RESOLUTION NO. R-12-58

A RESOLUTION TO AUTHORIZE THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY OF COFFEYVILLE BOARD OF TRUSTEES OF THE COFFEYVILLE REGIONAL MEDICAL CENTER AND COFFEYVILLE REGIONAL MEDICAL CENTER.

BE IT RESOLVED by the Board of Commissioners of the City of Coffeyville, Kansas, that the Mayor and City Clerk are hereby authorized and directed to execute a lease with Coffeyville Regional Medical Center for operation of the hospital facility.

Adopted this 10th day of July, 2012.

_____
David George, Mayor

ATTEST:

_____
Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

_____
Paul Kritz, City Attorney

RENEWAL
LEASE AGREEMENT
between
City of Coffeyville, Kansas,
Board of Trustees of Coffeyville Regional Medical Center,
a Kansas not-for-profit corporation,
and
Coffeyville Regional Medical Center, Inc.,
a Kansas not-for-profit corporation.

THIS LEASE AGREEMENT is made and entered into as of this _____ day of July, 2012, by and between the City of Coffeyville, a municipal corporation incorporated as a city of the first class of the State of Kansas (the "City"), acting by and through its City Commission, and the Board of Trustees (the "Board of Trustees") of Coffeyville Regional Medical Center, a Kansas not-for-profit corporation (collectively referred to as the "Lessor"), and Coffeyville Regional Medical Center, Inc., a Kansas, not-for-profit corporation (referred to as "Lessee").

WHEREAS, the Board of Trustees presently operates a hospital building (the "Hospital") owned by the City under the laws of the State of Kansas; and

WHEREAS, the City is authorized by the provisions of the Kansas statutes to lease the hospital facility to any person or corporation upon such terms and conditions as the governing body of the City may deem to the best interest of the City, and the governing body of the City and the Board of Trustees have determined that the best interest of the City and its residents would be served by leasing the Hospital Facility to the Lessee on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, as well as other good and valuable consideration, the receipt of which is hereby mutually acknowledged, the parties hereto do hereby agree as follows:

1. Premises. In consideration of the willingness and commitment by the Lessee to provide health care services to the residents of the City and its environs and of the nominal rental payments to be made by the Lessee to the Lessor as provided herein, and in consideration of other terms, provisions and covenants hereof, Lessor hereby leases to Lessee, and Lessee hereby takes from Lessor, certain premises (the "Leased Premises") situated in the City of Coffeyville, Montgomery County, Kansas, more particularly described in *Exhibit A*, attached hereto and incorporated herein by this reference, to have and to hold the same for a term of five (5) years, unless this Lease is revoked, canceled or forfeited by reason of the violation of its terms or as otherwise herein provided. The Lease Term shall commence as of July 1, 2012, regardless of when this Agreement is executed. This Agreement shall automatically extend for two (2) successive five (5) year periods unless either party notifies the other at least ninety (90) days prior to the expiration of the original term or extension thereof. In the event the building(s) on the Leased Premises are altered, modified, improved or expanded by the Lessee, or additional structures are constructed by the Lessee on the Leased Premises, such additional facilities shall be deemed a part of the Hospital Facility owned by the City subject to the leasehold interest of Lessee and the terms and conditions of this Lease.

2. Equipment and Inventory. In addition to the real property described in *Exhibit A* hereof, the Lessor does hereby lease to the Lessee, and the Lessee hereby takes from the Lessor, any interest it has, if any, to all of the inventory of hospital supplies (the "Inventory") and the furniture, furnishings and equipment (the “Equipment”) located within the Hospital Facility as of the first day of the Lease Term.

3. Rent. As rental for the Premises, Lessee shall pay to Lessor the sum of One Dollar ($1.00) per year payable at the beginning of the Lease Term.

4. Assumption of Liabilities. Upon commencement of the Lease Term, Lessee shall assume and agrees to pay the current liabilities and ongoing expenses ("Current Liabilities") related to the operation of the Hospital Facility. Such payments shall be made as such liabilities become due.

5. Assignment of Accounts Receivable. In consideration of the assumption of the Current Liabilities, Lessor does hereby assign, convey and transfer to Lessee any interest it has, if any, to all accounts receivable of Coffeyville Regional Medical Center, a Kansas not-for-profit corporation.

6. Transfer of Working Capital. In consideration of the assumption of all of debts and liabilities with respect to the Hospital and the Hospital Facility, Lessor hereby assigns and transfers any interest it has, if any, to the current liquid assets (the "Working Capital") associated with the Hospital Facility to Lessee.

7. Annual Audit. An audit of the Lessee's book and records shall be timely performed by an independent certified public account or firm of certified public accountants selected by the Lessee for each fiscal year of Lessee during the Lease Term. Such audits shall be conducted according to generally accepted auditing standards, and shall evaluate Lessee's financial records and practices according to generally accepted accounting principles, consistently applied. A copy of the auditor's report and accompanying financial statements, notes and schedules shall be sent to the City and the Board of Trustees of the Hospital which shall have the right, through accountants employed by it, to review all books and records of the Lessee and the work papers of the Lessee's accountants.

