

CONSENT TO SUBLEASE

THIS CONSENT TO SUBLEASE (Consent) is provided by THE CITY OF SAN DIEGO, a California municipal corporation (City), to YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California 501(c)(3) nonprofit social services corporation (Lessee/Sublessor), to be effective upon execution by City and approval by the San Diego City Attorney (Effective Date), as follows:

RECITALS

- A. City as Lessor and Lessee/Sublessor, are parties to that certain City of San Diego Lease Agreement (Master Lease) filed in the Office of the San Diego City Clerk April 12, 2004 as Document No. RR-299062 pertaining to City-owned property commonly known as the Cortez Hill Transitional Housing consisting of an approximately 17,900 square foot 45-unit building located at 1449 Ninth Avenue, San Diego, California (Premises).
- B. Lessee/Sublessor now desires to sublease the Premises to Alpha Project for the Homeless, a California 501(3)(c) nonprofit human services corporation (Sublessee), to allow Sublessee to take over the operation of the Cortez Hill Transitional Housing on the Premises.
- C. The Master Lease requires Lessee/Sublessor to obtain City's consent to the sublease of any portion of the Premises.

NOW, THEREFORE, based on the Recitals set forth above which are incorporated herein, City provides its consent subject to the following:

- 1. In reliance upon Sublessee's written agreement to assume the rights and obligations of the Master Lease and to keep and perform all covenants, conditions, and provisions of the Master Lease which are applicable to the rights acquired, City consents to Lessee/Sublessor's request to sublease the Premises to Sublessee. By giving this Consent, City is merely consenting to Lessee/Sublessor's request to sublease that certain portion of the Premises to Sublessee, and is not approving any specific sublease term, condition or provision between Lessee/Sublessor and Sublessee. All terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in any sublease agreement executed between Lessee/Sublessor and the Sublessee, and any sublease will be subordinate to the Master Lease.
- 2. City does not release, discharge or modify Lessee/Sublessor's obligations to City under the Master Lease. As set forth in applicable law, Lessee/Sublessor's obligations under the Lease shall survive said sublease and shall continue through the termination dates of the Master Lease, as set forth therein.
- 3. This Consent does not constitute consent to any subsequent subleasing of any interest in and to the Master Lease.
- 4. The City has waived any applicable processing and/or administrative fee(s) for processing this Consent because the City has determined that the operation of the Cortez Hill Transitional

Housing center serves a public purpose and is a public benefit, and that this Consent allows for the operation center to continue.

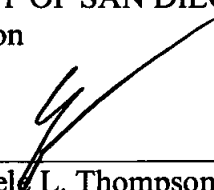
5. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the sublease. Further, Lessee/Sublessor agrees to protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, and employees harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee.

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IN WITNESS WHEREOF, this Consent to sublease is executed by City acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO, a California municipal corporation

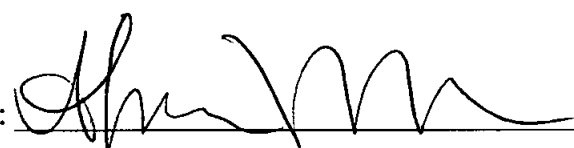
Date: 12/28/18

By: 
Cybele L. Thompson
Director, Real Estate Assets Department

PLANNING DEPARTMENT ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

Date: 12/28/18

BY: 
Name: Alyssa M. Muto
Title: Deputy Director, Environment & Mobility Planning
Planning Department

Approved as to form this 28th
day of December, 2018

MARA W. ELLIOT, City Attorney

BY: 
Name: Melissa Ables
Title: Deputy City Attorney



Date of Notice: December 11, 2018

NOTICE OF RIGHT TO APPEAL

ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Sublease to Alpha Project for the Homeless

COMMUNITY PLAN AREA: Downtown

COUNCIL DISTRICT: 3

LOCATION: Cortez Hill Transitional Housing, 1449 Ninth Avenue, San Diego, CA 92101

PROJECT DESCRIPTION: City is willing to provide consent to a YWCA sublease to Alpha Project for the Homeless for the purposes of providing transitional housing and related services and activities at the Cortez Hill Family Center. The sublease will expire at the termination of the Master Lease, April 30, 2019, and a new lease with Alpha Project for the Homeless will commence, for the same use.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities), which allows the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Isaac Tanori, Property Agent, Real Estate Assets Department
MAILING ADDRESS: 1200 Third Avenue, Suite 1700, San Diego, CA 92101
PHONE NUMBER: 619-236-6264

On December 11, 2018, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal the CEQA determination to the City Council must be filed in the Office of the City Clerk within 10 business days from the date of the posting of this Notice (**December 26, 2018**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: December 11, 2018

~~REMOVED: December 27, 2018~~

POSTED: E. Pasqual

SUBLEASE

This Sublease, dated as of December 3, 2018, between the YWCA of San Diego County ("YWCA"), a California 501(c)(3) nonprofit corporation ("Sublandlord"), and Alpha Project for the Homeless, a California 501(c)(3) nonprofit human services corporation ("Subtenant"), is entered into with reference to the following facts:

A. Pursuant to that certain Lease Agreement filed on April 12, 2004 with Document No. RR-299062 (the "Master Lease"), Sublandlord is leasing from The City of San Diego, a municipal corporation ("Master Landlord"), certain real property (the "Premises") situated at 1449 Ninth Avenue, containing an approximately 17,900 square foot 45-unit building ("Building") on an approximately 17,646 square feet lot, in the City of San Diego, County of San Diego, State of California commonly known as the Cortez Hill Family Center, and more particularly described in the Master Lease. A copy of the Master Lease and all amendments thereto is attached hereto as Exhibit "B".

B. Sublandlord desires to sublease to Subtenant, and Subtenant desires to sublease from Sublandlord, the Premises.

In consideration of the foregoing, and of the covenants and conditions set forth herein, Sublandlord and Subtenant hereby agree as follows:

1. Sublease of Premises. Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Premises. The size and location of the Premises are more particularly shown on the floor plans attached hereto as Exhibit "A" and incorporated herein by this reference. The rentable area of the Premises as specified above is only an approximation and no variation between the amount so stated and the actual rentable area of the Premises shall alter the obligations of Sublandlord and Subtenant under this Sublease.

2. Term and Possession.

2.1 Commencement. The term of this Sublease shall commence upon the date (the "Commencement Date") that is the later of (a) the date Master Lessor provides its consent to this Sublease (estimated to be on or about December 15, 2018) or (b) the date on which Sublandlord tenders possession of the Premises to Subtenant (estimated to be on or about January 1, 2019).

2.2 Expiration. Unless sooner terminated in accordance with the terms contained herein or the sooner termination of the Master Lease, the term of this Sublease shall expire on April 30, 2019 (the "Expiration Date").

2.3 Partial Months. Rent and other charges for any partial month during the term of this Sublease shall be prorated based on the total number of days in such month and the number of days of the term that fall within such month.

2.4 Holdover. Subtenant shall protect, defend, indemnify and hold Sublandlord harmless from and against all liability as Sublandlord may incur to Master Landlord

or others as a consequence of Subtenant's failure to timely surrender possession of the Premises in the condition required by this Sublease.

3. Rents and Charges. During the term of this Sublease, Subtenant shall pay to Sublandlord, without offset or deduction except as expressly provided in this Sublease, (1) the Base Rent and (2) the Additional Charges, as defined below.

3.1 Base Rent. Subtenant shall pay to Sublandlord, as the basic rent (the "Base Rent") the amount of three thousand eight hundred forty-seven dollars and no cents (\$3,847.00). Upon execution of this Sublease, Subtenant shall pay an initial amount of one thousand eight hundred sixty-one dollars and no cents (\$1,861.00). Thereafter, Subtenant shall pay the amount of six hundred sixty-two dollars and no cents (\$662.00), which shall be due and payable in equal monthly installments in advance on the 25th day of the month prior to each calendar month during the term hereof.

