

FIRST READING: 11.9.20
SECOND READING: 11.23.20
THIRD READING: 12.14.20

AMENDED ORDINANCE NO. 96-20

BY: JOHN B. SHEPHERD

AN EMERGENCY ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT TO THE LEASE AND OPERATING AGREEMENTS WITH CLEVELAND CLINIC CHILDREN'S HOSPITAL FOR REHABILITATION FOR SPACE AT THE ADDITION TO THE DON UMERLEY CIVIC CENTER

WHEREAS: the Cleveland Clinic Children's Hospital for Rehabilitation and the City of Rocky River entered into Lease and Operating Agreements for the leasing of space at the Don Umerley Civic Center for use in the Clinic's children rehabilitation services dated January 6, 2016; and

WHEREAS: the City administration has negotiated additional terms with the Cleveland Clinic for the continuation of said lease and operating agreements for a three (3) year term, allowing for two optional one-year extensions, commencing at Thirty three thousand one hundred fourteen dollars and thirty-six cents (\$33,114.36) for use of two thousand (2,000) square feet of the Civic Center for children in need of rehabilitative services.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROCKY RIVER, COUNTY OF CUYAHOGA, STATE OF OHIO:

SECTION 1. That the Mayor of the City of Rocky River be and she is hereby authorized to enter into an amendment to the lease agreement and an operating agreement with Cleveland Clinic Children's Hospital for Rehabilitation as attached as Exhibit "A".

SECTION 2. That funds collected in the leasing of space in the addition at the Don Umerley Civic Center shall be deposited into the Recreation Center fund – Lease Revenue account.

SECTION 3. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of public peace, health and safety, and for the further reason that continuation of child rehabilitative services are seen as an important component in the overall health and recreational needs of the community and, provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: December 14th, 2020


JAMES W. MORAN
President of Council

PRESENTED

TO MAYOR: December 14th, 2020

APPROVED: December 14th, 2020

ATTEST:


SUSAN G. PEASE
Clerk of Council

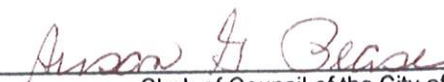

PAMELA E. BOBST

Mayor
City of Rocky River } ss
County of Cuyahoga }

THE UNDERSIGNED CLERK OF THE COUNCIL OF THE CITY OF ROCKY RIVER, OHIO DOES HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 96-20 ADOPTED BY THE COUNCIL OF SAID CITY ON THE 14th DAY OF December 2020 THAT THE PUBLICATION OF SUCH ORDINANCE HAS BEEN MADE AND CERTIFIED OF RECORD ACCORDING TO LAW, THAT NO PROCEEDINGS LOOKING TO A REFERENDUM UPON SUCH ORDINANCE HAVE BEEN TAKEN, THAT SUCH ORDINANCE AND THE CERTIFICATE OF PUBLICATION THEREOF, ARE OF RECORD IN ORDINANCE RECORD NO. 96-20

Record: CoverOrdAmendmentClinic leaseAgreement2020

I, the undersigned clerk of council of the city of Rocky River, State of Ohio, do hereby certify that publication of the foregoing ordinance was duly made by posting a true copy thereof in the lobby of the Rocky River City Hall, in accordance with the charter of Rocky River, commencing on the 14th day of December, 20 20.


Clerk of Council of the City of Rocky River, Ohio

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND AFFIXED MY OFFICIAL SEAL THIS 14th DAY OF December, 20 20.


CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO

AMENDMENT TO CLEVELAND CLINIC LEASE AND OPERATING AGREEMENT

This Amendment to Cleveland Clinic Lease and Operating Agreement (this “Amendment”) is entered into this ____ day of _____, 2020, by and between the City of Rocky River, a municipal corporation and political subdivision organized under its Charter and the laws of the State of Ohio (“City”), and Cleveland Clinic Children’s Hospital for Rehabilitation, a non-profit corporation organized under the laws of the State of Ohio (“Hospital”).

WHEREAS, the City, as landlord, and Hospital, as tenant, entered into a Lease Agreement (the “Lease”) effective January 1, 2016, and a concomitant Operating Agreement (the Operating Agreement”, and collectively with the Lease, the “Agreements”) effective January 6, 2016, executed copies of which are attached hereto as Exhibit A and Exhibit B, respectively, setting forth the terms and conditions under which the parties have agreed to permit the Hospital to operate a children’s hospital rehabilitation center within Studio 3 of the City’s Don Umerley Civic Center located at 21016 Hilliard Boulevard, Rocky River, Ohio (the “Civic Center”) and to use certain of the Civic Center’s Recreation Facilities on a non-exclusive basis;

WHEREAS, the term of the Lease will expire on January 1, 2021 and the term of the Operating Agreement will expire on January 6, 2021; and

WHEREAS, the City and Hospital wish to enter into this Amendment to extend the respective terms of the Agreements and make certain other mutually agreeable modifications.

