

**Examination of Certain Policies, Procedures, Controls,
and Financial Activity of
HealthFirst Bluegrass, Inc.**



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ADAM H. EDELEN
AUDITOR OF PUBLIC ACCOUNTS

July 25, 2013

Thomas Lester, Board Chair
HealthFirst Bluegrass, Inc
650 Newtown Pike
Lexington, Kentucky 40508

RE: Examination Report Findings and Recommendations

Dear Mr. Lester:

We have completed our Examination of Certain Policies, Procedures, Controls, and Financial Activity of HealthFirst Bluegrass, Inc. (HealthFirst). This examination identifies four findings and offers eleven recommendations to strengthen the management and oversight of the District. The examination report also includes four observations developed to provide certain facts obtained during the examination process that did not result in a finding.

In performing this examination, we requested and examined numerous contracts, invoices, financial reports, and other documents from HealthFirst related to the lease of the Southland Drive property in 2012 and the subsequent process followed to build a new health center at that location. In addition, we reviewed select financial information concerning HealthFirst revenue projections and cash flow projections. The audit team conducted interviews with the HealthFirst Executive Director, various members of the Board, certain HealthFirst contractors, certain Lexington-Fayette County Health Department staff, representatives of the Federal Health Resources and Services Administration, representatives from the Kentucky Heritage Council, and other local government officials.

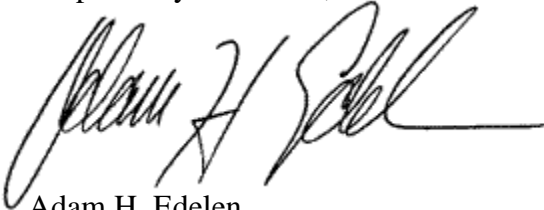
Due to the nature of certain findings discussed within this report, we are referring these issues to the Federal Health Resources and Services Administration for further review and determination of whether additional action is warranted.



Mr. Lester
July 25, 2013
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The Auditor of Public Accounts requests a report from the District on the implementation of the examination recommendations within (60) days of the completion of the final report. If you wish to discuss this report further, please contact me or Brian Lykins, Executive Director of the Office of Technology and Special Audits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adam H. Edelen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Adam H. Edelen
Auditor of Public Accounts

Introduction and Background

Examination Scope

On May 14, 2013, the Auditor of Public Accounts (APA) announced that it would conduct an independent examination of the processes and procedures used by HealthFirst Bluegrass, Inc. (HealthFirst) to administer an \$11.7 million Facilities and Improvement Program (FIP) grant from the Federal Health Resources and Services Administration (HRSA). This review was performed in response to a request from the Mayor of Lexington-Fayette Urban County Government (LFUCG). To accomplish this examination, the APA developed the following objectives:

- Review the site selection process used by HealthFirst.
- Review the procurement procedures that were performed by HealthFirst.
- Review HealthFirst’s communication and interaction with HRSA to manage this grant.
- Evaluate other operational issues and concerns expressed to the APA that could affect the implementation of the federal grant.

To address these objectives, audit staff interviewed multiple individuals that included the members of HealthFirst’s Board and Building Committee, as well as staff for HealthFirst, the Lexington-Fayette County Health Department (Health Department), LFUCG, and HRSA. Additional interviews were performed with the Board attorney, Project Manager, Kentucky Heritage Council, realtor, Fayette County Property Valuation Administrator (PVA), project engineers selected by HealthFirst, and others. We reviewed the documents related to HealthFirst’s lease for the property selected, related site plans, documentation provided to HRSA from HealthFirst, HealthFirst’s financial statements and information, HealthFirst’s Board and Building Committee meeting minutes, and the procurement documentation related to the selection of contractors related to the FIP grant.

The implementation of HealthFirst’s federal grant was discussed in a previous APA report, *Examination of Certain Policies, Procedures, Controls, and Financial Activity of Lexington-Fayette County Health Department*, released on October 17, 2011. The information and results from this audit were reviewed during this examination to evaluate HealthFirst’s progress in establishing its independence from the Health Department and its progress in implementing the \$11.7 million FIP grant.

History of HealthFirst

In 1981, the Health Department created a Primary Care Center to provide comprehensive medical care to those who have difficulty in obtaining medical services. This may include Medicaid and Medicare recipients or individuals that cannot afford health insurance. The Primary Care Center provided a full complement of services, including adult and pediatric medical care, dental services, and a pharmacy.

Chapter 1

Introduction and Background

The addition of a Primary Care Center by the Health Department makes it unique among most other health departments in the nation. Primary care centers are typically not associated with health departments and are more likely to be separate stand-alone non-profit entities. These types of centers can be regulated as Federally Qualified Health Centers (health centers) by HRSA, which allows these centers to receive Public Health Service Act Section 330 federal grant funding for operations through the Health Center Program. As a health center, the Primary Care Center typically received over \$2 million annually in operating funds from HRSA, and is eligible for other one time grants as well. The Primary Care Center must abide by 19 program requirements established by HRSA to continue to qualify for these funds.

One of the underlying themes within the 19 program requirements is that a health center is operated autonomously and independently by a governing body. Requirements for the governing body are designated by HRSA, which requires that a majority of the governing body be comprised of individuals that have been served by the health center. Because the Health Department's Board of Health (Board of Health) did not meet these requirements, a separate governing body was developed to oversee the Primary Care Center. The governing body was originally known as the Primary Care Governing Council (Governing Council) that was comprised of 11 to 15 members. The Governing Council membership is required to consist of the health center's consumers, community health care professionals, and other non-consumers. At least 51 percent must be consumers at the health center.

For the Primary Care Center to receive Public Health Service Act Section 330 funding, while operating under the umbrella of the Board of Health, a co-applicant agreement was established between the Board of Health and the Governing Council. This co-applicant agreement sets forth the autonomy of the Governing Council and defines it as a committee operating under the auspices of the Board of Health.

In December 2010, HRSA conducted an operational assessment of the Primary Care Center. This assessment was prompted by the hiring of a new Executive Director of Primary Care in August 2010, concerns that the Health Department was not complying with the co-applicant agreement, and the fact that the entity was approved to receive a federal grant of \$11.7 million in October 2010. HRSA issued an assessment report with recommendations in January 2011. In response to the report recommendations, a "Final Site Visit Response" was approved by the Governing Council in July 2011 and submitted to HRSA. On August 30, 2011, HRSA issued a revised Notice of Grant Award indicating their acceptance of this response by continuing HRSA grant funding without restriction.

To achieve the autonomy required by the HRSA assessment report, an organizational change was made in May 2011 to create a new non-profit organization, the legal entity HealthFirst, to operate the health center. After this organization was created, the co-applicant agreement was revised to be an agreement between the Health Department and HealthFirst. The new co-applicant agreement no longer considered the Governing Council a committee under the auspices of the Board of Health. The title of HealthFirst's governing body was also changed to "Board of Directors."

**Facility
Improvement
Program Grant**

On June 19, 2009, HRSA issued a new grant opportunity for health centers already receiving federal grant support under the Health Center Program. The new FIP grant was to be a one-time award made available through funds from the American Recovery and Reinvestment Act (Recovery Act). Projects approved for the FIP grant were expected to support the objectives of the Recovery Act and support the mission of the Health Center Program.

The grant states that the objectives of the Recovery Act were to:

- preserve and create jobs;
- promote economic recovery;
- help people most impacted by the recession;
- increase economic efficiency by investing in technological advances in science and health;
- promote long-term economic benefits by investing in transportation, environmental protection, and other infrastructure; and
- preserve essential services in state and local governments.

The mission of the Health Center Program "is to improve the health of the Nation's underserved communities and vulnerable populations by assuring access to comprehensive, culturally competent, quality primary healthcare services."

In keeping with these general principles of the Recovery Act and the Health Center Program, the grant funds were specifically limited to support the "alteration/renovation or construction of a facility." Due to these restrictions, grant funding could not be used to purchase real estate for renovation or new construction. By restricting funds for this purpose, it was intended that the funds would lead to improvements in access to health services for underserved populations and create health center and construction related jobs.

Chapter 1

Introduction and Background

Notice of Federal Interest

As a requirement for receiving federal funds through the FIP grant, a specific lien must be filed against any property benefiting from those federal funds. This lien is known as a Notice of Federal Interest (NFI). In summary, the lien requires that property being improved using grant funding must continue to be used for the original stated purpose of the grant funds. In the case of FIP grant funds, any property involved would have to continually be used as a health center unless the federal interest is purchased by the landowner. This restriction protects public funds from eventually being used solely for a private landowner's benefit, if for some reason the grant recipient could no longer operate the improved property.

FIP Grant Oversight

FIP grant funds are overseen by HRSA personnel, primarily through the review and approval of documents submitted by grant recipients using the HRSA Electronic Handbook system. The Notice of Grant Award, issued to all grant recipients, contains the full terms and conditions of the grant with required deadlines for documents to be filed or evidence of actionable items to be submitted. Examples of information to be submitted may include, but is not limited to, the filing of the NFI, Historic and Environmental Reviews, project budget, project plans, and any lease agreements. HRSA reserves the authority to modify the deadlines and due dates of any term within the grant award.

History of HealthFirst Facility Improvement Program Grant

In October of 2010, through joint application for the FIP grant, the Health Department and the former Primary Care Center were awarded \$11.7 million for the renovation or construction of a health center. These grant funds were to expire on September 30, 2012, though a one-year extension was possible if approved by HRSA.

The original grant application called for a 60,000 square foot facility to be built in close proximity to the current Health Department location. In April 2011, the grant was changed at the request of the Governing Council to include multiple site locations. It was thought by the Governing Council that multiple sites would better serve their strategic mission of providing services as required by the Health Center Program. It was also at this time that the Primary Care Center became HealthFirst.

After the grant was changed from the originally proposed single large health center facility to now include multiple facilities, numerous properties have been considered. At the time of the APA's October 2011 examination, the newly formed HealthFirst Board of Directors (Board) was strongly considering a 20,000 square foot facility on Georgetown Road and a 55,000 square foot building on Harrodsburg Road. In January 2012, it was announced by the Board that HealthFirst would reopen the search for a new building or site location after difficulties in obtaining the Harrodsburg Road location. See Exhibit 1 for a timeline of activities related to HealthFirst's building project.

After determining that HealthFirst would obtain the services of a new commercial property realtor in searching for a building, the Board heard presentations from three separate realtors on January 3, 2012, and chose a new realtor on that date. A HealthFirst Building Committee (Building Committee) of the Board was initiated to carry out the business related to the property acquisition and ultimately the development of the new health center using the FIP grant funds.

While an acceptable property was located, with the assistance of the realtor, FIP grant funds were to expire on September 30, 2012, before HealthFirst would be able to expend the funds. This required HealthFirst to request an extension of the grant funding from HRSA. On September 20, 2012, HRSA approved a one-year extension of the grant funds, with a new expiration date set for September 30, 2013. According to HRSA officials, further extension of the funding is possible.

**Acquisition of
Lease for
Southland Drive
Property**

The Building Committee, in collaboration with the realtor, reviewed a number of potential properties and, over a four month period, initiated five Letters of Intent to make offers on properties that could meet the needs of HealthFirst. This included the previously considered Harrodsburg Road building and a new long-term leasing scheme for the Newtown Pike location, which is currently owned by the Health Department. The following is a listing of the dates of all offers made by HealthFirst and the locations of the buildings considered:

- February 22, 2012 – 1030 South Broadway (former Winn-Dixie);
- March 7, 2012 – 326,306, 302 Southland Drive (Oleika Temple);
- March 21, 2012 – 2001 Harrodsburg Road (former Verizon building);
- March 28, 2012 – 650 Newtown Pike (current Health Department Building); and
- May 1, 2012 – 496 Southland Drive and collective properties on Rosemill Drive.

None of the first four Letters of Intent were accepted by the property owners. According to the majority of individuals interviewed during the examination, the primary reasons for property owners declining to engage in an agreement with HealthFirst was the organization's lack of credit and financial stability and, to a greater extent, the requirement to have an unsubjected federal lien against their property in the form of the NFI.

Despite the requirement for the NFI and the financial circumstances of HealthFirst, a lease deal with the landowners of 496 Southland Drive was developed. The lease was to include two buildings, an office building at the 496 Southland Drive location and a retail shopping center that was part of a collective of properties on Rosemill Drive. The Letter of Intent was signed by the landowner on May 2, 2012, with the full lease being effective June 21, 2012.

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At the time the lease was signed, the landowner did not own the properties collectively known as the Rosemill Drive properties. The lease was based on the premise and condition that the landowner would be able to obtain the Rosemill Drive properties, which HealthFirst required for sufficient office and parking space. According to the Letter of Intent sent by HealthFirst, the lease would only be effective if the landowner could obtain the Rosemill properties with a price not to exceed \$1,275,000. The landowner was able to purchase the Rosemill properties for \$1,025,000 so the lease agreement was able to move forward.

Southland Health Center Construction Project

Once all property to be leased by HealthFirst was obtained by the landowners, the process to utilize grant funding and develop the site began in earnest with the contracting of a Project Manager in July 2012. The contracted Project Manager was also an individual (hereafter known as landlord) who owned a minority interest in the company that leased the property to HealthFirst. Discussion related to this contracting process and the chosen Project Manager can be found in Findings 1 and 2.

With a Project Manager in place, HealthFirst began the procurement of an architect and engineer by issuing Requests for Proposals (RFP). HealthFirst, with the assistance of the Project Manager, graded the responding companies based on the qualifications specified in the RFPs. The architectural and engineering firms were selected by the Building Committee of the Board on September 24, 2012. Upon involving the newly contracted architect and engineer, it was determined that the two leased buildings that HealthFirst intended to renovate with the FIP grant funds would not be sufficient for the needs of the health center. This was primarily due to the older construction of the buildings not providing sufficient spacing between the first and second floors to accommodate more modern ventilation and other additions that would be necessary for the health center.

On October 4, 2012, based on the information provided by the contracted architects and engineers, the Building Committee determined that the proposed development of the leased property should be changed from a renovation of the buildings to full demolition and construction. This change was submitted to HRSA for approval, which was subsequently granted.

Filing the Notice of Federal Interest

Due to the various changes and delays that have occurred with the HealthFirst FIP grant project, HRSA agreed to make modifications to certain deadlines contained in the grant terms and conditions. This includes the requirement for filing the NFI to protect federal interest in the project. According to the Notice of Grant Award, the NFI must be filed within 90 days of the award issue date. The original award issue date was October 6, 2010; however, as the grant has been modified, so has the NFI due date filing requirement. At this time, HRSA officials have stated that HealthFirst is required to file an NFI on the leased property by August 19, 2013.

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Due to delays created by the historical and environmental reviews of the project and the approaching expiration date of the FIP grant funds on September 30, 2013, the filing date for the NFI will likely be modified again. The reason stated for not filing the NFI on the property already is to ensure that a lien is not initiated until construction is more certain. Standard procedure appears to dictate that this occurs approximately 30 days prior to the start of construction.

Historical and Environmental Reviews

The completion of a required Historical Review and Environmental Assessment has always been a requirement of the FIP grant process. The Environmental Assessment appears to have reached completion and been accepted by HRSA, while the Historic Review process is still ongoing. A timeframe for completion of this process has yet to be determined by HRSA. Further discussion of this issue is included in Observation 1 contained in this report.

FIP Grant Expenditures

According to the Notice of Grant Award issued by HRSA to HealthFirst, no grant funds may be drawn down and construction activities cannot begin until all appropriate grant conditions are met. The only exception to the restriction on the drawdown of grant funds is limited to those activities considered to be for pre-construction purposes. This includes completing architectural and engineering plans, licensing and permitting requirements, historic preservation requirements, and preparing an environmental assessment.

As of May 31, 2013, HealthFirst has expended \$762,004 in FIP grant funding on pre-construction activities. Table 1 includes the amounts and types of expenditures from FIP grant funds that were made by HealthFirst.

Table 1: Total Grant Funds Expended as of May 31, 2013

| Expense Type | Expense |
|---------------------|------------------|
| Primary Engineer | \$109,610 |
| Architect | 442,486 |
| Project Manager | 120,000 |
| Primary Legal | 47,571 |
| Office Supplies | 1,545 |
| Advertising | 2,275 |
| Realtor | 1,000 |
| Other Engineering | 5,245 |
| Other Legal | 2,415 |
| Other | 29,857 |
| Total | \$762,004 |

Source: Auditor of Public Accounts based on HealthFirst's grant disbursement schedule.

In addition to these actual expenditures, HealthFirst had incurred, but not yet expended, \$31,512 as of May 31, 2013. This amount primarily includes expenditures for an environmental analysis, but also includes legal fees, engineering services, and other consulting fees.

Findings, Recommendations, and Observations

Finding 1: A candidate for Project Manager appears to have been preselected prior to the solicitation process for the contracted position.

Based on a review of the Building Committee meeting minutes, information provided through interviews, and records related to scoring candidate resumes and selecting a Project Manager, it appears the selection of a Project Manager was decided before the solicitation process to identify potential candidates for the contracted position was initiated. On July 12, 2012, the Building Committee voted to engage HealthFirst’s landlord as Project Manager before any qualifications for the position were decided or a search for other candidates was initiated. Once the solicitation process began, it appears the criteria developed for scoring the candidate would highly favor the selection of the landlord as the Project Manager. The HealthFirst Executive Director (Executive Director), not the Building Committee members, scored the candidates’ resumes. Building Committee members were then given the resumes of the candidates with the top five scores, which included the landlord’s resume that received the highest score. Candidate interviews were not performed by the Executive Director or the Building Committee before the landlord was selected as the Project Manager.

According to Building Committee meeting minutes, during the July 12, 2012 meeting, the Building Committee Chair and the landlord of the property being leased by HealthFirst made a presentation to the Building Committee about different processes undertaken during construction. It is unclear why the landlord was asked to assist in such a presentation. During the presentation to the Building Committee, a representative of the realty team hired by HealthFirst recommended the landlord for the Project Manager position “based on his experience and knowledge of the neighborhood.” This resulted in the Building Committee members voting to negotiate a price, terms, and conditions with the landlord about the Project Manager position. The Building Committee Chair instructed the Executive Director to “engage” the landlord, but also directed the Executive Director to determine if HRSA would require three bids or just the credentials of the chosen candidate.

Emails reviewed during the examination indicate that the Executive Director followed the directive to “engage” the landlord by contacting him on July 13, 2012 to inquire about the Project Manager position. The Executive Director clarified to audit staff that, after contacting the landlord, he recognized some process should be undertaken to seek out candidates. The landlord was not contracted to be the Project Manager at that time.

An advertisement was issued on July 22, 2012 seeking resumes for a “Construction Project Manager” with a deadline for response by July 30, 2012. According to documents provided by HealthFirst, there were 24 candidates, including the landlord, who responded to the advertisement. Based on interviews, the landlord appears to have been the only candidate verbally asked to submit a resume for the position. See Exhibit 4 for advertisement of the Construction Project Manager position.

Findings, Recommendations, and Observations

The Executive Director stated that he scored all candidates using criteria that he developed based on the advertisement for the position and discussions with the Building Committee members. No formal scoring criteria or the weighting of each category was established by the Building Committee. The landlord either tied or was the top scoring candidate in nearly every category used by the Executive Director, including the category “Ability to Collaborate,” in which he received two points higher than the maximum number allocated for that category. See Exhibit 5 for a copy of the scoring sheet.

The Executive Director then submitted the overall scoring sheet of all candidates and the top five candidates’ resumes to the Building Committee for consideration. Meeting minutes indicate that the Building Committee received the list of Project Manager candidates on July 27, 2012, three days prior to the end of the solicitation period. On that date the Building Committee members then voted to select the landlord as the Project Manager subject to a review of his background and the completion of a contractual agreement.

The background review appears to have consisted of a reference check by the Building Committee Chair who contacted three individuals about the landlord. This included a local architect, a local commercial property owner, and the HealthFirst contracted realtor.

Based on interviews with certain Building Committee members, there was confusion as to whether the top candidates were interviewed prior to their resumes being submitted to the Building Committee. At least two Building Committee members were certain that a number of the candidates were contacted for an interview either by phone or in person. The members typically cited the Building Committee Chair and the Executive Director as the likely individuals conducting the interviews. According to the Building Committee Chair and the Executive Director, no interviews of any candidates were conducted. The Building Committee Chair stated no interviews were held because no other candidates met the criteria established for the Project Manager position.

As previously stated, the Executive Director created the scoring criteria based on the wording of the advertisement soliciting resumes from potential candidates for the position, along with other input from certain Building Committee members. The advertisement included the following requirements:

1. Knowledge of the commercial real estate market in Lexington-Fayette County.
2. Knowledge of federal, state, and local commercial construction laws as related to federal grants.
3. Bidding requirements.
4. Fast Track project management experience of \$10 million or greater.

Findings, Recommendations, and Observations

The scoring sheet used by the Executive Director did not include categories that could have been scored for overall experience, Lexington experience, and experience with projects of at least \$10 million that was identified as criteria in the advertisement. In addition to criteria identified in the advertisement, the scoring sheet included categories for “Owner Developer Experience” and “Ability to Collaborate,” which was not specifically or clearly defined. The Building Committee Chair stated that they specifically wanted someone local who knew the policies and politics of Lexington. Another Building Committee member stated they wanted to make sure the grant funds stayed in Fayette County.

By using these criteria, HealthFirst considerably narrowed the options for potential Project Manager candidates to be selected by increasing the opportunity for the candidate that had already been voted to be selected by the Building Committee to score favorably. In reviewing the process followed, it appears the criteria used for scoring ensured that HealthFirst would receive responses closely aligned with the experiences and qualifications of the landlord.

Policies governing the procurement practices of HealthFirst are based on the policy and procedure manual of the Health Department, which were adopted by HealthFirst. There are a variety of processes to procure services under the adopted policies, though no specific process under the policies was cited by HealthFirst for the Project Manager position. Since HealthFirst eventually advertised the position with certain requirements indicated and made a request for qualifications from candidates through the submission of resumes, the process undertaken most closely resembles Competitive Negotiations as described under Section I, Subsection 11 of the policies. However, the full requirements of this policy do not appear to have been followed, which result in the lack of a greater amount of detail and transparency envisioned in the policy.

