

## LEASE AGREEMENT

This Lease Agreement (“Lease”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the Gadsden Independent School District a public school (“Lessor”) and La Clinica de Familia, Inc. a non-profit 501(c) health care corp. (“Lessee”), for and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**WHEREAS** Lessee owns and operates several community health care clinics now located and conducting operations throughout the Las Cruces, New Mexico area and South to the US-Mexico border and desires to and operate a clinic on Lessor’s property known as the Santa Teresa School Site.

**WHEREAS**, Lessee Corporation is in good standing with State Public Regulation Commission and Lessor is in good standing with the New Mexico Public Education Department.

**WHEREAS**, The Lessor owns a parcel of land of approximately \_\_\_\_\_ acres on which the Santa Teresa High School is now located, more particularly described in Exhibit A to this Lease Agreement. The address of the property is \_\_\_\_\_, Santa Teresa, New Mexico \_\_\_\_\_ (the “Property”).

**WHEREAS**, The Lessor desires to Lease to Lessee approximately \_\_\_\_\_ acres of Lessor’s Property at its Santa Teresa High School site (hereinafter the “Leased Premises”) for the purposes of locating buildings and other structures to constitute a public health care facility for the operation by Lessee of a health care clinic.

**WHEREAS**, The Santa Teresa School Site is an undivided area of the Lessor's Property and is more specifically described on Exhibit B to this Lease Agreement along with certain Lessor Improvements as described herein.

**WHEREAS**, Lessee will make Tenant Improvements to the property as described in Exhibit C (Engineering Site Plan) and Exhibit D (construction plans ) to this Lease Agreement, which improvements shall be completed at Lessee's sole expense by November 15, 2014. If subsequent funding becomes available to the Lessee, the parties may negotiate additional Tenant Improvements to be completed by Lessee.

**WHEREAS**, Lessee will spend approximately \$500,000 (including A&E and Construction Management on a modern 2700 ft. health clinic at its own expense and Lessee shall continue to operate and be responsible for the clinic pursuant to the terms of this Lease Agreement.

**NOW THEREFORE** in consideration of the covenants agreed to herein, the parties agree as follows:

1. School Site. Lessor does hereby lease to Lessee \_\_\_\_\_ acres of the Property described in Exhibit A to this Lease Agreement and covenants that Lessee shall have possession and quiet enjoyment of its building and improvements to be constructed on the leased premises pursuant to this Lease Agreement.

2. Use of School Site. Lessee will use and occupy the leased premises for provision of primary medical care to the public and related health services and programs and for no unlawful use or purposes. Lessee will conform to and comply with all applicable municipal, state, and federal permits, ordinances, laws, rules and regulations in using the leased premises, and does further covenant that Lessee will not

use or suffer to be used within the leased premises any nuisance or waste or any activity as might tend to increase the existing rate of fire and extended coverage insurance of the Lessor. Lessee will keep on the Site an adequate and operable fire extinguisher.

3. Parking. Lessee and its invitees shall have a non-exclusive right to access and use the parking lot currently serving the Santa Teresa High School. See, Exhibit C. Lessee acknowledges that the Lessor must, during certain hours of the school day, have designated student drop-off/pick-up and that coordination by Lessor of use of the parking lot by Lessee's patients may be required during these times to ensure a safe and adequate area for the student drop-off/pick-up activities and patients seeking medical care by Lessee.

4. Possession and Rent. Lessee shall be entitled to take possession of the Site immediately following the execution of this Lease by all parties and upon approval of the State Board of Finance. In consideration of Lessee's provision of healthcare to Lessors public school students pursuant to Lessee's obligations under its contracts with the federal government (HIRSA) and in consideration of Lessee's investment of approximately \$500,000 in improvements to the premises, use and occupancy of the Leased Premises by Lessee shall be permitted without further consideration paid to Lessor.

5. Non-Appropriation Termination. This Lease is contingent upon sufficient appropriations being made by the United States of America and the State of New Mexico for performance of this Lease. Either party may terminate this Lease prior to the end of its term, if sufficient appropriations and authorizations are not made by the

United States of America and the State of New Mexico, as either party shall determine in its sole discretion. Provided, however, in the event of termination due to non-appropriation and Lessee has built and occupied the facility as required by this Lease, Lessor shall in good faith negotiate another Lease for no additional consideration for use and occupancy of the Leased Premises by the Lessee.