THEREFORE, in consideration of the reciprocal performance by the parties of the terms, covenants and conditions hereinafter set forth, the parties agree as follows:

1. INCORPORATION OF TERMS AND CONDITIONS OF THE AGREEMENTS. The parties intend to be bound by the terms, conditions and covenants of the Agreements as if those terms, conditions and covenants were fully rewritten herein, except as specifically amended below.
2. TERM. Notwithstanding that the Agreements have separate expiration dates, the parties acknowledge and agree that the term of the Agreements shall be amended and extended for three (3) years such that both Agreement shall now be coterminous. Such extension period shall begin on January 1, 2021 and expire on December 31, 2023 and shall be referred to herein as the “Extended Term”. In addition to the Extended Term, Hospital shall have the right to extend the term of the Agreements for two (2) additional successive one (1) year options (the “First Extension Option” and “Second Extension Option”, and collectively, the “Extension Options”). In the event that Hospital shall choose to exercise an Extension Option, it shall provide City with not less than six (6) months prior written notice.
3. RENT. During the Extended Term and any Extension Option exercised, Hospital agrees to pay to City annual Base Rent as follows:
 - 2021 annual Base Rent shall be Thirty-three thousand one hundred fourteen dollars and thirty-six cents (\$33,114.36);
 - 2022 annual Base Rent shall be Thirty-three thousand nine hundred forty-eight dollars and zero cents (\$33,948.00);
 - 2023 annual Base Rent shall be Thirty-four thousand seven hundred ninety-six dollars and seventy cents (\$34,796.70);

- Annual Base Rent for First Extension Option shall be Thirty-five thousand six hundred sixty-five dollars and ninety cents (\$35,665.90);
- Annual Base Rent for Second Extension Option shall be Thirty-six thousand five hundred fifty-seven dollars and fifty-five cents (\$36,557.55).

4. RIGHT OF FIRST REFUSAL. Hospital and City further agree that should additional space become open at the Civic Center, Hospital has the right of first refusal to lease said additional space upon a negotiated amount for the additional square footage, consistent with the terms and conditions of this Amendment. City shall give Hospital written notice of such availability and allow Hospital ten (10) business days to respond before advertising the availability of or leasing the space to any other tenant or the general public.

5. NOTICES. Section 13 of the Lease shall be deleted in its entirety and replaced as follows:

All notices which either party hereto may give to the other party hereto shall be addressed:

in the case of the City, as follows:

THE CITY OF ROCKY RIVER
21012 Hilliard Blvd.
Rocky River, Ohio 44116
Attention: Mayor and Clerk of Council

And in the case of the Hospital, as follows:

CLEVELAND CLINIC CHILDREN'S HOSPITAL FOR REHABILITATION
2801 Martin Luther King Jr. Drive
Cleveland, Ohio 44104
Attention: Department Administrator

WITH A COPY TO:

THE CLEVELAND CLINIC FOUNDATION
9500 Euclid Avenue, HS1-02
Cleveland, Ohio 44195
Attention: Sr. Director of Real Estate

AND A COPY TO:

THE CLEVELAND CLINIC FOUNDATION
3050 Science Park Drive, AC321
Beachwood, Ohio 44122
Attention: Sr. Counsel, Real Estate

Such notices shall be delivered personally, or sent by certified mail or nationally recognized overnight courier to the above addresses or such other addresses in the United States of America as addressee may specify in writing, or sent by facsimile transmission and promptly confirmed by regular mail. The effective date thereof shall be the date of delivery, if delivered personally or telefaxed, or the date three (3) days following the date it is deposited in the mail, if mailed.

6. SIGNAGE. The parties agree that any changes that the City proposes to make to Hospital's exterior signage shall be subject to Hospital's review and approval.

7. COUNTERPARTS. This Amendment may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement. This Amendment shall not become a binding and enforceable agreement until it has been executed and delivered (in counterpart or otherwise) by both parties. The parties may deliver their respective counterparts to each other by fax or by PDF attachment to an e-mail and such delivery shall be deemed effective and binding.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first above written.

HOSPITAL:
Cleveland Clinic Children's Hospital for Rehabilitation

By: _____
Printed Name: _____
Its: _____

STATE OF OHIO
COUNTY OF CUYAHOGA, SS:

The foregoing Amendment was acknowledged before me this _____ day of _____, 2020,
by _____, the _____ of
Cleveland Clinic Children's Hospital for Rehabilitation, on behalf of said Hospital.

Notary Public

My Commission Expires: _____

EXHIBIT A

LEASE

EXHIBIT B

OPERATING AGREEMENT

Contract ID 4241192 Approved as to Form JLS 11/2/2020

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), entered into effective the 6th day of January 2016, by and between the City of Rocky River, a municipal corporation and political subdivision organized under its charter and the laws of the State of Ohio ("Landlord") and Cleveland Clinic Children's Hospital for Rehabilitation, a nonprofit corporation organized under the laws of the State of Ohio ("Tenant").

WHEREAS, City operates the Don Umerley Civic Center (the "Civic Center") on land located at 21016 Hilliard Blvd., Rocky River, Ohio and owned by the City of Rocky River,

WHEREAS, City and Hospital have entered into an agreement entitled "Operating Agreement for Cleveland Clinic Children's Hospital for Rehabilitation" (the "Operating Agreement") attached hereto and incorporated herein as Exhibit A, setting forth the terms and conditions under which the parties have agreed to permit the Hospital to operate a Children's Hospital Rehabilitation Center within the Civic Center; and

WHEREAS, City and Hospital wish to enter into this Lease to carry out the intent of the Operating Agreement,

NOW THEREFORE, in consideration of the payment by Hospital of the rents hereinafter reserved by City, and the performance and observance by parties of all the terms, covenants, and conditions hereinafter set forth, the parties agree as follows:

1. PREMISES. City does hereby demise and lease unto Hospital two thousand (2,000) square feet on the second floor of its Civic Center known as Studio 3, adjacent to its fitness center, as shown on Exhibit B attached hereto and made a part hereof (the "Premises"). Tenant, including its employees, patients and invitees, may also use, on a non-exclusive basis, the fitness center, running track, pool/spa and aerobics room (collectively, "Recreation Facilities") as outlined in the Operating Agreement dated January 6, 2016.
2. TERM. The term of this Lease shall be for five (5) years commencing on January 1, 2016 and terminating on December 31, 2020; provided that if the Operating Agreement shall terminate on an earlier date, this Lease shall terminate concurrently with the Operating Agreement.
3. SUBJECT TO OPERATING AGREEMENT. This Lease is subject in all respects to the terms and conditions of the Operating Agreement, which terms and conditions are incorporated herein by this reference. The parties agree to perform and abide by all the terms of the Operating Agreement. Any default under the Operating Agreement shall be considered a default under this Lease.

