



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

D-13

For the meeting of: April 7, 2009

Date: February 26, 2009

To: Board of Supervisors

From: Phillip R. Crandall, Director
Department of Health and Human Services - Public Health Branch

Subject: Approve License Agreement with Grace Good Shepherd Church for Women, Infants, and Children (WIC) Program office located at 1450 Hiller Rd, McKinleyville, California.

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve and execute License Agreement with Grace Good Shepherd Church.
2. Direct the Clerk of the Board to return one original executed License Agreement to Real Property and one copy of the executed License Agreement to Public Health Branch, Maternal Child Adolescent Health Division.

SOURCE OF FUNDING:

Public Health Funds

DISCUSSION:

The Department of Health and Human Services, Maternal Child Adolescent Health (MCAH) Division, Women Infants and Children (WIC) Program desires to enter into a new License Agreement with Grace Good Shepherd Church for WIC office space located at 1450 Hiller Rd. in McKinleyville, California.

Prepared by Angela K. Armstrong, AAI

CAO Approval [Signature]

REVIEW:

Auditor [Signature]

County Counsel [Signature]

Personnel _____

Risk Manager [Signature]

Other _____

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor **NEELY**
Seconded by Supervisor **LOVELACE**
And unanimously carried by those members present,
The Board hereby adopts the recommended action
contained in this report.

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

Dated: April 7, 2009
Kathy Hayes, Clerk of the Board

By: [Signature]

The WIC Program provides individualized nutrition counseling, breastfeeding support, vouchers to purchase healthy foods and referrals to health care organizations. The target groups supported include women who are pregnant, breastfeeding or have recently delivered a baby as well as infants and children under five years old. Participants have low to moderate income.

The new License Agreement is for WIC office space located on APN 510-133-015, 1450 Hiller Road, McKinleyville, California. The monthly rent will be \$50.00 to cover the cost of utilities and the County has use of this office space every Thursday and the last Wednesday of every month. The County has agreed to supply its own janitorial service.

This License Agreement begins upon Board approval and ends February 29, 2012. Either party has the right to terminate this License Agreement with a 30 day notice.

FINANCIAL IMPACT:

Approval of this recommendation before your Board today will have no negative impact on approved budgets for Public Health or the County General Fund. Although there is \$20.00 increase in rent from the prior location there are sufficient funds in the County WIC budget to cover the increased cost through the end of this fiscal year for 2008-09.

OTHER AGENCY INVOLVEMENT:

Real Property

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board Discretion

ATTACHMENTS:

I. License Agreement with Grace Good Shepherd Church.

ORIGINAL

LICENSE AGREEMENT

This Agreement, made and entered into this 7 day of April, 2009, by and between the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter referred to as COUNTY, and GRACE GOOD SHEPHERD CHURCH and PRESBYTERY OF THE REDWOODS, a nonprofit corporation, hereinafter collectively referred to as LICENSOR, who agree to the following.

1. **LICENSE**

LICENSOR gives its permission, subject to all the terms and conditions of this Agreement, for COUNTY to use space as designated by LICENSOR in the building located on Assessor's Parcel No. 510-133-015, more commonly known as 1450 Hiller Road, McKinleyville, CA. Said premises is more particularly shown on Exhibit A, which is attached hereto and incorporated herein.

2. **LICENSE IS NOT A LEASE**

This Agreement does not constitute a lease, but constitutes a mere License Agreement and COUNTY is limited to the use of the premises expressly and specifically described in paragraphs (1) and (5).

3. **TERM**

The initial term of this Agreement shall commence upon Board approval, and shall terminate on February 29, 2012 unless either party gives thirty (30) days written notice to terminate to the other party.

4. **RENT**

COUNTY shall pay to LICENSOR as rent for the use of the premises a monthly rental as follows:

Fifty Dollars (\$50.00)

Rent shall be paid in advance on the first day of each month, except in the event that COUNTY'S occupancy shall commence on a day other than the first day of the month, the rent for the first partial month shall be prorated at one-thirtieth (1/30) of the rental rate for each calendar day the premises are ready for occupancy during such month.

5. **USE OF PREMISES**

The premises shall be used by COUNTY for various Health and Human Services Department programs. COUNTY shall have use of the premises every Thursday and the last Wednesday of each month.

6. **LICENSOR'S ACCESS TO PREMISES**

LICENSOR shall have reasonable access to the premises.