6. Cooperation to Complete Lessee's Improvements. Lessee acknowledges that Lessor shall require access to the School Site to complete the Lessee's Improvements. Lessee agrees to cooperate and provide full access to the extent practicable under the circumstances. If the Lessee shall require access to the School Site during times that students will be present, the Lessee shall notify Lessor no later than 48 hours in advance. Lessee acknowledges and agrees that no officer, agent, employee, contractor, or other representative of the Lessee ("Lessee's Representatives") shall be in student areas without first notifying Lessors administrator's office. Lessee's Representatives shall not be in the immediate presence of students on the Leased Premises, unless an authorized Lessor Representative is supervising those students or unless Lessee has constructed and maintained construction barriers or fences commonly used in the industry to separate work areas occupied by Lessee or its agents, employees or contractors from areas used by students.

7. Term of Lease and Extensions. The term of this Lease shall be for a period of ninety nine (99) years commencing on \_\_\_\_\_, 2014 ("the Commencement Date") and terminating on \_\_\_\_\_, 2114 (the Base Lease term). At the option of the Lessee, the Lease may be extended for one more Base Lease term ending \_\_\_\_\_, 2214. Lessee shall notify the Lessor in writing by no later

than ninety (90) days from the expiration of the Base Lease term whether it intends to renew for a subsequent ninety nine (99) years term. If the Lessee desires to extend for an additional ninety nine (99) years, the parties agree that they shall meet to plan for additional Tenant Improvements and to renegotiate the Lease payments. In no event shall additional improvements increase the amount of rent paid by Lessee in excess of the rent as defined in paragraph 4.

8. Operating Expenses and Utilities. All operating expenses and utility services for Lessee's improvements will be at the expense of the Lessee. Lessor shall provide Lessee written permission prior to Lessee's construction, permitting Lessee to use electric power service already at the School Site on condition of a separate meter installed and paid for by Lessee. Water service and sewer service shall be arranged for by Lessee for its building, however, during construction Lessor shall allow Lessee use of water available on-site for construction purposes. During construction, Lessee shall provide for porta potties for its personnel.

9. Lessee's Expenses/Alterations, Additions and Improvements.

a. The parties acknowledge that Lessee has, in anticipation of and for the benefit of the premises, at considerable expense to the Lessee provided for engineering and site plans for installation of Lessee's buildings and related structures.

10. Lessor's Lien. Lessor is a public body subject to disposition of property rules defined in NMSA 1978 Sections 13-6-1, *et seq.* To the extent it does not conflict with disposition property rules as set forth in statute, to secure all Lessee's obligations due and to become due hereunder and the faithful performance of this Lease by Lessee and to secure all other indebtedness and liabilities of Lessee to Lessor now existing or

hereafter incurred, if this Lease is terminated according to paragraph 19, Lessor shall have the right of first refusal of Lessee's fixtures and other improvements to the Leased Premises in consideration of then unfulfilled obligations owed to Lessor by Lessee, and to secure the costs of removing improvements if Lessee does not remove same when vacating the Leased Premises.

11. Maintenance, Repair and Replacement Responsibilities.

a. Lessee, as additional rent covenants to operate, maintain, replace and repair its structures on the Leased Premises. Lessee shall be responsible for and save Lessor safe and harmless from all maintenance, repair and replacement costs of its structures and operations on the Leased Premises. Lessee's responsibilities include janitorial services, interior and exterior maintenance and repairs to the structures placed on the Leased Premises by the Lessee.

b. Lessor shall maintain, repair and replace at Lessor's cost, all Lessors improvements including but without limitation, the shared parking lot. The parties agree that they shall promptly repair any damage caused one to the other of the others improvements.

