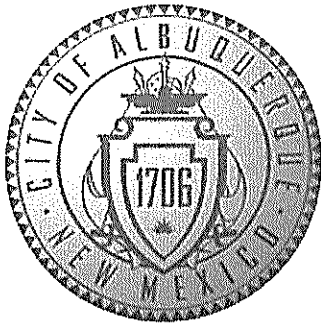


EC-21-475



**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

October 19, 2021

**TO:** Cynthia Borrego, President, City Council

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** Lease Agreement between Zia Community Cares, LLC and the City of Albuquerque at 5400 Gibson Blvd. SE


The City owns property located at 5400 Gibson Blvd. SE. With the recent acquisition of the property, the City assumed a lease agreement with Zia Community Cares, LLC. Zia provides in-home behavioral health services and currently occupies a portion of Building 11 on the campus. The City and Tenant have mutually agreed to relocate Zia's services into the main building of the campus. Zia Community Cares, LLC wishes to continue its tenancy and is willing to enter into a new lease directly with the City of Albuquerque.

The proposed Lease Agreement is for a one (1) year term with four (4) one (1) year extension options, provided that lessee is in compliance with the lease and if properly exercised. Family and Community Services has agreed to waive the first month's rent (\$1,500.00) to offset Zia's moving expenses. The proposed annual rent of the initial term will generate \$19,500.00 in revenue for the City, and the extension options will have an annual escalation of 3% per each extended term.

This Lease Agreement is forwarded to City Council for approval.

TITLE/SUBJECT OF LITIGATION: Lease Agreement between Zia Community Cares, LLC and the City of Albuquerque at 5400 Gibson Blvd. SE

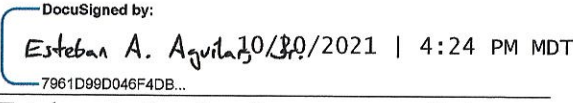
Approved:

  
\_\_\_\_\_  
Sarita Nair  
Chief Administrative Officer

11/2/21

Date

Approved as to Legal Form:

  
\_\_\_\_\_  
Esteban A. Aguilar, Jr.  
City Attorney

DocuSigned by:

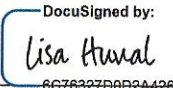
Esteban A. Aguilar, Jr. 10/20/2021 | 4:24 PM MDT

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Date

DS  


Recommended:

  
\_\_\_\_\_  
Carol M. Pierce, Director  
Family and Community Services

10/20/2021 | 4:12 PM MDT

Date

## **Cover Analysis**

### **1. What is it?**

Lease Agreement between the City of Albuquerque (Family and Community Services Department) and Zia Community Cares, LLC.

### **2. What will this piece of legislation do?**

Enter into a new lease agreement with the City and Zia Community Cares, LLC in order to relocate Zia's current operations and continue their tenancy.

### **3. Why is this project needed?**

Zia Community Cares, LLC provides in-home behavioral health services to the citizens in the Albuquerque Community. The lease agreement will also generate revenue for the City.

### **4. How much will it cost and what is the funding source?**

Waiver of first month's rent to offset relocation expenses (\$1,500.00). There are no costs associated with this lease agreement.

### **5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

The proposed annual rent of the initial term will generate \$19,500.00 in revenue for the City, and the extensions options will have an annual escalation of 3% for each extended term.

### **6. What will happen if the project is not approved?**

The citizens in the Albuquerque Community will not receive the services and support provided by Zia Community Cares, LLC at 5400 Gibson Blvd. SE and the City will lose the revenue generated from the lease agreement.

### **7. Is this service already provided by another entity?**

No.

**LEASE AGREEMENT**  
**CITY OF ALBUQUERQUE AND ZIA COMMUNITY CARES, LLC**

THIS LEASE AGREEMENT ("Lease") between the **City of Albuquerque** (the "City"), a New Mexico municipal corporation, and **Zia Community Cares, LLC**, a New Mexico limited liability company, (the "Tenant"). Tenant and City may be referred to herein each individually as a "Party" and collectively as the "Parties."

**I. MISCELLANEOUS REPRESENTATIONS.**

WHEREAS, the City owns certain real property located at 5400 Gibson Blvd. SE, Albuquerque, NM (the "Property"); and

WHEREAS, Tenant desires to lease from City, and City desires to lease to Tenant, a portion of the Property identified as administrative office space located on the third floor and comprised of approximately one thousand, two hundred and two (1,202) square feet of rentable space (the "Premises"); and

WHEREAS, the Tenant is able and wishes to use the Premises for the purpose of providing in-home behavioral health services (the "Purpose"); and

WHEREAS, this Lease shall supersede and replace all prior agreements between the Parties (or their predecessors in interest) relating to the Property, including the prior lease by Tenant of a different premises ("the Current Premises") located on the Property, which Current Premises shall be vacated and surrendered to the City when Tenant begins occupancy of the Premises; and

WHEREAS, the Parties wish to enter into this Lease for the Premises.

NOW, THEREFORE, for mutual consideration, and on the terms and subject to the conditions set forth herein, City and Tenant hereby agree as follows:

**II. DEFINITIONS**

A. **"Department of Health Standards"** shall mean the minimum standards for a medical facility providing services such as a physician's office, a health clinic, an urgent care facility, or any other medical facility, as established by the New Mexico Department of Health ("NMDOH").

B. **"Environmental"** shall be interpreted in the broadest sense to include all federal, state or local statutes, ordinances, regulations, rules, or guidelines now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (defined below) or relate to the protection of human health, safety, or the environment.

C. **“Hazardous Substance”** shall be interpreted in the broadest sense to include any substance, material, waste, pollutant, or oil, which is, or becomes designated, classified, or regulated as being “toxic,” “hazardous,” “radioactive,” “dangerous,” or a “pollutant,” or any similar term, which is or becomes similarly designated, classified, or regulated, under any Environmental Law, including asbestos, petroleum, and petroleum products.

D. **“Net Lease”** shall be interpreted to mean a property lease in which a lessee pays all expenses which are normally associated with ownership, by way of example but not limitation: utilities, insurance and taxes, janitorial, routine maintenance, and all repairs. This Lease is a partial Net Lease in that the City as landlord has an obligation to maintain and repair certain Structural Components (as defined herein) while other expenses flow to the Tenant, all as more specifically set forth below.

F. **“Environmental Law”** means any federal, state, or local law, statute, ordinance, regulation, rules, or guidelines, now or hereafter in effect, pertaining to or governing Hazardous Substances or which relate to the protection of human health, safety, or that of the environment, including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980), RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).

### III. BASIC LEASE PROVISIONS.

A. Premises. The City hereby leases the Premises to the Tenant, which Premises consists of approximately one thousand, two hundred and two (1,202) square feet of rentable administrative office space, which is located on the third floor of the Property, more specifically shown on **Exhibit A** attached hereto. “Common Areas” on the Property and available for common, shared use by the City and all tenants of the Property may be used, by Tenant subject to the rules imposed by the City. Common Areas include the conference rooms in the Property and parking areas on the Property.

B. Terms.

(1) Effective Date and Term: This Lease will not be binding upon the Parties until it is approved by the Albuquerque City Council and signed by the Chief Administrative Officer or her designee (“Effective Date”).

(2) Lease Commencement Date: November 1, 2021

(3) Rent Commencement Date: December 1, 2021

(4) Expiration Date: October 31, 2022

(5) Term: The period of time starting on the Rent Commencement Date and ending on the Expiration Date shall be the “Term.”

(6) Rent:

- a. Rental payments shall commence on the Rent Commencement Date and shall be due at a total monthly rental amount of One Thousand, Five Hundred and no/100 dollars (\$1,500.00) per month (the "Base Rent") for the period of December 1, 2021 through April 30, 2022. Base Rent shall be paid in advance on a monthly basis, without notice, due on the first day of the month.
- b. The Base Rent shall be increased beginning on May 1, 2022 to Two Thousand and no/100 dollars (\$2,000.00) per month until the expiration date, October 31, 2022.
- c. In the event Tenant fails to pay Base Rent within fifteen (15) days of the due date, Tenant shall pay City a late payment charge equal to five percent (5%) of the Base Rent.
- d. Base Rent together with all other consideration to be paid or provided by Tenant to City shall collectively constitute "Rent" and shall be paid or provided to the City without offset.

(7) Time, Place and Manner of Payments:

- a. All Rent shall be paid to the City of Albuquerque, Central Accounts Receivable and Billing Division, PO Box 27780, Albuquerque, NM 87125, or at such other place as the City may designate from time to time for this purpose.
- b. Rent shall be paid by check, online, or as otherwise specified by the City.

