

**BUILDING LEASE
(1123 North Osteopathy)**

THIS LEASE is made this _____ day of August, 2015, by and between the City of Kirksville, a Missouri municipality, ("**Landlord**") and A. T. Still University, a Missouri nonprofit corporation, ("**Tenant**").

1. **Premises.**

A. **Leased Premises.** Landlord leases to Tenant, and Tenant leases from Landlord, the following described premises and all the improvements situated on the premises (hereinafter, in whole or in part, the "**Premises**"), in the City of Kirksville, Adair County, State of Missouri:

The existing building shown on the plat attached hereto and made a part hereof as though more fully set out herein, marked Exhibit "A" (the "**Building**"), the property herein leased is the existing building shown on said plat as well as all land between the south edge of Burton Street and the north wall of the existing building and all land between Osteopathy Street and the existing east wall of said building along with the area labeled "newly fenced play area". Additionally, Tenant and its officers, invitees and employees shall have the non-exclusive right to use the parking area around the existing building, all of which also collectively referred to as the "**Land.**"

2. **Use.** Said Premises are being leased by Landlord to Tenant for such purposes and uses as Tenant may from time-to-time elect; provided, however, for so long as Bright Beginnings Day Care Center, Inc. and the Christian Food Depot choose, space currently being made available to them shall continue to be made available during the term hereof for the operation of a day care center by Bright Beginnings Day Center, Inc. and for the storage of food items by the Christian Food Depot. In the event Bright Beginnings Day Care Center, Inc. or the Christian Food Depot choose to vacate the Premises, such vacated space may be used by Tenant as it may from time to time elect.

3. **Base Rent.**

A. **Base Rent Amount.** Tenant agrees to pay as Base Rent for the Premises, Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) per year, payable in equal monthly installments of Six Hundred Twenty-five and 00/100 Dollars (\$625.00) each, payable in advance on the first day of each calendar month during the term of this Lease.

B. **Utilities.** Tenant shall pay all utilities that serve the Premises,

excluding that portion of utilities paid by Bright Beginnings Day Care, Inc. In the event utilities are not paid when due, Landlord may, but is not required, to pay the same, which amounts so paid are hereby declared to be additions to rent and shall be due and payable at the next installment of rent.

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4. **Lease Term.** This Lease shall be for a term of Five (5) years, commencing September 1, 2015 and ending at midnight on August 31, 2020; provided, however, this Lease may be terminated by Tenant at such earlier time as the purposes of said Lease become impracticable and prohibitive in operation and Landlord may terminate this Lease in the event the Tenant fails to allow use of the Premises by Bright Beginnings Day Care Center, Inc. and the Christian Food Depot as provided for in Section 2., above.

5. **Condition of Premises and Title.** Tenant has occupied this building since September 1985 and knows the condition of the Premises, and accepts the same in their present condition. Landlord hereby warrants that it has good title to the Premises and good right to lease the premises and will hold Tenant harmless for any damages Tenant may suffer resulting from any breach of this warranty of title and right to lease.

6. **Insurance.**

A. Tenant shall obtain fire and extended coverage insurance on the Building, including fixtures and non-removable tenant improvements, in an amount equal to ninety percent (90%) of the full insurable value of the Building based upon an appraisal of the Premises (Exhibit B). In the event of loss thereunder, Landlord shall be entitled to the proceeds accruing from the insurance coverage for damage to the Building; provided, however, Tenant shall be entitled to a portion of such proceeds accruing from the insurance coverage for all repairs, additions and improvements made to the Building by Tenant as well as all personal property of tenant located in the Building

B. The policy of insurance obtained now or at any future time by Tenant, shall name Landlord, as well as Tenant, as an insured.

C. Lessee shall defend, indemnify and hold Lessor harmless from, any loss, cost or expense *in*connection with or *in* any way related to (i) Lessee's use or operation of the Premises, excluding any environmental condition that existed prior to September 1, 1985 or that arose prior to that date and continued after that date; (ii) any breach or default in the performance of any obligation to be performed by Lessee under the terms of this Lease; or (iii) any intentional misconduct or negligence of Lessee, or any officer, agent, employee, guest or invitee of Lessee.

