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RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH ARKANSAS CHILDREN’S HOSPITAL TO LEASE PROPERTY IN SOUTHWEST COMMUNITY PARK FOR A MEDICAL CLINIC; AND FOR OTHER PURPOSES.

WHEREAS, the City selected Arkansas Children’s Hospital to place a Medical Clinic on property at the Southwest Community Park, and it is necessary to enter into a formal agreement for the lease of this property;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF LITTLE ROCK, ARKANSAS:

Section 1. The Mayor, City Clerk, and any other City Officials, are authorized to enter into an agreement with Arkansas Children’s Hospital, in substantially the form as that attached as Exhibit A to this resolution, and acceptable to the City Attorney, to lease property in the Southwest Community Park for a period of ninety-nine (99) years to construct, operate and maintain a Medical Clinic.

Section 2. Severability. In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the resolution which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the resolution.

Section 3. Repealer. All laws, ordinances, resolutions, or parts of the same, that are inconsistent with the provisions of this resolution, are hereby repealed to the extent of such inconsistency.

ADOPTED: September 6, 2016

ATTEST:

APPROVED:

Susan Langley, City Clerk
APPROVED AS TO LEGAL FORM:

Mark Stodola, Mayor

Thomas M. Carpenter, City Attorney

A.
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1 **EXHIBIT A**

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3 **LEASE AGREEMENT**

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5 **THIS LEASE AGREEMENT**, dated as of _____ (the "Lease"), is made by and between the
6 City of Little Rock, Arkansas ("City") as Landlord, whose address is City Hall, 500 West Markham Street,
7 Little Rock, Arkansas 72201, and Arkansas Children's Hospital ("ACH") as Tenant, whose address is 1
8 Children's Way, Little Rock, Arkansas 72202.

9 **RECITALS**

- 10 A. On May 27, 2016, the City issued a Request for Proposals (Bid No. 16126) for the lease of park
11 property in the Southwest Community Park to be used for the delivery of medical services at a
12 Primary Care Pediatric Medical Clinic.
- 13 B. ACH submitted a response to City's Request for Proposals in which it proposed to construct
14 and operate a Primary Care Pediatric Medical Clinic in the Park. ACH's clinic in the Southwest
15 Community Park is to be built and paid for by ACH and will include a fifteen (15)-room
16 Primary Care Pediatric Medical Clinic in a building that will be approximately 11,555 square-
17 feet.
- 18 C. Pursuant to Little Rock, Ark., Resolution No. 14,381 (July 5, 2016), adopted by City's Board
19 of Directors and attached hereto as Exhibit A, ACH was selected as the most suitable entity
20 to enter into a lease with City for property in the Southwest Community Park.

21 **NOW, THEREFORE, for and in consideration of the mutual premises and promises herein**
22 **contained, City and ACH covenant and agree as follows:**

23 **ARTICLE 1-DEMISE; TERM**

24 **1.1 Demise and Legal Description.** City hereby leases to ACH and ACH hereby leases from City, for
25 the term and upon and under the conditions set forth in this Lease, the parcel of land located in the Southwest
26 Community Park ("Park") more particularly described as and hereinafter referred to as "Premises":

27 City of Little Rock, Arkansas - Dailey Drive A part of the N1/2 of the NW1/4 of Section
28 1, Township 1 South, Range 13 West, Pulaski County, Arkansas, more particularly
29 described as follows: Commencing from the SE corner of the N1/2 of the NW1/4 of Section
30 1, Township 1 South, Range 13 West; thence North 86 degrees 50 minutes 09 seconds
31 West, a distance of 141.43 feet to a set 1/2-inch rebar with cap for the point of beginning;
32 thence North 02 degrees 23 minutes 00 seconds East 361.45 feet; thence South 87 degrees
33 08 minutes 24 seconds West 364.80 feet; thence South 04 degrees 26 minutes 25 seconds
34 West, 161.04 feet; thence South 87 degrees 39 minutes 38 seconds East, 138.95 feet; thence

Commented [CT1]:
This is what we have been working with throughout this process. Please make sure that BOTH parties review and make sure this is accurate.

1 South 03 degrees 18 minutes 06 seconds West, 200.48 feet; thence South 86 degrees 50
2 minutes 09 seconds East, 234.85 feet to the point of beginning.

3 TO HAVE AND TO HOLD the same unto the said ACH for the Term of this Lease and upon and under
4 the conditions stated in this Lease, together with all rights and privileges appurtenant thereto.

5 **1.2. Term.** The term of this Lease (the "Term") shall be for a period of ninety-nine (99) years
6 commencing on _____ (the "Term Commencement Date") and ending at 12:00 midnight,
7 December 31, 2115, unless this Lease is modified, terminated on an earlier date in accordance with the
8 terms hereof, or renewed in accordance with Section 1.3.

9 **1.3. New Term.** Prior to the end of the Term, City may solicit proposals for the operation of the primary
10 care pediatric medical clinic in the manner then required by applicable law. So long as ACH is not then in
11 default under this Lease, ACH shall have the right to submit a response to City. City reserves the right to
12 modify the Term of this Lease pursuant to any changes in the applicable state law if (a) in the opinion of
13 the governing body of City it is deemed in the best interest of City to do so and (b) the modification is
14 acceptable to ACH.

15 **1.4 Termination.** This Lease may be terminated by either party at any time upon written notice of
16 not less than six (6) calendar months by either party or as otherwise mutually agreed in writing by the
17 parties, provided that if there is a default by ACH because of a final finding of intentional discrimination
18 by ACH in violation of Federal, State, or Municipal Law, then the City may terminate the Lease and ACH
19 shall cease operation on the Premises immediately and direct that the personal property of ACH be removed
20 from the Premises as soon as practicable as determined by the City.

21 **ARTICLE 2-RENT AND OTHER CONSIDERATION**

22 **2.1. Annual Rent.** Commencing on the Term Commencement Date and continuing throughout the re-
23 mainder of the Term and any renewal term, ACH shall pay an annual fixed rent of One Dollar (\$1.00) (the
24 "Annual Rent").

25 **2.2. Payment of Rent.** The Annual Rent shall be paid in advance on the Term Commencement Date
26 and on each one (1)-year anniversary thereof during the Term and any renewal term. ACH, at its option,
27 may pay the Annual Rent for the Term or any renewal term in advance.

28 **2.3. Other Consideration.** The amount of the Annual Rent, having been approved by City's Board of
29 Directors by its Little Rock, Ark., Resolution No. _____ (September 6, 2016), which is attached hereto
30 as **Exhibit B**, together with the commitment of ACH made pursuant to this Lease to construct and operate
31 the Primary Care Pediatric Medical Clinic, constitute the consideration hereunder.

32 **ARTICLE 3- IMPROVEMENTS**

33 **3.1. Construction of Primary Care Pediatric Medical Clinic.**

34 (a) ACH shall construct on the Premises the improvements constituting the primary care pediatric
35 medical clinic substantially in accordance with ACH's response to City's Request for Proposals, all of which

1 shall be compatible with the use of the Premises as a City Park. All plans for the design, construction, and
2 development of the Premises and any building on the Premises shall be subject to the review and approval
3 of the City. City shall not unreasonably withhold approval. ACH shall build, operate, and maintain the
4 Premises in a manner that is consistent with a "city in a park" atmosphere, which includes connecting to
5 any existing City Park Trail System and building a sidewalk connecting the Pulaski County Health Unit
6 and ACH's Pediatric Clinic, if such sidewalk connecting is reasonably feasible. The estimated value of the
7 improvements constructed by ACH is \$3.3 million including site preparation, facility, landscaping and
8 parking lot.

9 (b) ACH shall complete the improvements on the Premises pursuant to the proper Building Permits
10 issued by City in the manner provided by law. City agrees that issuance of such Building Permits will not
11 be unreasonably withheld or delayed.

12 (c) ACH shall cause its contractor to provide payment and performance bonds for construction of the
13 improvements described in this Section and any future construction.

14 (d) ACH shall comply with City Ordinances, as they currently exist or may be hereinafter revised,
15 amended, or adopted, particularly with respect to signage in City parks, and the Article IX, Chapter 26 of
16 the City Code of Ordinances.

17 **3.2. Cooperation.** The parties acknowledge that the construction to be undertaken by each of them
18 under this Article will require close cooperation and coordination. To this end, ACH agrees to use its best
19 efforts to keep City apprised of ACH's plans regarding the Premises.

