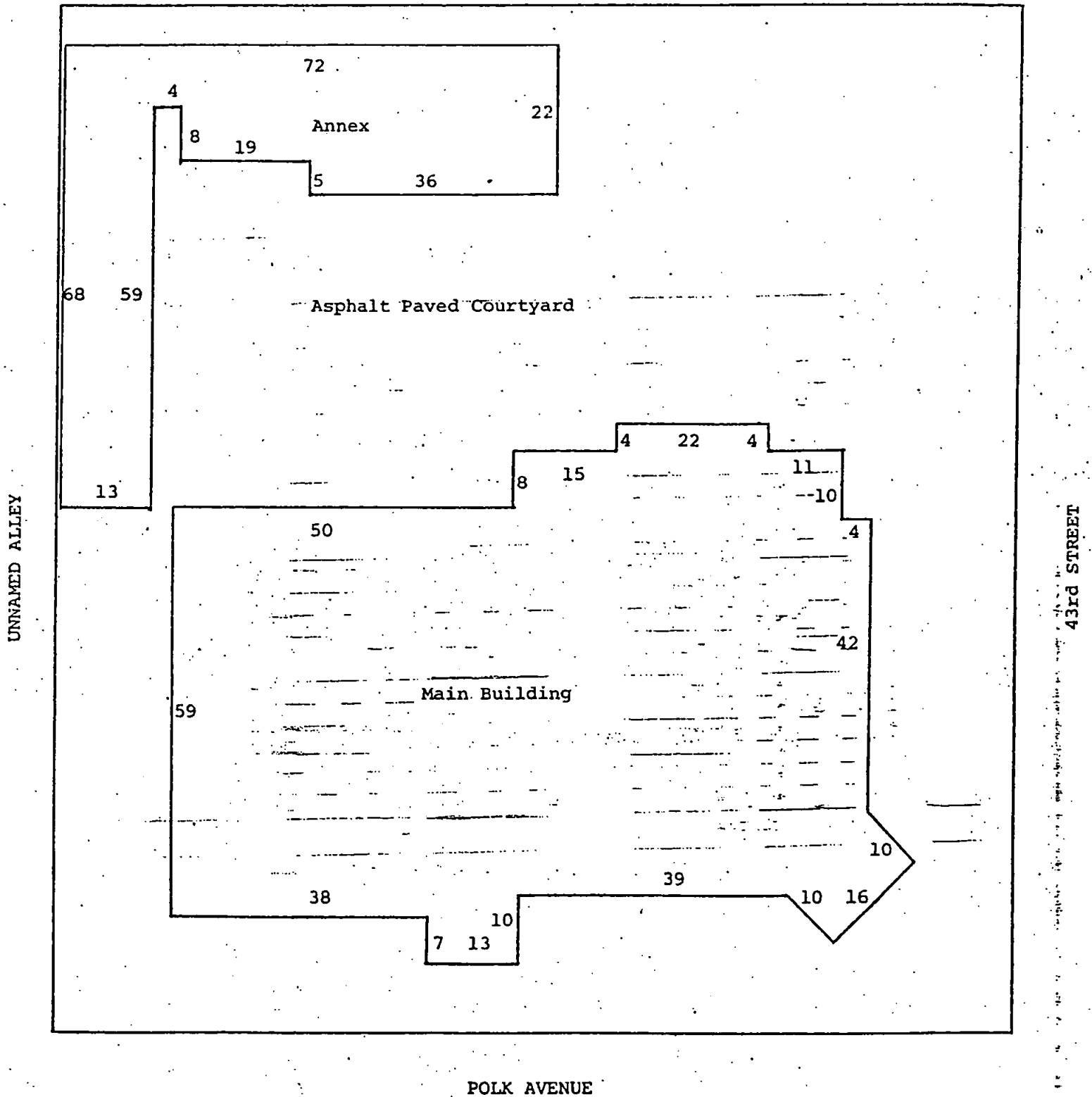


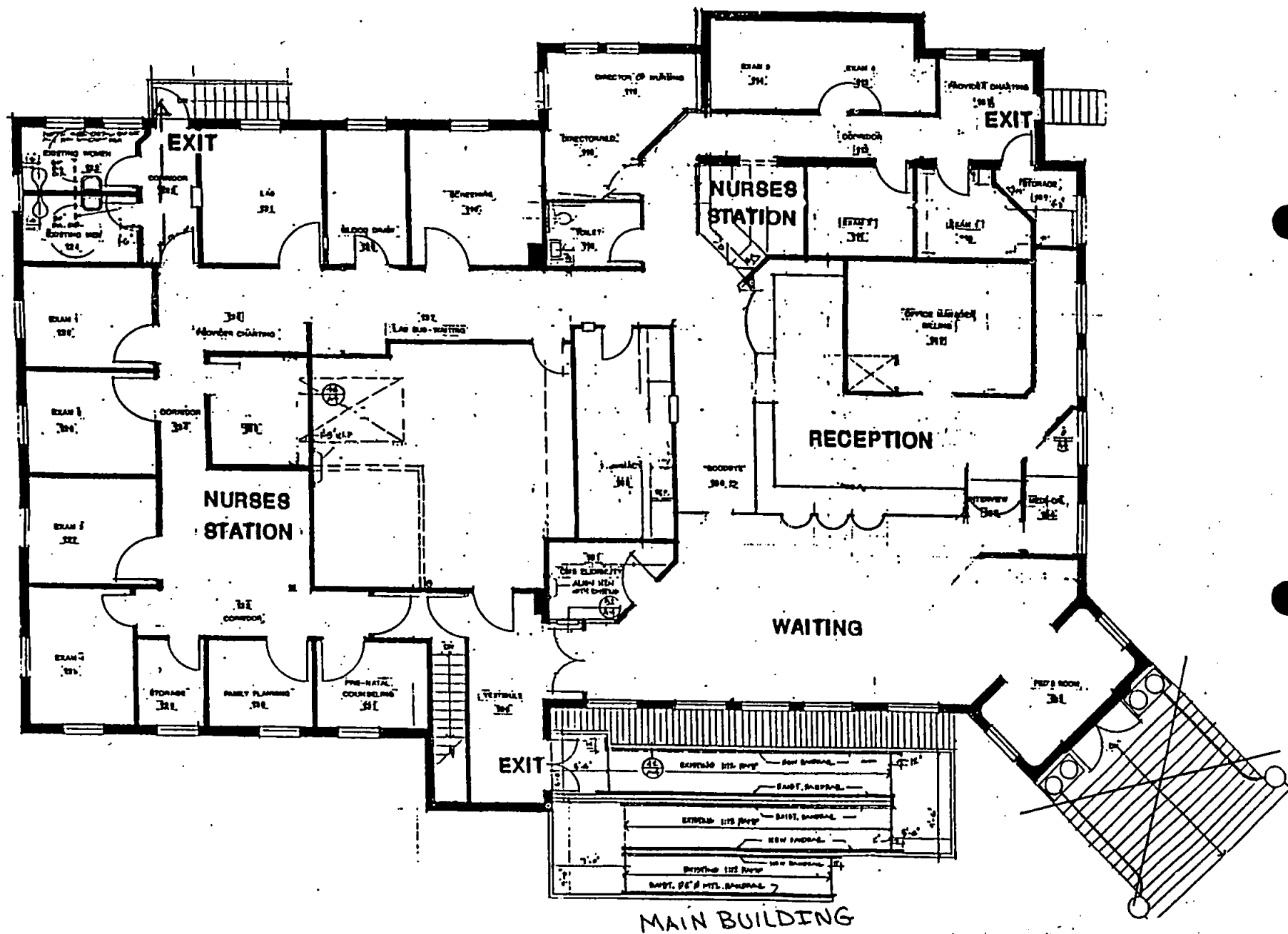
MAP 9878 - SCHMIDT NO. 3 (CONDM)
MAP 1000 - TERALTA SUB OF LOTS 20-50. BLK N