7. **BUILDING STANDARDS AND COMPLIANCE WITH LAWS**

LICENSOR covenants and warrants that the premises have been constructed and any remodeling done in accordance with all local, state, and federal laws and regulations, including but not limited to, the Americans with Disabilities Act. LICENSOR further agrees to comply with any federal, state, or local licensing standards, any applicable accrediting standards, and any other applicable standards or established criteria locally or by the state or federal governments.

COUNTY shall have the right to terminate upon seven (7) days notice if any of the above mentioned applicable laws, standards, or criteria are not complied with.

8. **UTILITIES**

LICENSOR agrees to furnish and pay for all charges for gas, refuse collection, electricity, water and sewer supplied to and used in the premises by COUNTY. COUNTY shall pay for its own telephone and communication services.

9. **JANITORIAL**

COUNTY Public Health Branch staff shall be responsible for janitorial services to the premises.

10. **MAINTENANCE**

LICENSOR shall be responsible for maintenance of the exterior and interior of the building, except for the following:

- A. Any repairs caused by negligence of COUNTY personnel.

- B. Any repairs to phone system, computers, security system or installation thereof.

11. **IMPROVEMENTS AND ALTERATIONS**

COUNTY may make non-structural alterations or improvements to the premises to accommodate COUNTY'S use of the premises. However, COUNTY shall not make any alterations or improvements to the premises being used without the prior written consent of LICENSOR. Such consent shall not be unreasonably withheld.

COUNTY, at its own cost, may install in the premises the equipment needed for telecommunication system and computer terminals including, but not limited to, the following:

- A. Telephone cable
- B. Key system units
- C. Intercom system
- D. Telephones
- E. Answering machine
- F. Security system

Upon termination of Agreement, COUNTY shall have the right to remove from the premises any such equipment installed by COUNTY.

12. **SMOKING**

Pursuant to Humboldt County Code §971-1 et seq., COUNTY owned or licensed premises are smoke free. LICENSOR shall comply with said provision.

13. **HOLD HARMLESS/INDEMNIFICATION**

A. LICENSOR shall indemnify, defend and hold harmless COUNTY and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with LICENSOR'S duties and obligations under this Agreement and any amendments hereto, except such loss or damage which was caused by the sole negligence or willful misconduct of the COUNTY.

- B. COUNTY shall indemnify, defend and hold harmless LICENSOR and its

officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with COUNTY'S duties and obligations under this Agreement and any amendments hereto, except such loss or damage which was caused by the sole negligence or willful misconduct of the LICENSOR.

C. Acceptance of insurance, if required by this Agreement, does not relieve LICENSOR from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by LICENSOR'S operations regardless if any insurance is applicable or not.

14. LICENSOR'S INSURANCE

This License shall not be executed by COUNTY and LICENSOR is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the Clerk of the Humboldt County Board of Supervisors.

Without limiting LICENSOR'S indemnification provided for herein, LICENSOR shall and shall require any of its subcontractors to take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of LICENSOR, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

A. Comprehensive or Commercial General Liability Insurance:

Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 for any one incident, including personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.

B. Property Insurance

LICENSOR is responsible for providing "All-Risk" Property Insurance for this location.

C. Workers' Compensation Insurance Compensation Coverage

If required by California law, and in accordance with the statutory limits set forth therein. Said policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its officers, agents, and employees.

15. COUNTY'S INSURANCE

Without limiting COUNTY'S indemnification provided herein, COUNTY shall and shall require any of its subcontractors to take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of COUNTY, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

A. Comprehensive/Liability Insurance

Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence for any one incident, including personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.

B. Property Insurance

COUNTY is responsible for providing an "All-Risk" Property Insurance for the contents of the property at this location.

C. Workers Compensation Insurance Compensation Coverage

COUNTY certifies that COUNTY is aware of the provisions of Section 3700 of the California Labor Code and COUNTY will comply with such provisions in connection with any work performed on the premises. Any persons providing services with or on behalf of COUNTY shall be covered by workers' compensation (or qualified self-insurance).

