CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **Financial Services**

AGENDA DATE: **Introduction October 27, 2009**
Public Hearing November 3, 2009

CONTACT PERSON NAME AND PHONE NUMBER: **Liza Ramirez-Tobias (915) 541-4074**
Angela Mora (915) 541-771-5706

DISTRICT(S) AFFECTED: District 4, Rep. Robinson

SUBJECT:
An ordinance authorizing the City Manager to execute a lease agreement between the City of El Paso and El Paso Healthcare System LTD dba Del Sol Medical Center for the use of approximately 222.43 square feet in the Northeast Health Center, at 5587 Transmountain Road, El Paso, Texas.

BACKGROUND / DISCUSSION:
The City of El Paso Health Department will lease approximately 222.43 square feet in the Northeast Health Center (5587 Transmountain) to Del Sol Medical Center. Del Sol will provide certain services free of charge to patients, such as: patient health education, health screenings including but not be limited to glucose/diabetes, cholesterol, blood pressure/hypertension, pregnancy testing and counseling, nutrition classes, and any other health related services as determined by the City of El Paso Health Department to be needed and deliverable from Del Sol Medical Center to individuals attending the El Paso Department of Health clinical services programs conducted at the Center.

PRIOR COUNCIL ACTION:

June 17, 2008- City Council approved leasing a portion of Ysleta Health Center (110 Candelaria) to Tenet Hospitals to provide basic health care and community resources.

AMOUNT AND SOURCE OF FUNDING:
Revenue generating lease: $4,003.74 annually

BOARD / COMMISSION ACTION:

Approved by CARE

**********REQUIRED AUTHORIZATION**********

DEPARTMENT HEAD: Carmen Arrieta-Candelaria
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

ORDINANCE NO._____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF EL PASO AND EL PASO HEALTHCARE SYSTEM LTD dba DEL SOL MEDICAL CENTER FOR THE USE OF APPROXIMATELY 222.43 SQUARE FEET IN THE NORTHEAST HEALTH CENTER, AT 5587 TRANSMOUNTAIN ROAD, EL PASO, TEXAS.

WHEREAS, the City of El Paso owns the Northeast Health Center, located at 5587 Transmountain Road, El Paso, Texas; and

WHEREAS, the City of El Paso desires to lease approximately 222.43 square feet in the Northeast Health Center to El Paso Healthcare System LTD dba Del Sol Medical Center so that Del Sol Medical Center will provide certain services free of charge to patients; and

WHEREAS, at the termination of the lease for any reason, the property, together with any improvements thereto, made or erected during the term of the lease shall revert to the City, without any additional compensation to Del Sol Medical Center.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager is authorized to execute a lease agreement between the City of El Paso and El Paso Healthcare System LTD dba Del Sol Medical Center for the use of approximately 222.43 square feet in the Northeast Health Center, at 5587 Transmountain Road, El Paso, Texas.

PASSED AND APPROVED THIS _____ day of _____, 2009.

THE CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Liza Ramirez-Tobias
Capital Assets Manager

#50802 v1 - Health//Northeast Health Center/Del Sol /Ordinance

Northeast

STATE OF TEXAS	§	
	§	**LEASE AGREEMENT**
COUNTY OF EL PASO	§	

This Lease Agreement ("**Agreement**"), made this the ____day _____, 2009, between the CITY OF EL PASO, TEXAS, a home rule municipal corporation ("**Landlord**"), and EL PASO HEALTHCARE SYSTEM, LTD., a Texas limited partnership d/b/a Del Sol Medical Center ("**Tenant**").

