

**FIRST AMENDMENT
TO OFFICE SPACE LEASE BETWEEN
THE CITY OF SAN JOSE
AND LA FAMILIA, L.P.**

This First Amendment ("Amendment") to the Office Space Lease between the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY") and LA FAMILIA, L.P., a California limited partnership ("LESSOR") dated August 5, 2005 ("LEASE") is made and entered into, and shall be effective, as of **August 1, 2010**.

Whereas, CITY and LESSOR entered into the LEASE for office space at 777 North First Street, Suite 320, San Jose, California, commencing on August 1, 2005 and expiring on July 31, 2010. A copy of the LEASE is attached hereto as **Exhibit A** and is incorporated herein by reference; and

Whereas, CITY and LESSOR mutually desire to extend the LEASE term for five (5) additional years; and

Now, therefore, the parties hereto agree as follows:

Section 3 of the LEASE is amended in its entirety to read as follows:

"Section 3. TERM.

This LEASE shall commence on August 1, 2005, and subject to CITY's right to terminate contained in Section 24, shall expire on July 31, 2015."

Section 4 of the LEASE is amended in its entirety to read as follows:

"Section 4. RENT.

CITY shall pay to LESSOR the following monthly rental amounts:

Year	Monthly Rent
8-1-10 to 7-31-11	\$ 1,521.90
8-1-11 to 7-31-12	\$ 1,567.56
8-1-12 to 7-31-13	\$ 1,614.58
8-1-13 to 7-31-14	\$ 1,663.02
8-1-14 to 7-31-15	\$ 1,712.91

Such rental payments shall be due and payable in advance, on the first day of the month."

Section 18 of the LEASE is amended in its entirety to read as follows:

“Section 18. IMPROVEMENTS.

LESSOR, at no cost to CITY and by December 10, 2010, shall again replace the carpet in the Leased Premises with building standard carpet (DesignWeave, Montara, Trapani or equivalent), in a color choice agreed upon by CITY and LESSOR.”

Section 23 of the LEASE is amended in its entirety to read as follows:

“Section 23. PARKING.

LESSOR shall provide to CITY two (2) parking permits: one permit will be in the Building’s garage for an additional fee of Eighty Dollars (\$80.00) per space per month, and one permit will be in the outside parking lot for an additional fee of Sixty Dollars (\$60.00) per space per month. Additional parking spaces shall be provided to CITY upon request at a rate of Eighty Dollars (\$80.00) per space per month for garage permits, and a rate of Sixty Dollars (\$60.00) per space per month for outside parking permits.”

All of the provisions of the LEASE not specifically amended by this First Amendment shall remain in full force and effect.

APPROVED AS TO FORM



KENNETH D. JOHNSON
Senior Deputy City Attorney

“CITY”
City of San José,
a municipal corporation

By: _____
Name: _____
Title: _____

“LESSOR”
La Familia, L.P., a California limited
partnership


By: _____
Name: C. B. Swenson
Title: General Partner

EXHIBIT A
LEASE
(behind this page)

Exhibit A

**OFFICE SPACE SUBLEASE
BETWEEN
THE CITY OF SAN JOSE
AND
LA FAMILIA, L. P.**

THIS LEASE AGREEMENT by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter "CITY") and La Familia L.P., a California Limited Partnership (hereinafter "LESSOR"), is entered into upon execution by CITY, ("Effective Date").

RECITALS

WHEREAS, LESSOR is owner of certain real property located at 777 N. First Street; and

WHEREAS, CITY and LESSOR now wish to enter into a new lease for 865 sq. ft. of space on the Third Floor of 777 North First Street (hereinafter "Leased Premises");

Now, therefore, the parties agree to the following terms, which shall become effective upon execution by the City Manager:

1. **LEASED PREMISES.** Subject to the terms and conditions of this agreement, LESSOR hereby leases to CITY, and CITY hereby leases from LESSOR, approximately Eight Hundred Sixty-Five usable square feet of office space identified as Suite 320 on the 3rd floor of LESSOR's Building ("Building") located at 777 North First Street, San Jose, California (hereinafter "Leased Premises"). The Leased Premises are more particularly described in **Exhibit "A"**.
2. **USE.** The Leased Premises shall be used for general office purposes.
3. **TERM.** This Lease Agreement shall be deemed to have commenced on August 1, 2005 and Subject to CITY's right to terminate contained in **Section 24**, shall expire on July 31, 2010.
4. **RENT.** CITY shall pay to LESSOR the sum of One Thousand Four Hundred Fifty-Three and 20/100 Dollars (\$1,453.20) per month, payable in

advance on the first day of the month from August 1, 2005 through July 31, 2006; CITY shall pay to LESSOR the sum of One Thousand Four Hundred Ninety-Six and 80/100 Dollars (\$1,496.80) per month from August 1, 2006 through July 31, 2007; CITY shall pay to LESSOR the sum of One Thousand Five Hundred Forty-One and 71/100 Dollars (\$1,541.71) per month from August 1, 2007 through July 31, 2008; CITY shall pay to LESSOR the sum of One Thousand Five Hundred Eighty-Seven and 97/100 Dollars (\$1,587.97) per month from August 1, 2008 through July 31, 2009; CITY shall pay to LESSOR the sum of One Thousand Six Hundred Thirty-Five and 61/100 Dollars (\$1,635.61) per month from August 1, 2009 through July 31, 2010.