EXHIBIT "A" 1 of 4 sheets

FOR
PURPOSES ONLY

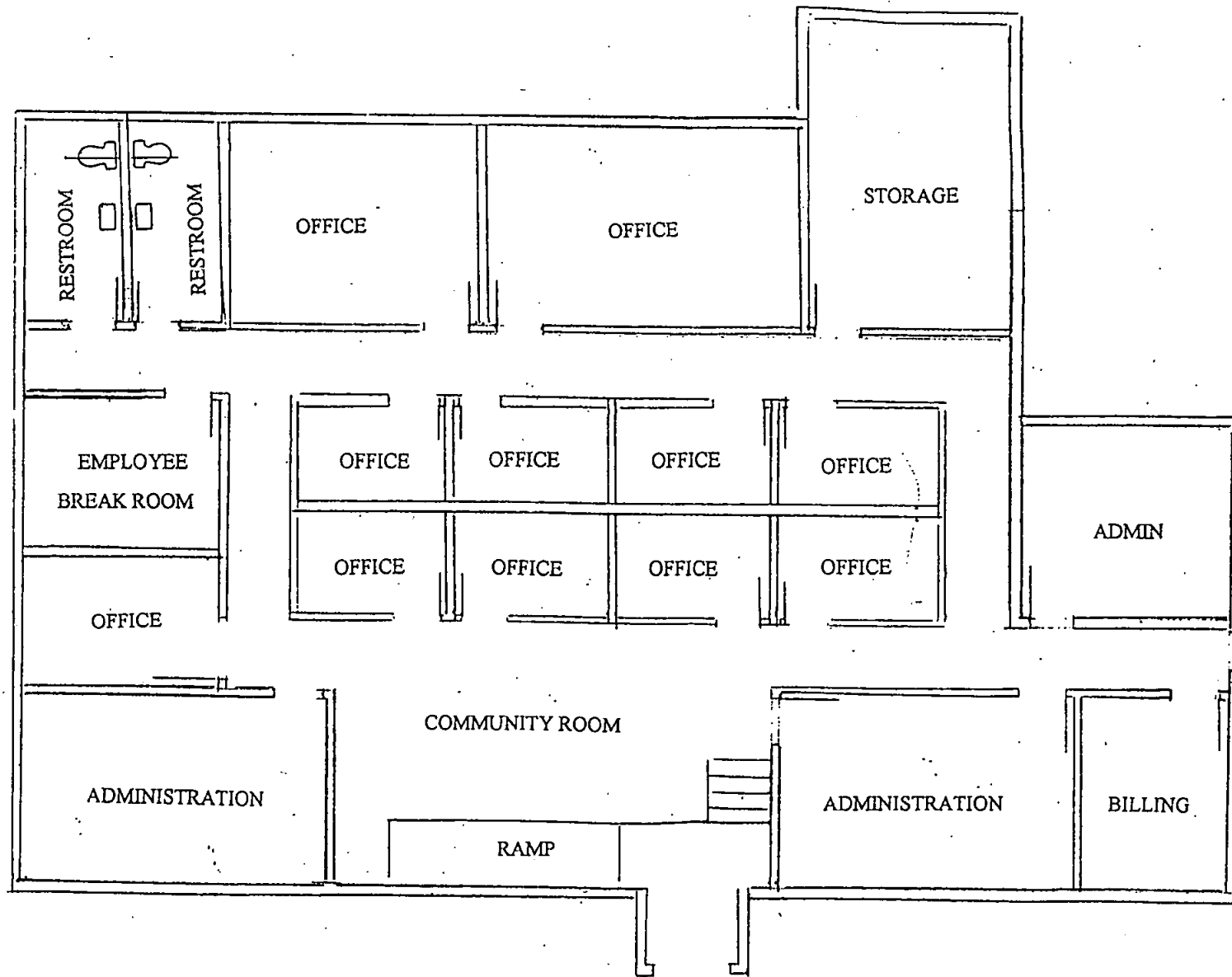
PLOT PLAN





MAIN BUILDING
Exhibit A 3 of 4 sheets

EXHIBIT A

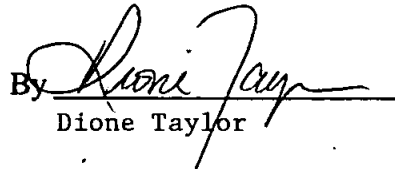


10.2 Corporate Name.

San Diego Family Care dba
Mid-City Community Clinic

CORPORATE NAME

I, Dione Taylor certify that I am the
Secretary of the corporation named in the attached agreement;
that Roberta L. Feinberg, who signed this agreement on behalf of the corporation, was
then Chief Executive Officer of said corporation; that said agreement was duly signed
for and on behalf of said corporation by authority of its governing body, pursuant to a resolution
duly adopted by its Board of Directors on August 5, 2003, and is within the
scope of its corporate powers; and that set out below are the names of the officers and directors
of said corporation.

By 
Dione Taylor

CORPORATE SEAL

Name Joseph A. Bradley, III, Esq, President
Title

Name Steven Tess, Ph.D., Vice President
Title

Name William R. Polk, Esq., Treasurer
Title

Name Dione Taylor, Secretary
Title



10.3 General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Estimated Construction Costs
- d. Financial Plan
- e. Schematic Elevations
- f. Landscape Plan
- g. Others as applicable

and is filed in the Office of the City Clerk referenced in this lease.

10.4 Estimate and Scope of Work - Basement Repairs and Renovation- Exhibit "B"

John Carey Construction Company, Inc.

9484 Chesapeake Drive • Suite 804 • San Diego, CA 92123
(858) 268-4848 Lic. 374521 Fax (858) 268-1918

July 15, 2003

Roberta Feinberg
Mid City Community Clinic
4290 Polk Ave.
San Diego, CA 92105

RE: ESTIMATE FOR REPAIRS TO BASEMENT AT 4290 POLK AVE.

Dear Ms. Feinberg,