3.2 Additional Charges. If Sublandlord is required to pay any Additional Rent as provided in the Master Lease, any other charges passed through to Sublandlord by Master Landlord under the Master Lease, or any amount due to third parties under the Master Lease (collectively, "Additional Charges"), Sublandlord shall promptly provide Subtenant with a copy of all documents available to Sublandlord which support such Additional Charges and Subtenant shall pay Sublandlord, on or before the 25th day of the month prior to the month in which any such payment is due, the amount of the Additional Charges allocable to the Premises. Additional Charges shall also include any amount arising from or related to all taxes, utility, and/or service agreements for the Premises that continue under Sublandlord's name during the term of this Sublease. The Subtenant shall be responsible for the entirety of all Additional Charges. Subtenant shall pay its share of all Additional Charges applicable to any period of time during the term of this Sublease. To the extent the Additional Charges are payable on a monthly estimated basis, the Additional Rent in respect thereto must be paid as and when Base Rent is due based on Master Landlord's estimates; and upon a reconciliation of estimated and actual Additional Charges, the corresponding Additional Rent must be adjusted between Sublandlord and Subtenant (with appropriate reimbursements or additional payments) within twenty (20) days after delivery to Subtenant of any reconciliation statement under the Master Lease. For purposes of calculating Additional Charges, Sublandlord will be entitled to rely conclusively on Master Landlord's determination of estimated and actual Additional Charges.

4. Incorporation of Master Lease.

4.1 As used herein, the term "Incorporated Provisions" means all of the provisions of the Master Lease except the following:

(a) The provisions of the Master Lease providing for Sublandlord to pay additional rent based on real estate taxes and/or operating expenses and/or increases therein, all of which shall be Subtenant's sole responsibility.

(b) The provisions of the Master Lease providing for Master Landlord to provide liability and/or casualty insurance.

(c) Any covenant of quiet enjoyment.

(d) The provisions, if any, of the Master Lease requiring Master Landlord to indemnify, defend and/or hold harmless Sublandlord with respect to the Building or Premises.

(e) The following additional provisions of the Master Lease:

(1) The provisions of the first paragraph of Section 1.3 pertaining to discretionary actions made by City or the Council of City;

(2) The provisions of Section 1.4 (Quiet Possession);

(3) The provisions of Section 2.1 (Commencement);

(4) The provisions of Section 2.2 (Right to Extend);

(5) The provisions of Section 3.1 (Time and Place of Payment);

(6) The provisions of Section 3.2 (Rent and Administrative Fee);

(7) The provisions of Section 6.10(b) as it pertains to the time of notice prior to expiration, which shall be changed to thirty (30) days prior to expiration of this Sublease;

(8) The provisions of fifth paragraph of Section 6.12 as it pertains to the time period of twelve (12) months;

(9) The provisions of Section 7.1(a); and

(10) The provisions of Section 7.3 as it pertains to the City Manager and City Council.

4.2 Except as otherwise expressly provided in, or otherwise inconsistent with this Sublease, and except to the extent not applicable to the Premises, the Incorporated Provisions are hereby incorporated in this Sublease by reference with the same force and effect as if set forth herein, except that, unless the context requires otherwise:

4.2.1 references in such provisions to City, Owner, Landlord or Lessor shall be deemed to refer to Sublandlord;

4.2.2 references in such provisions to Tenant or Lessee shall be deemed to refer to Subtenant;

4.2.3 references in such provisions to the premises, leased premises, or the demised premises shall be deemed to refer to the Premises;

4.2.4 references in such provisions to other provisions of the Master Lease that are not incorporated herein shall be disregarded; and

4.2.5 references in such provisions to subleases, sublettings or subtenants shall be deemed to refer to subsubleases, subsublettings or subsubtenants.

4.3 Sublandlord shall not be deemed to have made any representation made by Master Landlord in any of the Incorporated Provisions. Moreover, Sublandlord shall not be obligated

4.3.1 to provide any of the services or utilities that Master Landlord has agreed in the Master Lease to provide, if any,

4.3.2 to make any of the repairs or restorations that Master Landlord has agreed in the Master Lease to make, if any,

4.3.3 to comply with any laws or requirements of public authorities with which Master Landlord has agreed to in the Master Lease to comply, if any,

4.3.4 to remove, encapsulate or otherwise treat any asbestos-containing materials or other hazardous materials located in the Premises and/or the Building, if any,

4.3.5 to provide any insurance with respect to the Building, the Premises or the improvements therein, if any, or

4.3.6 to take any action with respect to the operation, administration or control of the Building or any of its public or common areas that the Master Landlord has agreed in the Master Lease to take (all the foregoing being herein called the "Building Services"), and Sublandlord shall have no liability to Subtenant on account of any failure of Master Landlord to do so, or on account of any failure by Master Landlord to observe or perform any of the terms, covenants or conditions of the Master Lease required to be observed or performed by Master Landlord. Subtenant hereby expressly waives the provisions of any statute, ordinance or judicial decision, now or hereafter in effect, which would give Subtenant the right to make repairs at the expense of Sublandlord, or to claim any actual or constructive eviction by virtue of interruption in access or services to, or failure to make repairs in or to, the Premises or the Building.

4.4 Sublandlord agrees:

4.4.1 upon Subtenant's request, to use reasonable efforts (excluding litigation or arbitration), at Subtenant's expense, (a) to cause Master Landlord to provide any Building Service, or (b) to obtain Master Landlord's consent or approval whenever required by the Master Lease (unless, in such instance, Sublandlord shall be entitled to withhold its consent or approval even if Master Landlord shall have granted its consent or approval), and

4.4.2 that, if under the Master Lease any right or remedy of Sublandlord or any duty or obligation of Master Landlord is subject to or conditioned upon Sublandlord's making any demand upon Master Landlord or giving any notice or request to Master Landlord, if Subtenant shall so request, Sublandlord, at Subtenant's expense, shall make such demand or give such notice or request, except that Sublandlord shall not be required to request Master Landlord's consent or approval with respect to any act or thing as to which Sublandlord shall have determined in accordance with this Sublease to withhold its consent or approval.

4.5 Whenever Subtenant desires to do any act or thing which requires the consent or approval of Master Landlord:

4.5.1 Subtenant shall not do such act or thing without first having obtained the consent or approval of both Master Landlord and Sublandlord (and Sublandlord's right to withhold consent or approval shall be independent of Master Landlord's right);

4.5.2 Subtenant shall not request Master Landlord's consent or approval directly (and no efforts by Sublandlord to obtain Master Landlord's consent or approval shall constitute Sublandlord's consent or approval or prejudice Sublandlord's right to withhold consent or approval); and

4.5.3 in no event shall Sublandlord be required to give its consent or approval prior to Master Landlord doing so. Subtenant shall reimburse Sublandlord for all reasonable costs incurred by Sublandlord in processing any request by Subtenant for Master Landlord's or Sublandlord's consent, such costs not to exceed \$1,000.00 per request.

4.6 The time limits contained in the Incorporated Provisions for the giving of notices, making of demands or performing of any act, condition or covenant on the part of the tenant thereunder, or for the exercise by the tenant thereunder of any right, remedy or option (collectively, "Actionable Items"), are changed for the purposes of incorporation herein by reference by shortening the same in each instance by two (2) days with respect to monetary Actionable Items and five (5) days with respect to non-monetary Actionable Items, so that in each instance Subtenant shall have two (2) days less time to observe or perform hereunder than Sublandlord has as the tenant under the Master Lease with respect to monetary Action Items and five (5) days less time to observe or perform hereunder than Sublandlord has as the tenant under the Master Lease with respect to non-monetary Action Items. If Master Landlord shall give any notice of failure or default under the Master Lease arising out of any failure by Subtenant to perform any of its obligations hereunder (other than the payment of money) then Sublandlord shall promptly furnish Subtenant with a copy thereof. If the Master Lease shall provide any grace or cure period for such failure or default then the grace or cure period hereunder shall be three (3) days fewer than the number of days in the applicable grace or cure period under the Master Lease. In no event shall this Section 4.6 extend the time, date or period by or within which Subtenant is required to perform.

4.7 If (a) Subtenant shall fail to perform any of its obligations hereunder and such failure shall continue beyond any cure period provided for herein, or (b) Master Landlord shall give any notice of failure or default under the Master Lease arising out of any failure by Subtenant to perform any of its obligations hereunder then, in either case, Sublandlord shall have the right (but not the obligation) to perform or endeavor to perform such obligation, at Subtenant's expense, and Subtenant shall, within ten (10) days of Sublandlord's demand from time to time, reimburse Sublandlord for all costs and expenses incurred by Sublandlord in doing so. Sublandlord shall have the right to enter the Premises in connection with exercising its rights under this Section 4.7.