According to the policy for Competitive Negotiations, a RFP must be developed and contain “comprehensive performance requirements, technical provisions, separate cost provisions, and specific evaluation criteria for evaluating offers.” No such detailed RFP was created for the Project Manager position. Only the advertisement of the position was developed for the Project Manager, and this does not appear to meet the intent of the policy. In comparison, the process that was used to choose an engineer, architect, and construction manager for the HealthFirst clinic project included a detailed RFP and followed a prescribed scoring process undertaken by more than one individual.

Findings, Recommendations, and Observations

Federal regulations governing the procurement processes of those organizations receiving grants from HRSA also require a greater amount of detail and transparency in the process used to select contractors. In directly addressing competition, 45 CFR § 74.43 states,

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

With regards to the basis on which the contracts should be awarded, this regulation further states,

Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient.

The federal regulations become more specific about the process to be followed under 45 CFR § 74.44, which further emphasizes the need for transparency in the contracting process by specifying the amount and types of information that should be considered and produced by a grantee related to a solicitation process.

Based on the information that was solicited from Project Manager candidates and received by HealthFirst, it is unclear how HealthFirst could have ensured that the Project Manager chosen was the “most advantageous” to HealthFirst. The advertisement for the position solicited only resumes from qualified candidates and, according to the Executive Director, these resumes were the only documents used as the basis for scoring the candidates. There does not appear to have been any consideration of the cost for the service and it does not seem possible to determine the quality of a candidate without more detailed information, interviews, or discussions with candidates.

After reviewing the resumes for the top five candidates, there is an obvious difference in the amount of detail provided by the responding candidates. The landlord provided a one-page resume indicating his general experience in commercial real estate and noted two mixed-use properties that exceeded the \$10 million requirement of the advertisement. The landlord did not specify any experience with healthcare facilities. Resumes of other candidates included numerous pages detailing past projects, many exceeding \$10 million, some of which included experience with healthcare facilities. Such information should have been sufficient to require further review and requests for information from all the top candidates. As stated by one of the top five candidates in response to the advertisement, “[a] resume is merely a snap-shot of ones experience.”

Findings, Recommendations, and Observations

According to the contractual agreement between HealthFirst and the Project Manager, the Project Manager monitors all facets of the project on behalf of HealthFirst, including preparation, planning, design, and construction. Due to the importance of this position, the Building Committee should have ensured that the process to fill the position was thorough, transparent, fair, and complied with the procurement policies adopted by HealthFirst, as well as any related federal regulations. At a minimum, the Building Committee should have followed the same process performed to select the other professional services related to this construction project. Based on the selection process and the information reviewed, it appears the Building Committee wanted and preselected the landlord as Project Manager. See Exhibit 6 for the Project Manager Agreement.

Recommendations

We recommend the HealthFirst Board ensure that all procurement activity follow the intended procurement practices adopted by the Board and those required by a granting agency. This includes ensuring appropriate competition and transparency in the process. We further recommend that the HealthFirst Board determine whether the procurement process for a Project Manager should be reperformed following the policy and regulation requirements. Finally, we recommend HealthFirst work with HRSA to determine what actions, if any, are required to maintain compliance with applicable federal regulations.

Finding 2: The Project Manager has a conflict of interest functioning as both HealthFirst landlord and Project Manager.

HealthFirst contracted with an individual to perform the responsibilities of a Project Manager that was to represent HealthFirst's interests and oversee the planning, design, and construction of a new health center. However, the contracted Project Manager has a conflict of interest due to his part ownership in the property HealthFirst is leasing and developing for the new health center. The individual's dual interests create a conflict for the Project Manager in carrying out his obligations to HealthFirst, while also having financial interests in both the property being leased by HealthFirst and any future business opportunities with the majority landowner associated with the project. A contractor should be able to perform duties without having any personal interests, whether real or perceived, that could impact decisions made on behalf of the organization with which they have contracted.

HealthFirst signed a lease for property at 496 Southland Drive and other adjacent lots on Rosemill Drive on June 21, 2012, after working primarily with a 10 percent minority owner in the company that purchased the properties. In July 2012, the Building Committee chose to contract for a Project Manager to help oversee and guide the development and construction process of a new health center to be located at the newly leased property. The minority landowner of the property, who primarily represented the landowners in lease negotiations with HealthFirst, was chosen as the Project Manager on July 27, 2012. See Finding 1 for further details of the Project Manager selection process.

Findings, Recommendations, and Observations

It is apparent from meeting minutes that the HealthFirst Board was fully aware of the 10 percent property ownership of the individual contracted to be the Project Manager. The Building Committee members interviewed also stated that such a conflict was discussed when selecting the Project Manager. During these discussions, Building Committee members have stated they determined that the situation could be seen as a benefit, not as a conflict, to HealthFirst as the landlord would be motivated to ensure the property was developed properly. Building Committee members also cited a condition within the Project Manager Agreement (Agreement) intended to mitigate the risk of the conflict of interest. According to Section 11 of the Agreement between the Project Manager and HealthFirst,

Although the Project Manager is a minority member of [] the owner of the Southland Drive Premises, the Project Manager's duties shall solely run to the Company and not [] with the matters set forth in this Agreement. The Project Manager represents that he shall at all times consider only the best interests of the Company first and foremost in performing the Services.

This condition included in the contract provides HealthFirst a basis to end the contract and seek restitution if it was determined the Project Manager did not fulfill the requirement to only represent the interests of HealthFirst. However, this only acts to possibly discourage actions that do not serve HealthFirst, if discovered, and cannot ensure that such a situation does not occur.

According to documents provided by the Project Manager, he holds a 10 percent non-controlling interest in the company that owns the properties currently being leased to HealthFirst. Though not having a controlling interest, 10 percent of a multi-million dollar property investment is significant, making it highly improbable that an individual could completely remove any personal consideration when making decisions as Project Manager. In addition, the Project Manager is also known to have business dealings with the majority owner of the Southland property in other projects. It is also improbable, if conflicts arise, that an individual could fully disregard his responsibility to his business associate and jeopardize future business opportunities and potential earnings with that person.

It is unreasonable to assume an individual in this situation is able to divest himself of his own personal financial interests to resolve either real or apparent conflicting interests. It is for this reason that codes of conduct and ethics standards for employees, officials, and board members serving in the public sector prohibit such conflicts of interests. This can be seen in the policies and standards of conduct adopted by HealthFirst, a publicly funded entity, which must have previously recognized such conflicts as having potential detrimental effects on the organization and the public funding used to support the organization.

Findings, Recommendations, and Observations

According to the Lexington-Fayette County Health Department employee Code of Ethics adopted by HealthFirst,

An employee, spouse, or business of which the employee or spouse owns at least five percent (5%) must not knowingly have any agreement or contract with the LFCHD for which the employee works. This includes contracts that are awarded through a competitive bid process or any grant issued by the department regardless of funding source.

Further, the Standards of Conduct for Board Members adopted by HealthFirst prohibit such conflicts for the Board member. These standards state,

No board member will have a direct or indirect financial interest in, or receive any compensation or other benefits as a result of, transactions between HealthFirst and any individual or business firm...

The Standards of Conduct also specifically note that it is typically not enough to simply identify the conflict and attempt to act in HealthFirst's best interests despite the conflict.

A "*financial or other interest*" includes not only personal and pecuniary (monetary) advantage, but also situations in which there is a duality or diversity of interests between HealthFirst and another organization with which the board member, or relative of any of these individuals, also is associated. In these situations, it is typically not enough for an individual to be aware of the conflict and to attempt to act in HealthFirst's best interest despite the conflict...For serious, visible, continuing or pervasive conflicts, an individual may be required to withdraw from his or her position with HealthFirst Board of Directors or from the outside position that causes the conflict.

As an independent contractor hired by HealthFirst, none of the requirements in either the employee Code of Ethics or the Board member Standards of Conduct appear to apply to the Project Manager, but these rules do reflect the employees and Board members should conduct themselves in a manner to not create a conflict for the organization. It is generally recognized that the duality of serving two conflicting interests is not logically possible and has, therefore, been prohibited. The same policies and standards should be applied to a contractor whose position carries great influence with the Board members and the Executive Director, who are tasked with making final approvals for the health center construction project.

Findings, Recommendations, and Observations

It could be interpreted that federal regulations governing the procurement practices of those receiving grants from HRSA may prohibit the conflict of interest identified with the Project Manager, but the issue would ultimately require federal officials to make this determination. According to 45 CFR § 74.42,

No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict or interest would be involved.

If the Project Manager were considered an agent of HealthFirst, it appears that a violation of the federal regulation would exist. Further, analysis would need to be completed by HRSA officials to determine whether this contractor would be considered an agent of HealthFirst.

According to the Agreement, the authority of the Project Manager to bind HealthFirst for any payment is limited and requires the written approval from HealthFirst; however, the Project Manager is provided extensive oversight authority of the project and the other project contractors. The Agreement also provides the Project Manager the ability to influence the decisions of HealthFirst through his role as an advisor. Under these circumstances, the conflicting interests of the Project Manager could result in decisions or actions that produce a potential personal benefit for the Project Manager at the expense of HealthFirst and its public funds.

Recommendations

We recommend the HealthFirst Board reconsider contracting with a Project Manager that may, in appearance or in reality, create a conflict of interest. We also recommend HealthFirst inquire to HRSA whether such a conflict would be prohibited under federal regulations and, if so, whether the funding and use of the capital grant may be negatively impacted.

Finding 3: The amended lease draft does not require exclusive parking for HealthFirst.

The original and amended lease agreements have conflicting parking terms that could negatively affect HealthFirst's compliance with HRSA requirements. The original lease stated that the tenant will be provided with 200 parking spaces on the premises and the Development Lot, but the amended lease (still unsigned) states that the tenant will have nonexclusive use of all parking spaces on the premises. If the federal government's capital development grant is used to pay for the construction of the parking lot, the lease agreement must provide for exclusive parking rights that cannot be shared for other interests. If HRSA were to approve the grant award under the amended lease agreement, HealthFirst's clinic parking will not be contractually exclusive, which could provide an unallowable benefit for the property's owners. Therefore, this change is needed to ensure that any parking on the premises is exclusive to HealthFirst and the federal government's investment, through the FIP grant, is protected. See Exhibits 2 and 3 for the original and amended lease agreements.

Findings, Recommendations, and Observations

The original lease, signed on June 21, 2012, stated that the tenant will be provided with 200 parking spaces on the premises and Development Lot. In addition, the original lease also contains a section titled, Cross-Easement for Parking, which requires the landlord to secure a cross-easement parking agreement with the Development Lot. This agreement will be acceptable to the tenant at its sole discretion and the tenant will be required to pay the parking lot's common maintenance expenses based on building size. This section states that the building on the Development Lot has an on-going deed restriction that the size of the building cannot exceed 10,000 square feet.

After HealthFirst's architects and engineers made the recommendation to construct a new building instead of renovating the current buildings, the lease was amended and restated in March 2013, but has not been signed. According to HealthFirst's Executive Director, the amended lease agreement will not be finalized until the results are known about the on-going historical and environmental reviews. While lease rates and the option to purchase prices remained the same, the parking term was changed to state that the tenant will have nonexclusive use of all parking spaces on the premises.

A section of the amended lease titled, Cross-Easement for Access and Parking, is similar to the original lease. This section states that the landlord will record a Non-Exclusive Reciprocal Easement and Maintenance Agreement for the Development Lot, which will provide for pro-rata maintenance of the parking areas based on building size. This agreement is required to be acceptable to the tenant in its sole discretion. It also states that the tenant is responsible for the maintenance requirements of the parking area on the premises.

According to our interviews with the HRSA representatives, the budget submitted by the agency should reflect any unallowable costs. They provided an example that if a three story building was built and the first floor was used as retail space, the construction costs for the building should be reduced by the pro-rata cost for the first floor because the building would not be used exclusively as a health care clinic. Therefore, the total costs of the parking site should be reduced by any unallowable costs if the parking is not being constructed solely for HealthFirst.

The most recent construction budget information submitted to HRSA documents that the cost of site work is estimated to be \$900,000, with the entire amount identified as an allowable cost for the federal government to pay. According to a site plan presented by the HealthFirst contracted engineering firm on October 11, 2012, this cost will provide the clinic with 175 plus parking spaces that includes 10 handicap spaces. Per this plan, zoning at this location would require a minimum of 148 spaces.

Findings, Recommendations, and Observations

HealthFirst's Executive Director stated that it was his understanding that the parking spaces constructed on the premises would be dedicated solely for the use of HealthFirst, but that this issue would be reviewed to ensure compliance. He also stated that if HealthFirst agrees to any terms that HRSA does not approve, the project would not be able to move forward. If he thought anything was at risk of not being approved, he would discuss the issue with his HRSA project officer before it resulted in a delay. The Executive Director was aware that there was a shared cross-easement and parking section with the Development Lot, but this has not been a priority to address at this point.

Parking was a significant issue in HealthFirst's site selection and the lease agreement needs to reflect that any parking on the premises is solely for the use of the health center. HealthFirst should ensure that the property owners do not receive an unallowable benefit by using the parking spaces for any other purposes so that the federal government's investment through its capital development grant is protected.

Recommendations

We recommend that HealthFirst review the lease agreement prior to it being finalized to ensure that any parking spaces on the premises are dedicated solely for HealthFirst's clinic. To prevent any delays in the approval of the grant award, we recommend that this issue be discussed with a HRSA officer to ensure their approval before the lease agreement is finalized. We also recommend that the lease terms related to cross-easement and parking issues within the Development Lot be discussed with HRSA and the landlord to ensure that these terms will not result in any compliance problems with the capital development grant.

Finding 4: HealthFirst's financial stability is threatened by untimely Medicaid payments and less than budgeted patient revenue.

On May 9, 2013, the HealthFirst Board and the Board of Health reached an agreement that \$1.2 million of the local health tax revenue would be provided to HealthFirst in payments of \$100,000 per month until December 2015. This was an important step in establishing HealthFirst's independence from the Health Department, as required by HRSA program regulations. As a newly formed independent entity, HealthFirst continues to work toward ongoing financial viability, while also having the responsibility of overseeing the use of an \$11.7 million federal grant to be used for the construction of a new health center for the community. From our review of its financial audit, HealthFirst's financial stability is threatened by untimely Medicaid payments and receiving less than budgeted patient revenue with only approximately 30 days of cash on hand as of December 31, 2012. However, June 1, 2013 cash flow projections indicate that HealthFirst would have less than 30 days of cash on hand through 2013.

Findings, Recommendations, and Observations

According to HealthFirst’s first independent financial audit of calendar year 2012, its “continued existence is dependent on its ability to achieve profitable operations, maintain positive cash flows, and obtain adequate financing.” According to HealthFirst’s audited financial statements as of December 31, 2012, cash on hand was 30.4 days. This was calculated by dividing the entity’s cash and cash equivalents by their daily expenditures less depreciation. The following illustrates the formula and the numbers used in this calculation:

$$\frac{925,246 \text{ (Cash and Cash Equivalents)}}{11,122,708 \text{ (Annual Expenditures Less Depreciation)}} = 30.4 \text{ Days of Cash on Hand}$$

In 2013, HealthFirst has experienced lower than budgeted patient revenue and a large Medicaid accounts receivable. Though there may be explanations for the revenue shortfall and increased Medicaid accounts receivable, as a new entity, HealthFirst is more vulnerable to these conditions because it has not yet developed the cash reserves needed to endure these situations.

HealthFirst budgeted for an aggressive net patient revenue increase of 38 percent in 2013 anticipating its expansion to the Regency Road and two school clinics. However, these budget projections had to be revised downward to nine percent to reflect a more conservative anticipated net patient revenue increase from 2012. The primary reason provided for lower than budgeted revenue is that the Regency Road location does not have a pharmacy, unlike the Newtown Pike location, and these clients appear to be using other providers to fill their prescriptions. Table 2 illustrates the original and revised 2013 budget estimates related to patient revenues that HealthFirst must manage as the year progresses.

Table 2: Budget Revisions for Patient Data for 2013

| Category | Budgeted as of January 2013 | Revised Budget as of May 2013 | Difference | % Change |
|----------------------|------------------------------------|--------------------------------------|-------------------|-----------------|
| Patient Visits | 65,254 | 55,959 | (9,295) | (14.24%) |
| Newborn Services | 5,852 | 4,137 | (1,715) | (29.31%) |
| Prescriptions | 111,681 | 86,095 | (25,586) | (22.91%) |
| Net Patient Revenues | \$9,547,782 | \$7,550,926 | (\$1,996,856) | (20.91%) |

Source: Auditor of Public Accounts based on HealthFirst’s Monthly Projection statement as of May 31, 2013.

In addition to realizing lower net patient revenue, HealthFirst has a Medicaid accounts receivable of \$1.1 million that is net of an allowance for uncollectible accounts. Untimely Medicaid payments is an issue affecting most healthcare agencies that accept Medicaid patients, but this may have a more significant impact on the financial position of HealthFirst since it is a new organization that has not had sufficient time to build up a healthy cash reserve.

Findings, Recommendations, and Observations

HealthFirst developed a Cash Flow Projection as of June 1, 2013 that illustrates its tight cash situation. According to this projection, if HealthFirst is able to receive an increased amount of Medicaid payments each month beginning in July 2013, it appears it will be able to meet their monthly operating payment obligations. HRSA recommends health centers to maintain an adequate amount of cash on hand of one month or more, but these cash flow projections do not indicate this amount will be available. For example, cash remaining at the end of August 2013 is projected to be \$131,478 whereas; \$925,246 in cash was available on December 31, 2012.

Currently, HealthFirst reimburses the Health Department for personnel and other shared administrative expenses so a limited HealthFirst cash flow may affect both entities. If the assumption within the Cash Flow Projection of receiving increased Medicaid payments beginning July 2013 is not realized or without additional revenue from another source, there is a risk that HealthFirst may not be able to fully reimburse the Health Department timely for its monthly expenditures.

With the required need to establish independence, as well as constructing a new health center for the community, HealthFirst's viability could be threatened by untimely Medicaid payments or reduced revenues from other sources because it has limited options to acquire financial assistance. In addition, overly aggressive revenue projections could aggravate the situation when cash is required and not available.

A primary responsibility of a health center's governing board is to understand its financial situation and to react accordingly with management. A board should ensure that they are overseeing the entity's financial performance by reviewing its basic financial goals using financial statement data. According to a HRSA publication, *Governing Board Responsibilities and How to Do Them*, a board should provide for the following responsibilities:

- Assume legal fiduciary responsibility of the health center – assuring financial accountability, effective oversight of the center, and sound financial viability;
- Review and approve the annual audit and monthly financial statements;
- Ensure that there are board members who are willing and able to perform the financial oversight function;
- Approve the selection of the financial measures and their annual and long term goals;
- Regularly review progress and ensure corrective action is taken when necessary.

Findings, Recommendations, and Observations

Recommendations We recommend HealthFirst routinely inform the Board and the Board of Health of the status and potential impact of Medicaid account receivable, monthly budget to actual revenues, and cash flow projections. This information should be provided to both the boards through the Joint Committee developed to interact and resolve financial issues. The Joint Committee should monitor HealthFirst’s cash flows and outstanding Medicaid payments for both boards to stay informed of the potential impact on HealthFirst’s financial position. In addition, the boards, through the Joint Committee, should develop procedures to follow if HealthFirst is not able to fully pay its monthly reimbursement amount. These procedures should be designed to mitigate any damage to the Health Department, such as implementing late charges or interest fees. We further recommend that conservative revenue projections are made to reduce the risk that projections are relied upon but not realized.

The Health Department employs a Chief Financial Officer who is included in HealthFirst’s finance meetings; therefore, we recommend this individual also attend the Joint Committee meetings to provide information regarding the Health Department’s financial situation and to discuss HealthFirst’s financial status. As HealthFirst’s financial situation improves, we recommend that it employ a senior finance officer to provide focused, daily expertise and attention to monitor HealthFirst’s financial operations.

Observations

As part of the examination process, certain concerns and issues were expressed to this office related to HealthFirst and the FIP grant project proposed on Southland Drive. While all concerns were reviewed thoroughly, the examination of information presented through documents and interviews led auditors to conclude that certain concerns did not result in a finding. However, due to the public interest in certain concerns, we determined that information regarding select issues should be presented to provide facts obtained during the examination process.

Observation 1: Historic review and environmental assessment.

As part of the FIP grant requirements, recipients must ensure projects are compliant with federal historic and environmental laws. This includes the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). NEPA ensures that the project has considered the environmental impact of a project and that the general public has been fully informed and had the ability to comment on the project. NHPA requires that projects funded by federal agencies take into account any impacts to historic properties. The extent that each of these acts is implemented depends upon the type and scope of a project being completed. The requirements to be met for each approved FIP grant program are included in the Notice of Grant Award issued by HRSA.

Findings, Recommendations, and Observations

According to the original Notice of Grant Award issued by HRSA to HealthFirst on October 6, 2012, a draft Environmental Assessment had to be filed with HRSA within 90 days of the award issue date. It also states that HealthFirst must submit a letter from the State Historic Preservation Officer (SHPO) indicating no adverse impact on historic or cultural resources within 60 days of the award issue date. Due to the various changes in proposed locations for the HealthFirst grant project, these deadlines were modified and extended by HRSA over the period of the grant.

Once a project location and proposed construction plans were solidified at the Southland Drive location, HealthFirst underwent a great deal of public feedback related to environmental and other issues. According to information from HealthFirst and HRSA, a complaint related to environmental concerns was filed with HRSA sometime in January 2013. HRSA required that HealthFirst further review and address the issue. These concerns were apparently addressed by HealthFirst through the site plans for the project. Based on an interview with HRSA officials, it appears environmental concerns have been satisfactorily addressed by HealthFirst.

A letter dated December 14, 2012, from the HealthFirst Executive Director to the SHPO, requested a Historic Review be completed in compliance with the federal requirements. The designated SHPO in Kentucky is the Director of the State Historic Preservation Office. At the request of the SHPO, an independent contractor was hired by HealthFirst to conduct the Historic Review. The report from the contractor was finalized March 22, 2013 and reviewed by the office of the SHPO followed by further assessment from that office. On April 30, 2013, it was the final determination of the SHPO that both buildings being leased by HealthFirst and planned for demolition could be eligible for the National Register of Historic Places.

The conclusion of the SHPO required a process of further evaluation by HRSA, including a public comment period, to determine what actions to take. This may include some form of mitigation such as documentation of the properties or could result in a halting of the demolition. At this time, HealthFirst may not go forward with demolition and construction until all required procedures related to the Historic Review process is completed and a final decision is made. No final timeframe has been determined identifying when this will occur. Information provided during interviews indicate that demolition will likely go forward with some form of mitigation being performed based on input from the SHPO and other consulting parties determining the specific requirements.

