

**PIMA COUNTY DEPARTMENT OF:
NATURAL RESOURCES, PARKS AND RECREATION**

**LEASE: 16150 W. AJO WAY
TUCSON, AZ 85735**

TENANT: FRIENDS OF ROBLES RANCH dba MY FRIENDS CLOSET

**LEASE NO.: _____
NON-REVENUE CONTRACT**

CONTRACT
NO. <u>CTN-PW-160000000000000031</u>
AMENDMENT NO. _____
<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>

FACILITIES LEASE

This Lease is entered into by and between Pima County, a body corporate and politic of the state of Arizona (hereinafter "Landlord"), and Friends of Robles Ranch dba My Friends Closet, an Arizona non-profit corporation (hereinafter "Tenant").

RECITALS

1. Landlord owns a public community center known as Robles Ranch Community Center, including associated parking areas, located at 16150 W. Ajo Way, Tucson, Arizona, a portion of which has been utilized for the distribution of clothing and household goods to residents of Pima County as is more fully described or illustrated on Exhibit A attached hereto (hereinafter called the "Premises").
2. Tenant is a non-profit corporation organized under the laws of the State of Arizona for the purpose of providing household goods and clothing assistance to Pima County residents. Tenant is exempt from the payment of federal income tax under Section 501(c)(3) of the Internal Revenue Code.
3. Landlord has the authority, under A.R.S. § 11-256.01, to lease to a nonprofit corporation real property owned by Landlord at less than fair market value. Landlord has previously published notice of its intent to enter into this Lease as required by law.
4. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, under the terms and conditions and for the specific purposes set forth herein.

AGREEMENT

1. **Premises.** In consideration of the foregoing Recitals, which are incorporated herein, and in further consideration of the valuable social services to be provided by Tenant, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, under the terms and conditions and for the purposes set forth herein, the Premises. For the purposes of this Lease, the Premises is defined as the land on which the tack room wherein My Friends Closet

operates, and the large conference room for once a month meetings located inside the community center along with Landlord's existing storage units, as shown on Exhibit A. Additional on-site storage units MAY be approved as part of Premises provided such requests are made in writing and approved in advance by Landlord.

2. **Term.** This Lease commences on the date it is executed by both parties and terminates on the last day of December 2016, (the "Initial Term"). Landlord and Tenant may, by written agreement, extend the term of and modify the conditions of this Lease for up to four one year periods (the "Renewal Terms").
3. **No Rent.** In consideration of the valuable social services that Tenant is to provide to the residents of Pima County pursuant to this Lease, Tenant will pay no rent to Landlord during the Initial Term or any Renewal Term of this Lease.
4. **Non-Profit Tax-Exempt Status.** Tenant shall at all times during any term of this Lease be a non-profit organization exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code (26 USC § 501(c)(3)). On each anniversary date, Tenant shall provide to County a certificate of good standing from the Arizona Corporation Commission as an Arizona non-profit Corporation. Tenant will provide Landlord a copy of Tenant's letter of exemption from the U.S. Internal Revenue Service granting Tenant such tax-exempt status and any analogous ruling from the Arizona Department of Revenue. Tenant will notify Landlord in writing and provide Landlord with a copy of any ruling or inquiry from any governmental authority affecting or potentially affecting such status.

Because this Lease is a lease of public land for a public purpose to a non-profit entity, Tenant agrees that any compensation paid by Tenant to its members, officers, employees, or any related entity, must be reasonable, not excessive, compensation for a non-profit entity. Landlord has the right to inspect Tenant's records to verify the levels of compensation paid by Tenant. If Landlord reasonably determines that such compensation is excessive, Landlord may terminate this Lease unless Tenant adjusts its compensation to reasonable levels within sixty (60) days of receiving notice from Landlord of its objection to Tenant's compensation levels. "Excessive" is defined as any amount over what market compensation would be for a typical government member, officer, employee, or any related entity serving in a similar capacity.

5. **Tenant's Use of the Premises.**

A. **Permitted Activities.** The purpose of this Lease is to provide household goods and clothing assistance for the benefit of members of the general public through the collection and sale of household goods and clothing at low cost to residents of Pima County who need such assistance (the "Permitted Activities"). Permitted Activities allowed on the Premises, subject to the restrictions below, are strictly limited to collection and sale of household goods and clothing. Tenant is being provided the use of two mobile storage units for the sole purpose of on-site storage of donated items. Donated items must be stored in mobile storage units or at off-site locations. In addition, Tenant is allowed to utilize large conference room to conduct monthly meetings, provided such meetings are appropriately scheduled in advance with the Community Center Coordinator. Tenant will use the Premises solely for the Permitted Activities and will conduct the Permitted Activities for the duration of this Lease.