7. **Maintenance and Repair.**

A. **Tenant Obligations.** Tenant shall have the obligation of

maintaining all portions of the Premises, excluding that portion occupied by Bright Beginnings Day Care, which Landlord is not specifically obligated to maintain, and shall repair and maintain the general building plumbing, heating, electrical, *air* conditioning and ventilating systems, including the boiler. Tenant shall maintain and keep in good working order all equipment, fixtures and systems on the Premises and which serve the Premises, and shall perform routine repair and maintenance on the same, including without limitation all plumbing, heating, electrical, air conditioning and ventilating systems and equipment.

B. Parking Lot. Tenant shall keep the parking lot and all sidewalks, alleys, walkways and asphalted or concrete areas of the Land clean and free of snow and rubbish, and shall keep and maintain the same *in* good condition and repairing the same when needed. The Landlord agrees to share equally with Tenant in the cost of future parking lot surface treatments, which includes asphalt overlays and surface sealing.

8. Tenant Improvements and Alterations.

A. Tenant's Rights. At its sole expense, Tenant may, but is not required to, make tenant improvements, alterations or additions to the Premises. Any improvements, alterations or additions shall be of good workmanship and material and shall not reduce the size or strength of the then existing improvements or of any load bearing wall or structural support.

B. Payment of Costs. Tenant shall pay all bills and expenses resulting from such improvements, alterations or additions. Tenant shall fully pay and satisfy any mechanic's liens prior to the time the same may be foreclosed or the Building or any portion of the Land is subjected to any foreclosure sale.

C. Ownership of Improvements. Any improvements, alterations, additions or fixtures placed on the Premises, and permanently affixed to the Premises, shall become a part of the realty, shall belong to Landlord, and shall remain on and be surrendered with the Premises at the termination of this Lease.

9. Assignment or Sublease.

A. Permitted Assignments. Without regard to the use of the Premises by Bright Beginnings Care Center, Inc. and the Christian Food Depot as set out in Section 2. above, Tenant shall have the right to assign this Lease or to sublease all or any portions of the Premises without the consent of the Landlord to one of the following described entities:

- i. an entity resulting from a merger or consolidation with Tenant;
- ii. an entity succeeding to substantially all of the business and assets of Tenant; or

iii. a subsidiary or affiliate of Tenant.

B. Other Assignments or Subleases. Except as permitted by the preceding subsection, Tenant shall not assign this Lease, sublease the Premises or any part thereof, or allow anyone else to use or occupy any part of the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed.

10. **Right of First Refusal.** Other than for bona fide economic development purposes, if at any time during the life of this Lease, Landlord receives an offer from a third person for the purchase of the Building, and if Landlord desires to accept the offer, then Landlord shall promptly deliver to Tenant a copy of the offer (if written) or a letter setting forth the terms of the offer (if verbal), and Tenant may within thirty (30) days thereafter elect to purchase the Building on the same terms as those set forth in the offer. Should Tenant not exercise its right to purchase the Building, and if Landlord does not sell the Building to the third party, then Tenant shall continue to have this right of first refusal in connection with subsequent offers. If Landlord sells the Building after Tenant's election not to exercise this right, then the sale (if the transaction is a sale) shall be subject to this Lease.

11. **Inspection.** Landlord and its agents may enter the Premises at reasonable hours to examine the same and do anything required of Landlord by this Lease. During the last 120 days of the Lease term, Landlord may display a "For Rent" sign on the Premises, and show the Premises to prospective tenants.

12. **Signage.** Tenant shall have the right to place any signage on the Building and one sign on the grounds at the front of the building, which is permitted under applicable laws, ordinances, codes, regulations and requirements of any applicable governmental authorities.

13. **Damage By Casualty.**

A. Total Untenability. If a substantial part of the Premises is so damaged by fire or other casualty that the Premises are totally untenable, this Lease shall terminate and rent shall be paid only to the date of termination and Tenant shall surrender the Premises to Landlord and insurance proceeds shall be applied as provided for in Section 6 above.

B. Partial Untenability. If the Premises are so damaged by fire or other casualty that tenability is only partially disturbed, this Lease shall not terminate and Landlord shall restore the Premises to at least their previous condition within a reasonable time. For that purpose, Landlord and its agents may enter the Premises, and rent shall abate during such restoration and insurance proceeds shall be applied as provided for in Section above.