(8) Extension Option: So long as the Tenant is not in default (beyond the applicable period of notice and cure) at the time of any extension, and upon written notice at least ninety (90) days prior to the expiration of the current Term, Tenant has the right to extend the Term (an "Option") up to four (4) additional, consecutive, one (1) year options (each an "Extended Term") upon the same terms and conditions as are in effect under this Lease immediately preceding the commencement of such Extended Term, except Base Rent shall increase by three (3%) percent per Extended Term. If Tenant fails to deliver to City written notice of exercise of an Option within the prescribed time period, such Option shall lapse, and there shall be no further right to extend the Lease Term.

(9) Holding Over: Holding over by the Tenant after the expiration of this Lease, whether with or without the consent of the City ("Holding Over"), shall not operate to extend or renew this Lease. Any such Holding Over shall be construed as a tenancy from month to month, and Tenant shall be bound by all terms and conditions of this Lease but only as they are applicable to a month-to-month tenancy, provided however, that if the Holding Over is without consent of the City, all rents and charges shall be in an amount equal to one hundred fifty percent (150%) of the rates and charges required in this Lease.

Nothing in this Lease shall be construed to grant Tenant the right to hold over at any time, and City shall be entitled to exercise any and all remedies at law or in equity to recover possession of the Premises, as well as any damages incurred by City, including attorneys' fees.

(10) Termination: Notwithstanding any provision in this Lease to the contrary and without limitation, the City or the Tenant may terminate this Lease at any time without cause by giving the other Party ninety (90) day's prior written notice. If either Party terminates the Lease pursuant to this provision, Rent shall abate at the end of the ninety (90) day notice period.

C. Use:

(1) Tenant shall use and operate the Premises only for the Purpose identified here within and for no other purpose whatsoever without City's prior written consent.

(2) Tenant shall continuously (except for short term closures due to fire, casualty, condemnation, weather, permitted or approved Tenant remodeling not exceeding sixty (60) days, or other causes beyond Tenant's control ("Permitted Closures") use the leased Premises, subject to the terms, conditions, and limitations set forth in this Lease.

(3) Tenant shall operate and maintain the Premises in a safe, sanitary and operable condition.

(4) Tenant shall, at Tenant's sole cost, comply with all federal, state, county, municipal, and other governmental statutes, ordinances, laws, rules, and regulations, now or hereafter enacted or amended, affecting the Premises, or occasioned by or affecting the use thereof by Tenant, including, but not limited to, the Americans with Disabilities Act.

(5) Tenant shall properly handle and dispose of all Hazardous Substances pursuant to Environmental Laws. Tenant shall take all appropriate measures necessary to prevent the release on or from the Premises of any Hazardous Substances. Neither Party shall create or bring on the Premises any Hazardous Substances or permit any third party to do so in violation of Environmental Laws. Should Tenant become aware of the existence of any Hazardous Substance on the Premises, Tenant shall immediately notify City of such Hazardous Substance.

(6) Tenant shall not use, occupy or permit the Premises to be used or occupied for any unlawful purposes or for purposes not specified in this Lease.

(7) Tenant shall cause its agents, employees and contractors to comply with any rules and regulations for the Property promulgated by City from time to time (the "Rules"). City from time to time by notice to Tenant may amend such Rules in any manner not inconsistent with the express provisions of this Lease.

(8) Tenant will provide copies of all Licensing, Permitting, Facility Audits, and Inspections to the Property Manager within three (3) business days of receipt.

(9) Tenant shall not use, occupy, or permit the Premises or any part of the Premises to be used or occupied, or do or permit anything to be done in or on the Premises in any manner which would:

- a. Cause or be likely to cause structural damage to the Premises or any part thereof, or adversely affect the mechanical, electrical, plumbing, or other base building systems.
- b. Cause, permit, or suffer any waste or damage or private nuisance, disfigurement, or injury to the Premises or the fixtures or equipment thereof, other than due to normal wear and tear.
- c. Cause the cancellation of any insurance policies related to the Premises. Tenant shall reimburse City for any increases in insurance premiums payable by City as a result of Tenant's use of the Premises or the nature of Tenant's business. All property kept, stored or maintained by Tenant within the Premises shall be there at Tenant's sole risk, and if the whole or any part thereof shall be destroyed or damaged by fire, water, or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft, or from any other cause, no part of said loss or damage is to be charged to or borne by City, unless and only to the extent due to the negligence or willful misconduct of City, its employees, agents, or contractors.
- d. Violate City rules, regulations, or policies promulgated for the use and operation of City-owned property.

(10) Tenant shall not:

- a. Place or install any signs, racks, stands, trade fixtures, pedestal signs, or other displays of products or services, advertisement, notice, lettering or decoration on any part of the outside of the Premises or on the outside of the building, the grounds of the Premises, the right-of-way or adjacent properties, without the express prior written approval of the City, which approval will not be unreasonably withheld. Tenant, at its expense, may install its standard signs and logos so long as they are in compliance with applicable signage codes and are approved by City in advance of fabrication and installation. Tenant shall pay for all fees and costs associated with obtaining the approval of its sign package by the City of Albuquerque, including any necessary application for a variance or an appeal thereof. All signs shall be kept in good condition and in proper operating order at all times. Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs



are attached, and this obligation shall survive the expiration or earlier termination of this Lease.

- b. Allow smoking of any kind on the Premises or at the Property at any time by any person in non-designated areas.
- c. Allow political activities or campaigning by candidates for any elected office on the Premises, except as expressly permitted by City in advance.
- d. Allow its employees to bring their children to work unless it is on an emergency basis. "Emergency Basis" means a one to two-day exception while daycare services are being arranged by the parent. Notwithstanding the foregoing, children may accompany their parents to work on the Premises on City-designated days for such purpose, such as "Bring Your Daughter to Work Day." Children are to be closely supervised when accompanying their parents to work and shall remain in the Premises in which their parents work.

#### **IV. LEASE OF PREMISES.**

A. The leasehold interest granted by this Lease shall be subject and subordinate to the right of the City and other owners of public utilities to operate, maintain, repair, modify, realign, replace, and reconstruct all public utilities in, under, across and upon the Premises and to all easements, licenses, and restrictions now or hereafter granted by the City to third parties in the Premises.

B. The leasehold includes with the right of ingress and egress to and from the Premises, through and across property owned by the City that is adjacent to the Premises in a manner to be directed by the City.

C. City shall allow Tenant prearranged and scheduled reasonable access to the building, telephone rooms, electrical closets, and other conduits, pipes, and facilities to accommodate Tenant's telecommunication systems. Tenant's right to the use of and access to the City's facilities for purposes of establishing service for the Premises shall be without charge other than the Rent provided for herein and any applicable charges of the respective service providers. However, no installation of telephone, computer or other telecommunication systems shall be made until the installation plan has been approved in writing by the City in advance of installation.

D. The City reserves the right to install security camera systems on any portion of the Property, excluding the Premises.

E. Should the City need to close the Property for any reason due to adverse weather, emergency, unforeseen or other governmental action, Tenant will comply with such orders to vacate and/or close as required and will not constitute a default of City. At no time shall the Tenant access the Property and/or Premises when the City has deemed the Property "CLOSED."

F. A “Property Manager” shall be identified by the City, and the Property Manager’s contact information shall be provided to Tenant and shall be updated timely in the event of any changes. The Property Manager shall provide all keys and access cards to the Tenant for the Premises. Keys and/or access cards lost by Tenant shall be duplicated by City at Tenant’s cost. Subject to specific provisions herein to the contrary, locks shall not be altered unless approved by the Property Manager in advance in writing. Lock changes, if approved, shall be at the sole cost of Tenant. City shall not be obligated to provide a key or other means of ingress to Tenant’s agents. The Tenant is responsible for maintaining a readily available key log and informing the Property Manager of key assignments. If at any time a key is unaccounted for the Premises will be rekeyed at the Tenant’s sole expense.

G. The Premises may be utilized by the Tenant and its agents Monday through Sunday 24 hours a day. The Premises shall only be open to the public Monday through Sunday during normal business hours 7:00 am to 6:00pm. Tenant shall be responsible for providing staff for all times during which the Premises is open to the public.

H. Tenant shall provide to the City, and keep updated, the contact information for at least two individuals who are responsible for the use and security of the Premises.