4. RENT. Hospital agrees to pay to City annual base rent as follows:

A. During the first year of the Lease, the sum of Thirty Thousand Dollars (\$30,000), payable in equal monthly installments of Two Thousand Five Hundred Dollars (\$2,500) (the "Base Rent"); and

B. Base Rent shall increase by 2.5% in each subsequent Lease year as shown below:

	<u>Monthly Base Rent</u>	<u>Annual Base Rent</u>
Lease Year 1	\$2,500.00	\$30,000.00
Lease Year 2	\$2,562.50	\$30,750.00
Lease Year 3	\$2,626.56	\$31,518.72
Lease Year 4	\$2,692.22	\$32,306.64
Lease Year 5	\$2,759.53	\$33,114.36

The rent shall be inclusive of all utilities, with the exception of telephone service, facsimile and Internet costs, which shall be the sole responsibility of Hospital. Additionally, Hospital shall pay to City the sum of Three Hundred Dollars (\$300.00) for each and every month during the term of the Lease for cleaning services.

5. USAGE FEE. In addition to Base Rent, in Lease years two (2) through five (5) Hospital will be charged a usage fee for every patron visit in excess of 2,500 annually, at the then-current daily usage fee for the Civic Center Recreation Facilities as specified in Codified Ordinances of Rocky River, Ohio at Part Nine, Title Five, Chapter 954.01, which fee may be adjusted at any time pursuant to City Council vote.

6. USE OF PREMISES. Hospital shall use the Premises to conduct autistic assessment, treatment and medical programming as set forth in and pursuant to the terms of the Operating Agreement.

7. ALTERATION OF PREMISES. Hospital shall be responsible for the costs of any alteration or modification required by the Hospital for Premises leased hereunder. Prior to commencing alteration of the Premises, Hospital shall obtain the written approval of the City. Upon termination of this Lease, Hospital shall restore the Premises to its original condition except for normal wear and tear, or to an agreed upon condition that will satisfy the needs of the City of Rocky River (i.e., if the improvements are to the City's standards then no changes are required).

8. SIGNS. Hospital may install a suitable sign on the outside of the Premises. Before installing any sign, Hospital shall obtain City's approval of the design, color, size, style, location and material of the sign, which approval shall not be unreasonably withheld. At the expiration or termination of the Lease, Hospital, at Hospital's expense, shall remove all signs, advertisements, and notices installed by Hospital.

9. INSURANCE. City shall maintain a policy for general public liability, all risk, fire and property damage for the replacement value of the Civic Center. Hospital shall obtain

and maintain in force all risk or fire insurance relating to Hospital fixtures, furnishings, and all personal property of Hospital in, on, or about the Premises on a full replacement value basis. Hospital shall provide and keep in full force workers' compensation insurance on Hospital employees as required by law.

10. COVENANTS OF TITLE AND QUIET ENJOYMENT. City warrants that the City is the lawful lessor of the Premises and has the authority to make this Lease subject to City Council approval. If Hospital pays the rent as agreed, and fulfills all other conditions and obligations under this Lease and the Operating Agreement, Hospital may quietly enjoy the Premises without hindrance by City or any person lawfully claiming under City.

11. DEFAULT. A. In the event of a material default by either party in the performance of its obligation under this Lease, the non-defaulting party shall deliver to the other party written notice setting forth the nature of the default. The defaulting party shall have thirty (30) days to cure the default if the default involves a direct payment of money and ninety (90) days to cure the default if the default does not involve a direct payment of money.

B. If the default shall not be resolved to the satisfaction of both parties within such ninety (90) day period, the non-defaulting party may terminate this Lease and the Operating Agreement between said parties.

C. In the event of termination, the defaulting party shall have no further rights or obligations under this Lease and the Operating Agreement after the date of termination; however, the defaulting party shall not be relieved of its obligations under this Lease which accrued prior to the date of termination.

12. MISCELLANEOUS. This Lease shall be governed by the laws of the State of Ohio. This Lease contains the entire agreement between the parties, and any agreement hereafter made shall be ineffective to change, modify, or discharge it in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, or discharge is sought. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect. Whenever words are used herein in any gender, they shall be construed as though they were used in the gender appropriate to the context and the circumstances, and whenever words are used herein in the singular or plural form, they shall be construed as though they were used in the form appropriate to the context and the circumstances. Headings and captions in this Lease are inserted for convenient reference only and in no way define, limit or describe the scope or intent of this Lease, nor constitute any part of this Lease and are not to be considered in the construction of this Lease.

