

1 RESOLUTION NO. _____
2

3 A RESOLUTION TO AUTHORIZE THE MAYOR TO EXECUTE A
4 LEASE AGREEMENT BETWEEN THE CITY OF LITTLE ROCK,
5 ARKANSAS, AND WOMEN AND CHILDREN FIRST: THE CENTER
6 AGAINST FAMILY VIOLENCE, WITHIN PARK PROPERTY LOCATED
7 IN THE SOUTHWEST COMMUNITY PARK; AND FOR OTHER
8 PURPOSES.
9

10 WHEREAS, the Parks & Recreation Department issued Bid No. 556 for the lease of park property
11 located within the Southwest Community Park to a vendor that provides crisis intervention, safe shelter,
12 social and legal advocacy, and support services for families suffering from domestic violence; and,

13 WHEREAS, Women and Children First: The Center Against Family Violence was the only
14 respondent but was determined to be able to provide those services; and ,

15 WHEREAS, the City Board of Directors has determined that it is in the best interests of the City for
16 the City to lease property to Women and Children First: The Center Against Family Violence, located in
17 the Southwest Community Park; and,

18 WHEREAS, the term of the lease shall be for a period of ninety-nine (99) years from date of
19 commencement; and,

20 WHEREAS, Women and Children First: The Center Against Family Violence shall pay an annual
21 fixed rate sum of One Dollar (\$1.00) per annual rent.

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

24 Section 1. The Mayor and the City Clerk are hereby authorized to execute, the Lease Agreement as
25 in substantially the form attached as Exhibit 1 to this resolution and or finally approved by the City
26 Attorney, for the following described property for the total sum of Ninety-Nine Dollars (\$99.00) for a
27 ninety-nine (99) year period:

28 City of Little Rock, Arkansas - Daily Drive A part of the NI/2 of the NWI/4 of
29 Section I, Township 1 South, Range 13 West, Pulaski County, Arkansas, more
30 particularly described as follows: Commencing from the SE comer of the NI/2
31 of the NWI/4 of Section 1, Township I South, Range 13 West; thence (PT NW
32 NE & PT NE NW MPDA COM SW COR NW NE TH S87*11'39"E AL SLN
33 OF SD NW NE 154.94' TO POB TH N02*07'40" E550.68' TH

1 **S87*47'40"W300.0' TH S02*07'43"E550.68' TH S87*11'39"E AL TH N**
2 **BOUNDARY OF LTS 6 & 7 BLOCK 11 FAIRFIELD SUB & CONTINUING E**
3 **IN R/W OF WARREN ROAD 300') to the point of beginning. This land is**
4 **known as Parcel No. 45L0010000703 and contains 3.79 acres; and,**

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

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

12 **ADOPTED: October 15, 2019**

13 **ATTEST:**

14
15 _____
16 **Susan Langley, City Clerk**

15 _____
16 **Frank Scott, Jr., Mayor**

17 **APPROVED AS TO LEGAL FORM:**

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19 _____
20 **Thomas M. Carpenter, City Attorney**

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1 **Exhibit A**

2 **LEASE AGREEMENT**

3 **THIS LEASE AGREEMENT**, dated as of October ___, 2019, is made by and between the City
4 of Little Rock, Arkansas ("City"), as Landlord, whose address is City Hall, 500 West Markham
5 Street, Little Rock, Arkansas, 72201, and Women and Children First: The Center Against Family
6 Violence ("Center") as Tenant, whose address is P.O. Box 1954, Little Rock, 72203.

7 **RECITALS**

8 **WHEREAS**, On May 23, 2019, the City issued a Request for Proposals Bid No. 556 for the lease of
9 park property in the Southwest Community Park to be used as a Family Peace Center that provides crisis
10 intervention, safe shelter, social and legal advocacy, and support services for families experiencing
11 domestic violence. The Request for Proposals Bid No. 556 is incorporated herein as Exhibit A; and,

12 **WHEREAS**, the Center submitted a response to City's Request for Proposals in which it proposed to
13 construct and operate a Family Peace Center in the Park, and Center proposes to construct a 20,000 to
14 30,000 square-foot facility at a cost of \$4.5 to \$6 Million Dollars in site and facility costs. Angela
15 McGraw, Executive Director, Women and Children First: The Center Against Family Violence drafted a
16 Letter of Commitment dated July 23, 2019, pledging that the Center will construct the Family Peace
17 Center at its own cost. The Price Proposal for Bid No. 556 is incorporated hereto as Exhibit B; and,

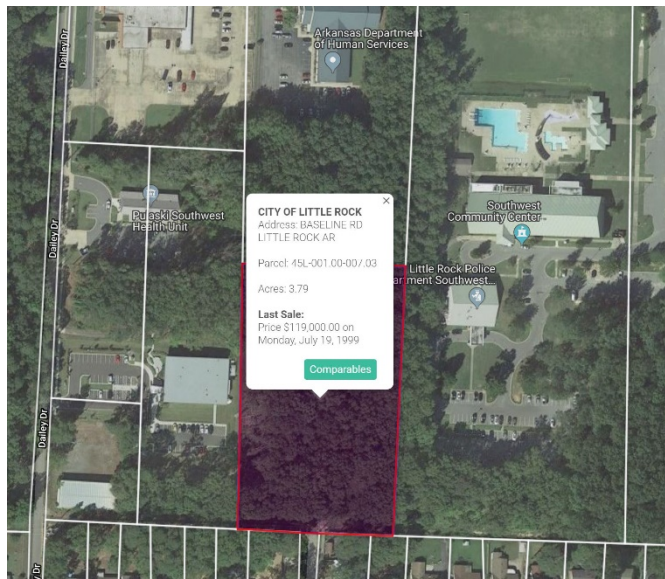
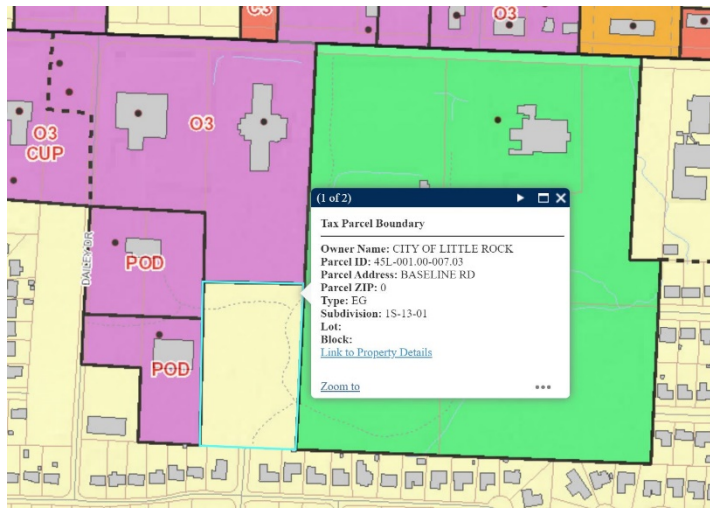
18 **WHEREAS**, pursuant to Little Rock, Ark., Resolution No. _____ (date), adopted by City's Board
19 of Directors and attached hereto as Exhibit C. Women and Children First: The Center Against
20 Family Violence was selected as the most suitable entity to enter into a lease with City for property in
21 the Southwest Community Park; and,

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

24 **ARTICLE 1-DEMISE; TERM:**

25 **1.1. Demise and Legal Description.** City hereby leases to Center for the term and upon and under
26 the conditions set forth in this Lease, the parcel of land located in the Southwest Community Park
27 ("Park") more particularly described as and hereinafter referred to as "Premises": City of Little Rock,
28 Arkansas - Daily Drive A part of the N1/2 of the NW1/4 of Section I, Township 1 South, Range 13
29 West, Pulaski County, Arkansas, more particularly described as follows: Commencing from the SE
30 comer of the N1/2 of the NW1/4 of Section 1, Township I South, Range 13 West; thence (PT NW
31 NE & PT NE NW MPDA COM SW COR NW NE TH S87*11'39"E AL SLN OF SD NW NE
32 154.94' TO POB TH N02*07'40" E550.68' TH S87*47'40"W300.0' TH S02*07'43"E550.68' TH
33 S87*11'39"E AL TH N BOUNDARY OF LTS 6 & 7 BLOCK 11 FAIRFIELD SUB &
34 CONTINUING E IN R/W OF WARREN ROAD 300') to the point of beginning. This land is known

1 as Parcel No. 45L0010000703 and contains 3.79 acres; and is as pictured below.