I. The Premises is located within a building designed for the occupancy of more than one tenant; Tenant acknowledges that the building contains areas intended for the use in common by all occupants of the building. As long as Tenant occupies the Premises, Tenant and its employees, agents, and invitees shall have the right to use, in common with City, its successors, assigns and other Tenants, all of the common areas, except for areas reserved for the exclusive use of City or other Tenants or occupants of the building.

J. Common Areas. All of the portions of the Property made available by the City for use in common by Tenants and their employees and invitees from time to time (“Common Areas”) shall remain subject to the City’s exclusive control at all times. Tenant shall not directly or indirectly conduct business in the Common Areas or make any use of the Common Areas that interferes in any way with the use of the Common Areas by other parties. Tenant’s use of the Common Areas shall be subject to the other provisions of this agreement. Tenant’s right to use the Common Areas shall terminate upon the expiration or earlier termination of this agreement or Tenant’s right to possession of the Premises. The City shall be entitled to make such changes in the Common Areas as it deems appropriate and to determine the nature and extent of all Common Areas. The City reserves the right to use or permit or deny the use of the Common Areas for any purpose that in the City’s reasonable opinion may be in the best interests of the Property, including without limitation promotions, events, exhibits, displays, shows and other activities.

**V. QUIET ENJOYMENT.** Upon the performance of all terms, conditions, and covenants of this Lease which the Tenant is required to perform, the Tenant shall at all times during the Term peaceably and quietly enjoy the Premises without any disturbance from the City. Any entry by the City pursuant to the rights, terms, and conditions of this Lease shall not be deemed a

constructive or actual eviction of Tenant and shall not be considered to be a breach of City's covenant of quiet enjoyment.

**VI. ACCEPTANCE OF PROPERTY.** Tenant acknowledges and represents that it has examined the Premises and has determined by its own independent evaluation that the Premises are suitable and usable for the purposes, uses and activities intended by Tenant and contemplated by this Lease. Tenant acknowledges that the City has made no representation, warranty or guarantee, express or implied, that the Premises are now, or during the Term of this Lease will be, suitable or usable for the Purpose.

**VII. PERMITS AND LICENSES.** Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises and shall otherwise comply with all applicable laws, ordinances, and governmental regulations. Tenant shall immediately notify City in the event any permit, license, or approval necessary for the operation of Tenant's business from the Premises is revoked or suspended. If such revocation or suspension is not corrected within twenty (20) days after notice to City (or such longer period as is reasonable so long as Tenant initiates such correction within the twenty (20) day period and thereafter diligently and continuously works towards correcting the revocation or suspension) then it shall be an automatic event of default under this Lease.

**VIII. REPAIRS AND MAINTENANCE, TENANT'S NEGLIGENCE AND SUBSTANTIAL DAMAGE.**

A. Tenant Build-Out and Improvements. Subject to the requirements of Article XI (Alterations), Tenant may pay for any additional finishing and upgrades to the Premises ("Tenant Improvements"), but such items, once affixed, and accepted by the City shall become the sole property of the City, and no reimbursement will be provided to Tenant at any time for such fixtures. Under no circumstance shall the Tenant make any alterations to the Premises without approval from the City. Any tenant improvements shall be approved prior to construction by the DMD Facilities Management Division Manager or his/her designee.

B. Tenant Repairs and Maintenance. Tenant shall, at its sole cost and expense make all necessary additions, repairs, maintenance and replacements to equipment owned by the Tenant, and with prior written Property Manager approval, repair or replace any damages caused by Tenant or its employees or invitees to the Premises promptly and when necessary. Any repairs or replacements shall be made in good condition and repair consistent with the quality of materials and workmanship of the original work. Tenant shall be responsible for cleaning all flooring at least annually. Tenant shall submit invoices as proof of service to City upon City request.

C. The City shall be responsible for all Structural Deficiencies (defined below) and the repairs and maintenance to Structural Components (defined below), unless the need for such repairs or maintenance are the result of Tenant's Improvements, renovations, alterations, or the result of the negligence or intentional acts or omissions of Tenant, its employees, agents, contractors, representatives, or invitees. Except for such negligence or intentional acts or omissions of Tenant, its employees, agents, contractors, representatives, or invitees, Tenant shall

not have any liability for any Structural Deficiencies or the repairs and maintenance to such. Unless otherwise agreed the following shall apply.

(1) "Structural Components" are defined to mean the building's foundation, roof, and exterior and interior load bearing walls.

(2) All technical systems including HVAC, electrical distribution, and plumbing including wastewater systems shall be the responsibility of the City. Substantive equipment includes: motors, condensers, fans and moving parts within the HVAC system, pipes within the plumbing system, and electrical distribution system including lighting. If the Tenant causes catastrophic failures of any of the aforementioned systems by their use of the Premises, Tenant shall be held accountable for any costs incurred by the City arising therefrom.

(3) "Structural Deficiencies" are significant, non-cosmetic, problems involving Structural Components which interfere with the function of the component or create a safety hazard.

D. Tenant's Failure. If Tenant refuses or neglects to commence or complete any repairs or replacements or maintenance as required by this Lease, the City may, at its option, make or complete the repairs or replacements or maintenance, and Tenant shall reimburse the City for such costs and expenses promptly upon receipt of an invoice. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed "Additional Rent."

E. At the City's discretion and as reasonably scheduled with the Tenant, a City representative will conduct periodic walk-throughs to identify repairs and maintenance needs of the Premises. The Property Manager will provide Tenant's responsibilities to Tenant in writing and such responsibilities must be remedied within thirty (30) days, unless deemed of an emergency nature, in which such needs must be remedied immediately.

F. Janitorial Services and Trash Removal. The City shall provide basic janitorial services to the Premises one (1) time per week. Services include vacuuming, trash removal and light dusting. The City shall provide supplies only to the Common Areas of the Property and only those supplies that are normally found in said Common Areas, such as bathroom paper and soap. Tenant shall be solely responsible for providing and paying for supplies to meet their needs for the Premises, including but not limited to, all paper products and office supplies. A tenant that requires hospital janitorial standards shall provide and pay for all janitorial services for the Premises. There shall be no reduction of rent based on janitorial services provided or paid by Tenant. The City shall provide and pay for a common trash dumpster for use by all tenants at the Property. Tenant shall cause its employees to place all refuse in refuse containers meant for that purpose, contained and bagged so as to avoid unsightly or unsanitary conditions in the area of the refuse containers or anywhere around the Premises. Tenant shall not place medical waste or Hazardous Materials in

the dumpster and shall be responsible for paying for disposal of such waste and materials pursuant to Environmental Laws.

(1) Tenant shall cause its employees to place all refuse and recyclables in appropriate containers. Trash must be contained and bagged so as to avoid unsightly or unsanitary conditions in the area of the refuse containers or anywhere around the Premises, and with the fitted lids of such containers kept closed and secured. Liquids should be disposed of in sinks and never in refuse containers. Boxes shall be broken down, loose paper bagged, and lids of City-provided, shared, recycle containers shall be kept closed. Tenant shall transport its refuse using a container with wheels so as to not drag bags of refuse along the hallways, sidewalks, or parking lots.

(2) Tenant shall not permit offensive or strong odors of any kind to emanate from the Premises. If such odors are emanating from the Premises, then upon notice from City, Tenant shall, within ten (10) days, install devices or put in place procedures to eliminate or contain such odors within the Premises. Tenant shall not store any items, including, but not limited to, food, equipment, crates, boxes, or cleaning supplies outside of its Premises without City's prior written approval.

G. Substantial Damage: Tenant's Negligence. In the event the Premises are destroyed or so damaged and rendered untenable so that they cannot reasonably be repaired within thirty (30) days, and such damage is a result of the negligent or intentional act or omission of Tenant, its officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees, the Rents, and fees payable hereunder shall not abate and the City may, at its discretion require Tenant to complete repair and reconstruction of the Premises promptly and pay the costs associated therewith, or the City may repair and reconstruct the Premises, in which case Tenant shall be responsible for reimbursing City for the costs and expenses incurred in such repair and reconstruction. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

H. Substantial Damage: City's Responsibility. If the damage to the Premises is not due to the negligent act or omission of the Tenant, its officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees, and if such repairs or rebuilding can, in the judgment of the City, be completed within ninety (90) consecutive calendar days from the date the damage occurred, the City, at its option may proceed promptly with such repairs, in which event abatement of the rental fees shall be allowed or the City may terminate this Lease. If such work cannot, as determined by the City, be completed within ninety (90) consecutive calendar days from the date the damage occurred, either the City or the Tenant may terminate the Lease. Neither Tenant nor City shall be deemed in default under this Lease in the event it elects to terminate pursuant to this Article.