**Observation 2:
HealthFirst lease
for property.**

Based on our research of other properties available for leasing in the Southland Drive area, the agreed-upon rental rates in HealthFirst's original lease of \$7.50 per square foot for one building and \$10.50 per square foot for a second building are reasonable and comparable to other properties. Similar buildings in the area had lease rates that ranged from \$8 to \$12 per square foot.

Findings, Recommendations, and Observations

In the original lease agreement for the Southland Drive property signed on June 21, 2012, HealthFirst agreed to pay \$7.50 per square foot for the 496 Southland Drive location that totaled \$13,062.50 per month. For the Rosemill building, HealthFirst agreed to pay \$10.50 per square foot for a total of \$10,412.50. In total, for both buildings, HealthFirst agreed to pay \$23,475. These rental amounts will remain the same for the first five years of the lease and will increase by a small margin every five-year period.

Per the amended lease agreement that has not yet been finalized, the monthly rental rate for the first five years will remain at \$23,475.50 for all leased property. The primary reason for the amended lease was to reflect the decision to remove the two buildings and to construct a new building. Though the new construction is planned to have approximately 1,200 square feet more than the two buildings that were originally going to be renovated, the lease rates have not changed from the original lease.

The signed lease provides for a six-month period in which no lease payments will be made. After that time, based on the original lease agreement, the payments will begin after the six-month period or may be deferred for an agreed-upon period of time. Any deferred payments must be amortized at an interest rate of two percent over the landlord's borrowing rate in equal installments over a period of time.

HealthFirst did not begin making lease payments to the landlord until March 2013, choosing to defer some lease payments. As of May 31, 2013, HealthFirst had expended \$86,879 in lease fees over a three month period.

**Observation 3:
Agreement
relating to
property owners
Development Lot.**

Within the HealthFirst lease agreement for the Southland Drive and Rosemill Drive properties, a portion of the Rosemill Drive properties is specifically excluded from the description of the premises. This parcel is noted in the lease document as the "Development Lot." It is described as a "10,000 square foot office/retail building site" in the description of the premises, but in another section of the lease it is indicated that the lot will allow for a 10,000 square foot building. The actual location of this lot is not described specifically in the body of the lease, but a map of the premises is included as an exhibit to the lease indicating the proposed location. The lease and the attached map can be seen in Exhibit 2.

An initial concern expressed to this office related to this Development Lot was that the price HealthFirst agreed to pay for the option to purchase the Rosemill properties from the landlord is based on the full \$1,025,000 the landlord had paid to purchase the Rosemill properties. This can give the perception that HealthFirst would not fully receive all the property that was purchased if that option were exercised. Based on information provided in interviews and a review of the lease, this does not appear to be correct.

Findings, Recommendations, and Observations

Since the Development Lot size was clearly disclosed in the lease agreement, HealthFirst appears to have agreed to a price it was willing to pay for a known total property area. The calculation of this area would be the total area of the Rosemill properties, excluding the Development Lot. According to Board directors and officials, this area was sufficient to meet the needs of the proposed health center in conjunction with the 496 Southland Drive location.

At the time the original lease was signed, the location of the Development Lot appears to have been set in one of the few probable places within the boundaries given the location of the two existing buildings anticipated to be leased. This placement of the Development Lot would likely have impacted the flow of parking for the proposed health center, due to the central location in the main parking lot. It could also have impacted federal grant funding if it was determined that the centralized placement would have allowed the landlord's Development Lot to substantially benefit from the improvements being made using federal grant funds. However, the plan contained in the signed lease was only used for several months until the determination was made to demolish the leased buildings and construct a single building.

While the lease signed on June 21, 2012 is still the current lease, it does not reflect the decisions made by HealthFirst since October 2012. By removing the two separate buildings from the property, the Development Lot could be moved to a new location that is more separated from the HealthFirst leased property so that the Development Lot does not interfere with the central parking lot and is less likely to impact federal funding, notwithstanding issues found in Finding 3. The movement of the Development Lot is done at the full discretion of HealthFirst as indicated in the lease term 20 (d), which states:

Seller shall have caused the subdivision plat for the subdivision of the Development Lot to have been recorded on or before the end of the Due Diligence Period, which subdivision plat shall be acceptable to Tenant in its sole discretion.

According to Board directors, officials, and contracted engineers, the new placement of the Development Lot has been established since at least October 2012. See Exhibit 7 for site plans of the existing lease and the proposed amended lease. Documents submitted to the PVA's office also indicate that the property plat has been subdivided to reflect the proposed location and not that found in the original lease. According to HealthFirst, a new lease reflecting all changes being made to the project will be signed after the completion of the Historic Review process and FIP grant funding is extended past the current expiration date of September 30, 2013.

Findings, Recommendations, and Observations

**Observation 4:
HealthFirst option
to buy leased
property.**

As a term of the lease agreement for the Southland Drive and Rosemill Drive properties, HealthFirst has the option to purchase the properties four years after the effective date. This purchase is not a requirement but, according to HealthFirst officials, is preferred as analysis indicates it would save the organization money over time. The purchase prices of the properties are established in the lease agreement. For years four through ten of the lease, if HealthFirst chooses to exercise the option to purchase, the price for 496 Southland Drive is set at \$1,100,000. The price for the collective Rosemill Drive properties is set at 30 percent over the settlement price of the properties paid by the landlord plus reasonable costs incurred by the landlord during the purchase process. The proposed purchase prices increase slightly after the 10 year period.

The price for the Rosemill properties was not established with a specified price because they had not yet been purchased, nor was there an established price for those properties at the time the lease was signed. Within the Letter of Intent produced by HealthFirst, a limit of \$1,275,000 was placed on the amount the landlord could pay for the Rosemill properties to ensure the final price for the option to purchase was not above what HealthFirst was willing to pay. Based on the final settlement price of \$1,025,000, the total amount HealthFirst would pay for the option to purchase would be \$1,332,500. This would make the total purchase price for all leased property approximately \$2,432,500.

There is a concern that the prices HealthFirst agreed to pay under the purchase option are excessive. This concern appears to be based on two primary factors that note the purchase prices in the lease are more than the property values on record with the PVA and that the purchase prices provide the landlord with an excessive amount of return over what was paid for the properties.

In discussions with the PVA, it was understood that PVA values do not necessarily reflect true market values of property. This appears to be especially true for commercial properties that have not been sold for an extended period of time or are being sold under financial hardship. This was the case for the properties being leased by HealthFirst.

Given the reduced purchase amount paid by the landlord to obtain the property, the 30 percent rate premium applied to the purchase price does not indicate that the amount paid by HealthFirst is unreasonable or above market value. This is also supported by private appraisals, offers, and other documents shared with this office. Further, a property owner assumes a level of risk when entering into a lease agreement with a newly formed entity, such as HealthFirst, that has limited financial resources, as well as a federal lien requiring the property to be used solely as a health center.

Findings, Recommendations, and Observations

Consideration should be given to the final price that would be paid by HealthFirst for the value of the property they would receive. In this case, HealthFirst funds would pay less than \$2.5 million for an approximately 34,000 square foot built-to-suit medical center with adequate parking in a location preferred by HealthFirst.

EXHIBITS

| Date | Action |
|-------------|---|
| 1/3/2012 | Board reopens search for building location, three realtors make presentations to the Board, one is chosen by the Chair |
| 2/16/2012 | Board creates Building Committee |
| 2/22/2012 | Offer made on former Winn-Dixie Building (1030 South Broadway) |
| 3/7/2012 | Offer made on Oleika Temple (326, 306, 302 Southland Drive) |
| 3/21/2012 | First meeting of Building Committee |
| 3/21/2012 | Offer made on Verizon building (2001 Harrodsburg Road) |
| 3/28/2012 | Offer made on 650 Newtown Pike (Health Department Building) |
| 4/17/2012 | Building Committee tours 496 Southland Drive |
| 4/19/2012 | Board told by Building Committee Chair they have identified a Southland property "in the control of a well-known developer" |
| 4/20/2012 | Building Committee approves offer for Southland and Rosemill properties |
| 5/1/2012 | Offer made for 496 Southland and Rosemill, Letter of Intent sent to company |
| 5/2/2012 | Letter of Intent for Southland Drive property signed |
| 5/2/2012 | Landlord presents property information to the Building Committee, Letter of Intent updated |
| 5/17/2012 | Settlement date of 496 Southland Drive purchase |
| 5/30/2012 | Southland Drive and Rosemill Drive properties presented to the full Board and approved |
| 6/21/2012 | Lease Agreement effective date |
| 7/19/2012 | Landlord recommended as the Project Manager by member of realty team |
| 7/19/2012 | Landlord and Building Committee Chair make presentation on construction processes |
| 7/22/2012 | Advertisement for Project Manager |
| 7/25/2012 | Settlement date for 480-490 & 496 Rosemill & 490 Southland purchase |
| 7/27/2012 | Building Committee votes to select landlord as Project Manager |
| 7/30/2012 | Original advertised deadline for response to Project Manager resume submission |
| 8/2/2012 | Effective date of Project Manager contract |
| 9/4/2012 | Building Committee votes to release Project Manager information to the public |
| 9/20/2012 | New Notice of Grant Award issued by HRSA extending FIP grant funds one-year and changing project address to 496 Southland Drive |
| 9/24/2012 | Architect and Engineer selected by Building Committee |
| 10/4/2012 | Architect and Engineer contracts approved by Building Committee |
| 10/4/2012 | Determination by Building Committee made that the property would require demolition and construction |
| 10/18/2012 | Board told that two buildings would need to be demolished and replaced by a new one |
| 11/15/2012 | Full Board receives presentation on new building from Architect and Engineer |
| 12/14/2012 | Letter sent to SHPO to initiate Historic Review process |
| 1/17/2013 | Board notified of delay due to HRSA complaint and need for Environmental and Historical Reviews |
| 4/30/2013 | Comment Letter from SHPO sent to HealthFirst with conclusions of Historic Review |
| 5/9/2013 | Board of Health agrees to provide HealthFirst with \$100,000/month in Health Tax funding through 2015 |
| 9/30/2013 | Current FIP Grant end date |

EXECUTION VERSION

LEASE

THIS LEASE (the "Lease") is entered into and made as of the 21st day of June, 2012 (the "Effective Date"), between _____, a Kentucky-limited-liability company ("Landlord"), and HEALTHFIRST BLUEGRASS, INC., a Kentucky non-profit corporation ("Tenant").

WITNESSETH:

Landlord, in consideration of the Rents and covenants hereinafter set forth, does hereby demise, let and lease to Tenant, and Tenant does hereby hire, take and lease from Landlord, on the terms and conditions hereinafter set forth, the Premises (hereinafter defined) to have and to hold the same, with all appurtenances, unto Tenant for the term hereinafter specified.

SECTION A. BASIC DEFINITIONS AND PROVISIONS. The following basic definitions and provisions apply to this Lease. Any capitalized terms used in this Lease but not defined shall have the same meaning as set forth in this Section A:

- (1) *Premises:* (i) 496 Southland Drive, Lexington, KY, consisting of, among other real property, an office building with approximately 20,900 square feet (hereinafter referred to collectively as "496"); and (ii) 480 through 490 Southland Drive and 480 through 496 Rosemill Drive, Lexington, KY, consisting of, among other real property, an office building with approximately 11,900 square feet (hereinafter referred to collectively as "Rosemill"); 496 and Rosemill shall be referred to herein collectively as the "Premises")

Including the right for the benefit of Tenant and Tenant's employees, patients, customers, agents, licensees, concessionaires and invitees to use all parking areas, sidewalks, driveways, service drives and service roads, traffic islands, landscaped areas, loading and service areas, stairways, elevators, lobbies, and any other areas, both indoors and outdoors, within the Premises (collectively, the "Ancillary Areas").

- (2) *Term:* Number of Months of Initial Term: 120 months
Commencement Date: The earlier of (a) 180 days after the Effective Date or (b) Tenant's receipt of a Certificate of Occupancy.
Expiration Date: The date that is 120 months from the Commencement Date, as such date may be extended by the exercise of any renewal options.
Renewal Terms: Six (6) sixty (60) month renewal options

"Term" as used herein shall include any Renewal Terms.

- (3) **Permitted Use:** Office use for providing medical services and operating a medical clinic, as provided for herein.
- (4) **496 Rent:** The rent for 496 (the "496 Rent") is payable in monthly installments beginning on the Commencement Date and continuing on the first (1st) day of each month in accordance with the following Schedule:

| MONTHS OF THE TERM | RENT /SQ. FT. | MONTHLY GROSS RENT |
|---|---------------|--------------------|
| 1 thru 120 (Initial Term) | \$7.50 | \$13,062.50 |
| 121 thru 180 (1 st Renewal Term) | \$7.88 | \$13,724.33 |
| 181 thru 240 (2nd Renewal Term) | \$8.27 | \$14,403.58 |
| 241 thru 300 (3rd Renewal Term) | \$8.68 | \$15,117.67 |
| 301 thru 360 (4th Renewal Term) | \$9.11 | \$15,866.58 |
| 361 thru 420 (5th Renewal Term) | \$9.57 | \$16,667.75 |
| 421 thru 480 (6th Renewal Term) | \$10.05 | \$17,503.75 |

- (5) **Rosemill Rent:** The rent for Rosemill (the "Rosemill Rent"; the 496 Rent and Rosemill Rent shall be referred to herein collectively as the "Rent") is payable in monthly installments beginning on the Commencement Date on the first (1st) day of each month in accordance with the following Schedule:

| MONTHS OF THE TERM | RENT /SQ. FT. | MONTHLY GROSS RENT |
|---------------------------------|---------------|--------------------|
| 1 through 120 | \$10.50 | \$10,412.50 |
| 121 thru 180 (1st Renewal Term) | \$11.03 | \$10,938.08 |
| 181 thru 240 (2nd Renewal Term) | \$11.58 | \$11,483.50 |
| 241 thru 300 (3rd Renewal Term) | \$12.16 | \$12,058.67 |
| 301 thru 360 (4th Renewal Term) | \$12.77 | \$12,663.58 |
| 361 thru 420 (5th Renewal Term) | \$13.41 | \$13,298.25 |
| 421 thru 480 (6th Renewal Term) | \$14.08 | \$13,962.67 |

(6) *Rent Payment Address:*

(7) *Parking:* Tenant shall have use of all parking spaces on the Premises.

(8) *Notice Address:*

LANDLORD:

TENANT:

HealthFirst Bluegrass, Inc
650 Newtown Pike
Lexington, Kentucky 40508
Attn: T.A. Lester

1. **DESCRIPTION OF THE PREMISES.** The Premises are more particularly shown on Exhibit A attached hereto and incorporated herein, and contain (i) 496, consisting of, among other real property, an office building with approximately 20,900 square feet; and (ii) Rosemill Drive, consisting of, among other real property, an office building with approximately 11,900 square feet. The Premises does not include the proposed estimated 10,000 square foot office/retail building site within Rosemill (hereinafter referred to as the "Development Lot"), as shown more particularly on Exhibit A attached hereto and incorporated herein, which shall be for the sole use of Landlord and its successors or assigns and not included as part of this Lease.

2. **TERM AND RENEWAL OPTIONS.** The Term of this Lease commences on the Commencement Date and expires on the Expiration Date, subject to the following:

(a) The Lease shall be effective on the Effective Date and Tenant shall have reasonable access to the Premises and appropriate documents relating to the Premises as of the Effective Date in order to complete its due diligence inspections and reviews; provided, however that Rent and other obligations of the Lease shall not begin until the Commencement Date.

(b) The Commencement Date, the Term and the Expiration Date shall be set forth in a Commencement Agreement in substantially the same form as Exhibit B, attached hereto and incorporated herein by this reference, to be prepared by Landlord and executed by both parties.

(c) Tenant shall have the option to extend the term of this Lease for up to six (6) periods of five (5) years each (each period shall be referred to herein as a "Renewal Term") beyond the initial Term in accordance with the provisions of this Section. Such option shall be exercisable by written notice of renewal given by Tenant to Landlord not less than six (6) months prior to the end of the Initial Term or immediately preceding Renewal Term, as applicable. The terms and conditions of this Lease for any Renewal Term shall be the same as for the Initial Term, except the Rent shall be as provided in Section A(4) and (5) above and the Option Prices

shall be as set forth in Section 31 below. Tenant may not effectively exercise a renewal option at any time that there exists an uncured Event of Default.

3. **RENT.** Tenant shall pay to Landlord, at the address listed in Section A(6), for the Premises in the amounts as set forth in Section A(4) and (5). Rent shall be payable in monthly installments as provided above, in advance, on or before the first day of each and every month throughout the Term; provided, however, that if the Commencement Date shall be a day other than the first day of a calendar month or the Expiration Date shall be a day other than the last day of a calendar month, the Rent installment for such first or last fractional month shall be pro-rated accordingly based on a 365-day year. Notwithstanding the foregoing or anything else in this Lease to the contrary, if Tenant's requirement to pay Rent, as set forth above, begins prior to Tenant's medical clinic on the Premises becoming operational, then Tenant may defer its payment of Rent until the earlier of (i) the date that the clinic becomes operational or (ii) 270 days from the Effective Date (the "Rent Payment Start Date"). All deferred payments of Rent shall be amortized at an interest rate of two percent (2%) over Landlord's borrowing rate in equal installments to be paid on or before the first day of each month over a period of one (1) to three (3) years from the Rent Payment Start Date (the "Amortized Rent"). The payments of Amortized Rent shall be in addition to regularly-scheduled Rent payments.
4. **TAXES.** Tenant shall pay on or before their due dates all real estate taxes, installments of special assessments, sewer charges, transit taxes, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary (excluding income, franchise, or other taxes based upon Landlord's income or profit, unless imposed in lieu of real estate taxes) which shall now or hereafter be levied, assessed or imposed against the Premises during the Term (the "Taxes"); provided, however, that if the assessment period for any Taxes shall cover any period before the Commencement Date or after the Expiration Date, the payment of such Taxes shall be pro-rated accordingly between the Landlord and Tenant based on a 365-day year. Upon receipt of any invoices for Taxes, Landlord shall promptly forward such invoices to Tenant.
5. **INSPECTIONS.** Landlord shall permit Tenant reasonable access to the Premises and appropriate documents relating to the Premises in order to complete its due diligence inspections and reviews during the period beginning on the Effective Date and ending on the 130th day after the Effective Date (the "Due Diligence Period"). All inspections and reviews shall be conducted at reasonable times agreed upon in advance by Landlord and Tenant. Such inspections and review may include, but not be limited to, (i) a physical inspection of the Premises, including all wiring, plumbing, HVAC, structural components, foundations, and roofs; (ii) an environmental study of the Premises, including without limitation, a Phase I and/or Phase II study of the Premises; and (iii) a survey of the Premises, including without limitation, an ALTA survey of the Premises. Landlord shall take the steps necessary to ensure that Tenant has access to Rosemill prior to the closing of Landlord's purchase of Rosemill.
6. **TENANT IMPROVEMENTS.** Tenant may construct the improvements (the "Tenant Improvements") on the Premises at any time after Tenant notifies Landlord in writing that all of the conditions to this Lease set forth in Section 20 have been satisfied or waived. All Tenant Improvements shall be constructed in accordance with the following terms and conditions:

(a) Within ninety (90) days of the Effective Date, Tenant shall provide Landlord with general schematic plans of improvement for the Premises, showing generally the size, nature and location of the improvements to be constructed in the Premises (the "Plans"). Landlord shall have the right to approve the Plans within ten (10) days of the receipt of the Plans; provided however, that Landlord's approval shall not be unreasonably withheld, delayed or conditioned. Tenant shall cause the contractor constructing the Tenant Improvements to obtain a performance and completion bond in an amount equal to the actual contract cost to construct the Tenant Improvements.

(b) Tenant shall pay for all costs for the Tenant Improvements.

(c) Tenant shall construct the Tenant Improvements within the Premises set forth in the Plans in a good, workmanlike manner and in substantial accordance with the Plans.

(d) Tenant shall obtain all governmental permits and approvals relating to the construction and use of the Tenant Improvements. Copies of all building permits, certificates of occupancy and other governmental notices, permits or licenses received with respect to the Tenant Improvements shall be promptly furnished to Landlord. Landlord shall cooperate with Tenant at the request of Tenant in obtaining any of the necessary or advisable permits and approvals.

(e) Within sixty (60) days upon completion of Tenant's improvements to the Premises, and specifically those that may be subject to the Notice of Federal Interest ("NFI") referenced herein, a Cost Segregation Study ("CSS") shall be performed, at Tenant's sole cost and expense, by an accounting or consulting firm chosen by Landlord and subject to reasonable approval by Tenant. The purpose of the CSS being to identify all construction related costs that can be depreciated over a shorter period than the building.

7. DELIVERY OF POSSESSION; ADJUSTMENT OF TERM.

(a) Delivery of Possession. Landlord shall deliver possession of the Premises to Tenant as of the Contingency Satisfaction Date, as defined in Section 20, for Tenant, its agents, and its contractors to begin construction of the Tenant Improvements.

(b) Tenant's Acceptance of the Premises. Upon delivery of possession to Tenant, the Premises shall be accepted by Tenant "AS IS", "WHERE IS", and "WITH ALL FAULTS," except as otherwise provided in this Lease.

8. USE OF THE PREMISES.

(a) Specific Use. Tenant shall have the right to use the Premises for (a) any lawful purpose, including, without limitation, in connection with its business of providing medical services, and (b) any other lawful purposes consistent with the existing zoning of the Premises. Landlord represents and warrants that Tenant's use of the Premises for its medical services business (the "Tenant's Intended Use") does not violate any zoning ordinances or other laws applicable to the Premises, or any leases, rules and regulations, or agreements, including exclusive use agreements, with existing tenants or third parties relating to the Premises and

Landlord agrees to not enter into any future leases or agreements prohibiting such use for the Term of the Lease, including all Renewal Terms.

(b) **Representations and Covenants Regarding Use.** In connection with its use of the Premises, Tenant agrees to do the following:

(i) Tenant shall use the Premises and conduct its business thereon in a safe, careful, reputable and lawful manner; shall keep and maintain the Premises in as good a condition as they were when Tenant first took possession thereof, ordinary wear and tear excepted, and shall make all necessary repairs to the Premises other than those which Landlord is obligated to make as provided elsewhere herein.

