

**City of Carson City
Agenda Report**

Date Submitted: 9/8/09

Agenda Date Requested: 9/18/09
Time Requested: Consent

To: Carson City Board of Supervisors

From: Larry Werner, City Manager

Subject Title: Action to approve the Third Amended Lease Agreement between Carson City and Community Counseling Center, a non-profit organization.

Staff Summary: Community Counseling Center desires to amend the current lease to decrease the amount of square footage they are leasing from the City.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve the Third Amended Lease Agreement between Carson City and Community Counseling Center, a non-profit organization.

Explanation for Recommended Board Action: Community Counseling Center desires to amend the current lease to decrease the amount of square footage they are leasing from the City. The premises are leased to CCC for the uses of detoxification, civil protective custody, and transitional living. Although CCC will not make rental payments, they are providing a service that the City would otherwise need to provide to the community and CCC is responsible for paying \$2,563.00 for utilities.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 244.284

Fiscal Impact: N/A

Funding Source: N/A

Supporting Material: Third Amended Lease

Prepared By: Larry Werner, City Manager

Reviewed By:


(City Manager)
Melanie Bankert
(District Attorney)
Nancy Paulson
(Finance Director)

Date: 8-8-09

Date: 9-8-09

Date: 9/8/09

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

THIRD AMENDED LEASE AGREEMENT

THIS THIRD AMENDED LEASE AGREEMENT (hereinafter referred to as the "Lease") is made and entered into this ____ day of _____, 2009, by and between the Consolidated Municipality of **CARSON CITY**, hereinafter referred to as **CITY**, and **COMMUNITY COUNSELING CENTER**, a non-profit Nevada corporation, hereinafter referred to as **CCC**.

WHEREAS, the **CITY** and **CCC** made and entered into an original Lease Agreement on January 5, 2006, calling for the use of 6,998 square feet of property located at 900 East Long Street by **CCC** for charitable or civic purposes, to wit; a non-profit detoxification and treatment center; and

WHEREAS, the parties entered into an Amended Lease Agreement on November 1, 2007 to change the term of the lease from January 5, 2006 through January 4, 2016 to November 1, 2007 through October 31, 2017 and to include the entire second floor of the real property located at 900 East Long Street as the rental premises; and

WHEREAS, the parties entered into a Second Amended Lease Agreement on June 5, 2008 to change the rent from \$2,066.00 per year to \$2,066.00 per month which was the intent of the parties at the time the First Amended Lease Agreement was entered into on November 1, 2007; and

WHEREAS, the parties desire to enter into this Third Amended Lease Agreement to change the square footage of the rental premises; and

WHEREAS, the Carson City Board of Supervisors has determined that the property being leased to **CCC** is not needed for public purposes of the county for a period of ten (10) years commencing with the execution of the Amended Lease Agreement; and

WHEREAS, the **CCC**, is a non-profit charitable or civic organization under the provision of the Internal Revenue Code 501 (c) (3), and desires to use one-half the second floor at 900 East Long Street, Carson City, Nevada, for charitable or civic purposes, to-wit; a non-profit detoxification and treatment center; and

WHEREAS, NRS 244.284 allows the Carson City Board of Supervisors to lease any real property of the county for a term not exceeding ninety nine (99) years if such real property is not needed for the public purposes of the county and is let to a nonprofit charitable or civic organization for charitable or civic purposes; and

WHEREAS, the Carson City Board of Supervisors specifically finds that this Lease meets the conditions of NRS 244.284; and

WHEREAS, a condition precedent to the CCC's occupancy of the premises under this Lease is that the CCC must apply for and receive all required special use permits and/or variances and any other licenses or permits required by City, State, or Federal governmental agencies; and

WHEREAS, the parties agree that this Lease Agreement replaces all previously entered into Lease Agreements.