Attached please find a spread sheet for our estimate of the repair work to be done at the former Salvation Army space, in the basement of the building at 4290 Polk Ave., San Diego. The total budget we anticipate for this project is \$54,491.00. The scope of work has been developed as a result of our meeting with the Diana Drake from the City of San Diego and includes basic repairs as follows:

Control of water intrusion to the building by saw cutting and removing the asphalt and concrete that slopes toward the building and installing new concrete and asphalt, to slope away from the building. Also caulking the edge of the building and the windows.

Mold Remediation to be accomplished by removing drywall and treating the affected areas, using a licensed mold remediation contractor. This is based on an allowance of \$20,000. This allowance is based on visual observations and the scope of work would include removing damaged drywall and studs and/or treating the affected areas. Drywall would need to be removed in order to determine the full extent of the work and the best way to handle the situation.

Electrical repairs are an allowance of \$2,900.00. Our preliminary investigation indicates a problem with the sub panel, that controls power to the restrooms and kitchen areas.

We have also included amounts for general interior improvements, such as painting and ceiling tile repairs. We anticipate these items would be completed by volunteer help or by Mid City Clinic's staff.

Please note that these repairs are based on recommendations received and does not include any repairs to the building not listed in the attached scope of work. This price does not include any architectural services or permits.

ESTIMATE SCOPE OF WORK
EXHIBIT "B"
4 PAGES

Thank you for the opportunity to submit this proposal and if you have any questions please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary G. Benson', written over the printed name.