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3 **1.2. Term.** The term of this Lease (the "Term") shall be for a period of ninety-nine (99) years
4 commencing on _____, 2019 (the "Term Commencement Date"), and ending at 12:00 midnight,
5 _____, 2118, unless this Lease is modified, or terminated on an earlier date in accordance with
6 the terms hereof, or renewed in accordance with Section 1.3.

7 **1.3. New Term.** Prior to the end of the Term, City may solicit proposals for the operation of the
8 Family Peace Center in the manner then required by applicable law. So long as the Center is not then
9 in default under this Lease, the Center shall have the right to submit a response to City. City reserves
10 the right to modify the Term of this Lease pursuant to any changes in the applicable State Law if (a)
11 in the opinion of the governing body of City it is deemed in the best interest of City to do so and (b)
12 the modification is acceptable to the Center.

1 **1.4. Termination.** If this Lease is found to be in violation of any Federal, State or Municipal Code,
2 and such violation is not cured within sixty (60) days of receipt of written notice of such violation by the
3 Center, the Lease may be terminated by the either party upon written notice of not less than six (6)
4 calendar months. This Lease may also be terminated as otherwise mutually agreed in writing by the
5 parties. If the Center is found in a final finding or court order of intentional discrimination then the City
6 may terminate the Lease and the Center shall cease operation on the Premises immediately and direct that
7 the personal property of the Center be removed from the Premises as soon as practicable as determined by
8 the City.

9 **ARTICLE 2- RENT AND OTHER CONSIDERATION:**

10 **2.1. Annual Rent.** Commencing on the Term Commencement Date and continuing throughout
11 the remainder of the Term and any renewal term, the Center shall pay an annual fixed rent of One
12 Dollars (\$1.00) (the "Annual Rent").

13 **2.2. Payment of Rent.** The Annual Rent shall be paid in advance on the Term Commencement
14 Date and on Center's one (1)-year anniversary thereof during the Term and any renewal term. The
15 Center, at its option, may pay the Annual Rent for the Term or any renewal term in advance.

16 **2.3. Other Consideration.** The amount of the Annual Rent, having been approved by City's
17 Board of Directors by its Little Rock, Ark., Resolution No. _____ (date), which is hereto as
18 Exhibit, together with the commitment of the Center made pursuant to this Lease to construct and
19 operate the Family Peace Center, constitute the consideration hereunder.

20 **ARTICLE 3- IMPROVEMENTS:**

21 **3.1. Construction of the Family Peace Center.**

22 **(a)** The Center shall construct on the Premises the improvements constituting the
23 Family Peace Center substantially in accordance with the Center's response to City's
24 Request for Proposals, which included the proposed timeline for construction all of
25 which shall be compatible with the use of the Premises as a City Park. All plans for the
26 design, construction, and development of the Premises and any building on the Premises
27 shall be subject to the review and approval of the City. City shall not unreasonably
28 withhold approval. The Center shall build, operate, and maintain the Premises in a
29 manner that is consistent with a "city in a park" atmosphere, which includes connecting
30 to any existing city park trail system and building such improvements that are reasonably
31 feasible. The estimated value of the improvements constructed by the Center is between
32 approximately \$4.5 to \$6 Million Dollars. These costs include the construction of the
33 facility, site preparation, landscaping and parking lot.

34 **(b)** The Center shall complete the improvements on the Premises pursuant to the proper

1 building permits issued by City in the manner provided by law. City agrees that issuance
2 of such Building Permits will not be unreasonably withheld or delayed.

3 (c) The Center shall cause its contractor to provide payment and Performance Bonds for
4 construction of the improvements described in this Section and any future construction.

5 (d) The Center shall comply with City Ordinances, as they currently exist or may be
6 hereinafter revised, amended, or adopted, particularly with respect to signage in City
7 Parks, and the Article IX, Chapter 26 of the City Code of Ordinances.

8 **3.2. Cooperation.** The parties acknowledge that the construction to be undertaken by the Center
9 under this Article will require close cooperation and coordination. To this end, the Center agrees to use
10 its best efforts to keep City apprised of the Center's plans regarding the Premises.

11 **ARTICLE 4-USE; ACCESS:**

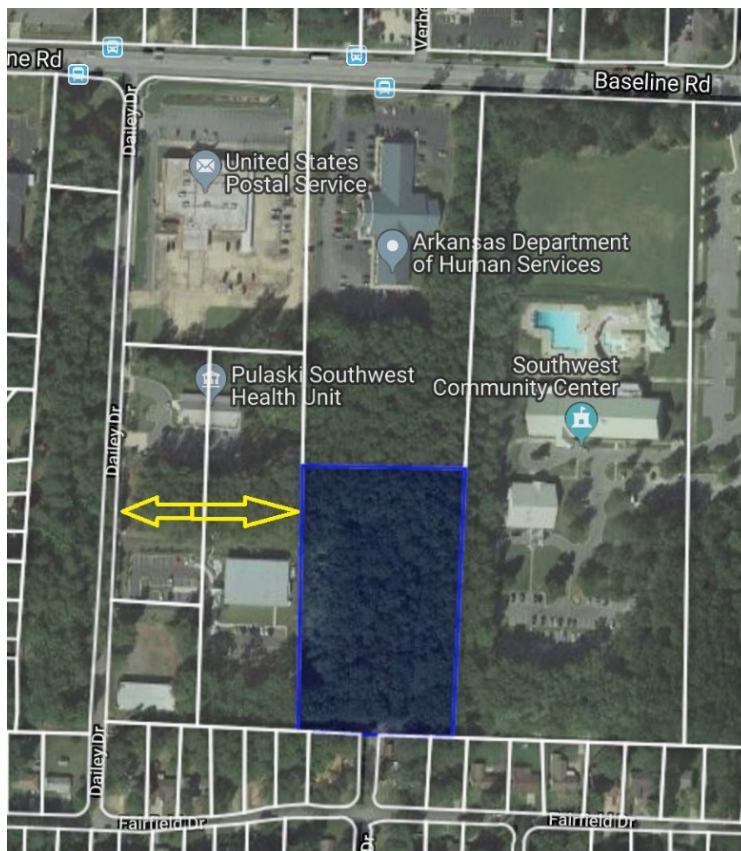
12 **4.1. Use of Premises.** The Parties agree that due to the nature of the Family Peace Center and
13 inherent safety concerns that the Center may erect security fencing around the parking lot of the Family
14 Peace Center and around the Family Peace Center itself. The Center shall also have the right to maintain
15 a gate across its entry drive to control vehicle access on to the site. In keeping with the public park
16 theme, the Center shall either maintain or reconstruct, as necessary, the existing public trails on the site so
17 as not to deny pedestrian access through the area that currently exists. The parties acknowledge that City,
18 acting through its Parks and Recreation Department, will be responsible for programming, as that term is
19 defined in the City Master Parks Plan, for the Park. City agrees to work in cooperation with the Center in
20 the development of programming for the Premises to maintain the theme for the Premises and avoid
21 scheduling conflicts.