IN CONSIDERATION of the mutual promises of both parties and other good and valuable consideration as hereafter set forth, the parties hereto covenant and agree as follows:

CITY does hereby lease to **CCC**, and **CCC** does hereby lease from **CITY**, the following described property hereinafter referred to as "the premises":

900 EAST LONG STREET, a portion of the second floor consisting of 9,380 square feet as depicted in Attachment A.

CARSON CITY, NEVADA

1. **TERM:** a. Lease: The term of this Lease is for a period of ten (10) years, which began on the 1st day of November, 2007 and terminates at midnight on the 31st day of October, 2017, unless sooner terminated by mutual agreement of the parties or for violation of any term or condition of this Lease.

b. Option to Renew Lease: Upon the expiration of the initial term of this Lease (10-31-17), **CCC** may request to renew this Lease upon the same terms and conditions as contained herein, for one five year period, by providing notice of its desire to remain on the premises for an additional five years. Said notice must be provided in writing at least sixty (60) calendar days prior to the expiration of the initial term of this Lease. Renewal of this Lease shall be at the sole discretion of the Carson City Board of Supervisors which may base its decision to renew or not to renew on a number of factors including, but not limited to, the need to use the premises for a public purpose and the performance of the **CCC** under the terms of this Lease

2. **RENTAL:** In the past the City has waived, and it continues to intend to waive for the purpose of this third amended lease, the rental rate. The services provided by **CCC** to the City are valuable services that are needed for the residents of this community and which help off-set the expenses provided by the Sheriff's Office and the Fire Department. However, **CCC** shall be responsible for all costs of **CCC**'s operation, renovation of the premises, and charges

or expenses of any nature whatsoever including liens filed in connection with CCC's operation of the premises.

3. **THE USE OF PREMISES:** The premises are leased to CCC for the uses of detoxification, civil protective custody, and transitional living. Any change of this use shall not be made unless such change of use is lawful and CCC first obtains the written consent of CITY. CCC shall not use the premises for any illegal trade, manufacturing or other business, or for any other illegal purpose or for any purpose not expressly allowed by this Lease or consented to by City in writing.

4. **REPAIRS AND MAINTENANCE:** CITY shall be responsible for maintaining at City's expense the building and grounds in keeping with the requirements of the county regarding structural integrity and current City, State, and Federal codes. This shall include, but shall not be limited to the following:

Roof, foundation, exterior walls, underground plumbing, and exterior grounds. CCC shall, at its own expense, maintain the premises in good condition and repair during the entire term of this Lease, including, but not limited to, the following:

Interior walls, flooring, paint, plumbing, HVAC appurtenant to the space, electrical fixtures, fire protection equipment, and the interior of the premises in general.

5. **ALTERATIONS, LIENS, ENCUMBRANCES, AND REPAIRS:** CCC shall not make any permanent alterations, additions, improvements or repairs in the premises without first obtaining the consent of the CITY in writing. All alterations, additions, and improvements which are made, shall be at the sole cost and expense of the CCC, and shall become the property of the CITY upon completion, trade fixtures excluded. Upon expiration, or earlier termination of this Lease, CCC shall peacefully and quietly surrender to CITY the premises, and all CCC's improvements and alterations to the premises, in good order and repair (excepting ordinary wear and tear). Any work performed by CCC must comply with all laws, ordinances, rules and regulations of the local agencies having jurisdiction hereof. CCC agrees to hold the CITY free and harmless from all damage, loss, and expenses arising out of said work. CCC agrees to keep and maintain the leased premises free from any liens or encumbrances caused by any act or omission of CCC.

6. USE OF EXTERIOR GROUNDS: CCC shall not conduct any business activity outside the premises, nor store vehicles or other property, nor perform any services, on any sidewalk, parking lot, or other public area provided by CITY without the written consent of CITY, which consent shall not be unreasonably withheld if the proposed uses are for exhibits or activities which relate directly to the permitted uses as described herein.

7. ENTRY AND INSPECTION: CCC shall permit CITY and its agents to enter the premises during normal business hours for any reasonable purpose, including, but not limited to inspections; to show the premises to prospective purchasers or lessees; to post notices of nonresponsibility for alterations, additions, repairs or utility installations; for the purpose of placing upon the property or building in which said premises are located any ordinary "for sale" or "for lease" sign within six (6) months prior to the end of this Lease or any option thereof.