(ii) Tenant shall not commit, nor allow to be committed, in, on or about the Premises, or the Building, any act of waste, including any act which might deface, damage or destroy the Building, or any part thereof; permit any objectionable or offensive noise or odors to be emitted from the Premises.

(c) **Compliance with Laws.** Tenant shall not use or permit the use of any part of the Premises for any purpose prohibited by law. Tenant shall, at Tenant's sole cost and expense, comply with all laws, statutes, ordinances, rules, regulations and orders of any federal, state, municipal or other governmental agency thereof having jurisdiction over and relating to the use, condition and occupancy of the Premises.

(d) **Compliance with Zoning.** Tenant knows the character of its operation in the Premises and that applicable zoning ordinances and regulations are of public record. Tenant shall have sole responsibility for its compliance therewith. Landlord shall reasonably cooperate with Tenant at Tenant's request to obtain a compliance letter, an approved development plan, building permit and/or other planning and zoning or other required governmental approvals relating to the planned use of the Premises by Tenant or any planned alterations, improvements or additions by Tenant.

(e) **Unsafe Materials.** "Unsafe Materials" shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the laws of Kentucky or the laws of the United States. Tenant shall not cause or permit any Unsafe Materials (except for cleaning supplies used in normal quantities in the ordinary course of business and medical waste handled in accordance with law) to be brought upon, kept or used in or about the Building by Tenant, its agents, employees, contractors or invitees.

Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses of any kind whatsoever (including reasonable attorneys' fees) directly or indirectly arising out of the existence of Unsafe Materials or non-compliance with Environmental Laws which have been introduced or caused by Tenant.

Landlord shall defend, indemnify and hold harmless Tenant from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses of any kind whatsoever (including reasonable attorneys' fees) directly or indirectly arising out of the

existence of Unsafe Materials or non-compliance with Environmental Laws which have been introduced or caused by Landlord.

The indemnities contained in this Section 8(e) shall survive the expiration or termination of this Lease, and shall continue for one year thereafter.

9. UTILITIES AND OTHER BUILDING SERVICES. During the Term, Tenant shall pay for all utility and sanitation services furnished to the Premises during the Term, including without limitation electric, telephone, natural gas, cable television and internet, water, sewer and sanitation services. This includes all costs related to bringing any of the above services to the Premises. Tenant shall pay, and will indemnify Landlord against any liability for charges for utility services furnished to the Premises during the Term. Landlord does not warrant the quantity or quality of any utility services to the Premises.

10. SIGNS. Provided Tenant remains in compliance with all applicable laws and ordinances, Tenant at its expense may inscribe, paint, affix or display any signs, advertisements or notices on or in the Premises and visible from outside the Premises.

11. REPAIRS, MAINTENANCE, ALTERATIONS, IMPROVEMENTS AND FIXTURES.

(a) Repair and Maintenance of Building. Tenant shall have the opportunity to perform all necessary inspections during the Due Diligence Period as provided hereunder, and if Tenant elects not to terminate this Lease, then Tenant shall accept the Premises "as is" and "where is" with all faults. Landlord makes no warranties as to the condition of the Premises and Tenant is to rely on its own inspections. Upon expiration of the Due Diligence Period, and provided Tenant has not terminated the Lease, Tenant shall be solely responsible for all repairs, maintenance, alterations, improvements, and fixtures in the Premises.

(b) Repair and Maintenance of Premises. Except as provided in Section 11(a) hereof, Tenant shall, at its own cost and expense, keep and maintain the Premises in good order, condition and repair at all times during the Term, and Tenant shall promptly repair all damage to the Premises and replace or repair all damaged or broken fixtures, equipment and appurtenances with materials equal in quality and class to the original materials, under the supervision and subject to the approval of Landlord, and within any reasonable period of time specified by Landlord. If Tenant fails to do so, Landlord may, but need not make such repairs and replacements, and Tenant shall pay Landlord the reasonable cost thereof.

(c) Alterations or Improvements. Except for the Tenant Improvements for which Tenant shall be required to obtain a performance and completion bond, Tenant shall not make, nor permit to be made, any other alterations or improvements to the Premises, unless Tenant obtains the prior written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed; provided, however that Tenant shall have the right to make non-structural alterations, additions or improvements to the Premises without Landlord's prior written consent if the cost of doing the particular alteration, addition or improvement does not exceed \$500,000 in any one instance. If any such alterations or improvements are permitted, Tenant shall make the same in accordance with all applicable laws and building codes, in a good and

workmanlike manner and in quality equal to or better than the standards required by Landlord and shall comply with such requirements as Landlord considers reasonably necessary or desirable, including without limitation requirements as to the manner in which and the times at which such work shall be done and the contractor or subcontractors to be selected to perform such work. Tenant shall promptly pay all costs attributable to such alterations and improvements and shall indemnify, defend and hold harmless Landlord from and against any mechanic's liens or other liens or claims filed or asserted as a result thereof and against any costs or expenses which may be incurred as a result of building code violations attributable to such work unless caused by the negligence or willful misconduct of Landlord, its agents, employees, invitees or contractors. Any alterations or improvements to the Premises, except movable office furniture and equipment and trade fixtures, shall at Landlord's election, either (i) become a part of the realty and the property of Landlord, and shall not be removed by Tenant, or (ii) be removed by Tenant upon the expiration or sooner termination hereof and any damage caused thereby repaired at Tenant's cost and expense. In the event Tenant so fails to remove same, Landlord may have same removed and the Premises so repaired at Tenant's expense.

Title to any alterations, addition or improvements to the Premises paid for by Tenant shall vest and remain in and with the Tenant at all times during the Term.

Landlord hereby acknowledges and agrees to Tenant's improvements for the medical office space to become a part of the Premises and the property of Landlord at the expiration or early termination of this Lease. Tenant shall not be obligated to remove any of the foregoing from the Premises at the expiration or early termination of this Lease.

(d) **Trade Fixtures.** Any trade fixtures installed on the Premises by Tenant at its own expense, such as movable partitions, counters, shelving, showcases, mirrors, medical equipment, medical fixtures, and the like may, and, at the request of Landlord, shall be removed on the Expiration Date or within sixty (60) days of any earlier termination of this Lease, provided that Tenant bears the cost of such removal, and further that Tenant repair at its own expense any and all damage to the Premises resulting from the original installation of and subsequent removal of such trade fixtures. If Tenant fails so to remove any and all such trade fixtures from the Premises on the Expiration Date or within sixty (60) days of any earlier termination of this Lease, all such trade fixtures shall become the property of Landlord unless Landlord elects to require their removal, in which case Tenant shall promptly remove same and restore the Premises to their prior condition. In the event Tenant so fails to remove same, Landlord may have same removed and the Premises so repaired to their prior condition at Tenant's expense.

12. FIRE OR OTHER CASUALTY; CASUALTY INSURANCE.

(a) **Substantial Destruction of the Buildings.** If either of the office buildings on the Premises should be substantially destroyed by fire or other casualty and such buildings cannot be reconstructed within 18 months, Tenant may, at its option, terminate this Lease by giving written notice thereof to the other party within thirty (30) days of such casualty. In such event, the Rent shall be apportioned to and shall cease as of the date of such casualty. If Tenant does not exercise this option, and in the event that the buildings can be reconstructed within 18 months, then the buildings shall be reconstructed and restored, by Landlord out of insurance proceeds to

substantially the same condition as prior to the casualty within a commercially reasonable time period. Notwithstanding the foregoing, if the Lease is terminated pursuant to this Section 12(a), then Tenant shall be entitled to receive any and all insurance proceeds of Landlord attributable to non-structural and non-affixed Tenant Improvements paid for by the Tenant, unless such proceeds are required to be paid to the federal government in connection with the Tenant's grant from the federal government in order to release the NFI.

(b) **Casualty Insurance.** Tenant shall be responsible for insuring and shall at all times during the Term carry a policy of insurance which insures the buildings and other improvements on the Premises, against loss or damage by fire or other casualty (namely, the perils against which insurance is afforded by the standard fire insurance policy and extended coverage endorsement) in an amount equal to at least one hundred percent (100%) of the actual replacement cost thereof without any deduction for depreciation, which insurance shall name the Landlord and Tenant as beneficiaries as their interests may appear. Such casualty insurance shall also provide standard losses-sustained coverage. Tenant shall furnish Landlord with insurance certificates evidencing that such coverage is in full force and effect and the insurance shall require the insurance company to provide Landlord with at least 30 days notice of any pending termination of insurance coverage.

Tenant shall at all times during the Term, carry, at its own expense, property insurance covering its personal property, trade fixtures installed by or paid for by Tenant or any additional improvements which Tenant may construct on the Premises, which coverage in the amount of full replacement value. Tenant shall furnish Landlord with a certificate evidencing that such coverages are in full force and effect.

(c) **Waiver of Subrogation.** Landlord and Tenant hereby release each other and each other's employees, agents, customers and invitees from any and all liability for any loss, damage or injury to property occurring in, on or about or to the Premises, improvements and buildings or personal property within the improvements and buildings, by reason of fire or other casualty which are covered by applicable standard fire and extended coverage insurance policies. Because the provisions of this paragraph will preclude the assignment of any claim mentioned herein by way of subrogation or otherwise to an insurance company or any other person, each party to this Lease shall give to each insurance company which has issued to it one or more policies of fire and extended coverage insurance notice of the terms of the mutual releases contained in this paragraph, and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverages by reason of the mutual releases contained in this paragraph.

13. GENERAL PUBLIC LIABILITY, INDEMNIFICATION AND INSURANCE.

(a) Tenant shall be responsible for, shall insure against, and shall indemnify Landlord and hold it harmless from, any and all liability for any loss, damage or injury to person or property, arising out of use, occupancy or operations of Tenant and occurring in, on or about the Premises, except for that which is caused by negligence or willful misconduct of Landlord, its agents, employees or contractors. Tenant's obligation to indemnify Landlord hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury

and to pay any judgments, settlements, costs, fees and expenses, including reasonable attorneys' fees, incurred in connection therewith.

(b) Landlord shall be responsible for, shall insure against, and shall indemnify Tenant and hold it harmless from, any and all liability for any loss, damage or injury to person or property arising out of use, occupancy or operations of Landlord and occurring in, on or about the Premises, except for that which is caused by negligence or willful misconduct of Tenant, its agents, employees or contractors. Landlord's obligation to indemnify Tenant hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including reasonable attorneys' fees, incurred in connection therewith.

(c) Landlord shall at all times during the Term carry, at its own expense, a policy of commercial general liability insurance issued by one or more insurance companies acceptable to Tenant, insuring against claims for bodily injury or death occurring in or on the Premises to the limit of not less than amounts customary for owners of similar properties. Landlord shall furnish Tenant with certificates evidencing such insurance within fifteen (15) days after request by Tenant. The failure of Landlord to have such insurance shall be a default by Landlord under this Lease. Landlord's insurance coverages required hereby shall not discharge or limit Landlord's indemnity obligations contained in Section 13(b).

(d) Tenant shall at all times during the Term carry, at its own expense, for the protection of Tenant and Landlord, as their interests may appear, one or more policies of general public liability and property damage insurance, issued by one or more insurance companies acceptable to Landlord, covering Tenant's use, occupancy and operations of the Premises providing minimum coverages of \$1,000,000 combined single limit for bodily injury and property damage per occurrence with \$2,000,000 aggregate coverage. Such insurance policy or policies shall name Landlord, its agents and employees, as insureds and shall provide that they may not be canceled or materially changed on less than thirty (30) days prior written notice to Landlord. Tenant shall furnish Landlord with certificates evidencing such insurance within fifteen (15) days after request by Landlord.

14. **EMINENT DOMAIN.** If the whole or any part of the Premises shall be taken for public or quasi-public use by a governmental authority under the power of eminent domain or shall be conveyed to a governmental authority in lieu of such taking, and if such taking or conveyance shall cause the remaining part of the Premises to be untenable and inadequate by Tenant in its discretion for use by Tenant for the purpose for which they were leased, then Tenant may, at its option, terminate this Lease as of the date Tenant is required to surrender possession of the Premises by providing written notice to Landlord. If a part of the Premises shall be taken or conveyed but the remaining part is tenantable and adequate for Tenant's Intended Use or any other use of Tenant at that time, then this Lease shall be terminated as to the part taken or conveyed as of the date Tenant surrenders possession; Landlord shall make such repairs, alterations and improvements as may be necessary to render the part not taken or conveyed tenantable at its sole cost and expense; and the Rent shall be reduced in proportion to the part of the Premises so taken or conveyed. Landlord shall be entitled to that portion of the award attributable to its fee simple interest in the Premises and any repairs, alterations and improvements made by Landlord as may be necessary to render the part not taken or conveyed

tenantable, and Tenant shall be entitled to that portion of the award attributable to its pro-rata share of any award for the taking of the Premises to the extent that Tenant has contributed to the cost of any alterations, additions or improvements, such as the Tenant Improvements, for the full amount. In addition, Tenant shall have the right to recover from the governmental authority, but not from Landlord, such compensation as may be awarded to Tenant on account of moving and relocation expenses, business interruption, and depreciation to and removal of Tenant's trade fixtures and personal property.

15. LIENS.

(a) If, because of any act or omission of Tenant or anyone claiming by, through, or under Tenant, any mechanic's lien or other lien shall be filed against the Premises, Tenant shall, at its own expense, bond against or cause the same to be discharged of record within a reasonable time, not to exceed twenty (20) days after the date of filing thereof; provided that Tenant shall have the right to contest the validity of any lien or claim if Tenant shall first have posted a bond, and shall also defend and indemnify Landlord and hold it harmless from any and all claims, losses, damages, judgments, settlements, costs and expenses, including attorneys' fees, resulting therefrom or by reason thereof, unless caused by negligence or willful misconduct of Landlord, its agents, employees or contractors. If such lien is not bonded against or discharged of record within twenty (20) days after the date of filing thereof, Landlord, at its sole option, may take all action necessary to release and remove such lien (without any duty to investigate the validity thereof) and Tenant shall promptly upon notice reimburse Landlord for all sums, costs and expenses (including reasonable attorneys' fees) incurred by Landlord in connection with such lien.

(b) Landlord shall indemnify and hold Tenant harmless from and against any damages resulting from the filing of any liens or claims of lien arising out of work performed, materials furnished or obligations incurred by, for, or at the request of Landlord, its employees, agents, or contractors. In the event that any liens on the Premises result in such lienholder initiating foreclosure proceedings against the Premises, Landlord shall bond against or discharge the lien within twenty (20) days after notice of such action. If Landlord shall have posted a bond, the bond must insure that, upon final determination of the validity of such lien or claim, Landlord shall immediately pay any judgment rendered against it with all proper costs and charges and shall have such lien released without cost to Tenant.

16. RENTAL, PERSONAL PROPERTY AND OTHER TAXES. Tenant shall pay before delinquency any and all taxes, assessments, fees or charges (hereinafter referred to as "Taxes"), including any sales, gross income, rental, business occupation or other taxes, levied or imposed upon Tenant's business operation in the Premises and any personal property or similar taxes levied or imposed upon Tenant's trade fixtures, leasehold improvements or personal property located within the Premises. In the event any such taxes are charged to the account of, or are levied or imposed upon the property of Landlord, Tenant shall reimburse Landlord for the same. Notwithstanding the foregoing, Tenant shall have the right to contest in good faith any such tax.

17. ASSIGNMENT AND SUBLETTING. Tenant may not assign or otherwise transfer its interest in this Lease or sublet the Premises or any part thereof or allow the use of the Premises by a third party without the prior written consent of Landlord, which consent shall not be

unreasonably withheld, delayed or conditioned. Any assignment or sublease of the Tenant's interest in this Lease shall not include the Tenant's option to purchase set forth in Section 31 below. Tenant shall notify Landlord thirty (30) days in advance of its intent to transfer, assign or sublet all or any portion of the Premises. Such consent is deemed to be given if not denied by Landlord within thirty (30) days after Tenant's request therefor. Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Premises and all other property referred to herein, with the prior written consent of Tenant, at all times subject to this Lease, which consent shall not be unreasonably withheld, delayed or conditioned.

18. **SUBORDINATION OF LEASE TO MORTGAGES.** Tenant agrees that its interest in this Lease shall be subordinate to any mortgage recorded against the Premises prior or subsequent to the execution of this Lease if the mortgagee or beneficiary under said mortgage so elects, and Tenant will, upon request from time to time by one or more holders of a mortgage, subordinate this Lease to such mortgage and agree with such holder that Tenant will attorn to and recognize such holder or the purchaser at any foreclosure sale (or any sale under power of sale contained in any such mortgage) as the landlord under this Lease; provided, however, that in the event a mortgage is entered into subsequent to the execution of this Lease, such subordination shall not become effective until the mortgagee under said mortgage executes a subordination, non-disturbance and attornment agreement in a form acceptable to Tenant (an "SNDA"), providing that (i) any action or proceeding commenced by mortgagee for the foreclosure of the mortgage or sale of the Premises shall not result in the termination of this Lease or disturb or interfere with Tenant's possession or use of the Premises or any other rights of Tenant under this Lease, including, without limitation, any and all rights to exercise the option to purchase set forth hereunder, and (ii) in the event that the mortgagee succeeds to the interests of Landlord under the Lease, this Lease and all rights of Tenant, shall continue in full force and effect. All legal expenses incurred in connection with the drafting of any such subordination, non-disturbance and attornment agreement shall be the obligation of the Landlord. Landlord shall cause its existing mortgage(s) to enter into an SNDA.

19. **DEFAULTS AND REMEDIES.**

(a) **Default by Tenant.** The occurrence of any one or more of the following events shall be a event of default (a "Default") and breach of this Lease by Tenant:

(i) Tenant shall fail to pay any monthly installment of Rent within ten (10) days after the same shall be due and payable.

(ii) Tenant shall fail to perform or observe any term, condition, covenant or obligation (other than payment of Rent) required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Tenant is of such nature that the same cannot reasonably be performed within such thirty (30) day period, Landlord shall give Tenant an additional thirty (30) days if Tenant commences such performance within the thirty (30) day period and thereafter diligently undertakes to complete the same and in any event completes the cure within the additional thirty (30) day period.

(iii) Tenant makes an assignment for the benefit of creditors; or, substantially all of Tenant's assets in, on or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution (and Tenant does not discharge the same within thirty (30) days thereafter).

(b) Remedies of Landlord. Upon the occurrence of any event of default and after any applicable cure periods set forth in Section 19(a), Landlord shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon Tenant:

(i) Landlord may re-enter the Premises and cure any default of Tenant, in which event Tenant shall reimburse Landlord for any costs and reasonable expenses which Landlord may incur to cure such default.

(ii) Landlord may terminate this Lease as of the date of such default and any applicable cure periods, in which event: (A) neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Premises, and Tenant shall immediately thereafter surrender the Premises to Landlord; (B) Landlord may re-enter the Premises and dispossess Tenant or any other occupants of the Premises by summary proceedings, ejectment or otherwise, and may remove their effects, without prejudice to any other remedy which Landlord may have for possession or arrearages in Rent; and (C) notwithstanding the termination of this Lease Landlord may either declare all Rent which would have been due under this Lease for the balance of the Term or exercised Renewal Term to be immediately due and payable, whereupon Tenant shall be obligated to pay the same to Landlord, together with all loss or damage which Landlord may sustain by reason of such termination and reentry, or relet all or any part of the Premises for a term different from that which would otherwise have constituted the balance of the Term and for Rent and on terms and conditions different from those contained herein, whereupon Tenant shall be obligated to pay to Landlord as liquidated damages the difference between the Rent provided for herein and that provided for in any lease covering a subsequent reletting of the Premises for the period which would otherwise have constituted the balance of the Term, together with all of Landlord's costs and expenses for preparing the Premises, for reletting, including all repairs, Tenant Improvements, marketing costs, broker's and attorney's fees, and all loss or damage which Landlord may sustain by reason of such termination, re-entry and reletting, it being expressly understood and agreed that the liabilities and remedies specified above shall survive the termination of this Lease.

(iii) Landlord may terminate Tenant's right of possession of the Premises and may repossess the Premises by unlawful detainer action, by taking peaceful possession or otherwise, without terminating this Lease, in which event Landlord may, but shall be under no obligation to, relet the same for the account of Tenant, for such Rent and upon such terms as shall be satisfactory to Landlord. For the purpose of such reletting, Landlord is authorized to decorate, repair, remodel or alter the Premises. If Landlord fails to so relet the Premises, Tenant shall pay to Landlord as damages a sum equal to the Rent which would have been due under this Lease for the balance of the Term or exercised Renewal Term as such Rent shall become due and payable hereunder from time to time during the Term. If the Premises are relet and a sufficient sum shall not be realized from such reletting to satisfy the Rent provided for in this Lease, Tenant shall satisfy and pay the deficiency in Rent upon demand therefor from time to time.

(iv) Landlord may sue for injunctive relief or to recover damages for any loss resulting from the breach.

(c) **Default by Landlord and Remedies of Tenant.** It shall be a default and breach of this Lease by Landlord if:

(i) Landlord shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period, Tenant shall give Landlord an additional thirty (30) days if Landlord commences such performance within the thirty (30) day period and thereafter diligently undertakes to complete the same and in any event completes the cure within the additional thirty (30) day period.

(ii) If a petition is filed by, or an order for relief is entered against Landlord under the Bankruptcy Code, or Landlord files a bankruptcy petition, or Landlord becomes insolvent.

Upon the occurrence of any such default, Tenant may sue for injunctive relief or to recover damages for any loss resulting from the breach, and pursue any and all remedies available to it at law or equity, including, without limitation, termination of this Lease and cessation of Rent.

(d) **Non-Waiver of Defaults.** The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Lease shall not be construed to be a waiver thereof, nor affect the validity of any part of this Lease or the right of either party thereafter to enforce each and every such right or remedy or other provisions. No waiver of any default and breach of this Lease shall be held to be a waiver of any other default or breach.

(e) **Attorney's Fees.** If either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and either party places the enforcement of all or any part of this Lease, the collection of any Rent due or to become due or the recovery of possession of the Premises in the hands of an attorney, or if either party incurs any fees or out-of-pocket costs in any litigation, negotiation or transaction in which Tenant causes Landlord (without Landlord's fault) or Landlord causes Tenant (without Tenant's fault) to be involved or concerned, either party agrees to reimburse the other party for the reasonable attorney's fees and costs incurred thereby, whether or not suit is actually filed.

