

**LEASE BY AND BETWEEN SANTA FE COUNTY  
AND  
WOMEN'S HEALTH SERVICES, INC.**

The parties to this agreement ("Lease") between Santa Fe County (sometimes "County"), a political subdivision of the State of New Mexico, as Lessor, and Women's Health Services, Inc., ("WHS"), a New Mexico nonprofit corporation as Lessee, agree as follows:

1. **Recitals.** The County is (or will be by the Lease Commencement date) the owner of certain real property which includes a building located in Santa Fe County, New Mexico, described in Exhibit "A" hereto ("the Property"). The County desires to lease to WHS and WHS, having demonstrated a history of service to sick and indigent persons in Santa Fe County, desires to lease from the County a portion of the Property as described in Exhibit "B" hereto ("the Premises") 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 and Option.** The term of this Lease shall be for a five (5) year period beginning upon the approval by the New Mexico State Board of Finance of this Lease or upon the closing of the Property by the County, whichever occurs later ("Term"). WHS shall have the option to renew the Term for five (5) additional five (5) year option periods on the same terms and conditions contained in this Lease (each as "Option Term") provided that (i) WHS continues to provide services to sick and indigent persons in Santa Fe County and (ii) WHS is not then in default under this Lease. Each such Option Term shall be automatically exercised unless WHS provides notice that it does not exercise the option, or unless Lessor provides notice that either condition set forth above has not been satisfied such notice to be provided thirty (30) days prior to the expiration of the Term or any Option Term.

3. **Lease of Additional Building Space.** As any space within the Property becomes available for leasing and should the County agree to lease such space to WHS, the parties will execute an amendment to this Lease containing such additional terms and conditions as the parties agree upon.

4. **Consideration.** The values set forth in this paragraph represent the relative value of the use of the Premises.

A. **Initial Term – Premises.** WHS will pay the County an annual rent of \$124,016.00 for the Premises which includes 7,751 square feet of usable building area and shared parking area, payable as set forth in Exhibit C attached hereto and incorporated herein.

B. **Lease of Additional Space Within the Property.** Should WHS obtain additional available space within the Property during the Term or an Option Term, the annual rent will be increased by an amount to be agreed upon by the parties at fair market value rates which shall be payable as set forth in Exhibit C. In the event that such lease of additional space is agreed upon before the anniversary date of the Lease, the additional annual rental shall be pro-rated for the balance of the Lease year in which it is leased. Any additional space so rented shall then be considered part of the Premises for the purposes of this Lease. For purposes of the calculations set forth during the Option Terms, the total annual base rent shall be considered to be the total of the rent set forth in subparagraph A and the rent calculated pursuant to this subparagraph B.

C. **Option Terms.** At the conclusion of the initial term and at the beginning of any Option Term exercised by WHS, the annual rental payment set forth above shall increase at the beginning of each Option Term. The annual rental payment for each

succeeding year of each five-year term shall increase by five percent (over the immediately preceding annual rental amount) at the beginning of each Option Term.

D. **Building and Common Area Maintenance Charges.** WHS shall pay to the County in addition to rent, a pro rate share of the cost of maintenance and operation of the Property and Property Common Areas including areas exterior to the building. WHS' share of all costs and Building and Common Area maintenance and operation shall be in proportion to the ratio that the floor area of the Premises bears to the total rentable area of the building. Such Building and Common Area maintenance costs shall include but not be limited to the cost of utilities, garbage removal, janitorial services, repairs to lighting fixtures and equipment and utility systems, snow removal and parking lot maintenance and repair. Currently, the common area maintenance charges are included in WHS' annual rent. If, at any time during the term of this lease, common area maintenance for the Property exceeds three dollars (\$3.00) per square foot, WHS shall be provided with a statement of such charges and shall be responsible for paying the charges. Such charges may be paid as provided for in Exhibit C. CAM

5. **Use of Premises.** WHS may use the Premises for clinical and administrative uses that include services to sick and indigent persons in Santa Fe County. WHS shall not create a nuisance on the Premises. WHS 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.

6. **Utilities.** WHS agrees to pay all utilities, in cash, including but not limited to water, sewer, refuse, electricity, gas, telephone and security monitoring, whether or not such payments are made to the respective utility companies or to the County. In addition, WHS shall

pay for all of its janitorial services and needs.