13. NOTICES. All notices which either party hereto may give to the other party hereto may give to the other party hereto shall be addressed, in the case of the City, as follows:

THE CITY OF ROCKY RIVER
21012 Hilliard Blvd.
Rocky River, Ohio 44116
Attention: Mayor and Clerk of Council

And in the case of the Hospital, as follows:

THE CLEVELAND CLINIC FOUNDATION
PEDIATRIC INSTITUTE & CLEVELAND CLINIC CHILDREN'S
9500 Euclid Avenue A111
Cleveland, Ohio 44195
Attention: Alee G. Kulik, Institute Administrator

WITH A COPY TO:
THE CLEVELAND CLINIC FOUNDATION
9500 Euclid Avenue, DD6
Cleveland, Ohio 44195
Attention: Sr. Director of Real Estate

AND A COPY TO:
THE CLEVELAND CLINIC FOUNDATION
3050 Science Park Drive, AC321
Beachwood, Ohio 44122
Attention: Law Department

Such notices shall be delivered personally, sent by certified mail to the above addresses or such other addresses in the United States of America as addressee may specify in writing, or sent by facsimile transmission and promptly confirmed by regular mail. The effective date thereof shall be the date of delivery, if delivered personally or telefaxed, or the date three (3) days following the date it is deposited in the mail, if mailed.

IN WITNES WHEREOF, the undersigned have caused this Lease to be executed as of the date first above written.

HOSPITAL: Cleveland Clinic Children's Hospital
for Rehabilitation

By: 
Its: Jason Hargreaves
Senior Director, Financial Accounting

APPROVED AS TO FORM
OF LAW DEPT.
DATE: 1-23-16 CMSE #:
BY: A. G. Kulik C/1250-0389

STATE OF OHIO
COUNTY OF CUYAHOGA, ss:

The foregoing Lease was acknowledged before me this 25th day of August 2016, by Ben Bergman the SR Dir. In. Acc. of Cleveland Clinic Children's Hospital for Rehabilitation, on behalf of said Hospital.

Marlene Doyle
Notary Public,

MARLENE GAYDOS, Notary Public,
In and for the State of Ohio
My Commission Expires Dec 18, 2016

CITY:

The City of Rocky River

By: Pamela E. Bobst

Printed Name: Pamela E. Bobst

Its: Mayor

By: James Moran

Printed Name: James Moran

Its: President of Council

STATE OF OHIO
COUNTY OF CUYAHOGA, SS:

The foregoing Lease was acknowledged before me this 6th day of January, 2016, by Pamela E. Bobst, Mayor, and by James Moran, the President of Council, of the City of Rocky River, an Ohio municipal corporation, on behalf of the City

Michael T. Greco
Notary Public

My Commission Expires:

MICHAEL T. GRECO
Notary Public, State of Ohio, Cuy. Co.
My commission expires Oct 4, 2019

Approved as to form only:

Andrew Bemmer

Andrew Bemmer, Director of Law

1.6.16

Date

11/12/15 MyDocs:RecDept:Lease Agreement

EXHIBIT A
OPERATING AGREEMENT

**OPERATING AGREEMENT FOR
CLEVELAND CLINIC CHILDREN'S HOSPITAL FOR REHABILITATION**

THIS OPERATING AGREEMENT, entered into effective the 6th day of January, 2016 ("Effective Date") by and between the City of Rocky River, a municipal corporation and political subdivision organized under its charter and the laws of the State of Ohio ("City") and Cleveland Clinic Children's Hospital for Rehabilitation, a nonprofit corporation organized under the laws of the State of Ohio ("Hospital"),

WHEREAS, City and Hospital desire to enter into this Operating Agreement setting forth the terms and conditions under which the parties will agree to the Hospital's use of the Don Underley Civic Center incident to the Hospital's lease of the premises (the "Lease") entered into contemporaneously with this Agreement;

NOW THEREFORE, the parties agree as follows:

1. SCOPE OF AGREEMENT

This Agreement is meant to describe the duties and responsibilities of the parties as to the use of the Civic Center facilities for Hospital services.

2. MEDICAL PROGRAMMING

The City agrees that Hospital will be permitted to conduct autistic assessment, treatment and medical programming at the Civic Center. It is understood by and between the parties that the City may conduct what the Hospital considers to be medically-related programming on its own or sponsored by individual doctors. As the City is the exclusive programmer for recreational and fitness programming, the Hospital shall not sponsor programs or events at the Civic Center which would compete with existing programming at the Civic Center. All Hospital sponsored programs and events shall be submitted to the Civic Center Manager for approval no less than one month prior to the commencement of the program.

3. DUTIES AND RESPONSIBILITIES OF THE PARTIES

- A. *Payment of Rent:* Hospital shall abide by the terms and conditions of the lease of Premises, including the payment of rent and patient per day charges.
- B. *Limitation of Patients and Patrons at the Civic Center:* Hospital shall make a reasonable effort not to exceed more than forty (40) total Hospital patrons of Hospital-sponsored programs and events at the Civic Center on any single day, limited to Monday through Friday, 7:50 a.m. to 7:00 p.m. Use by Hospital of Civic Center recreation facilities shall be by approval of Center Manager, including the fitness center, the running track, pool and or spa, and aerobics rooms.
- C. *Identification of Hospital Personnel:* All Hospital employees assigned to the Civic Center will wear name tags identifying them as staff of the Hospital. The Hospital

will submit a list of the names of Hospital employees to the Civic Center Manager and shall keep that list current.

D. *Use of Civic Center Facilities:* Hospital shall make a reasonable effort to have no more than four (4) persons total including Hospital personnel, use any one of the following Civic Center areas: fitness center, running track, aerobics room, and the pool area. A maximum total of sixteen (16) patrons can use the recreation facilities at the same time. These Civic Center areas are available to Hospital patrons Monday through Friday from 7:30 a.m.- 7:00 p.m. The Hospital and patrons shall comply with all Civic Center rules and regulations at all times.