20. **CONDITIONS.** It is understood and agreed that the following conditions must be satisfied, or waived by Tenant, prior to the end of one hundred thirty (130) days from the Effective Date (heretofore defined as the "Due Diligence Period" with the end of the Due Diligence Period being hereinafter referred to as the "Contingency Satisfaction Date"), in order for Tenant to be obligated to carry out the terms of this Lease, including without limitation the obligation to pay Rent:

(a) **Subordination, Non-Disturbance and Attornment Agreement.** Tenant shall execute and deliver to Landlord a SNDA and a standard estoppel agreement. Within fifteen (15) days of delivery by Tenant of the SNDA Landlord shall cause its mortgagee to execute the SNDA and shall deliver a fully executed copy of the SNDA to Tenant. Tenant may, but shall not be obligated, to record the SNDA with the Fayette County Clerk's Office in its sole discretion.

(b) **Financing, Letter of Consent, and Notice of Federal Interest.**

(i) Tenant shall have obtained financing for this Lease, all obligations of Tenant under the Lease, and the Tenant Improvements which is satisfactory to the Tenant in its sole discretion.

(ii) Within thirty (30) days of Tenant providing the plans provided in Section 6a above, Landlord shall have provided the executed Letter of Consent in a similar form to that attached "Exhibit C" hereto.

(iii) Prior to the end of the Due Diligence Period, Landlord shall provide an executed Notice of Federal Interest, the form attached hereto as "Exhibit D" which is the lien to be filed in the local clerk's office securing the federal government's capital development grant to Tenant, which lien shall include restrictions limiting the use of the Premises for medical-related uses only (the "NFI"). Tenant shall not file this NFI until a date no earlier than fifteen (15) days prior to commencing work on the Premises, provided Tenant gives Landlord no less than thirty (30) days written notice of its intent to file said NFI on said date.

(c) **Closing of Purchase of Premises.** Seller shall have closed the purchase of Rosemill by July 31, 2012.

(d) **Subdivision of Development Lot.** Seller shall have caused the subdivision plat for the subdivision of the Development Lot to have been recorded on or before the end of the Due Diligence Period, which subdivision plat shall be acceptable to Tenant in its sole discretion.

(e) **Cross-Easement for Parking.** Landlord shall secure Tenant a cross easement parking agreement (which shall provide for pro-rata maintenance of the parking areas based on building size) with the Development Lot, which shall be acceptable to the Tenant in its sole discretion and shall NOT include a cross easement agreement for the proposed parking lot that will occupy the plat of land currently know as 480 Rosemill Drive (aka condemned white house and lot), for which Tenant shall have exclusive use, unless required by the development plan for the Premises. For this cross easement agreement, Tenant shall pay its pro-rata share of parking lot common area maintenance expense. Landlord shall cause an ongoing deed restriction to be put in place on the Development Lot that restricts the size of any building on the Development Lot to no greater than 10,000 square feet.

(f) **Satisfactory Completion of Due Diligence.** Tenant shall have completed to its satisfaction its due diligence inspections and reviews of the Premises pursuant to Section 5 and shall have obtained a satisfactory Commitment for a Leasehold Owner's Policy of Title Insurance revealing no adverse matters regarding the title to the Premises.

(g) No Material Adverse Change. No material adverse change shall have occurred with respect to the Property.

(h) Phase 1 Environmental Reports. Landlord shall provide Tenant with a copy of the Phase 1 Environmental Study for 496 ("496 Phase 1") within thirty (30) days of the Effective Date; and a copy of the Phase 1 Environmental Study for Rosemill ("Rosemill Phase 1") within thirty (30) days of closing on the Rosemill property

(i) Permits and Approvals. Landlord on Tenant's behalf, and at Tenant's cost (except as qualified below), shall have secured any and all permits, licenses, zoning approvals, development plan approvals, or other approvals from all State, local, and Federal governmental authorities having jurisdiction over the Premises or the use thereof as may be necessary for Tenant's proposed use of the Premises, including without limitation approval of the Premises from the Bureau of Primary Health Care. Notwithstanding anything in this Lease to the contrary, Landlord shall bear the sole cost of permits, development plans, subdivision plats, and other approvals required for the Development Lot. Tenant shall reasonably cooperate with Landlord's efforts pursuant to this Section 20(i). Tenant and Landlord acknowledge that multiple development plans may be required or desired for the Premises in order to best carry out the development of the Premises.

If all of these conditions are not satisfied by the Contingency Satisfaction Date, Tenant shall notify Landlord in writing of such failure within five (5) days after the Contingency Satisfaction Date. Landlord may elect to cure any unsatisfied condition, provided however, Landlord shall not be under any obligation to cure any unsatisfied condition. Within five (5) days after receipt of notice of the failure of any condition, Landlord shall notify Tenant in writing that it either elect to cure, or not cure, any unsatisfied condition, and if Landlord elects to cure any unsatisfied condition, the amount of time required by Landlord to cure such condition. Within five (5) days after receipt of notice of Landlord's notice, Tenant shall notify Landlord in writing that Tenant elects either to (i) terminate this Lease in full and this Lease shall be of no further force and effect upon such termination notwithstanding Landlord's election to cure any unsatisfied condition or (ii) accept Landlord's election to cure the unsatisfied condition.

21. ACCESS TO THE PREMISES. Landlord, its employees and agents and any mortgagee of the Building shall have the right to enter any part of the Premises at all reasonable times during normal business hours upon reasonable notice to Tenant for the purposes of examining or inspecting the same, showing the same to prospective purchasers, mortgagees or tenants and for making such repairs, alterations or improvements to the Premises so long as such parties adhere to the safety procedures and requirements of Tenant. Tenant reserves the right to accompany Landlord during any inspections or examinations.

22. SURRENDER OF PREMISES. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord, together with all keys, access cards, alterations, improvements, and other property as provided elsewhere herein, in broom-clean condition and in good order, condition and repair, except for ordinary wear and tear and damage which Tenant is not obligated to repair, failing which Landlord may restore the Premises to such condition at Tenant's expense, which shall be payable upon demand. Upon such expiration or termination Tenant's trade fixtures, furniture and equipment shall remain Tenant's property,

Tenant shall have the right to remove the same prior to the expiration or within sixty (60) days of earlier termination of this Lease, so long as none of the property removed may be subject to the recorded NFI. Tenant shall promptly repair any damage caused by any such removal, and shall restore the Premises to the condition existing prior to the installation of the items so removed. Any of Tenant's trade fixtures, furniture or equipment not so removed shall be considered abandoned and may be retained by Landlord or be destroyed.

23. **HOLDING OVER.** If Tenant remains in possession of the Premises without the consent of Landlord after the expiration or earlier termination of this Lease, Tenant shall be deemed to hold the Premises as a tenant at sufferance subject to all of the terms, conditions, covenants and provisions of this Lease (which shall be applicable during the holdover period). Tenant shall vacate and surrender the Premises to Landlord upon Tenant's receipt of notice from Landlord to vacate.

24. **ASSURANCE OF OCCUPANCY, USE AND POSSESSION.** Except as provided in this Lease to the extent as may be applicable, so long as Tenant pays the prescribed Rent and performs and observes all of the terms, conditions, covenants and obligations of this Lease required to be performed and observed by it hereunder, and no Event of Default has occurred which remains uncured, Tenant shall at all times during the Term hereof have the peaceable possession, occupancy and use of the Premises without any interference from Landlord or any person or persons claiming the Premises by, through or under Landlord, subject to any mortgages, underlying leases or other matters of record to which this Lease is or may become subject.

25. **NOTICE AND PLACE OF PAYMENT.**

(a) All Rent and other payments required to be made by Tenant to Landlord shall be delivered or mailed to Landlord's agent at the address set forth in Section A(6) hereof or any other address Landlord may specify from time to time by written notice given to Tenant.

(b) Any notice, demand or request required or permitted to be given under this Lease or by law shall be deemed to have been given if reduced to writing and personally delivered, mailed by registered or certified mail, return receipt requested, postage prepaid, or sent by a nationally-recognized overnight courier service, to the party who is to receive such notice, demand or request at the addresses set forth in Section A(9) or at such other address as Landlord or Tenant may specify from time to time by written notice. When delivering such notice, demand or request shall be deemed to have been given as of the date it was so delivered, mailed or deposited with the courier service.

26. **ENVIRONMENTAL COMPLIANCE.**

(a) **Tenant's Responsibility.** Tenant covenants and agrees that it will keep and maintain the Premises at all times in compliance with environmental laws. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically active or other hazardous substances, or materials on the Premises. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or in compliance with the standards prevailing in the industry for the storage and use of such

substances or materials, nor allow to be brought onto the Property any such materials or substances except to use in the ordinary course of Tenant's business in compliance with law.

(b) **Tenant's Liability.** Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this Section 26.

(c) **Limitation on Tenant's Liability.** Tenant's obligations under this Section 26 shall not apply to any condition or matter constituting a violation of any Environmental Laws: (i) which existed prior to the commencement of Tenant's use or occupancy of the Premises; (ii) which was not caused, in whole or in part, by Tenant or Tenant's agents, employees, officers, partners, contractors or invitees; or (iii) to the extent such violation is caused by, or results from the acts or neglects of Landlord or Landlord's agents, employees, officers, partners, contractors, guests, or invitees.

(d) **Landlord's Liability.** To the best of Landlord's actual knowledge with reasonable investigation, Landlord represents and warrants that there are no hazardous materials on the Premises as of the Commencement Date in violation of any environmental laws other than that which may be disclosed in the 496 Phase 1 or the Rosemill Phase 1. Landlord shall indemnify and hold Tenant harmless from any liability resulting from Landlord's violation of this representation and warranty.

(e) **Liability After Termination of Lease.** The indemnities contained in this Section 26 shall survive the expiration or termination of this Lease, and shall continue for one year thereafter.

27. **PARKING.** Landlord shall provide Tenant with a minimum of 200 parking spaces on the Premises and Development Lot, which shall exceed the amount that may be required by law or ordinance.

28. **LANDLORD'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

(a) Landlord represents and warrants that it holds or will hold as provided herein above good and marketable fee simple title to the Premises free and clear of all liens, encumbrances and security interests other than 2012-2013 real property taxes, not yet due and payable, and the exceptions listed on Exhibit E attached hereto and incorporated herein by reference that shall include certain mortgages filed, or to be filed, against the Premises to the benefit of Landlord's lenders.

(b) Subject to the contingencies provided herein, Landlord represents and warrants that it has full authority to execute and enter into this Lease, to lease the Premises, and to otherwise perform its obligations arising under this Lease. This Lease constitutes the legally valid and binding obligations of Landlord, enforceable in accordance with its terms.

29. **RESERVED.**

30. **MISCELLANEOUS GENERAL PROVISIONS.**

(a) **SNDA's and Estoppel Letters.** Either party shall, within ten (10) days following written request from the other party, execute, acknowledge and deliver to the requesting party or to any lender, prospective purchaser or prospective lender or purchaser an SNDA and/or written statement (estoppel letter) certifying (i) that this Lease is in full force and effect and unmodified (or, if modified, stating the nature of such modification); (ii) the date to which Rent has been paid; (iii) that there are not, to the party's knowledge, any uncured defaults (or specifying such defaults if any are claimed); and (iv) such further matters as may be reasonably requested by the requesting party.

(b) **Claims For Fees.** Each party represents and warrants that it has not engaged the services of or dealt with any broker, salesperson or other entity who may claim a commission or other payment in conjunction with this Lease, except as set forth in this Section 30(b). Each party agrees to indemnify, defend and hold the other harmless from and against all loss, damage, claims, costs and expenses (including reasonable attorneys' fees) caused by a breach of the foregoing representation. Landlord shall be solely liable for a commission payable to Silvestri-Craig Realtors ("Broker") pursuant to that certain For Lease by Owner Protection Period and Commission Agreement executed on April 18, 2012 by Broker and on April 19, 2012 by Landlord.

(c) **Applicable Law.** This Lease and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

(d) **Entire Agreement.** This Lease, including all Exhibits, Riders and Addenda, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto.

(e) **Binding Effect.** This Lease and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as well as the parties themselves.

(f) **Severability.** 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.

(g) **No Partnership.** Landlord shall not, by virtue of the execution of this Lease or the leasing of the Premises to Tenant, become or be deemed a partner of or joint venture with Tenant in the conduct of Tenant's business on the Premises or otherwise.

(h) **Headings, Gender, etc.** As used in this Lease, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words of any gender shall include any other gender. The topical headings of the several paragraphs of this Lease are inserted only as a matter of convenience and reference, and do not affect, define, limit or describe the scope or intent of this Lease.

(i) **Time of Essence.** Time is of the essence of this Lease and each of its provisions.

(j) **Memorandum of Lease.** Landlord and Tenant agree to execute a Memorandum of Lease which shall be mutually acceptable to Landlord and Tenant, and either Landlord or Tenant shall have the right to record the Memorandum of Lease in the applicable county registry.

(k) **Waiver of Landlord's Lien.** Landlord agrees not to distraint any of the Tenant's personal property, including trade fixtures; or to assert any claim against the Tenant's personal property, including trade fixtures, for any reason, and Landlord hereby waives any right to a lien or security interest in the same.

(l) **Exhibits.** The following Exhibits are attached hereto and incorporated herein as if fully set forth in this Lease:

- (i) Exhibit A Premises
- (ii) Exhibit B Commencement Agreement
- (iii) Exhibit C Landlord Letter of Consent
- (iv) Exhibit D NFI
- (v) Exhibit E Permitted Encumbrances

(m) **Confidentiality.** The parties shall keep this Lease, and its content, confidential, except that they may disclose this Lease, and its content, to their respective directors, officers, employees, affiliates, counsel, accountants, consultants, financial advisors, investors, financiers and agents (collectively, "Representatives"), but only if such Representatives need to know such information in order to carry out the transactions contemplated by this Lease.

31. **OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL.** At any time during the fourth (4th) through twentieth (20th) years of the Term of the Lease, Tenant shall have the option to purchase either, or both of, 496 and Rosemill at the following prices:

| MONTHS OF THE TERM | PREMISES | PURCHASE PRICE |
|-------------------------------|----------|--|
| 37 thru 120 (Years 4 thru 10) | 496 | \$1,100,000.00 |
| 37 thru 120 (Years 4 thru 10) | Rosemill | (30% over the sum of the Rosemill purchase price plus reasonable direct costs of Landlord to purchase Rosemill as shown on the Rosemill settlement statement (the "Cost")) |

| | | |
|---|----------|-----------------|
| 121 thru 180 (1 st Renewal Term) | 496 | \$1,155,000.00 |
| 121 thru 181 (1 st Renewal Term) | Rosemill | (30% over Cost) |
| 181 thru 240 (2 nd Renewal Term) | 496 | \$1,212,750.00 |
| 181 thru 240 (2 nd Renewal Term) | Rosemill | (30% over Cost) |

In order to exercise these options, Tenant shall give the Landlord written notice in the manner provided in Section 25(b) not less than sixty (60) days prior to the expiration of the applicable months of the Term set forth in the table above. The closing of the option purchase shall take place on the last business day before the expiration of the applicable months of the Term during which the option was exercised.

Landlord agrees not to transfer or convey all or any part of the Premises without first offering to Tenant the right to purchase such interest for the same amount and otherwise in accordance with the terms of any bona fide contract that Landlord has entered into. In the event that Landlord intends to transfer or convey the Premises, Landlord shall give Tenant written notice disclosing such intent and enclosing a copy of the contract, and Tenant shall on or before 30 days after receipt of such notice from Landlord, notify Landlord in writing that Tenant either does or does not agree to acquire the Premises on the terms of the contract. If Tenant notifies Landlord that Tenant elects to exercise the right of first refusal with respect to the contract, then the closing of the conveyance of the Premises to Tenant pursuant to the contract shall occur on or before the 90th day after delivery of Tenant's notice to Landlord. If Tenant notifies Landlord that Tenant does not intend to acquire the Premises pursuant to the contract, then Landlord may convey the Premises pursuant to the contract, provided however, any new contract shall be subject to this right of first refusal.

[Remainder of page intentionally left blank. Signature pages follow.]

WITNESS the following signatures:

LANDLORD:

By: _____

Print Name: _____

Title: _____

TENANT:

HEALTHFIRST BLUEGRASS, INC.

By:  _____
T.A. Lester, Chairman

Signature Page to Lease

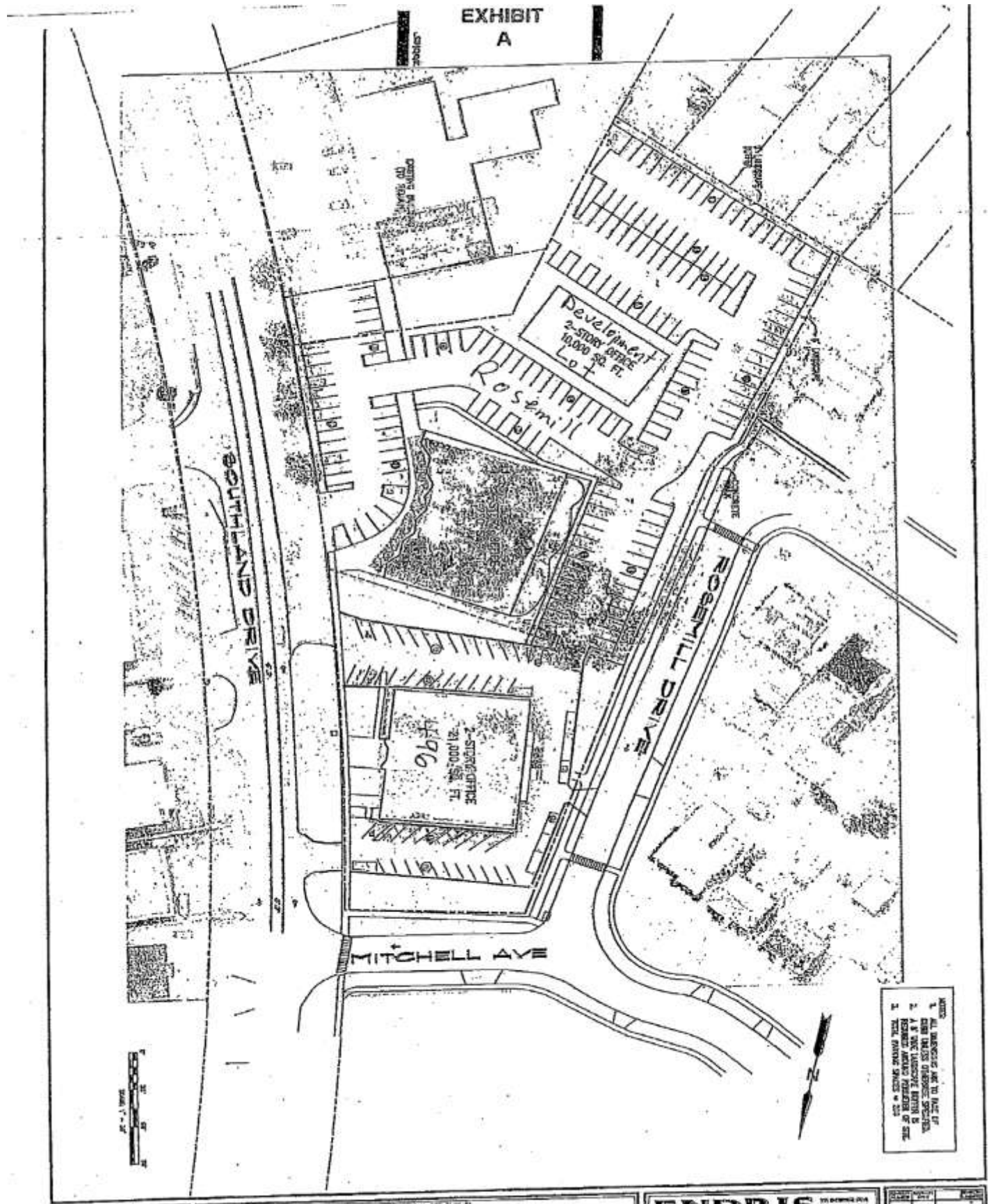


EXHIBIT B

COMMENCEMENT AGREEMENT

Attached to and made part of the Lease dated _____, 2012,
; a Kentucky limited liability company; as Landlord, and **HEALTHFIRST
BLUEGRASS, INC.**, a Kentucky non-profit corporation, as Tenant.

As of this _____ day of _____, 201____, Landlord and Tenant do hereby declare that:

1. The execution date of the Lease is _____, 2012.
2. The Commencement Date is _____, 201____.
3. The Expiration Date is _____, 201____.
4. The Lease is in full force and effect as of the date hereof. Any capitalized terms used herein but not defined shall have the same meaning as set forth in the Lease.

LANDLORD:

By: _____

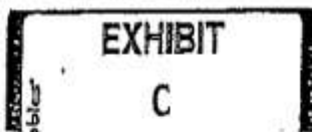
Print Name: _____

Title: _____

TENANT:

HEALTHFIRST BLUEGRASS, INC.

By: _____
T.A. Lester, Chairman



(Owner)
 (Location/Address)

Landlord Letter of Consent

(Insert owner), is/(are) the owner(s) of the property located at (insert facility name and address). The property is currently leased by (insert recipient/lessee). (Insert owner) currently has/will have a lease agreement with (insert recipient/lessee), for a period of ____ years that will expire on (insert date).

(Insert owner) is/(are) in full agreement of the proposed improvements to the aforementioned leased property as part of the Health Resources and Services Administration (HRSA) (Insert name of funding opportunity) funding opportunity, and grant permission to (insert recipient/lessee) to undertake proposed improvements.

(Insert owner) also acknowledge that there will be a Federal interest in the property as a result of the proposed improvements and that (insert owner) agrees to file a Notice of Federal Interest prior to work commencing, if required by HRSA.