- i. **Hours of Operation.** Tenant is authorized to receive donations at the Premises only when the facility is staffed and only during open hours which are currently on Wednesday's from 12:00pm to 5pm and Saturdays from 9am to 1pm and by appointment. Additional or modified collection days/hours may be approved by Pima County NRPR Director. Tenant agrees to educate donors and potential donors that donations may not be dropped off at the unattended Premises but must be accepted by Tenant staff during scheduled operating hours.
- ii. **Restrictions on Donated Items.** Tenant shall not accept for donation at the Premises any item identified as "Prohibited" as defined in attached Exhibit B. Landlord will assist Tenant in preparing and installing signs that identify a list of Prohibited Items at the Premises.
- iii. **Storage.** Tenant is required to store all donated items within existing available storage units or at an appropriate off-site location. Tenant is not permitted to store donated items on-site outside of mobile storage units and agrees that items temporarily placed outside will be removed to storage as soon as feasible but in no cases will exceed 24 hours. Tenant is encouraged to hold frequent community outreach events to liquidate donated items inventory.
- iv. **Operator Contract.** Tenant may not contract with a third party to conduct the Permitted Activities, unless: (1) it informs Landlord in writing of the identity of the third party contractor, and provides Landlord with contact information for the contractor; (2) the contractor is a nonprofit, tax-exempt organization, and (3) Tenant provides Landlord with the information with respect to the contractor that is required with respect to Tenant itself under **Section 4** above. No officer, director, or employee of Tenant may receive pecuniary benefit from such contract directly or indirectly. Such a contract will not relieve Tenant of any of its obligations, responsibilities, or liabilities hereunder, and Tenant is fully liable for, and hereby indemnifies Landlord from and against any liability, losses, or expenses suffered or incurred by Landlord as a result of Tenant's contractor's operations on the Premises. Tenant's contractors must be bound by all provisions of this Lease, including limits on compensation in **Section 4** above.

B. Expense of Tenant. Tenant will conduct all of the Permitted Activities at the Premises at its own expense and without contribution from Landlord. Tenant will not suggest, state or imply that Landlord will participate, guarantee or otherwise assist in any financial obligation undertaken by Tenant with respect to Tenant's operations on the Premises.

C. Compliance with Laws. Tenant will comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, standards, policies, and executive orders with respect to its operations on the Premises.

D. Alcohol Prohibited. Possession, consumption, distribution or sale of alcoholic beverages is not permitted on the Premises. *No exceptions will be permitted*

E. Background Checks. Given the location of the Premises and adjacent to a public community center with children's programs, Landlord may require Tenant's employees and volunteers to be fingerprinted and background checked in accordance with applicable policies.

F. Expulsion of a member of the public. When the Premises are open, Tenant will provide suitable staffing. Members of the public will not be excluded from the Premises unless they are in material violation of Tenant's or Landlord's rules with respect to use of the Premises. Tenant's rules must be reasonable, approved in advance by Landlord, and posted in a prominent place or places on the Premises.

In the event that Tenant excludes a member of the public from the Premises, Tenant will first give that individual (the "Excluded Person") written notice of the reasons for the Tenant's decision to exclude that person. Tenant will also submit a written report to Landlord detailing the reasons for exclusion and describing Tenant's interaction with the Excluded Person. Tenant will, in its written notice, inform the Excluded Person that the Excluded Person has the right to appeal Tenant's decision to the Director of the Pima County Natural Resources, Parks and Recreation Department (the "Director"). Tenant will instruct the Excluded Person to submit the Excluded Person's appeal in writing to the Director or the Director's designee, at the address given in this Lease for notices.

If the Excluded Person exercises the right to appeal, the Director or the Director's designee will review Tenant's decision and may reverse it if the Director or the Director's designee finds that Tenant has acted in an arbitrary or capricious matter. Tenant is bound by this decision. Notwithstanding the requirement for written notice, Tenant may cause a person to be removed from the Premises for violation of law, breach of the peace or other serious infraction of a rule. Nothing in this section prohibits Tenant from contacting local law enforcement to preserve the peace.