4.8 This Sublease is and shall at all times be subject and subordinate to the Master Lease. Subtenant shall not do anything, or permit anything to be done, in connection

with Subtenant's use or occupancy of the Premises which would violate any covenants or agreements contained in the Master Lease. Master Landlord (under the Master Lease) or Sublandlord may enforce directly against Subtenant, each in its own capacity, any of the rights granted to Master Landlord pursuant to the incorporated provisions of the Master Lease, except as expressly modified by this Sublease. Sublandlord may not grant to Subtenant, and nothing in this Sublease shall be construed to grant, any greater rights than Sublandlord has received as tenant from Master Landlord pursuant to the Master Lease. Subtenant does not have any greater rights against Sublandlord with respect to this Sublease or the Premises than Sublandlord has as tenant against Master Landlord with respect to the Master Lease.

4.9 During the Term of this Sublease, and thereafter for obligations that arose during the term of this Sublease, Subtenant (a) hereby expressly assumes and agrees to perform and comply with, for the benefit of Sublandlord, every duty, liability, obligation and responsibility of Sublandlord with respect to the Premises under the Master Lease which accrue during the term of this Sublease, and (b) hereby agrees to observe all negative covenants of Sublandlord as tenant under the Master Lease (collectively, the "Assumed Obligations"). Subtenant shall defend, indemnify and hold Sublandlord harmless from and against all claims, demands, causes of action, liabilities, losses, costs and expenses (including without limitation costs of suit and reasonable attorneys' fees) arising from or in connection with any failure by Subtenant to perform the Assumed Obligations.

4.10 Any non-liability, release, indemnity or hold harmless provision, and any provisions pertaining to waiver of subrogation rights and or the naming of a party under an insurance policy, in the Master Lease for the benefit of Master Landlord which is an Incorporated Provision, shall be deemed to inure to the benefit of Sublandlord and Master Landlord, for the purpose of incorporation by reference in this Sublease.

4.11 Any Additional Charges resulting from Subtenant's abnormal use of services or otherwise attributable to Subtenant's use of the Premises shall, notwithstanding any other provision of this Sublease, be promptly paid by Subtenant to Sublandlord upon demand.

4.12 Any Master Lease provisions with respect to rent abatements (whether in connection with a destruction of the Premises or otherwise) shall only entitle Subtenant to a Base Rent abatement hereunder for any portion of the Premises, and during any period, for which Sublandlord actually receives a rent abatement under the Master Lease.

4.13 Where the Master Lease grants Sublandlord any discretionary right to terminate the Master Lease as to all or any portion of the Premises, whether due to casualty, condemnation, or otherwise, Sublandlord shall be entitled to exercise or not exercise such right in its sole and absolute discretion, but only after notice to Subtenant.

4.14 Any right of the Master Landlord for access or inspection and any right of the Master Landlord under the Master Lease to do work in the Premises or in the Building or in the common area, and any right of the Master Landlord in respect of rules and regulations, shall be deemed to inure to the benefit of Sublandlord and Master Landlord, for the purpose of incorporation by reference in this Sublease.

5. Use. The Premises shall be used only for the purposes permitted under the Master Lease.

6. Assignment and Subletting. Independent of and in addition to any provisions of the Master Lease, including without limitation the obligation to obtain the Master Landlord's consent to any sublease or assignment, it is understood and agreed that Subtenant shall not assign this Sublease or any interest therein, shall not sublet the Premises or any portion thereof or any right or privilege appurtenant thereto, and shall not suffer or permit any other person (other than agents, servants or associates of the Subtenant) to occupy or use the Premises or any portion thereof, without the prior written consent of Sublandlord, which shall not be unreasonably withheld or delayed. Any assignment or subletting by Subtenant without such prior written consent shall be void and shall, at the option of Sublandlord, terminate this Sublease.

7. Asbestos Disclosure. Sublandlord discloses to Subtenant that portions of the structural components of the Premises may contain asbestos. Subtenant acknowledges having received notice from Sublandlord of the presence of such asbestos in accordance with Health and Safety Code Section 25915. Subtenant shall disclose the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. Subtenant agrees to indemnify and hold Sublandlord harmless from any loss or claim which may result from the existence of asbestos on the Premises.

8. Insurance and Indemnification.

8.1 Whenever, pursuant to any of the Incorporated Provisions as incorporated herein, Subtenant is required to furnish insurance to or for Sublandlord, Subtenant also shall be required to furnish such insurance to or for Master Landlord and such other persons as shall be entitled thereto under the Master Lease, provided that, in the case of any such other person not named in the Master Lease, Sublandlord shall have notified Subtenant thereof.

8.2 Whenever, pursuant to any of the Incorporated Provisions as incorporated herein, Subtenant is required to indemnify or defend Sublandlord, Subtenant shall be required also to indemnify or defend Master Landlord and such other persons as shall be entitled thereto under the Master Lease.

8.3 In addition to Subtenant's obligations under Section 8.2, Subtenant shall indemnify, defend and hold harmless Sublandlord from and against any loss, cost, damage or expense (including reasonable attorneys' fees), or any claim therefor, arising out of (a) actions taken by Sublandlord at Subtenant's request pursuant to Section 4.4, or (b) any failure by Subtenant to observe or perform any of the terms, covenants or conditions of this Sublease required to be observed or performed by Subtenant, including any loss, cost, damage or expense which may result from (i) any default under or termination of the Master Lease arising by reason of any such failure, or (ii) any holding over by Subtenant in the Premises beyond the expiration or sooner termination of this Sublease, including any such liability with respect to the entire Premises arising out of such holding over by Subtenant.

8.4 Subtenant's liability insurance shall name as additional insureds Sublandlord and all other persons reasonably designated by Sublandlord from time to time, and

shall contain cross-liability endorsements and shall cover liabilities based on doctrines of strict liability. Policies for such insurance shall be in form and substance and with an insurer reasonably acceptable to Sublandlord, shall require at least 15 days' prior written notice to Sublandlord for any termination or material alteration during the term of this Sublease, and shall waive any right of subrogation against Sublandlord or Master Landlord. Subtenant shall, upon Sublandlord's request from time to time, provide Sublandlord with reasonable evidence that such policies are in effect. Master Landlord's consent to this Sublease shall be deemed to evidence Master Landlord's agreement that Subtenant shall be entitled to waiver of claims and of the right of subrogation for damages to Master Landlord's property if and to the extent that the Master Lease provides such waivers for the benefit of Sublandlord.

9. Conditions to Sublease. Subtenant acknowledges that this Sublease is subject to the approval of Master Landlord. Sublandlord shall use reasonable efforts to obtain such approval as soon after the execution of this Sublease as is practicable. In the event that Subtenant enters into possession of the Premises before Sublandlord obtains such approval(s), (a) Subtenant accepts the risk that such consent may not be obtained and hence that this Sublease may not be effective, (b) Subtenant hereby waives all claims against Sublandlord for any loss, liability, cost or damages that may be incurred by Subtenant as a result, (c) Subtenant's right to occupy the Premises shall terminate on the third (3rd) business day following receipt of written notice of such termination from Sublandlord at any time following Sublandlord's receipt of notification that Master Landlord has determined that it will not consent to this Sublease, (d) the terms of this Sublease (including without limitation Subtenant's obligations to pay Base Rent and Additional Charges) shall, to the extent otherwise applicable, apply to the period ending on the date on which Subtenant surrenders possession of the Premises, and (e) following any such termination, Subtenant shall, if so required by Sublandlord at Subtenant's sole cost, on or before the fifteenth (15th) business day following receipt of Sublandlord's termination notice, undo all of Subtenant's alterations and improvements to the Premises and return the Premises to substantially the condition they were in prior to the commencement of Subtenant's work. So long as Subtenant does not enter into possession of the Premises, the Commencement Date shall in no event be deemed to occur before Sublandlord obtains all such approvals. For purposes of this paragraph, Master Landlord's consent shall be deemed to have been given as of the date when Master Landlord's unconditional consent to this Sublease has been obtained, or, in the event such consent is conditional, the date upon which such conditions have been fully satisfied or waived by Master Landlord. Nothing in this Sublease will prevent Sublandlord from entering into any agreement or amendment with Master Landlord which terminates the Master Lease with respect to the Premises in lieu of Master Landlord granting its consent to this Sublease. On the Commencement Date, Subtenant must reimburse Sublandlord for any fees or consideration which Sublandlord is required to pay to Master Landlord under the Master Lease on account of its consideration of Sublandlord's request to enter into this Sublease.