22 **4.2. Access to Premises.** The Center shall have access to the entire Premises at all times during the
23 Term, except to the extent otherwise expressly provided herein. City shall not permit or create, or cause
24 to be permitted or created, any continuing event or condition that prevents, restricts, or otherwise
25 materially interferes with the Center's use and enjoyment of the Premises for its intended purpose,
26 provided that nothing within this Agreement precludes the City from temporary disruptions based upon
27 the need for repairs or constructions, provided thirty (30) days prior notice is given to the Center, except
28 in an emergency, in which case notice is to be provided as quickly as possible. The Center shall have the
29 right to construct an access drive from Dailey Drive to the Premises. This drive shall be constructed
30 according to all City of Little Rock Public Works Department requirements for two (2)-way access on to
31 the Premises. The drive shall generally run in an east-west direction and lie between the existing Pulaski
32 Southwest Health Unit and the Arkansas Children's Hospital Southwest Clinic as shown in the graphic
33 below.

34 **4.3. The Center's Personal Property.** All personal property not permanently affixed, including, but

1 not limited to, furniture, furnishings, machinery, equipment, movable trade fixtures, and other personal
2 property at the Premises, supplied by or installed by or on behalf of the Center ("Personal Property") shall
3 remain the property of the Center. The Center may remove its Personal Property from the Premises at
4 any time during the Term.

5 4.4. The Center shall have the right, without obtaining City's prior written consent, to enter into
6 various leasing or other financing arrangements with respect to the Center's Personal Property
7 ("Equipment Financing"). These leasing or financing arrangements need to serve a Public Park or Center
8 purpose. City shall not have any lien for the performance of any obligations of the Center upon any of the
9 Center's Personal Property and City hereby expressly waives the provisions of any law giving to it such a
10 lien. City agrees, if requested by or on behalf of any lender to which the Center shall grant a security
11 interest in the Center's Personal Property or any lessor of the Center's Personal Property in connection
12 with such Equipment Financing (collectively, the "Equipment Lessor"), to promptly execute,
13 acknowledge, and deliver such waivers or other instruments reasonably required by the Center or the
14 Equipment Lessor to confirm that City: (i) has waived any such lien, (ii) agrees that the Equipment Lessor



15 shall have the right to enter upon the Premises for the purposes of removing the Center's Personal
16 Property, and (iii) shall not hinder or delay such removal, provided that the Center or the Equipment
17 Lessor shall agree to repair any damage to the Improvements caused by such removal and otherwise

1 comply with the terms of this Lease in connection with such removal and not otherwise be in default.

2 **4.5. Title to Improvements.** "Improvements" means any buildings, structures, and fixtures, and any
3 renewals and replacements thereof, erected, built, installed, or constructed upon the Premises during the
4 Term of this Lease. Title to all Improvements shall remain the property of the City during the Term of this
5 Lease. Upon termination of this Lease, the Premises and all Improvements shall become the sole property
6 of the City in fee simple and free and clear of all encumbrances excepting only the lien of taxes assessed,
7 if any, but not yet due and payable (for which the Center shall remain obligated to pay to the extent that
8 they are allocable to the period prior to the termination of this Lease).

9 **ARTICLE 5-OPERATION AND MAINTENANCE:**

10 **5.1. Operation and Maintenance.** Throughout the Term of this Lease:

11 (a) The Center shall maintain all of the Premises.

12 (b) The Center shall furnish electricity for all outdoor lighting and other outdoor electrical use on
13 the Premises (if needed by the Center). The Center shall be required to install a separate
14 electrical meter.

15 (c) The Center shall furnish potable water for all outdoor water use on the Premises.

16 (d) The Center will submit voluntarily to any inspections requested by the City to review the
17 Center facility on the Premises for compliance with this lease, applicable City codes,
18 regulations, and ordinance requirements, provided such requests are made in accordance with
19 applicable law.

20 **5.2. Operating Procedures.** The parties agree that the maintenance and operation of the Premises is
21 the sole responsibility of the Center. The Center agrees to provide notice of such maintenance operation
22 procedures upon request by City. The Center agrees to consider in good faith any amendment or
23 supplement to the Operating Procedures requested in writing by the City.

24 **5.3. Parking.**

25 (a) **Management.** The Center shall manage and operate or oversee the management and
26 operation of the parking areas on the Premises in accordance with the Operating Procedures.
27 Parking on the Family Peace Center shall strictly be accessed only through a gated entry to
28 the Family Peace Center and will be available only for staff, Center approved guests and City
29 Staff. .

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

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

2 **6.1. "Construction" Defined.** As used in this Article, "construction" includes initial construction of
3 the Improvements as contemplated in Sections 3.1 and 3.2, work performed in connection with any
4 Restoration pursuant to Section 9.2 or Alteration pursuant to Section 6.5, and any other construction
5 carried on by either party at the Premises.

6 **6.2. Construction to Proceed in Reasonable Manner:**

7 **(a)** Until completion of the Family Peace Center, the Center agrees that construction shall not (i)
8 unreasonably interfere with the operation of the Southwest Community Center. Neither party
9 shall unreasonably interfere with the other party's operations and rights as contemplated by
10 this Lease.

11 **(b)** After completion of the Family Peace Center, both parties agree not to unreasonably interfere
12 with the other party's operations and rights as contemplated by this Lease. This clause does
13 not prevent the City from enforcing its rights against the Center by terminating this lease in
14 accordance with Section 1.4. Specifically, the City wants to ensure that the Center does not
15 violate the City's Non-Discrimination Ordinance No. 21,031.

16 **(c)** Notwithstanding the foregoing, or anything else in this Article, neither party shall perform
17 construction or erect barricades in a manner which materially adversely affects, or otherwise
18 substantially interferes with, the use and operation of the Premises or the Public Park in the
19 manner contemplated by this Lease, except to the extent specifically permitted in this Lease.
20 Nothing in this Section shall preclude the use of perimeter fencing of the Premises during
21 construction of the improvements described in Article 3.

22 **6.3. Safety Matters.** The Center is responsible for construction and shall take all safety
23 measures reasonably required to protect the other party and all Premises visitors and the property of
24 the Center from injury or damage caused by or resulting from the performance of its construction.

25 **6.4. Workmanship.** Evidence of Compliance with Construction Requirements. The Center
26 agrees that all construction to be performed under this Lease by the Center shall be done in a
27 diligent, good, and workmanlike manner and in accordance with all applicable laws, including the
28 standards set forth in Section 3.1(b). The Center shall pay all costs, expenses, liabilities, and liens
29 arising out of or in any way connected with such construction. After it has completed any
30 construction, the Center shall, within sixty (60) days after the written request, deliver to the City
31 evidence that the construction has been completed in compliance with all applicable laws.

32 **6.5. Alterations.** At any time and from time to time during the Term, the Center may, but is not
33 obligated to, construct or otherwise make new improvements on any part of the Premises and
34 demolish, remove, replace, alter, relocate, reconstruct, or add to any existing improvements in whole

1 or in part, to modify or change the contour or grade, or both, of the Premises (any of which activities
2 is referred to herein as an "alteration"), provided that all of the following conditions are satisfied
3 with respect to the alteration in question:

4 (a) Any alteration which changes the building foot print shall be subject to prior approval of
5 City, which consent shall not be unreasonably withheld or delayed.

6 (b) Once commenced, the alteration shall be effected with due diligence, in a good
7 workmanlike manner, and in material compliance with all laws and insurance
8 requirements.

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

15 **6.6. Center Improvements.** City shall cooperate with the Center (including its architects and
16 contractors), which shall include but not be limited to, executing all documents, providing all
17 information, appearing before governmental boards and authorities, and such other actions as may be
18 required or otherwise reasonably requested by the Center in connection with obtaining all building
19 permits, licenses, and other governmental approvals and authorizations which may be required to
20 commence or complete improvements and other work at the Premises proposed by the Center, at Center's
21 written request.

22 **6.7. Liens.** The Center agrees that in the event any mechanic's lien or other statutory lien shall be filed
23 during the Term against the ownership or leasehold interest of the other party in the Premises by reason of
24 work, labor, services, or materials supplied to or at the request of the party or pursuant to any
25 construction, it shall pay and discharge the same of record within sixty (60) days after receiving notice of
26 the filing thereof, subject also to the provisions of the following sentence. The Center shall have the right
27 to contest the validity, amount, or applicability of any such liens by appropriate legal proceedings, and so
28 long as it shall furnish bond or indemnity, and be prosecuting such contest in good faith, the requirement
29 that it pay and discharge such items within said sixty (60)-day period shall not be applicable. In the event
30 such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to the
31 party contesting such liens, such party shall, within five business days thereafter, cause the lien(s) to be
32 discharged of record.