I. Requests. All requests or complaints of Tenant relating to the Property's operation shall be addressed to the Property Manager. If the Property Manager is not available or not able to address complaints or questions regarding the Property operations, Tenant may contact the City's Department of Family and Community administration by calling 311.

**IX. PARKING.** This Lease includes parking privileges on the Property for clients and staff of Tenant as may be designated by the City from time to time.

**X. SURRENDER UPON TERMINATION.** At the expiration of the Term of this Lease, Tenant shall surrender the Premises to the City in as good condition as it was in at the beginning of the Term, reasonable use, wear, and tear excepted, clean and free of debris. Tenant shall remove Tenant's personal property from the Premises. Any and all improvements made to the Premises during the Term hereof, or during any preceding Lease for which Lease serves to allow for continuation of tenancy of the Premises, shall, unless City requests their removal, belong to the City without compensation, allowance, or credit to Tenant, except movable trade fixtures, furnishings, and equipment of the Tenant which can be removed without defacing the Premises or the Property. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings, and equipment. Any of Tenant's personal property left by Tenant at the expiration of the Term of this Lease shall, at the option of the City, become the property of the City, and the City shall be entitled to use, sell, or otherwise dispose of such personal property.

**XI. ALTERATIONS AND LIENS.**

A. Alterations. Tenant shall not make any alterations, improvements, additions, or changes to the Premises without the prior written consent of the City. All alterations shall be at the sole expense of Tenant and shall be made by a contractor licensed and insured in the State of New Mexico and shall be performed in a good and workmanlike manner. All materials used shall be of a quality comparable to or better than those in the Premises and shall be in accordance with plans and specifications approved by City. Tenant shall be responsible for securing any and all required permits for the performance of such work. Prior to the commencement of any repair, improvement, or alteration, Tenant shall give City at least five (5) business days' prior written notice so that City may post appropriate notices to avoid any liability for liens.

B. Liens. Tenant will pay all costs of construction done by Tenant or caused to be done by Tenant on the Premises as permitted by this Lease. Tenant will keep the Property free and clear of all construction, mechanic's, materialman's, laborer's, and supplier's liens resulting from construction done by or for Tenant. The interest of City in the Premises and the Property shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer, or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. If any construction, mechanic's, materialman's, laborer's or supplier's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Property in connection with any such Tenant work, Tenant shall, within thirty (30) days after receipt by Tenant of notice of such lien, discharge same as a lien either by payment or by posting of any bond as permitted by law. If Tenant shall fail to discharge any such lien, whether valid or not, within thirty (30) days after receipt of notice from City, City shall have the right, but not the obligation, to discharge such lien on behalf of Tenant, and Tenant shall be responsible for reimbursing City for any and all reasonable and actual costs and expenses incurred by City associated with the discharge of the lien(s), including, without limitation, reasonable attorneys' fees, which costs and fees shall constitute Additional Rent hereunder and shall be immediately due and payable by Tenant.

## **XII. UTILITIES.**

A. City shall provide to the Premises the same air conditioning, heat, water, gas, electricity, light, sewage, janitorial, and security services that are used in or rendered or supplied to the entire Property. It is the expectation that the Tenant incorporate energy efficient processes to their operations by conserving energy, water and natural gas.

B. Tenant shall arrange for and pay all fees (including connection fees and required deposits as applicable) for all additional services such as cable, telephone, internet services, and any other communication or computer for operation of its business at the Premises. Tenant shall not install any equipment or fixtures, or use the same, in any manner that exceeds the safe and lawful capacity of any utility equipment or lines serving the Premises.

C. No installation of such systems shall be made until the installation plan has been approved in writing by City in advance of installation.

D. Notwithstanding anything in this Lease to the contrary, City shall not be liable in damages or otherwise for any failure, variation, shortage, or interruption of any utilities or services due to any cause, except to the extent that such is the result of actions or omissions of City, its employees, agents, or contractors.

## **XIII. DEFAULT AND REMEDIES.**

A. Default. The occurrence of any one or more of the following events shall constitute a default by Tenant:

(1) Failure to make payment when due.

(2) The abandonment of the Premises by Tenant for a period of thirty (30) consecutive calendar days.

(3) The failure by Tenant to observe or perform any of the express covenants or provisions of this Lease, where such failure shall continue for a period of ten (10) consecutive calendar days after written notice thereof from the City to Tenant, provided that if the nature of Tenant's default is such that more than ten (10) consecutive calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences to cure within the ten (10) day period, and thereafter diligently and continuously prosecutes such cure to completion.

(4) Tenant (a) files, or consents by answer or otherwise to the filing against it, of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (b) makes an assignment for the benefit of its creditors; (c) consents to the appointment of

a custodian, receiver, trustee, or other officer with similar powers of itself or of any substantial part of its property; or (d) takes action for the purpose of any of the foregoing.

(5) A court or governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian, receiver, trustee, or other officer with similar powers with respect to it or with respect to any substantial portion of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up, or liquidation of Tenant, or if any such petition is filed against Tenant and such petition is not dismissed within one hundred and eighty (180) days.

(6) This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within one hundred and eighty (180) days.

(7) Tenant assigns this Lease or subleases all or any portion of the Premises without City's prior written consent.

B. City's Remedies. In the event of default by Tenant as defined above, the City, in addition to any other remedies set forth in this Lease, may without further notice or demand, exercise any one or more of the following remedies concurrently or in succession:

(1) Terminate this Lease, in which event this Lease and the leasehold estate hereby created shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice was the day originally fixed in this Lease for the expiration of the Lease Term. City shall thereupon be entitled to take possession of the Premises, and Tenant shall immediately surrender the Premises to City and agrees to pay to City, on demand, the following damages:

- a. the unpaid Rent and other amounts due at the time of termination plus interest thereon at the maximum lawful rate per annum from the due date until paid;
- b. the net present value of the balance of the Rent for the remainder of the Term (or applicable Extended Term), for the remainder of the Term or then-current Extended Term (had such Term not been terminated by City prior to the date of expiration), less the net present value of the fair market value rental of the Premises for said period taking into consideration a reasonable lease up period and reasonable expenses that would be incurred by City in re-letting the Premises (spread evenly throughout the term of the new lease), however this sum shall not be less than zero as in no event shall City be obligated to pay Tenant if the difference is a negative number. Both future payments computed in accordance with this provision shall be discounted to present value in accordance with accepted financial practices using a discount rate of four percent (4%) per annum. For purposes of this Article, Tenant's obligations, if any, for insurance premium increases and real estate taxes shall be projected



based on the average rate of annual increases from the Rent Commencement Date through the date of default; and

- c. any other amount arising out of Tenant's failure to perform its obligations under the Lease, or which in the ordinary course of events would be likely to result therefrom, including the cost of recovering the Premises, which costs shall not include the costs of demolition or remodeling the Premises for a new tenant, and brokerage commissions.

(2) Continue this Lease in effect, and as long as the City does not terminate Tenant's right to possession and City may enforce all its rights and remedies under the Lease, including the right to recover the Rent. Actions to collect amounts due by Tenant to City as provided in this Article may be brought from time to time, on one or more occasions, without the necessity of waiting until expiration of the Lease Term or then-current Extended Term.

(3) Terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State of New Mexico, without demand or notice of any kind to Tenant, in which event City may, but shall be under no obligation to do so (except to the extent required by the laws of the State of New Mexico), relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to City. Tenant shall be responsible for Rent for the period that the Premises are vacant, and for all direct and reasonable costs of recovering possession, re-letting the Premises, and collecting amounts owed, as provided in this Article XIII, Section (B). Tenant shall be liable for any deficiency of such rental below the total rental and all other payments herein provided for the unexpired balance of the Term or applicable Extended Term of this Lease. City may, at its discretion, elect to accelerate all future payments due in this paragraph, and such future payments shall be discounted to present value in accordance with accepted financial practices using a discount rate of four percent (4%) per annum. If said breach of the Lease continues, City may, at any time thereafter, elect to terminate the Lease as provided above.

(4) From time to time recover accrued and unpaid Rent and damages arising from Tenant's breach of the Lease, regardless of whether the Lease has been terminated, together with applicable late charges and interest at the rate of eighteen percent (18%) per annum or the highest lawful rate, whichever is less.

(5) Subject to any subordination of lien expressly granted by City in writing, to enforce the statutory Landlord's lien on Tenant's property.

