

**LEASE BY AND BETWEEN SANTA FE COUNTY
AND
ESPERANZA SHELTER FOR BATTERED FAMILIES, INC.**

The parties to this agreement (hereinafter "Lease") between Santa Fe County (hereinafter "County"), a political subdivision of the State of New Mexico, as Lessor, and Esperanza Shelter for Battered Families, Inc., ("Esperanza"), a New Mexico nonprofit corporation as Lessee, agree as follows:

1. Recitals.

- A. The County is the Lessee under a separate Land Lease Agreement with the City of Santa Fe of certain real property located in the City of Santa Fe, County of Santa Fe, State of New Mexico, shown in Exhibit A attached hereto (Lot 7 – 3130 Rufina St. (Kiva Center – Phase 2 and Second Replat of Lot 1, Block 3, Phase1) recorded in August 1979 at Book 71, Page 020) consisting of .76 acres and located at 3130 Rufina Street, Santa Fe, New Mexico (the "Property").
- B. The County is permitted, under said Land Lease Agreement, to sublease the Property to Esperanza.
- C. The County intends to construct a building (hereinafter "Improvements") on the Property and by this Lease, Esperanza will lease the Property and the Improvements thereon (hereinafter "Premises").
- D. The County desires to lease the Premises to Esperanza and Esperanza, having demonstrated a history of service to sick and indigent persons in Santa Fe County, desires to lease the Premises from the County in order to provide services to sick

and indigent persons in Santa Fe County, which services could legally be expected to be provided by a governmental entity.

2. **Term.** The term of this Lease shall be for twenty-three (23) years commencing on the date of Board of Finance approval and terminating on March 28, 2032, subject to earlier termination as provided herein.
3. **Rent and Maintenance Charges.** The rent and maintenance charges for the Premises shall be provided by Esperanza as follows:
 - A. **Annual Rent.** Esperanza will pay the County an annual rent of \$184,044.00 for the Premises which includes 8,764 square feet of usable building area and parking areas, payable as set forth in Exhibit B attached hereto and incorporated herein. A market appraisal of the rental value of the Premises shall be conducted by the County every five (5) years during the term of this Lease and the rent shall be adjusted every five (5) years thereafter to reflect the then current rental value.
 - B. **Building and Maintenance Charges.** Esperanza shall pay to the County, in addition to rent, the sum of Five Hundred Dollars (\$500.00) each month, due by the tenth (10th) day of each month for maintenance of the building and the Property pursuant to the County's maintenance obligations as provided in Paragraph 8 herein. Such charges must be paid in cash each month and may not be offset as provided for in Exhibit B. The maintenance charges shall increase by One Hundred Dollars (\$100.00) per month every five (5) years during the Lease term.

4. **Use of Premises.** Esperanza may use the Premises for the limited use of administrative functions, non-residential counseling and psycho-educational group therapy that includes services to sick and indigent persons in Santa Fe County. The County is not a participant, nor in any way involved, in the operation of Esperanza or the services provided by Esperanza. Esperanza shall not create a nuisance on the Premises. Esperanza shall use the Premises at all times in compliance with all applicable federal, state and local laws and regulations and only after all necessary permits or licenses have been obtained.
5. **Utilities.** Esperanza agrees to pay all utilities when due, in ready and available funds, including but not limited to water, sewer, refuse, electricity, gas, telephone and security monitoring, whether or not such payments are made directly to the respective utility companies or to the County. In addition, Esperanza shall pay for all of its janitorial services and needs.
6. **Insurance.** Esperanza shall procure and maintain in force a policy of general commercial liability insurance during the term of this Lease.
 - A. All insurance documents must include a provision for 30 day written notification to the Director of the Santa Fe County Community Services Department, with copies to the County Attorney, Santa Fe County at the County of Santa Fe, P. O. Box 276, Santa Fe, NM 87504-0276, if any required policy has been materially changed or cancelled.
 - B. The County shall be added as an additional insured (Form B – CG20101185 or CG2010398) and will be written on an occurrence form, and shall provide limits as follows:

1. Commercial General Liability \$1,050,000 combined single limit per occurrence
2. Damage to Rented Premises \$100,000

C. Esperanza shall furnish one copy of the Certificates of Insurance herein required which shall specifically set forth evidence of all coverage required under this Lease. Esperanza shall furnish to the County copies of any endorsements that are subsequently issued amending coverage or limits.