WHEREAS, the Landlord is the owner of that certain building commonly known as the **Northeast Health Center** (the "**Center**"), located on the land in El Paso County, Texas, having an address of 5587 Transmountain Road, El Paso, Texas 79924 ("the "**Land**"); and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord certain space in the Center consisting of approximately 222.43 square feet of usable area, as shown on Exhibit "A" attached hereto and incorporated herein (such space hereinafter referred to as the "**Leased Space**"), together with the non-exclusive right in common with other Tenants and occupants of the Center, to use and occupy the "Common Areas" (as hereinafter defined); and

WHEREAS, Landlord and Tenant mutually desire for Tenant to provide certain services free of charge to patients (the "**Services**"), including by way of example, but not required by this Agreement, patient health education, health screenings including but not be limited to glucose/diabetes, cholesterol, blood pressure/hypertension, pregnancy testing and counseling, nutrition classes, and any other health related services as determined by Tenant to be needed and deliverable from the Leased Space to individuals attending the El Paso Department of Health clinical services programs conducted at the Center.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

Landlord hereby leases to Tenant the Leased Space for the term and upon the conditions and agreements hereinafter set forth, together with the non-exclusive right in common with other Tenants and occupants of the Center, to use and occupy the Common Areas. The Leased Space and such rights to the Common Areas are hereinafter referred to as the "**Premises.**" As used herein the term "**Common Areas**" shall mean and include all entrances, lobbies, corridors, stairways, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, sidewalks, driveways, and landscaped areas, located in, on, adjacent to or under the Center or the Land.

CITY CLERK DEPT.
09 OCT 22 PM 2:10

1.0 TERM AND RENT

1.1 Term. The term of this Agreement shall be for approximately three (3) years, commencing on November 16, 2009 (the "**Commencement Date**") and ending at 11:59 p.m. on November 30, 2012 (such term hereinafter called the "**Primary Term**"). This agreement may be

renewed for subsequent one (1) year terms subject to the mutual written agreement of Landlord and Tenant no less than ninety (90) days prior to the expiration of the then current term. No rent shall accrue prior to the Commencement Date. The phrases "**Term,**" "**term of this Lease,**" "**Lease term,**" or any other similar phrases used in this Agreement shall be deemed to include, unless otherwise provided, the Primary Term and any other renewals or extensions of this Lease. "**Lease Year**" shall mean the period beginning on the Commencement Date and ending on the day prior to the first anniversary of the Commencement Date, and each twelve month period thereafter during the Term of this Lease.

1.2 Rent. During the Primary Term, Tenant shall pay to Landlord as annual base rent for the Premises (the "**Rent**") the following:

Lease Year	Per Usable Square Foot Annual Rent Rate	Annual Rent
1	$18.00 per s.f.	$4,003.74
2	$18.00 per s.f.	$4,003.74
3	$18.00 per s.f.	$4,003.74

Rent is payable in advance beginning on the Commencement Date and the annual anniversary of the Commencement Date during each subsequent Lease Year of the term of this Lease. Such installments shall be paid, without demand or deduction, at Landlord's office at Two Civic Center Plaza, El Paso, Texas 79901-1196, or at such other address as Landlord may designate.

2.0 USE OF PREMISES; MAINTENANCE AND REPAIRS; LANDLORD SERVICES; DELIVERY, ACCEPTANCE AND SURRENDER OF PREMISES

2.1 Use of Leased Space. The Leased Space shall only be used, and occupied by Tenant for medical, administrative, or office uses and any uses incidental to or in connection with such health related uses as approved by Landlord. Tenant understands and agrees that the Center is to be free and open to the public on a non-discriminatory basis, yet the services offered through the Center may be limited to those individuals (hereinafter "**Patients**") as determined appropriate by the El Paso Department of Public Health. However, Tenant may impose reasonable restrictions on its provision of Services with the need to preserve and protect the Premises, the Center or the safety and welfare of any occupants therein.

2.1.1 Tenant's Responsibilities Regarding Services. It is understood that Tenant intends to use the Premises as a resource for the delivery of Services. In connection with any Services that Tenant provides in the Leased Space, Tenant agrees to:

(a) Have qualified staff make all decisions regarding medical education, including priority of Patients, the time necessary for each visit, and the appropriate scope of Services for each Patient;

(b) Provide all equipment, materials, supplies, office equipment, furniture, telephone and computer equipment, and staff, such as clerical and medical assistants, at the Center as necessary for the delivery of Services to Patients, provided, however, nothing in this Agreement shall obligate Tenant to provide any of the foregoing; and

(c) Not use the Premises or the Center for any purpose besides the uses permitted by this Agreement, without first obtaining the Landlord's consent in writing.