(6) With or without having terminated the Lease, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying or using said Premises or any part thereof, by force if necessary, without incurring liability to Tenant or to any person occupying or using the Premises for any damage caused or sustained by reason of such entry or such removal.

(7) Enter upon and/or take possession of the Premises and perform any obligation on Tenant's behalf and recover from Tenant, upon demand, the entire amount paid or incurred by City for such purpose, plus fifteen percent (15%) for special handling, supervision, and overhead, which Tenant hereby acknowledges constitutes reasonable liquidated damages and not a penalty.

(8) Alter all locks and other security devices at the Premises without terminating this Lease. City shall not be obligated to provide a key or other means of ingress to the Tenant or Tenant's agents, or to pay for any damage to any security system, or to provide re-entry for any reason or under any circumstances whatsoever.

(9) In case of any event of default or breach by Tenant, Tenant shall also be liable for and shall pay to City, at the address specified for notice to City herein, in addition to any sum provided to be paid above; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants, and all reasonable expenses incurred by City in enforcing or defending City's rights and/or remedies, recovering possession, re-letting the Premises, or collecting amounts owed, including reasonable attorneys' fees (including, but not limited to, the reasonable fees and disbursements of City's legal counsel and the reasonable charges of City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees).

(10) In the event that City shall have taken possession of the Premises pursuant to the authority herein granted, then City shall have the right to keep in place and use all of the furniture, fixtures, and equipment at the Premises, including that which is owned by or Leased to Tenant at all times prior to any foreclosure thereon by City or repossession thereof by a lessor thereof or third party having a lien thereon. City shall also have the right to remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration, or other legal process) all or any portion of such furniture, fixtures, equipment, and other property located thereon and place same in storage at any premises within the county in which the Premises are located; and in such event, Tenant shall be liable to City for costs incurred by City in connection with such removal and storage, and Tenant disclaims any right to hold City liable and shall hold City harmless from all loss, damage, cost, expense, and liability in connection with such removal and storage. City shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment, and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to City a copy of any instrument represented to City by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment, or other property, without the necessity on the part of City to inquire into the authenticity of said instrument's copy of Tenant's or Tenant's predecessor's signature thereon and without the necessity of City's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and Tenant disclaims any right to hold City liable and shall hold City harmless from all cost, expense, loss, damage, and liability incident to City's relinquishment of possession of

all or any portion of such furniture, fixtures, equipment, or other property to Claimant. The rights of City herein stated shall be in addition to any and all other rights which City has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights herein granted City are commercially reasonable.

(11) Seek injunctive relief, including, if applicable, a mandatory injunction.

(12) Pursue any other remedies provided in specific provisions of this Lease, available at law, or provided in equity.

(13) If Tenant fails more than twice within a twelve (12) month period to observe or perform any covenant, condition, or agreement of the Lease (including, without limitation, the payment of Rent), regardless of whether such failures have been cured by Tenant, the third failure will at the election of City, in its sole and absolute discretion, be deemed an automatic event of default, without notice to Tenant or an opportunity to cure.

(14) Once a failure to make a payment of Rent or a failure to perform or observe any other term or condition contained in this Lease has occurred, City, in its sole discretion, may at any time require that all future payments from Tenant pursuant to this Lease be in certified funds or made by automatic electronic bank transfers.

(15) All of the remedies provided in this Article XIII shall survive the termination of this Lease.

#### **XIV. HAZARDOUS SUBSTANCES.**

A. Tenant's Responsibilities. At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Property by Tenant, its agents, employees, contractors, or invitees without the prior written consent of City. Tenant will cause any and all Hazardous Substances brought upon the Premises by Tenant to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with, and manage any and all Hazardous Substances in, on, under, or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the term of the Lease, Tenant will cause all Hazardous Substances placed on, under, or about the Premises by Tenant or at Tenant's direction to be removed and transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or the Property, nor enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying City of Tenant's intention to do so and affording City ample opportunity to appear, intervene, or otherwise appropriately assert and protect City's interests with respect thereto.

B. City's Representation. City represents and warrants that, to the best of its knowledge, the Premises do not contain nor have the Premises ever contained hazardous substances, nor have the Premises ever been investigated or held in violation of any environmental law.

C. Environmental Audit. At any time and from time to time, City may retain an environmental consultant or engineer to conduct an environmental audit or environmental assessment of the Premises and Tenant's compliance with applicable laws, rules, and regulations. Tenant shall extend its full cooperation with such audit or investigation. If Tenant is found not to be substantially in compliance with applicable law, then Tenant shall pay all reasonable costs associated with such audit or assessment to City upon demand; otherwise all costs shall be borne by City. In addition, Tenant, at City's request from time to time, shall complete such questionnaires and provide such information with respect to Tenant's activities and operations on the Premises as City shall reasonably require.

D. Notice. If the Premises or the Property become contaminated in any manner for which Tenant is legally liable or otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify City of the release or discharge of the Hazardous Substance. This obligation shall survive the expiration or earlier termination of this Lease.

**XV. RIGHT OF ENTRY.** The City, agents and other representatives shall have the right to enter into and upon the Premises or any part thereof at reasonable times and with reasonable notice for the purpose of inspecting the Premises, making repairs, showing the Premises to prospective lenders or purchasers of the Property and prospective tenants during the six (6) months preceding the expiration of the term. City shall also at all reasonable times with or without notice have access to the Premises for the purposes of performing City's obligations and exercising its rights under this Lease. In the event of an emergency as determined by the City, the City, its agents, and other representatives may enter at any time, without notice and without the presence of Tenant. Tenant will permit City at any time within one hundred and eighty (180) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit potential tenants to inspect the Premises, provided that such inspections do not unreasonably interfere with the operations of Tenants business activities.

**XVI. FIRE OR OTHER CASUALTY LOSS TO PERSONAL PROPERTY.** The City shall not be liable for any damage or loss of the Tenant's personal property on the Premises from any cause, including but not limited to bursting or leaking of water pipes, leaking roof, fire, theft, and negligence of co-tenants. Tenant shall be solely responsible for obtaining and paying for insurance covering Tenant's personal property in the Premises, operations losses, and liability insurance. Tenant shall not be insured by the City for such losses and shall not be entitled to make loss claims under the insurance coverage of the City.

**XVII. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublet the whole or any part of the Premises at any time for any reason without the City's prior written approval. Tenant acknowledges that the terms of this Lease are unique to Tenant and Tenant's

situation, and that the City may not grant such terms to a potential assignee or sublessee. It being further understood that it shall be reasonable for City, among other things, to withhold consent if City is not satisfied with the financial responsibility, identity, reputation, or business character of the proposed assignee or subtenant. Notwithstanding any consent by City, Tenant and its guarantor(s), if any, shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically become liable for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and City shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sublessee without proceeding in any way against any other party. In the event of an assignment or sublease, contemporaneously with the granting of City's consent, Tenant shall cause the assignee or sublessee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee or sublessee shall be jointly and severally liable therefore along with Tenant. Unless approved by City, no usage of the Premises, different from the usage provided for in Article I, above, shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease. Tenant shall not enter into, execute, or deliver any financing or security agreement that can be given priority over any mortgage given by City or its successors. City shall have the right to assign or transfer, in whole or in part, City's rights and obligations hereunder and in the Property and the Premises.

**XVIII. TAXES AND ASSESSMENTS.** Tenant shall promptly pay all taxes and other exactions assessed or assessable, shall pay all license and permit fees applicable to the Tenant's operation, and shall acquire and keep current all licenses, municipal, state, or federal, required as a result of the Tenants' operation on the Premises and shall not allow any of said taxes, excises, or fees to become delinquent.

**XIX. INSURANCE; INDEMNIFICATION.** At its expense, the Tenant shall procure and maintain, insurance in the kinds and amounts as set forth in this Article XIX.

A. At its expense, the Tenant shall procure and maintain insurance in the kinds and amounts set forth below:

- (1) Special Form Property Insurance. Tenant shall obtain and maintain special form property insurance, in an amount equal to one hundred percent (100%) of the then full replacement cost of all property owned by Tenant or within the Premises, including, but not limited to, Tenant's improvements, contents, inventory, trade fixtures, and all personal property within the Premises. This coverage shall be updated in the event of changes in the amount or value of such covered improvements, inventory, contents and other personal property within the Premises.
- (2) Comprehensive General Liability Insurance. Tenant shall obtain and maintain commercial general liability insurance applying to third party claims for bodily injury (including death) or property damage, including coverage for "premises/operations," "products and completed operations," and "blanket contractual" liabilities," which insurance policy shall be

written on an occurrence basis with limits not less than one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) personal or advertising injury, two million dollars (\$2,000,000) products and completed operations aggregate, and two million dollars (\$2,000,000) general aggregate, or such higher amounts and additional coverages as the City may reasonably require from time to time.