20 **ARTICLE 4-USE; ACCESS**

21 **4.1. Use of Premises.** The Premises shall at all times be used as a public park and the site of an ACH
22 Primary Care Pediatric Medical Clinic. The grounds of the Park shall be open to the public in accordance
23 with such rules and regulations as shall be promulgated by City. The parties acknowledge that City, acting
24 through its Parks and Recreation Department, will be responsible for programming, as that term is defined
25 in the City Master Parks Plan, for the Park. City agrees to work in cooperation with ACH in the
26 development of programming for the Premises to maintain the theme for the Premises and avoid scheduling
27 conflicts.

28 **4.1. Access to Premises.** ACH shall have access to the entire Premises at all times during the Term,
29 except to the extent otherwise expressly provided herein. City shall not permit or create, or cause to be
30 permitted or created, any continuing event or condition that prevents, restricts, or otherwise materially
31 interferes with ACH's use and enjoyment of the Premises for its intended purpose, provided that nothing
32 within this Agreement precludes the City from temporary disruptions based upon the need for repairs or
33 constructions, provided 30 days prior notice is given to ACH, except in an emergency, in which case notice
34 is to be provided as quickly as possible.

35 **4.2. ACH's Personal Property.** All personal property not permanently affixed, furniture, furnishings,

Commented [CT2]:
This is the oblique reference to the City's medical waste in-
cinerator ordinance.

1 machinery, equipment, movable trade fixtures, and other personal property at the Premises, supplied by or
2 installed by or on behalf of ACH ("ACH's Personal Property") shall remain the property of ACH. ACH
3 may remove ACH's Personal Property from the Premises at anytime during the Term.

4 ACH shall have the right, without obtaining City's prior written consent, to enter into various leasing
5 or other financing arrangements with respect to ACH's Personal Property ("Equipment Financing"). City
6 shall not have any lien for the performance of any obligations of ACH upon any of ACH's Personal Property
7 and City hereby expressly waives the provisions of any law giving to it such a lien. City agrees, if requested
8 by or on behalf of any lender to which ACH shall grant a security interest in ACH's Personal Property or
9 any lessor of ACH's Personal Property in connection with such Equipment Financing (collectively, the
10 "Equipment Lessor"), to promptly execute, acknowledge, and deliver such waivers or other instruments
11 reasonably required by ACH or the Equipment Lessor to confirm that City: (i) has waived any such lien;
12 (ii) agrees that the Equipment Lessor shall have the right to enter upon the Premises for the purposes of
13 removing ACH's Personal Property; and (iii) shall not hinder or delay such removal, provided that ACH or
14 the Equipment Lessor shall agree to repair any damage to the Improvements caused by such removal and
15 otherwise comply with the terms of this Lease in connection with such removal.

16 **4.3. Title to Improvements.** "Improvements" means any buildings, structures, and fixtures, and any
17 renewals and replacements thereof, erected, built, installed, or constructed upon the Premises during the
18 Term of this Lease. Title to all Improvements shall remain the property of ACH during the Term of this
19 Lease. Upon termination of this Lease, the Premises and all Improvements shall become the sole property
20 of the City in fee simple and free and clear of all encumbrances excepting only the lien of taxes assessed,
21 if any, but not yet due and payable (for which ACH shall remain obligated to pay to the extent that they are
22 allocable to the period prior to the termination of this Lease).

23 **ARTICLE 5-OPERATION AND MAINTENANCE**

24 **5.1. Operation and Maintenance.** Throughout the Term of this Lease:

25 (a) ACH shall maintain all of the Premises.

26 (b) ACH shall furnish electricity for all outdoor lighting and other outdoor electrical use on the
27 Premises.

28 (c) ACH shall furnish potable water for all outdoor water use on the Premises.

29 (d) ACH will submit voluntarily to any inspections requested by the City to review the clinic facility
30 on the Premises for compliance with applicable City codes, regulations, and ordinance requirements,
31 provided such requests are made in accordance with applicable law.

32 **5.2 Operating Procedures.** The parties agree that the maintenance and operation of the Premises shall
33 be subject to such written operating procedures (the "Operating Procedures") as may be adopted by
34 agreement between City and ACH from time to time. Any amendment or supplement to the Operating
35 Procedures must be in writing, consented to, and executed by each of the parties. Each party agrees to

1 consider in good faith any amendment or supplement to the Operating Procedures requested in writing by
2 the other party.

3 **5.3. Parking.**

4 (a) *Management.* ACH shall manage and operate or oversee the management and operation of the
5 parking areas on the Premises in accordance with the Operating Procedures. ACH anticipates that the public
6 parking generally will be open to all users of the Premises and those persons who visit neighboring
7 attractions, provided that ACH recognizes that its facilities are located in a municipal park, and that except
8 for the actual structure of the medical clinic, and an appropriate zone of quiet around it not to exceed 200
9 feet from the outline of the clinic, are areas for which there is significant protection for activities pursuant
10 to the 1st Amendment to the U.S. Constitution, and pursuant to Article II of the Arkansas Constitution, and
11 such protection shall be recognized as determined by the City. This area is shown on Exhibit C to this
12 Agreement.

13 (b) *Maintenance.* Throughout the Term, ACH, at its cost, shall cause the parking areas on the Premises
14 to be: (a) maintained in a clean and sanitary condition; (b) kept properly drained and reasonably free from
15 snow, ice, and debris; and (c) provided with adequate lighting and security during the hours of operation of
16 the Premises. ACH agrees to maintain the structural integrity of such parking areas.

17 **ARTICLE 6-GENERAL CONSTRUCTION AND ALTERATION REQUIREMENTS**

18 **6.1. "Construction" Defined.** As used in this Article, "construction" includes initial construction of
19 the Improvements as contemplated in Sections 3.1 and 3.2, work performed in connection with any
20 Restoration pursuant to Section 9.2 or Alteration pursuant to Section 6.5, and any other construction carried
21 on by either party at the Premises.

22 **6.2. Construction to Proceed in Reasonable Manner.**

23 (a) Until completion of the ACH clinic on the Premises, City agrees that construction shall not be performed
24 by or on behalf of City in a manner that (i) unreasonably interferes with construction of the ACH clinic on
25 the Premises, or (ii) causes any unreasonable increase in the cost of construction of the ACH clinic on the
26 Premises. Neither party shall unreasonably interfere with the other party's operations and rights as
27 contemplated by this Lease.

28 (b) After completion of the ACH clinic on the Premises, each party agrees that construction shall not be
29 performed so as to (i) unreasonably interfere with construction being performed by the other party, (ii)
30 cause any unreasonable increase in the cost of construction being performed by the other party, or (iii)
31 unreasonably interfere with the other party's operations and rights as contemplated by this Lease.

32 (c) Notwithstanding the foregoing, or anything else in this Article, neither party shall perform construction
33 or erect barricades in a manner which materially adversely affects, or otherwise substantially interferes
34 with, the use and operation of the Premises in the manner contemplated by this Lease, except to the extent
35 specifically permitted in this Lease. Nothing in this Section shall preclude the use of perimeter fencing of

Commented [CT3]:
I wanted to point out this exhibit in particular. I suspect that there should be some other exhibits; e.g., perhaps one with the initial special medical equipment that will be located in the structure itself – i.e., X-ray machines, and so forth.

The resolutions should be exhibits so everything is in one place once the lease is signed.

Commented [AG4]: There is not a Section 5.5(c).

1 the Premises during construction of the improvements described in Article 3.

2 **6.3. Safety Matters.** Each party initiating or responsible for construction shall take all safety measures
3 reasonably required to protect the other party and all Premises visitors and the property of each from injury
4 or damage caused by or resulting from the performance of its construction.

5 **6.4. Workmanship; Evidence of Compliance with Construction Requirements.** ACH agrees that
6 all construction to be performed under this Lease by ACH shall be done in a diligent, good, and
7 workmanlike manner and in accordance with all applicable laws, including the standards set forth in Section
8 3.1(b). ACH shall pay all costs, expenses, liabilities, and liens arising out of or in any way connected with
9 such construction. After it has completed any construction, ACH shall, within sixty (60) days after the
10 written request, deliver to the City evidence that the construction has been completed in compliance with
11 all applicable laws.