(d) Provide a monthly report to Landlord identifying the types of services provided and the number of Patients seen in the Leased Space.

2.1.2 Landlord's Reservation of Rights in Center. Landlord reserves the right to use the Center for Women, Infants, and Children (WIC) immunizations and other public health services in areas of the Center not utilized by Tenant.

2.1.3 Functions. Neither Tenant nor its officers, agents, servants or employees will discriminate on account of race, color, religion, sex or national origin. Admission to a public function held at the Center and thus, covered by this Agreement, shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

2.1.4 Recordkeeping and Billing. Tenant agrees to create and maintain all medical and other records required by law regarding the provision of Services. All documents and records created and/or maintained by Tenant shall be the exclusive property of Tenant.

2.2 Maintenance and Repairs. Landlord shall keep the Center and all improvements thereon, including without limitation, fixtures, equipment and property in the Center (excluding Tenant's furniture, fixtures and equipment placed in the Leased Space) in good condition and repair during the term of this Agreement. Tenant shall notify Landlord of any repairs needed during the lease term. Landlord shall at all times during the term of this Agreement keep the Center clean, orderly and in an attractive condition.

2.3 Landlord's Responsibilities. Landlord will provide electricity, gas and water; general janitorial and building maintenance services; security and security monitoring; and pest control services to the Premises. The term "general janitorial services" does not include handling of biohazard medical waste. Tenant is responsible for the containment, removal and disposition of any biohazard medical waste arising from Tenant's use of the Premises. The Landlord reserves the right to monitor the use and consumption of electricity, gas and water provided to the Center and to make recommendations should there be an overabundant consumption of these identified utilities because of Tenant's use. If after the Landlord makes recommendations on limiting consumption of utility use in the Center and the utility use is not directly proportionate to Tenant's use of the Center, the Landlord reserves the right to renegotiate the terms of this Agreement. Tenant shall pay and be responsible for all telephone installations and service utilized by Tenant in the Leased Space.

2.4 Delivery of Leased Space in "AS IS" Condition. Landlord and Tenant hereby acknowledge and agree that the Leased Space and Premises are leased on an "AS IS" basis pursuant to this Agreement. **Tenant has been and is hereby placed on notice that the Landlord neither has knowledge of, nor can Landlord warrant against the existence of asbestos, which may or may not exist at the Center and on the Premises. If Tenant determines that asbestos exists on the Premises, then Tenant may rescind, cancel and terminate this Lease, upon which Landlord and Tenant shall have no further obligations hereunder, except for such obligations that are expressly described herein as surviving termination.**

2.5 Signs. Tenant agrees that all identification signs or symbols placed on the interior of the Center must be approved prior to installation and Tenant shall remove all identifying signs or symbols placed on the Center by it before redelivery of the Center to the Landlord and to restore the portion of the Center on which they were placed to substantially the same condition as before their placement, except for reasonable wear and tear.

2.6 Alterations. Tenant may not make alterations or improvements to the Leased Space without the prior consent of Landlord, which consent shall not be unreasonably withheld or delayed. All such alterations and improvements shall be made at Tenant's expense and performed in a good and workman-like manner and in compliance with all applicable rules and regulations. At its sole expense, Tenant shall repair any damage to the Building or the Leased Space resulting from the removal from the Leased Space of any of Tenant's property or of any such alterations and improvements. In the case that Tenant removes any such alterations or improvements, it shall restore the Premises to substantially its condition prior to the time such alterations and improvements were made, unless Tenant makes further alterations or improvements in accordance with this Section 2.6. All alterations and improvements made by Tenant that remain in the Leased Space at the expiration of this Lease shall become the property of Landlord.