- (3) The policies of insurance must include coverage for all operations performed by the Tenant on, in, or relating to the Premises and Common Areas, and shall include contractual liability coverage, which shall specifically insure the hold harmless provisions of the Lease.
- (4) Business Interruption Insurance. Tenant shall procure and maintain business interruption insurance with a limit sufficient to cover not less than a six (6) month loss of income.
- (5) Workmen's Compensation Insurance. Tenant shall procure and maintain workmen's compensation insurance for its employees in accordance with the provisions of the Workmen's Compensation Act of the State of New Mexico, and shall include employer's liability insurance with a limit not less than one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease - each person, and one million dollars (\$1,000,000) bodily injury by disease - policy limit, or such higher amounts and additional coverages as the City may reasonably require from time to time.
- (6) Automobile Liability Insurance. Tenant shall procure and maintain a comprehensive automobile liability insurance policy with liability limits in amounts not less than one million dollars (\$1,000,000) combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy shall include coverage for the use of all owned, non-owned, or hired automobiles, vehicles, and other equipment both on and off-road. The City shall be named an additional insured.
- (7) Sexual Abuse/Molestation Coverage. Tenant agrees to carry sexual abuse/molestation liability coverage in an amount not less than one million dollars (\$1,000,000) for the duration of this lease.

B. Policy Requirements. Tenant's insurance policies shall:

- (1) Be issued by insurers reasonably acceptable to the City and rated A-VII or better by A.M. Best;

- (2) Cover all operations of Tenant on, in, or relating to the Premises under or permitted pursuant to this Lease, whether performed by Tenant, its agents, volunteers, contractors, or sublessee(s);
- (3) As to liability policies, name the City, its property managers, and any mortgagee(s), and their respective directors, officers, partners, agents, employees, members, trustees, and shareholders as additional insureds, by endorsement approved by the City;
- (4) Contain a mortgage clause satisfactory to the City and a waiver of any subrogation rights that Tenant's insurers may have against the City and those for whom the City is legally responsible;
- (5) Be non-contributing and apply as primary, and not as excess to, any other insurance available to the City;
- (6) Not be invalidated with respect to the interests of the City and the holder of any encumbrance on the Property or Premises by reason of any breach or violation by Tenant of any warranties, representations, declarations, or conditions contained in the policies;
- (7) Contain a requirement by the insurer to notify in writing the City and the holder of any encumbrance on the Property or Premises as designated by the City not less than thirty (30) days prior to any cancellation, termination, or non-renewal of the policy; and
- (8) Be reasonably satisfactory in form, substance, limits, deductibles, and retentions to the City.

C. Evidence of Coverage. Tenant shall deliver to the City certificates of insurance, or if required by the City, certified copies of each such insurance policy as soon as practicable after the placing of the required insurance and periodically thereafter upon renewal or replacement of the policies then in force, which shall occur at least thirty (30) days prior to the expiration or cancellation thereof. A certificate of insurance that states that the failure to give the City notice imposes no liability or obligation on the insurer shall not be in compliance with this Article. For example, certificates or policies stating that the insurance company shall "endeavor to notify" and that the "failure to give such notice imposes no obligation" on the insurance company are not in compliance with the insurance requirement of this Lease. All certificates of insurance shall provide that thirty (30) days written notice be given to the Director, Risk Management Department, City of Albuquerque, P.O. Box 470, Albuquerque, NM 87103 and the Real Property Manager, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. The City shall have the right to request current

confirmation of insurance coverage from time to time. No review or approval of any such insurance certificate by the City shall derogate or diminish the City's rights or Tenant's obligations. Tenant shall not take possession of the Premises without having complied with the requirements of this Article. If at any time Tenant fails to provide satisfactory evidence of all required coverages, the City may, but shall have no obligation to, purchase such insurance for Tenant which shall be at Tenant's sole cost and expense, and which shall be immediately due and payable by Tenant upon demand by City.

D. General Indemnification. Tenant agrees to indemnify, defend and hold harmless the City, its officers, agents, and employees against liability, claims, damages, losses, penalties, expenses, suits, actions or proceedings arising out of bodily injury to person, including death or damage to property caused by or resulting from Tenant's and/or its employees', agents', contractors', and invitees' act(s) or omission(s) in the Premises, on the Property, or relating to the Purpose. Provided, however, Tenant is not required to indemnify the City for the negligence or intentional acts, errors, or emissions of the City or of its employees or agents.

## **XX. CONDEMNATION.**

A. Termination. If during the Term any part of the Property is taken or purchased by right of eminent domain or in lieu of condemnation, whether or not any portion of the Premises is taken, and if in the reasonable opinion of City substantial alteration or reconstruction of the portion of the Property is necessary or desirable as a result thereof, or the amount of parking available to the portion of the Property is materially and adversely affected, City shall have the right to terminate this Lease by giving Tenant at least thirty (30) days written notice of such termination.

B. Award. City shall be entitled to receive and retain the entire award or consideration for the affected lands and improvements and Tenant shall not have, or advance, any claims against City for (i) the value of its property or its leasehold estate, (ii) the unexpired term of this Lease, (iii) costs of removal or relocation, or (iv) business interruption expense or any other damages arising out of the taking or purchase. Nothing herein shall give City any interest in or preclude Tenant from seeking and recovering on its own account from the condemning authority any separate award of compensation attributable to the taking or purchase of Tenant's chattels or trade fixtures or attributable to Tenant's relocation expenses provided that any such separate claim by Tenant shall not reduce or adversely affect the amount of City's award. If any such separate award made or compensation paid to Tenant specifically includes an award or amount for City, Tenant shall promptly account therefor to City.

## **XXI. ETHICS AND CAMPAIGN PRACTICES BOARD, FAIR DEALING AND CONFLICT OF INTEREST.**

A. To the extent allowable, Tenant agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Lease whenever such records or information are



within Tenant's custody, are germane to an investigation authorized by the Board and are requested by the Board. Tenant further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Tenant agrees to require that all contractors, subcontractors, or sub-consultants employed by Tenant for any of the services performed under the terms of this Lease will agree in writing to comply with the provisions of this paragraph. Tenant, will not be compensated for its time or any costs it incurs in complying with the requirements of this paragraph.

B. Upon execution of this Lease, or within five (5) days after the acquisition of any interest described in this Lease or any time during the Term of this Lease, the Tenant shall disclose in writing to the City whether any City Councilor or other officer or employee of the City has or hereafter acquires any direct, indirect, legal or beneficial interest in the Tenant or in any contract, lease or agreement between the City and Tenant or in any franchise, concession, right or privilege of any nature granted by the City to the Tenant in this Lease.

C. Tenant covenants that the only person or firm interested in this Lease as principal or principals is named in this Lease, and that this Lease is entered into by the Tenant without collusion on the part of the Tenant with any person or firm, without fraud, and in good faith. The Tenant also covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were, or during the term of this Lease will be, offered or given by the Tenant or any agent or representative of the Tenant to any officer or employee of the City with a view towards securing this Lease or for securing more favorable treatment with respect to making any determinations with respect to performing this Lease.

**XXII. DISCRIMINATION PROHIBITED.** In the operation and use of the Premises, the Tenant shall not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Tenant agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

**XXIII. AMERICANS WITH DISABILITIES.** Tenant agrees to meet all applicable requirements of the American with Disabilities Act of 1990, as amended, and all applicable rules and regulations, as amended, (the "ADA"), that are imposed directly on Tenant or that would be imposed on the City as a public entity. Tenant agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind

brought against said parties as a result of any acts or omissions of Tenant or its agents in violation of the ADA.

**XXIV. BROKER.** Tenant represents that it has not consulted or negotiated with any broker or finder with regard to the Premises or this Lease.

**XXV. RIGHTS RESERVED BY CITY.** Except as expressly provided in this Lease, City reserves all rights of ownership and control over all portions of the Premises including without limitation the following:

A. Access. Upon reasonable notice to Tenant, City shall have access to the Premises for purposes of showing the Premises to current or prospective lenders, to prospective purchasers of the Property, and during the twelve-month period preceding the expiration of the Term of this Lease, to prospective tenants. City shall also at all reasonable times with or without notice have access to the Premises for purposes of inspection and performing City's obligations and exercising its rights under this Lease.

