AGENDA: APRIL 5, 2005

PORTERVILLE REDEVELOPMENT AGENCY

PUBLIC HEARING

SUBJECT: LEASE AGREEMENT FOR PROPERTY LOCATED AT 287 N. HOCKETT STREET

SOURCE: COMMUNITY DEVELOPMENT - REDEVELOPMENT

COMMENT: On February 2, 2001, the Porterville Redevelopment Agency purchased the property located at 287 N. Hockett Street as a site for a future parking lot. To date, funding has not been available for the construction of a parking lot at this location and during the December 7, 2004 Closed Session, the Agency approved the lease or sale of the building. The prior tenant of the building was the Porterville Adult Literacy Program operated by the City’s Parks and Leisure Services Department.

United Hearts Center for Healing has expressed a desire to lease, with an option to purchase, the building located at 287 N. Hockett Street for their non-denominational ministry office. The lease would be a year-to-year lease, with no specified term for expiration. The cost for the lease is $1300.00 per month, based on a survey of rents for similar downtown buildings. Should United Hearts desire to exercise the option to purchase the building, the terms and price would be negotiated based on an updated appraisal of the property.

United Hearts Center for Healing is a 501(c)(3) non-profit corporation, operating with a Board of Directors and an advisory board. The premises would be used by United Hearts for the purpose of “open to the public” prayer rooms and would be staffed with volunteers from many area churches. United Hearts has multiple sources of fund-raising, including a small business which exists for the purpose of financially supporting this ministry.

RECOMMENDATION: That the Porterville Redevelopment Agency:

1) Approve a year-to-year lease agreement, including the option to purchase, with the United Hearts Center for healing at a rate of $1300.00 per month, to be adjusted annually as outlined in the lease agreement, and;

2) Authorize the Redevelopment Agency Chairman to sign the lease agreement on behalf of the Agency.

ATTACHMENT: 1) Site Map
2) Lease Agreement

DD_____ APPROPRIATED/FUNDED_______ CM _______ ITEM NO. PRA-01
AGREEMENT FOR LEASE OF PREMISES

THIS AGREEMENT, is entered into as of this ______ day of ____________, 2005 by and between the PORTERVILLE REDEVELOPMENT AGENCY, hereinafter referred to as "Lessor", and UNITED HEARTS CENTER, a non-profit corporation, hereinafter referred to as "Lessee", with respect to the following:

WHEREAS, Lessor owns the real property located at 287 North Hockett Street in the City of Porterville, County of Tulare, California and more particularly described in Exhibit A, attached hereto; and

WHEREAS, Lessee desires to cause the property to be leased for a non-denominational ministry office; and

WHEREAS, Lessee will not utilize the property for a church or church services; and

WHEREAS, Lessor is willing to enter into a lease with Lessee under the terms and conditions set forth below.

ACCORDINGLY, IT IS AGREED:

PART 1.
LEASE, TERM, OPTION TO EXTEND, HOLDOVER, ASSIGNMENT, SUBLETTING

1.1 Lease.
Lessee will lease the Premises located at 287 North Hockett Street, in the City of Porterville, County of Tulare, California, from Lessor on the terms and conditions set forth below.

1.2 Lessee's Possession Date and Term.
Lessee will be entitled to exclusive possession of the Premises on the date to be mutually agreed upon by Lessee and Lessor. If Lessee takes possession of the Premises on a date other than the first day of a calendar month, the initial term will consist of the unexpired portion of the calendar month in which Lessee holds possession of the Premises plus 1 full year from the first day of the calendar month immediately following. The anniversary date will be the first day of the first full month of the term.

1.3 Lessee's Option to Extend Term.
Provided Lessee is not then in default of this Lease, Lessee may extend this Lease on a year-to-year term from the expiration date of the initial term, for a total period not to exceed five years from the first day of the first full calendar month Lessee is in possession of the Premises by serving a Notice of Election to Extend on Lessor at least 30 calendar days before the expiration of the initial term. The year-to-year term will be subject to the same terms and conditions as the initial term, including the annual percentage rent increase as stated in Section 2.1.3 of this agreement, until the tenancy is terminated in a manner provided by law.