Mary G. Benson
President

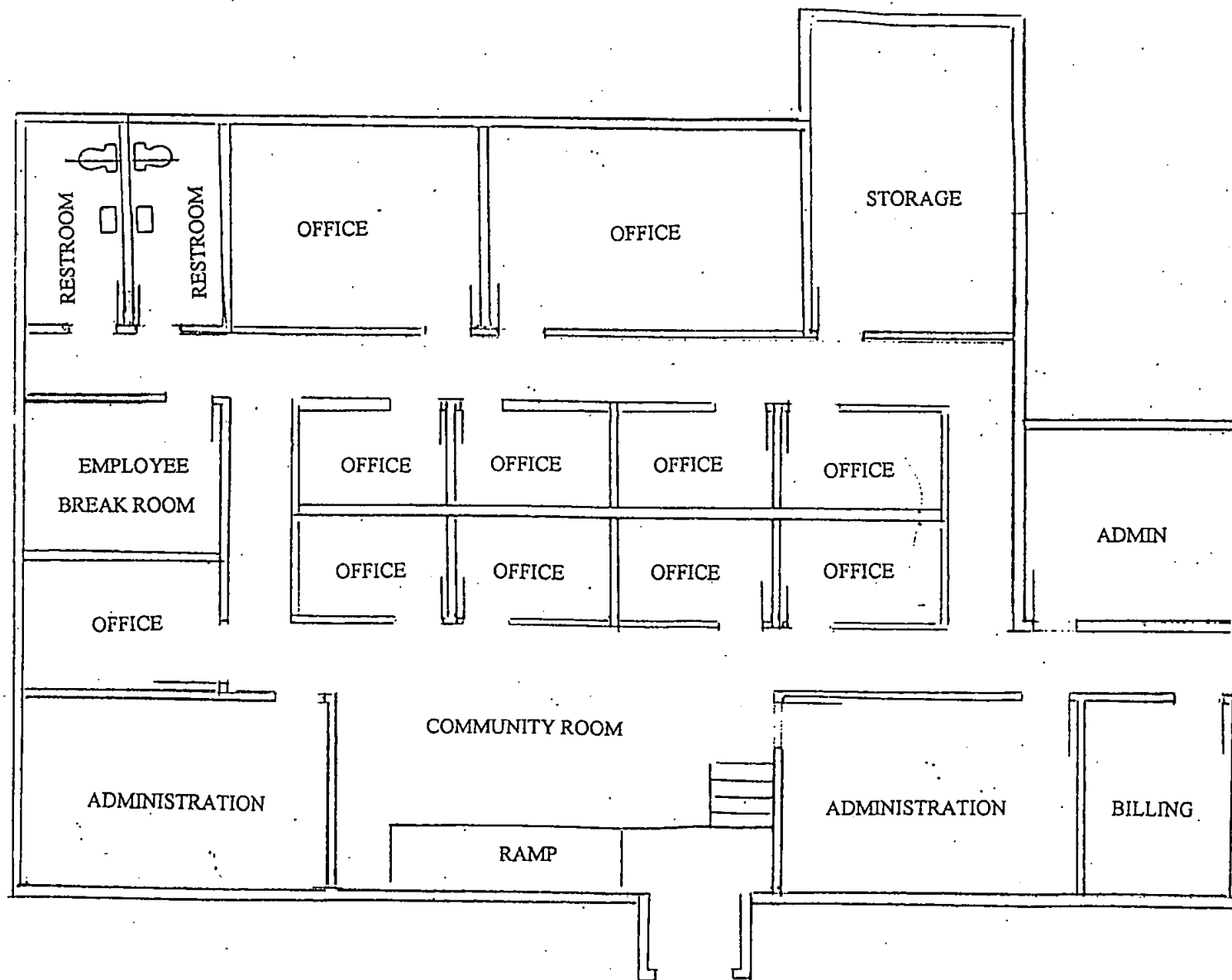
Rough estimate for Mid City Clinic

Scope of work only includes items in description

All prices are estimate only, final cost based on actual scope of work and quantity.

Supervision / CM / Related Expenses	7,340.00	1 month
Dumpster	650.00	1 only for 1 month
Demo Conc. & Asphalt 900SF	5,400.00	Budget \$6.00 SF
Re-Install Conc. & Asphalt 900SF	6,300.00	Budget \$7.00 SF
Excavate & Seal Sewer pipe at building	920.00	Budget Max. 4' deep
Mold Remediation / Clearance & Repair	20,000.00	Allowance
Electrical Repairs – 32 hrs Labor @ 75.	2,900.00	Allowance \$500.00
Re-Paint – 6120 SF walls only	2,142.00	Budget 0.35 SF
Clean & caulk Ext. Wind. & Bluid. perimeter	1,830.00	Budget \$6.00 LF
Contractors Mark up 15%	7009.00	
	54,491	

EXHIBIT B



10.5 Schedule of Days and Hours of Operation.

Monday through Friday	8:00 a.m. to 5:00 p.m.
Saturday	8:00 a.m. to 2:00 p.m.