12. Condition of the Lessor's Premises/Lessee's Improvements/Equipment and Repairs.

a. Lessor represents that to the best of its knowledge, as of the date of this Lease, the Lessor's School Site and improvements thereon made to date are in satisfactory condition. If any modification is required to be made to the Lessor's School Site after the date of execution of this Lease as a result of any laws not arising from Lessee's use and occupancy of the Leased Premises, Lessee shall have no liability for any costs therefore, whether as a pass through, an operating expense or otherwise.

b. Lessee stipulates and agrees the Lessee has inspected the Lessor's School Site and Lessee's Leased Premises as of the signing of this Lease and Lessee agrees to accept the Leased Premises as is. At the expiration of this Lease, Lessee will yield up peaceably the School Site and the Leased Premises in as good order and condition as when the same were entered upon by Lessee, ordinary wear and tear excepted. Upon Lease expiration, Lessee shall be responsible for any repair and damage it has caused to the School Site (excluding the Leased Premises).

c. If the party responsible therefore fails to make such repairs and replacements promptly, or, if such repairs and replacements have not been made within thirty (30) days after the occurrence of damage, the non-responsible party may, at its option, make such repairs and replacements, and the responsible party hereby agrees and covenants to repay the cost thereof to the other on demand.

13. Environmental Damage and Compliance.

With respect to its improvements placed on the Leased Premises, Lessee shall, at Lessee's own expense, comply with any and all laws, statutes, rules or regulations governing the disposition, handling, storage or cleanup of hazardous materials. For the purposes of this paragraph, "hazardous materials" shall include but not be limited to substances defined as "hazardous substance", "hazardous materials", or "toxic substances" in the comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 96901, et. Seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et. Seq.; the Resource Conservation and Recovery Act. 42 U.S.C. Section 6901, et. Seq.; and those substances defined as "hazardous waste" or any similar toxic substance in any New

Mexico Statute. This definition shall include any and all laws of any governmental authority now in effect, or hereafter enacted as any said above-mentioned laws may be amended from time to time, and in the regulations adopted and the publications promulgated pursuant to said laws ("Cleanup Laws"). Lessee shall, at Lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws with regard to conditions created by Lessee. Should the Authority determine that a cleanup plan be prepared and that a cleanup be undertaken because of any spills or discharges of hazardous substances or wastes on the Leased Premises created by Lessee which occur during the term of this Lease, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans. Lessee's obligations under this paragraph shall arise only if there is any event or occurrence created by Lessee on the Leased Premises during the Term of this Lease which requires compliance with the Cleanup Laws. At no expense to Lessor, Lessee shall promptly provide all information requested by Lessor for preparation of affidavits or other documents required by Lessor to determine the applicability of the Cleanup Laws to the Leased Premises, and shall sign the affidavits promptly when requested to do so by Lessor. Lessee's obligations and liabilities under this paragraph shall be restrainable by injunction.

14. Tort Claims Act/Non-Waiver of Immunity. Lessor is protected by the Tort Claims Act and Lessee has certain protections under the Medical Malpractice Act and neither party waives immunity by its agreement to hold harmless or insure the other against claims made against the other by reason of its negligence. Provision of



additional named insurance coverage in excess of Tort Claims Act exposures shall not be construed to waive either parties immunity granted by state or federal law .

15. Assignment and Subletting. This Lease may not be assigned or sublet by the Lessee except with the prior written consent of the Lessor, which consent shall not be unreasonably withheld; subject, however, to each of the following conditions: (i) Lessee is not in default of any provision of the Lease; (ii) no assignment of the Lease shall change the use of the Leased Premises without prior written consent of the Lessor; and (iii) a copy of the sublease agreement shall be provided to the Lessor. Assignments and subletting of the property shall not be valid or enforceable unless approved by the New Mexico State Board of Finance.

16. Lessor's Right of Entry and to Make Alterations, Additions, and Improvements. In the event Lessee fails to repair damage to the Leased Premises caused by it, subject to reasonable notice and an opportunity for Lessee to cure under the circumstances, Lessor, Lessor's assignees, agents, attorneys, and successors in interest shall have the right to enter upon the Leased Premises to inspect the same and to make any and all reasonable improvements and alterations, upon the Leased Premises, at Lessee's expense, providing such improvements and alterations are necessary to the use to which the Leased Premises are being put at the time, but at no time shall Lessor be compelled or required to make any improvements, alterations, or additions, except as otherwise described in paragraph 11 (b). Provided, further, that nothing herein shall be construed to empower the Lessor to enter the buildings or structures of Lessee to inspect the same or require improvements or changes to the interior or exterior of Lessee's buildings and structures.