8. ASSIGNMENT AND SUBLÉASING: CCC may only assign this Lease or sublet the leased premises, in whole or in part, after first obtaining the written consent of CITY. If CITY consents, no assignments or sublease shall be effective until CCC delivers a copy of the assignment or subleasing agreement to CITY and the assignee or sublessee agrees in writing to assume all of the obligations of CCC under this Lease. No assignment or subletting will relieve CCC from any obligations under this Lease. This consent by CITY to any assignment or subletting shall not be deemed to be a waiver on the part of CITY of any prohibition against any future assignment, or subletting.

9. INDEMNIFICATION: Unless due to the sole negligence of CITY or CITY's failure to abide by the terms of this Lease, CCC hereby indemnifies and agrees to hold CITY harmless from and against all claims, which either arise from or in connection with the possession, use, occupancy, management, repair, maintenance, or control of the premises or any portion thereof; or as a result from any default, breach, violation or non-performance of this Lease or any provision of this Lease by CCC. CCC will defend, notwithstanding the City's right to participate, any claims against CITY with respect to the foregoing. CCC will pay, satisfy, and discharge any judgments, orders, and decrees which are recovered against CITY in connection with the foregoing. CITY hereby indemnifies and agrees to hold CCC harmless and shall defend any claims against CCC in any action where CITY was solely negligent or failed to abide by the terms of this Lease. The indemnifying party shall not be responsible for

paying the attorney's fees and costs for the indemnified party's chosen right to participate with legal counsel.

10. **LIABILITY INSURANCE:** CITY shall not be liable to CCC, or to any person whatsoever, for any damage caused by the acts or omissions of any persons occupying any space adjacent to or adjoining the premises unless the CITY or its agents caused the loss or damage. Except for loss or damage caused by CITY's sole negligence, CITY shall not be responsible or liable to CCC for any loss or damage resulting to CCC or CCC's property from any natural or manmade disaster, or water, gas or steam; or the bursting, stoppage, or leakage of pipes. CCC agrees to indemnify and hold the CITY harmless from and defend the CITY against any and all such claims or liability for any injury or damage to any person or property whatsoever, occurring in or on the premises or occurring as a result of the use of any of the facilities or appliances anywhere on the premises at 900 East Long Street. CCC further agrees to provide and pay for a general liability insurance policy with a limit of at least \$1,000,000 per occurrence and in the aggregate for bodily injury or death resulting therefrom, or for damage to the premises and shall name CITY as an additional insured by endorsement. A certificate of said insurance shall be presented to CITY prior to occupancy of the premises. The policy of insurance shall not be suspended, voided, canceled, or reduced in coverage without the prior written consent of CITY and shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to CITY no less than THIRTY (30) days in advance of the effective date thereof. Said policy of insurance shall be primary coverage for all claims and losses arising from the use, occupancy and operation of the premises under this Agreement.

11. **DEFAULT:**

A. **DEFINITION OF DEFAULT:** Each of the following events shall constitute a default:

1. Insolvency (this includes an assignment for the benefit of creditors; filing or acquiescing to a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings.)
2. Assignment by operation of law.
3. Vacating the premises after occupation.
4. Refusing to take possession of the premises or permitting the premises to remain unoccupied and unattended.

5. Failure to pay any installment of rent or any other charge required to be paid by **CCC** under this Lease when due and payable and said failure continues for ten (10) days after written notice.
6. Failure to perform any other conditions required to be performed by **CCC** under this Lease and said failure continues for fifteen (15) days after written notice.
7. Loss of non-profit status.
8. Failure to continuously use the leased premises for the purposes described herein.