12 **6.5. Alterations.** At any time and from time to time during the Term, ACH may, but is not obligated
13 to, construct or otherwise make new Improvements on any part of the Premises and demolish, remove,
14 replace, alter, relocate, reconstruct, or add to any existing Improvements in whole or in part, to modify or
15 change the contour or grade, or both, of the Premises (any of which activities is referred to herein as an
16 "Alteration"), provided that all of the following conditions are satisfied with respect to the Alteration in
17 question:

18 (a) Each Alteration in an amount in excess of Five Hundred Thousand Dollars (\$500,000.00) shall be
19 subject to prior approval of City, which consent shall not be unreasonably withheld or delayed.

20 (b) Once commenced, each Alteration shall be effected with due diligence, in a good workmanlike
21 manner, and in material compliance with all laws and insurance requirements.

22 (c) The expenses for any Alteration shall be timely and fully paid or shall be adequately provided for
23 by ACH; provided, however, that ACH shall be permitted to contest the validity and amount of any such
24 expense provided that it does not result in the imposition of a lien against the Premises unless either: (i)
25 such lien is removed within sixty (60) days from the date ACH receives notice thereof, or (ii) such lien is
26 adequately bonded, or otherwise provided for in a manner acceptable to City.

27 **6.6. ACH Improvements.** City shall cooperate with ACH (including its architects and contractors),
28 which shall include but not be limited to, executing all documents, providing all information, appearing
29 before governmental boards and authorities, and such other actions as may be required or otherwise
30 reasonably requested by ACH in connection with obtaining all building permits, licenses, and other
31 governmental approvals and authorizations which may be required to commence or complete
32 Improvements and other work at the Premises proposed by ACH, at ACH's written request.

33 **6.7. Liens.** Each party agrees that in the event any mechanic's lien or other statutory lien shall be filed
34 during the Term against the ownership or leasehold interest of the other party in the Premises by reason of
35 work, labor, services, or materials supplied to or at the request of the party or pursuant to any construction,

1 it shall pay and discharge the same of record within sixty (60) days after receiving notice of the filing
2 thereof, subject also to the provisions of the following sentence. Each party shall have the right to contest
3 the validity, amount, or applicability of any such liens by appropriate legal proceedings, and so long as it
4 shall furnish bond or indemnity, and be prosecuting such contest in good faith, the requirement that it pay
5 and discharge such items within said sixty (60)-day period shall not be applicable. In the event such legal
6 proceedings shall be finally concluded (so that no further appeal may be taken) adversely to the party
7 contesting such liens, such party shall, within five business days thereafter, cause the lien(s) to be
8 discharged of record.

9 **ARTICLE 7-INSURANCE**

10 **7.1. Extended Coverage and Liability.** ACH shall, throughout the Term, maintain with respect to the
11 Premises and Improvements insurance of the following character:

12 (a) All Improvements shall be insured with extended coverage (all risks) casualty insurance, in the
13 amount of the replacement value thereof. Such insurance shall include coverage for any other named perils
14 customarily insured against in the general vicinity of the Premises.

15 (b) Comprehensive public liability and property damage insurance covering the Premises and the
16 Improvements with combined single limit coverage in an amount not less than Five Million Dollars
17 (\$5,000,000) each occurrence and Five Million Dollars (\$5,000,000) aggregate where applicable. The
18 policy representing such insurance shall insure ACH against liability for injury to persons or property
19 damage occurring in or about the Premises or arising out of the ownership, maintenance, operation, use, or
20 occupancy thereof and shall include the City as an additional insured party.

21 (c) A policy or policies of worker's compensation insurance sufficient to comply with all applicable
22 laws.

23 (d) Such other insurance, in such amounts and against such other risks, as deemed necessary by ACH.

24 **7.2. Builder's Risk Insurance.** During the construction of any Improvements, the insurance required
25 by this Article shall be in the form commonly known as "Builder's Risk" on an "all risk" basis including
26 without limitation coverage against fire, lightning, wind damage, hail, and collapse. The policy shall be
27 secured and maintained by ACH or its general contractor in a form and amount as may from time to time
28 be determined by ACH. Coverage shall include all materials, supplies, and equipment that are intended for
29 specific installation in the Improvements while such materials, supplies, and equipment are located in or on
30 the Premises, in transit, and while temporarily located away from the Premises for the purpose of repair,
31 adjustment, or storage at the risk of one of the insured parties.

32 **7.3. Carriers; Policies.** All insurance provided for pursuant to this Article shall:

33 (a) Be effected under a valid and enforceable policy or policies issued by insurers of recognized
34 responsibility licensed to do business in the State of Arkansas;

35 (b) Require the applicable insurance carrier to endeavor to provide at least ten (10) days' notice to the

1 other party hereto of any cancellation of the policy and, to the extent obtainable without additional premium,
2 such insurance shall not be invalidated as to the interest of City by any act, omission, or neglect of ACH,
3 any Leasehold Mortgagee (defined in Section 13.1), their respective employees or agents, or any occupant
4 of the Premises which might otherwise result in a forfeiture or suspension of such insurance; and

5 (c) Have deductibles in amounts deemed appropriate by ACH.

6 ACH shall be permitted to effect any of the insurance coverage required under this Article to be
7 procured and maintained by ACH by means of a "blanket" or "umbrella" policy or policies of insurance.

8 **7.4. Proceeds.** Fire and extended coverage insurance proceeds and boiler and machinery insurance
9 proceeds paid to ACH by reason of damage to the Improvements shall be used by ACH to restore the
10 Improvements if ACH elects to do so under Article 9.

11 **7.5. Certificate of Insurance.** Copies of the original insurance policies (or certificates thereof
12 satisfactory to City) shall be delivered to City on or before the Term Commencement Date. Thereafter,
13 ACH at all times will deliver copies to City of renewal certificates, replacement policies, or other
14 satisfactory proof of such insurance, together with satisfactory evidence of payment of the premiums
15 thereon.

16 **7.6. Release and Waiver of Subrogation.** To the extent permitted by law, City and ACH hereby waive
17 all rights of recovery and causes of action, and each releases the other from any liability (provided such
18 party's right of full recovery under the applicable policy is not adversely affected), from all claims it might
19 otherwise have (including a claim for negligence) which it might have against the other party for losses,
20 damage, or destruction occasioned during the Term to the property of each located within or upon or
21 constituting a part of the Premises, which losses and damages are of the type covered under the policies
22 required by this Article or actually carried. The policies required by this Article shall provide for waivers
23 of any right of subrogation that the insurer of such party may acquire against the other party hereto with
24 respect to any such losses so long as the same is obtainable at no significant additional cost.

25 **7.7. Assurance of Title.** In the event that any defects in City's title to the Premises shall be discovered
26 or asserted, City agrees to exercise its power of eminent domain to cure such defects.

Commented [AG5]: not defined or used in the Lease

ARTICLE 8-IMPOSITIONS

28 **8.1. ACH's Obligation to Pay Impositions.** ACH shall pay, before any fine, penalty, interest, or cost
29 may be added thereto for the non-payment thereof, all Impositions (defined below) which are hereafter
30 assessed, imposed, or become a lien upon the Premises or any part thereof during the Term. If, by law, any
31 such Imposition may be paid in installments, ACH may pay the same in installments and ACH shall only
32 be required to pay those installments coming due during the Term. "Impositions" shall be defined as all
33 taxes (including possessory interest taxes associated with the Premises and the execution of this Lease),
34 assessments (including all assessments for public improvements or benefits), fees, water, sewer, or similar
35 rates and charges, excises, levies, license fees, permit fees, inspection fees, and other authorization fees and

1 other governmental charges of any kind or nature whatsoever, whether general or special, ordinary or
2 extraordinary, foreseen or unforeseen, or hereafter levied or assessed in lieu of or in substitution of any of
3 the foregoing of every character, which at any time during the Term may be assessed, levied, confirmed, or
4 imposed on or be a lien upon the Premises, any Improvements, or the leasehold estate created hereby, or
5 which may be levied upon or measured by the rent payable under this Lease. "Impositions" shall not include
6 any income, excess profit, estate, inheritance, successions, transfer, franchise, capital, or other tax
7 assessment upon the fee interest of City in the Premises or upon the rentals payable under this Lease, all of
8 which shall be the obligation of City. ACH will pay or reimburse City, as the case may be, for any fine,
9 penalty, interest, or cost which may be added by the collecting authority for the late payment or nonpayment
10 of any Imposition required to be paid by ACH under this Lease. All Impositions imposed for the tax year
11 in which this Lease shall commence, and the tax year in which this Lease shall terminate, shall be
12 apportioned between ACH and City. Notwithstanding the foregoing, ACH shall have the right to contest
13 any Imposition or other assessment, valuation, or levy against all or any part of the Premises, or any interest
14 therein, in accordance with applicable laws and the provisions of Section 23.8 below.