E. *Use of Recreational Facilities for Hospital-sponsored Programs and Events:* The Hospital may use the recreational facilities of the Civic Center for programs and events by scheduling the programs and events with the Civic Center Manager. The Hospital must submit a request form for all Hospital-sponsored events. The form will include the name of the event and the description of the event. The form must be submitted not less than one (1) month before the commencement of the event.

F. *Priority of Previously Scheduled Programming:* The Hospital's use of recreational facilities for Hospital patrons or Hospital personnel is subordinate to previously scheduled Civic Center programming. The Hospital can determine the availability of any of the recreational facilities by first consulting with the Civic Center Manager. The Hospital and the City will cooperate in scheduling the use of the facilities.

G. *Check-In Procedure:* Hospital patrons will sign-in at the front desk. Hospital patrons who are not members of the Civic Center may not use any of the facilities of the Civic Center either before or after their appointments.

H. *Premises Access:* Hospital personnel are permitted on the premise whenever Civic Center personnel are on the premises. However, Hospital patrons may only be on the premises during the normal hours of operation of the Civic Center. Neither Hospital personnel nor Hospital patrons are permitted to use any of the recreational facilities of the Civic Center unless said use is for a purpose described in this Agreement.

I. *Check-In Procedure:* The Hospital will provide the Civic Center with a list of the names of Hospital-sponsored patrons at least forty-eight (48) hours before the event, and an updated list on the day of the event.

J. *Patient Parking Space:* Four (4) patient parking spaces, as determined by the City, will be provided Monday through Friday 7:00 a.m. to 7:00 p.m.

4. INDIVIDUAL HEALTH CARE SERVICES

It is anticipated that the patrons at the Civic Center may from time to time require diagnostic evaluation and treatment at the Hospital. Such evaluation could include, but not necessarily be limited to, use of laboratory, radiology, emergency department, physical and occupational services, and/or dietetic consultations. These services and the fees for these services are not included in this Agreement. The Hospital and any physician performing such services will be entitled to bill separately for such services.

5. TERM/TERMINATION

The term of this Agreement will be five (5) years, commencing on the Effective Date, unless sooner terminated as provided herein, or if the Lease between City and Hospital is terminated, then this Agreement will automatically terminate. Either party may terminate this Agreement at any time, without cause or penalty, by giving the other party ninety (90) days advance notice. In the event that either party fails to perform the duties as required herein (the "breaching party") the "non-breaching party" may give notice to the breaching party of such failure to perform and demand performance. If the breaching party fails to fully perform all duties required by this Agreement within thirty (30) days of such notice, without waiver of any rights the non-breaching party may have against the breaching party for such failure to perform, then the non-breaching party may terminate this Agreement.

6. NON-ASSIGNABILITY

This Agreement may not be assigned by either party without the prior written consent of the other party.

7. COMPENSATION

Except as otherwise provided herein, each party shall be responsible for bearing their own costs and expenses in performing their respective responsibilities pursuant to this Agreement. The compensation shall be as set forth herein and in the lease agreement between the City and the Hospital.

8. INDEPENDENT CONTRACTOR

No relationship of employer or employee is created by this Agreement. Hospital and its employees and the City and its employees shall act hereunder as independent contractors, with no claim under this Agreement or otherwise against the other party for vacation pay, sick leave pay, retirement benefits, Social Security, Workers' Compensation, disability or unemployment insurance benefits or employee benefits of any kind, nor shall either party or its employees have any claim against the other for any business and/or traveling expenses incurred as a result of or in complying with this Agreement.

9. ENTIRE AGREEMENT

Hospital and City agree that this Agreement and the Lease between said parties constitutes the entire agreement between them with respect to the subject matter hereof, and that any and all prior discussions, negotiations, commitments, and understandings relating thereto are hereby superseded and merged herein. The terms and provisions of the Agreement and of said Lease shall not be changed, amended, waived, modified, or terminated in any respect whatsoever except by a written instrument executed by the parties hereto.

10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Cuyahoga County, Ohio, shall be the sole, proper venue of any litigation, proceeding or special proceeding between the parties which arises out of or is in connection with any right, duty or obligation under this Agreement, and each party agrees to submit to the jurisdiction of any court of Cuyahoga County, Ohio, having jurisdiction over the subject matter and waives any objections based on forum non-conveniens.

11. INSURANCE/INDEMNIFICATION

Hospital agrees to maintain commercial general liability insurance or professional liability insurance through an insurance policy or self-insurance, in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate covering the Hospital's activities and operations at the Civic Center.

Hospital shall indemnify and hold City, its agents and employees, harmless from and against all claims, demands, costs, expenses, liabilities and losses, including reasonable attorney's fees which may result against City as a consequence of Hospital's acts, omissions, or performance of this Agreement except to the extent such liability is caused by the acts or omissions of City.

12. CONFIDENTIALITY

The City, its agents and employees, shall not at any time, make or cause to be made any disclosure or other use of any information relating to Hospital patrons, except as permitted by this Agreement for the purpose of the City's check-in procedure. In the event that City is deemed to be a Business Associate pursuant to the Health Insurance Portability and Accountability Act of 1996 (the "Act") and the Privacy Regulations, 45 C.F.R. Parts 160 and 164 issued under said Act, City agrees to comply with the applicable provisions of the Act, from and after the date of such determination, and to execute any mutually acceptable documents, including a Business Associate Agreement, from that date forward, which confirms City's agreement to comply with such provisions. If City is determined to be a Business Associate of Hospital, City understands and agrees that failure of City or its employees, agents, and subcontractors to comply with the Act or to execute a Business Associate Agreement when requested by Hospital shall be a material breach of this

Agreement and shall permit Hospital to immediately terminate this Agreement, provided that such breach shall not have been cured by City within a reasonable time of notice.