2.7 Personal Property. Tenant may, without Landlord's consent, install temporary partitions, shelves, bins, equipment, trade fixtures and other personal property in the Leased Space. These items shall remain Tenant's property and may be removed by Tenant prior to the expiration or earlier termination of this Lease. Tenant shall repair any damage to the Leased Space caused by such removal.

2.8 Liens. Tenant shall not give nor permit any liens or encumbrances on the Leased Space or the Building and Premises.

2.9 Surrender of Premises. At the expiration of the term of this Lease, Tenant shall surrender the Leased Space to Landlord in as good order, clean condition and repair as at the Commencement Date, reasonable wear and tear and damage by fire and extended coverage perils and other causes beyond the reasonable control of Tenant, excepted. Tenant shall have the right prior to said termination to remove any equipment, furniture, trade fixtures or other personal property placed in the Leased Space by Tenant, provided that Tenant promptly repairs any damage to the Premises caused by such removal prior to the expiration date of the Term. Should the Leased Space not be in substantially the same condition as it was at the beginning of the term

of this Agreement and any of the noted conditions were not reported or given approval by Landlord, Tenant shall make any necessary repairs, cleaning or painting to restore the Leased Space to its pre-lease condition within twenty one (21) days after receipt of written notice by the City which notice identifies the necessary repairs, cleaning or painting. If Tenant fails to make the necessary repairs, cleaning or repairs to the satisfaction of Landlord, Tenant agrees to pay Landlord for the cost of such repairs, cleaning and/or painting, in an amount determined appropriate by Landlord in its reasonable discretion.

2.10 Holding Over. A hold over beyond the expiration of the Term shall operate as an extension of this Lease from month to month at a rental rate of one hundred fifty percent (150%) of 1/12 of the last Rent paid, on the same terms and conditions as herein provided, except for rental and duration. Such extended term may be terminated either by Landlord or Tenant by giving 30 days' written notice to the other.

3.0 CONTRACTUAL RELATIONSHIP

3.1 Tenant is an independent contractor and is otherwise a tenant in a landlord-tenant relationship with the Landlord. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.

3.1.1 As an independent contractor, Tenant and Landlord both understand, acknowledge and agree that each of them shall be responsible for the acts and omissions of their respective employees, officers, agents, representatives and contractors, and that Tenant shall not be deemed to be an employer of Landlord's employees, and Landlord shall not be deemed to be an employer of Tenant's employees.

3.1.2 Tenant shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of Tenant. Landlord shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of Landlord.

4.0 ALLOCATION OF RISK

4.1 Governmental Function. The Parties expressly agree that since the Landlord is a governmental entity any claims will be governed by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of Landlord, which, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function. Accordingly, the Parties further agree that Landlord's liability, if any, for damages for injury to or death of any person or for damage to any property, arising, if at all, out of or in connection with activities under this Agreement, shall be determined under the limited waiver of sovereign immunity contained in the Texas Tort Claims Act.

4.2 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **LANDLORD WILL NOT BE LIABLE TO CENTER (NOR TO ANY**

PERSON CLAIMING RIGHTS DERIVED FROM CENTER'S RIGHTS) FOR INCIDENTIAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND – including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress – **AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER LANDLORD WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.**

4.3 Indemnity. **TENANT WILL INDEMNIFY LANDLORD AGAINST ALL CLAIMS FOR DAMAGES RELATED TO INJURY TO OR LOSS OF PROPERTY, OR INJURY, ILLNESS, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH OF ANY PERSON CAUSED DIRECTLY OR INDIRECTLY BY ANY NEGLIGENT ACT OR OMISSION OF TENANT OR TENANT'S AGENTS, EMPLOYEES OR CONTRACTORS.**

4.4 Insurance. At the commencement of the term of this Lease and throughout the term of this Lease, Tenant shall provide Landlord with written evidence of the following coverage:

(a) Professional liability insurance with limits of at least $1,000,000 per occurrence and at least $2,000,000 in the aggregate. Insurance shall cover each practitioner employed by Tenant who provides services at the Center, and in addition shall cover such employee group of Tenant as a whole.