15 **ARTICLE 9-DAMAGE**

16 **9.1. Notice.** In the event of any material damage to the Improvements caused by fire or other peril, ACH
17 shall promptly give written notice thereof to City generally describing the nature and extent of such damage.

18 **9.2. Restoration or Termination.**

19 (a) In the event of any damage to the Improvements for which insurance proceeds are made available
20 to ACH, ACH shall, within a reasonable period of time, commence and complete such restoration,
21 replacement, or rebuilding of the Improvements as ACH determines, in its sole discretion, to make, to the
22 extent possible with the available insurance proceeds (such restoration, replacement, and rebuilding,
23 together with any temporary repairs pending completion of the work, being hereinafter called
24 "Restoration"). In the event of any Major Damage to the Improvements, ACH shall, at ACH's option upon
25 written notice to City, as promptly as practicable, either (i) commence and complete Restoration, (ii) elect
26 to operate with the remaining Improvements, or (iii) elect to terminate this Lease. If ACH elects to terminate
27 this Lease and there are any insurance proceeds made available to ACH, then such proceeds shall be payable
28 to ACH.

29 (b) "Major Damage" to the Improvements shall mean such damage that the cost of Restoration by
30 reason thereof will exceed 25% of the cost to replace the Improvements in the Premises in their entirety as
31 of the date of the damage. "Major Damage" shall also include damage, destruction, or casualty to the
32 Premises or the Improvements which: (i) is total or substantially total; (ii) renders the Premises, the Im-
33 provements, or the use thereof untenable or substantially untenable; or (iii) cannot be repaired or
34 restored at least two years prior to the expiration of the Term. "Untenable" shall mean that ACH is
35 prevented or prohibited from using the Premises or the Improvements in a manner substantially comparable

1 to that existing on the date immediately preceding the subject damage, destruction, or casualty.

2 **9.3. Effect of Lease Termination.** If ACH elects to terminate this Lease pursuant to this Article, the
3 following shall apply:

4 (a) If City so elects, ACH shall raze that part of the Improvements that has been damaged and clear
5 the area of all debris; provided that ACH shall have no obligation under this Section if the damage,
6 destruction, or other casualty resulted from or was related to the negligence or willful misconduct of City,
7 its agents, employees, contractors, or licensees.

8 (b) This Lease shall terminate and the parties shall thereupon be released from their obligations under
9 this Lease, except for those obligations which have accrued prior to the effective date of such termination,
10 upon either the date set forth in ACH's notice of termination or, if City makes the election under
11 subparagraph (a), the date on which such demolition and clearing is completed.

12 **9.4. Restoration.** All Restoration undertaken by ACH pursuant to this Article and pursuant to Article
13 10 shall be effected with due diligence, in a good workmanlike manner, and in material compliance with
14 all laws and insurance requirements.

15 **ARTICLE 10 - CONDEMNATION**

16 **10.1. Notice.** For purposes of this Article, "Taking" means the taking of all or any part of the
17 Premises or the possession thereof under the power of eminent domain by, or voluntary sale of all or any
18 part of the Premises to, any person having the power of eminent domain, provided that the Premises or such
19 part thereof is then under the threat of condemnation. In the event of a Taking of all or any part of the
20 Premises, or the commencement of any proceedings or negotiations which might result in a Taking, ACH
21 shall, within a reasonable period of time, give written notice thereof to City.

22 **10.2. Total Taking.** In the event of a Taking of the entire Premises or Improvements, this Lease
23 shall terminate as of the date title vests in the condemning authority or the date the condemning authority
24 is entitled to possession, whichever first occurs (the "Date of Taking"). In case of a Taking of such a
25 substantial part of the Premises or Improvements as shall result in the Premises remaining after such Taking
26 (even if Restoration were made) being unsuitable or economically unfeasible for the use to which the
27 Premises had been put by ACH prior to such Taking, ACH may, at its option, terminate this Lease by
28 written notice to City given within ninety (90) days after the Date of Taking, such termination to be effective
29 as of a date specified in such notice; provided, however, ACH shall be relieved of all monetary obligations
30 and other liabilities arising under this Lease from and after the Date of Taking. Any Taking of the Premises
31 of the character referred to in this Section which results in the termination of this Lease is referred to as a
32 "Total Taking". If ACH elects to terminate this Lease as provided in this Section, then the parties shall be
33 released without further obligations to the other party as of the effective date of such termination subject to
34 (i) the indemnification provisions of Article 15 with respect to events occurring prior to termination, and
35 (ii) the payment to City by ACH of all accrued obligations of ACH to City under this Lease as of the

1 effective date of such termination.

2 **10.3. Partial Taking.** In case of a Taking of the Premises or the Improvements other than a Total
3 Taking (a "Partial Taking"), (i) this Lease shall remain in full force and effect as to the portion of the
4 Premises remaining immediately after such Taking, and (ii) ACH shall promptly commence and complete
5 Restoration of the Premises provided that ACH shall not be obligated to expend more for the Restoration
6 than the amount awarded for such Restoration by the condemning authority, which amount shall be paid to
7 ACH for use in completing such Restoration.

Commented [AG6]: Is this intended to be different than the Net Award? If so, this means ACH would be required to spend more than the Net Award.

8 **10.4. Award.** Any award and other payments to ACH on account of a Taking, less costs, fees,
9 and expenses incurred in the collection thereof ("Net Award"), shall be applied as follows:

10 (a) In case of a Partial Taking (except a Taking for temporary use), ACH shall furnish to City evidence
11 satisfactory to City of the total estimated cost of the Restoration required by Section 10.3.

12 (b) The Net Award received on account of a Partial Taking (except a Taking for temporary use) shall
13 be held by ACH and applied to pay the cost of Restoration. The balance, if any, shall be divided between
14 City and ACH based on the then existing value of their respective interests in the Improvements on the
15 affected portion of the Premises.

16 (c) Any Net Award received on account of a Taking for temporary use shall be paid as follows:

17 (i) each party shall attempt to obtain a separate award for its own damages resulting from such
18 temporary Taking;

19 (ii) if the condemning authority fails or refuses to grant separate awards to each party, then the Net
20 Award for a Taking for temporary use shall be divided between City and ACH based on the then existing
21 value of their respective interests in the Improvements on the affected portion of the Premises.

22 (d) The Net Award received on account of a Total Taking shall be allocated based on the then existing
23 value of their respective interests in the Improvements on the Premises.

24 **10.5. Abatement of Rent.** There shall be no abatement of Annual Rent in the event of a Partial
25 Taking or a Taking for temporary use.

26 **10.6. City's Condemnation Covenant.** City hereby covenants and agrees not to condemn ACH's
27 interest in the Premises and Improvements and to refrain from consenting to or permitting any Taking by
28 any other governmental authority without obtaining ACH's prior written consent thereto. In addition, ACH
29 may, at its option and in its sole discretion, participate in any proceedings and negotiations in connection
30 with any such Taking and other agreements relating or incidental thereto.

31 **ARTICLE 11 -LIENS**

32 **11.1. No Liens.** ACH will not create any mortgage, deed of trust, lien, security interest,
33 encumbrance, or charge on, pledge of, or conditional sale or other title retention agreement with respect to
34 the Premises, other than (i) this Lease, subleases and other agreements permitted by Article 12, and
35 Leasehold Mortgages permitted by Article 13, (ii) liens for Impositions not yet payable or being contested

1 as permitted by Section 23.8, (iii) liens of mechanics, materialmen, suppliers, or vendors for sums which
2 under the terms of the related contracts are not at the time due or which are being contested as permitted by
3 Section 23.8, (iv) the granting of easements, restrictions, and rights of way necessary or desirable in
4 connection with the construction of the Improvements or otherwise granted in the ordinary course of
5 business; or (v) liens on and in connection with any Equipment Financing or otherwise in connection with
6 the acquisition of ACH's Personal Property.

7 **11.2. Mechanics' Liens.** ACH agrees that ACH will, at all times when the same may be necessary,
8 or in ACH's opinion desirable, and subject to ACH's rights under Section 23.8, take such action as may be
9 required under any law then in existence which will prevent the enforcement of any mechanics' or similar
10 liens against the fee of the Premises for or on account of labor, services, or materials furnished to ACH or
11 furnished at ACH's request.