33 **ARTICLE 7- INSURANCE:**

34 **7.1. Extended Coverage and Liability.** The Center, throughout the term, shall maintain, with

1 respect to the Premises and improvements, insurance of the following character:

- 2 (a) All improvements shall be insured with extended coverage for special cause of loss property
3 insurance, in the amount of the replacement value thereof. Such insurance shall include
4 coverage for any other named perils customarily insured against in the general vicinity of the
5 Premises.
- 6 (b) Comprehensive public liability and property damage insurance covering the Premises and the
7 Improvements with combined single limit coverage in an amount not less than One Million
8 Dollars (\$1,000,000.00), and Two Million Dollars (\$2,000,000.00) aggregate where
9 applicable. The policy representing such insurance shall insure the Center against liability for
10 injury to persons or property damage occurring in or about the Premises or arising out of the
11 ownership, maintenance, operation, use, or occupancy thereof and shall include the City as an
12 additional insured party.
- 13 (c) A policy or policies of Worker's Compensation Insurance sufficient to comply with all
14 applicable laws.
- 15 (d) Such other insurance, in such amounts and against such other risks, as deemed necessary by
16 the Center.

17 **7.2. Builder's Risk Insurance.** During the construction of any Improvements, the insurance required
18 by this Article shall be in the form commonly known as "Builder's Risk" on an "special cause of loss"
19 basis including without limitation coverage against fire, lightning, wind damage, hail, and collapse. The
20 policy shall be secured and maintained by the Center or its general contractor in a form and amount as
21 may from time to time be determined by the Center. Coverage shall include all materials, supplies, and
22 equipment that are intended for specific installation in the improvements while such materials, supplies,
23 and equipment are located in or on the Premises, in transit, and while temporarily located away from the
24 Premises for the purpose of repair, adjustment, or storage at the risk of one of the insured parties.

25 **7.3. Carriers; Policies.** All insurance provided for and pursuant to this Article shall:

- 26 (a) Be effected under a valid and enforceable policy or policies issued by insurers of recognized
27 responsibility licensed to do business in the State of Arkansas;
- 28 (b) Require the applicable insurance carrier to endeavor to provide at least ten (10) days' notice
29 to the other party hereto of any cancellation of the policy and, to the extent obtainable without
30 additional premium, such insurance shall not be invalidated as to the interest of City by any
31 act, omission, or neglect of the Center, any Leasehold Mortgagee (defined in Section 13.1),
32 their respective employees or agents, or any occupant of the Premises which might otherwise
33 result in a forfeiture or suspension of such insurance; and
- 34 (c) Have deductibles in amounts deemed appropriate by the Center.

1 (d) The Center shall be permitted to effect any of the insurance coverage required under this
2 Article to be procured and maintained by the Center by means of a "blanket" or "umbrella"
3 policy or policies of insurance.

4 **7.4. Proceeds.** Fire and extended coverage insurance proceeds paid to the Center by reason of
5 damage to the improvements shall be used by the Center to restore the improvements if the Center elects
6 to do so under Article 9.

7 **7.5. Certificate of Insurance.** Copies of the original insurance policies (or certificates thereof
8 satisfactory to City) shall be delivered to City on or before the Term Commencement Date. Thereafter, the
9 Center at all times will deliver copies to City of renewal certificates, replacement policies, or other
10 satisfactory proof of such insurance, together with satisfactory evidence of payment of the premiums
11 thereon.

12 **7.6. Release and Waiver of Subrogation.** To the extent permitted by law, the Center does hereby
13 waive all rights of recovery and causes of action, and the Center releases the City from any liability
14 (provided such party's right of full recovery under the applicable policy is not adversely affected), from
15 all claims it might otherwise have (excluding a claim for negligence) which it might have against the City
16 for losses, damage, or destruction occasioned during the lease term to the Family Peace Center or upon or
17 constituting a part of the Premises, which losses and damages are of the type covered under the policies
18 required by this Article or actually carried. The policies required by this Article shall provide for waivers
19 of any right of subrogation that the insurer of such party may acquire against the other party hereto with
20 respect to any such losses so long as the same is obtainable at no significant additional cost.

21 **7.7. Assurance of Title.** In the event that any defects in City's title to the Premises shall be
22 discovered or asserted, City agrees to exercise its power of eminent domain to cure such defects.

23 **ARTICLE 8-IMPOSITIONS:**

24 **8.1. The Center's Obligation to Pay Impositions.** The Center shall pay, before any fine, penalty,
25 interest, or cost may be added thereto for the non-payment thereof, all impositions (defined below) which
26 are hereafter assessed, imposed, or become a lien upon the Premises or any part thereof during the lease
27 term. If, by law, any such imposition may be paid in installments, the Center may pay the same in
28 installments and the Center shall only be required to pay those installments coming due during the Term.
29 "Impositions" shall be defined as all real estate taxes, taxes (including possessory interest taxes associated
30 with the Premises and the execution of this Lease), assessments (including all assessments for public
31 improvements or benefits), fees, water, sewer, or similar rates and charges, excises, levies, license fees,
32 permit fees, inspection fees, and other authorization fees and other governmental charges of any kind or
33 nature whatsoever, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or
34 hereafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, which

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

13 **ARTICLE 9-DAMAGE:**

14 **9.1. Notice.** In the event of any material damage to the improvements caused by fire or other
15 peril, the Center shall promptly give written notice thereof to City generally describing the nature and
16 extent of such damage.

17 **9.2. Restoration or Termination.**

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

31 **(b)** "Major Damage" to the Improvements shall mean such damage that the cost of
32 Restoration by reason thereof will exceed 25% of the cost to replace the Improvements in
33 the Premises in their entirety as of the date of the damage. "Major Damage" shall also
34 include damage, destruction, or casualty to the Premises or the Improvements which: (i)

1 is total or substantially total; (ii) renders the Premises, the improvements, or the use
2 thereof untenable or substantially untenable; or (iii) cannot be repaired or restored
3 at least two years prior to the expiration of the Term. "Untenantable" shall mean that the
4 Center is prevented or prohibited from using the Premises or the Improvements in a
5 manner substantially comparable to that existing on the date immediately preceding the
6 subject damage, destruction, or casualty.

7 **9.3. Effect of Lease Termination.** If the Center elects to terminate this Lease pursuant to
8 this Article, the following shall apply:

9 (a) If City so elects, the Center shall raze at Center's expense that part of the
10 Improvements that has been damaged and clear the area of all debris; provided that
11 the Center shall have no obligation under this Section if the damage, destruction, or
12 other casualty resulted from or was related to the willful misconduct of City, its
13 agents, employees, contractors, or licensees.

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

19 **9.4. Restoration.** All Restoration undertaken by the Center pursuant to this Article and
20 pursuant to Article 10 shall be effected with due diligence, in a good workmanlike manner, and
21 in material compliance with all laws and insurance requirements.

22 **ARTICLE 10 – CONDEMNATION:**

23 **10.1. Notice.** For purposes of this Article, "Taking" means the taking of all or any part of
24 the Premises or the possession thereof under the power of eminent domain by, or voluntary sale
25 of all or any part of the Premises to, any person having the power of eminent domain, provided
26 that the Premises or such part thereof is then under the threat of condemnation. In the event of a
27 Taking of all or any part of the Premises, or the commencement of any proceedings or
28 negotiations which might result in a Taking, the Center shall, within a reasonable period of time,
29 give written notice thereof to City.