(b) Comprehensive general liability insurance at minimum levels of $1,000,000 per occurrence and $2,000,000 in the aggregate.

(c) Tenant shall maintain said insurance with a solvent insurance company authorized to do business in Texas or a prudent program of self-insurance. The general liability policy shall name Landlord, their officers, agents, servants, and employees as additional insureds. Such policy shall provide that the insurance provider will endeavor to provide at least thirty (30) days written notice before the cancellation of or any reduction in the amount of coverage under any such policy.

(d) In lieu of carrying any policy of insurance required to be carried by Tenant under this Lease, Tenant shall have the option, either alone or in conjunction with Tenant's ultimate parent corporation, or any subsidiaries or affiliates of Tenant or of Tenant's ultimate parent corporation, to maintain self-insurance and/or provide or maintain any insurance required by this Lease under blanket insurance policies maintained by Tenant, Tenant's ultimate parent corporation or such subsidiaries or affiliates, or provide or maintain insurance through such alternative risk management programs as Tenant, Tenant's ultimate parent corporation or such subsidiaries or affiliates may provide or participate in from time to time (such types of insurance programs being herein collectively and severally referred to as "self-insurance").

4.4.1 Subrogation. Landlord and Tenant on behalf of themselves and all others claiming under them, including any insurer, waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property (including, but not limited to, the Building and the Premises) arising from fire, smoke damage, windstorm, hail, vandalism, theft, malicious mischief and any of the other perils normally insured against in an "all risk" of physical loss insurance policy, regardless of whether insurance against those perils is in effect with respect to such party's property and regardless of the negligence of either party. If either party so requests, the other party shall obtain from its insurer a written waiver of all rights of subrogation that it may have against the other party.

4.4.2 Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance, so long as it is customary in the industry and under Texas law for such insurance to be primary, to any other insurance available to Landlord, the Additional Insured, with respect to claims arising hereunder and that the insurance applies separately to each insured.

4.4.3 Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to Tenant for any further premium payment and has no right to recover any premiums from Landlord.

5.0 CLAIMS

5.1 Without modifying the conditions of preserving, asserting or enforcing any legal liability against the Landlord as required by the City Charter or any law, the Landlord will promptly forward to Tenant every demand, notice, summons or other process received by the Landlord in any claim or legal proceeding contemplated herein.

5.2 In addition, Tenant shall promptly advise the Landlord in writing of any claim or demand against the Landlord or Tenant known to Tenant related to or arising out of Tenant's activities under this Agreement.

5.3 Tenant understands and agrees that it will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; and 2) negotiate or cause to be negotiated the claim as Tenant may deem expedient.

6.0 TERMINATION. This Agreement may be terminated as provided herein.

6.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

6.2 Termination by Either Party. It is further understood and agreed by Tenant and the Landlord that either party may terminate this Agreement by providing the other party with ninety (90) days written notice.

6.3 Termination by Landlord. If Tenant ceases to use or occupy the Leased Space for a period of ninety (90) continuous days or more, if Tenant does not provide written proof of required insurance coverage within thirty (30) days written notice and request from Landlord, or if Tenant defaults in any of its obligations under this Agreement and fails to correct such default within thirty (30) days written notice, the Landlord may terminate this Agreement by giving thirty (30) days written notice to Tenant, and may thereafter take possession of the Leased Space, subject to Tenant's rights to remove its furniture, fixtures and equipment pursuant to Section 2.9 of this Agreement. After any such termination by Landlord pursuant to this Section 6.3, all rights of Tenant in and to the Leased Space and the Premises shall terminate.

6.4 Force Majeure. Neither party to this Agreement will be liable for failure to comply with any term of this Agreement when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Agreement unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing.