16. SPECIAL INSURANCE REQUIREMENTS

Said policies shall unless otherwise specified herein be endorsed with the following

provisions:

A. LICENSOR

1. The Comprehensive General Liability Policy shall provide that the COUNTY, its officers, officials, employees, and volunteers are covered as additional insured for liability arising out of the operations performed by or on behalf of LICENSOR. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:

- a. Includes contractual liability
- b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards".
- c. Is primary insurance as regards to County of Humboldt.
- d. Does not contain a pro-rata, excess only, and /or escape clause.
- e. Contains a cross liability, severability of interest or separation of insureds clause.
- f. Shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY and in accordance with the Notice provisions set forth under Section 17. It is further understood that LICENSOR shall not terminate such coverage until it provides COUNTY with proof satisfactory to COUNTY that equal or better insurance has been secured and is in place.
- g. Is primary coverage to COUNTY, and insurance or self-insurance programs maintained by COUNTY are excess to LICENSOR'S insurance and will not be called upon to contribute with it.

2. LICENSOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as approved by the COUNTY'S Risk Manager or County Counsel. Any deductible or self-insured retention over \$100,000 shall be disclosed to and approved by COUNTY. If LICENSOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and LICENSOR agrees to pay the cost of said insurance. COUNTY is also hereby authorized with the discretion to deduct the cost thereof

from the monies owed to LICENSOR under this Agreement.

3. COUNTY is to be notified immediately if twenty-five (25%) or more of any required insurance aggregate limit is encumbered and LICENSOR shall be required to purchase additional coverage to meet the aggregate limits set forth above.

B. COUNTY

1. The Comprehensive General Liability Policy shall provide that the LICENSOR, its officers, officials, employees, and volunteers are covered as additional insured for liability arising out of the operations performed by or on behalf of COUNTY. The coverage shall contain no special limitations on the scope of protection afforded to the LICENSOR, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:

- a. Includes contractual liability
- b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards".
- c. Contains a cross liability, severability of interest or separation of insureds clause.
- d. The policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to LICENSOR and in accordance with the Notice provisions set forth under Section 17. It is further understood that COUNTY shall not terminate such coverage until it provides LICENSOR with proof satisfactory to LICENSOR that equal or better insurance has been secured and is in place.
- e. COUNTY shall furnish LICENSOR with certificates and original endorsements effecting the required coverage of this Agreement by LICENSOR.

C. COUNTY AND LICENSOR

1. The COUNTY and LICENSOR agree that insurance carried or required to be carried by either of them against loss or damage to property by fire, flood, earthquake, acts of terrorism, acts of war or other casualty shall contain a clause whereby the insurer waives its right to subrogation against the other party, its elected officials, directors, employees, volunteers, and agents and each party shall indemnify the other against any loss

or expense, including reasonable attorney's fees resulting from the failure to obtain such waiver.

2. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

3. Any failure to comply with reporting or other provisions of the Parties, including breach of warranties, shall not affect coverage provided to LICENSOR, COUNTY, their officers, officials, employees, and volunteers.

17. **NOTICE**

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

LICENSOR: Grace Good Shepherd Church
PO Box 2446
McKinleyville, CA 95519

COUNTY: County of Humboldt
Public Works
Real Property Division
1106 Second Street
Eureka, CA 95501

All insurance notices shall also be sent to:

County of Humboldt
Attn: Risk Management
825 Fifth Street, Room 131
Eureka, CA 95501

18. **LICENSE IS PERSONAL**

The license herein granted is personal to COUNTY and no right hereunder may be assigned, sublet or otherwise transferred in whole or in part without prior written consent of LICENSOR and any attempt to assign, sublet, or transfer shall be of no force or effect whatsoever unless and until LICENSOR shall have given its written consent.

19. **NUCLEAR FREE CLAUSE**

LICENSOR certifies by its signature below that LICENSOR is not a Nuclear Weapons contractor, in that LICENSOR is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. LICENSOR agrees to notify COUNTY immediately if it becomes a nuclear weapons contractor, as defined above. COUNTY may immediately terminate this agreement if it determines that the foregoing certification is false or if LICENSOR becomes a nuclear weapons contractor.

20. **JURISDICTION AND APPLICABLE LAWS**

This Agreement shall be construed under the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure §§394 and 395.

21. **REAL PROPERTY TAXES**

LICENSOR shall pay all real property taxes and general and special assessments levied and assessed against the premises.

22. **DESTRUCTION OF PREMISES**

In the event the premises are destroyed in whole or in part by fire or other casualty to the extent that they are substantially unusable, COUNTY reserves the right to forthwith terminate this Agreement upon written notice within seven (7) days following the date of loss.