7. **Insurance.** WHS shall procure and maintain in force a policy of general liability insurance, during all terms of this Lease. All insurance documents must include a provision for 30 day written notification to Joseph Gutierrez, Director of Projects and Facilities Management Department, with copies to the County Manager, 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. 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:

Commercial General Liability

- |     |                                |                               |
|-----|--------------------------------|-------------------------------|
| (1) | Bodily Injury/Property Damages | \$1,050,000 Each Occurrence   |
|     |                                | \$3,000,000 General Aggregate |

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

If, during any 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 WHS to increase the limits of such insurance by notice to WHS. Evidence of a policy increasing the limits and complying with all requirements of this paragraph 7 shall be provided to the County within thirty (30) days of such notification.

8. **Indemnification.** WHS agrees to promptly defend, indemnify and hold harmless the County, its officers and employees, against liability, claims (including, without limitation, medical malpractice claims), damages, losses or expenses arising out of bodily injury to person,

including death, or damage to property caused by or resulting from WHS's and/or its officials', agents' and employees' negligent act(s) or omission(s) involving a third party claim where any claims are made against the County and/or from its officials, employees, and/or agents performance or failure to perform its obligations and duties under the terms and conditions of this Lease. WHS shall not indemnify the County for any negligent or intentional acts or omissions of the County or any of its officials, employees and or agents.

9. **Repair and Maintenance.** The County will maintain the structure, roof, mechanical and electrical systems, foundation, building exterior and plumbing of the Premises. WHS will maintain the Premises except to the extent the County is obligated to do so pursuant to the preceding sentence and shall at its sole cost and expense provide day-to-day maintenance and shall repair or replace any damages caused by WHS, its employees or invitees to the Premises (even if the damage is to a part of the Premises which the County is 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.

10. **Alterations and Improvements.** WHS shall not make any alterations, improvements, additions or changes to the Premises, other than those required for the day-to-day maintenance of the Premises, without the prior written consent of the County.

11. **Hazardous Materials.** WHS will neither cause nor permit any Hazardous Material (defined below) to be brought upon, kept or used in or about the Premises or Property except as is reasonably necessary and required for WHS customary operations. Any Hazardous Materials permitted on the Premises or Property will be used, stored and disposed of in strict accordance with applicable federal, state and local laws.

In the event of WHS's breach of the foregoing covenants, WHS accepts and affirms full liability and responsibility for all costs and expenses related to, and indemnifies the County from and against any liability or damages related to, (i) 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 WHS and (ii) the Hazardous Material clean-up, removal or restoration of the Premises or Property required by a federal, state or local governmental agency. WHS's responsibilities and indemnity under this Lease will survive the expiration or termination of this Lease.

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, 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. It is acknowledged that WHS uses formaldehyde and other chemical substances necessary in a medical practice but WHS shall dispose of and handle such materials pursuant to all applicable laws and regulations.

12. **Assignment or Subletting.** WHS shall not assign this Lease or sublet the whole or any part of the Premises without the prior written consent of the County and only upon such terms as the County may require.

13. **Lessor's Access to Property.** Lessor will have free access to the Property (which includes the Premises) at all reasonable times for the purpose of examining the Property, to

exhibit the Property to Lessor's prospective purchasers or mortgagors of the Property, to determine if WHS is performing this Lease, and to post such reasonable notices as Lessor may desire to protect the rights of the County. However, the County's access will be consistent with WHS's privacy obligations to its clients, in connection with applicable federal, state and county laws and WHS's operations.

14. **WHS's Default.** If WHS fails to perform the duties of WHS under this Lease when the duties are to be performed, WHS will be in default under this Lease. If the default is not cured within thirty (30) days after written notice of the default is given to WHS, then Lessor may terminate this Lease upon written notice to WHS.

15. **Surrender Upon Termination.** At the expiration of any term of this Lease or upon termination, WHS shall surrender the Premises to the County in as good a condition as it was in at the beginning of the term, reasonable use and wear excepted.