IN WITNESS WHEREOF, the undersigned have caused this Operating Agreement to be executed as of the date first above written.

HOSPITAL:
CLEVELAND CLINIC CHILDREN'S
HOSPITAL FOR REHABILITATION

CITY:
THE CITY OF ROCKY RIVER

By: 
His: Jason Merganser
Senior Director, Financial Acct

by: 
Mayor
Pamela E. Bobst

Approved as to Form Only


Andrew Bemer, Director of Law

1.6.16
Date:

8.25.15MyDocs\RecdDept\Operating Agreement

APPROVED AS TO FORM

CCF - LAW DEPT.

DATE: 1.21.16 CMSI #: C402503455
BY: J. L. Giff

EXHIBIT B
LEASED PREMISES

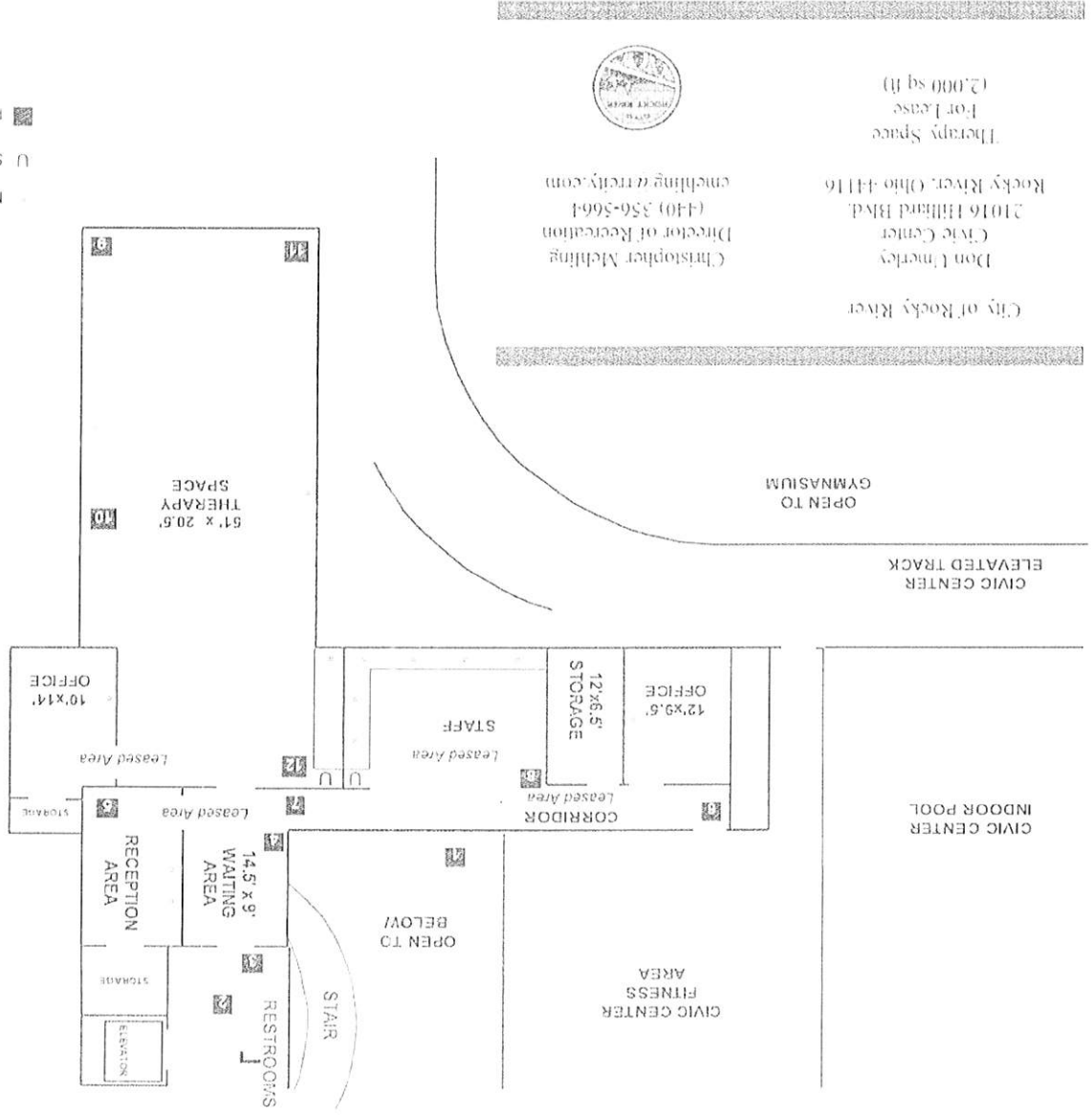
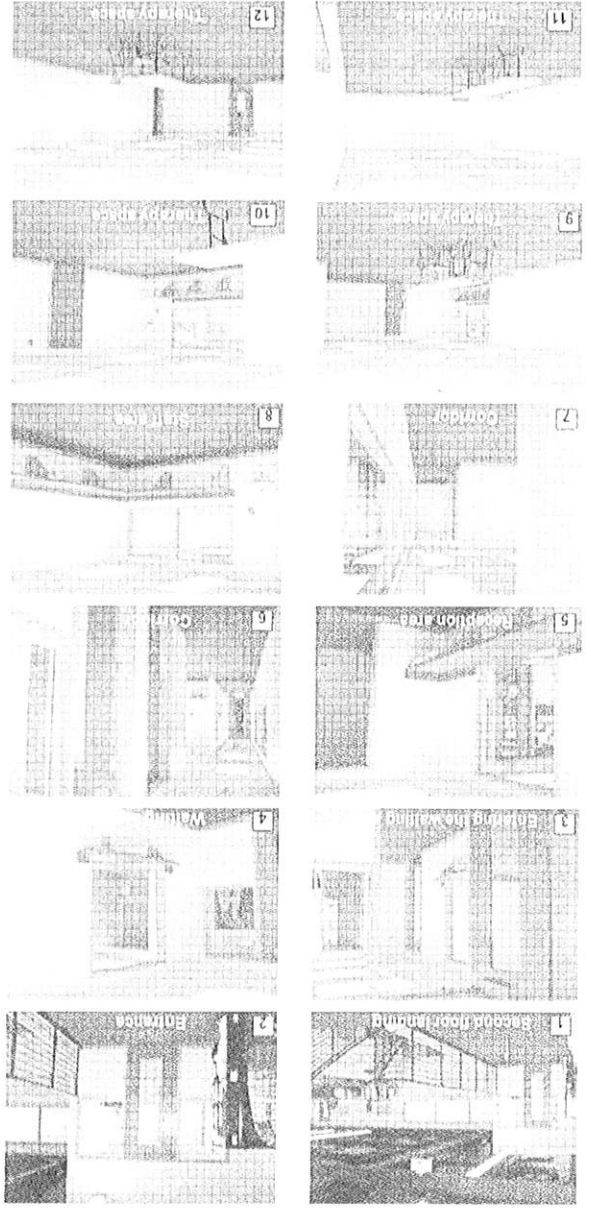