10. Representations and Warranties of Sublandlord.

10.1 Sublandlord hereby represents and warrants to Subtenant, as of the date on which this Sublease is executed by Sublandlord, as follows:

(a) A true and complete copy of the Master Lease, together with all supplements, amendments and other modifications thereto, (excluding redacted terms and conditions not relevant to Subtenant) is attached hereto as Exhibit "B".

(b) The Master Lease is in full force and effect.

(c) To Sublandlord's actual knowledge, no uncured default by Sublandlord presently exists under the Master Lease.

(d) Sublandlord has not received any notice of default under the Master Lease, except for any defaults which Sublandlord has cured and Master Landlord is no longer claiming exist.

10.2 Subtenant acknowledges that, except for the representations and warranties expressly set forth in this Sublease, Sublandlord has made no representations or warranties, express or implied, with respect to the Master Lease and the Premises.

11. Defaults and Remedies.

11.1 Defaults. The occurrence of any of the following shall constitute a material default and breach of this Sublease by Subtenant:

11.1.1 The occurrence of any of the events specified in Section 4.4 of the Master Lease; provided that, for purposes of this Section 11.1.1, "City" shall be read as "Sublandlord," "Lessee" shall be read as "Subtenant," and "the Lease" shall be read as "this Sublease".

11.1.2 Any default by Subtenant under this Sublease, subject to the same cure provisions, if any, set forth in the Master Lease with respect to defaults of the applicable type.

11.2 Remedies. In the event of any such default by Subtenant, Sublandlord shall have, in addition to all other rights and remedies set forth in this Sublease or available at law or in equity, the same rights and remedies against Subtenant as Master Landlord has against Sublandlord as tenant under the incorporated provisions of the Master Lease.

12. Notices. All notices, demands, approvals and other communications provided for in this Sublease shall be in writing and be delivered to the appropriate party at its address as follows:

If to Sublandlord:	YWCA of San Diego County
	1012 C Street
	San Diego, CA 92101
	Attention: Chief Executive Officer

If to Subtenant: **Alpha Project for the Homeless**
3737 Fifth Avenue, Suite 203
San Diego, CA 92103
Attention: Chief Executive Officer

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Notices under this Sublease shall be permitted to be transmitted by overnight courier service, in addition to the other methods permitted under the Master Lease.

13. **Brokers.** Sublandlord represents and warrants to Subtenant that Sublandlord has had no conversations or negotiations with any broker concerning the subleasing of the Premises to Subtenant and has not entered into any agreement with any other party that would give rise to a claim for a brokerage commission or finder's fee. Sublandlord shall indemnify, defend and hold Subtenant harmless from all damages, costs and liabilities, including reasonable attorneys' fees, resulting from or arising out of a breach of such warranty and any failure of Sublandlord to pay the commission due to Sublandlord's Broker in connection with this Sublease. Subtenant represents and warrants to Sublandlord that Subtenant has had no conversations or negotiations with any broker concerning the subleasing of the Premises from Sublandlord and has not entered into any agreement with any other party that would give rise to a claim for a brokerage commission or finder's fee. Subtenant shall indemnify, defend and hold Sublandlord harmless from all damages, costs and liabilities, including reasonable attorneys' fees, resulting from or arising out of a breach of such warranty.

14. Further Assurances. Each party hereto shall execute, acknowledge and deliver to each other party all documents, and shall take all actions, reasonably required by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Sublease.

15. Attorneys' Fees. In the event that any litigation shall be commenced concerning this Sublease by any party hereto, the party prevailing in such litigation shall be entitled to recover, in addition to such other relief as may be granted, its reasonable costs and expenses, including without limitation reasonable attorneys' fees and court costs, whether or not taxable, as awarded by a court of competent jurisdiction.

16. **No Third Parties Benefited.** This Sublease is made for the purpose of setting forth certain rights and obligations of Sublandlord and Subtenant, and no other person shall have any rights hereunder or by reason hereof; provided, however, that Master Landlord shall be entitled to the benefit of (a) Subtenant's assumption of the Assumed Obligations pursuant to Paragraph 4.9 above, (b) Subtenant's indemnities under this Sublease and (c) Subtenant's waivers and covenants to hold harmless under this Sublease.

17. Miscellaneous. This Sublease shall bind, and shall inure to the benefit of, the successors and assigns of the parties. This document may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Sublease that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Sublease. This Sublease shall be governed by the laws of the State of California.

18. Covenant of Quiet Enjoyment. Sublandlord covenants that Subtenant may peaceably and quietly enjoy the Premises without disturbance by Sublandlord or any person claiming by, through or under Sublandlord, subject nevertheless to the terms and conditions of this Sublease and to the Master Lease and any other leases and mortgages to which this Sublease is subordinate.

19. Improvements.

19.1 Subtenant agrees to accept the Premises strictly in an "AS IS" condition, without any express or implied warranty as to the safety, condition, compliance with laws or regulations, or fitness for use of the Premises or any fixtures or appurtenances therein or any common areas to be used in connection therewith. It is understood and agreed, notwithstanding any other provision of this Sublease or the Master Lease, that neither Sublandlord nor Master Landlord shall have any responsibility to make any alterations, additions or repairs to the Premises in connection with this Sublease, nor to bear any cost incident to any such alteration, addition or repair which may be requested or undertaken by Subtenant, except that Sublandlord shall deliver the Premises in broom clean condition.

19.2 Without limiting the generality of the Incorporated Provisions, in the event that Subtenant desires to make any alteration, addition or other modification to the Premises, and in the event that any governmental authority requires any other alterations, additions or modifications to be made to the Building as a condition to permitting Subtenant to make its desired modification(s), Subtenant shall not be permitted to make its desired modifications unless Subtenant also makes all of the modifications so required by governmental authorities, at Subtenant's sole expense.

19.3 Subtenant shall not make any alterations, installations, additions or improvements in or to the Premises without first having obtained the consent or approval of Master Landlord (if and to the extent required by the Master Lease) and of Sublandlord. Sublandlord may withhold such consent or approval in its sole discretion. Any alterations, installations, additions or improvements in or to the Premises made by or on behalf of Subtenant, whether or not Sublandlord's consent is required, must be removed by Subtenant at the expiration or earlier termination of this Sublease and Subtenant shall restore any improvements removed in connection therewith and repair any damage resulting from such removal. If Master Landlord and Sublandlord shall consent to any alterations, installations, additions or improvements then Subtenant shall observe and perform all of the terms, covenants and conditions of the Master Lease applicable thereto.

20. Right to Relocate. This Sublease is subject to any relocation rights contained in the Master Lease. In addition, in the event the relocation clause of the Master Lease is an Incorporated Provision, Sublandlord shall have the same right to relocate Subtenant as Master Landlord has the right to relocate Sublandlord under the Master Lease.

21. Express Assumption. Notwithstanding any other language herein to the contrary, Subtenant agrees to assume the rights and obligations subleased from Sublandlord and will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights required.

22. Negotiated Termination. Sublandlord shall have the right, exercisable by written notice to Subtenant within five (5) days thereafter, to terminate this Sublease after negotiating a termination of the Master Lease with Master Landlord. If Sublandlord exercises its termination right in accordance with this Section, Subtenant shall vacate the Premises (unless otherwise agreed to in writing) and shall comply with all terms of this Sublease and the Master Lease with respect to the condition of the Premises and the terms of surrender thereof.

23. Eminent Domain or Condemnation.

23.1 Termination of Master Lease. In the event a proceeding in eminent domain or condemnation is instituted against the Building or any part thereof, the Master Lease shall either continue or terminate according to the terms thereof. If the Master Lease terminates, this Sublease shall also terminate and Subtenant shall not be entitled to any award of damages for Subtenant's interest in the Premises, other than for the taking of Subtenant's personal property and fixtures, all other sums being paid to the Sublandlord or Master Landlord, as their respective interests may appear.