30 **10.2. Total Taking.** This Lease shall terminate as of the date title vests in the condemning
31 authority or the date the condemning authority is entitled to possession, whichever first occurs
32 (the "Date of Taking"). In case of a Taking of such a substantial part of the Premises or
33 Improvements as shall result in the Premises remaining after such Taking (even if Restoration
34 were made) being unsuitable or economically unfeasible for the use to which the Premises had

1 been put by the Center prior to such Taking, the Center may, at its option, terminate this Lease
2 by written notice to City given within ninety (90) days after the Date of Taking, such termination
3 to be effective as of a date specified in such notice; provided, however, the Center shall be
4 relieved of all monetary obligations and other liabilities arising under this Lease from and after
5 the Date of Taking. Any Taking of the Premises of the character referred to in this Section which
6 results in the termination of this Lease is referred to as a "Total Taking". If the Center elects to
7 terminate this Lease as provided in this Section, then the parties shall be released without further
8 obligations to the other party as of the effective date of such termination subject to (i) the
9 indemnification provisions of Article 15 with respect to events occurring prior to termination, and
10 (ii) the payment to City by the Center of all accrued obligations of the Center to City under this Lease
11 as of the effective date of such termination.

12 **10.3. Partial Taking.** In case of a Taking of the Premises or the Improvements other than a Total
13 Taking (a "Partial Taking"), (i) this Lease shall remain in full force and effect as to the portion of the
14 Premises remaining immediately after such Taking, and (ii) the Center shall promptly commence
15 and complete Restoration of the Premises provided that the Center shall not be obligated to expend
16 more for the Restoration than the amount awarded for such Restoration by the condemning authority,
17 which amount shall be paid to the Center for use in completing such Restoration.

18 **10.4. Award.** Any award and other payments to the Center on account of a Taking, less costs,
19 fees, and expenses incurred in the collection thereof ("Net Award"), shall be applied as follows:

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

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

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

29 (i) The Center shall attempt to obtain a separate award for its own damages resulting from
30 such temporary Taking;

31 (ii) if the condemning authority fails or refuses to grant separate awards to Center, then the Net
32 Award for a Taking for temporary use shall be divided between City and the Center based
33 on the then existing value of their respective interests in the Improvements on the
34 affected portion of the Premises.

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

3 **10.5. Abatement of Rent.** There shall be no abatement of Annual Rent in the event of a Partial
4 Taking or a Taking for temporary use.

5 **10.6. City's Condemnation Covenant.** City hereby covenants and agrees not to condemn Center's
6 interest in the Premises and Improvements and to refrain from consenting to or permitting any Taking by
7 any other governmental authority without obtaining Center's prior written consent thereto. In addition, the
8 Center may, at its option and in its sole discretion, participate in any proceedings and negotiations in
9 connection with any such Taking and other agreements relating or incidental thereto.

10 **ARTICLE 11-LIENS:**

11 **11.1. No Liens.** The Center will not create any mortgage, deed of trust, lien, security interest,
12 encumbrance, or charge on, pledge of, or conditional sale or other title retention agreement with respect to
13 the Premises, other than (i) this Lease, sublease and other agreements permitted by Article 12, and
14 Leasehold Mortgages permitted by Article 13, (ii) liens for Impositions not yet payable or being contested
15 as permitted by Section 23.8, (iii) liens of mechanics, materialmen, suppliers, or vendors for sums which
16 under the terms of the related contracts are not at the time due or which are being contested as permitted
17 by Section 23.8, (iv) the granting of easements, restrictions, and rights of way necessary or desirable in
18 connection with the construction of the Improvements or otherwise granted in the ordinary course of
19 business; or (v) liens on and in connection with any Equipment Financing or otherwise in connection with
20 the acquisition of Center's Personal Property.

21 **11.2. Mechanics' Liens.** the Center agrees that the Center will, at all times when the same may be
22 necessary, or in Center's opinion desirable, and subject to Center's rights under Section 23.8, take such
23 action as may be required under any law then in existence which will prevent the enforcement of any
24 mechanics' or similar liens against the fee of the Premises for or on account of labor, services, or
25 materials furnished to the Center or furnished at Center's request.

26
27 **ARTICLE 12-ASSIGNMENT AND SUBLEASING:**

28 **12.1. Assignment.** Except as permitted by Article 14 below, neither party may assign all or any part
29 of its interest in this Lease, the Improvements, or the Premises without the other party's prior written
30 consent. Any attempted assignment that does not comply with the provisions of this Article 12 or Article
31 14 below shall be voidable at the non-assigning party's option. A party's consent to any assignment shall
32 not constitute a waiver of the provisions of this Article 12 or Article 14 below as to any subsequent
33 proposed assignment.

34 **12.2. Sublease.** The Center may not sublease all or any part of the improvements or the Premises;

1 provided, however, that the Center may make such sublease to any persons or entities with City's prior
2 written consent. The following provisions shall apply to any sublease by the Center:

3 (a) The Center shall remain obligated to perform Center's obligations to the City under this
4 Lease.

5 (b) The Center sublease shall contain a provision requiring Center's sublease to terminate and
6 possession return to City in the event this Lease is terminated.

7 **12.3. Provisions Applicable to Subleases.** The following provisions shall apply to any sublease
8 proposed by the Center:

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

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

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

17 **ARTICLE 13-LEASEHOLD MORTGAGES:**

18 **13.1. Center's Right to Create Leasehold Mortgages.** At any time and from time to time during
19 the Term, the Center may encumber all or any part of its interest in the Premises or the improvements by
20 way of one or more deeds of trust, mortgages, or other security devices (a "Leasehold Mortgage", the
21 holder of which is referred to herein as a "Leasehold Mortgage"); provided, that any such Leasehold
22 Mortgage shall at all times be subject and subordinate to the rights of City under this Lease.

23 **ARTICLE 14-TRANSFER BY CITY:**

24 **14.1. Transfer.** During the Term of this Lease, City may not sell, assign, or otherwise transfer fee
25 ownership except governmental eminent domain of all or any part of the Premises to any persons or
26 entities other than the Center, the State of Arkansas, or the United States of America.

27 **14.2. Other Limitations.** City covenants and agrees with the Center that it shall not cause, create, or
28 permit (whether voluntarily, by operation of law or otherwise) any lien, claim, charge, or attachment to be
29 filed against all or any portion of the Premises, the Improvements, and any interest created by this Lease.

30 **ARTICLE 15-INDEMNIFICATION:**

31 **15.1. Indemnification of City.** The Center shall protect and, to the extent of its applicable insurance
32 coverage, indemnify, defend, and hold City harmless from and against all liabilities, obligations, claims,
33 damages, penalties, causes of action, judgments, settlements, orders, and other costs and expenses
34 (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted

1 against City or the Premises by reason of the occurrence or existence of any of the following: (i.) any
2 accident, injury to, or death of persons (including workmen) or loss of or damage to property occurring on
3 the Premises or any part thereof during the Term as a result of the acts or omissions of the Center; (ii.)
4 any use, non-use, possession, occupation, operation, maintenance, management, or condition of the
5 Premises or any part thereof during the Term by the Center; (iii.) any failure on the part of the Center to
6 perform or comply with any of the terms of this Lease; the performance of any labor or services or the
7 furnishing of any materials or other property on the Premises or any part thereof by or on behalf of the
8 Center; or (iv.) any gross negligence or willful misconduct on the part of the Center or any of its agents,
9 contractors, or employees; except as described in the preceding clauses (i.) through (iv.) to the extent
10 resulting from events on the Premises sponsored or authorized by City, any failure on the part of City to
11 perform or comply with any of the terms of this Lease or any representation made by City in this Lease,
12 or the gross negligence or willful misconduct of City, its agents, servants, employees, sub lessees
13 contractors, licensees, invitees, representatives, or assigns.