B. **EFFECT OF DEFAULT:** If a default occurs, **CITY** shall give **CCC** a written notice of intention to terminate this Lease at the expiration of a thirty (30) day notice period. The written notice shall specify the breach. At the expiration of the notice period, the term of this Lease shall end if said default has not been cured by **CCC** within said thirty (30) day period. **CCC** must then quit and surrender the premises to **CITY**. **CCC**'s liability under all the provisions of this Lease shall continue notwithstanding any expiration, surrender, or reentry, repossession or disposition pursuant to the following paragraph with a setoff to **CCC** for any new rents collected by **CITY** from any new tenant during the term of this Lease.

Upon the expiration or earlier termination of this Lease, **CITY** or its agents or employees may immediately, or anytime thereafter, reenter the premises and remove **CCC**, **CCC**'s agents, any subtenants, licensees, concessionaires or invitees, and any of their property from the premises. Reentry and removal may be effectuated by summary dispossess proceedings or by a suitable action or proceeding at law, by force, or otherwise. If the term of this Lease expires, **CITY** may repossess and enjoy the premises. **CITY** shall be entitled to the benefits of all provisions of law respecting the speedy recovery of lands and tenements held over by **CCC** or proceedings in forcible entry and detainer. **CCC**'s liability, subject to any setoff, will survive **CITY**'s reentry, the institution of summary proceeding, and the issuance of any warrants with respect thereto.

C. **DEFICIENCY:** If this Lease is terminated pursuant to Paragraph (B) above, **CCC** shall remain liable (in addition to accrued liabilities) to the extent legally permissible for the rent and all other charges **CCC** would be required to pay until the date this Lease would have naturally expired had such earlier

termination not occurred. CCC's liability for rent shall continue notwithstanding reentry or repossession of the premises by CITY subject to a setoff pursuant to Paragraph (B) above.

- D. **ATTORNEY'S FEES AND COSTS:** CCC shall pay CITY and/or CITY shall pay CCC reasonable attorney's fees and court costs incurred in any lawsuit or action instituted by CITY or CCC to enforce the provisions of this Lease upon determination of the prevailing party.
- E. **WAIVER OF REDEMPTION:** Except for setoffs discussed above, CCC hereby waives (to the extent legally permissible), for itself and all persons who claim by, through, or under it, any right of redemption or for the restoration or the operations of this Lease in case CCC is dispossessed for any cause, or in case CITY obtains possession of the premises as herein provided.
- F. **CITY MAY CURE CCC'S DEFAULT:** If CCC is in default under this Lease, CITY may cure the default at anytime for CCC. If CITY cures a default for CCC, CCC shall reimburse CITY for any amount expended by CITY in connection with said cure. CITY shall also be entitled to interest at the maximum legal rate on any amount advanced by CITY to cure a default of CCC from the date the expense is incurred to the date of reimbursement.

The rights and remedies of CITY set forth herein are in addition to any other rights and remedies now or hereinafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. No delay or omission by CITY in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default. No waiver of a default shall extend to or affect any other default or impair any right or remedy with respect thereto. No waiver of a default shall be effective, unless it is in writing.

12. **CHOICE OF LAW AND FORUM:** The laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this Lease. The parties agree that any dispute and/or legal proceedings regarding this Lease shall be subject to the sole jurisdiction of the State courts in the State of Nevada and must be filed in the First Judicial Court located in Carson City.

13. **DESTRUCTION OF PREMISES:** CCC shall maintain a policy of insurance to cover events of complete or partial destruction of the premises with or without fault, negligence or

carelessness on the part of **CCC**, its agents, employees, or those holding possession of the premises under it. **CITY** shall use reasonable efforts to repair such damage. Any insurance proceeds received by **CCC** as a result of such damage shall be assigned to **CITY** in order to pay for any necessary repairs.

14. **HOLDING OVER:** Should **CCC** holdover beyond the term hereby created with the consent of **CITY**, **CCC** shall become a tenant from month to month subject to the terms herein specified and **CCC** shall continue to be a month-to-month tenant until the tenancy is terminated by **CITY** or until **CCC** has given **CITY** a written notice at least one month prior to the termination of the monthly tenancy of its intention to terminate the tenancy.