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OPERATING AGREEMENT FOR CLEVELAND CLINIC CHILDREN'S HOSPITAL FOR REHABILITATION

THIS OPERATING AGREEMENT, entered into effective the 6th day of January, 2016 ("Effective Date") by and between the City of Rocky River, a municipal corporation and political subdivision organized under its charter and the laws of the State of Ohio ("City") and Cleveland Clinic Children's Hospital for Rehabilitation, a nonprofit corporation organized under the laws of the State of Ohio ("Hospital").

WHEREAS, City and Hospital desire to enter into this Operating Agreement setting forth the terms and conditions under which the parties will agree to the Hospital's use of the Don Umerley Civic Center incident to the Hospital's lease of the premises (the "Lease") entered into contemporaneously with this Agreement:

NOW THEREFORE, the parties agree as follows:

1. SCOPE OF AGREEMENT

This Agreement is meant to describe the duties and responsibilities of the parties as to the use of the Civic Center facilities for Hospital services.

2. MEDICAL PROGRAMMING

The City agrees that Hospital will be permitted to conduct autistic assessment, treatment and medical programming at the Civic Center. It is understood by and between the parties that the City may conduct what the Hospital considers to be medically-related programming on its own or sponsored by individual doctors. As the City is the exclusive programmer for recreational and fitness programming, the Hospital shall not sponsor programs or events at the Civic Center which would compete with existing programming at the Civic Center. All Hospital sponsored programs and events shall be submitted to the Civic Center Manager for approval no less than one month prior to the commencement of the program.

3. DUTIES AND RESPONSIBILITIES OF THE PARTIES

- A. *Payment of Rent:* Hospital shall abide by the terms and conditions of the lease of Premises, including the payment of rent and patient per day charges.
- B. *Limitation of Patients and Patrons at the Civic Center:* Hospital shall make a reasonable effort not to exceed more than forty (40) total Hospital patrons of Hospital-sponsored programs and events at the Civic Center on any single day, limited to Monday through Friday, 7:30 a.m. to 7:00 p.m. Use by Hospital of Civic Center recreation facilities shall be by approval of Center Manager, including the fitness center, the running track, pool and or spa, and aerobics rooms.
- C. *Identification of Hospital Personnel:* All Hospital employees assigned to the Civic Center will wear name tags identifying them as staff of the Hospital. The Hospital

will submit a list of the names of Hospital employees to the Civic Center Manager and shall keep that list current.

D. *Use of Civic Center Facilities:* Hospital shall make a reasonable effort to have no more than four (4) persons total including Hospital personnel, use any one of the following Civic Center areas: fitness center, running track, aerobics room, and the pool area. A maximum total of sixteen (16) patrons can use the recreation facilities at the same time. These Civic Center areas are available to Hospital patrons Monday through Friday from 7:30 a.m.– 7:00 p.m. The Hospital and patrons shall comply with all Civic Center rules and regulations at all times.

E. *Use of Recreational Facilities for Hospital-sponsored Programs and Events:* The Hospital may use the recreational facilities of the Civic Center for programs and events by scheduling the programs and events with the Civic Center Manager. The Hospital must submit a request form for all Hospital-sponsored events. The form will include the name of the event and the description of the event. The form must be submitted not less than one (1) month before the commencement of the event.

F. *Priority of Previously Scheduled Programming:* The Hospital's use of recreational facilities for Hospital patrons or Hospital personnel is subordinate to previously scheduled Civic Center programming. The Hospital can determine the availability of any of the recreational facilities by first consulting with the Civic Center Manager. The Hospital and the City will cooperate in scheduling the use of the facilities.

G. *Check-In Procedure:* Hospital patrons will sign-in at the front desk. Hospital patrons who are not members of the Civic Center may not use any of the facilities of the Civic Center either before or after their appointments.