Landlord/Corporation Signature: _____

Typed Name: _____

Title: _____

Date: _____



SAMPLE NOTICE OF FEDERAL INTEREST

On insert date, the Health Resources and Services Administration's Bureau of Primary Health Care awarded Grant No. _____ to insert name of recipient. The grant provides Federal funds for describe purpose of grant, e.g., construction, alteration/repair/renovation*, which is located on the property described below in _____ County, State of _____:

(GRANTEE INSERT LEGAL DESCRIPTION OF PROPERTY)

The Notice of Grant Award for this grant includes conditions on use of the aforementioned property and provides for a continuing Federal interest in the property. Specifically, the property may not be (1) used for any purpose inconsistent with the statute and any program regulations governing the award under which the property was acquired; (2) mortgaged or otherwise used as collateral without the written permission of the Office of Federal Assistance Management (OFAM), Health Resources and Services Administration (HRSA), or designee; or (3) sold or transferred to another party without the written permission of Office of Federal Assistance Management (OFAM), Health Resources and Services Administration (HRSA), or designee, or its designee. These conditions are in accordance with the statutory provisions set forth in Title 45 CFR part 74 or 92 (as appropriate), the HHS Grants Policy Statement, and other terms and conditions of award.

These grant conditions and requirements cannot be nullified or voided through a transfer of ownership. Therefore, advance notice of any proposed change in usage or ownership must be provided to the Associate Administrator, Office of Federal Assistance Management (OFAM), Health Resources and Services Administration (HRSA), or designee.

Signature: _____
 Typed Name: _____
 Title: _____
 Date: _____

* Description should include specificity to determine if the Federal interest applies to the land, building, or part thereof. Street or campus address should be included whenever possible

EXHIBIT E

PERMITTED ENCUMBRANCES

1. Notice of Federal Interest

C-1

AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE (the "Lease") is entered into and made as of the ____ day of March, 2013, but is effective as of June 21, 2012 (the "Effective Date"), between _____, a Kentucky limited liability company ("Landlord"), and **HEALTHFIRST BLUEGRASS, INC.**, a Kentucky non-profit corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease dated June 21, 2012 (the "Original Lease") whereby Landlord leased to Tenant the Premises (as defined below), which consist of, among other real property, two office buildings; and

WHEREAS, Tenant desires to remove the two office buildings and construct a new building (the "New Building") on the Premises and Landlord has agreed to allow Tenant to do so; and

WHEREAS, Landlord and Tenant now desire to amend and restate in its entirety the Original Lease according to the terms set forth below.

NOW THEREFORE, Landlord, in consideration of the Rents and covenants hereinafter set forth, does hereby demise, let and lease to Tenant, and Tenant does hereby hire, take and lease from Landlord, on the terms and conditions hereinafter set forth, the Premises (hereinafter defined) to have and to hold the same, with all appurtenances, unto Tenant for the term hereinafter specified.

This Lease is an amendment and restatement, and not a novation, of the Original Lease. As amended and restated hereby, the Original Lease shall remain in full force and effect.

SECTION A. BASIC DEFINITIONS AND PROVISIONS. The following basic definitions and provisions apply to this Lease. Any capitalized terms used in this Lease but not defined shall have the same meaning as set forth in this Section A:

- (1) ***Premises:*** (i) Consisting of LOT 1 as shown on the attached "Exhibit A" located at the intersection of Southland Drive and Mitchell Avenue, Lexington, KY, currently consisting of, among other real property, an office building (the "First Building") with approximately 20,900 square feet and a smaller office building with approximately 11,900 square feet (the "Second Building"; the First Building and Second Building shall be referred to herein collectively as the "Existing Buildings, including the right for the benefit of Tenant and Tenant's employees, patients, customers, agents, licensees, concessionaires and invitees to use all parking areas, sidewalks, driveways, service drives and service roads, traffic islands, landscaped areas, loading and service areas, and any other areas within LOT 1 or to which LOT 1 is entitled to use for same.

- (2) **Term:** Number of Months of Initial Term: 120 months
Commencement Date: December 18, 2012
Expiration Date: The date that is 120 months from the Commencement Date, as such date may be extended by the exercise of any renewal options.
Renewal Terms: Six (6) sixty (60) month renewal options
 “Term” as used herein shall include any Renewal Terms.
- (3) **Permitted Use:** To remove the Existing Buildings located on the Premises and to construct, occupy, and use the building to be constructed by Tenant at Tenant’s sole cost and expense within the location provided on the attached Exhibit A (hereinafter referred to as the “New Building”) on the Premises in order to provide medical services and operate a medical clinic, as provided for herein.
- (4) **Rent:** The rent for the Premises is payable in monthly installments beginning on the Commencement Date and continuing on the first (1st) day of each month in accordance with the following Schedule:

| MONTHS OF THE TERM | | MONTHLY RENT |
|---|--|--------------|
| 1 thru 120 (Initial Term) | | \$23,475.50 |
| 121 thru 180 (1 st Renewal Term) | | \$24,662.41 |
| 181 thru 240 (2 nd Renewal Term) | | \$25,887.08 |
| 241 thru 300 (3 rd Renewal Term) | | \$27,176.34 |
| 301 thru 360 (4 th Renewal Term) | | \$28,530.16 |
| 361 thru 420 (5 th Renewal Term) | | \$29,966.00 |
| 421 thru 480 (6 th Renewal Term) | | \$31,466.42 |

- (5) RESERVED

(6) *Rent Payment Address:*

(7) *Parking:* Tenant shall have non exclusive use of all parking spaces on the Premises and to which the premises may be entitled by law or reciprocal agreement.

(8) *Notice Address:*

LANDLORD:

TENANT: HealthFirst Bluegrass, Inc
650 Newtown Pike
Lexington, Kentucky 40508
Attn: T.A. Lester

1. **DESCRIPTION OF THE PREMISES.** The Premises consist of LOT 1 and are more particularly shown on Exhibit A attached hereto and incorporated herein, and contain the Existing Buildings, among other real property, and the Ancillary Areas. The Premises does not include the office/retail building site located on LOT 2 (hereinafter referred to as the "Development Lot"), as shown more particularly on Exhibit A attached hereto and incorporated herein, which shall be for the sole use of Landlord and its successors or assigns and not included as part of this Lease.

2. **TERM AND RENEWAL OPTIONS.** The Term of this Lease commences on the Commencement Date and expires on the Expiration Date, subject to the following:

(a) The Lease shall be effective on the Effective Date and Tenant shall have reasonable access to the Premises and appropriate documents relating to the Premises as of the Effective Date in order to complete its due diligence inspections and reviews; provided, however that Rent and other obligations of the Lease shall not begin until the Commencement Date.

(b) The Commencement Date, the Term and the Expiration Date shall be set forth in a Commencement Agreement in substantially the same form as Exhibit B, attached hereto and incorporated herein by this reference, to be prepared by Landlord and executed by both parties.

(c) Tenant shall have the option to extend the term of this Lease for up to six (6) periods of five (5) years each (each period shall be referred to herein as a "Renewal Term") beyond the initial Term in accordance with the provisions of this Section. Such option shall be exercisable by written notice of renewal given by Tenant to Landlord not less than six (6) months prior to the end of the Initial Term or immediately preceding Renewal Term, as applicable. The terms and conditions of this Lease for any Renewal Term shall be the same as for the Initial Term, except the Rent shall be as provided in Section A(4) and (5) above and the Option Prices

shall be as set forth in Section 31 below. Tenant may not effectively exercise a renewal option at any time that there exists an uncured Event of Default.

3. **RENT.** Tenant shall pay to Landlord, at the address listed in Section A(6), for the Premises in the amounts as set forth in Section A(4) and (5). Rent shall be payable in monthly installments as provided above, in advance, on or before the first day of each and every month throughout the Term; provided, however, that if the Commencement Date shall be a day other than the first day of a calendar month or the Expiration Date shall be a day other than the last day of a calendar month, the Rent installment for such first or last fractional month shall be pro-rated accordingly based on a 365-day year. Notwithstanding the foregoing or anything else in this Lease to the contrary, if Tenant's requirement to pay Rent, as set forth above, begins prior to Tenant's medical clinic on the Premises becoming operational, then Tenant may defer its payment of Rent until March 18, 2013 (the "Rent Payment Start Date"). All deferred payments of Rent shall be amortized over a period of _____ years at an interest rate of six and one half percent (6.5%) in equal installments to be paid on or before the first day of each month beginning _____ with final payment made _____ (the "Amortized Rent"). The payments of Amortized Rent shall be in addition to regularly-scheduled Rent payments.

4. **TAXES.** Tenant shall pay on or before their due dates all real estate taxes, installments of special assessments, sewer charges, transit taxes, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary (excluding income, franchise, or other taxes based upon Landlord's income or profit, unless imposed in lieu of real estate taxes) which shall now or hereafter be levied, assessed or imposed against the Premises during the Term (the "Taxes"); provided, however, that if the assessment period for any Taxes shall cover any period before the Commencement Date or after the Expiration Date, the payment of such Taxes shall be pro-rated accordingly between the Landlord and Tenant based on a 365-day year. Upon receipt of any invoices for Taxes, Landlord shall promptly forward such invoices to Tenant.

5. **INSPECTIONS.** Landlord shall permit Tenant reasonable access to the Premises and appropriate documents relating to the Premises in order to complete its due diligence inspections and reviews during the period beginning on the Effective Date and ending on the 130th day after the Effective Date (the "Due Diligence Period"). All inspections and reviews shall be conducted at reasonable times agreed upon in advance by Landlord and Tenant. Such inspections and review may include, but not be limited to, (i) a physical inspection of the Premises, including all wiring, plumbing, HVAC, structural components, foundations, and roofs; (ii) an environmental study of the Premises, including without limitation, a Phase I and/or Phase II study of the Premises; and (iii) a survey of the Premises, including without limitation, an ALTA survey of the Premises. Landlord shall take the steps necessary to ensure that Tenant has access to Rosemill prior to the closing of Landlord's purchase of Rosemill.

6. **TENANT IMPROVEMENTS.** Tenant may remove at Tenant's cost the Existing Buildings and construct the New Building and other related improvements (the "Tenant Improvements") on the Premises at any time after Tenant notifies Landlord in writing that all of the conditions to this Lease set forth in Section 20 have been satisfied or waived. All Tenant Improvements shall be constructed in accordance with the following terms and conditions:

(a) Within three hundred (300) days of the Effective Date, Tenant shall provide Landlord with general schematic plans of the Tenant Improvements for the Premises, showing generally the size, nature and location of the Tenant Improvements to be constructed in the Premises (the "Plans"). Landlord shall have the right to approve the Plans within ten (10) days of the receipt of the Plans; provided however, that Landlord's approval shall not be unreasonably withheld, delayed or conditioned. Tenant shall cause the contractor constructing the Tenant Improvements to obtain a performance and completion bond in an amount equal to the actual contract cost to construct the Tenant Improvements.

(b) Tenant shall pay for all costs for the Tenant Improvements.

(c) Tenant shall construct the Tenant Improvements within the Premises set forth in the Plans in a good, workmanlike manner and in substantial accordance with the Plans.

(d) Tenant shall obtain all governmental permits and approvals relating to the construction and use of the Tenant Improvements. Copies of all building permits, certificates of occupancy and other governmental notices, permits or licenses received with respect to the Tenant Improvements shall be promptly furnished to Landlord. Landlord shall cooperate with Tenant at the request of Tenant in obtaining any of the necessary or advisable permits and approvals.

(e) Within sixty (60) days upon completion of Tenant's improvements to the Premises, and specifically those that may be subject to the Notice of Federal Interest ("NFI") referenced herein, a Cost Segregation Study ("CSS") shall be performed, at Tenant's sole cost and expense, by an accounting or consulting firm chosen by Landlord and subject to reasonable approval by Tenant. The purpose of the CSS being to identify all construction related costs that can be depreciated over a shorter period than the New Building.

7. DELIVERY OF POSSESSION; ADJUSTMENT OF TERM.

(a) Delivery of Possession. Landlord shall deliver possession of the Premises to Tenant as of the Contingency Satisfaction Date, as defined in Section 20, for Tenant, its agents, and its contractors to begin construction of the Tenant Improvements.

(b) Tenant's Acceptance of the Premises. Upon delivery of possession to Tenant, the Premises shall be accepted by Tenant "AS IS", "WHERE IS", and "WITH ALL FAULTS," except as otherwise provided in this Lease.

8. USE OF THE PREMISES.

(a) Specific Use. Tenant shall have the right to use the Premises for (a) any lawful purpose, including, without limitation, in connection with its business of providing medical services, and (b) any other lawful purposes consistent with the existing zoning of the Premises. Landlord represents and warrants that Tenant's use of the Premises for its medical services business (the "Tenant's Intended Use") does not violate any zoning ordinances or other laws applicable to the Premises, or any leases, rules and regulations, or agreements, including exclusive use agreements, with existing tenants or third parties relating to the Premises and

Landlord agrees to not enter into any future leases or agreements prohibiting such use for the Term of the Lease, including all Renewal Terms.

(b) **Representations and Covenants Regarding Use.** In connection with its use of the Premises, Tenant agrees to do the following:

(i) Tenant shall use the Premises, construct the Tenant Improvements, and conduct its business thereon in a safe, careful, reputable and lawful manner; shall keep and maintain the Tenant Improvements in as good a condition as they were when Tenant first takes possession thereof, ordinary wear and tear excepted, and shall make all necessary repairs to the Premises other than those which Landlord is obligated to make as provided elsewhere herein.

(ii) Other than the removal of the Existing Buildings, Tenant shall not commit, nor allow to be committed, in, on or about the Premises, any act of waste, including any act which might deface, damage or destroy the Premises, or permit any objectionable or offensive noise or odors to be emitted from the Premises.

(iii) Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses of any kinds whatsoever (including reasonable attorneys' fees) directly arising out of Tenant's removal of the Existing Buildings.

(c) **Compliance with Laws.** Tenant shall not use or permit the use of any part of the Premises for any purpose prohibited by law. Tenant shall, at Tenant's sole cost and expense, comply with all laws, statutes, ordinances, rules, regulations and orders of any federal, state, municipal or other governmental agency thereof having jurisdiction over and relating to the use, condition and occupancy of the Premises.

(d) **Compliance with Zoning.** Tenant knows the character of its operation in the Premises and that applicable zoning ordinances and regulations are of public record. Tenant shall have sole responsibility for its compliance therewith. Landlord shall reasonably cooperate with Tenant at Tenant's request to obtain a compliance letter, an approved development plan, building permit and/or other planning and zoning or other required governmental approvals relating to the planned use of the Premises by Tenant or any planned alterations, improvements or additions by Tenant.

(e) **Unsafe Materials.** "Unsafe Materials" shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the laws of Kentucky or the laws of the United States. Tenant shall not cause or permit any Unsafe Materials (except for cleaning supplies used in normal quantities in the ordinary course of business and medical waste handled in accordance with law) to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees.

Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses of any kind whatsoever (including reasonable attorneys' fees) directly or indirectly arising out of the existence of Unsafe Materials or non-compliance with Environmental Laws which have been introduced or caused by Tenant.

Landlord shall defend, indemnify and hold harmless Tenant from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses of any kind whatsoever (including reasonable attorneys' fees) directly or indirectly arising out of the existence of Unsafe Materials or non-compliance with Environmental Laws which have been introduced or caused by Landlord.

The indemnities contained in this Section 8(c) shall survive the expiration or termination of this Lease, and shall continue for one year thereafter.

9. **UTILITIES AND OTHER BUILDING SERVICES.** During the Term, Tenant shall pay for all utility and sanitation services furnished to the Premises during the Term, including without limitation electric, telephone, natural gas, cable television and internet, water, sewer and sanitation services. This includes all costs related to bringing any of the above services to the Premises. Tenant shall pay, and will indemnify Landlord against any liability for charges for utility services furnished to the Premises during the Term. Landlord does not warrant the quantity or quality of any utility services to the Premises.

10. **SIGNS.** Provided Tenant remains in compliance with all applicable laws and ordinances, Tenant at its expense may inscribe, paint, affix or display any signs, advertisements or notices on or in the Premises and visible from outside the Premises.

11. **REPAIRS, MAINTENANCE, ALTERATIONS, IMPROVEMENTS AND FIXTURES.**

(a) **Repair and Maintenance of Building.** Tenant shall have the opportunity to perform all necessary inspections during the Due Diligence Period as provided hereunder, and if Tenant elects not to terminate this Lease, then Tenant shall accept the Premises "as is" and "where is" with all faults. Landlord makes no warranties as to the condition of the Premises and Tenant is to rely on its own inspections. Upon expiration of the Due Diligence Period, and provided Tenant has not terminated the Lease, Tenant shall be solely responsible for all repairs, maintenance, alterations, improvements, and fixtures in the Premises.

(b) **Repair and Maintenance of Premises.** Except as provided in Section 11(a) hereof and for the removal of the Existing Buildings, Tenant shall, at its own cost and expense, keep and maintain the Premises in good order, condition and repair at all times during the Term, and Tenant shall promptly repair all damage to the Premises and replace or repair all damaged or broken fixtures, equipment and appurtenances with materials equal in quality and class to the original materials, under the supervision and subject to the approval of Landlord, and within any reasonable period of time specified by Landlord. If Tenant fails to do so, Landlord may, but need not make such repairs and replacements, and Tenant shall pay Landlord the reasonable cost thereof.

(c) **Alterations or Improvements.** Except for the Tenant Improvements for which Tenant shall be required to obtain a performance and completion bond, Tenant shall not make, nor permit to be made, any other alterations or improvements to the Premises, unless Tenant obtains the prior written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed; provided, however that Tenant shall have the right to make non-

structural alterations, additions or improvements to the Premises without Landlord's prior written consent if the cost of doing the particular alteration, addition or improvement does not exceed \$500,000 in any one instance. If any such alterations or improvements are permitted, Tenant shall make the same in accordance with all applicable laws and building codes, in a good and workmanlike manner and in quality equal to or better than the standards required by Landlord and shall comply with such requirements as Landlord considers reasonably necessary or desirable, including without limitation requirements as to the manner in which and the times at which such work shall be done and the contractor or subcontractors to be selected to perform such work. Tenant shall promptly pay all costs attributable to such alterations and improvements and shall indemnify, defend and hold harmless Landlord from and against any mechanic's liens or other liens or claims filed or asserted as a result thereof and against any costs or expenses which may be incurred as a result of building code violations attributable to such work unless caused by the negligence or willful misconduct of Landlord, its agents, employees, invitees or contractors. All Tenant Improvements, except movable office furniture and equipment and trade fixtures, shall at Landlord's election, either (i) become a part of the realty and property of the Landlord, and shall not be removed by Tenant, or (ii) be removed by Tenant upon the expiration or sooner termination of this Lease, and any damage caused thereby repaired at Tenant's cost and expense. In the event Tenant so fails to remove same, Landlord may have same removed and the Premises so repaired at Tenant's expense. Notwithstanding anything in this Lease to the contrary, the New Building shall become a part of the realty and property of the Landlord, unless the Tenant purchases the Premises pursuant to Section 31 below, and shall not be removed by Tenant.

Title to any Tenant Improvements, including but not limited to the New Building, shall vest and remain in and with the Tenant at all times during the Term.

Landlord hereby acknowledges and agrees to the Tenant Improvements for the medical office space to become a part of the Premises and the property of Landlord at the expiration or early termination of this Lease, unless the Tenant purchases the Premises pursuant to Section 31 below. Tenant shall not be obligated to remove any of the foregoing from the Premises at the expiration or early termination of this Lease.

(d) **Trade Fixtures.** Any trade fixtures installed on the Premises by Tenant at its own expense, such as movable partitions, counters, shelving, showcases, mirrors, medical equipment, medical fixtures, and the like may, and, at the request of Landlord, shall be removed on the Expiration Date or within sixty (60) days of any earlier termination of this Lease, provided that Tenant bears the cost of such removal, and further that Tenant repair at its own expense any and all damage to the Premises resulting from the original installation of and subsequent removal of such trade fixtures. If Tenant fails so to remove any and all such trade fixtures from the Premises on the Expiration Date or within sixty (60) days of any earlier termination of this Lease, all such trade fixtures shall become the property of Landlord unless Landlord elects to require their removal, in which case Tenant shall promptly remove same and restore the Premises to their prior condition. In the event Tenant so fails to remove same, Landlord may have same removed and the Premises so repaired to their prior condition at Tenant's expense.

12. **FIRE OR OTHER CASUALTY; CASUALTY INSURANCE.**

(a) **Substantial Destruction of the New Building.** If the New Building should be substantially destroyed by fire or other casualty and cannot be reconstructed within 18 months, Tenant may, at its option, terminate this Lease by giving written notice thereof to the other party within thirty (30) days of such casualty. In such event, the Rent shall be apportioned to and shall cease as of the date of such casualty. If Tenant does not exercise this option, and in the event that the New Building can be reconstructed within 18 months, then the New Building shall be reconstructed and restored, by Landlord out of insurance proceeds to substantially the same condition as prior to the casualty within a commercially reasonable time period. Notwithstanding the foregoing, if the Lease is terminated pursuant to this Section 12(a), then Tenant shall be entitled to receive any and all insurance proceeds of Landlord attributable to non-structural and non-affixed Tenant Improvements paid for by the Tenant, unless such proceeds are required to be paid to the federal government in connection with the Tenant's grant from the federal government in order to release the NFI.

(b) **Casualty Insurance.** Tenant shall be responsible for insuring and shall at all times during the Term carry a policy of insurance which insures the New Building and other improvements on the Premises, against loss or damage by fire or other casualty (namely, the perils against which insurance is afforded by the standard fire insurance policy and extended coverage endorsement) in an amount equal to at least one hundred percent (100%) of the actual replacement cost thereof without any deduction for depreciation, which insurance shall name the Landlord and Tenant as beneficiaries as their interests may appear. Such casualty insurance shall also provide standard losses-sustained coverage. Tenant shall furnish Landlord with insurance certificates evidencing that such coverage is in full force and effect and the insurance shall require the insurance company to provide Landlord with at least 30 days notice of any pending termination of insurance coverage.

Tenant shall at all times during the Term, carry, at its own expense, property insurance covering its personal property, trade fixtures installed by or paid for by Tenant or any additional improvements which Tenant may construct on the Premises, which coverage in the amount of full replacement value. Tenant shall furnish Landlord with a certificate evidencing that such coverages are in full force and effect.

(c) **Waiver of Subrogation.** Landlord and Tenant hereby release each other and each other's employees, agents, customers and invitees from any and all liability for any loss, damage or injury to property occurring in, on or about or to the Premises, improvements and buildings or personal property within the improvements and buildings, by reason of fire or other casualty which are covered by applicable standard fire and extended coverage insurance policies. Because the provisions of this paragraph will preclude the assignment of any claim mentioned herein by way of subrogation or otherwise to an insurance company or any other person, each party to this Lease shall give to each insurance company which has issued to it one or more policies of fire and extended coverage insurance notice of the terms of the mutual releases contained in this paragraph, and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverages by reason of the mutual releases contained in this paragraph.