1.4 Lessee's Option to Purchase.
Lessee is provided with the first option to purchase the property, subject to appraisal and evaluation, for the same price and same terms and conditions to be offered to any other potential buyer. Lessee is provided the first option to renew purchase upon satisfactory completion of first year lease. The option to purchase may be cancelled by either party at the end of each year.
of lease, with written notice at least 30 days prior to the end of the lease period. Upon termination of the lease, by either the Lessee or Lessor, the option to purchase will expire.

1.5 Holdover without Consent.
If Lessee holds over beyond the expiration of the initial term of this Lease without the written consent of Lessor, the holding over will be deemed a month-to-month tenancy including the annual percentage rent increase, until the tenancy is terminated in a manner provided by law.

1.6 Assignment and Subletting.
Lessee may not assign this Agreement, or sublet any portion thereof, without the prior written consent of Lessor, which consent will not be unreasonably withheld.

2. RENT

2.1 Amount.
Lessee will pay the following rent to Lessor for the exclusive use and occupancy of the Premises.

2.1.1 Daily Rent and First and Last Months Rent.
On the first day of the first full month following occupancy, the sum of $42.74 per day, for any unexpired portion of the calendar month in which the building is occupied, plus the sum of $2,600.00, for the first and last month’s rent.

2.1.2 Monthly Rent.
On the first day of the first second full month of occupancy, and on the first day of each month thereafter, the sum of $1300.00 per month, in advance. Payments not made by the fifth day of the month for which the rent is owed shall be subject to a $50.00 late fee.

2.1.3 Annual Adjustment.
The monthly rent will be increased by 1%, rounded up to the nearest dollar, on every anniversary date following the first full year of the term, including any holdover period.

2.1.4 Place of Payment.
Lessee will pay all rent at the City of Porterville Finance Department, located at 291 North Main Street, Porterville, California 93257.

3. USE OF PREMISES.

3.1 Allowed Uses.
Lessee and Lessee’s subtenants will use the Premises only for the provision of providing an office for non-denominational ministry services, unless Lessee first obtains Lessor’s written consent for other uses. Lessee will use the Premises in compliance with all laws, ordinances, and other governmental regulations now in force or which may hereafter be in force relating thereto, including, but not limited to all zoning, building, safety and public health requirements and regulations.

3.2 Prohibited Uses.
Lessee will not commit or permit the commission of any acts on the Property that:
1. Increase Lessor's existing rates for, or causes the cancellation of, any fire, casualty, liability, or other policy of Lessor insuring the Premises or its contents; or

2. Violate or conflict with any law, statute, ordinance, or governmental rule or regulation, whether now in force or hereafter enacted, applicable to the Premises; or

3. Constitute waste on the Premises, or the maintenance of a nuisance as defined by the laws of California; or

4. Lessee shall not operate as a church, i.e. a meeting place of people for the purpose of organized worship.

4. MAINTENANCE, REPAIR AND UPKEEP.

4.1 Lessee's Responsibilities.
Lessee will be responsible for all day to day maintenance, repair (i.e. leaking faucets, non-working light bulbs, etc.) and upkeep of the Premises including all building interiors and exteriors, all exterior structures and attached equipment and fixtures, including fire extinguishers, whether furnished or constructed by Lessor or by Lessee, all pest control, and all parking areas. Lessee will be responsible for complying with all codes or laws requiring alterations, maintenance or restoration of the Premises during the term of the lease, at no cost to Lessor, including codes requiring fire extinguishers or other fire suppression equipment. If Lessee is required by any code or regulation to construct any alteration as a result of Lessee's, or any subtenant's particular and specific use of the Premises, or if Lessee is required to repair any deterioration or damage to the Premises caused by Lessee's clients, invitees, or subtenants, or by Lessee's lack of ordinary care, Lessee will either directly pay, or will reimburse Lessor for, the reasonable cost thereof.