8. Quarterly Report. As soon as is practicable after the close of each fiscal quarter, a written quarterly report of Lessee's financial conditions shall be sent to the City and to the Board

of Trustees of the Hospital, which quarterly report shall contain the unaudited balance sheets and income statement of the Lessee for such quarter. Such quarterly reports shall also contain the cumulative totals for the Lessee's fiscal year to the date of the report.

9. Use of Leased Premises. The Lease Premises shall be used for the purpose of providing health care services and related services during the Lease Term. Such health care services may include, by way of illustration and not by way of limitation, both acute care and extended care facilities. The premises shall also be used as the principal office of the Lessee during the full Lease Term Lessee shall comply with all governmental laws, ordinances and regulations applicable to the use of the Leased Premises and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon or connected with the Leased Premises, all at the Lessee's own expense.

10. Quiet Enjoyment. The Lessor covenants that it has title to the Leased Premises and that so long as Lessee shall not be in default under this Lease, Lessee shall and may peaceably and quietly have, hold and enjoy the Hospital Facility, Inventory and Equipment leased hereunder and that the Lessor will defend Lessee's enjoyment and possession thereof against all parties.

11. Covenant Against Waste. Lessee shall, throughout the Lease Term, take good care of the buildings, Equipment and other improvements located upon the Leased Premises and keep them free from waste or nuisance of any kind. Lessee shall keep the buildings and other improvements located on the Leased Premises in good condition and make all necessary repairs as set forth in Section 12 of this Lease. At the end or the termination of the Lease Term, Lessee shall redeliver possession of the Hospital Facility and Equipment in good condition and repair, reasonable wear and tear and damage by fire, tornado or other casualty only, excepted.

12. Repairs. Lessee shall at all times, at its sole cost and expense, keep the roof, exterior walls, parking lot and sidewalks, gutters and waterspouts of the building, situated on the Hospital Facility and Equipment, in good repair and condition. Lessee may, in addition, make all necessary repairs on all in-floor or otherwise inaccessible plumbing, air conditioning and heating systems, keeping the Hospital Facility in good repair and condition, reasonable wear and tear excepted. Lessee will promptly make all structural repairs necessary during the Lease Term.

13. Alterations and Improvements. Lessee may make interior and exterior modifications, alterations, additions or improvements to the Hospital Facility.

14. Ownership of Property Not Located on Lease Premises. Any real property, improvements thereon, equipment or inventory acquired or constructed by Lessee and not located on the Lease Premises shall be deemed owned for all purposes by Lessee, subject in any event, to the dissolution provisions set forth in Lessee's Articles of Incorporation.

15. Hazardous Usage. Lessee will not permit the Leased Premises to be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous; it being understood and agreed that the use of the premises in the proper and ordinary conduct of Lessee's operation for the purposes set forth in Section 10 above shall not in any event be considered in violation of this Section.

16. Right of Entry. Lessor and Lessor's agents and representatives shall have the right to enter and inspect the Leased Premises at any time during reasonable business hours for the purpose of ascertaining the condition of the Leased Premises or in order to make required repairs as may have been neglected to be made by Lessor under the terms of this Lease.

17. Utilities. Lessee shall pay all charges incurred for water, sewer, and electricity, gas and telephone services used on the Leased Premises.

18. Assignment. Neither party to this Lease shall have the right to assign this Lease or sublet the whole or any part of the Leased Premises without the express prior written consent of the other.

19. Insurance.

(A) Lessee shall carry professional liability (malpractice) insurance covering its operation of the Hospital with policy limits at least equal to that required by Kansas law and pay the applicable surcharge to such company for payment to the Health Care Stabilization Fund. Lessee shall provide a certificate of insurance and a copy of the malpractice insurance policy it has obtained to Lessor. The certificate of insurance shall require the insurance company to provide Lessor immediate notice in the event the policy of insurance is, for any reason, terminated or lapses.

(B) In addition to professional liability insurance. Lessee agrees that it will, at all times during the Lease Term, maintain and pay for the following types of insurance coverage:

(1) property damage;

(2) general liability;

(3) fire and extended coverage casualty insurance upon the Hospital Facility and Equipment;

(4) Directors and officer's liability insurance for the Board of Directors of Lessee and the Board of Trustees of the Coffeyville Regional Medical Center, a Kansas not-for-profit corporation.

All such coverages shall be maintained at levels not less than the levels of comparable insurance coverage carried by the Lessor on the close of business on the day immediately preceding the commencement of the Lease Term; provided, however, the Board of Directors shall maintain the Coverage described at item (3) above at the replacement value of the buildings and equipment and shall annually review and assess the adequacy of all insurance coverages and increase coverage as it deems necessary. All such policies of insurance shall name the Lessor as an additional insured.

20. Indemnity of Lessor. Lessee shall at all times indemnity and hold Lessor harmless against all actions, claims, demands, costs, damages and expenses of every kind which may be brought or made against Lessor or which Lessor may payor incur by reason of Lessee's

occupancy of the Leased Premises, whether arising from the negligence of Lessee, its agents, employees and invitees, or otherwise. Lessor agrees to indemnify Lessee and hold it harmless from any and all loss, expense or claims arising out of any injury to person or damage to property caused by the negligence of Lessor.