D. If, during the term of this Lease, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act, the County may require Esperanza to increase the limits of such insurance by notice to Esperanza. Evidence of a policy increasing the limits and complying with all requirements of this paragraph 6 shall be provided to the County within thirty (30) days of such notification.

7. **Indemnification.** Esperanza agrees to promptly defend, indemnify and hold harmless the County, its officers, employees, agents and elected officials against liability claims (including, without limitation, professional negligence claims), attorney's fees, damages, losses or expenses arising out of bodily injury to person, including death, or damage to property caused by, or resulting from, Esperanza's and/or its directors', agents' or employees' act(s) or omission(s) arising out of, or relating to, the obligations and conditions of this Lease or out of Esperanza's use, activities on or occupation of the Premises, or for any services provided or a failure to perform services by Esperanza. Esperanza shall not be required to indemnify the County for any negligent or intentional acts or omissions of the County or any of its officials, employees and or agents.

8. **Repair and Maintenance.**

- A. The County will maintain the outside structure, roof, mechanical and electrical systems, HVAC systems, foundation, building exterior and plumbing of the Improvements, subject to the County having sufficient appropriations for the same which decision may be made in the County's sole discretion. Should the County be unable to provide the described maintenance, Esperanza shall provide the necessary maintenance at its own cost and expense.
- B. Except to the extent of the County is obligated to do so pursuant to the preceding paragraph, Esperanza shall, at its sole cost and expense, maintain the interior of the building and provide day-to-day maintenance.
- C. Esperanza shall, at its sole cost and expense, repair or replace any damage caused by Esperanza, its employees or invitees to the Improvements (even if the damage is to a part of the Improvements which the County is otherwise required to maintain) promptly upon approval for such repairs from the County. All such repairs and replacements shall be at least equal in quality of materials and workmanship to the original work. Approval for repairs and replacements shall be obtained from the Director of Operations for the Projects and Facilities Management Department for the County.

9. **Alterations and Improvements.** Esperanza shall not make any alterations, improvements, additions or changes to the Premises without the prior written consent of the County, which shall be contained in a separate written agreement regarding any such improvements.

10. **Mechanic's Liens.** Esperanza agrees that at least five (5) business days before any construction work is done by Esperanza or on Esperanza's behalf by any person, firm or corporation or by any contractor, that Esperanza will post and record, or cause to be posted and recorded, as provided by law, a notice of non-responsibility for any work, labor or materials used or expended or to be used or expended on the Premises. Esperanza further agrees to remove any mechanic's liens placed on the Premises, as a result of work it has procured, within five (5) business days of notice of the lien and will indemnify the County or the landowner for the same. Any improvements made by Esperanza in the nature of fixtures shall become the property of the County at the termination of the Lease.
11. **Taxes.** Esperanza shall pay any and all taxes and levies assessed upon any personal property, fixtures and improvements belonging to Esperanza and located upon the Premises, and all leasehold and possessory interest taxes with respect to the Premises, levied or assessed by any proper taxing authority.
12. **Signs and Personal Property.** Esperanza may place signs on the Premises only with advance approval of the County, provided however that all such signs shall conform to applicable law. All personal property, *e.g.* signs and improvements of Esperanza, its employees, agents, customers and invitees, kept on the Premises shall be in furtherance of the use of the Premises as permitted under this Lease, and at the sole risk of Esperanza, and the County shall not be liable for any damage thereto.
13. **Non-Discrimination.** Esperanza, with respect to employment of staff and to those persons using the Premises and/or receiving services from Esperanza, shall not

discriminate unlawfully with respect to race, sex, national origin, age, religion, sexual orientation or any other class protected against discrimination by applicable local, state or federal laws.