16. **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 Lessor or WHS at the following addresses, unless either Lessor or WHS changes the address of Lessor or WHS by giving written notice of the change to the other. The addresses for notice are:

(1) **Notice to the County:**

County Manager  
Santa Fe County  
102 Grant Avenue  
P. O. Box 276  
Santa Fe, NM 87504-0276

**With a copy to:**

Santa Fe County Attorney  
102 Grant Avenue  
P. O. Box 276  
Santa Fe, NM 87504-0276

(2) **Notice to WHS:**

Justina A. Trott, M.D.  
Women's Health Services, Inc.  
The Solana Center  
901 W. Alameda  
Suite 25  
Santa Fe, NM 87501

17. **Waiver Remedies.** No waiver of any default as provided in this Agreement or delay or omission in exercising any right or power of the County or WHS 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 WHS 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

18. **Entire Agreement.** This Lease constitutes the entire agreement of the County and WHS relating to the subject matter hereof and supersedes all previous agreements, written or oral, between the County and WHS on such subject.

19. **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.

20. **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 WHS may be amended only in writing signed by both parties.

21. **State Approval.** This Lease shall be subject to State Board of Finance approval.

Any and all future agreements by and between the parties regarding the premises shall also be subject to State Board of Finance approval.

**LESSOR:**

BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY, NEW MEXICO

By: 

Virginia Vigil  
Chairman

Date: 3-13-07

**LESSEE:**

WOMEN'S HEALTH SERVICES, INC.

By: 

Name: Justina A. Trotter

Its: Director

Date: 3/15/07

**Approved as to Form:**

By: 

Stephen C. Ross  
County Attorney

Date: 3-13-07

**Attest:**

By: 

Valerie Espinoza  
County Clerk

Date: 3-13-07

## EXHIBIT A

Units 11, 12, 13 and 14, Solano Center, a Commercial Condominium, Tract C-1, projected Section 23, T17N, R9E, NMPM, City of Santa Fe, as shown on survey plat completed by G. Dawson and Associates, NMPLS #7014, dated August 4, 2005.

## **EXHIBIT B**

Unit 14, Solano Center a Commercial Condominium, Tract C-1, projected Section 23, T17N, R9E, NMPL, City of Santa Fe, as shown on survey plat completed by G. Dawson and Associates, NMPLS #7014, dated August 4, 2005, being 7,751 square feet.

## EXHIBIT C

The annual rental and charges set forth in Paragraph 4 shall be paid as follows:

1. The rent and maintenance charges due in any year shall be paid with cash or the equivalent in the form of services WHS provides to sick and indigent residents of Santa Fe County that are not otherwise paid for with County money as set forth in paragraph 2, below.

2. WHS shall provide the County with a quarterly written report that contains each of the following: (i) a written description and valuation of the shortfall to WHS for Medicaid and Medicare services provided to Santa Fe County patients ("Monetary Shortfall") existing after the application of payments for services provided on behalf of those patients for that quarter; and (ii) any and all documentation required by the County in order that the County may verify such Monetary Shortfall. The quarterly reports shall be due on the twenty-fifth (25<sup>th</sup>) day of the month following each quarter. The monetary shortfall in services shall be equal to at least one-fourth of the annual rent then due. In the event the Monetary Shortfall is greater than one-fourth of the rent then due, the excess shall be carried forward and applied against the next quarter's rent. On the anniversary of the lease, the parties shall determine the amount, if any, of the credit WHS is entitled to for the next year. The County will accept the Monetary Shortfall in services provided by WHS as rental payment so long as:

A. The services are valued at no more than the maximum cost per encounter for each type of service as contained in the most current report issued by the New Mexico Department of Health pursuant to the Rural Primary Healthcare Act. WHS shall provide the most current such report as part of its reporting requirement with its first quarterly report and thereafter as part of its first quarter report of each year;

B. WHS 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, 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 would qualify 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.

3. WHS may, at its option, pay all or part of the annual rental and/or changes in cash in lieu of providing services.

4. The quarterly reports and supporting documentation to be provided by WHS shall be submitted to:

Director of Health and Human Services  
Santa Fe County  
102 Grant Avenue  
P. O. Box. 276  
Santa Fe, NM 87504-276

5. Should the County reject any or all of the Monetary Shortfall analysis, WHS shall, within thirty (30) days of notice from the County, pay the rent due for the preceding year, in cash.

6. Nothing in this Exhibit C shall require WHS to disclose information that would violate the privacy rights of clients pursuant to HIPAA or other applicable state or federal law.