B. Use. City reserves the right to use (or grant others the right to use) any portion of the Property other than the Premises, including without limitation the Common Area(s), the exterior of all buildings and improvements, and air rights, surface rights and subsurface rights, and water rights appurtenant to the Property.

C. Restriction of Access. City reserves the rights to:

(1) prevent or restrict access to any portion of the Property by such security procedures or devices as City may consider necessary or appropriate;

(2) control or prevent access by and remove, any person who is loitering or whose presence in the judgment of City's security or management personnel is prejudicial to the safety, character, reputation and interests of the Property or who in the judgment of such personnel is intoxicated or under the influence of liquor or drugs; and

(3) limit or prevent access to all or any portion of the Property, activate emergency controls or procedures or otherwise take such action or preventive measures deemed necessary by City for the safety of tenants or other occupants of the Property or the protection of the Property or other property located thereon or therein, in case of fire or other casualty, riot or other civil disorder, strike or labor unrest, public excitement, a public health emergency or other dangerous condition or threat thereof.

D. Other Tenants. City reserves the right to lease or sell any portion of the Property to such other tenants, occupants or other parties and for such uses as City, in City's sole discretion, deems appropriate. Tenant acknowledges that City has made no representations as to City's continued ownership of all or any portion of the Property or the presence of any specific tenant or number or types of tenants at the Property as of or after the Rent Commencement Date, hours or days that such other tenants shall or may be open for business or gross sales that may be achieved

by Tenant or any other tenants at the Property. Without limiting the foregoing, Tenant acknowledges that portions of the Property will not be used for retail purposes and that City may in the future enlarge or diminish such non-retail areas.

E. Changes. City reserves the right to:

- (1) change the name of the Property and the address or designation of the Premises;
- (2) install, maintain, alter and remove signs on or about the Property;
- (3) add land or other real property interests to or eliminate the same from the Property and grant interests and rights in the Property to other parties;
- (4) add, alter, expand, reduce, eliminate, relocate or change the shape, size, location, character, design, appearance, use, number or height of any permanent or temporary buildings, structures, improvements, parking areas and structures, kiosks, planters, driveways, landscaped areas, and other Common Areas, change the striping of parking areas and direction and flow of traffic and convert Common Areas to leasable areas and leasable areas to Common Areas;
- (5) enclose any area, remove any such enclosure or add one or more additional levels or stories to the Property or any portion thereof other than the Premises and add structural supports that may be required within the Premises or Common Areas; and
- (6) in connection with the foregoing matters or with any other inspections, repairs, maintenance, improvements, or alterations in or about the Property or as a result of any casualty, incident, strike, condemnation, act of God, law or governmental requirement or request or other cause, erect scaffolding, barricades and other structures.

F. Limitations. In connection with exercising any rights reserved under this Article XXV, City shall:

- (1) take reasonable steps to minimize interference with access to the Premises except when necessary on a temporary basis;
- (2) take reasonable steps to avoid materially changing the configuration or reducing the square footage of the Premises unless required by law or other causes beyond City's reasonable control (and in the event of any permanent material reduction in the area of the Premises the Base Rent shall be proportionately reduced); and
- (3) if City enters the Premises in connection with any of the foregoing matters, take reasonable steps to minimize any interference with Tenant's business, and following completion of the work, return Tenant's leasehold improvements, fixtures, property, and equipment to the original locations and conditions to the fullest extent reasonably possible.

## **XXVI. MISCELLANEOUS**

Lease: City to Zia Community Cares, LLC  
5400 Gibson SE – 3<sup>rd</sup> Floor

A. Waiver of Default. No failure by the City to insist upon the strict performance of any term, condition, or covenant of this Lease or to exercise any right or remedy available on the breach thereof, and no acceptance of full or partial Rent during the continuance of any breach will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Lease that Tenant is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the City.

B. Relation to Other Leases. This Lease is separate and distinct from and shall be construed separately from any other agreement between City and Tenant or the City and any other tenant.

C. Time is of the Essence. Time is of the essence in the performance of this Lease.

D. Governmental Right and Powers. Nothing in this Lease shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Premises or waiving or limiting the City's control over the management, operations, or maintenance of the Premises except as specifically provided in this Lease, or impairing exercising, or defining governmental rights and the police powers of the City.

E. Exhibits. All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Lease, including but not limited to the exhibits referred to in this Lease, are hereby incorporated into this Lease by reference and are made a part hereof as though set forth in full in this Lease to the extent they are consistent with the terms and conditions of this Lease.

F. No Partnership or Agency. Nothing contained in this Lease is intended or shall be construed in any respect to create or establish any relationship other than that of landlord and tenant, and nothing herein shall be construed to establish any partnership, joint venture, or association, or to make Tenant the general representative or agent of City for any purpose whatsoever.

G. Non-Liability of City. City shall not in any event be liable for any acts or omissions of Tenant or its agents, servants, employees, or independent contractors or for any condition resulting from the operations or activities of Tenant, its agents, servants, employees, or independent contractors either as to Tenant or to any other person. City shall not be liable for Tenant's failure to perform any of its obligations under this Lease, or for any delay in the performance thereof, nor shall any such delay, or failure, be deemed a default by City. Notwithstanding anything to the contrary in this Lease, neither the City, nor City's administration, councilors, directors, employees, agents, representatives, successors, or assigns (collectively, "City's Affiliates") shall be personally responsible or liable for any representation, warranty, covenant, undertaking, or agreement contained in the Lease, and the sole right and remedy of Tenant or any subsequent sublessee or assignee shall be against City's interest in the Premises. Neither Tenant nor any subsequent sublessee or assignee shall seek to obtain any judgment imposing personal liability against the City, City's Affiliates, or their successors or assigns, nor execute upon any judgment or place any lien against any property other than City's interest in the Premises. Any liability incurred in connection with this Agreement is subject to the immunities

and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

H. Force Majeure. In the event City or Tenant is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, acts of God, public health emergency, pandemic, epidemic, executive order, or other causes beyond the reasonable control of City or Tenant, neither Party shall be liable for the delay, and the period for the performance by either Party shall be extended for a period equivalent to the period of such delay. The foregoing shall be inapplicable to the payment of Rent by Tenant.

I. Contract Review. City and Tenant acknowledge that they have thoroughly read this Lease including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Tenant further acknowledge that this Lease is the result of negotiations between them and that this Lease shall not be construed against either Party hereto by reason of that Party's preparation of all or part of this Lease.

J. Notices. Any notice from one Party to the other must be in writing and shall be deemed duly given three days after deposit in the United States Mail if mailed by registered or certified mail, return receipt requested, or upon receipt or refusal to accept if personally delivered or deposited with a national overnight deliver courier who obtains written confirmation of delivery, addressed to the other Party at the address set below, or such other address as either Party may designate in writing. The Parties shall be responsible for notifying each other of any change of address. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, or request sent.

If and when included within the term "Tenant" as used in this instrument there is more than one person, firm, or corporation, all shall jointly arrange amongst themselves and specify some individual at some specific address for the receipt of notices and payments to Tenant. All parties included with terms "City" and "Tenant" respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effects as if each had received such notice or payment.

Notice to Tenant:

Zia Community Healthcare  
Attn: Monica Jaramillo, COO-Owner  
5400 Gibson SE, Box 18  
Albuquerque, NM 87108

Notice to the City:

City of Albuquerque

Lease: City to Zia Community Cares, LLC  
5400 Gibson SE – 3<sup>rd</sup> Floor

Attn: Family and Community Services, Director  
P.O. Box 1293  
Albuquerque, NM 87103

City of Albuquerque  
One Civic Plaza, 11th Floor  
Attn: Chief Administrative Officer  
P.O. Box 1293  
Albuquerque, New Mexico, 87103

With a copy to:  
Real Property Division Manager  
City of Albuquerque  
P.O. Box 1293  
Albuquerque, New Mexico, 87103

K. Estoppel Certificates. Tenant shall at any time within ten (10) days after written request from City execute, acknowledge, and deliver to City a statement in writing:

- (1) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and specifying the date to which the Rent and other charges are paid in advance, if any;
- (2) confirming the commencement and expiration dates of the Term (or then applicable Extended Term);
- (3) confirming the amount of the security deposit held by City;
- (4) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of City hereunder, or specifying such defaults if any are claimed; and
- (5) confirming such other matters as City may reasonably request.