6. **Tenant Improvements.** All improvements that Tenant desires to make to the Premises must receive the prior written approval of Landlord, to whom Tenant will submit detailed plans and specifications. Improvements will be constructed in a good and workmanlike manner using new materials, in compliance with the approved plans and specifications and with all applicable laws, rules, and regulations, including all applicable building, electrical and other codes. All improvements constructed or installed by Tenant on the Premises pursuant to this **Section 6** become the property of Landlord.

7. **Condition of Premises/Maintenance & Repairs.** Tenant accepts the Premises in an "as is" condition. Tenant will maintain the Premises at all times hereunder in a good, clean, safe and sanitary condition, at its sole cost and expense, including making any necessary repairs or replacements of improvements thereon, and will leave the Premises, upon the expiration or earlier termination of this Lease, in a condition at least as good as when Tenant first took possession of the Premises, reasonable wear and tear excepted. Landlord will maintain and repair the parking lot, parking lot lighting, and sewer, water and electrical lines outside of the Premises.

8. **Utilities.** Tenant will pay the cost of phone and internet service used in connection with its operation of the Premises. Notwithstanding the foregoing, at the request of Tenant and with the approval of Landlord, Landlord may provide Tenant with potable water service and trash disposal service if trash generated on site is properly deposited in on-site roll-off containers, at no cost to the Tenant.
9. **Signs.** Tenant may affix and maintain upon the Premises such signs relating to the services provided on the Premises as Tenant deems appropriate; provided, however, if such signs are visible outside of the Premises, such signs must first receive the written approval of Landlord as to type, size, color, location, copy nature and display qualities. All signs utilized by Tenant on or about the Premises, whether visible outside the Premises or not, will at all times comply with the Pima County Sign Code and will be installed and maintained at Tenant's sole cost. Any and all signs placed by Tenant on the Premises will be immediately removed by Tenant upon termination of this Lease for any reason, and any damage resulting from such removal will be repaired immediately by Tenant at its sole cost. Except as designated in Section 5 Tenant will pay all costs for construction, erection, installation, maintenance, and repair of any sign either currently in existence or to be erected or installed or otherwise placed on the Premises. Tenant will, through coordination with Pima County Natural Resources Parks and Recreation Department, identify the Premises as belonging to Pima County, should any signs be placed at the entrances to the Premises, and will acknowledge the contribution of Pima County in providing the Premises to Tenant in Tenant's annual report and publications.
10. **Reporting.** Tenant will provide County an annual progress report covering all permitted activities. At a minimum, the report shall summarize program totals concerning participants served, program expenditures and revenues, funding sources, and community outreach efforts.
11. **Environmental.** Tenant will not cause or permit any hazardous or toxic substance or material to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, except for hazardous or toxic substances used, produced, by or generated by the Tenant in the normal course of its Permitted Activities. Tenant will fully comply with all environmental rules and regulations with respect to its operations on the Premises and will properly remediate and clean up any contamination of the Premises occurring during the term of this Lease.
12. **Entry by Landlord.** Landlord may enter the Premises at reasonable times to inspect the Premises and Tenant's operations thereon.
13. **Security.** Tenant is responsible for securing the Premises and preventing any unlawful or unauthorized use thereof. When the Premises are not open to the public, the Premises will be secured in order to prevent unsupervised use or entry into the Premises. Tenant will contact law enforcement authorities when it appears necessary to protect the Premises and any persons or property thereon, and Tenant will assist in any resulting prosecution.
14. **Insurance.** Tenant will procure and maintain for the duration of the Lease, insurance against claims for injury to persons or damage to property that may arise from or in connection with this Lease.

A. Types of Insurance Required. Tenant will procure, prior to the Effective Date, and maintain throughout the term of this Lease, the following insurance from an insurance company or companies approved by Landlord:

1) Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, volunteer liability, personal and advertising injury and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Each Occurrence \$1,000,000
- Blanket Contractual Liability \$1,000,000
- Damage to Rented Premises \$ 100,000
- Volunteer Liability \$ 500,000

a. The policy shall be endorsed to include the following additional insured language: “Pima County shall be named as additional insured with respect to liability arising out of the use and/or occupancy of the property subject to this Lease.” Landlord shall be covered to the full limits of liability purchased by the Tenant, even if those limits of liability are in excess of those required by this Lease.

b. Policy shall contain a waiver of subrogation endorsement in favor of the Landlord for losses arising from Lease.