13. **GENERAL PUBLIC LIABILITY, INDEMNIFICATION AND INSURANCE.**

(a) Tenant shall be responsible for, shall insure against, and shall indemnify Landlord and hold it harmless from, any and all liability for any loss, damage or injury to person or property, arising out of use, occupancy or operations of Tenant and occurring in, on or about the Premises, except for that which is caused by negligence or willful misconduct of Landlord, its agents, employees or contractors. Tenant's obligation to indemnify Landlord hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including reasonable attorneys' fees, incurred in connection therewith.

(b) Landlord shall be responsible for, shall insure against, and shall indemnify Tenant and hold it harmless from, any and all liability for any loss, damage or injury to person or property arising out of use, occupancy or operations of Landlord and occurring in, on or about the Premises, except for that which is caused by negligence or willful misconduct of Tenant, its agents, employees or contractors. Landlord's obligation to indemnify Tenant hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including reasonable attorneys' fees, incurred in connection therewith.

(c) Landlord shall at all times during the Term carry, at its own expense, a policy of commercial general liability insurance issued by one or more insurance companies acceptable to Tenant, insuring against claims for bodily injury or death occurring in or on the Premises to the limit of not less than amounts customary for owners of similar properties. Landlord shall furnish Tenant with certificates evidencing such insurance within fifteen (15) days after request by Tenant. The failure of Landlord to have such insurance shall be a default by Landlord under this Lease. Landlord's insurance coverages required hereby shall not discharge or limit Landlord's indemnity obligations contained in Section 13(b).

(d) Tenant shall at all times during the Term carry, at its own expense, for the protection of Tenant and Landlord, as their interests may appear, one or more policies of general public liability and property damage insurance, issued by one or more insurance companies acceptable to Landlord, covering Tenant's use, occupancy and operations of the Premises providing minimum coverages of \$1,000,000 combined single limit for bodily injury and property damage per occurrence with \$2,000,000 aggregate coverage. Such insurance policy or policies shall name Landlord, its agents and employees, as insureds and shall provide that they may not be canceled or materially changed on less than thirty (30) days prior written notice to Landlord. Tenant shall furnish Landlord with certificates evidencing such insurance within fifteen (15) days after request by Landlord.

14. **EMINENT DOMAIN.** If the whole or any part of the Premises shall be taken for public or quasi-public use by a governmental authority under the power of eminent domain or shall be conveyed to a governmental authority in lieu of such taking, and if such taking or conveyance shall cause the remaining part of the Premises to be untenable and inadequate by Tenant in its discretion for use by Tenant for the purpose for which they were leased, then Tenant may, at its option, terminate this Lease as of the date Tenant is required to surrender possession of the Premises by providing written notice to Landlord. If a part of the Premises shall be taken or conveyed but the remaining part is tenantable and adequate for Tenant's Intended Use or any other use of Tenant at that time, then this Lease shall be terminated as to the part taken or

conveyed as of the date Tenant surrenders possession; Landlord shall make such repairs, alterations and improvements as may be necessary to render the part not taken or conveyed tenantable at its sole cost and expense; and the Rent shall be reduced in proportion to the part of the Premises so taken or conveyed. Landlord shall be entitled to that portion of the award attributable to its fee simple interest in the Premises and any repairs, alterations and improvements made by Landlord as may be necessary to render the part not taken or conveyed tenantable, and Tenant shall be entitled to that portion of the award attributable to its pro-rata share of any award for the taking of the Premises to the extent that Tenant has contributed to the cost of any alterations, additions or improvements, such as the Tenant Improvements, for the full amount. In addition, Tenant shall have the right to recover from the governmental authority, but not from Landlord, such compensation as may be awarded to Tenant on account of moving and relocation expenses, business interruption, and depreciation to and removal of Tenant's trade fixtures and personal property.

15. **LIENS.**

(a) If, because of any act or omission of Tenant or anyone claiming by, through, or under Tenant, any mechanic's lien or other lien shall be filed against the Premises, Tenant shall, at its own expense, bond against or cause the same to be discharged of record within a reasonable time, not to exceed twenty (20) days after the date of filing thereof; provided that Tenant shall have the right to contest the validity of any lien or claim if Tenant shall first have posted a bond, and shall also defend and indemnify Landlord and hold it harmless from any and all claims, losses, damages, judgments, settlements, costs and expenses, including attorneys' fees, resulting therefrom or by reason thereof, unless caused by negligence or willful misconduct of Landlord, its agents, employees or contractors. If such lien is not bonded against or discharged of record within twenty (20) days after the date of filing thereof, Landlord, at its sole option, may take all action necessary to release and remove such lien (without any duty to investigate the validity thereof) and Tenant shall promptly upon notice reimburse Landlord for all sums, costs and expenses (including reasonable attorneys' fees) incurred by Landlord in connection with such lien.

(b) Landlord shall indemnify and hold Tenant harmless from and against any damages resulting from the filing of any liens or claims of lien arising out of work performed, materials furnished or obligations incurred by, for, or at the request of Landlord, its employees, agents, or contractors. In the event that any liens on the Premises result in such lienholder initiating foreclosure proceedings against the Premises, Landlord shall bond against or discharge the lien within twenty (20) days after notice of such action. If Landlord shall have posted a bond, the bond must insure that, upon final determination of the validity of such lien or claim, Landlord shall immediately pay any judgment rendered against it with all proper costs and charges and shall have such lien released without cost to Tenant.

16. **RENTAL, PERSONAL PROPERTY AND OTHER TAXES.** Tenant shall pay before delinquency any and all taxes, assessments, fees or charges (hereinafter referred to as "Taxes"), including any sales, gross income, rental, business occupation or other taxes, levied or imposed upon Tenant's business operation in the Premises and any personal property or similar taxes levied or imposed upon Tenant's trade fixtures, leasehold improvements or personal property located within the Premises. In the event any such taxes are charged to the account of, or are

levied or imposed upon the property of Landlord, Tenant shall reimburse Landlord for the same. Notwithstanding the foregoing, Tenant shall have the right to contest in good faith any such tax.

17. **ASSIGNMENT AND SUBLETTING.** Tenant may not assign or otherwise transfer its interest in this Lease or sublet the Premises or any part thereof or allow the use of the Premises by a third party without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any assignment or sublease of the Tenant's interest in this Lease shall not include the Tenant's option to purchase set forth in Section 31 below. Tenant shall notify Landlord thirty (30) days in advance of its intent to transfer, assign or sublet all or any portion of the Premises. Such consent is deemed to be given if not denied by Landlord within thirty (30) days after Tenant's request therefor. Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Premises and all other property referred to herein, with the prior written consent of Tenant, at all times subject to this Lease, which consent shall not be unreasonably withheld, delayed or conditioned.

18. **SUBORDINATION OF LEASE TO MORTGAGES.** Tenant agrees that its interest in this Lease shall be subordinate to any mortgage recorded against the Premises prior or subsequent to the execution of this Lease if the mortgagee or beneficiary under said mortgage so elects, and Tenant will, upon request from time to time by one or more holders of a mortgage, subordinate this Lease to such mortgage and agree with such holder that Tenant will attorn to and recognize such holder or the purchaser at any foreclosure sale (or any sale under power of sale contained in any such mortgage) as the landlord under this Lease; provided, however, that in the event a mortgage is entered into subsequent to the execution of this Lease, such subordination shall not become effective until the mortgagee under said mortgage executes a subordination, non-disturbance and attornment agreement in a form acceptable to Tenant (an "SNDA"), providing that (i) any action or proceeding commenced by mortgagee for the foreclosure of the mortgage or sale of the Premises shall not result in the termination of this Lease or disturb or interfere with Tenant's possession or use of the Premises or any other rights of Tenant under this Lease, including, without limitation, any and all rights to exercise the option to purchase set forth hereunder, and (ii) in the event that the mortgagee succeeds to the interests of Landlord under the Lease, this Lease and all rights of Tenant, shall continue in full force and effect. All legal expenses incurred in connection with the drafting of any such subordination, non-disturbance and attornment agreement shall be the obligation of the Landlord. Landlord shall cause its existing mortgagee(s) to enter into an SNDA.

19. **DEFAULTS AND REMEDIES.**

(a) **Default by Tenant.** The occurrence of any one or more of the following events shall be a event of default (a "Default") and breach of this Lease by Tenant:

(i) Tenant shall fail to pay any monthly installment of Rent within ten (10) days after the same shall be due and payable.

(ii) Tenant shall fail to perform or observe any term, condition, covenant or obligation (other than payment of Rent) required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Landlord; provided,

however, that if the term, condition, covenant or obligation to be performed by Tenant is of such nature that the same cannot reasonably be performed within such thirty (30) day period, Landlord shall give Tenant an additional thirty (30) days if Tenant commences such performance within the thirty (30) day period and thereafter diligently undertakes to complete the same and in any event completes the cure within the additional thirty (30) day period.

(iii) Tenant makes an assignment for the benefit of creditors; or, substantially all of Tenant's assets in, on or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution (and Tenant does not discharge the same within thirty (30) days thereafter).

(b) **Remedies of Landlord.** Upon the occurrence of any event of default and after any applicable cure periods set forth in Section 19(a), Landlord shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon Tenant:

(i) Landlord may re-enter the Premises and cure any default of Tenant, in which event Tenant shall reimburse Landlord for any costs and reasonable expenses which Landlord may incur to cure such default.

(ii) Landlord may terminate this Lease as of the date of such default and any applicable cure periods, in which event: (A) neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Premises, and Tenant shall immediately thereafter surrender the Premises to Landlord; (B) Landlord may re-enter the Premises and dispossess Tenant or any other occupants of the Premises by summary proceedings, ejection or otherwise, and may remove their effects, without prejudice to any other remedy which Landlord may have for possession or arrearages in Rent; and (C) notwithstanding the termination of this Lease Landlord may either declare all Rent which would have been due under this Lease for the balance of the Term or exercised Renewal Term to be immediately due and payable, whereupon Tenant shall be obligated to pay the same to Landlord, together with all loss or damage which Landlord may sustain by reason of such termination and reentry, or relet all or any part of the Premises for a term different from that which would otherwise have constituted the balance of the Term and for Rent and on terms and conditions different from those contained herein, whereupon Tenant shall be obligated to pay to Landlord as liquidated damages the difference between the Rent provided for herein and that provided for in any lease covering a subsequent reletting of the Premises for the period which would otherwise have constituted the balance of the Term, together with all of Landlord's costs and expenses for preparing the Premises, for reletting, including all repairs, Tenant Improvements, marketing costs, broker's and attorney's fees, and all loss or damage which Landlord may sustain by reason of such termination, re-entry and reletting, it being expressly understood and agreed that the liabilities and remedies specified above shall survive the termination of this Lease.

(iii) Landlord may terminate Tenant's right of possession of the Premises and may repossess the Premises by unlawful detainer action, by taking peaceful possession or otherwise, without terminating this Lease, in which event Landlord may, but shall be under no obligation to, relet the same for the account of Tenant, for such Rent and upon such terms as shall be satisfactory to Landlord. For the purpose of such reletting, Landlord is authorized to

decorate, repair, remodel or alter the Premises. If Landlord fails to so relet the Premises, Tenant shall pay to Landlord as damages a sum equal to the Rent which would have been due under this Lease for the balance of the Term or exercised Renewal Term as such Rent shall become due and payable hereunder from time to time during the Term. If the Premises are relet and a sufficient sum shall not be realized from such reletting to satisfy the Rent provided for in this Lease, Tenant shall satisfy and pay the deficiency in Rent upon demand therefor from time to time.

(iv) Landlord may sue for injunctive relief or to recover damages for any loss resulting from the breach.

(c) **Default by Landlord and Remedies of Tenant.** It shall be a default and breach of this Lease by Landlord if:

(i) Landlord shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period, Tenant shall give Landlord an additional thirty (30) days if Landlord commences such performance within the thirty (30) day period and thereafter diligently undertakes to complete the same and in any event completes the cure within the additional thirty (30) day period.

(ii) If a petition is filed by, or an order for relief is entered against Landlord under the Bankruptcy Code, or Landlord files a bankruptcy petition, or Landlord becomes insolvent.

Upon the occurrence of any such default, Tenant may sue for injunctive relief or to recover damages for any loss resulting from the breach, and pursue any and all remedies available to it at law or equity, including, without limitation, termination of this Lease and cessation of Rent.

(d) **Non-Waiver of Defaults.** The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Lease shall not be construed to be a waiver thereof, nor affect the validity of any part of this Lease or the right of either party thereafter to enforce each and every such right or remedy or other provisions. No waiver of any default and breach of this Lease shall be held to be a waiver of any other default or breach.

(e) **Attorney's Fees.** If either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and either party places the enforcement of all or any part of this Lease, the collection of any Rent due or to become due or the recovery of possession of the Premises in the hands of an attorney, or if either party incurs any fees or out-of-pocket costs in any litigation, negotiation or transaction in which Tenant causes Landlord (without Landlord's fault) or Landlord causes Tenant (without Tenant's fault) to be involved or concerned, either party agrees to reimburse the other party for the reasonable attorney's fees and costs incurred thereby, whether or not suit is actually filed.

20. **CONDITIONS.** It is understood and agreed that the following conditions have been satisfied and/or waived by Tenant. However, in order for the Lots to be subdivided as provided herein and for Tenant to be able to complete its New Building and begin operation of their business Landlord and Tenant hereby agree to complete, as and when needed, the following items:

(a) **Subordination, Non-Disturbance and Attornment Agreement.** Tenant shall execute and deliver to Landlord a SNDA and a standard estoppel agreement. Within fifteen (15) days of delivery by Tenant of the SNDA Landlord shall cause its mortgagee to execute the SNDA and shall deliver a fully executed copy of the SNDA to Tenant. Tenant may, but shall not be obligated, to record the SNDA with the Fayette County Clerk's Office in its sole discretion.

(b) **Financing, Letter of Consent, and Notice of Federal Interest.**

(i) Tenant shall have obtained financing for this Lease, all obligations of Tenant under the Lease, and the Tenant Improvements which is satisfactory to the Tenant in its sole discretion.

(ii) Within thirty (30) days of Tenant providing the plans provided in Section 6a above, Landlord shall have provided the executed Letter of Consent in a similar form to that attached "Exhibit C" hereto.

(iii) Upon request by Tenant, Landlord shall provide an executed Notice of Federal Interest, the form attached hereto as "Exhibit D" which is the lien to be filed in the local clerk's office securing the federal government's capital development grant to Tenant, which lien shall include restrictions limiting the use of the Premises for medical-related uses only (the "NFI"). Tenant shall not file this NFI until a date no earlier than fifteen (15) days prior to commencing work on the Premises, provided Tenant gives Landlord no less than thirty (30) days written notice of its intent to file said NFI on said date.

(c) **Reserved.**

(d) **Subdivision of Development Lot and Consolidation of Lots.** Landlord shall cause the plat for the subdivision of the Development Lot and the consolidation of the current property to be recorded to reflect LOT 1 and LOT 2 as shown on the attached Exhibit A..

(e) **Cross-Easement for Access and Parking.** Landlord shall record a Non-Exclusive Reciprocal Easement and Maintenance Agreement ("REA") in the form as attached as "Exhibit F" hereton to secure Tenant and Landlord a cross easement parking agreement (which shall provide for pro-rata maintenance of the parking areas based on building size) with the Development Lot, which shall be acceptable to the Tenant in its sole discretion. For this REA Tenant shall be responsible for the maintenance requirements of LOT 1.

(f) **Satisfactory Completion of Due Diligence.** Tenant shall obtain a satisfactory Commitment for a Leasehold Owner's Policy of Title Insurance. Should adverse matters regarding the title to the Premises be revealed, Landlord shall reasonably assist in removing those items should they have existed prior to entry into this Lease.

(g) **No Material Adverse Change.** NA.

(h) **Phase 1 Environmental Reports.** Landlord has provided Tenant with a copy of the Phase 1 Environmental studies for the Premises that they have had previously completed.

(i) **Permits and Approvals.** Landlord, as and when necessary, on Tenant's behalf, and at Tenant's cost (except as qualified below), shall secure any and all permits, licenses, zoning approvals, development plan approvals, or other approvals from all State, local, and Federal governmental authorities having jurisdiction over the Premises or the use thereof as may be necessary for Tenant's proposed use of the Premises, including without limitation approval of the Premises from the Bureau of Primary Health Care. Notwithstanding anything in this Lease to the contrary, Landlord shall bear the sole cost of permits, development plans, subdivision plats, and other approvals required for the Development Lot. Tenant shall reasonably cooperate with Landlord's efforts pursuant to this Section 20(i). Tenant and Landlord acknowledge that multiple development plans may be required or desired for the Premises in order to best carry out the development of the Premises.

21. **ACCESS TO THE PREMISES.** Landlord, its employees and agents and any mortgagee of the Premises shall have the right to enter any part of the Premises at all reasonable times during normal business hours upon reasonable notice to Tenant for the purposes of examining or inspecting the same, showing the same to prospective purchasers, mortgagees or tenants and for making such repairs, alterations or improvements to the Premises so long as such parties adhere to the safety procedures and requirements of Tenant. Tenant reserves the right to accompany Landlord during any inspections or examinations.

22. **SURRENDER OF PREMISES.** Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord, together with all keys, access cards, alterations, improvements, and other property as provided elsewhere herein, in broom-clean condition and in good order, condition and repair, except for ordinary wear and tear and damage which Tenant is not obligated to repair, failing which Landlord may restore the Premises to such condition at Tenant's expense, which shall be payable upon demand. Upon such expiration or termination Tenant's trade fixtures, furniture and equipment shall remain Tenant's property, Tenant shall have the right to remove the same prior to the expiration or within sixty (60) days of earlier termination of this Lease, so long as none of the property removed may be subject to the recorded NFI. Tenant shall promptly repair any damage caused by any such removal, and shall restore the Premises to the condition existing prior to the installation of the items so removed. Any of Tenant's trade fixtures, furniture or equipment not so removed shall be considered abandoned and may be retained by Landlord or be destroyed.

23. **HOLDING OVER.** If Tenant remains in possession of the Premises without the consent of Landlord after the expiration or earlier termination of this Lease, Tenant shall be deemed to hold the Premises as a tenant at sufferance subject to all of the terms, conditions, covenants and provisions of this Lease (which shall be applicable during the holdover period). Tenant shall vacate and surrender the Premises to Landlord upon Tenant's receipt of notice from Landlord to vacate.

24. **ASSURANCE OF OCCUPANCY, USE AND POSSESSION.** Except as provided in this Lease to the extent as may be applicable, so long as Tenant pays the prescribed Rent and performs and observes all of the terms, conditions, covenants and obligations of this Lease required to be performed and observed by it hereunder, and no Event of Default has occurred which remains uncured, Tenant shall at all times during the Term hereof have the peaceable possession, occupancy and use of the Premises without any interference from Landlord or any person or persons claiming the Premises by, through or under Landlord, subject to any mortgages, underlying leases or other matters of record to which this Lease is or may become subject.

25. **NOTICE AND PLACE OF PAYMENT.**

(a) All Rent and other payments required to be made by Tenant to Landlord shall be delivered or mailed to Landlord's agent at the address set forth in Section A(6) hereof or any other address Landlord may specify from time to time by written notice given to Tenant.

(b) Any notice, demand or request required or permitted to be given under this Lease or by law shall be deemed to have been given if reduced to writing and personally delivered, mailed by registered or certified mail, return receipt requested, postage prepaid, or sent by a nationally-recognized overnight courier service, to the party who is to receive such notice, demand or request at the addresses set forth in Section A(8) or at such other address as Landlord or Tenant may specify from time to time by written notice. When delivering such notice, demand or request shall be deemed to have been given as of the date it was so delivered, mailed or deposited with the courier service.

26. **ENVIRONMENTAL COMPLIANCE.**

(a) **Tenant's Responsibility.** Tenant covenants and agrees that it will keep and maintain the Premises at all times in compliance with environmental laws. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically active or other hazardous substances, or materials on the Premises. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or in compliance with the standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought onto the Property any such materials or substances except to use in the ordinary course of Tenant's business in compliance with law.

(b) **Tenant's Liability.** Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this Section 26.

(c) **Limitation on Tenant's Liability.** Tenant's obligations under this Section 26 shall not apply to any condition or matter constituting a violation of any Environmental Laws: (i) which existed prior to the commencement of Tenant's use or occupancy of the Premises; (ii) which was not caused, in whole or in part, by Tenant or Tenant's agents, employees, officers, partners, contractors or invitees; or (iii) to the extent such violation is caused by, or results from

the acts or neglects of Landlord or Landlord's agents, employees, officers, partners, contractors, guests, or invitees.

(d) **Landlord's Liability.** To the best of Landlord's actual knowledge with reasonable investigation, Landlord represents and warrants that there are no hazardous materials on the Premises as of the Commencement Date in violation of any environmental laws other than that which may be disclosed in the 496 Phase I or the Rosemill Phase I. Landlord shall indemnify and hold Tenant harmless from any liability resulting from Landlord's violation of this representation and warranty.

(e) **Liability After Termination of Lease.** The indemnities contained in this Section 26 shall survive the expiration or termination of this Lease, and shall continue for one year thereafter.

27. **PARKING and COMMON AREAS.** Landlord shall provide Tenant with all parking to which the Premises may be entitled, which shall exceed the amount that may be required by law or ordinance. Tenant shall be responsible for maintaining said parking and areas located on the Premises or that may be the responsibility of the Premises.

28. **LANDLORD'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

(a) Landlord represents and warrants that it holds or will hold as provided herein above good and marketable fee simple title to the Premises free and clear of all liens, encumbrances and security interests other than 2012-2013 real property taxes, not yet due and payable, and the exceptions listed on Exhibit E attached hereto and incorporated herein by reference that shall include certain mortgages filed, or to be filed, against the Premises to the benefit of Landlord's lenders.

(b) Subject to the contingencies provided herein, Landlord represents and warrants that it has full authority to execute and enter into this Lease, to lease the Premises, and to otherwise perform its obligations arising under this Lease. This Lease constitutes the legally valid and binding obligations of Landlord, enforceable in accordance with its terms.