5. **TAXES.** LESSOR shall pay all real property taxes and assessments that are levied and assessed against the Lease Premises.

6. INDEMNITY AND HOLD HARMLESS.

- A. CITY agrees to and shall indemnify, defend and hold harmless LESSOR from and against all liability, loss, damage, costs or expenses arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on the Leased Premises and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of City, its agents, servants, employees or contractors or any of them. City shall not be responsible for, and such indemnity shall not apply to, any loss due to the negligence or willful misconduct on the part of the LESSOR or its agents, servants, employees or contractors or any of them or conduct resulting in an award for punitive damages against LESSOR, its agents, servants, employees or contractors or any of them.
- B. LESSOR agrees to and shall indemnify, defend and hold harmless City from and against all liability, loss, damage, costs or expenses arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Leased Premises or in the Building and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of the Lessor or its agents, servants, employees or contractors or any of them. Lessor shall not be responsible for (and such indemnity shall not apply to) any loss due to the negligence or willful misconduct on the part of City, its agents, servants, employees or any of them or conduct resulting in an award for punitive damages against City's agents, servants, employees or any of them. City shall not be responsible for any acts, errors or omissions of any person or entity except its agents, servants, employees or any of them.

7. INSURANCE.

- A. Without limiting the provisions set forth in **Section 6** in any way, each party to this Lease Agreement shall maintain its own public liability insurance or self-insurance program in amounts of not less than \$1,000,000.00 combined single limit per occurrence, and shall furnish to the other, on request, a certificate of such insurance or self-insurance. The above described certificate shall provide for not less than thirty (30) days notice to the other party of any cancellation or renewal or material change.
- B. LESSOR shall provide and pay for all fire and extended insurance coverage for the Leased Premises and for the Building in which the Leased Premises are located.

8. **MUTUAL WAIVER OF SUBROGATION.** LESSOR and City and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from, or caused by, any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance on the Leased Premises or in connection with property or activities conducted on the Leased Premises, and waive any right of subrogation that might otherwise exist in, or accrue to, any person on account thereof.

9. **UTILITIES AND SERVICE.** LESSOR shall, at LESSOR's own cost and expense, furnish to Leased Premises and shall maintain continuously during the term of this Lease Agreement:
- (a) Water and electricity suitable for the intended use of Leased Premises at all times; and
 - (b) Heating and air conditioning suitable for the comfortable use and occupation of Leased Premises during reasonable business hours on regular business days; and
 - (c) Adequate and sufficient lighting of common stairways, hallways, restrooms, entry ways, and any other common areas of the Building in which Leased Premises are located at all times; and
 - (d) Elevator service 6:00 a.m. - 8:00 p.m., seven (7) days per week, and Key Code Access during off hours.

10. **JANITORIAL.** LESSOR shall provide and pay for all janitorial services necessary to maintain the Leased Premises and the Building in which the Leased Premises are located in clean and sanitary condition and in accordance with normal trade practices. Said services shall be provided by LESSOR on a five (5) day per week basis.

11. **MAINTENANCE AND REPAIRS.** LESSOR shall maintain the Leased Premises in good order and condition and repair. LESSOR shall also maintain in good order, condition and repair the Building in which the

Leased Premises are located, including all mechanical and utility systems, and emergency systems and facilities, and common areas. LESSOR shall complete its repair obligations within thirty (30) days from the date LESSOR is notified of, or becomes aware of, the need to make a repair; provided, if the nature of a repair is such that it cannot reasonably be completed within thirty (30) days, LESSOR shall not be in default of its obligations under this provision if LESSOR commences the repair in question within such thirty (30) day period and thereafter diligently pursues the repair to completion.