21. Access to Books and Records. Pursuant to 42 U.S.C. 1395x(v)(1)(I), at any time during the Lease Term, during the four (4) year period after the expiration of the Lease Term, Lessor will, upon written request, make available to the Secretary of Health and Human Services of the United States or to the Comptroller General of the United States, or their duly authorized representatives, this Lease and any books, documents and records that are necessary to certify the nature and extent of costs incurred by Lessee under the provision of this Lease. This provision shall be in force for any twelve-month period during which the total value of services provided or goods delivered hereunder is Ten Thousand Dollars ($10,000.00) or more.

22. Contributions. The Lessee is a Kansas not-for-profit corporation exempt from federal income taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is eligible to receive donations deductible to the donors under the provisions thereof. It is agreed that all gifts, bequests, contributions and donations to the Lessor made for use in the operation and betterment of the Hospital shall be received by the Lessee by or transferred to Lessee and shall be used and applied by it in the operation of the Hospital or in the improvement or enlargement of the Hospital Facility, unless the use of such contributions is specifically restricted for stated purposes. If any contribution is received by the Lessee which is, by its terms, to be and become the property of Lessee, Lessee shall have both the right to receive and retain such property or other contribution and the right to use it for its own purposes during or after the Lease Term, subject to the dissolution provisions of Lessee's Articles of

Incorporation.

23. Termination Prior to Expiration of Term. Notwithstanding the provisions of Section 1 of this Agreement, any party to this Agreement may terminate the Lease, without cause, upon one hundred eighty (180) days written notice given by the party terminating the Lease to the other parties. The provisions of this Lease regarding transfers of property, Inventory and transfers of accounts and funds on hand at the expiration of the Lease Term shall be followed in the event of termination by either party under the provisions of this paragraph.

24. Rental Payment and Notice. Each provision of this Lease or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessor to Lessee or with reference to the sending, mailing, or delivery of any notice or the making of any payment by Lessee to Lessor shall be deemed to be complied with when and if the following steps are taken.

(A) All rent and other payments required to be made by Lessee to Lessor hereunder shall be payable to Lessor at the address hereinbelow set forth or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith.

(B) Any payments required to be made by Lessor to Lessee hereunder shall be payable to Lessee at the address hereinbelow set forth or at such other address as Lessee may specify from time to time by written notice delivered in accordance herewith.

(C) Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out opposite their names below, or at such other addresses as they may have given in writing to the other party.

If to Lessee:

Coffeyville Regional Medical Center, Inc.
ATTENTION: Administrator
1400 W. Fourth Street
Coffeyville, Kansas 67337

If to Lessor:

Board of Trustees Coffeyville Memorial Hospital
ATTENTION: Chairman of the Board of Trustees
1400 W. Fourth Street
Coffeyville, Kansas 67337

and

The City of Coffeyville
ATTENTION: Mayor
P.O. Box 1629
Coffeyville, Kansas 67337

25. Definitions. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

26. Law to Control. It is mutually understood and agreed that this Lease shall be governed by the laws of the State of Kansas.

27. Invalid Provision. If any part, term or provision of this Lease is by legislation, regulation or court decision rendered invalid, the validity of the remaining portion or provisions shall be construed as if the Lease did not contain the particular part, term or provision held to be invalid.

28. Binding Effect. The terms, provisions, covenants and conditions contained in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto, their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

29. Amendment. This Lease Agreement may be amended at any time by an agreement in writing executed with the same formality as this Lease Agreement.

30. Prior Negotiations. This Lease Agreement supersedes all prior negotiations and agreements between the parties hereto relative to the transaction contemplated by this Lease Agreement and contains the entire understanding of the parties hereto. This Lease Agreement may only be modified as has heretofore been provided.

IN WITNESS WHEREOF, both parties aforesaid have hereunto set their hands, by and through their duly authorized representatives, as of the day and year first above written.

"LESSOR"

COFFEYVILLE REGIONAL MEDICAL CENTER, a Kansas not-for-profit corporation

By_____
Board of Trustees Chairman

CITY OF COFFEYVILLE

By_____
David George, Mayor

ATTEST:

By_____
Cindy Price, City Clerk

"LESSEE"

COFFEYVILLE REGIONAL MEDICAL CENTER, INC., a Kansas not-for-profit corporation

By_____
President

ATTEST:

By_____
Secretary

Exhibit A
Legal Description

The legal description for the Hospital Facility and related realty is as follows:

1. Tract A of Ozark Addition to the City of Coffeyville, Montgomery County, Kansas (campus proper)

2. Lot Thirteen (13), Block Four (4), Patton's First Addition to the City of Coffeyville, Montgomery County, Kansas (1324 West 2nd Street, Coffeyville, Kansas)

3. Lot Two (2), Block Five (5), Ozark Addition to the City of Coffeyville, Montgomery County, Kansas (206 Wilkie, Coffeyville, Kansas)