12 **ARTICLE 12-ASSIGNMENT AND SUBLEASING**

13 **12.1. Assignment.** Except as permitted by Article 14 below, neither party may assign all or any part
14 of its interest in this Lease, the Improvements, or the Premises without the other party's prior written
15 consent. Any attempted assignment that does not comply with the provisions of this Article 12 or Article
16 14 below shall be voidable at the non-assigning party's option. A party's consent to any assignment shall
17 not constitute a waiver of the provisions of this Article 12 or Article 14 below as to any subsequent proposed
18 assignment.

19 **12.2. Sublease.** ACH may not sublease all or any part of the Improvements or the Premises;
20 provided, however, that ACH may make such sublease to any persons or entities with City's prior written
21 consent. The following provisions shall apply to any sublease by ACH:

22 (a) ACH shall remain primarily obligated to perform ACH's obligations under this Lease.

23 (b) Each sublease shall contain a provision requiring each sublease to terminate and possession
24 return to City in the event this Lease is terminated.

25 **12.3. Provisions Applicable to Subleases.** The following provisions shall apply to any sublease
26 proposed by ACH:

27 (a) ACH shall give City at least thirty (30) days' prior written notice of its desire to enter into a sublease.
28 Such notice shall describe in reasonable detail the proposed terms of the sublease and the identity of the
29 proposed subtenant. Any sublease that is not approved in writing by City shall be voidable at City's option.

30 (b) Any attempted sublease that does not comply with the provisions of this Article shall be voidable
31 at City's option.

32 (c) City's consent to any one sublease shall not constitute a waiver of the provisions of this Article as
33 to any subsequent proposed sublease.

34 **ARTICLE 13-LEASEHOLD MORTGAGES**

35 **13.1. ACH's Right to Create Leasehold Mortgages.** At any time and from time to time during the

1 Term, ACH may encumber all or any part of its interest in the Premises or the Improvements by way of one
2 (1) or more deeds of trust, mortgages, or other security devices (a "Leasehold Mortgage", the holder of
3 which is referred to herein as a "Leasehold Mortgagee"); provided, that any such Leasehold Mortgage shall
4 be subject and subordinate to the rights of City under this Lease.

5 **ARTICLE 14-TRANSFER BY CITY**

6 **14.1. Transfer.** During the Term of this Lease, City may not sell, assign, or otherwise transfer fee
7 ownership of all or any part of the Premises to any persons or entities other than ACH, the State of Arkansas,
8 or the United States of America. Any sale, assignment, or other transfer to the State of Arkansas or the
9 United States of America shall be subject to this Lease and the purchaser, assignee, or transferee shall
10 assume in writing all undertakings of City under this Lease, and ACH shall be notified in writing of such
11 sale, assignment or transfer at least thirty (30) days prior thereto.

12 **14.2. Limitation on Encumbrance by City.** This Lease shall automatically and without further
13 documentation be prior and superior to any lease, mortgage, deed of trust, hypothecation, pledge, or other
14 encumbrance made, created, or permitted by City or resulting from actions or omissions of City (including
15 tax liens or judgment liens), and City shall not cause or permit any such hypothecation, pledge, deed of
16 trust, or other encumbrance to be made (whether arising voluntarily, by operation of law, or otherwise)
17 unless such hypothecation, pledge, deed of trust, or other encumbrance specifically by its terms provides
18 that it is subject and subordinate to this Lease in a manner and in a form approved by ACH.

19 **14.3. Other Limitations.** City covenants and agrees with ACH that it shall not cause, create, or
20 permit (whether voluntarily, by operation of law or otherwise) any lien, claim, charge, or attachment to be
21 filed against all or any portion of the Premises, the Improvements, and any interest created by this Lease.

22 **ARTICLE 15-INDEMNIFICATION**

23 **15.1. Indemnification of City.** ACH shall protect and, to the extent of its applicable insurance
24 coverage, indemnify, defend, and hold City harmless from and against all liabilities, obligations, claims,
25 damages, penalties, causes of action, judgments, settlements, orders, and other costs and expenses
26 (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against
27 City or the Premises by reason of the occurrence or existence of any of the following: (i) any accident,
28 injury to, or death of persons (including workmen) or loss of or damage to property occurring on the
29 Premises or any part thereof during the Term as a result of the acts or omissions of ACH; (ii) any use,
30 non-use, possession, occupation, operation, maintenance, management, or condition of the Premises or any
31 part thereof during the Term by ACH; (iii) any failure on the part of ACH to perform or comply with any
32 of the terms of this Lease; (iv) the performance of any labor or services or the furnishing of any materials
33 or other property on the Premises or any part thereof by or on behalf of ACH; or (v) any gross negligence
34 or willful misconduct on the part of ACH or any of its agents, contractors, or employees; except in each
35 case described in the preceding clauses (i) through (v) to the extent resulting from events on the Premises

1 sponsored or authorized by City, any failure on the part of City to perform or comply with any of the terms
2 of this Lease or the breach of any representation made by City in this Lease, or the gross negligence or
3 willful misconduct of City, its agents, servants, employees, sub lessees contractors, licensees, invitees,
4 representatives, or assigns.

5 **15.2. Indemnification of ACH.** To the extent that insurance coverage is provided for particular
6 events sponsored by City upon the Premises, City shall protect, indemnify, defend, and hold ACH harmless
7 from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments,
8 settlements, orders, and other costs and expenses (including, without limitation, reasonable attorneys' fees
9 and expenses) imposed upon or incurred by or asserted against ACH or the Premises by reason of the
10 occurrence or existence of any death, bodily injury, personal injury, or property damage resulting from
11 events on the Premises sponsored or authorized by City, any failure on the part of City to perform or comply
12 with any of the terms of this Lease or the breach of any representation made by City in this Lease, or the
13 gross negligence or willful misconduct of City, its agents, servants, employees, sub lessees, contractors,
14 licensees, invitees, representatives, or assigns. Nothing in this Section shall be deemed a waiver or
15 mitigation of any statutory immunity which City enjoys under Arkansas law.

16 **15.3. Use by Public for Recreational Purposes and Tort Immunity.** The provisions of Ark. Code
17 Ann. §§ 18- 11-301 through 18- 11-307 shall be applicable to the duties and liability of City and ACH
18 to the extent permitted by law. City will rely on the defense of tort immunity as provided by Ark. Code
19 Ann. § 21-9-301 when applicable.

20 **ARTICLE 16--ACH'S DEFAULT AND CITY'S REMEDIES**

21 **16.1. ACH Default.** The occurrence and continuation beyond the expiration of applicable notice and
22 cure periods of anyone or more of the following events shall be an "ACH Default," unless such event is
23 being contested or appealed as allowed in this Lease:

24 (a) ACH shall fail to pay any sum due to City under this Lease within thirty (30) days after written
25 notice that the same is past due and payable.

26 (b) ACH shall fail to perform or comply with any other term of this Lease, such failure shall continue
27 for more than sixty (60) days after notice thereof from City, and ACH shall not within such period
28 commence with due diligence and dispatch the curing of such default, or having so commenced, shall there-
29 after fail or neglect to prosecute or complete with diligence and dispatch the curing of such default.

30 (c) The filing by or against ACH of any proceedings under any State or Federal Insolvency or
31 Bankruptcy law, or any comparable law that is now or hereafter may be in effect, whether for liquidation
32 or reorganization, where such proceedings are not dismissed within ninety (90) days after filing.

33 (d) The entry of an order for relief against ACH under any bankruptcy, insolvency, or reorganization
34 case.

35 (e) The appointment of a receiver, trustee, liquidator, custodian, or similar officer of ACH or any part

1 of the property of ACH if such appointment is not discharged within ninety (90) days after such
2 appointment.

3 (f) The assignment of all or substantially all of the property of ACH for the benefit of creditors.

4 (g) A writ of attachment or execution is levied on ACH's interest in this Lease which writ is not
5 discharged within ninety (90) days after attachment or execution.