If such casualty occurs and a portion of said premises is still usable by COUNTY, the rent shall be prorated on a square footage basis of usable space until the premises are restored to their original condition. Payment of prorated rent shall not constitute a waiver of

COUNTY'S right to terminate this Agreement as provided in this paragraph (22).

In the event that the premises are destroyed in whole or in part by fire or other casualty, and the cost of restoring the same exceeds the then remaining rental for the unused portion of the term of this Agreement, LICENSOR shall have the option to rebuild or to terminate this Agreement. Such option shall be exercised by LICENSOR by notice in writing to COUNTY within seven (7) days following the date of loss. LICENSOR'S option to rebuild shall not constitute a waiver of COUNTY'S right to terminate this Agreement, as provided in this paragraph (22).

23. **LICENSOR DEFAULT**

LICENSOR shall be in default of this Agreement if it fails or refuses to perform any material provision of this Agreement that it is obligated to perform if the failure to perform is not cured within ten (10) days after written notice of the default has been given by COUNTY to LICENSOR. If the default cannot reasonably be cured within ten (10) days, LICENSOR shall not be in default of this Agreement if LICENSOR commences to cure the default within the ten (10) day period and diligently and in good faith continues to cure the default.

24. **COUNTY'S REMEDIES ON LICENSOR'S DEFAULT**

COUNTY, at any time after LICENSOR is in default, can terminate this Agreement or can cure the default at LICENSOR'S cost. If COUNTY at any time, by reason of LICENSOR'S default, pays any sum or does any act that requires the payment of any sum, the sum paid by COUNTY shall be due from LICENSOR to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate COUNTY is permitted by law to charge from the date the sum is paid by COUNTY until COUNTY is reimbursed by LICENSOR. If LICENSOR fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has expended until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Agreement.

25. **TERMINATION**

COUNTY reserves the right to terminate this Agreement, upon seven (7) days written notice, for any cause or reason provided by the Agreement itself, or by law, or upon the happening of one or more of the following:

- A. The making by LICENSOR of any general assignment for the benefit of creditors.
- B. The failure of LICENSOR to pay promptly when due all charges, fees, or other payments in accordance with this Agreement.
- C. The failure of LICENSOR to remedy any default, breach, or violation of county, municipal, federal and/or state laws or regulations by LICENSOR or its employees.
- D. The violation of any of the provisions of this Agreement.
- E. The premises becomes damaged due to fire, flood, earthquake, or any other natural disaster.
- F. Intentionally supplying COUNTY with false or misleading information or misrepresenting any material fact on its application or documents or in its statement to or before COUNTY, or intentional failure to make full disclosure on its financial statement or other documents.

26. **LICENSE MODIFICATION**

This Agreement may be modified only by subsequent written agreement signed by COUNTY and LICENSOR.

27. **LICENSOR NOT OFFICER, EMPLOYEE, OR AGENT OF COUNTY**

While engaged in carrying out and complying with the terms and conditions of this Agreement, LICENSOR is an independent contractor and not an officer, employee, or agent of COUNTY.

28. **ATTORNEYS' FEES**

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by County Counsel) on appeal, if any. As used herein, "the party prevailing" means the party who dismisses an action or proceeding in exchange for payment

of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

29. **WAIVER OF BREACH**

The waiver by COUNTY of any breach of any provisions of this Agreement shall not constitute a continuing waiver of any subsequent breach of the same or a different provision of this Agreement.

30. **BREACH, REMEDY FOR**

In the event of breach of this Agreement by LICENSOR or COUNTY, COUNTY and/or LICENSOR shall have all rights and remedies provided by law.

31. **SURRENDER OF PREMISES**

At the termination of this Agreement, COUNTY shall surrender the premises to LICENSOR in good condition and repair, except for normal wear and tear. COUNTY shall be under no obligation to repair or restore the whole or any portion of the premises which may be damaged by reason of fire, earthquake or the elements or other casualty.

32. **BINDING EFFECT**

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, successors, and assigns.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto upon the date first above written.