6.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

6.6 Effective Federal or State Eminent Domain Proceedings. State or federal eminent domain proceedings resulting in condemnation of the Premises or any part thereof shall result in termination of this Agreement. All compensation awarded for the Center or any portion thereof shall be the Landlord's, except that the portion of such compensation which is allocable to leasehold or other tenant improvements made at Tenant's cost and expense shall be the property of Tenant.

7.0 GENERAL PROVISIONS

7.1 Taxes and Assessments. Tenant will promptly pay all taxes and assessments lawfully levied on Tenant's leasehold interest, as well as on Tenant's personal property.

7.2 Assignments and Subletting. Tenant shall not have the right to assign this Agreement in whole or in part nor sublet all or any portion of the Leased Space without the prior written consent of Landlord which consent will not be unreasonably withheld. Any sublease shall be subject and subordinate to this Agreement and Tenant shall remain liable for the performance of all of its covenants and agreements under this Agreement. No such assignment without the consent of Landlord, shall be effective unless each such assignee by written instrument or operation of law assumes and becomes bound to perform and observe all of the covenants and agreements of Tenant under this Agreement arising from and after the date of

such assignment, provided that Tenant shall not be released of liability for the payment of rent and for the performance and observance of the other covenants and agreements of Tenant under the Agreement after the effective time of such assignment.

7.3 Inspections. Landlord shall have the right to enter the Center at all reasonable times, upon providing no less than 48 hours notice to Tenant (except in the event of an emergency, in which event Landlord shall provide Tenant with such notice as is reasonable under the circumstances) for the purpose of inspecting the same and determining compliance with the terms of this Agreement, and Tenant shall have no claim or cause of action against the Landlord by reason thereof.

7.4 Compliance with Laws. Tenant shall observe and comply with all federal, state and local codes and ordinances including, but not limited to those related to health care, and with such further reasonable rules and regulations as the Landlord may prescribe, on written notice to Tenant, for the safety, care and cleanliness of the Premises.

7.5 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within thirty (30) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

7.6 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the indemnification provisions herein.

7.7 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the Landlord and Tenant. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Any waiver by one party to this Agreement of any breach by the other party of its obligations hereunder shall not be deemed a continuing waiver and shall not prevent the non-defaulting party from exercising any remedy it may have for any succeeding breach of the same or another obligation of the defaulting party.

7.8 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

7.9 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

7.10 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

7.11 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas. Venue shall be in the County of El Paso, State of Texas.

7.12 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States certified mail, return receipt requested, or via delivery by a nationally-recognized express courier service, addressed to the respective other party at the address below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

Landlord:	City of El Paso Attn: Department of Financial Services/Capital Assets Two Civic Center Plaza El Paso, Texas 79901-1196
Copy to:	City of El Paso Department of Public Health 5115 El Paso Drive El Paso, Texas 79905
Tenant:	El Paso Healthcare System, Ltd. 10301 Gateway West El Paso, Texas 79925 Attn: Chief Executive Officer
Copy to:	El Paso Healthcare System, Ltd. One Park Plaza Nashville, Tennessee 37203 Attn: Vice President, Real Estate

7.13 Quiet Enjoyment. So long as Tenant pays the Rent and performs Tenant's covenants, Tenant shall peacefully and quietly hold the Premises throughout the Term free from any hindrance or molestation by Landlord or any other person or entity whatsoever.

7.14 Records. Upon the written request of the Secretary of the U.S. Department of Health and Human Services, the U.S. Comptroller General of the Government Accounting Office, or their authorized representatives, Landlord shall make available this Agreement and

all books, documents, and records necessary to certify the nature and extent of Landlord's costs with respect to this Agreement and the Premises for a period of four (4) years after performing its duties hereunder.