6 **16.2. Notice from City.** At any time after the occurrence and during the continuance of an ACH
7 Default, City may give written notice to ACH of the termination of this Lease. On the date specified in such
8 notice (which shall be at least ten business days after the delivery of such notice) this Lease shall terminate
9 unless ACH has cured such ACH Default and all rights of ACH under this Lease shall cease. Alternatively,
10 City may elect to continue this Lease and enforce all of its rights and remedies under this Lease. ACH shall
11 reimburse City for all costs and expenses incurred by or on behalf of City (including, without limitation,
12 reasonable attorneys' fees and expenses) occasioned by any ACH Default under this Lease.

13 **16.3. Termination of ACH's Right to Possession.** If an ACH Default has occurred and is
14 continuing, then City shall have the immediate right to re-enter the Premises and terminate ACH's right to
15 possession thereof. Upon such occurrence, ACH shall promptly surrender possession of the Premises and
16 pay to City all amounts due City under this Lease. City may, but shall have no obligation to, remove all
17 persons and property therefrom, subject to ACH's rights to remove and retain ACH's Personal Property and
18 the Improvements under Sections 4.2 and 4.3. Such property may be removed and stored in a warehouse
19 or elsewhere at the expense and risk of and for the account of ACH. Should City elect to re-enter in
20 accordance with this Lease, or should City terminate ACH's right to possession pursuant to legal proceed-
21 ings or to any notice provided for by law, this Lease shall terminate.

22 **16.4. Post-Termination Obligations; Equitable Relief.** No expiration or termination of this Lease
23 by operation of law or otherwise, and no repossession of the Premises pursuant to Section 16.3 or otherwise,
24 shall relieve either party of its liabilities and obligations arising prior to such termination or repossession,
25 all of which shall survive such expiration, termination, or repossession, including, without limitation, the
26 right of either party under Article 15 to indemnification for liability arising prior to termination of this Lease
27 to the extent provided for therein for personal injuries or property damage, nor shall anything in this Lease
28 be deemed to affect the right of a party to equitable relief where such relief is permitted at law.

29 **16.5. No Waiver by City.** No waiver of any breach shall affect or alter this Lease, which shall
30 continue in full force and effect, or the respective rights of City or ACH with respect to any other then
31 existing or subsequent breach. The failure of City to insist upon strict performance of any of the obligations
32 of ACH under this Lease in one or more instances shall not be deemed a waiver of City's right to insist upon
33 the full and strict performance of the same or any other obligation of ACH at a subsequent time nor shall
34 the failure of City to seek redress for the violation of any obligation or covenant of ACH be deemed to
35 preclude City from seeking redress for any subsequent violation nor to prevent a subsequent act which

1 would originally have constituted a violation from having all the force and effect of an original violation.

2 **16.6. City's Remedies Cumulative.** Each right, power, and remedy of City provided for in this
3 Lease or existing at law or in equity shall be cumulative and concurrent and shall be in addition to every
4 other right, power, or remedy provided for in this Lease or existing at law or in equity, and the exercise or
5 beginning of the exercise by City of any one or more of the rights, powers, or remedies provided for in this
6 Lease or existing at law or in equity shall not preclude the simultaneous or later exercise by City of any or
7 all such other rights, powers, or remedies.

8 **16.7. Force Majeure.** Anything to the contrary contained in this Lease notwithstanding, ACH shall
9 not be deemed to be in default of any such obligations if it shall be prevented from or delayed in performing
10 such obligation by reason of the occurrence of a Force Majeure, and ACH's time for such performance shall
11 be extended by the number of days during which any condition of Force Majeure prevails. "Force Majeure"
12 means delays or defaults due to causes beyond the reasonable control of the party obligated to perform,
13 which may include: war; insurrection; strikes, lockouts; riots; floods; earthquakes; fires; casualties; acts of
14 God; acts of the public enemy; epidemics; quarantine restrictions; unusually severe weather; or other causes
15 beyond the reasonable control of the party obligated to perform (except financial inability). An extension
16 of time for any such cause shall be for the period of the enforced delay and shall commence to run from the
17 time of the commencement of the cause if notice by the party claiming such extension is given to the other
18 party or parties within sixty (60) days after the commencement of the cause.

19 **ARTICLE 17-CITY DEFAULT AND ACH'S REMEDIES**

20 **17.1. City Default.** A "City Default" shall have occurred under this Lease, thereby entitling ACH to
21 exercise each right, power, and remedy to which it is entitled under this Lease, at law or in equity, if City
22 breaches any representation or warranty (when made) or covenant on its part to be performed under this
23 Lease which is not cured within sixty (60) days (or such sooner period as may be required by law, or by
24 virtue of an emergency) after written notice by ACH to City specifying City's failure to perform; provided,
25 however, that if the nature of City's obligation is such that more than sixty (60) days are reasonably required
26 for performance, then City shall not be in default if City commences performance within such sixty (60)-
27 day period and thereafter diligently prosecutes the same to completion.

28 **17.2. Force Majeure.** Anything to the contrary contained in this Lease notwithstanding, City shall
29 not be deemed to be in default of any of its obligations under this Lease if it shall be prevented from or
30 delayed in performing such obligation by reason of Force Majeure and City's time for such performance
31 shall be extended by the number of days during which any condition of Force Majeure prevails.

32 **17.3. ACH's Remedies.** If a City Default occurs, then ACH shall have the right, in addition to any
33 and all other remedies to which it is entitled under this Lease, (a) after ten (10) business days' (or such
34 sooner period as may be required by law, or by virtue of an emergency) written notice to City of its intent
35 to do so, to perform any obligation of City and to either, at ACH's option: (i) obtain immediate

1 reimbursement of all costs of performing such obligation, (ii) deduct the cost of performing such
2 obligations; or (iii) terminate the Lease; or (b) seek specific performance. ACH shall also have any other
3 remedy available to it at law or in equity under Arkansas law, which remedies shall be cumulative in the
4 manner described by Section 16.6 for City's remedies.

5 **17.4. No Waiver.** The failure of ACH to insist upon strict performance of any obligation of City
6 under this Lease in one or more instances shall not be deemed a waiver of ACH's right to insist upon the
7 full and strict performance of the same or any other obligation of City at a subsequent time nor shall the
8 failure of ACH to seek redress for the violation of any obligation or covenant of City be deemed to preclude
9 ACH from seeking redress for any subsequent violation nor to prevent a subsequent act which would orig-
10 inally have constituted a violation from having all the force and effect of an original violation.

11 **ARTICLE 18-ESTOPPEL CERTIFICATES**

12 **18.1. Estoppel Certificates.** The parties agree to execute, acknowledge, and deliver within twenty
13 (20) days after a written request therefor a certificate that is in a form acceptable to each respective party
14 certifying that (i) this Lease is unmodified and in full force and effect (or, if there have been modifications,
15 that this Lease is in full force and effect, as modified and stating the modifications), (ii) the dates, if any, to
16 which any rent and other sums payable under this Lease have been paid, and (iii) no notice has been received
17 by such party of any default which has not been cured, and to the knowledge of such party no defaults then
18 exist, except in either case as to defaults specified in said certificate. Any such certificate may be relied
19 upon by any prospective purchaser, mortgagee, sublessee, or assignee of the Premises or any part thereof,
20 so long as such sale, mortgage, sublease or assignment is made in compliance with this Lease.

21 **ARTICLE 19- TERMINATION**

22 **19.1. End of Term.** Upon the expiration of the Term or other termination of the Lease, ACH shall
23 quit and surrender to City the Premises in good order and condition, ordinary wear and tear and damage by
24 fire and other perils excepted. ACH agrees to execute all documents reasonably necessary to evidence any
25 such termination. The foregoing is not intended and shall not be construed to derogate in any way ACH's
26 rights to remove its Improvements and ACH's Personal Property under Sections 4.2 and 4.3.

27 **19.2. Holding Over.** Any holding over by ACH after the expiration or termination of this Lease shall
28 not constitute renewal of this Lease or give ACH any rights under this Lease or in the Premises, except with
29 the prior written consent of City. Any holding over after the expiration or termination of this Lease with
30 the consent of City shall be construed to be a tenancy from month to month at a rent equal to the rent
31 payable by ACH under this Lease prior to such expiration or termination (prorated on a monthly basis) and
32 shall otherwise be on the terms and conditions herein specified so far as applicable. Any holding over
33 without City's consent shall constitute a default by ACH and entitle remedies as provided herein.