14 **15.2. Indemnification of the Center.** To the extent that City in its sole discretion decides to
15 purchase insurance for particular events sponsored by City upon the Premises, City shall protect,
16 indemnify, defend, and hold the Center harmless from and against all liabilities, obligations, claims,
17 damages, penalties, causes of action, judgments, settlements, orders, and other costs and expenses
18 (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by
19 or asserted against the Center or the Premises by reason of the occurrence or existence of any death,
20 bodily injury, personal injury, or property damage resulting from events on the Premises sponsored or
21 authorized by City, any failure on the part of City to perform or comply with any of the terms of this
22 Lease or the breach of any representation made by City in this Lease, or willful misconduct of City,
23 its agents, servants, employees, sub lessees, contractors, licensees, invitees, representatives, or
24 assigns. Nothing in this Section shall be deemed a waiver or mitigation of any statutory immunity
25 which City enjoys under Arkansas law. The City shall only be liable only to the extent of the
26 insurance carried.

27 **15.3. Use by Public for Recreational Purposes and Tort Immunity.** The provisions of Ark. Code
28 Ann. §§ 18- 11-30 I through 18- 11-307 shall be applicable to the duties and liability of City and the
29 Center to the extent permitted by law. City will rely on the defense of tort immunity as provided by Ark.
30 Code Ann.§ 21-9-301 when applicable.

31 **ARTICLE 16-THE CENTER'S DEFAULT AND CITY'S REMEDIES:**

32 **16.1. The Center's Default.** The occurrence and continuation beyond the expiration of
33 applicable notice and cure periods of anyone or more of the following events shall be a "Center
34 Default," unless such event is being contested or appealed as allowed in this Lease:

- 1 (a) The Center shall fail to pay any sum due to City under this Lease within thirty (30) days
2 after written notice that the same is past due and payable; and/or,
- 3 (b) The Center shall fail to perform or comply with any other term of this Lease, and such
4 failure shall continue for more than sixty (60) days after notice thereof from City, and the
5 Center shall not within such period commence with due diligence and dispatch the curing
6 of such default, or having so commenced, shall thereafter fail or neglect to prosecute or
7 complete with diligence and dispatch the curing of such default; and/or,
- 8 (c) The filing by or against the Center of any proceedings under any State or Federal
9 Insolvency or Bankruptcy Law, or any comparable law that is now or hereafter may be in
10 effect, whether for liquidation or reorganization, where such proceedings are not
11 dismissed within ninety (90) days after filing; and/or
- 12 (d) The entry of an order for relief against the Center under any bankruptcy, insolvency, or
13 reorganization case, and such order is upheld after any appeal; and/or,
- 14 (e) The appointment of a receiver, trustee, liquidator, custodian, or similar officer of the Center
15 or any part of the property of the Center if such appointment is not discharged within ninety
16 (90) days after such appointment; and/or,
- 17 (f) The assignment of all or substantially all of the property of the Center for the benefit of
18 creditors; and/or,
- 19 (g) A writ of attachment or execution is levied on Center's interest in this Lease which writ is not
20 discharged within ninety (90) days after attachment or execution.

21 **16.2. Notice from City.** At any time after the occurrence and during the continuance of a Center
22 default, City may give written notice to the Center of the termination of this Lease. On the date specified
23 in such notice (which shall be at least sixty (60) business days after the delivery of such notice) this Lease
24 shall terminate unless the Center has cured such default and all rights of the Center under this Lease shall
25 cease. Alternatively, City may elect to continue this Lease and enforce all of its rights and remedies under
26 this Lease. The Center shall reimburse City for all costs and expenses incurred by or on behalf of City
27 (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any Center default
28 under this Lease.

29 **16.3. Termination of Center's Right to Possession.** If a Center default has occurred and is
30 continuing, then City shall have the immediate right to re-enter the Premises and terminate Center's right
31 to possession thereof. Upon such occurrence, the Center shall promptly surrender possession of the
32 Premises and pay to City all amounts due City under this Lease. City may, but shall have no obligation to,
33 remove all persons and property therefrom, subject to Center's rights to remove and retain Center's
34 Personal Property and the improvements under Sections 4.2 and 4.3. Such property may be removed and

1 stored in a warehouse or elsewhere at the expense and risk of and for the account of the Center. Should
2 City elect to re-enter in accordance with this Lease, or should City terminate Center's right to possession
3 pursuant to legal proceedings or to any notice provided for by law, this Lease shall terminate.

4 **16.4. Post-Termination Obligations; Equitable Relief.** No expiration or termination of this
5 Lease by operation of law or otherwise, and no repossession of the Premises pursuant to Section 16.3
6 or otherwise, shall relieve either party of its liabilities and obligations arising prior to such termination or
7 repossession, all of which shall survive such expiration, termination, or repossession, including,
8 without limitation, the right of either party under Article 15 to indemnification for liability arising
9 prior to termination of this Lease to the extent provided for therein for personal injuries or property
10 damage, nor shall anything in this Lease be deemed to affect the right of a party to equitable relief
11 where such relief is permitted at law.

12 **16.5. No Waiver by City.** No waiver of any breach shall affect or alter this Lease, which shall
13 continue in full force and effect, or the respective rights of City or the Center with respect to any
14 other then existing or subsequent breach. The failure of City to insist upon strict performance of any
15 of the obligations of the Center under this Lease in one or more instances shall not be deemed a
16 waiver of City's right to insist upon the full and strict performance of the same or any other
17 obligation of the Center at a subsequent time nor shall the failure of City to seek redress for the
18 violation of any obligation or covenant of the Center be deemed to preclude City from seeking
19 redress for any subsequent violation nor to prevent a subsequent act which would originally have
20 constituted a violation from having all the force and effect of an original violation.

21 **16.6. City's Remedies Cumulative.** Each Center right, power, and remedy of City provided for
22 in this Lease or existing at law or in equity shall be cumulative and concurrent and shall be in
23 addition to every other right, power, or remedy provided for in this Lease or existing at law or in
24 equity, and the exercise or beginning of the exercise by City of any one or more of the rights,
25 powers, or remedies provided for in this Lease or existing at law or in equity shall not preclude the
26 simultaneous or later exercise by City of any or all such other rights, powers, or remedies.

27 **16.7. Force Majeure.** Anything to the contrary contained in this Lease notwithstanding, the
28 Center shall not be deemed to be in default of any such obligations if it shall be prevented from or
29 delayed in performing such obligation by reason of the occurrence of a Force Majeure, and Center's
30 time for such performance shall be extended by the number of days during which any condition of
31 Force Majeure prevails. "Force Majeure" means delays or defaults due to causes beyond the
32 reasonable control of the party obligated to perform, which may include: war; insurrection; strikes,
33 lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy;
34 epidemics; quarantine restrictions; unusually severe weather; or other causes beyond the reasonable

1 control of the party obligated to perform (except financial inability). An extension of time for any
2 such cause shall be for the period of the enforced delay and shall commence to run from the time of
3 the commencement of the cause if notice by the party claiming such extension is given to the other
4 party or parties within sixty (60) days after the commencement of the cause.

5 **ARTICLE 17-CITY DEFAULT AND CENTER’S REMEDIES:**

6 **17.1. City Default.** A "City Default" shall have occurred under this Lease, thereby entitling the
7 Center to exercise each Center’s right, power, and remedy to which it is entitled under this Lease, at
8 law or in equity, if City breaches any representation or warranty (when made) or covenant on its part
9 to be performed under this Lease which is not cured within sixty (60) days (or such sooner period as
10 may be required by law, or by virtue of an emergency) after written notice by the Center to City
11 specifying City's failure to perform; provided, however, that if the nature of City's obligation is such
12 that more than sixty (60) days are reasonably required for performance, then City shall not be in
13 default if City commences performance within such sixty (60)-day period and thereafter diligently
14 prosecutes the same to completion.

15 **17.2. Force Majeure.** Anything to the contrary contained in this Lease notwithstanding, City
16 shall not be deemed to be in default of any of its obligations under this Lease if it shall be prevented
17 from or delayed in performing such obligation by reason of Force Majeure and City's time for such
18 performance shall be extended by the number of days during which any condition of Force Majeure
19 prevails.