23.2 Continuation of Master Lease. If the Master Lease does not terminate, then a determination will be made whether the Premises are condemned or taken by the proceeding in eminent domain or condemnation pursuant to the same standard giving rise to Sublandlord's termination right under Section 4.5 of the Master Lease. If the entire Premises have not been condemned or taken, then the Sublease shall continue in full force and effect except that the rent payable hereunder shall be reduced to the extent that rent applicable to the Premises is equitably reduced under the terms of the Master Lease. Neither Subtenant nor Sublandlord shall have any responsibility or obligation to rebuild or restore the Premises after part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain. There shall be no reduction or abatement of rent for any period during which Subtenant is unable to use the Premises, in whole or in part, due to the condemnation or taking unless Sublandlord actually receives a reduction or abatement in rent under the terms of the Master Lease (which claim Subtenant may pursue against Master Landlord pursuant to Section 4.4 above) and then, only to the extent such reduction or abatement relates to the Premises and the Term.

24. Entire Agreement. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Sublease and this Sublease supersedes and cancels any and all previous negotiations, arrangements, representations, agreements and understandings, if any, between Sublandlord and Subtenant.

25. Headings. The Article and Section headings contained in this Sublease are for purposes of reference only and shall not limit or define the meaning of any of the terms or provisions hereof.

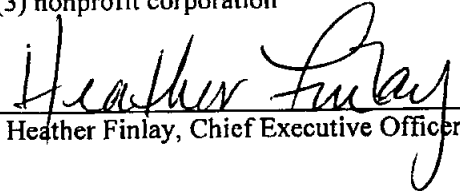
[Signatures to follow]

IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this
Sublease as of the date first written above.

"Sublandlord":

YWCA of San Diego County, a California
501(c)(3) nonprofit corporation

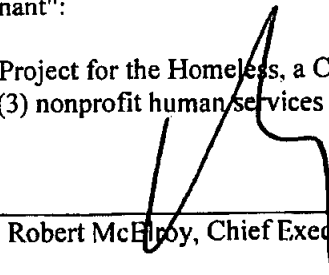
By: _____


Heather Finlay, Chief Executive Officer

"Subtenant":

Alpha Project for the Homeless, a California
501(c)(3) nonprofit human services corporation

By: _____


Robert McElroy, Chief Executive Officer

(Premises)

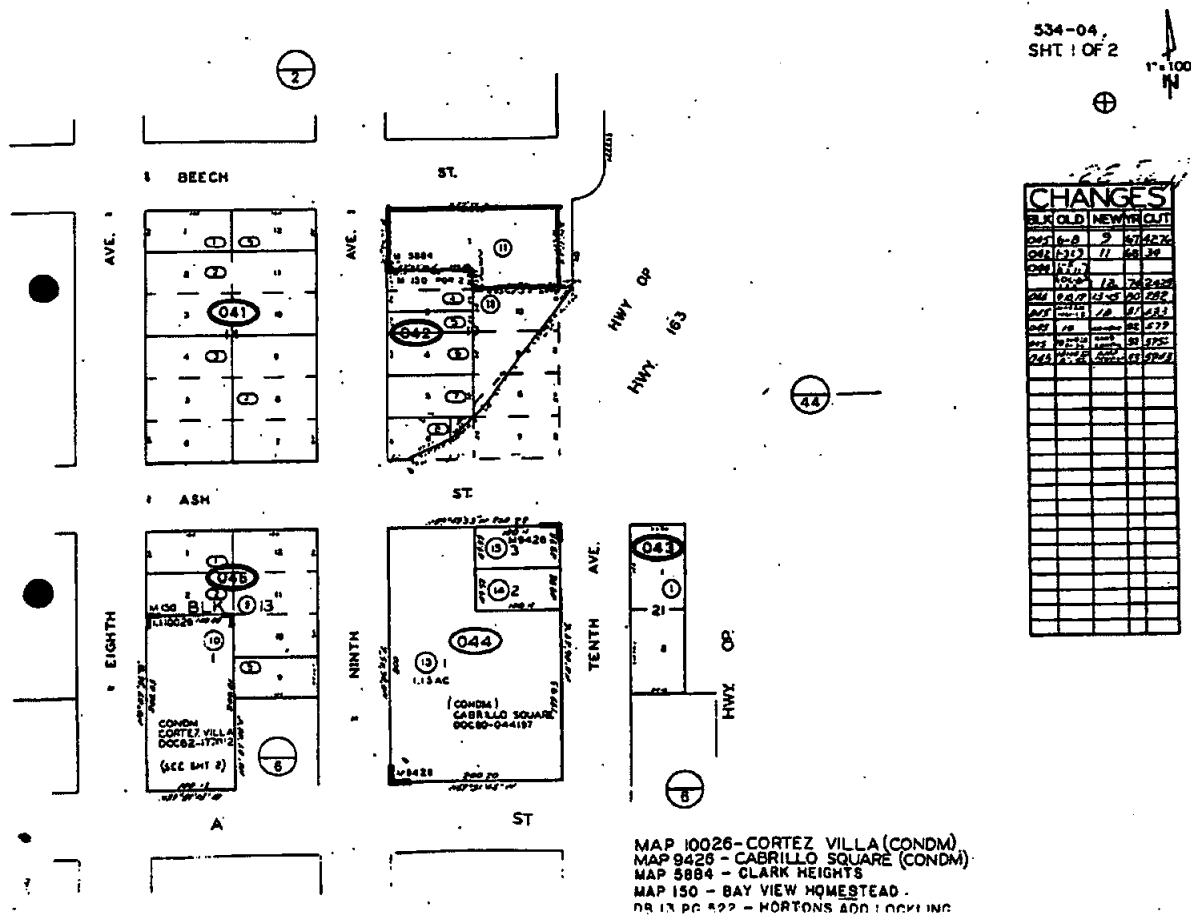


EXHIBIT "B"
(Master Lease)

COPY



THE CITY OF SAN DIEGO

YWCA LEASE

CORTEZ HILL TRANSITIONAL HOUSING

DOCUMENT NO. RR-299062

FILED APR 12 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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>	2
1.4 <u>Quiet Possession</u>	2
1.5 <u>Easements and Reservations</u>	2
1.6 <u>Competent Management</u>	3
1.7 <u>Political Activities</u>	3
1.8 <u>Public Signage</u>	3
1.9 <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: RENT	4
3.1 <u>Time and Place of Payment</u>	4
3.2 <u>Rent and Administrative Fee</u>	5
3.3 <u>Inspection of Records</u>	7
3.4 <u>Delinquent Administrative Fee</u>	7
3.5 <u>Unauthorized Use Charge</u>	7
SECTION 4: ASSIGNMENT	7
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	7
4.2 <u>Assignment and Subletting</u>	7
4.3 <u>Encumbrance</u>	8
4.4 <u>Defaults and Remedies</u>	8
4.5 <u>Eminent Domain</u>	11
4.6 <u>Additional Consideration to CITY</u>	12
SECTION 5: INSURANCE RISKS/SECURITY	12
5.1 <u>Indemnity</u>	12
5.2 <u>Insurance</u>	13
5.3 <u>Waste, Damage, or Destruction</u>	14
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	15
6.1 <u>Acceptance of Premises</u>	15
6.2 <u>Entry and Inspection</u>	15

6.3	<u>Maintenance</u>	16
6.4	<u>Improvements/Alterations</u>	16
6.5	<u>Utilities</u>	16
6.6	<u>Construction Bond</u>	16
6.7	<u>Liens</u>	17
6.8	<u>Taxes</u>	17
6.9	<u>Signs</u>	17
6.10	<u>Ownership of Improvements and Personal Property</u>	17
6.11	<u>Unavoidable Delay</u>	18
6.12	<u>Hazardous/Toxic Waste</u>	18
6.13	<u>Asbestos Disclosure</u>	20
6.14	<u>Water Quality - Best Management Practices and Stormwater Pollution Prevention Plan</u>	20
SECTION 7: GENERAL PROVISIONS		20
7.1	<u>Notices</u>	20
7.2	<u>Compliance with Law</u>	21
7.3	<u>CITY Approval</u>	21
7.4	<u>Nondiscrimination</u>	21
7.5	<u>Compliance with CITY's Equal Opportunity Contracting Program</u>	21
7.6	<u>Partial Invalidity</u>	22
7.7	<u>Legal Fees</u>	22
7.8	<u>Number and Gender</u>	22
7.9	<u>Captions</u>	22
7.10	<u>Entire Understanding</u>	23
7.11	<u>CITY Employee Participation Policy</u>	23
7.12	<u>Drug-free Workplace</u>	23
7.13	<u>Disabled Access Compliance</u>	24
7.14	<u>Corporate Authority</u>	25
7.15	<u>Standard of Employees</u>	25
7.16	<u>Relocation Payments</u>	25
7.17	<u>Survival</u>	25
SECTION 8: SIGNATURES		26
8.1	<u>Signature Page</u>	26
SECTION 9: EXHIBITS		27
9.1	<u>Exhibit "A"</u>	27
9.2	<u>Parcel Map</u>	28
9.3	<u>Corporate Name</u>	29