34 **19.3 Early Termination.** If ACH ceases operation of the primary care pediatric medical clinic on
35 the Premises, then City may terminate this Lease. Upon such occurrence, ACH shall promptly surrender

1 possession of the Premises and pay to City all amounts due City under this Lease. City may, but shall have
2 no obligation to, remove all persons and property therefrom, subject to ACH's rights to remove and retain
3 ACH's Personal Property and the Improvements under Sections 4.2 and 4.3. Such property may be removed
4 and stored in a warehouse or elsewhere at the expense and risk of and for the account of ACH.

5 **ARTICLE 20-ENVIRONMENTAL MATTERS**

6 **20.1 Definitions.** The meanings of the following terms when used in this Article shall be determined
7 as follows:

8 "*Environmental Compliance Liability*" means any obligation or liability arising as the result of any default,
9 violation, or breach by City or its affiliates or previous owners or tenants of any portion of the Premises or
10 adjoining owners or tenants prior to the commencement of the Term of: (i) environmental permits and other
11 approvals, consents, licenses, certificates, and authorizations applicable to the Premises or the operation of
12 a prior owner's, tenant's, or other occupant's business and activities thereon which are required by
13 Environmental Laws; (ii) any environmental regulatory compliance requirements applicable to the
14 Premises or operations conducted on or from the Premises under Environmental Laws; or (iii) other
15 Environmental Laws.

16 "*Environmental Condition*" means circumstances with respect to soil, land surface, subsurface strata,
17 surface waters, groundwaters, stream sediments, air, and similar environmental media both on and off the
18 Premises resulting from any activity, inactivity, operations, or Release occurring on or off the Premises,
19 which under Environmental Laws require investigatory, corrective, and/or remedial measures and/or that
20 may result in claims or demands or give rise to liabilities of City or ACH or to third parties including, but
21 not limited to, governmental entities.

22 "*Environmental Laws*" means any and all laws concerning air, water, solid waste, Hazardous Materials,
23 Releases, worker and community right-to-know hazard communication, noise, resource protection,
24 subdivision, inland wetlands and watercourses, health protection, and similar environmental, health, safety,
25 and land use concerns in all cases at any time or from time to time in effect at or prior to the commencement
26 of the Term.

27 "*Hazardous Materials*" means any substance: (i) that now or in the future is regulated or governed by,
28 requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance,
29 pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, and
30 any amendment thereto, including the Comprehensive Environmental Response Compensation and
31 Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"), and the Resource Conservation and Recovery Act,
32 42 U.S.C. § 6901 et seq. ("RCRA"), or (ii) that is toxic, explosive, corrosive, flammable, radioactive,
33 carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons,
34 polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.

35 "*Release*" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting,

1 escaping, leaching, disposing, or dumping, or as otherwise defined under RCRA, CERCLA, or any other
2 federal, state, or local Environmental Law, including laws relating to emissions, discharges, releases, or
3 threatened releases of pollutants, contaminants, chemicals, or industrial, toxic, or hazardous substances or
4 wastes into the environment (including ambient air, surface water, ground water, land surface, or subsurface
5 strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal,
6 transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic, or hazardous substances
7 or wastes, as may be amended from time to time, or other Environmental Laws.

8 **20.2. City's Environmental Obligations.** City represents and warrants that it has not created,
9 placed, stored, transported, or disposed of any Hazardous Materials nor is it aware of any Environmental
10 Condition in, on, at, around, under, or affecting all or any part of the Premises. City and ACH has caused a
11 Phase I Environmental Site Assessment of the Premises to be conducted. That said Phase I Environmental
12 Site Assessment revealed no evidence of any recognized environmental conditions or business
13 environmental risks in connection with the Premises. Both City and ACH have reviewed the findings of
14 the report and agree that no additional investigation will be necessary.

15 **20.3. ACH's Environmental Obligations.** ACH covenants and agrees that it shall not create, place,
16 store, transport, or dispose of any Hazardous Materials in, on, at, around, or under any part of the Premises;
17 provided, however, (i) ACH may store and use normal quantities of those Hazardous Materials customarily
18 used in the conduct of general office activities, such as copier fluids and cleaning supplies, and landscaping,
19 such as fertilizers and insecticides, as long as ACH's storage and use of such Hazardous Materials complies
20 with all Environmental Laws, and (ii) City hereby expressly acknowledges and agrees that ACH will utilize
21 the Premises for the operation of an outpatient medical clinic and those purposes related thereto, and, as
22 such, ACH may from time to time, in the normal, ordinary course of its operations, generate and/or store
23 certain substances considered to be Hazardous Materials, and so long as ACH shall store and handle said
24 substances in accordance with applicable law, ACH shall not be deemed to have violated the provisions of
25 this Lease. City further acknowledges and agrees that ACH may maintain one or more x-ray machines at
26 the Premises, provided that said x-ray machine(s) are installed, maintained, and operated in accordance
27 with applicable manufacturer and industry guidelines. ACH shall be responsible for all Environmental
28 Compliance Liability with respect to the Premises which results from ACH's negligence or misconduct or
29 that of its agents, employees, or contractors. Notwithstanding anything to the contrary contained elsewhere
30 herein, ACH agrees to be responsible for and indemnify, defend, and hold harmless City and its officials,
31 directors, and employees and its successors and assigns, from and against any and all losses, claims,
32 liabilities, damages, judgments, expenses (including reasonable attorneys' fees and disbursements), fees,
33 fines, and other costs (whether relating to or arising out of actions or claims by governmental authorities or
34 private parties), relating to or arising out of the existence of any Environmental Condition created in, on,
35 at, or under the Premises during the Term (except to the extent resulting or arising from the gross negligence

Commented [CT7]:
This obviously needs some language to deal with x-rays, MRI's, and any other kinds of materials, pharmaceuticals, etc., that are necessary.

There also needs to be some kind of notice procedure for the unexpected that may trigger an environmental question.

1 or willful misconduct of City or its officials, employees, agents, contractors, licensees, guests, or invitees)
2 arising from the negligence or misconduct of ACH. It is a condition to ACH's obligations under this Section
3 that ACH shall receive prompt notice of any such claim against City.

4 **20.4. Legal Contests.** For purposes of this Article, any party entitled to be indemnified under Section
5 20.3 shall be referred to as the "Indemnified Party;" and any party required to so indemnify another party
6 shall be referred to as an "Indemnifying Party." The Indemnified Party shall have the right to contest, by
7 appropriate legal proceedings, but without cost, liability, or expense to the Indemnifying Party, the validity
8 of any Environmental Law, provided that such contest will not result in any lien, charge, or liability, civil
9 or criminal, or result in a default under any Leasehold Mortgage. In addition, if compliance with such
10 Environmental Law may be legally held in abeyance without the occurrence of any danger to persons or
11 property or threat thereof, lien, charge, or liability, civil or criminal, or a default under any Leasehold Mort-
12 gage, for a failure to comply during such contest, the Indemnifying Party may postpone compliance there-
13 with until the final determination of any such proceedings, provided that such proceedings are pursued in
14 good faith and with due diligence. The provisions of this Section shall survive the expiration or sooner
15 termination of this Lease.

16 **20.5. Additional City Responsibilities; Termination of Lease.** If, as a result of the presence of any
17 Environmental Compliance Liability, Hazardous Materials, or other Environmental Condition within, on,
18 under, about, or otherwise affecting the Premises which existed as of the Term Commencement Date or is
19 directly attributable to the breach by City of its obligations under this Article or the gross negligence or
20 willful misconduct of City, any of the following shall occur, then ACH shall have the right to terminate this
21 Lease upon sixty (60) days' written notice sent to City: (i) ACH shall be unable to conduct, or shall be
22 prohibited by public authorities from conducting, its normal business operations within the Premises, (ii)
23 normal business operations within the Premises or normal pedestrian and vehicular access to the Premises
24 shall be unreasonably interfered with as a result of any work of removal, repair, restoration, or other
25 construction work performed in connection with the removal and/or remediation of any such Environmental
26 Compliance Liability, Hazardous Materials, or other Environmental Condition, or (iii) City shall have failed
27 to do either of the following, at ACH's option, within the specified periods: (A) to promptly initiate and
28 diligently prosecute to completion any action which may be necessary to abate and remediate such event
29 or conditions, to ACH's satisfaction based on an environmental report prepared by a licensed environmental
30 engineer selected by ACH (and reasonably acceptable to City), showing the abatement and remediation of
31 such event or condition in compliance with applicable law, the cost for which shall be paid by City promptly
32 after written request therefor from ACH, or (B) pay to ACH, within 15 days after written request therefor,
33 the amount reasonably estimated by ACH to be required for ACH to complete the abatement and
34 remediation of such event or conditions, which estimate shall be based on a Phase I environmental site
35 assessment prepared by a licensed environmental engineer selected by ACH (and reasonably acceptable to

1 City), the cost for which shall be borne by City and included in such payment.

2 **ARTICLE 22 – FREEDOM OF INFORMATION ACT**

3 **22.1.** City and ACH agree that for purposes of this Lease, City is not providing any financial support
4 of any kind whatsoever to ACH, and therefore, any and all records of ACH, its patients, physicians, and
5 health care professionals, are strictly the property and under the control of ACH. Should there be any request
6 for such information pursuant to the Arkansas Freedom of Information Act, or the federal Freedom of
7 Information Act, City shall provide immediate notice as soon as possible to ACH. Further, City, with the
8 cooperation and assistance of ACH, shall take appropriate legal action to exempt any such records from
9 disclosure as public records of City.