17. Taxes, Other Assessments, and Insurances. All taxes and other assessments (including but not limited to utilities) of whatsoever kind and nature which have been or may be levied upon the structures or personal property of the Lessee located upon the Leased Premises by Lessee shall be paid by Lessee at the time when the same shall become due and payable. Lessee will carry and maintain in full force and effect during the term of this Lease, at Lessee's expense, public liability insurance covering bodily injury and property damage liability, in a form and with an insurance company reasonably acceptable to Lessor, with limits of coverage of not less than Tort Claims Act limits for bodily injury or death and property damage liability for each accident, providing protection against all liability claims arising from the use of the Leased Premises by the Lessee, and cause Lessor to be an additional named insured on such policy of insurance, and delivering a copy thereof to Lessor prior to occupying the Leased Premises. Fire and extended coverage insurance in the replacement value upon all of the structures, contents and other personal property situated upon the Leased Premises shall be maintained by Lessee.

18. Destruction. If at any time during the term of this Lease, or an extension or renewal thereof, the Lessee's improvements on the Leased Premises shall be totally or partially destroyed by fire, earthquake, or other calamity, Lessee shall have the right to terminate this Lease and, in such event, all provisions herein contained shall cease and be void, but if Lessee elects to terminate the Lease, Lessee shall undertake the restoration of the Leased Premises to the condition existing before this Lease was entered into within a reasonable period of time. If Lessee fails to complete the restoration within a reasonable period of time following the event causing the

destruction, Lessor shall be entitled to terminate the Lease and all provisions herein contained shall cease and be void and Lessee shall reimburse Lessor its costs of restoration of the Leased Premises to its condition prior to the Lease.

19. Default. In addition to other specific provisions of this Lease, each of the following acts or omissions of a party or occurrences shall constitute an “Event of Default”:

a. Failure or refusal by Lessee or Lessor to timely comply with its obligations under this Lease;

b. However, notwithstanding the occurrence of such Event of Default, neither party shall be entitled to exercise any of the remedies provided for in this Lease or by law unless such Event of Default continues beyond the expiration of ten (10) days following notice to the defaulting party of such Event of Default; or

c. Abandonment or vacating of the Leased Premises or any significant portion thereof for a period of at least ninety (90) days;

d. Failure or refusal by Lessee to keep and maintain the Leased Premises as required pursuant to the provision of paragraph 11 (a) above;

e. Failure or refusal by Lessor to keep and maintain the Leased Premises as required pursuant to the provision of paragraph 11 (b) above; or

f. Termination of Lessee’s charter by revocation or nonrenewal by its authorizer.

20. Remedies following Default. This Lease and the term and estate hereby granted and the demise hereby made are subject to the limitation that if and whenever any Event of Default shall occur, after such notice, if any, as is provided in paragraph

19, above, Lessor may, at its option, in addition to all other rights and remedies given hereunder or by law or equity, do any one or more of the following:

a. Terminate this Lease, in which event, Lessee, shall immediately surrender possession of the Leased Premises to Lessor or be deemed guilty of forcible detainer of the Leased Premises and shall be subject to eviction proceedings;

b. Enter upon and take possession of the Leased Premises with or without having terminated the Lease; or

c. Pursue any other remedies available at law or in equity.

Exercise by Lessor of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Leased Premises by Lessee, whether by agreement or by operation of law, it being understood that such acceptance can be effected only by the written agreement of Lessor and Lessee.

If either party should fail to take any action or cure any default hereunder within the time herein permitted, the other party, without being under any obligation to do so and without thereby waiving such default, may take reasonable action to remedy such default for the account of the other (and, in the case of the Lessor, enter the Leased Premises for such purpose), and thereupon the defaulting party shall be obligated to, and hereby agrees to pay the other, upon demand, all costs, expenses and disbursements incurred by the other in taking such remedial action.