12. **SUPPLIES.** LESSOR shall supply and pay for adequate restroom supplies including soap, towels, seatcovers, and toilet tissue. LESSOR shall also provide fire extinguishers upon the Leased Premises and within the building in which the Leased Premises are located in accordance with the local regulations and shall further maintain said fire extinguishers in good order and working condition.
13. **INGRESS AND EGRESS.** CITY shall have access to the Leased Premises and to the Building in which the Leased Premises are located twenty-four (24) hours a day.
14. **ALTERATIONS.** CITY may make alterations to the Leased Premises with the written consent of the LESSOR, which consent the LESSOR agrees not to withhold unreasonably. CITY, in City's sole discretion, may remove such alterations at the expiration or earlier termination of the Lease Agreement, provided that the CITY, if CITY elects to remove such alterations, restores the Leased Premises to the same condition as received, less ordinary wear and tear. If alterations cost less than seventy-five thousand dollars (\$75,000), CITY and LESSOR shall agree to such alterations by a separate, written agreement and not by amendment to this LEASE.
15. **WAIVER.** The waiver by LESSOR or CITY of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such terms, covenants or conditions or any subsequent breach of same or any other term, covenant or condition herein contained. The acceptance of rent hereunder by the LESSOR shall not be a waiver of any preceding breach by CITY of any term, covenant or condition of this Agreement
16. **DAMAGE TO PREMISES.** If, during the term of this Lease Agreement or any extension thereof, the Leased Premises or the Building in which the Leased Premises are located are damaged from any cause, rendering the Leased Premises totally or partially inaccessible or unusable, the CITY may terminate this Lease Agreement by the giving of thirty (30) days written notice thereof.
17. **EMINENT DOMAIN.** If, during the term or during the period of time between the execution of this Lease Agreement and the date the term commences, there is any taking of all or part of the LEASED PREMISES,

the Building, other improvements, or Land on which the LEASED PREMISES are a part, or any interest in this Lease Agreement by condemnation, this LEASE shall terminate on the date of taking. The parties understand and agree that the term "condemnation" as used in this Lease Agreement means (a) the exercise of any governmental power, whether by legal proceedings or otherwise, by a condemnor or (b) a voluntary sale or transfer by LESSOR to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are proceeding. The parties further understand and agree that the term "date of taking" as used in this Lease Agreement means the date the condemnor has the right to possession of the property being condemned or acquired under threat of condemnation.

18. **IMPROVEMENTS.** LESSOR to replace carpet with building standard (DesignWeave Montara, Trapani, or equivalent). Tenant and Landlord to agree on color choice.
19. **QUIET ENJOYMENT.** LESSOR covenants and agrees with CITY that upon CITY paying rent and observing and performing all the terms, covenants, and conditions of this Lease Agreement, on CITY's part to be observed and performed, CITY shall have the right to quiet enjoyment of the Leased Premises.
20. **SURRENDER OF PREMISES.** Upon expiration or earlier termination of this Lease Agreement, CITY shall surrender the Leased Premises in the same condition as received, or as may have been repaired or maintained by Lessor pursuant to Paragraph 11 of this Lease Agreement, with the exception of ordinary wear and tear, damage by fire, earthquake, act of God or the elements.
21. **BINDING ON HEIRS AND SUCCESSORS.** This Lease Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties, LESSOR and CITY, hereto, but nothing in this paragraph shall be construed as a consent by LESSOR to any assignment of this Lease Agreement or any interest herein except as otherwise provided in this Lease Agreement.
22. **SUBLEASING.** CITY shall have the right to sublet the Leased Premises, or any part thereof, subject to all terms, covenants and conditions of this Lease Agreement. In the event of such a sublease, CITY shall continue to remain liable and responsible for the due performance of all terms, covenants and conditions of this Lease Agreement.
23. **PARKING.** LESSOR shall provide to CITY one (1) parking space in the parking facility in the basement of the building at a rental rate of \$80 per month.

remainder of the term hereof, or, at the election of such new owner, this Lease shall automatically become a new Lease between Lessee and such new owner, upon all of the terms and conditions hereof, for the remainder of the term hereof, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations hereunder, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor; (c) be bound by prepayment of more than one month's rent; or (d) be liable for the return of any security deposit paid to any prior lessor.

- C. Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.
- D. Self-Executing.** The agreements contained in this Paragraph 26 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

27. MISCELLANEOUS.

- A.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- B.** If there be more than one entity designated in or signatory to this Agreement, the obligations hereunder imposed upon Company shall be joint and several; and the term Company as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

- C. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.
- D. Time is and shall be of the essence of each term and provision of this Agreement.
- E. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of, the State of California.
- F. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- G. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either City or Company in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.
- H. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.
- I. Days, unless otherwise specified, shall mean calendar days.
- J. Whenever in this Agreement the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent.
- K. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be vested in the state courts of California in the County of Santa Clara or in the United States District Court in the Northern District of California.

28. RELOCATION

LESSOR shall have the right to relocate Tenant to equivalent space within the building at LESSOR's expense upon 60-days written notice.

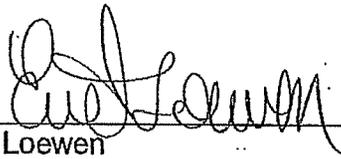
29. TERMINATION OF PREVIOUS AGREEMENT

Upon execution of this agreement by CITY, City shall be released from any and all obligations under the previous lease agreement dated November 15, 2000 covering Suite 320.