15. **SALE OF PREMISES:** In the event of a sale or conveyance by **CITY** of the building containing the premises, the sale shall be subject to the terms and conditions of this Lease. In such event, **CCC** agrees to look solely to the successor in interest of **CITY** to satisfy the terms of this Lease. **CITY** may transfer any security deposits held from **CCC** to its successor in interest and thereupon **CITY** shall be discharged from any further liability in reference thereto.

16. **CONDEMNATION:** If all the premises are taken by eminent domain, condemnation, or purchase under threat thereof, except for a taking for temporary use, this Lease shall be canceled automatically as of the taking date. If only a part of the premises are taken, **CITY** may cancel this Lease at its sole discretion. The option to cancel may be exercised within six (6) months of the taking date by giving **CCC** notice that the option has been exercised.

If there is a taking of the premises for temporary use, this Lease shall continue in full force and effect, and **CCC** shall continue to comply with **CCC**'s obligations under this Lease, except to the extent compliance is rendered impossible or impracticable by reason of the taking. All compensation awarded upon the condemnation or taking shall belong to **CITY**. **CCC** hereby waives any interest in any condemnation proceeding or litigation.

17. **SUBORDINATION:** **CCC** agrees that this Lease is and shall be subordinate to any mortgage, deed of trust, or other instrument of security, existing on the land and building of which the premises are a part. Such subordination is hereby made effective without any further act by **CCC**. **CCC** agrees at any time, upon request by **CITY**, to execute and deliver

any instrument, release or other document that may be required in connection with subjecting and subordinating this Lease to any lien or mortgage, deed of trust or other instrument of security.

This provision shall be without effect unless and until the holder of the mortgage, deed of trust, or other instrument of security in question delivers to CCC a written agreement providing, in effect, that so long as CCC is not in default in the performance of its obligations under this Lease, CCC shall not be disrupted in its possession of the premises hereunder.

18. SIGNS: CCC shall not place or permit to be placed any sign, marquee, awning, decoration or other attachment on or to the roof, front windows, doors or exterior walls of the premises without first obtaining a City permit and the written consent of the CITY.

It is the intention of CITY to insure aesthetically tasteful uniformity in the building of which the premises are a part. CITY may, without liability, enter onto the premises and remove any such sign, marquee, awning, decoration or attachment affixed in violation of this paragraph. CCC agrees to pay the cost of removal thereof.

19. SURRENDER OF LEASE: No act or conduct of CITY, whether consisting of the acceptance of the keys to the premises, or otherwise, shall be deemed to constitute an acceptance of the surrender of the premises by CCC prior to the expiration of the term hereof. Acceptance by CITY of surrender of the premises by CCC must be evidenced by a written acknowledgment of acceptance of surrender by CITY. The voluntary or other surrender of this Lease by CCC, or a mutual cancellation thereof, shall not constitute a merger, and CITY may terminate all or any existing subleases, subtenancies, or concessions, or may, at its sole option, accept any and all such subleases, subtenancies or concessions as being legally binding and enforceable.

20. NOTICES: Notices to the respective parties must be in writing and sent by certified or registered mail, addressed to the respective party at the addresses set forth below, or at such other address as either party may elect to provide in advance in writing, to the other party.