H. *Premises Access:* Hospital personnel are permitted on the premise whenever Civic Center personnel are on the premises. However, Hospital patrons may only be on the premises during the normal hours of operation of the Civic Center. Neither Hospital personnel nor Hospital patrons are permitted to use any of the recreational facilities of the Civic Center unless said use is for a purpose described in this Agreement.

I. *Check-in Procedure:* The Hospital will provide the Civic Center with a list of the names of Hospital-sponsored patrons at least forty-eight (48) hours before the event, and an updated list on the day of the event.

J. *Patient Parking Space:* Four (4) patient parking spaces, as determined by the City, will be provided Monday through Friday 7:00 a.m. to 7:00 p.m.

4. INDIVIDUAL HEALTH CARE SERVICES

It is anticipated that the patrons at the Civic Center may from time to time require diagnostic evaluation and treatment at the Hospital. Such evaluation could include, but not necessarily be limited to, use of laboratory, radiology, emergency department, physical and occupational services, and/or dietetic consultations. These services and the fees for these services are not included in this Agreement. The Hospital and any physician performing such services will be entitled to bill separately for such services.

5. TERM/TERMINATION

The term of this Agreement will be five (5) years, commencing on the Effective Date, unless sooner terminated as provided herein, or if the Lease between City and Hospital is terminated, then this Agreement will automatically terminate. Either party may terminate this Agreement at any time, without cause or penalty, by giving the other party ninety (90) days advance notice. In the event that either party fails to perform the duties as required herein (the "breaching party") the "non-breaching party" may give notice to the breaching party of such failure to perform and demand performance. If the breaching party fails to fully perform all duties required by this Agreement within thirty (30) days of such notice, without waiver of any rights the non-breaching party may have against the breaching party for such failure to perform, then the non-breaching party may terminate this Agreement.

6. NON-ASSIGNABILITY

This Agreement may not be assigned by either party without the prior written consent of the other party.

7. COMPENSATION

Except as otherwise provided herein, each party shall be responsible for bearing their own costs and expenses in performing their respective responsibilities pursuant to this Agreement. The compensation shall be as set forth herein and in the lease agreement between the City and the Hospital.

8. INDEPENDENT CONTRACTOR

No relationship of employer or employee is created by this Agreement. Hospital and its employees and the City and its employees shall act hereunder as independent contractors, with no claim under this Agreement or otherwise against the other party for vacation pay, sick leave pay, retirement benefits, Social Security, Workers' Compensation, disability or unemployment insurance benefits or employee benefits of any kind, nor shall either party or its employees have any claim against the other for any business and/or traveling expenses incurred as a result of or in complying with this Agreement.

9. ENTIRE AGREEMENT

Hospital and City agree that this Agreement and the Lease between said parties constitutes the entire agreement between them with respect to the subject matter hereof, and that any and all prior discussions, negotiations, commitments, and understandings relating thereto are hereby superseded and merged herein. The terms and provisions of the Agreement and of said Lease shall not be changed, amended, waived, modified, or terminated in any respect whatsoever except by a written instrument executed by the parties hereto.

10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Cuyahoga County, Ohio, shall be the sole, proper venue of any litigation, proceeding or special proceeding between the parties which arises out of or is in connection with any right, duty or obligation under this Agreement, and each party agrees to submit to the jurisdiction of any court of Cuyahoga County, Ohio, having jurisdiction over the subject matter and waives any objections based on forum non-conveniens.

11. INSURANCE/INDEMNIFICATION

Hospital agrees to maintain commercial general liability insurance or professional liability insurance through an insurance policy or self-insurance, in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate covering the Hospital's activities and operations at the Civic Center.

Hospital shall indemnify and hold City, its agents and employees, harmless from and against all claims, demands, costs, expenses, liabilities and losses, including reasonable attorney's fees which may result against City as a consequence of Hospital's acts, omissions, or performance of this Agreement except to the extent such liability is caused by the acts or omissions of City.

12. CONFIDENTIALITY

The City, its agents and employees, shall not at any time, make or cause to be made any disclosure or other use of any information relating to Hospital patrons, except as permitted by this Agreement for the purpose of the City's check-in procedure. In the event that City is deemed to be a Business Associate pursuant to the Health Insurance Portability and Accountability Act of 1996 (the "Act") and the Privacy Regulations, 45 C.F.R. Parts 160 and 164 issued under said Act, City agrees to comply with the applicable provisions of the Act, from and after the date of such determination, and to execute any mutually acceptable documents, including a Business Associate Agreement, from that date forward, which confirms City's agreement to comply with such provisions. If City is determined to be a Business Associate of Hospital, City understands and agrees that failure of City or its employees, agents, and subcontractors to comply with the Act or to execute a Business Associate Agreement when requested by Hospital shall be a material breach of this

Agreement and shall permit Hospital to immediately terminate this Agreement, provided that such breach shall not have been cured by City within a reasonable time of notice.

IN WITNESS WHEREOF, the undersigned have caused this Operating Agreement to be executed as of the date first above written.

HOSPITAL:

CLEVELAND CLINIC CHILDREN'S
HOSPITAL FOR REHABILITATION

By: _____

Its: Jasen Hergenroeder
Senior Director, Financial Affairs

CITY:

THE CITY OF ROCKY RIVER

by: _____

Pamela E. Bobst
Mayor
Pamela E. Bobst

Approved as to Form Only

Andrew Bemer
Andrew Bemer, Director of Law

Date: 1.6.16

8/25/15My Docs:Rec Dept:Operating Agreement

APPROVED AS TO FORM
CCF - LAW DEPT.

DATE: 1.21.16 CMSI #: CW2503455
BY: ST [Signature]

(CW2503455) ccf 12-22-2015