14. **Hazardous Materials.**

- A. Esperanza will neither cause, nor permit, any Hazardous Material (defined below) to be brought upon, kept or used in or about the Premises or Property.
- B. In the event of Esperanza's breach of the provisions of this section, Esperanza accepts and affirms full liability and responsibility for all costs and expenses related thereto, and indemnifies the County from and against any liability or damages related to
 - 1. any investigation of the Premises or Property for the presence of Hazardous Materials alleged to have been brought, used or disposed of on the Premises or Property by Esperanza; and
 - 2. the Hazardous Material clean-up, removal or restoration of the Premises or Property required by a federal, state or local governmental agency.
- C. Esperanza's responsibilities and indemnity under this Lease will survive the expiration or termination of this Lease.
- D. As used herein, the term "Hazardous Material" means a substance the release of which on the Premises or Property would necessitate an environmental response action under any federal, state, county or municipal law, whether now in effect or enacted in the future, and includes without limitation asbestos in any form, formaldehyde, transformers or other equipment which contain fluid containing

polychlorinated biphenyls, any petroleum product in non-regulated bulk storage containers, radon, or any other chemical, material or substance which is defined or classified as hazardous or toxic or the exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority having jurisdiction.

15. Assignment, Subletting and Mortgage.

- A. Esperanza shall not assign this Lease or sublet the whole or any part of the Premises.
- B. Esperanza shall not transfer or convey, either voluntarily or involuntarily, this Lease, or any interest in this Lease and this Lease may not be hypothecated or mortgaged by Esperanza, and any attempted assignment, subletting, hypothecation or mortgaging of this Lease shall be void, and shall be of no force or effect, and shall confer no rights upon any assignee, sub-lessee or mortgage pledgee.
- C. In the event that Esperanza shall become incompetent, bankrupt or insolvent, or should a trustee or receiver be appointed to administer Esperanza's business or affairs, neither this Lease nor any interest in this Lease shall become an asset of Esperanza's bankruptcy or other estate, or of guardian, trustee, or receiver, and in the event of the establishment of such estate or the appointment of any such guardian, trustee, or receiver, this Lease shall immediately terminate and end.

16. County's Access to Property. The County will have free access to the Premises (which includes the Improvements) at all reasonable times for the purpose of examining the

Premises, to determine if Esperanza is performing under this Lease and to post such reasonable notices as the County may desire to protect the rights of the County. The County's access will be consistent with Esperanza's privacy obligations to its clients and Esperanza's operations.

17. **Breach.**

- A. In the event of a breach by either party, the non-breaching party shall notify the breaching party, in writing, of the breach. If the breach is not cured within thirty (30) days, or an extension granted thereto, this lease shall be terminated by the non-breaching party.
- B. In the event of a default and termination, the County shall have the following remedies:
 1. The County may declare this Lease terminated and enter upon the Premises or any part thereof, remove all persons therefrom, either with or without process of law, and repossess said Premises and remove all improvements.
 2. In such event, the County shall retain for any rent, damages or other sums that may be due hereunder any property belonging to Esperanza and located on the Premises, and all Center's right herein and to the Premises shall be forfeited.
 3. The County may re-enter the Premises and may rent same upon such terms as are suitable to the County, all without releasing Esperanza from liability

hereunder, including the applicability of the Land Lease Agreement mentioned heretofore.

4. In such event, any monies collected by such leasing shall be applied first to the expense of restoring and placing the Premises in a rentable condition and next to the payment of the rent or any sum due the county hereunder. Esperanza shall remain liable for any deficiency.
18. **Termination.** This Lease may be terminated upon written agreement by both parties to this Lease. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to date of termination.
19. **Surrender Upon Expiration or Termination.** At the expiration of this Lease or upon termination, Esperanza shall surrender the Premises, including all existing and any subsequently approved improvements, to the County in as good a condition as it was in at the beginning of the term, reasonable use and wear excepted.
20. **Notices.** All notices and other communications given as provided in this Lease will be in writing, and, unless otherwise specifically provided in this Lease, will be deemed to have been given if delivered in person, or sent by a nationally recognized overnight courier service, or mailed by certified or registered mail, postage prepaid, and addressed to the County or Esperanza at the following addresses, unless either the County or Esperanza changes the address of the County or Esperanza by giving written notice of the change to the other. The addresses for notice are:

Notice to the County:

Santa Fe County Attorney Office
102 Grant Avenue
P. O. Box 276

Santa Fe, NM 87504-0276
Telephone: 505-986-6279
Facsimile: 505-986-6362

Notice to Esperanza:

Esperanza Shelter for Battered Families, Inc.
P. O. Box 5701
Santa Fe, NM 87502
Telephone: 505-474-5336
Facsimile: 505-474-5826

21. **Waiver.** No waiver of any default as provided in this Lease or delay or omission in exercising any right or power of the County or Esperanza will be considered a waiver of any other default as provided in this Lease. The exercise of or failure to exercise any one of the rights and remedies of the County or Esperanza as provided in this Lease will not be deemed to be instead of, or a waiver of, any other right or remedy as provided in this Lease.
22. **Entire Agreement.** This Lease constitutes the entire agreement of the County and Esperanza relating to the subject matter hereof and supersedes all previous agreements, written or oral, between the County and Esperanza on such subject.
23. **Partial Invalidity.** If any term of this Lease, or the application of the term to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of the term to persons or circumstances other than those as to which the term is held invalid or unenforceable, will not be affected by the application and each term of the Lease will be valid and be enforced to the fullest extent permitted by law.
24. **Sublease Mortgages.** Esperanza may not grant a collateral assignment, deed of trust, mortgage or other security interest in its interest in this Lease or as to any improvements to any person or entity.

25. **Fixtures.** Except as otherwise provided herein, Esperanza shall have the right to install such fixtures and equipment as may be necessary for the conduct of its business. Upon termination of this Lease, all fixtures shall remain affixed to the Premises and shall become the property of the County, except for Esperanza's equipment purchased by it that can be removed without damage to the Premises.
26. **Damage or Destruction of Premises.**
- A. If, at any time during the term hereof, any of the Improvements are damaged or destroyed by fire, the elements or other causes, said Improvements may be repaired and rebuilt and restored by the County to a condition as good as it was immediately prior to such damage or destruction, using any insurance funds toward such expense and in accordance with all laws, regulations and ordinances of all governmental authorities having jurisdiction.
- B. The County may authorize or direct construction of an alternate structure, or may elect to retain insurance proceeds or other funds if it deems reconstruction or construction of a substitute to be impractical or unreasonable.
- C. In the event reconstruction or construction of a substitute is deemed impractical or unreasonable by the County, this Lease Agreement shall terminate with no further obligation on the part of the County.
- D. All warranty items and major structural problems arising from either construction/design or natural causes shall be repaired by the County within 30 days or repairs started within 30 days if it cannot be completed within 30 days of notification by the County that such condition exists. The types of such problems

shall include roof leaks, leaks or damage to exterior stucco walls, HVAC failures, major plumbing problems and other problems which are not routine maintenance.

27. **Sovereign Immunity.** No provision of this Lease modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or their public employees at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-41-1, et seq.
28. **Miscellaneous.** This Lease is governed by and will be construed according to the laws of the State of New Mexico and binds the successors, transferees and assigns of the parties. This Lease between the County and Esperanza may be amended only in writing signed by both parties.
29. **State Approval.** This Lease shall not be binding or effective until approved by the New Mexico State Board of Finance.
30. **Compliance with Laws.** Esperanza agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the Premises and the use thereof.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO**

**ESPERANZA SHELTER FOR
BATTERED FAMILIES, INC.**

[Signature]
MIKE ANAYA, CHAIR
Board of County Commissioners

By: *[Signature]*
SHERRY TAYLOR
Executive Director

Date: 10-27-09

Date: 10-28-09

Approved as to Form:
[Signature]
Stephen C. Ross
County Attorney

Date: 10-16-09

Attest:
[Signature]
Valerie Espinoza
County Clerk

Date: 10/27/09

APPROVED: AS Amended
NEW MEXICO STATE BOARD OF FINANCE

[Signature]

Date: 3/16/10



EXHIBIT A
(Property Map, Lot 7, 3130 Rufina St., Santa Fe, NM)

See attached City Map, labeled Exhibit A.