Lessee will be responsible for providing all custodial service and supplies for the Premises. On the expiration or termination of this Lease, Lessee will deliver the Premises to Lessor in as good condition and repair as existed upon possession of Premises, reasonable wear and tear and damage by the elements excepted.

4.2 Lessor's Responsibilities

Lessor will be responsible for maintenance of the grounds and all major structural repair to the existing systems, i.e. heating, air conditioning, roofing, plumbing (other than fixtures), and electrical.

5. UTILITIES.

5.1 Lessee's Responsibilities.
Lessee shall be responsible for and will pay for all utilities and services furnished to the Premises, including gas, electricity, telephone, water, trash collection, and all related connection charges.

6. LESSEE'S ALTERATIONS.

6.1 Alterations Permitted.
Lessee, may make such alterations, additions or improvements to the interior of the building on the Premises as Lessee deems necessary in order to conduct Lessee's business on the Premises, including the addition, rerouting or expansion of electrical circuits, telephone and data lines. Lessee may install such signs, awnings, canopies, marquee's or other advertising of Lessee's or any subtenant's services on any
exterior wall, door or window on the building, provided that such changes must not weaken or cause structural damage to the building or reduce the value of the Premises or result in a lien upon the Premises. All signs, awnings, canopies, or marquee's displayed on any exterior wall, door or window on the building shall comply with the Porterville Redevelopment Agency guidelines for Project Area #1 and must be in compliance with City Codes. Lessor will be notified in writing before any alterations, additions or improvements are undertaken by Lessee. All such alterations, additions or improvements will be at Lessee's sole expense.

6.2 Permits.
Lessee will obtain all governmental permits required for such changes, and such changes must comply with all applicable laws and regulations. All changes must comply with the Porterville Redevelopment Agency’s guidelines.

6.3 Lessor's Inspection.
Lessor may, at Lessor's own expense, inspect any of Lessee's work carried out under the terms of this paragraph 6, and may consult with any contractor, subcontractor or architect, as to any aspect of such work.

6.4 Ownership and Removal.
All alterations, additions, improvements, signs, awnings, canopies, marquee's or other advertising provided by Lessee or and subtenant and not removed by Lessee within 30 days of the expiration or other termination of the lease will become the property of Lessor, unless Lessor instructs Lessee in writing to remove the same at Lessee's sole expense. Lessee will promptly repair any damage to the Premises caused by any such removal, at no cost to Lessor.

7. INSURANCE.

7.1 Lessee's Insurance
Lessee, at its own expense, shall procure and maintain, throughout the term of this Lease, public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage as follows:

- $1,000,000 for personal injury or each person
- $1,000,000 for personal injury or death of two or more persons in each accident or event.

The policy must contain, or be endorsed to contain the following:

City of Porterville and Porterville Redevelopment Agency
The City of Porterville, Porterville Redevelopment Agency, its officers, employees, agents and subtenants must be covered as additional insured as respects liability arising out of activities performed by or on behalf of Lessee; and premises owned, occupied or used by Lessee. The coverage must contain no special limitations on the scope of protection afforded to Lessor, its officers, employees or agents

Lessee shall also procure and maintain, at its expense, throughout the term of this Lease, insurance against loss or damage to any structures constituting any part of the demised Premises, by fire and lightning, with extended coverage insurance.
Lessee will provide Lessor with a certificate or certificates of coverage showing the policy or policies are issued by insurers admitted to conduct business in the State of California.

The policy must not be suspended, voided, canceled or reduced in coverage or in limits, except after 30 days prior written notice has been given to Lessor.