CITY: **CARSON CITY MANAGER,**
 CITY OF CARSON CITY
 201 N. CARSON STREET, CARSON CITY, NV 89701

CCC : DIRECTOR, COMMUNITY COUNSELING CENTER
900 E. LONG STREET, CARSON CITY, NV 89701

21. NO ORAL CHANGES: This lease may not be changed or terminated orally.
22. SUCCESSOR AND ASSIGNS: Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs, and assigns.
23. UTILITIES: The following utilities shall be supplied to the premises by CITY: ELECTRICAL POWER, GAS, WATER, SEWER, AND GARBAGE SERVICE. CCC shall pay its proportional share of the cost of these utilities based on CCC's gross leasable area divided by the gross leasable area of the building of which CCC's premises are a part and based upon the comparative hours of operation of CCC as compared to CITY. In recognition of limitation to grant funds available for rent and utilities, CITY will accept \$3,934 per month for utilities up to June 30, 2008. The cost of utilities to CCC, has been determined to be twenty-five (25%) of the total cost for the building. Beginning on July 1, 2008, CCC shall pay \$2,563.00 for electric, power, gas, water, sewer and garbage service serving the premises.
CITY shall not be liable for failure to furnish any of the above services when such failure is caused by conditions beyond the control of CITY, or by accidents, repairs, or strikes; nor shall CITY be liable, except when negligent, for loss or injury to property, however occurring through or in connection with or incidental to the furnishing of any of the aforementioned services.
24. QUIET ENJOYMENT: The CITY agrees that as long as CCC is in full compliance with the provisions of this Lease, it shall be entitled to quietly enjoy the premises for the full term of this Lease. No use shall be made or permitted to be made of the premises or any part thereof and no acts will be done therein which may disturb the quiet enjoyment of any other tenant in the building of which the premises are a part.
25. SNOW REMOVAL: Snow and ice removal shall be the responsibility of CITY.

26. COMPLIANCE WITH THE LAW: CCC shall promptly execute and comply with all statutes, rules, orders, building codes, ordinances, requirements, and regulations of the City, County, State and Federal governments, including OSHA, the Americans with Disabilities Act of 1990 (42 USC Section 12101 through 12213 and 47 USC Sections 225.611) and their underlying regulations and rules, which are applicable to the premises. Nothing herein contained shall be construed to restrict CCC from contesting the validity of any such regulations; rule or ordinance, provided CCC indemnifies CITY to its reasonable satisfaction against the consequences of non-compliance during the period of dispute.

27. SMOKING AREA: CITY shall furnish a separate outside area which may be used for smoking. CITY shall also post signs prohibiting smoking in any place not designated as a smoking area.

28. ENTIRE AGREEMENT: This instrument along with any exhibits and attachments hereto constitutes the entire agreement between the parties. This Agreement may only be altered, amended or revoked by an instrument in writing signed by both parties. It is understood that there are no oral agreements between the parties hereto and that all previous negotiations, discussions, and previous leases between the parties hereto affecting this Lease are superseded by this Lease.

29. ATTORNEY'S FEES: In case suit shall be brought for an unlawful detainer of the premises, for the recovery of any rent due under the provisions of this Lease, or for CCC's breach of any other condition contained herein, CCC shall pay to CITY reasonable attorney's fees which shall be deemed to have accrued on the commencement of the action and shall be paid on the successful completion of this action by CITY. CCC shall be entitled to attorney's fees in the same manner if judgment is rendered in favor of CCC.

30. WAIVER: The failure of CITY or CCC to insist upon strict performance of any of the covenants, terms or provisions contained in this Lease or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any said covenants, terms or provisions or any other covenants, terms or provisions, but the same shall remain in full force and effect.

31. REMEDIES. The remedies given to **CITY** and **CCC** shall be cumulative, and the exercising of any one remedy shall not be to the exclusion of any other remedy.

32. EARLY TERMINATION. This Lease may be terminated prior to the end of the term set forth herein above or prior to the natural expiration of any renewal period if the purpose of this Lease is substantially impaired or obstructed by any unforeseen event, occurrence or circumstance outside the control of **CITY** or **CCC** without prejudice or penalty to either party hereto and without such event, occurrence or circumstance being defined, interpreted or construed as a breach or default on the part of either party.

33. FORCE MAJEURE. Any delay or stoppage of business due to acts of God, enemy or hostile action, fire or other casualty, shall excuse the performance by either party to this Lease for a period equal to any such delay or stoppage.

IN WITNESS WHEREOF, the parties hereto have inscribed their names, and if corporations, have authorized their officers by resolution to execute this Lease in duplicate, the day and year herein above written.