The Clinic is closed national holidays, Christmas Eve and New Years' Eve

RESOLUTION NUMBER R- **299359**

ADOPTED ON **JUN 21 2004**

WHEREAS, the City of San Diego and San Diego Family Care, d.b.a. Mid-City Community Clinic [MCCC], have negotiated a twenty-five year lease (an initial fifteen year term with a conditional right to extend for an additional ten years) to manage and operate a health care clinic for low-income patients and to provide related non-profit social services on City property located at 4290 Polk Avenue in the City Heights Community of the City of San Diego [the Property] at no rent plus an initial annual administrative fee of \$2,621 per year, adjusted annually; and

WHEREAS, MCCC is a private nonprofit public benefit corporation which has provided health and social services at the Property since 1979, and currently provides quality, low- or no-cost medical services and medications to low-income persons, health education programs, and counseling services, in several languages spoken by the residents of the diverse mid-city community; and

WHEREAS, in consideration for the lease, MCCC agrees to continue to provide a public benefit to the community by operating the health care clinic for low-income patients, immediately invest an estimated \$54,491 for repairs to the basement, and maintain the premises at an estimated annual cost of \$80,000; and

WHEREAS, the City's valuation staff has determined the fair market rent for the premises to be between \$181,800 and \$198,000 per year; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a lease agreement with San Diego Family Care, d.b.a. Mid-City Community Clinic, for the management and operation of a health care clinic for low-income patients and to provide related non-profit social services at 4290 Polk Avenue for an initial term of fifteen years and a conditional right to extend for an additional ten years, at no rent plus administrative cost recovery, under the terms and conditions as substantially set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 299359.

APPROVED: CASEY GWINN, City Attorney

By



Carrie L. Gleeson
Deputy City Attorney

CG:mm
06/02/04
Or.Dept:READ
Job Order: 220417
R-2004-1331

Passed and adopted by the Council of San Diego on June 21, 2004 by the following vote:

YEAS: **PETERS, ZUCCHET, ATKINS, LEWIS, MAIENSCHIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 299359, passed and adopted by the Council of The City of San Diego,
California on June 21, 2004.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

RESOLUTION NUMBER R- 299359

ADOPTED ON JUN 21 2004

WHEREAS, the City of San Diego and San Diego Family Care, d.b.a. Mid-City Community Clinic [MCCC], have negotiated a twenty-five year lease (an initial fifteen year term with a conditional right to extend for an additional ten years) to manage and operate a health care clinic for low-income patients and to provide related non-profit social services on City property located at 4290 Polk Avenue in the City Heights Community of the City of San Diego [the Property] at no rent plus an initial annual administrative fee of \$2,621 per year, adjusted annually; and

WHEREAS, MCCC is a private nonprofit public benefit corporation which has provided health and social services at the Property since 1979, and currently provides quality, low- or no-cost medical services and medications to low-income persons, health education programs, and counseling services, in several languages spoken by the residents of the diverse mid-city community; and

WHEREAS, in consideration for the lease, MCCC agrees to continue to provide a public benefit to the community by operating the health care clinic for low-income patients, immediately invest an estimated \$54,491 for repairs to the basement, and maintain the premises at an estimated annual cost of \$80,000; and

WHEREAS, the City's valuation staff has determined the fair market rent for the premises to be between \$181,800 and \$198,000 per year; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a lease agreement with San Diego Family Care, d.b.a. Mid-City Community Clinic, for the management and operation of a health care clinic for low-income patients and to provide related non-profit social services at 4290 Polk Avenue for an initial term of fifteen years and a conditional right to extend for an additional ten years, at no rent plus administrative cost recovery, under the terms and conditions as substantially set forth in that lease agreement on file in the office of the City Clerk as Document No. RR-299359.

APPROVED: CASEY GWINN, City Attorney

By



Carrie L. Gleeson
Deputy City Attorney

CG:mm
06/02/04
Or.Dept:READ
Job Order: 220417
R-2004-1331