7.2 Proof of Insurance.
Throughout Lessee's occupancy of the Premises Lessor will provide Lessee with a certificate or certificates acceptable to Lessee showing compliance with the provisions required above, and on written request of Lessee, will provide Lessee with a true and complete copy of any policy or policies required above.

8. DESTRUCTION OF PREMISES.

8.1 Repair.
If the Premises are damaged or destroyed from any cause whatsoever before the end of the initial term, Lessor will proceed with due diligence to repair or reconstruct the Premises to a condition substantially equivalent to their condition immediately before the damage or destruction. If such damage or destruction occurs during the last year of the initial term, Lessor will not be obligated to repair or reconstruct the Premises unless Lessee exercises its right to extend the term in accordance with paragraph 1.3, above.

8.2 Rent Adjustment.
Lessor will compensate Lessee for any period of time during which Lessee was unable to use the Premises by a pro-rata rent reduction based on square footage or other appropriate criteria during the period of non-use.

9. INDEMNITY.

9.1 Lessor's Indemnity.
Lessor will hold harmless, defend and indemnify Lessee from and against any liability, claims, actions, costs, damages or losses and expenses (including, without limitation, reasonable attorneys' fees and expenses) for injury, including death, to any person or damage to any property resulting from Lessor's acts or omissions with respect to the Premises. Lessor's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred before expiration or termination.

9.2 Lessee's Indemnity.
Lessee will hold harmless, defend and indemnify Lessor from and against any liability, claims, actions, costs, damages, losses and expenses (including, without limitation, reasonable attorney's fees and expenses) for injury, including death, to any person, damage to any property, or enforcement actions under California Prevailing Wage laws or any other applicable statute or ordinance, resulting from Lessee's acts or omissions with respect to the Premises. Lessee's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred before expiration or termination.

10. CONDEMNATION.

10.1 Lessee's Right to Terminate.
In the event of a total or partial taking of the Premises by an entity other than Lessor, exercising the right of eminent domain, which taking renders the majority of the Premises useless for the uses permitted under this Lease, Lessee will have the option of terminating this Lease.
10.2 Reduction of Rent.
If only a portion of the Premises is taken, and Lessee does not terminate this Lease as provided in paragraph 10.1, above, Lessor will reduce the rent thereafter payable by a pro-rata reduction based on square footage or other appropriate criteria.

11. TERMINATION FOR CAUSE.

11.1 Cause.
Either party may terminate this Agreement for cause without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement. Cause for the purpose of this Agreement exists if a party:

(a) is adjudged a bankrupt,
(b) becomes insolvent or has a receiver appointed,
(c) makes a general assignment for the benefit of creditors,
(d) suffers any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement,
(e) materially breaches this Agreement.

11.2 Notice to Defaulting Party.
For any of the above occurrences except item (e), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated only after the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within 5 calendar days of delivery of a written notice specifying the nature of the breach. If the breach is not remedied within the 5-day period, the non-defaulting party may terminate this Agreement by delivering a further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within the 5-day period, the defaulting party may deliver a written proposal to the non-defaulting party within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent will not be unreasonably withheld, the defaulting party will immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate after delivering a written notice specifying the date of termination.

11.3 Delivery of Notices.
Notices given under paragraph 11.2 will be deemed delivered as provided in paragraph 12.17 below.

11.4 Obligations Surviving Termination.
Termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

11.5 Unlawful Detainer.
The notices provided for in paragraph 12.2 are in addition to any required statutory notices for unlawful detainer proceedings under Code of Civil Procedure section 1161 et seq.
12. MISCELLANEOUS.

12.1 Quiet Enjoyment.
Upon the payment of the rent and Reimbursables and the performance of all the terms, covenants and conditions by Lessee to be performed as herein provided, Lessee will be allowed to peaceably and quietly hold and enjoy the Premises during the term of this lease, or any extended term thereof.