A prospective purchaser or encumbrancer of the Premises or the Property may conclusively rely upon any such statement. If Tenant fails to respond within the required period, Tenant shall conclusively be deemed to have certified, confirmed, and acknowledged all matters requested by City. If City desires to finance or refinance the Property, Tenant hereby agrees to deliver to any lender designated by City such financial statements of Tenant and any Guarantors named in this Lease as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Tenant and any guarantors. All such financial statements shall be received by City in confidence and shall be used only for the purposes herein set forth.

L. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Tenant's records with respect to all matters covered by this Lease. The Tenant shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Lease. The Tenant understands and will abide by the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

M. Binding Effect. Once this Lease is made, the covenants, terms, and conditions of this Lease will be binding upon and inure to the benefit of the parties, their successors, assigns, subtenants, and subleases.

N. Further Actions. At any time and from time to time, each Party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Lease.

O. Severability. In the event any covenant, condition, or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition, or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended without materially altering the intention of the Parties, it shall be stricken. If stricken, all other covenants, conditions, and provision of this Lease shall remain in full force and effect provided that the striking of such covenants, conditions, or provisions does not materially prejudice either the City or Tenant in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Lease

P. Authorization. If Tenant executes this Lease as a corporation or partnership, then Tenant and the person(s) executing this Lease on behalf of Tenant, represent that such entity is duly qualified to do business in the State of New Mexico and that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on Tenant's behalf. City represents and warrants that it is the fee simple owner of the Premises, and that it has all requisite authority and approval to enter into this Lease.

Q. Joint and Several Liability. In the event that more than one person or entity executes the Lease as Tenant, all such persons and entities shall be jointly and severally liable for all of Tenant's obligations hereunder.

R. Headings and Captions. Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

S. Attorneys' Fees. If either Party to this Lease institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Lease, for a declaration of such Party's rights or obligations hereunder, or for any other judicial remedy, each Party shall be responsible for its own attorney's fees (including the

reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees and service of process fees.

T. Choice of Law, Venue. This Lease shall be construed under the laws of the State of New Mexico. The Parties agree that venue for the filing and pursuit of any suit, action, or proceeding arising out of this Lease shall be in Bernalillo County, New Mexico. The Parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. The Parties further acknowledge that they have fully and fairly bargained for the terms of this Subsection S. The provisions of this Subsection S shall survive the expiration or earlier termination of this Lease.

U. Public Document. City and Tenant acknowledge that this Lease does not have a specific exemption within and may be subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978, and as amended and may be a “public record” within the meaning of said Act.

V. Appropriations. This Lease is contingent upon the funds required by the City to meet its obligations under this Lease being appropriated during each fiscal year in which this Lease is in force. In the event such funds are not appropriated, City shall give notice to Tenant and this Lease shall be terminated at the end of the last year in which such funds were appropriated, and such termination will not be considered a default by City.

W. Final Dates. If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word “days” is used herein, it shall be considered to mean “calendar days” and not “business days” unless an express statement to the contrary is made.

X. Multiple Counterparts; Electronic Signatures. The Lease may be signed in multiple counterparts or with detachable signature pages, but in either or both circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The Parties agree that this Lease may be electronically signed and that the electronic signatures appearing on the Lease are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Y. Entire Agreement. This Lease, including the attached Exhibits, constitutes the full and final agreement of the Parties and incorporates all of the conditions, agreements, and understandings between the Parties concerning the subject matter of this contract, and all such conditions, understandings, and agreements have been merged into this written Lease. All prior negotiations and agreements are merged into this Lease. No prior condition, agreement, or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Lease.

Z. Modification. No subsequent agreement may modify this Lease unless it is in writing and signed by the parties or their authorized agents. This Lease represents the entire



contract between the Parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT AS OF THE DATE indicated by each signature, and the Lease is effective after approval by the City Council and then only upon the signature of the City's Chief Administrative Officer or her authorized designee.

**[SIGNATURE PAGES IMMEDIATELY FOLLOWING]**

**CITY:**  
**CITY OF ALBUQUERQUE**  
A New Mexico Municipal Corporation

Approved by the City Council

EC# \_\_\_\_\_

\_\_\_\_\_  
Sarita Nair, Chief Administrative Officer

Approval Date: \_\_\_\_\_

Date: \_\_\_\_\_

RECOMMENDED BY:

\_\_\_\_\_  
Carol M. Pierce, Director  
Department of Family & Community Services

Date: \_\_\_\_\_

Lease: City to Zia Community Cares, LLC  
5400 Gibson SE – 3<sup>rd</sup> Floor

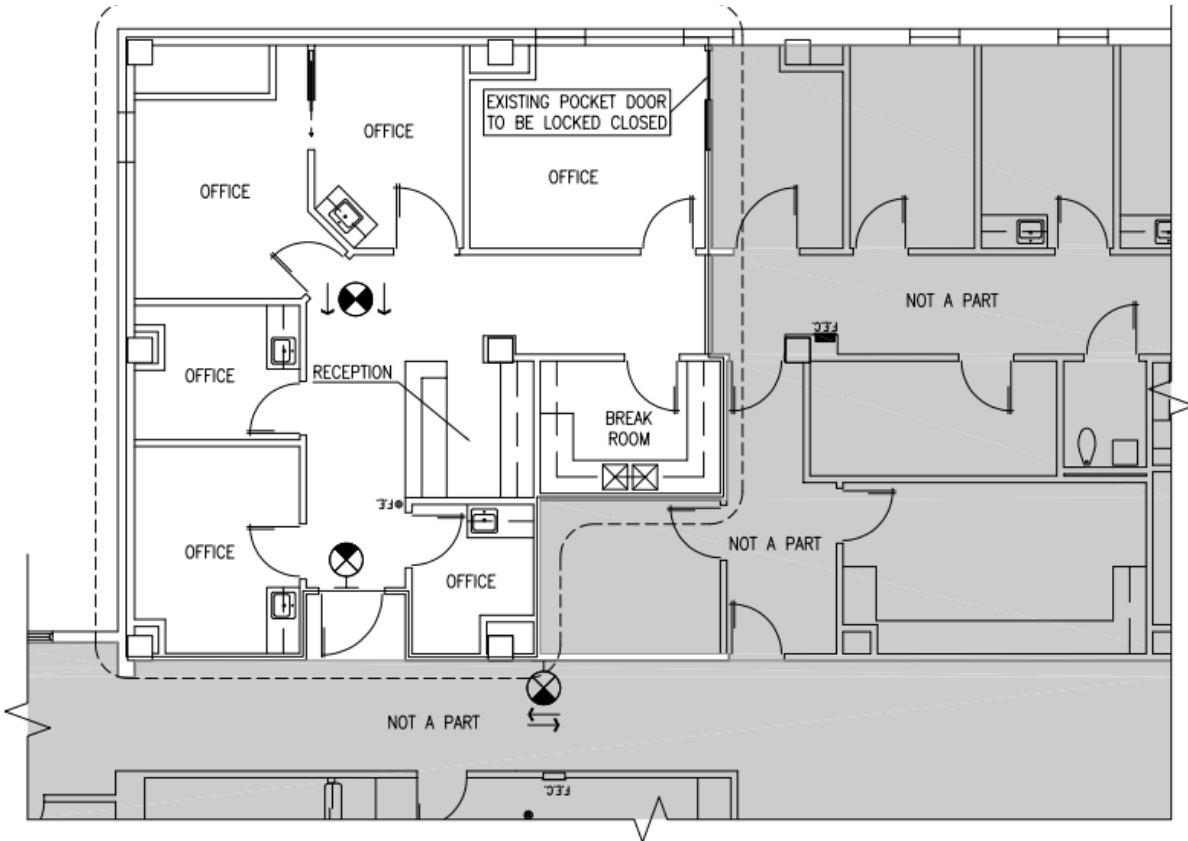
**TENANT:**  
**ZIA COMMUNITY HEALTHCARE, LLC**  
a New Mexico limited liability company

\_\_\_\_\_  
Monica Jaramillo, COO-Owner

Date:\_\_\_\_\_

Lease: City to Zia Community Cares, LLC  
5400 Gibson SE – 3<sup>rd</sup> Floor

EXHIBIT A  
5400 Gibson SE – 3<sup>rd</sup> Floor  
(1,202 sq. ft.)



Lease: City to Zia Community Cares, LLC  
5400 Gibson SE – 3<sup>rd</sup> Floor