2) Business Automobile Liability- Policy to include Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract (as compared to use for simple commuting). Policy shall maintain a Combined Single Limit (CSL) of \$1,000,000.

B. Supplemental Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

- a. The Tenant’s policies shall stipulate that the insurance afforded the Tenant shall be primary insurance and that any insurance carried by Landlord shall be excess and not contributory insurance.
- b. Coverage provided by the Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

C. Certificates. With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to Landlord. Such notice shall be sent directly to the Landlord.

D. Changes to Insurance Requirements. Landlord may review and modify the coverage, form, and amount of insurance required hereunder at any time. Landlord will notify Tenant in writing of any changes to the aforesaid insurance requirements, and Tenant will have sixty (60) days to comply with the requirements as changed.

15. **Indemnification.** To the fullest extent permitted by law, Tenant defends, indemnifies, and holds harmless Landlord, its officers, agents, and employees, from and against any and all claims, liabilities, losses, damage, cost and expense, including but not limited to reasonable attorney fees and/or litigation expenses, arising out of or resulting from the conduct or management of the Premises, or any accident, injury, damage, or violation of law whatsoever occurring in or at the Premises allegedly caused in whole or in part by any act or omission of Tenant or anyone directly or indirectly employed by it, its agents, representatives, contractors, subcontractors, licensees, or anyone for whose acts it may be liable, regardless of whether it is caused in part by the negligent act or omission of Landlord or any of its officers, agents, or employees. This indemnification includes any claims related to the condition of the Premises, which Tenant has historically occupied. To the fullest extent permitted by law, Tenant also indemnifies Landlord against any claim, liability, damage, cost, or expense arising out of the presence, disposal, or release of any hazardous substance, hazardous waste, hazardous materials, or petroleum products or by products on, from or under the Premises during the term of this Lease or any prior occupancy of the Premises by Tenant.
16. **Warranties.** Landlord makes no warranties or representations to Tenant as to the suitability of the Premises for its intended purpose. Landlord makes no warranties or representations that the Premises complies with applicable zoning ordinances, building codes, fire and safety regulations, or ADA provisions.
17. **Tenant not an Agent of Landlord.** Tenant is not an agent of Landlord for any purpose under this Lease or otherwise. Tenant will control its activities on the Premises, and Landlord will not control those activities. Tenant's employees and servants are not under the control of Landlord.
18. **Notices.** Any notices required hereunder will be delivered personally or by certified mail, directed as follows:
- If to Landlord:
Director
Pima County Natural Resources, Parks and Recreation
3500 W. River Road
Tucson, Arizona 85741
- If to Tenant:
President
Friends of Robles Ranch
Pat King
14990 S. Sasabe Rd
Tucson, AZ 85736
19. **Cancellation for Conflict of Interest.** This Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511.
20. **Non-Discrimination.** Tenant agrees that during the performance of this Lease, Tenant shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin. Tenant shall comply

with the provisions of Arizona Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this Lease as if set forth in full herein.

21. **Choice of Law.** The laws of the State of Arizona apply to any action relating to this Lease. Any action under this Lease must be brought in a court in Pima County, Arizona.
22. **Default/Termination.** Either party may present written notice of default or non-performance to the other party.

This Lease may be terminated immediately by Landlord for any of the following:

- (a) failure of Tenant to carry the required insurance;
- (b) loss by Tenant of its tax-exempt status or an action by the IRS challenging that status;
- (c) violation of any law by Tenant, or any unlawful activities carried out on the Premises;
- (d) any action or omission by Tenant that, in Landlord's sole judgment, causes a threat to the health or safety of the general public or the users of the facility;
- (e) any actions or omissions by Tenant that unduly interfere with activities of Landlord, or which unduly disturb the quiet enjoyment of neighboring property owners/occupants;
- (f) Tenant creates or permits any waste or nuisance on the Premises;
- (g) Tenant commits three defaults in a twelve-month period, regardless of whether or not Tenant timely cured such defaults as provided below; or
- (h) any other activity or omission that in Landlord's reasonable judgment is not a condition subject to cure.

For any other default, the non-breaching party may terminate the Lease only if the breaching party fails to cure the default within thirty (30) days of receiving the notice from the non-breaching party. Each party may pursue any remedies provided by law for the breach of this Lease. No right or remedy conferred or reserved is exclusive of any other right or remedy, and each is cumulative and in addition to any other right or remedy conferred or reserved in this Lease.