Any obligation of payment by the defaulting party is contingent upon that party receiving sufficient appropriations from the State of New Mexico or other public funding sources, the determination of which shall be made in the obligated party's sole discretion.

21. Waiver; Cumulative Remedies. Neither acceptance of any action to cure default or any non-action in the face of default of by either party shall constitute a waiver as to any breach of any covenant or condition of this Lease or a waiver of any of the rights hereunder. Waiver by a party of any right for any default of the other shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any other obligation. No right or remedy of a party hereunder or covenant, duty or obligation of a party hereunder shall be deemed waived by the other unless such waiver be in writing, signed by the other.

The specified remedies to either party under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the one may be lawfully entitled in case of any breach or threatened breach by the other of any of the agreements and covenants herein contained.

22. Estoppel Certificates. Lessee may, on form(s) provided by Lessee at any time or from time to time, within ten (10) days of a written request from Lessee require that Lessor certify by written statement, duly executed, acknowledged, subscribed and sworn to, and delivered, to Lessee or any other person, firm or corporation specified by Lessee:

a. that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

b. whether or not there are then existing any set-offs or defenses against the enforcement of the Lease terms, covenants or conditions hereof and any modifications hereof on the part of Lessee and, if so, specifying the same;

c. whether or not any obligations of the Lessee have not been satisfied and the nature and extent on the default ;

d. the date of expiration of the current Term of this Lease and any options to renew or extend this Lease specifying the same;

e. such other matters as may be reasonably required by Lessee or Lessee's mortgagee;

f. any obligations of Lessee under this Lease shall be subject to, and at all times subordinate to, the lien of any mortgage or mortgages covering the Lessee's improvements to the Leased Premises.

23. Attorney's Fee. In case it should be necessary or proper for either Lessor or Lessee to bring an action to enforce the terms of this Lease, or any rights hereunder, then the prevailing party in each and any such action shall be entitled to recover a reasonable attorney's fee. Notwithstanding the forgoing, the obligation of a non-prevailing party shall be contingent upon that party receiving sufficient appropriations from the State of New Mexico or other public funding sources, the determination of which shall be made in the obligated party's sole discretion.

24. Binding on Assigns, and Successors in Interest. The covenants and agreements herein contained shall extend to and be binding upon the assigns, and successors in interest of the parties to this Lease.

25. Notice. All notices required under this Lease shall be given or exercised in writing and shall be deemed to be properly served if delivered in writing personally, or sent by certified or registered mail with return receipt requested, to the addresses

below. The effective date of such notice or option shall be the date on which the same is received.

To Lessor: Suzan Martinez de Gonzales  
Chief Executive Officer  
La Clinica de Familia, Inc.

To Lessee: Efren Yturalde  
Gadsden Independent School District  
Superintendent

26. This Lease Embodies All Agreements Between the Parties. This Lease incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Lease. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied by this Lease.

27. Governing Law. This Lease shall be governed by the laws of the State of New Mexico.

28. Amendments. This Lease shall not be altered, changed or amended except by instrument in writing executed by the parties hereto, which shall also be approved by the New Mexico State Board of Finance.

29. Assignment and Subletting. This Lease may not be assigned or sublet by the Lessee except with the prior written consent of the Lessor, which consent shall not be unreasonably withheld; subject, however, to each of the following conditions:

(i) Lessee is not in default of any provision of the Lease; (ii) no assignment of the Lease shall change the use of the Property without prior written consent of the Lessor; and (iii) a copy of the sublease agreement shall be provided to the Lessor.

30. Captions. The paragraph headings are for convenience of reference only and shall not otherwise affect the meaning hereof.

31. Severability. If any provision of this Lease, or any application thereof, shall be declared invalid, or unenforceable by any court of competent jurisdiction, the remainder of this Lease and any other application of such provision, shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

Lessor:

Gadsden Independent School District

By: \_\_\_\_\_  
Superintendent

Approved:

New Mexico State Board of Finance

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

Lessee:

La Clinica de Familia

By: \_\_\_\_\_  
Chief Executive Officer

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