WITNESS THE EXECUTION HEREOF the day and year first hereinbelow written.

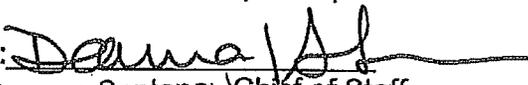
APPROVED AS TO FORM:

Richard Doyle, City Attorney

By: 
Evet Loewen
Chief Deputy City Attorney

"CITY"

CITY OF
SAN JOSE, a municipal corporation

By: 
Deanna Santana, Chief of Staff
City Manager's Office

Date: 8/5/05

"LESSOR"

La Familia, LP, a California Limited Partnership

By: 

Name: C. B. Swenson
Title: General Partner

Tax I.D. 77-0400383

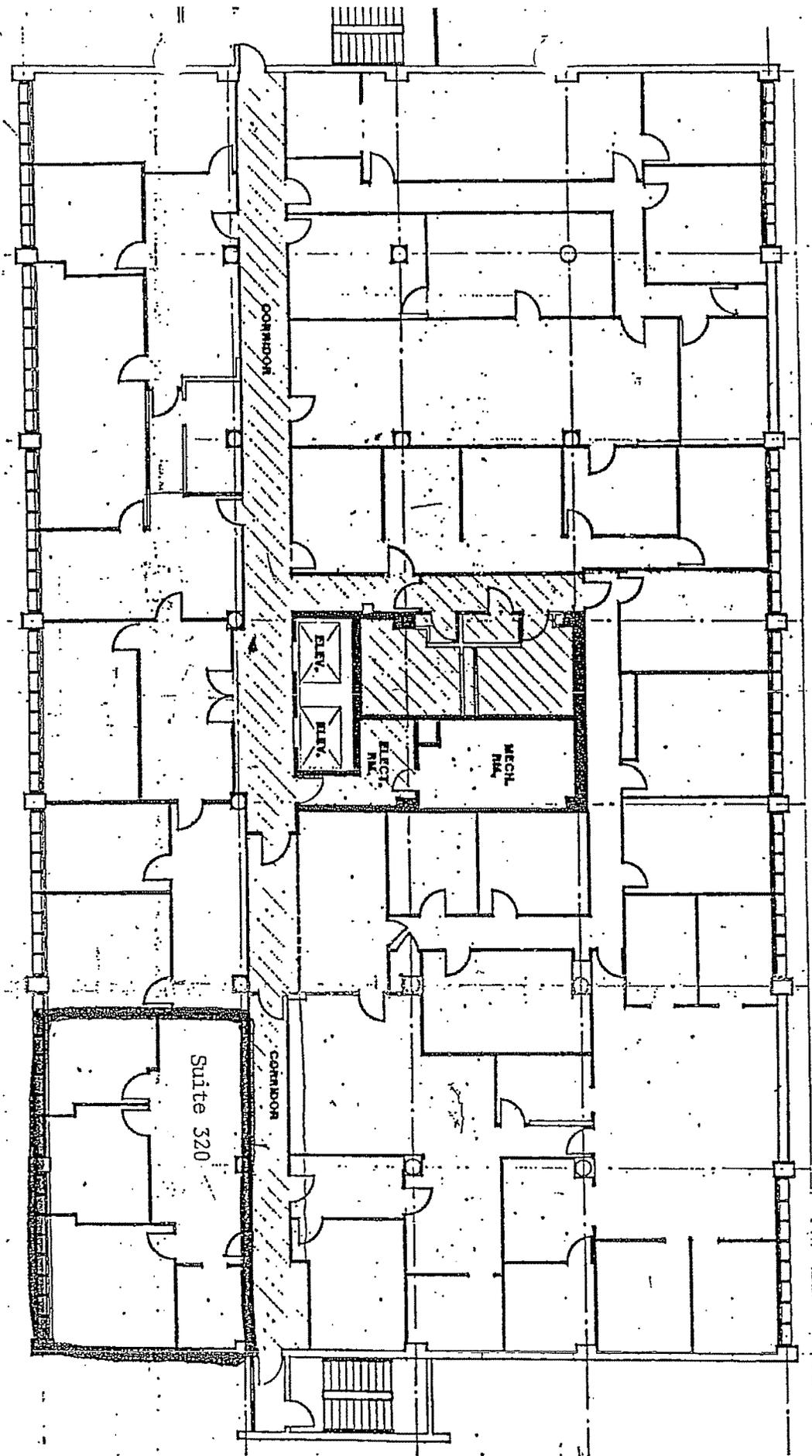


EXHIBIT A THIRD FLOOR - 777 N. First St., San Jose