**CITY OF SAN DIEGO
YWCA LEASE**

THIS Lease AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and the YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY (YWCA), a California 501(c)(3) nonprofit social services corporation, hereinafter called "LESSEE," based upon the following:

RECITALS

- A. CITY is the owner of the parcel at 1449 Ninth Avenue, now known as Cortez Hill Transitional Housing; and,
- B. The Cortez Hill Transitional Housing property has received a \$3,859,200 renovation to convert it from a underutilized motel to a shelter to house up to 45 homeless families; and,
- C. The YWCA has offered social services to families in San Diego County since 1903, and now currently offers domestic violence prevention, childcare, legal and counseling services, teen educational services, and a full range of transitional housing services including case management; and,
- D. The CITY and the YWCA desire to provide a safe and secure environment where homeless families with children can establish stability and work toward long-term self-sufficiency; and,
- E. The YWCA desires to enter into a long-term lease in order to provide its transitional housing services at Cortez Hill Transitional Housing;

NOW, THEREFORE, CITY and YWCA agree as follows:

SECTION 1: USES

- 1.1 Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that certain real property situated at 1449 Ninth Avenue, containing an approximately 17,900 square foot 45-unit building on an approximately 17,646 square feet lot, in the City of San Diego, County of San Diego, State of California, described in Section 9.1 attached hereto and by this reference made part of this agreement (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 providing transitional housing and related services and activities, 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 throughout the term hereof for the above-specified purposes and to diligently conduct the business consistent with its status as a nonprofit public benefit corporation. 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.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the premises, including all costs arising therefrom. This lease shall not be interpreted by any decision maker on any CITY-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

- 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 the management and operation of a transitional housing facility, and related activities in a fiscally responsible manner to serve the community.
- 1.7 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 two or more candidates from different political parties such as occurs at a "candidate forum" and similar events.
- 1.8 Public Signage. LESSEE shall, at all times during the lease term, maintain a prominent CITY-approved sign identifying the property as CITY-owned. The sign shall be installed by LESSEE at a location agreeable to CITY.
- 1.9 Parking. LESSEE shall maintain the parking lot within the leased premises, in accordance with Section 6.3 Maintenance hereof.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be five (5) years 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.

- 2.2 Right to Extend. Provided that LESSEE is not in default of this lease, and has properly notified CITY, LESSEE has the right to extend this lease for three (3) additional terms of five (5) years each, subject to, and on the same terms as set forth in this Lease and any subsequent amendments. LESSEE shall provide written notice to CITY at least ninety (90) days prior to expiration of the original or extended term of this lease that LESSEE intends to exercise its right to extend the term of this lease for an additional five years. Failure to provide timely written notice shall result in the expiration of the lease at the end of the respective five-year term.
- 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; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 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: RENT

- 3.1 Time and Place of Payment. An administrative fee is due annually in advance on or before the first day of each lease year. All annual administrative fees will be prorated during the first and final months of any lease year in order to achieve payment on the first day of each calendar month. Checks should 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 and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed administrative fee 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 Rent and Administrative Fee.

- a. Rent Amount. The annual rent is One Dollar (\$1) per lease year, receipt of which is hereby acknowledged by CITY.
- b. Administrative Costs. LESSEE shall pay a fee of Two Thousand Five Hundred Sixty-two Dollars (\$2,562.00) per lease year ("Administrative Fee" or "Fee"), payable annually, to partially offset the 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, 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 178.5. 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 2001.

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 Dollars (\$2,500).

Example Calculation for Calendar Year 2003 Fee Adjustment

Current Index (Third Quarter 2002)	182.9	
	-----	= 1.0246 (Adjustment
Base Index (Third Quarter 2001)	178.5	Multiplier)

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:

\$2,500	(Base Figure)
x 1.0246	(Adjustment Multiplier)
\$2,562	(Adjusted Fee)

- (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 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.
- 3.4 Delinquent Administrative Fee. If LESSEE fails to pay the administrative fee ("fee") when due, LESSEE shall pay, in addition to the unpaid fee, five percent (5%) of the delinquent fee. If the fee 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 fee 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 payment of the fee be less than Twenty-five Dollars (\$25). 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.
- 3.5 Unauthorized Use Charge. LESSEE shall pay CITY fifty percent (50%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for administrative fee payments and the provision for delinquent administrative fees. The existence of the fifty percent (50%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

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 during the term of this lease. LESSEE 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 subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent subletting, occupation, or use by another person. Any such subletting without such consent shall be void and shall, at the option of CITY, terminate this lease.

"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 sublease shall be conditioned upon the sublessee agreeing in writing that it will assume the rights and obligations thereby subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement 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, that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. The CITY Manager may also require, as a condition to approval of any sublease of a commercial nature (e.g., food vending or telecommunications installations), that LESSEE pay CITY market rents for such uses. 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.

- 4.3 Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument during the term hereof.

4.4 Defaults and Remedies.

a. Defaults. Each of the following shall constitute an event of default under this Lease:

- (1) LESSEE'S failure to make any payments required under this Lease when due;
- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default, other than those requiring payment to CITY,

is not curable within thirty (30) days, and fails to commence to cure the default(s) within said thirty (30)-day period and diligently pursue such cure to completion;

- (3) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (4) LESSEE is adjudicated a bankrupt;
- (5) LESSEE makes a general assignment for the benefit of creditors;
- (6) LESSEE uses the Premises for any unauthorized purpose.

b. Remedies.

- (1) Upon default by LESSEE, CITY may, at its option, give LESSEE or any person claiming rights through LESSEE a written Three (3)-Day Notice to Pay or Quit, if said default is based upon Section 4.5a(1), or CITY may terminate the 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 Section 4.5a(2) - (6) hereof is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues such cure to completion), and may recover from LESSEE the sum of:
 - (a) the worth of at the time of award of any unpaid rent that had been due at the time of termination;
 - (b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award exceeds (ii) the amount of rental loss, if any, and LESSEE affirmatively proves could have been reasonably avoided;
 - (c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the term after the time of the award exceeds (ii) the amount of rental loss, if any, as LESSEE affirmatively proves could be reasonably avoided;

- (d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (a) and (b) of this section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section the term "rent" shall include base rent, percentage rent and any other payments required by LESSEE.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the premises, 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 rent as it becomes due, plus damages.

LESSEE and CITY agree that any personal property left at the premises for thirty (30) days after termination of this lease shall be considered abandoned and that LESSEE forfeits all ownership to the abandoned personal property, and it is mutually agreed that CITY may dispose of the abandoned personal property as it solely deems appropriate, without further liability to LESSEE or any person claiming any interest in the personal property. CITY may, at its option, remove or dispose of the abandoned personal property at LESSEE'S expense. LESSEE shall hold CITY harmless and defend CITY against all claims asserted by third persons claiming an interest in the personal property.

- d. 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 rents is not a waiver of any default preceding the rent 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.

- 4.6 Additional Consideration to CITY. LESSEE acknowledges that CITY has expended considerable sums for the renovation of the Cortez Hill Transitional Housing. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the renovation of the facility. Therefore, 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 any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold. 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 forbearances regarding claims and judgments. 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 paragraph, together with an acknowledgment from the proposed sublessee as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the sublease transaction. Any subletting in violation of the terms and conditions of this paragraph shall be void.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its elected officials, officers, agents, employees and representatives 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 elected officials, officers, agents, employees and representatives.