LESSOR: CARSON CITY

By: _____

ROBERT L. CROWELL, Mayor

ATTEST:

Clerk-Recorder

LESSEE: COMMUNITY COUNSELING CENTER

Non-Profit Corporation

By: _____

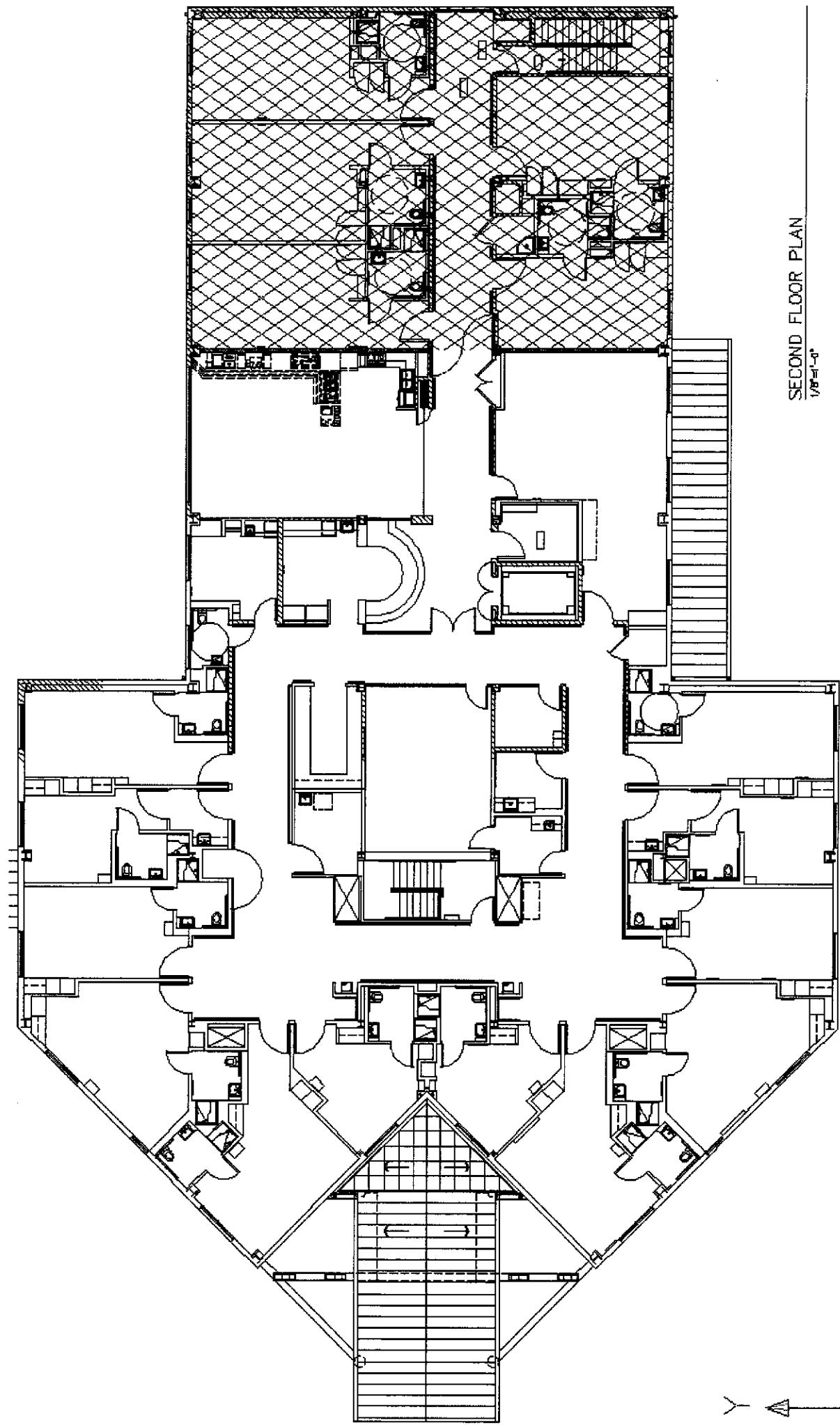
President: Tom Perkins

Approved as to legal form:

NEIL A. ROMBARDO

District Attorney

Deputy District Attorney



900 East Long