City of Santa Fe

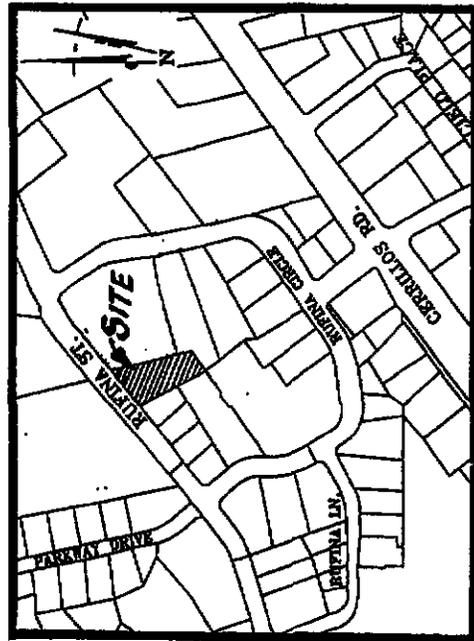
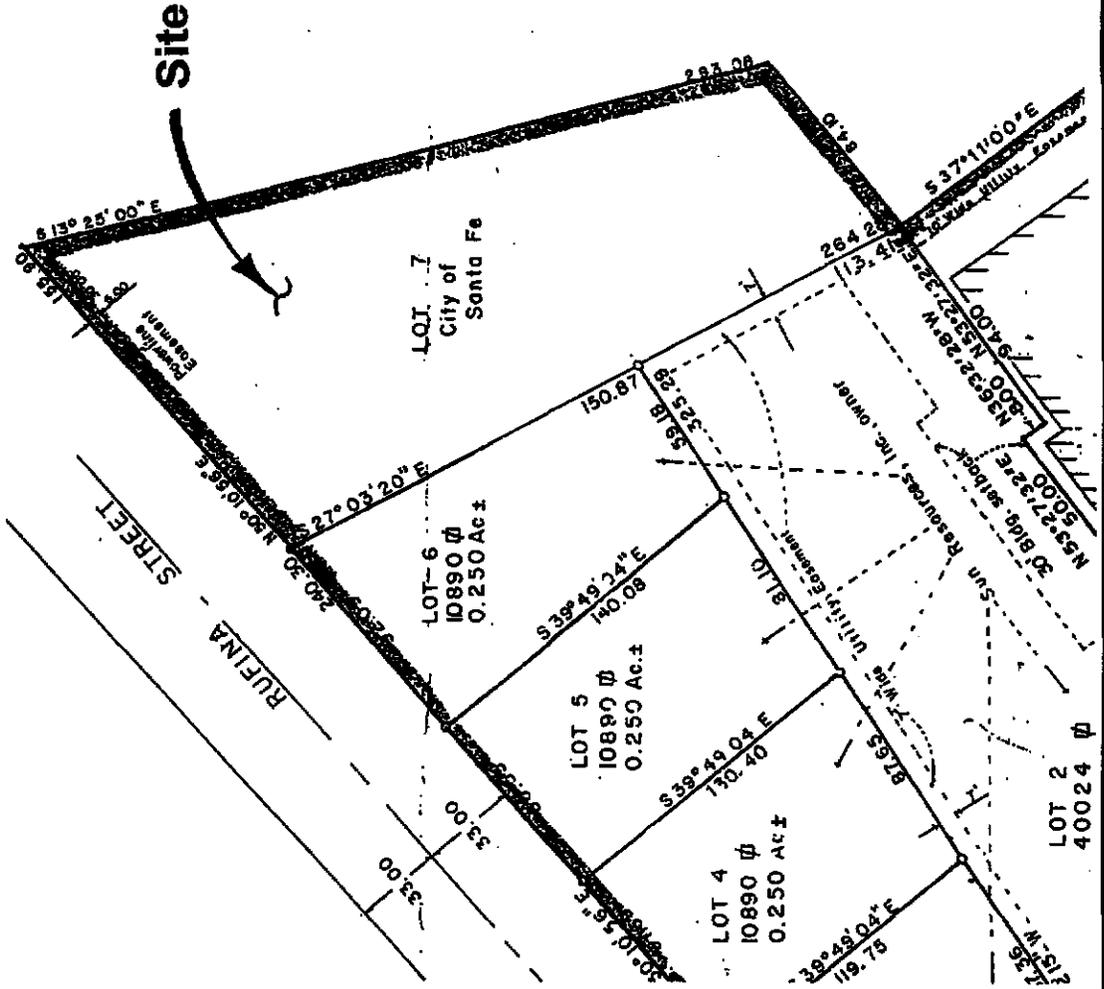
Exhibit "A"