7.15 Regulatory Matters. (a) Landlord and Tenant enter into this Agreement with the intent of conducting their relationship and implementing the agreements contained herein in full compliance with applicable federal, state and local law, including without limitation, the Medicare/Medicaid Anti-Kickback statute (the "**Anti-Kickback Law**") and Section 1877 of the Social Security Act (the "**Stark Law**"), as amended. Notwithstanding any unanticipated effect of any of the provisions of this Agreement, neither party will intentionally conduct itself under the terms of this Agreement in a manner that would constitute a violation of the Anti-Kickback Law or the Stark Law. Without limiting the generality of the foregoing, Landlord and Tenant expressly agree that nothing contained in this Agreement shall require either party to refer any patients to the other, or to any affiliate or subsidiary of the other.

(a) If any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of this Agreement, then Landlord and Tenant agree to negotiate in good faith for a period of ninety (90) days to modify the terms of this Agreement to comply with applicable law. Should the parties hereto fail to agree upon modified terms to this Agreement within this time, then either Landlord or Tenant may immediately terminate this Agreement by giving written notice to the other party.

(b) Landlord represents and warrants to Tenant that Landlord (i) is not currently excluded, debarred or otherwise ineligible to participate in Medicare or any federal health care program under section 1128 and 1128A of the Social Security Act or as defined in 42 U.S.C. § 1320a-7b(f) (the "**Federal Health Care Programs**"); (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in any Federal Health Care Program; and (iii) is not under investigation or otherwise aware of any circumstances which may result in Tenant being excluded from participation in any Federal Health Care Program. The foregoing representation shall be an ongoing representation and warranty during the term of this Agreement and Landlord shall immediately notify Tenant of any change in the status of the representation and warranty set forth in this Section, at which time Tenant will have the right to immediately terminate this Agreement.

(c) For purposes of this Section of this Agreement, "protected health information," or PHI, shall have the meaning defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the "**Privacy Standards**"), as promulgated by the Department of Health and Human Services ("**HHS**") pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"). The HIPPA Privacy Standards require that Landlord and Tenant safeguard any protected health information received or

created on behalf of Landlord or Tenant, respectively. Landlord and Tenant hereby agree to comply with the HIPPA Privacy Standards. Landlord and Tenant further agree that neither of them nor their respective contractors, subcontractors or agents shall need access to, nor shall they use or disclose, any PHI of the other party hereto. However, in the event PHI is disclosed by Landlord or Tenant, as the case may be (or by one of their respective agents) to the other party or such other party's contractors, subcontractors or agents, regardless as to whether the disclosure is inadvertent or otherwise, then said other party receiving the PHI agrees to take reasonable steps to maintain, and to require its contractors, subcontractors and agents to maintain, the privacy and confidentiality of such PHI. The parties agree that the foregoing does not create, and is not intended to create, a "business associate" relationship between the parties as that term is defined by the Privacy Standards.

[Signature page follows]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO CONTENT:

Michael Hill, Director
Department of Public Health

APPROVED AS TO CONTENT:

Liza Ramirez-Tobias
Capital Assets Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2009, by Joyce Wilson, as City Manager of the CITY OF EL PASO.

_____
Notary Public, State of Texas

My commission expires:

_____

(Signatures continued on next page)

CITY CLERK DEPT.
09 OCT 22 PM 2:10

EL PASO HEALTHCARE SYSTEM, LTD.
a Texas limited partnership d/b/a Del Sol Medical Center

By: W. Mark Kimbrough
W. Mark Kimbrough
Vice President

THE STATE OF TENNESSEE §
§
COUNTY OF DAVIDSON §

This instrument was acknowledged before me on this 21st day of October, 2009, by W. Mark Kimbrough, as Vice President for EL PASO HEALTHCARE SYSTEM, LTD., a Texas limited partnership d/b/a Del Sol Medical Center.