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 Three Million Dollars (\$3,000,000) Combined Single Limit Liability with an occurrence claims form. 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) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a 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.

- b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY, its elected officials, officers, agents, employees and representatives as an additional insured, 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 must be provided prior to the CITY's execution of the lease, and 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.
- (3) 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.
- (4) 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 b.(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.

- 5.3 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.

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 agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE shall make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.
- 6.4 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.
- 6.5 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 shall be installed underground.
- 6.6 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 one hundred percent (100%) 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.
- 6.7 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 attorneys' 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.

6.8 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 rent due CITY.

6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, 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 twenty-four (24) hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 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 at its expense.
- 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.

6.11 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 rental 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.

6.12 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional 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 769704-1 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.

- 6.13 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 the existence of asbestos on the leased premises.

- 6.14 Water Quality - Best Management Practices and Stormwater 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.

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

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.
- c. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

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 the 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 the 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) The 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 agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); 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 in 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 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, as provided in Section 9.3, Corporate Name, hereof, and all steps have been taken prior to the date hereof to qualify LESSEE to do business in California.

7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

7.16 Relocation Payments. LESSEE understands and agrees that is shall not be entitled to any relocation payments whatsoever from the CITY during the term of this lease, or upon termination of this lease for any reason

7.17 Survival. Any obligation which accrues under this lease prior to its expiration or termination shall survive the expiration or termination of the lease.

SECTION 8: SIGNATURES

8.1 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-299062, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 4/15/04

By [Signature]

LESSEE: YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF SAN DIEGO COUNTY

Date 2/12/04

By Judy Case DePasquale
[Signature]

APPROVED as to form and legality this 19th day of April, 2003. ⁴

CASEY GWINN, CITY ATTORNEY

By [Signature]
Deputy CITY Attorney

SECTION 9: EXHIBITS

9.1 Exhibit "A".

LEGAL DESCRIPTION

**LOT 1 OF CLARK HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO,
STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5884, FILED IN THE
OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 12, 1957**

APN 534-042-11

EXHIBIT A

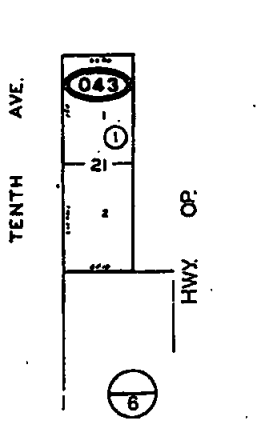
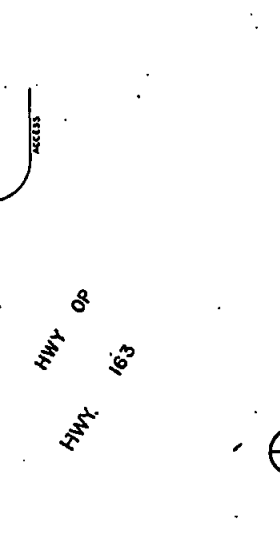
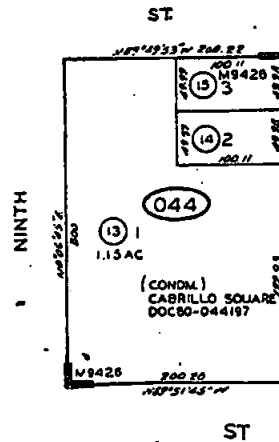
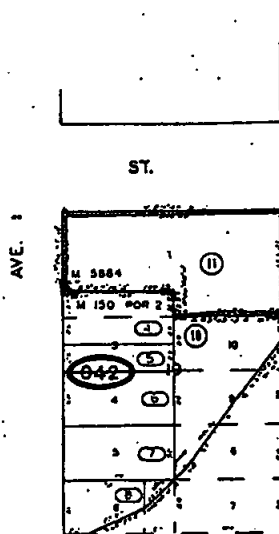
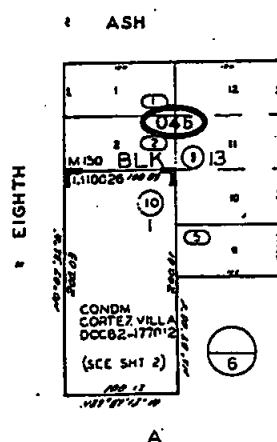
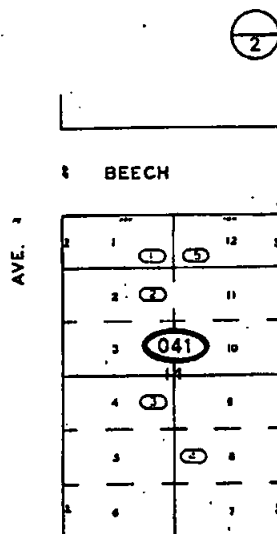
9.2 Parcel Map.

534-04
SHT 1 OF 2

1"=100'



CHANGES			
BLK	OLD	NEW	CUT
045	6-8	9	67 4276
042	1-3	11	68 39
040	5-7		
	12	74	2428
044	9-12	13-15	80 282
045	10	10	81 533
045	10	10	82 579
045	10	10	91 575
045	10	10	92 575
045	10	10	93 575
045	10	10	94 575
045	10	10	95 575
045	10	10	96 575
045	10	10	97 575
045	10	10	98 575
045	10	10	99 575
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045	10	10	119 575
045	10	10	120 575



MAP 10026-CORTEZ VILLA (CONDM)
MAP 9426 - CABRILLO SQUARE (CONDM)
MAP 5884 - CLARK HEIGHTS
MAP 150 - BAY VIEW HOMESTEAD
DB 13 PG 522 - HORTONS ADD LOCKING

9.3 Corporate Name.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY

I, DIANE PEARSON, certify that I am the
PRESIDENT of the corporation named in the attached agreement; that
Judy CASEDIPASQUALE, who signed this agreement on behalf of the
corporation, was then EXECUTIVE DIRECTOR 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
July 1, 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.

X By Diane Pearson

CORPORATE SEAL

Name Susan K. Weber. Past President
Title

Name Sherry Jones. Vice President
Title

Name Jane Haskell. Secretary.
Title

Name Roberta Spoon. CPA, Treasurer.
Title

RECEIVED

04 APR -2 AM 11:17

CITY CLERKS OFFICE
SAN DIEGO, CA

RESOLUTION NUMBER R- **299062**

ADOPTED ON **APR 12 2004**

WHEREAS, on January 28, 2002, the Council of the City of San Diego adopted Resolution No. R-296013, selecting the YWCA as the Cortez Hill Homeless Family Facility Operator and authorizing the City Manager to enter into exclusive negotiations and contract with the YWCA to operate the Cortez Hill Homeless Family Facility located at 1449 Ninth Avenue in the City of San Diego; and

WHEREAS, the City of San Diego and the YWCA have negotiated a twenty year lease (an initial five year term with 3-five year options to renew) to manage and operate the Cortez Hill Homeless Family Facility as a transitional housing facility at the nominal rental rate of \$1.00 per year plus an initial annual administrative fee of \$2,562 per year, adjusted annually; and

WHEREAS, the YWCA is a nonprofit organization which has provided social services to families in San Diego since 1903, and now currently offers domestic violence prevention, childcare, legal and counseling services, teen educational services, and a full range of transitional housing services including case management; and

WHEREAS, the YWCA program will serve up to 150 parents and children in 47 living units on site, will operate on a year-round basis, and is designed to promote self-sufficiency, assist in securing long term stable housing, and stabilize family dynamics; and

WHEREAS, the Cortez Hill Homeless Family Facility has been managed and operated by the YWCA since completion of renovation of the property in December 2002; and

WHEREAS, the City's valuation staff has determined the fair market value of the property to be \$2,500,000, and annual fair market lease value to be in the range of \$290,000 to \$320,000; 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 the YWCA, for the management and operation of the Cortez Hill Homeless Family Facility at 1449 Ninth Avenue for an initial term of five years with three addition five-year options to extend, at a rent of \$1 per year plus administrative cost recovery, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR-299062.