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(SEAL)

ATTEST:
CLERK OF THE BOARD

By: Nikki Turner

COUNTY OF HUMBOLDT

By: Sammy Smith

Chairman, Board of Supervisors
County of Humboldt, State of California

APPROVED AS TO FORM:
COUNTY COUNSEL

By: Joyce Myster

Deputy County Counsel

LICENSOR:

By: The Rev. Javan Reid

Title Moderator of the Session

INSURANCE CERTIFICATES
REVIEWED AND APPROVED:

By: Phyllis D. Carlton

Title Clerk of Session

By: John Smith

Risk Manager

1450 Hiller Rd
McKinnerville
Grace Good Shepherd

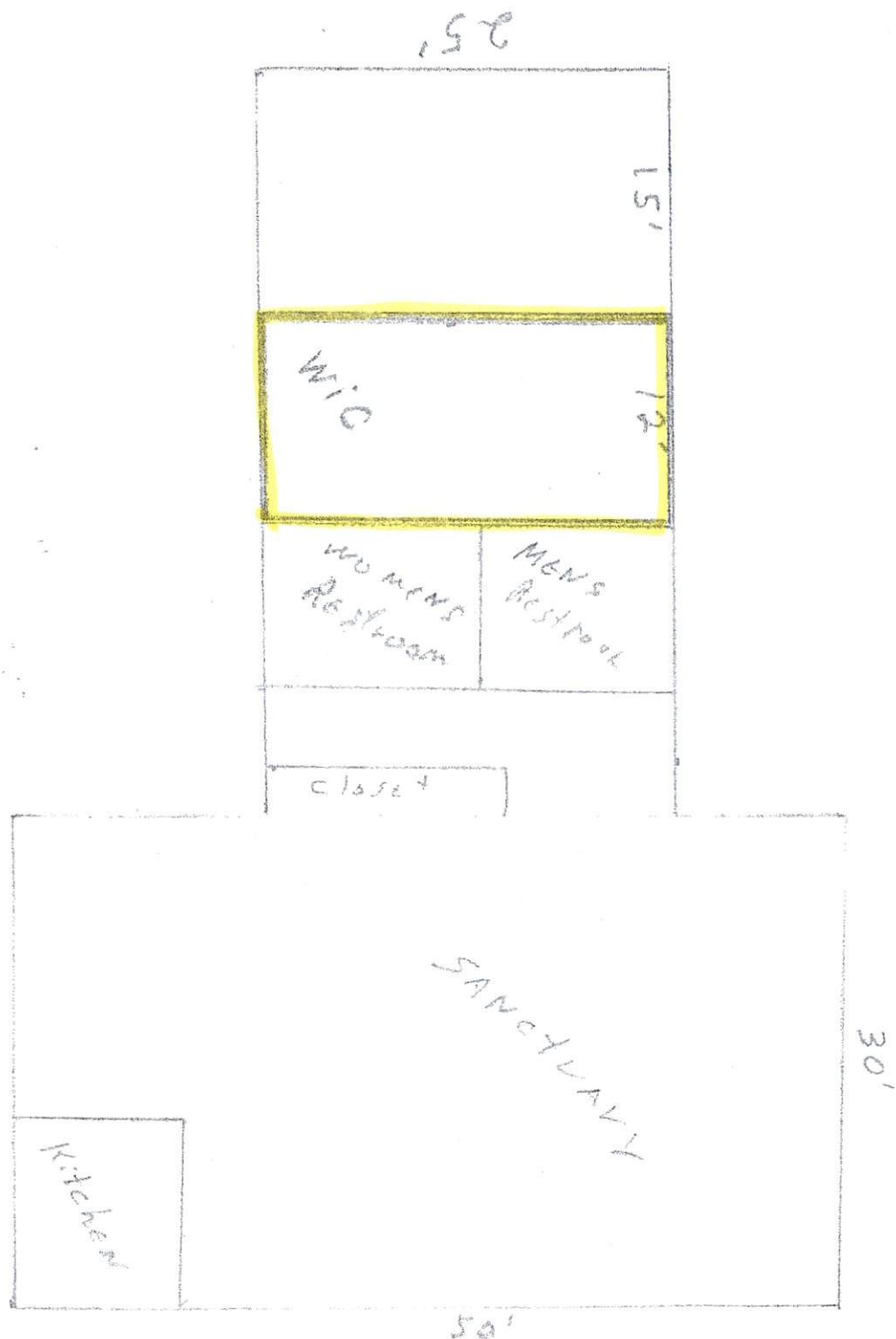


EXHIBIT A

Not to scale
JAVAN Reid