14. **Default By Landlord.** Tenant shall give Landlord written notice of any

default by Landlord. If (a) the default is not cured within thirty days after Landlord receives the written notice, or (b) Landlord does not within that thirty-day time period take actions which, if continued with reasonable diligence, will cure the default, then Tenant at its election may (i) seek all available remedies at law and equity; or (ii) declare this Lease terminated and rent shall cease.

15. **Default By Tenant.** The following provisions shall govern default by the Tenant:

A. Tenant will be in default under this Lease upon the happening of any one or more of the following events:

- i. Failure of Tenant to timely make any rent payment or fully perform any obligation contained in this Lease.
- ii. Tenant is dissolved or its existence terminated; Tenant becomes insolvent, its business fails, or a receiver is appointed for any of Tenant's Premises; Tenant is generally not paying its debts as they become due; or Tenant makes an assignment for the benefit of its creditors or is the subject of any voluntary or involuntary bankruptcy or insolvency proceeding.
- iii. Tenant abandons the Premises, or the Premises or Tenant's leasehold interest in the Premises are attached or taken under any court order or writ of execution.

B. If Tenant defaults, Landlord may (i) re-let the Premises for the remainder of the Lease Term or for any shorter or longer period as opportunity may offer, to such persons and at such rent as may be obtained and Tenant shall pay the difference between the amount of rent payable during the remainder of the Term and the rent received by Landlord from the re-letting; or (ii) re-enter the Premises and take possession of the Premises, with or without force or legal process, and shall have the right to declare this Lease void and the term herein contained ended, without prejudice to any remedies which Landlord may have to collect arrears of rent.

16. **Waivers.** Any waiver, consent or approval on the part of Landlord must be in writing, and shall be effective only to the extent specifically set forth in the writing.

17. **Notices.** All notices or other communications shall be in writing signed by the sender, and shall either be (a) personally delivered or (b) mailed by certified mail, at or to the following addresses:

Landlord: City Manager
City of Kirksville
201 South Franklin Street
Kirksville, Missouri 63501

Tenant: A.T. Still University
800 West Jefferson Street
Kirksville, Missouri
Attention: Vice President of Financial/Chief Financial Officer
and General Counsel

Either party may change the address by written notice to the other. Notices shall be effective when received (if personally delivered) or when deposited in the United States Mail (if mailed by certified mail).

18. **Return of Premises.** At the termination of this Lease, Tenant agrees to deliver to Landlord the Premises and all mechanical systems and all equipment and fixtures thereon in good working order and condition.

19. **Quiet Enjoyment.** Neither Landlord nor Landlord's successors or assigns will disturb Tenant in its quiet enjoyment of the Premises.

20. **Waiver of Subrogation.** Landlord and Tenant each respectively waive all rights of recovery against the other and the other's agents, employees, permitted licensees and assignees, for any loss or damage to Premises or injury to or death of persons, to the extent the same is covered or indemnified by proceeds of any insurance policy which either of the parties hereunder is required to carry under the terms of this Lease (whether or not such party is actually maintaining such insurance coverage), or for which reimbursement is otherwise received. This agreement, however, shall apply only so long as the parties' respective insurance companies expressly concur in this agreement and waive all subrogation rights. Each party shall have a continuing obligation to notify the other party if these waivers are not granted. Nothing in this section shall impose any greater liability upon the Landlord than would have existed in the absence of this section. The parties specifically recognize and acknowledge that the waivers contained herein are and shall be effective even though such claims may arise as a result of the negligence of the party being released hereunder, or such party's agents, officers or employees.

21. **Successors and Assigns.** This Lease shall inure to the benefit of and be binding upon the heirs, estates, executors, administrators, receivers, custodians, successors and (in the case of Tenant, permitted) assigns of the respective parties.

INTENDING to be fully bound, the parties have executed this Lease the day and year above written.

Landlord: **The City of Kirksville**, a Missouri Municipality

By:

Print Name: _____

Print Title: _____

Tenant: **A. T. Still University**, a Missouri nonprofit corporation

By:

Print Name: _____

Print Title: _____