20 **17.3. Center’s Remedies.** If a City default occurs, then the Center shall have the right, in
21 addition to any and all other remedies to which it is entitled under this Lease, (a) after sixty (60)
22 business days' (or such sooner period as may be required by law, or by virtue of an emergency)
23 written notice to City of its intent to do so, to perform any obligation of City and to either, at Center’s
24 option: (i) obtain immediate reimbursement of all costs of performing such obligation, or (ii) deduct
25 the cost of performing such obligations, or (iii) terminate the Lease; or (iv). seek specific performance.
26 The Center shall also have any other remedy available to it at law or in equity under Arkansas law,
27 which remedies shall be cumulative in the manner described by Section 16.6 for City's remedies.

28 **17.4. No Waiver.** The failure of the Center to insist upon strict performance of any obligation of
29 City under this Lease in one or more instances shall not be deemed a waiver of the Center’s right to
30 insist upon the full and strict performance of the same or any other obligation of City at a subsequent
31 time nor shall the failure of the Center to seek redress for the violation of any obligation or covenant
32 of City be deemed to preclude the Center from seeking redress for any subsequent violation nor to
33 prevent a subsequent act which would originally have constituted a violation from having all the
34 force and effect of an original violation.

1 **ARTICLE 18-ESTOPPEL CERTIFICATES:**

2 **18.1. Estoppel Certificates.** The parties agree to execute, acknowledge, and deliver within a
3 reasonable time after a written request therefor a certificate that is in a form acceptable to each
4 respective party certifying that (i) this Lease is unmodified and in full force and effect (or, if there
5 have been modifications, that this Lease is in full force and effect, as modified and stating the
6 modifications), (ii) the dates, if any, to which any rent and other sums payable under this Lease have
7 been paid, and (iii) no notice has been received by such party of any default which has not been
8 cured, and to the knowledge of such party no defaults then exist, except in either case as to defaults
9 specified in said certificate. Any such certificate may be relied upon by any prospective purchaser,
10 mortgagee, sublessee, or assignee of the Premises or any part thereof, so long as such sale, mortgage,
11 sublease or assignment is made in compliance with this Lease.

12 **ARTICLE 19-TERMINATION:**

13 **19.1. End of Term.** Upon the expiration of the Term or other termination of the Lease, the
14 Center shall quit and surrender to City the Premises in good order and condition, ordinary wear and
15 tear and damage by fire and other perils excepted. The Center agrees to execute all documents
16 reasonably necessary to evidence any such termination. The foregoing is not intended and shall not
17 be construed to derogate in any way Center's rights to remove its improvements and Center's
18 Personal Property under Sections 4.2 and 4.3.

19 **19.2. Holding Over.** Any holding over by the Center after the expiration or termination of this
20 Lease shall not constitute renewal of this Lease or give the Center any rights under this Lease or in
21 the Premises, except with the prior written consent of City. Any holding over after the expiration or
22 termination of this Lease with the consent of City shall be construed to be a tenancy from month to
23 month at a rent equal to the rent payable by the Center under this Lease prior to such expiration or
24 termination (prorated on a monthly basis) and shall otherwise be on the terms and conditions herein
25 specified so far as applicable. Any holding over without City's consent shall constitute a default by
26 the Center and entitle remedies as provided herein.

27 **19.3. Early Termination.** If the Center ceases operation of the Family Peace Center on the
28 Premises, then City may terminate this Lease. Upon such occurrence, the Center shall promptly
29 surrender possession of the Premises and pay to City all amounts due City under this Lease. City
30 may, but shall have no obligation to, remove all persons and property therefrom, subject to Center's
31 rights to remove and retain Center's personal property and the improvements under Sections 4.2 and
32 4.3. Such property may be removed and stored in a warehouse or elsewhere at the expense and risk of and
33 for the account the Center.

34 **ARTICLE 20-ENVIRONMENTAL MATTERS:**

1 **20.1. Definitions.** The meanings of the following terms when used in this Article shall be determined
2 as follows:

3 **"Environmental Compliance Liability"** means any obligation or liability arising as the result of
4 any default, violation, or breach by City or its affiliates or previous owners or tenants of any
5 portion of the Premises or adjoining owners or tenants prior to the commencement of the Term of:

6 (i) environmental permits and other approvals, consents, licenses, certificates, and authorizations
7 applicable to the Premises or the operation of a prior owner's, tenant's, or other occupant's
8 business and activities thereon which are required by Environmental Laws; (ii) any
9 environmental regulatory compliance requirements applicable to the Premises or operations
10 conducted on or from the Premises under Environmental Laws; or (iii) other Environmental
11 Laws.

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

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

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

32 **"Release"** means releasing, spilling, leaking, pumping, pouring, emitting, emptying,
33 discharging, injecting, escaping, leaching, disposing, or dumping, or as otherwise defined
34 under RCRA, CERCLA, or any other federal, state, or local Environmental Law, including

1 laws relating to emissions, discharges, releases, or threatened releases of pollutants,
2 contaminants, chemicals, or industrial, toxic, or hazardous substances or wastes into the
3 environment (including ambient air, surface water, ground water, land surface, or subsurface
4 strata) or otherwise relating to the manufacture, processing, distribution, use, treatment,
5 storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial,
6 toxic, or hazardous substances or wastes, as may be amended from time to time, or other
7 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
10 Environmental Condition in, on, at, around, under, or affecting all or any part of the Premises. City and
11 the Center has caused a Phase I Environmental Site Assessment of the Premises to be conducted.
12 That said Phase I Environmental Site Assessment revealed no evidence of any recognized
13 environmental conditions or business environmental risks in connection with the Premises. Both City
14 and the Center have reviewed the findings of the report and agree that no additional investigation
15 will be necessary.

16 **20.3. Center's Environmental Obligations.** the Center covenants and agrees that it shall not
17 create, place, store, transport, or dispose of any Hazardous Materials in, on, at, around, or under any
18 part of the Premises; provided, however, (i) the Center may store and use normal quantities of those
19 Hazardous Materials customarily used in the conduct of general office activities, such as copier
20 fluids and cleaning supplies, and landscaping, such as fertilizers and insecticides, as long as the
21 Center's storage and use of such Hazardous Materials complies with all Environmental Laws. The
22 Center shall be responsible for all Environmental Compliance Liability with respect to the Premises
23 which results from Center's negligence or misconduct or that of its agents, employees, or contractors.
24 Notwithstanding anything to the contrary contained elsewhere herein, the Center agrees to be responsible
25 for and indemnify, defend, and hold harmless City and its officials, directors, and employees and its
26 successors and assigns, from and against any and all losses, claims, liabilities, damages, judgments,
27 expenses (including reasonable attorneys' fees and disbursements), fees, fines, and other costs (whether
28 relating to or arising out of actions or claims by governmental authorities or private parties), relating to or
29 arising out of the existence of any Environmental Condition created in, on, at, or under the Premises
30 during the Term (except to the extent resulting or arising from the gross negligence or willful misconduct
31 of City or its officials, employees, agents, contractors, licensees, guests, or invitees) arising from the
32 negligence or misconduct of the Center. It is a condition to Center's obligations under this Section that
33 the Center shall receive prompt notice of any such claim against City.

34 **20.4. Legal Contests.** For purposes of this Article, any party entitled to be indemnified under

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

12 **20.5. Additional City Responsibilities; Termination of Lease.** If, as a result of the presence of
13 any Environmental Compliance Liability, Hazardous Materials, or other Environmental Condition
14 within, on, under, about, or otherwise affecting the Premises which existed as of the Term
15 Commencement Date or is directly attributable to the breach by City of its obligations under this
16 Article or the gross negligence or willful misconduct of City, any of the following shall occur, then
17 the Center shall have the right to terminate this Lease upon sixty (60) days' written notice sent to
18 City: (i) the Center shall be unable to conduct, or shall be prohibited by public authorities from
19 conducting, its normal business operations within the Premises, (ii) normal business operations
20 within the Premises or normal pedestrian and vehicular access to the Premises shall be unreasonably
21 interfered with as a result of any work of removal, repair, restoration, or other construction work
22 performed in connection with the removal and/or remediation of any such Environmental
23 Compliance Liability, Hazardous Materials, or other Environmental Condition, or (iii) City shall
24 have failed to do either of the following, at Center's option, within the specified periods: (A) to
25 promptly initiate and diligently prosecute to completion any action which may be necessary to abate
26 and remediate such event or conditions, to Center's satisfaction based on an environmental report
27 prepared by a licensed environmental engineer selected by the Center (and reasonably acceptable to
28 City), showing the abatement and remediation of such event or condition in compliance with
29 applicable law, the cost for which shall be paid by City promptly after written request therefor from
30 the Center, or (B) pay to the Center, within fifteen (15) days after written request therefor, the
31 amount reasonably estimated by the Center to be required for the Center to complete the abatement
32 and remediation of such event or conditions, which estimate shall be based on a Phase I
33 Environmental Site Assessment prepared by a licensed environmental engineer selected by the
34 Center (and reasonably acceptable to City), the cost for which shall be borne by City and included in

1 such payment.