23. **Personal Property.** Tenant will maintain and provide a copy to Landlord a current inventory of all items of personal property owned by Tenant and placed or kept on the Premises by Tenant. Any items of personal property left on the Premises upon expiration or earlier termination of this Lease become the property of Landlord and may be sold or otherwise disposed of by Landlord without liability to Tenant.

24. **Liens.** Tenant will timely pay all contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Premises, and will not permit any lien to attach to the Premises or any interest therein. Tenant will indemnify and defend Landlord against all legal costs and charges resulting from any such lien.
25. **Non-Waiver.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Lease to be performed by the other party, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing to it at any time is not an accord and satisfaction.
26. **Assignment/Subletting.** Any attempted assignment of this Lease by either Party hereto without prior written consent from the other Party is void. This Lease is binding on any and all successors and assigns to Landlord and Tenant. Tenant may not sublet any portion of the Premises without the prior written consent of Landlord, which consent may be withheld or given conditionally. Landlord has agreed to lease the Premises to Tenant at a rate below market value because of the unique nature of, and services provided by, the Tenant. Because of this, Landlord reserves the right to reject any attempted assignment.
27. **Non-Appropriation of Funds.** Notwithstanding any other provision in this Lease, this Lease may be terminated if for any reason the Pima County Board of Supervisors fails to appropriate sufficient monies for the purpose of maintaining this Lease. In the event of such termination, Landlord shall have no further obligations to Tenant.
28. **Termination for Convenience of Landlord.** Notwithstanding Landlord's ability to terminate this Lease for a material breach pursuant to **Section 22**, Landlord may terminate this Lease without cause at any time upon one hundred twenty (120) days' written notice to Tenant.
29. **Legal Arizona Workers Act Compliance.**

Tenant hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Tenant's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "***State and Federal Immigration Laws***"). Tenant will further ensure that each subcontractor who performs any work for Tenant under this Agreement likewise complies with the State and Federal Immigration Laws.

Landlord has the right at any time to inspect the books and records of Tenant and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws. Any breach of Tenant's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Lease subjecting Tenant to penalties up to and including suspension or termination of this Lease. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Tenant must take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

Tenant must advise each subcontractor of Landlord's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that Pima County may inspect the subcontractor's books and records to insure that subcontractor is in compliance with these requirements. Any breach of this paragraph by subcontractor is a material breach of this Agreement subjecting subcontractor to penalties up to and including suspension or termination of this Agreement."

Any additional costs attributable directly or indirectly to remedial action under this Section are the responsibility of Tenant. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of Tenant's approved construction or critical milestones schedule, such period of delay is excusable delay for which Tenant is entitled to an extension of time, but not costs.

30. Americans With Disabilities Act. Tenant will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36 in its operations on the Premises.

31. Accounting Records; Audits.

A. Accounting Records. In connection with the operation of the Premises, Tenant will keep and maintain accounting records on a tax basis consistently applied and the same will be open for inspection and audit by duly authorized representatives of Landlord at all reasonable times.

B. Annual Unaudited Financial Reports. Tenant will provide Landlord on an annual basis within sixty (60) days after Tenant's fiscal year end a year-end balance sheet and a year-end statement of income and expenses prepared in accordance with generally accepted accounting principles. The financial statements must show all revenues from operation of the Premises and all expenses incurred in connection with the operation of the Premises for Tenant's applicable fiscal year.

32. Entire Agreement. This Lease constitutes the entire contract between Landlord and Tenant with respect to the Premises and no modification hereof is binding unless in writing and signed by both parties.

IN WITNESS WHEREOF: LANDLORD and TENANT have executed this Lease.

LANDLORD
Pima County

TENANT
Friends of Robles Ranch


BY: _____ / ____ /2015
Sharon Bronson, Chair, Board of Supervisors

BY: _____ / ____ /2015
Pat King, President Friends of Robles
Ranch

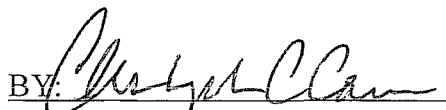
ATTEST:

BY: _____ / ____ /2015
Robin Brigode, Clerk of the Board of Supervisors

APPROVED AS TO FORM

BY:  11 / 13 /2015
Tobin Rosen, Deputy County Attorney

APPROVED AS TO CONTENT

BY:  11 / 13 /2015
Christopher C. Cawein, Director
Natural Resources, Parks and Recreation