12.2 Surrender.
Lessee will peaceably surrender possession of the Premises upon the expiration or other termination of this lease, and will return the Premises to Lessor in as good a condition as when received, reasonable wear and tear and damage from the elements excepted, except for so much of said Premises as may be injured or destroyed by fire, earthquake or other casualty not the fault of Lessee.

12.3 Amendment.
This Agreement may be modified, amended or terminated at any time by mutual consent in writing of the parties hereto.

12.4 Entire Agreement Represented.
This Agreement represents the entire understanding between Lessor and Lessee as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified, waived or repealed without the written consent of both parties.

12.5. Headings.
Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

12.6 Interpretation.
This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

12.7 No Third Party Beneficiaries.
Unless specifically set forth, the parties to this Agreement do not intend to provide any third party' with any benefit or enforceable legal or equitable right or remedy.

12.8 Governing Law.
This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this Agreement will be brought in Tulare County California. Lessor waives the removal provisions of California code of Civil Procedure Section 394.

12.9 Waivers.
The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

12.10 Exhibits and Recitals.
All Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
12.11 Conflict with Laws or Regulations; Severability.
This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect. If either party, exercising its sole discretion, elects to defend this agreement against a third party suit alleging any invalidity in this Agreement, they must do so at their own expense.

12.12 Further Assurances.
Each party will execute any additional documents and will perform any further acts which may be reasonably required to effect the purposes of this Agreement. Lessee will, on request by Lessor, execute appropriate estoppel certificates and attornments in favor of any trust deed holders or encumbrancers.

12.13 Assurances of Non-discrimination.
Lessor will not discriminate in employment or the performance of the Work or in the provision of services called for under this Agreement on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

Lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

12.14 Lessor’s Right to Enter to Inspect and Post.
Lessee will permit Lessor and its agents to enter upon the Premises at all reasonable times for the purpose of posting notices of non-responsibility for alterations or additions made by Lessee, or for the purpose of inspecting the Premises, and, within six (6) months prior to the expiration of the term of this Lease, or any extension thereof, will permit Lessor to enter for the purpose of placing ordinary for sale or for lease signs.

12.15 Brokers.
All negotiations relative to this Agreement have been carried out directly by representatives of Lessor and Lessee without the participation of brokers and each party represents to the other that there are no unpaid broker’s fees in connection with this Agreement.

12.16 Encumbrance of Premises.
Lessor may encumber the Premises so long as Lessee’s quiet enjoyment of the Premises is not disturbed thereby.
12.17 Notices.
All notices required to be given under this Agreement must be delivered to the addresses set forth below, unless otherwise instructed in writing, and will be deemed delivered on the following dates:

12.17.1 Notice to Lessor.
When delivered to Lessor in person, or when mailed by certified mail, postage prepaid, to Porterville Redevelopment Agency at 291 North Main Street, Porterville, California 93257.

12.17.2 Notice to Lessee.
When delivered to Lessee in person, or when mailed by certified mail, postage prepaid, to United Hearts Center at 1279 W Henderson, #224, Porterville, California 93257.

12.19 Successors and Assigns.
This Agreement is binding on and will inure to the benefit of the successors and assigns of the parties, but nothing in this section shall be construed as consent by Lessor to any sublease or assignment by Lessee if such consent is otherwise required by the terms of this Agreement.

12.20 Duplicate Originals.
This Agreement will be executed in duplicate originals.

12.21 Time of the Essence.
Time is of the essence of this Agreement.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

PORTERVILLE REDEVELOPMENT AGENCY

By: __________________________________________
    Pedro R. Martinez, Chairman
    LESSOR

Date: __________________________
    ATTEST:

By: __________________________________________
    John Longley, Executive Secretary

UNITED HEARTS CENTER

Date: __________________________
By: __________________________________________
    Shawn Beaudry, Director
    LESSEE

By: __________________________________________
    Chris Bastian, Director
    LESSEE

By: __________________________________________
    Jamie Bastian, Director
    LESSEE

Approved as to form:

By: __________________________________________
    Julia Lew, City Attorney