2 **ARTICLE 22 -FREEDOM OF INFORMATION ACT:**

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

10 **22.2.** The Center records from its operation of the facility, including guests records, are in no
11 way records of City, nor shall City have access to any such records except in accordance with federal
12 and state laws on access to medical records, and even then, only pursuant to appropriate procedures
13 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
16 may be exercised only to the extent that the exercise thereof does not violate any applicable law, and
17 are intended to be limited to the extent necessary so that they will not render this Lease invalid,
18 unenforceable, or not 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 the terms and
20 provisions of this Lease; provided, however, that any prevention or delay due to Force Majeure shall
21 excuse the performance, for a period equal to the period of any such prevention or delay, of any
22 obligation under 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
25 deemed to have been properly given if delivered personally to such party during business hours, or
26 by United States registered or certified mail, return receipt requested, postage prepaid, or via
27 nationally recognized overnight mail carrier addressed to such party at its address first set forth above,
28 provided that notices to the Center shall be addressed as follows:

29 **Women & Children First:**

30 Attn: Angela McGraw, or Executive Director
31 Women & Children First
32 P.O. Box 1954
33 Little Rock, AR 72203
34 Phone: (501) 376-3219
35 amcgraw@wcfarkansas.org
36

City of Little Rock:

Attn: John Eckart, Director
Little Rock Parks & Recreation Department
500 West Markham Street, Room 108
Little Rock, AR 72201
Phone: (501) 371-4770
jeckart@littlerock.gov

1 **Note:** A party may change its address for notices by written notice to the other party in accordance
2 with this Section 23.3. Notices, demands, consents, and requests which are served upon either party
3 in the manner aforesaid shall be deemed sufficiently served or given for all purposes under this Lease
4 as follows: (a) on the date delivered, if delivered personally; (b) the third business day after being
5 mailed, if delivered by certified or registered mail; or (c) the next business day, if delivered by
6 overnight mail.

7 **23.4. Invalidity of Particular Provisions.** If any term or provision of this Lease or the
8 application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable,
9 the remainder of this Lease, or the application of such term or provision to persons or circumstances
10 other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and
11 each Center term and provision of this Lease shall be valid and be enforced to the fullest extent
12 permitted by law.

13 **23.5. Applicable Law.** This Lease and the rights of the parties under this Lease shall be
14 governed by the laws of the State of Arkansas, and venue for any and all issues shall be in Little
15 Rock, Pulaski County, Arkansas.

16 **23.6. No Joint Venture.** It is agreed that nothing contained in this Lease shall be deemed or
17 construed as creating a partnership or joint venture between City and the Center or between City and
18 any other party, or cause either party to be responsible in any way for the debts or obligations of the
19 other party hereto or any third party.

20 **23.7. Successors.** The terms and conditions contained in this Lease shall run with the land and
21 shall bind and inure to the benefit of City and the Center and their respective successors and assigns.

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

1 Imposition and penalties or interest thereon, which shall have been paid by the Center or paid by
2 City, for which City shall have been fully reimbursed.

3 **23.9. Nondiscrimination.** Each party covenants by and for itself, its successors and assigns, and
4 all persons claiming under or through it, and this Lease is made and accepted upon and subject to the
5 condition, that there shall be no discrimination against or segregation of any person or group of
6 persons on account of basis of race, color, creed, religion, sex, national origin, age, disability, marital
7 status, sexual orientation, gender identity, or genetic information, in the leasing, subleasing,
8 transferring, use, or enjoyment of the Premises nor shall either party, or any person claiming under
9 or through it, establish or permit any such practice or practices of discrimination or segregation with
10 reference to the selection, location, number, use, or occupancy of tenants, subtenants, licensees,
11 vendees, invitees, or customers with respect to the Premises or the operation of any business thereon.
12 Each party and any employee or other person acting through or under its direction or control, shall fully
13 comply with all federal, state and local laws, regulations and ordinances prohibiting discrimination on
14 the basis of race, color, creed, religion, sex, national origin, age, disability, marital status, sexual
15 orientation, gender identity, or genetic information, including without limitation Ordinance No.
16 21,031 of the City of Little Rock, Arkansas, dated April 21, 2015.

17 **23.10. Interpretation.** The language in all parts of this Lease shall be construed as a whole
18 according to its fair meaning, and not strictly for or against either City or the Center. The captions
19 used in this Lease are for convenience only and shall not be considered in the construction or
20 interpretation of any provision of this Lease. When the context of this Lease requires, the neuter
21 gender includes the masculine, the feminine, or a partnership, corporation or joint venture, and the
22 singular includes the plural. The terms "shall," "will," and "agree" are mandatory. The term "may" is
23 permissive. When a party is required to do something by this Lease, it shall do so without right of
24 reimbursement from the other party unless a specific provision is made therefor. Parties had access
25 to legal counsel and no party is deemed to have drafted this agreement.

26 **23.11. Integration.** This Lease constitutes the entire agreement between the parties hereto with
27 respect to the subject matter hereof and there are no conditions, representations, or agreements
28 regarding the matters covered by this Lease which are not expressed herein.

29 **23.12. Memorandum of Lease for Recording.** The City and the Center may, upon the Term
30 Commencement Date, execute a memorandum or "short form" of this Lease in a form prepared by
31 City and reasonably acceptable to the Center, for purposes of, and in a form suitable for, being
32 recorded. The memorandum or "short form" of this Lease shall describe the parties, City and the
33 Center, set forth a description of the Premises, specify the Term of this Lease, and shall incorporate
34 this Lease by reference. Said memorandum shall be recorded in the real estate records of the office of

1 the Circuit Clerk and Ex-Officio Recorder of Pulaski County, Arkansas, as soon as practicable after
2 the date of execution of this Lease.

3 **23.13. Consents.** Whenever any consent or approval is required under the terms of this Lease,
4 except as otherwise specifically provided herein, such consent shall not unreasonably be withheld,
5 conditioned, or delayed.

6 **23.14. Quiet Enjoyment.** City represents and warrants that it is seized in fee simple title to the
7 Premises. City covenants that, provided no the Center Default has occurred, the Center shall have
8 quiet and peaceful possession of the Premises as against City and any person claiming the same by,
9 through or under City. City further represents and warrants that it has good right, full power, and
10 lawful authority to enter into this Lease for the Term and any renewal terms.

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

13 **LESSOR:**
14 **CITY OF LITTLE ROCK,**

LESSEE:
WOMEN & CHILDREN FIRST: THE
CENTER AGAINST FAMILY VIOLENCE

17
18 **BY:** _____
19 **Frank Scott, Jr. Mayor**

BY: _____
Angela McGraw, Executive Director

20
21 **Date:** _____

Date: _____

22 **ATTEST:**

ATTEST:

23
24 _____
25 **Susan Langley, City Clerk**

Title: _____

26
27 **Date:** _____

Date: _____

28 **APPROVED AS TO LEGAL FORM:**

29
30 **Thomas M. Carpenter, City Attorney**

31
32 **By:** _____
33 **Shawn A. Overton, Deputy City Attorney**

34 //
35 //
36 //