Lot 7 - 3130 Rufina St. (Kiva Center - Phase 2 and Second Replat of Lot 1, Block 3, Phase 1)

Book 71 Page 020

Reception No. 485,112

Dated: August 1979



Vicinity Map (Not to Scale)

EXHIBIT B

1. The annual rent and monthly building and maintenance charges set forth in Paragraph 3 shall be paid as follows:
 - A. The monthly building and maintenance charge must be paid, to the County, by Esperanza, in ready and available funds, by the tenth (10th) of each month.
 - B. The annual rent, after payment in cash of the building and maintenance charges, in any year, shall be paid with cash or the equivalent in the form of services Esperanza provides to sick and indigent residents of Santa Fe County which includes target populations of adult, child and teenage survivors of domestic violence as defined by the New Mexico Children, Youth and Families Department (CYFD) Domestic Violence Service Definition Manual (SDM) served at Esperanza's domestic violence emergency shelter that are not otherwise paid for with County money as set forth in paragraph 2, below.

2. Each quarter (beginning on June 30, 2010), Esperanza shall provide the County with a report that contains each of the following:
 - (i) a written description and valuation of the shortfall to Esperanza for the difference between the fair market value of the services provided to the sick and indigent residents of Santa Fe County including the target populations after the application of CYFD payments, and/or uncompensated services provided to sick and indigent Santa Fe County residents due to insufficient CYFD funding ("Monetary Shortfall");

- (ii) a listing of the most current CYFD reimbursement rates; and
- (iii) any and all documentation required by the County in order that the County may verify such Monetary Shortfall.

The fair market value of the services provided shall be at least equal to the average of insurance reimbursement rates for residential treatment, counseling and other ancillary services for providers through Access To Recovery, The Santa Fe Recovery Center, and the Santa Fe County Sobering Center.

3. The County will review the Monetary Shortfall analysis and, if approved by the County, the County will accept the Monetary Shortfall in services provided by Esperanza as rental payment so long as:
 - A. The payment meets the Monetary Shortfall requirements as set forth above;
 - B. Esperanza is not paid for the services by the County; and
 - C. The services are provided to sick and indigent residents of the County. For purposes of this agreement, "sick" includes behavioral, physical or mental conditions which adversely affect the functioning of an individual including the target populations of adult, child and teenage survivors of domestic violence as defined by the New Mexico Children, Youth and Families Department (CYFD) Domestic Violence Service Definition Manual (SDM) served at Esperanza's domestic violence emergency shelter, and "indigent" means a person who qualifies as an "indigent patient" as described in the "Indigent Hospital and County Health Care Act" ("the Act"), and who is qualified by application of residency and income criteria to receive assistance pursuant to the Act according

to policies of the Santa Fe County Indigent Hospital and County Health Care Board. Esperanza shall certify to the County that the residents served are indigent pursuant to the applicable criteria.

4. In the event the services provided in any one year are greater than the annual rent due for the preceding year, the excess shall be carried forward and applied against the next year's annual rent.
5. In the event the services are less than the annual rent due for the preceding year, then Esperanza shall promptly pay the balance owing to the County in cash within thirty (30) days.
6. Esperanza may, at its option, pay all or part of the annual rent in cash in lieu of providing services.
7. The quarterly letter and statement of any shortfall in services to be provided by Esperanza shall be submitted to:
Director of Human Services Department
Santa Fe County
102 Grant Avenue
P. O. Box. 276
Santa Fe, NM 87504
8. Should the County reject any or all of the report of services provided, Esperanza shall, within thirty (30) calendar days of notice from the County, pay all or a proportional amount of the rent due for the preceding year, in ready and available funds.
9. Nothing in this Exhibit B shall require Esperanza to disclose information that would violate the privacy rights of clients pursuant to HIPAA or other applicable state or federal laws including, but not limited to, the provisions of the Violence Against Women Act (VAWA).