Helen W. Cook
Notary Public, State of Tennessee

My commission expires:

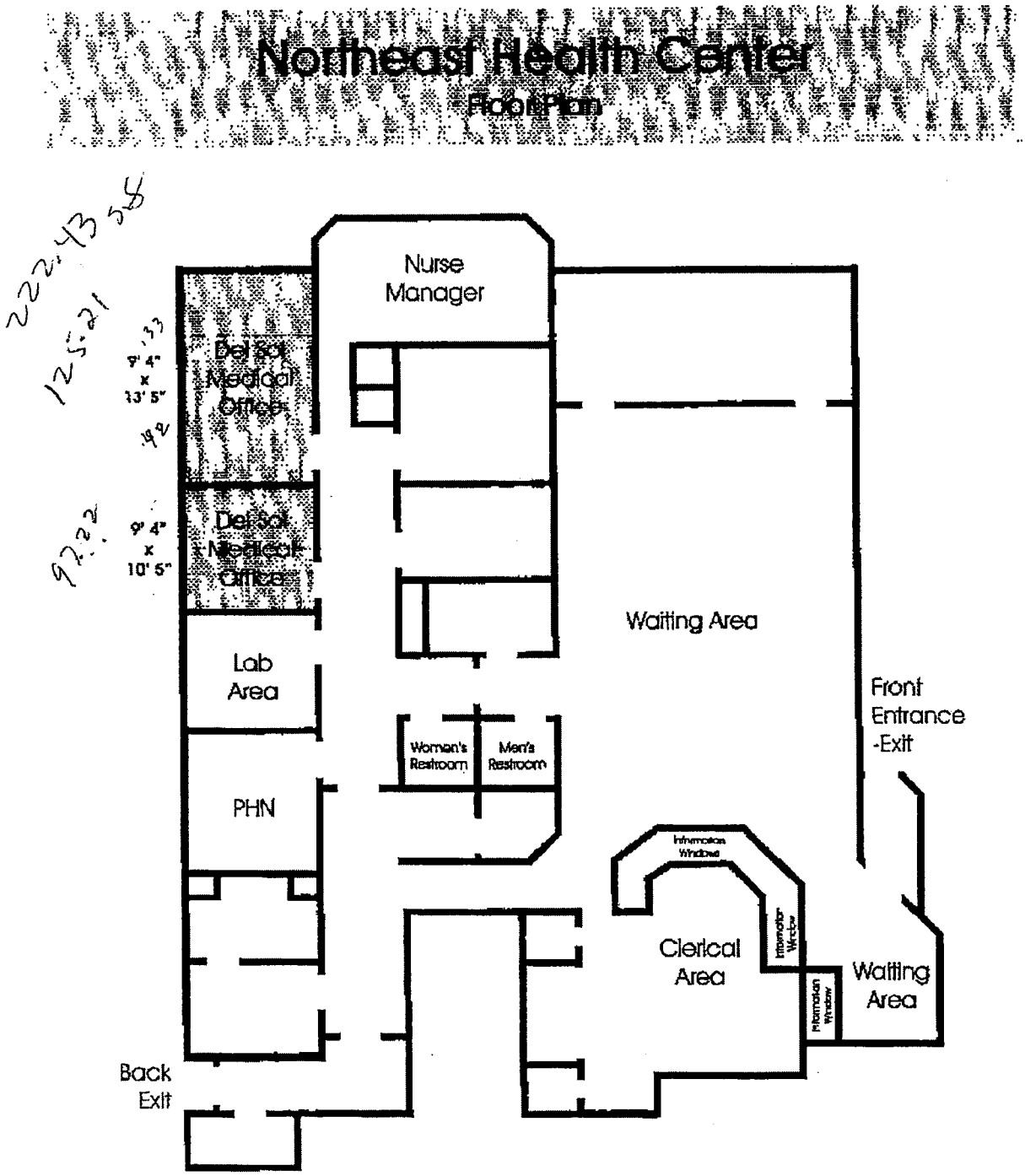
March 20, 2010

HELEN W. COOK
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

CITY CLERK DEPT.
09 OCT 22 PM 2:11

Northeast

EXHIBIT A



FAIRBANKS
NEW CASTLE
PANTHER
YUKON
FAIRBANKS
Northeast Clinic
5587 Transmountain
ALCAN
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