10 **22.2** ACH records from its operation of the facility, including but not limited to patient, physician,
11 or health care professional records, are in no way records of City, nor shall City have access to any such
12 records except in accordance with federal and state laws on access to medical records, and even then, only
13 pursuant to appropriate procedures as set forth in federal and state law and regulations.

14 **ARTICLE 23-GENERAL PROVISIONS**

15 **23.1. Provisions Subject to Applicable Law.** All rights, powers, and remedies provided herein may
16 be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended
17 to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable, or not
18 entitled to be recorded under any applicable law.

19 **23.2. Time is of the Essence.** Time is of the essence in the performance of all of the terms and
20 provisions of this Lease; provided, however, that any prevention or delay due to Force Majeure shall excuse
21 the performance, for a period equal to the period of any such prevention or delay, of any obligation under
22 this Lease.

23 **23.3. Notices.** All notices, demands, consents, and requests which may or are to be given by any
24 party to the other shall be in writing. All notices, demands, consents, and requests to a party shall be deemed
25 to have been properly given if delivered personally to such party during business hours, or by United States
26 registered or certified mail, return receipt requested, postage prepaid, or via nationally recognized overnight
27 mail carrier addressed to such party at its address first set forth above, provided that notices to ACH shall
28 be addressed as follows: Attn: Rob Steele, SVP & CSO, Arkansas Children’s Hospital, 1 Children’s Way,
29 Slot 301, Little Rock, AR 72202, with a copy to SVP & General Counsel at the same address. A party
30 may change its address for notices by written notice to the other party in accordance with this Section 23.3.
31 Notices, demands, consents, and requests which are served upon either party in the manner aforesaid shall
32 be deemed sufficiently served or given for all purposes under this Lease as follows: (a) on the date delivered,
33 if delivered personally; (b) the third business day after being mailed, if delivered by certified or registered
34 mail; or (c) the next business day, if delivered by overnight mail.

35 **23.4. Invalidity of Particular Provisions.** If any term or provision of this Lease or the application

1 thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of
2 this Lease, or the application of such term or provision to persons or circumstances other than those as to
3 which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this
4 Lease shall be valid and be enforced to the fullest extent permitted by law.

5 **23.5. Applicable Law.** This Lease and the rights of the parties under this Lease shall be governed
6 by the laws of the State of Arkansas, and venue for any and all issues shall be in Little Rock, Pulaski County,
7 Arkansas.

8 **23.6. No Joint Venture.** It is agreed that nothing contained in this Lease shall be deemed or
9 construed as creating a partnership or joint venture between City and ACH or between City and any other
10 party, or cause either party to be responsible in any way for the debts or obligations of the other party hereto
11 or any third party.

12 **23.7. Successors.** The terms and conditions contained in this Lease shall run with the land and shall
13 bind and inure to the benefit of City and ACH and their respective successors and assigns.

14 **23.8. Contests.** ACH shall have the right, after at least ten (10) days prior written notice to City (or
15 such shorter period as may be required at law in order to preserve the right to do so), to contest the amount
16 or validity of any Imposition or law or lien by appropriate proceedings conducted in good faith and with
17 due diligence. In the event of any such contest, if the final determination thereof is adverse to ACH, then
18 ACH shall pay fully the amounts involved in such contest, together with any penalties, fines, interests,
19 costs, and expenses that may have accrued thereon or that may result from any such contest by ACH. City
20 shall join in any such proceeding if any law now or hereafter in effect shall require that such proceedings
21 be brought by or in the name of City as owner of the Premises. Neither City nor the Premises shall be
22 subjected to any liability for the payment of any costs, fees, including attorneys' fees, or expenses in
23 connection with any such proceeding (except to the extent that such adverse determination results from or
24 is otherwise related to City's failure to comply with its obligations under this Lease, or City's gross
25 negligence or misconduct). ACH shall be entitled to any refund of any such Imposition and penalties or
26 interest thereon, which shall have been paid by ACH or paid by City, for which City shall have been fully
27 reimbursed.

28 **23.9. Nondiscrimination.** Each party covenants by and for itself, its successors and assigns, and all
29 persons claiming under or through it, and this Lease is made and accepted upon and subject to the condition,
30 that there shall be no discrimination against or segregation of any person or group of persons on account of
31 basis of race, color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation,
32 gender identity, or genetic information, in the leasing, subleasing, transferring, use, or enjoyment of the
33 Premises nor shall either party, or any person claiming under or through it, establish or permit any such
34 practice or practices of discrimination or segregation with reference to the selection, location, number, use,
35 or occupancy of tenants, subtenants, licensees, vendees, invitees, or customers with respect to the Premises

1 or the operation of any business thereon. Each party and any employee or other person acting through or
2 under its direction or control, shall fully comply with all federal, state and local laws, regulations and
3 ordinances prohibiting discrimination on the basis of race, color, creed, religion, sex, national origin, age,
4 disability, marital status, sexual orientation, gender identity, or genetic information, including without
5 limitation Ordinance No. 21,031 of the City of Little Rock, Arkansas, dated April 21, 2015.

6 **23.10. Interpretation.** The language in all parts of this Lease shall be construed as a whole according
7 to its fair meaning, and not strictly for or against either City or ACH. The captions used in this Lease are
8 for convenience only and shall not be considered in the construction or interpretation of any provision of
9 this Lease. When the context of this Lease requires, the neuter gender includes the masculine, the feminine,
10 or a partnership, corporation or joint venture, and the singular includes the plural. The terms "shall," "will,"
11 and "agree" are mandatory. The term "may" is permissive. When a party is required to do something by this
12 Lease, it shall do so without right of reimbursement from the other party unless a specific provision is made
13 therefor.

14 **23.11. Integration.** This Lease constitutes the entire agreement between the parties hereto with
15 respect to the subject matter hereof and there are no conditions, representations, or agreements regarding
16 the matters covered by this Lease which are not expressed herein.

17 **23.12. Memorandum of Lease for Recording.** City and ACH may, upon the Term Commencement
18 Date, execute a memorandum or "short form" of this Lease in a form prepared by City and reasonably
19 acceptable to ACH, for purposes of, and in a form suitable for, being recorded. The memorandum or "short
20 form" of this Lease shall describe the parties, City and ACH, set forth a description of the Premises, specify
21 the Term of this Lease, and shall incorporate this Lease by reference. Said memorandum shall be recorded
22 in the real estate records of the office of the Circuit Clerk and Ex-Officio Recorder of Pulaski County,
23 Arkansas, as soon as practicable after the date of execution of this Lease.

24 **23.13. Consents.** Whenever any consent or approval is required under the terms of this Lease, except
25 as otherwise specifically provided herein, such consent shall not unreasonably be withheld, conditioned, or
26 delayed.

27 **23.14. Quiet Enjoyment.** City represents and warrants that it is seized in fee simple title to the
28 Premises. City covenants that, provided no ACH Default has occurred, ACH shall have quiet and peaceful
29 possession of the Premises as against City and any person claiming the same by, through or under City.
30 City further represents and warrants that it has good right, full power, and lawful authority to enter into this
31 Lease for the Term and any renewal terms.

32 **IN WITNESS WHEREOF,** the parties have executed this Lease as of the date first written above.

33 CITY OF LITTLE ROCK, AS LANDLORD

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35 By: _____

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Mark Stodola, Mayor

ARKANSAS CHILDREN'S HOSPITAL, AS TENANT

By: _____
Robert W. Steele, MD, MBA
Senior VP/Chief Strategy Officer