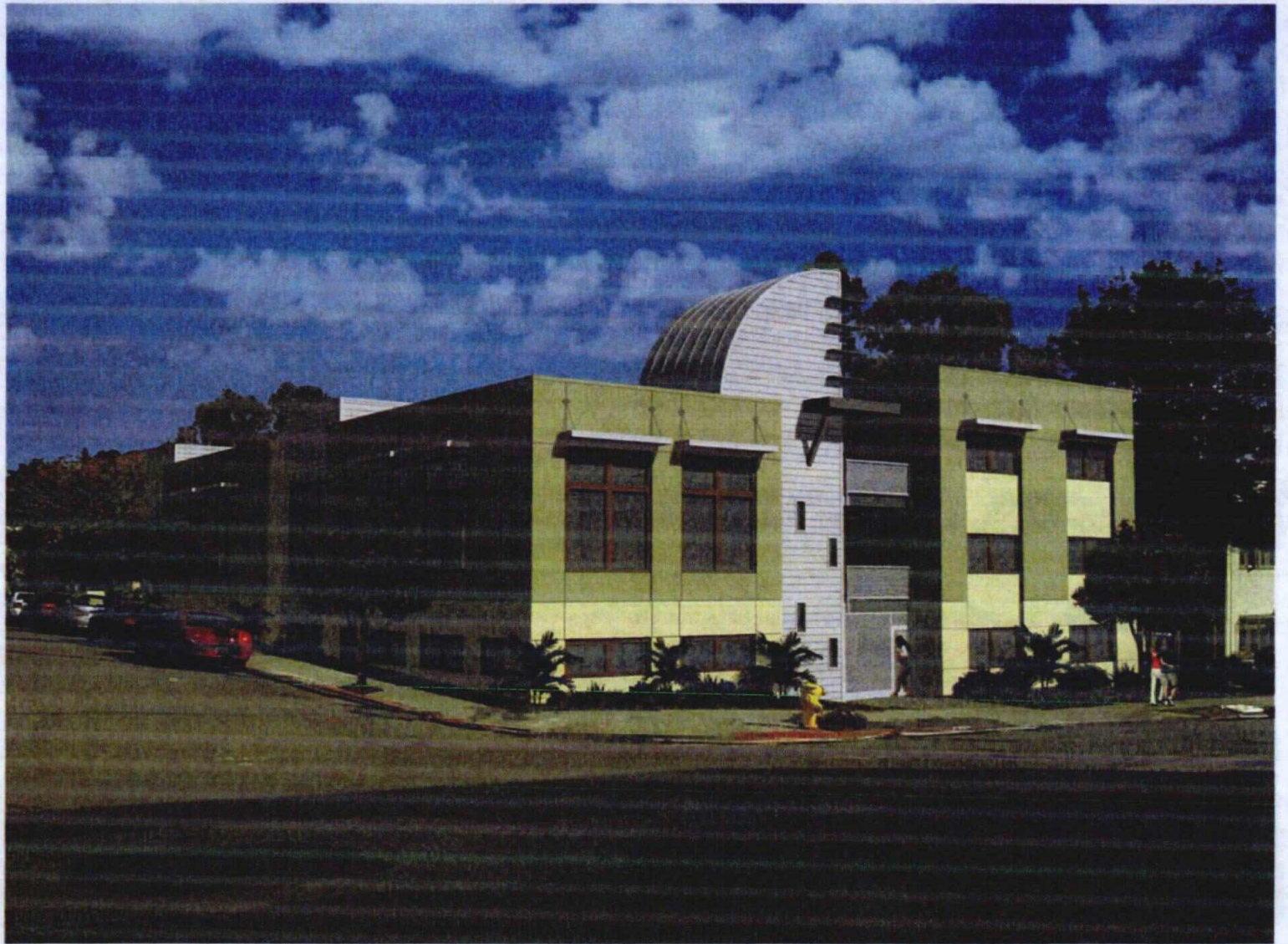
APPROVED: CASEY GWINN, City Attorney

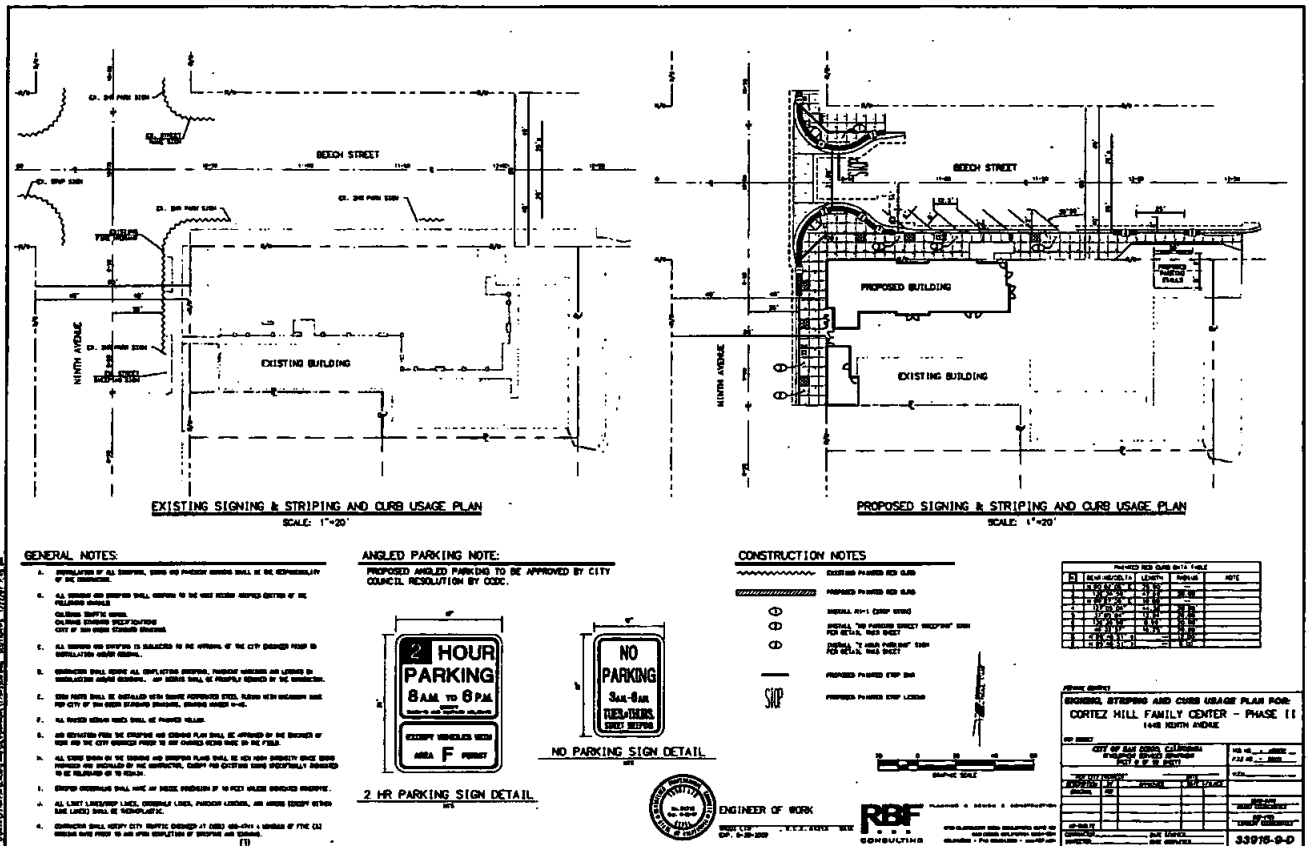
By



Carrie L. Gleeson
Deputy City Attorney

CG:mm
03/29/04
Or.Dept:READ
R-2004-1012







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\L-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



THE CITY OF SAN DIEGO

January 8, 2014

Ms. Heather Finlay
YWCA of San Diego County
1012 C Street
San Diego, CA 92101

Reference: YWCA located at 1449 Ninth Avenue, San Diego, CA

Dear Ms. Finlay:

Thank you for your letter dated January 6, 2014 requesting that the City of San Diego extend the above referenced lease for an additional 5 years, pursuant to Section 2.2, Right to Extend of the lease.

Pursuant to Section 2.2, the City agrees to extend the above referenced lease for the second of three (3) five year option periods. This extension will establish a new expiration date of April 30, 2019.

If you have any questions, please call me at (619) 236-6986.

Sincerely,

Charmaine R. Gillis
Property Agent

CRG/cb

I:\Support Staff Group\WPO\2014\GILLISL-FINLAY.docx

Real Estate Assets Department

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