29. **RESERVED.**

30. **MISCELLANEOUS GENERAL PROVISIONS.**

(a) **SNDA's and Estoppel Letters.** Either party shall, within ten (10) days following written request from the other party, execute, acknowledge and deliver to the requesting party or to any lender, prospective purchaser or prospective lender or purchaser an SNDA and/or written statement (estoppel letter) certifying (i) that this Lease is in full force and effect and unmodified (or, if modified, stating the nature of such modification); (ii) the date to which Rent has been paid; (iii) that there are not, to the party's knowledge, any uncured defaults (or specifying such defaults if any are claimed); and (iv) such further matters as may be reasonably requested by the requesting party.

(b) **Claims For Fees.** Each party represents and warrants that it has not engaged the services of or dealt with any broker, salesperson or other entity who may claim a commission or

other payment in conjunction with this Lease, except as set forth in this Section 30(b). Each party agrees to indemnify, defend and hold the other harmless from and against all loss, damage, claims, costs and expenses (including reasonable attorneys' fees) caused by a breach of the foregoing representation. Landlord shall be solely liable for a commission payable to Silvestri-Craig Realtors ("Broker") pursuant to that certain For Lease by Owner Protection Period and Commission Agreement executed on April 18, 2012 by Broker and on April 19, 2012 by Landlord.

(c) **Applicable Law.** This Lease and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

(d) **Entire Agreement.** This Lease, including all Exhibits, Riders and Addenda, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto.

(e) **Binding Effect.** This Lease and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as well as the parties themselves.

(f) **Severability.** 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.

(g) **No Partnership.** Landlord shall not, by virtue of the execution of this Lease or the leasing of the Premises to Tenant, become or be deemed a partner of or joint venture with Tenant in the conduct of Tenant's business on the Premises or otherwise.

(h) **Headings, Gender, etc.** As used in this Lease, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words of any gender shall include any other gender. The topical headings of the several paragraphs of this Lease are inserted only as a matter of convenience and reference, and do not affect, define, limit or describe the scope or intent of this Lease.

(i) **Time of Essence.** Time is of the essence of this Lease and each of its provisions.

(j) **Memorandum of Lease.** Landlord and Tenant agree to execute a Memorandum of Lease which shall be mutually acceptable to Landlord and Tenant, and either Landlord or Tenant shall have the right to record the Memorandum of Lease in the applicable county registry.

(k) **Waiver of Landlord's Lien.** Landlord agrees not to distraint any of the Tenant's personal property, including trade fixtures, or to assert any claim against the Tenant's personal property, including trade fixtures, for any reason, and Landlord hereby waives any right to a lien or security interest in the same.

(l) **Exhibits.** The following Exhibits are attached hereto and incorporated herein as if fully set forth in this Lease:

- (i) Exhibit A Premises
- (ii) Exhibit B Commencement Agreement
- (iii) Exhibit C Landlord Letter of Consent
- (iv) Exhibit D NFI
- (v) Exhibit E Permitted Encumbrances
- (vi) Exhibit F REA

(m) **Confidentiality.** The parties shall keep this Lease, and its content, confidential, except that they may disclose this Lease, and its content, to their respective directors, officers, employees, affiliates, counsel, accountants, consultants, financial advisors, investors, financiers and agents (collectively, "Representatives"), but only if such Representatives need to know such information in order to carry out the transactions contemplated by this Lease.

31. **OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL.** At any time during the fourth (4th) through twentieth (20th) years of the Term of the Lease, Tenant shall have the option to purchase at the Premises the following price:

| MONTHS OF THE TERM | | PURCHASE PRICE |
|---|--|---|
| 37 thru 120 (Years 4 thru 10) | | \$1,100,000.00 plus (30% over the sum of the *Rosemill purchase price plus reasonable direct costs of Landlord to purchase Rosemill as shown on the Rosemill settlement statement (the "Cost")) |
| 121 thru 180 (1 st Renewal Term) | | \$1,155,000.00 plus (30% over the sum of the *Rosemill purchase price plus reasonable direct costs of Landlord to purchase Rosemill as shown on the Rosemill settlement statement (the "Cost")) |

| | | |
|---|--|--|
| 181 thru 240 (2 nd Renewal Term) | | \$1,212,750.00 plus (30% over the sum of the *Rosemill purchase price plus reasonable direct costs of Landlord to purchase Rosemill as shown on the Rosemill settlement statement (the " <u>Cost</u> ")) |
|---|--|--|

*The property defined as Rosemill is that real property that prior to consolidation of the multiple lots into LOT 1 and LOT 2 was known as 480 through 490 Southland Drive and 480 through 496 Rosemill Drive and was the entire property except that which was previously known as 496 Southland Drive. The purchase price for Rosemill was \$1,025,000.00.

In order to exercise these options, Tenant shall give the Landlord written notice in the manner provided in Section 25(b) not less than sixty (60) days prior to the expiration of the applicable months of the Term set forth in the table above. The closing of the option purchase shall take place on the last business day before the expiration of the applicable months of the Term during which the option was exercised.

Landlord agrees not to transfer or convey all or any part of the Premises without first offering to Tenant the right to purchase such interest for the same amount and otherwise in accordance with the terms of any bona fide contract that Landlord has entered into. In the event that Landlord intends to transfer or convey the Premises, Landlord shall give Tenant written notice disclosing such intent and enclosing a copy of the contract, and Tenant shall on or before 30 days after receipt of such notice from Landlord, notify Landlord in writing that Tenant either does or does not agree to acquire the Premises on the terms of the contract. If Tenant notifies Landlord that Tenant elects to exercise the right of first refusal with respect to the contract, then the closing of the conveyance of the Premises to Tenant pursuant to the contract shall occur on or before the 90th day after delivery of Tenant's notice to Landlord. If Tenant notifies Landlord that Tenant does not intend to acquire the Premises pursuant to the contract, then Landlord may convey the Premises pursuant to the contract, provided however, any new contract shall be subject to this right of first refusal.

[Remainder of page intentionally left blank. Signature pages follow.]

WITNESS the following signatures:

LANDLORD:

By: _____

Print Name: _____

Title: _____

TENANT:

HEALTHFIRST BLUEGRASS, INC.

By: _____
T.A. Lester, Chairman

Signature Page to Lease

EXHIBIT A

PREMISES

SEE ATTACHED

A-1

EXHIBIT B

COMMENCEMENT AGREEMENT

Attached to and made part of the Lease dated _____, 2012, _____, a Kentucky limited liability company, as Landlord, and **HEALTHFIRST BLUEGRASS, INC.**, a Kentucky non-profit corporation, as Tenant.

As of this _____ day of _____, 201____, Landlord and Tenant do hereby declare that:

1. The execution date of the Lease is _____, 2012.
2. The Commencement Date is _____, 201____.
3. The Expiration Date is _____, 201____.
4. The Lease is in full force and effect as of the date hereof. Any capitalized terms used herein but not defined shall have the same meaning as set forth in the Lease.

LANDLORD:

By: _____

Print Name: _____

Title: _____

TENANT:

HEALTHFIRST BLUEGRASS, INC.

By: _____

T.A. Lester, Chairman

EXHIBIT C
LANDLORD LETTER OF CONSENT

C-1

EXHIBIT D

NFI

C-1

EXHIBIT E
PERMITTED ENCUMBRANCES

1. Notice of Federal Interest

C-1

EXHIBIT F

REA



Construction Project Manager

HealthFirst (Owner) is a Federally Qualified Health Center and co-applicant of a Section 330 Health Center operating grant with the Lexington-Fayette County Health Department. Owner was granted an \$11,749,172 Capital Development Grant in October of 2010.

Owner seeks to hire an experienced Project Manager (PM) for a period of 15 months with knowledge of the commercial real estate market in Lexington-Fayette County Kentucky, Federal, state and local commercial construction laws as relates to Federal grants; bidding requirements, plus Fast Track project management experience in projects of \$10 million or greater. It is anticipated that this position will be an independent contractor. This position will be responsible for all aspects of the project, work with Owner's staff in managing the project, and report to the Executive Director and Building Committee of Owner.

Please submit a resume to LindaL.Phelps@ky.gov
Or by mail to Linda Phelps, HealthFirst Bluegrass, Inc.,
650 Newtown Pike, Lexington, KY 40508.
Deadline July 30, 2012. No calls please.

Evaluation Form for Project Manager Services for HealthFirst Bluegrass, Inc. Exhibit 5

Evaluation form for Project Manager Services for HealthFirst Bluegrass, Inc.

| # | Name | Project Manager Experience (1-30 points) | Owner Developer Experience (1-25 points) | Projects of at least \$10 million (1-15 points) | Lexington Experience (1-15 points) | Ability to Collaborate (1-10 points) | Total Points (1-100 points) |
|----|------|--|--|---|------------------------------------|--------------------------------------|-----------------------------|
| 1 | | 0 | 0 | | | | 0 |
| 2 | + | 25 | 20 | 15 | 5 | 5 | 70 |
| 3 | | 15 | 0 | 10 | 5 | 5 | 35 |
| 4 | | 20 | 0 | | 0 | | 20 |
| 5 | | 20 | 0 | 0 | 0 | | 20 |
| 6 | | | 0 | | 0 | | 0 |
| 7 | | 0 | 0 | | | | 0 |
| 8 | | 0 | 0 | | | | 0 |
| 9 | + | 25 | 0 | 10 | 5 | 5 | 45 |
| 10 | | 0 | 0 | | | | 0 |
| 11 | | 0 | 0 | | | | 0 |
| 12 | | 20 | 20 | 0 | 0 | | 40 |
| 13 | | 0 | 0 | | | | 0 |

+ Top five candidates

Evaluation Form for Project Manager Services for HealthFirst Bluegrass, Inc. Exhibit 5

Evaluation form for Project Manager Services for HealthFirst Bluegrass, Inc.

| # | Name | Project Manager Experience (1-30 points) | Owner Developer Experience (1-25 points) | Projects of at least \$10 million (1-15 points) | Lexington Experience (1-15 points) | Ability to Collaborate (1-10 points) | Total Points (1-100 points) |
|----|------------|--|--|---|------------------------------------|--------------------------------------|-----------------------------|
| 14 | | 0 | 0 | | | | 0 |
| 15 | + | 20 | 5 | 15 | 15 | 7 | 62 |
| 16 | | 0 | 0 | | | | 0 |
| 17 | | 0 | 0 | | | | 0 |
| 18 | | 0 | 0 | | | | 0 |
| 19 | | 0 | 0 | | | | 0 |
| 20 | | 0 | 0 | | | | 0 |
| 21 | | 15 | 0 | 5 | 15 | 5 | 40 |
| 22 | + | 15 | 5 | 15 | 5 | 5 | 45 |
| 23 | | 0 | 0 | | | | 0 |
| 24 | Landlord*+ | 26 | 22 | 15 | 15 | 12 | 90 |

* Candidate selected as Program Manager

+ Top five candidates

PROJECT MANAGER AGREEMENT

This Project Manager Agreement is made effective as of the 2nd day of August, 2012 between HEALTHFIRST BLUEGRASS, INC. (the "Company"), with a mailing address of 650 Newtown Pike, Lexington, Kentucky 40508, and _____ and _____ (collectively, the "Project Manager") with a mailing address of _____

RECITALS

WHEREAS, The Company is the lessee of certain property located at 496 Southland Drive, Lexington, Kentucky, consisting of, among other real property, an office building with approximately 20,900 square feet; and 480 through 490 Southland Drive and 480 through 496 Rosemill Drive, Lexington, Kentucky, consisting of, among other real property, an office building with approximately 11,900 square feet (collectively, the "Southland Drive Premises") and the first and second floors of the office building located at 650 Newtown Pike, Lexington, Kentucky (collectively, the "Newtown Pike Premises", together with the Southland Drive Premises, the "Premises"); and

WHEREAS, The Company intends to make certain improvements to the Premises (the "Project"); and

WHEREAS, The Company desires to obtain the services of the Project Manager to oversee and manage the Project.

NOW THEREFORE, the Company and the Project Manager agree as set forth below.

1. Project Manager's Services. The Project Manager's services consist of those services set forth in Section 3 of this Agreement and other management services necessary and reasonably inferable for the proper management of the Project (collectively, the "Services"). The Project Manager's services shall be provided in conjunction with the services of a general contractor construction company (the "Design-Builder"), other construction contractors, architects, and other consultants (together with the Company, the "Project Team"). The Project Manager shall provide sufficient organization to carry out the requirements of this Agreement in an expeditious and economical matter consistent with the best interests of the Company. During the term of this Agreement, _____ shall devote substantially all of his working hours to the duties set forth herein, but in no case less than 40 hours per week. Project Manager shall not delegate the performance of the Services to another entity.

2. Term. The Project Manager acknowledges that the primary purpose for Company hiring a project representative is to ensure the timely and proper completion of the Project by October 1, 2013 (the "Substantial Completion Date"). The term of this Agreement shall commence upon execution hereof and continue until Project close-out but not less than thirty (30) days following actual Substantial Completion as defined in the Design-Build Agreement between Company and Design-Builder. The Project Manager recognizes that meeting the Substantial Completion Date is critical to the operation of Company's business.

3. Scope of Services.

3.1. Pre-Construction Phase.

- 3.1.1. Project Manager shall assist the Company in the bidding process of choosing a Design-Builder, architect, and such other parties to the Project Team, as the Company requests. Project Manager shall cause the Design-Builder to maintain a satisfactory performance bond.
 - 3.1.2. Project Manager shall act on behalf of the Company on the Project Team.
 - 3.1.3. Project Manager will participate, as appropriate, in periodic design review meetings with the Project Team and the Company.
 - 3.1.4. Project Manager will coordinate the review of design documents for clarity, consistency and constructability. The results of the review coordination will be provided to the Project Team. The performance of such coordination review by the Project Manager will not make the Project Manager liable for the design obligations or performance or both, of the Design-Builder.
 - 3.1.5. Project Manager will provide input to the Project Team with respect to constructability, sequencing construction, possible means and methods of construction, expected construction durations of various building methods and separation of the Project into contracts for various categories of the work.
 - 3.1.6. Project Manager shall monitor critical path elements of the program schedule so the Company can make necessary decisions in a timely manner.
 - 3.1.7. Project Manager shall use its best efforts to advise the Company about design and bidding alternatives that could result in savings to the Company, including savings in the construction cost and in the cost of operating the Project when completed.
 - 3.1.8. Project Manager and the Company's Executive Director shall advise the Company on maintaining compliance with the requirements of its federal grant as it relates to federal, state, and local commercial construction laws. Throughout the term of the Project, Project Manager and the Company's Executive Director shall prepare for the Company's Building Committee monthly and quarterly reports on the Project, which shall be satisfactory for the requirements of the Company's federal grant.
 - 3.1.9. Project Manager and the Company's Executive Director shall prepare a detailed development plan and development budget that meets the Company's requirements with respect to its federal grant.
- 3.2. Construction Services.
- 3.2.1. Project Manager will attend job coordination meetings and provide a report of the proceedings. Project Manager will provide coordination of pertinent details requiring the Company's input or involvement. Project

Manager, in conjunction with the Project Team, will provide representation for the Company in resolution of site construction problems and will continuously keep Company informed of all related matters.

- 3.2.2. In consultation with the Project Team, and based upon observation at the site and upon application for payment by each contractor, Project Manager will review the payment request for accuracy and determine whether amounts requested reflect the progress of the contractor's work. The Project Manager will recommend appropriate adjustments to each payment application to the Project Team.
- 3.2.3. Project Manager shall review all schedules and cost estimates developed by the Design-Builder and provide monthly reports to Company identifying variances and/or deficiencies between the proposed and actual schedules and estimates. Project Manager shall immediately notify Company at any time it appears the Project will not be completed on or before the Substantial Completion Date and will provide recommendations to meet that schedule.
- 3.2.4. The Project Manager shall keep a log containing a record of weather, each contractor's work on the site, number of workers, identification of equipment, work accomplished, problems encountered, and other similar relevant data as the Company may require. Project Manager shall provide a monthly written report to the Company outlining progress and construction issues.
- 3.2.5. Project Manager will make regular job site inspections to observe progress and quality of work and to determine in general that the work is proceeding in accordance to contract documents.
- 3.2.6. Project Manager will, in conjunction with the Project Team, make recommendations for corrective action on nonconforming work. The Project Manager will make recommendations to Company in instances where Project Manager observes work that, in Project Manager's opinion, should be rejected.
- 3.2.7. Project Manager will draw on prior experience to anticipate problems which may arise including, but not limited to, problems related to building permits, site and soil conditions, equipment and material shortages, proper balancing of heating, ventilating, and air conditions systems, and contractor and supplier delays.
- 3.2.8. Project Manager will work with the Project Team to solve problems and resolve disputes, if reasonably possible, promptly as they occur on the Project and promptly advise the Company of any action it should take to avoid, eliminate, and/or solve problems and disputes.
- 3.2.9. In conjunction with the Project Team, the Project Manager will assist in preparation of a list of incomplete or defective work (punch list) during

construction and prior to Substantial Completion. When incomplete or defective work has been remedied, the Project Manager will advise Company of Project completeness and assist the Company in determining Substantial Completion. The Project Manager shall record any rejection of work in its log and include information regarding the rejected work in its progress reports.

3.2.10. The Project Manager will coordinate all Company-initiated Change Order Proposal Requests with the Project Team, and review the Design-Builder's cost estimates and time extensions, if any, and make recommendations, in conjunction with the Project Team, to the Company. The Project Manager will review all contractor-initiated Change Order Requests relative to the contract documents, to verify the Request is not part of the basic scope of work. Project Manager will review Design-Builder's costs estimates and time extensions, if any, and make recommendations, in conjunction with the Project Team, to the Company.

3.2.11. Utilizing the documents provided by the Design-Builder, the Project Manager shall maintain at its office one copy of all contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes and selections made during construction. The Project Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Project Manager shall deliver them to the Company upon completion of the Project.

3.3. Post Construction Services.

3.3.1. Project Manager will assist the Company in administrating and coordinating all related equipment testing and start-up operations.

3.3.2. Project Manager will, at the conclusion of corrective action of all punch list items, make a final inspection of the facilities in conjunction with the Project Team, prepare a report of final inspection for the Company and will make a recommendation to the Company as to final payment to Design-Builder.

3.4. Insurance. Project Manager shall assure that the general contractor and each subcontractor performing work on the Project maintains reasonable and adequate insurance to fully protect the Company. Such insurance shall include, but not be limited to, workers' compensation insurance, employer's liability insurance and insurance against liability for injury to persons and property arising out of all such contractor's and subcontractors' operations and use of owned, non-owned or hired automotive equipment in the pursuit of all such operations. Such insurance shall furthermore name the Project Manager and the Company as insured under all such policies. Project Manager shall also cause to be maintained

all such builder's risk, fire and casualty (with extended coverage endorsement) and public liability insurance with respect to the Project and in such amounts and written by such insurers, as the Company shall reasonably require with the Company, Project Manager and any mortgagee named as an insured and loss payee as their interests may appear.

4. Company's Responsibilities.

- 4.1. The Project Manager and the Company's Executive Director shall provide to the Company's Building Committee within 30 days of the date hereof full information regarding the requirements for the Project, including a program which shall set forth the Company's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, assistance and site requirements.
- 4.2. The Company shall furnish the Project Manager with copies of any construction documents, plans, drawings, and specifications necessary to provide the Services.
- 4.3. Information or services under the Company's control shall be furnished by the Company with reasonable promptness to avoid delay in the orderly progress of the Project Manager's services and the progress of the work.

5. Items Outside Scope of this Agreement.

- 5.1. Project Manager shall not approve final plans, schedules, budgets and estimates provided and recommended by the Design-Builder to Company.
- 5.2. Project Manager shall not consider or approve any amendments, bulletins, field work orders or Change Orders which substantially modify the final construction plan or that involve increases in any contract amount.
- 5.3. Project Manager shall not undertake any of the responsibilities of the Design-Builder, including the design of the Project, and the coordination, scheduling and oversight of multiple contractors; provided, however, Project Manager shall immediately notify Company if it becomes aware of any defects or deficiencies in the design of the Project or in the construction thereof.

6. Reporting and Limitation of Authority.

- 6.1. The Project Manager shall not have any authority to bind the Company for the payment of any costs or expenses without the express written approval of the Company, as applicable. The Project Manager shall have reasonable and necessary authority to act on behalf of the Company only to the extent provided herein. In the event of an emergency affecting the safety of persons, the Project or adjacent property, the Project Manager, without special instruction or authorization but within its discretion, shall act reasonably to minimize any threatened damage, injury or loss. The Project Manager's authority to act on behalf of the Company shall be modified only by an amendment in accordance

with Section 11.3. Notwithstanding any provision in this Agreement to the contrary, Project Manager shall not, without prior written approval of the Company: (i) convey or otherwise transfer or pledge or encumber any property or other asset of the Company; (ii) retain attorneys on behalf of Company; (iii) institute or defend lawsuits or other legal proceedings on behalf of Company; (iv) enter into any dealing concerning the Project for the Project Manager's own account; (v) pledge credit of the Company for borrowed money or have the Company guarantee the obligations of any person; (vi) borrow money or execute any promissory note or other obligation or deed to secure a debt, or execute any mortgage, security agreement or other encumbrances in the name of or on behalf of the Company; or (vii) execute any contract on behalf of the Company.

- 6.2. The Project Manager shall report to and take direction from the Executive Director of the Company for ordinary matters under the scope of this Agreement, provided however, Project Manager shall receive written approval from the Company's Building Committee before (i) submitting a development plan to local authorities for approval or (ii) proceeding with any change in the Project which shall incur costs in excess of \$100,000.00. The Project Manager and the Company's Executive Director may jointly approve any change in the Project which incurs costs less than \$100,000.00.
- 6.3. The Project Manager and the Company's Executive Director shall at a minimum on a bi-weekly basis (or more frequently, if requested) give a status report on the progress of the Project to the Company's Building Committee.

7. Termination.

- 7.1. Upon thirty (30) days' written notice, the Company may terminate this Agreement if (i) it does not obtain, or loses, the federal grant or other financing for the Project, which grant or other financing shall be satisfactory to the Company in its sole discretion (the "Financing"); (ii) any of the conditions necessary to obligate the Company, as tenant, to carry out the terms of that certain Lease dated June 21, 2012 with _____, as landlord, for the Southland Drive Premises are not fulfilled; or (iii) the Company is unable to obtain the necessary approvals from local, state, and federal governmental authorities to complete the Project. Upon termination, the Project Manager shall not be entitled to any further payment or compensation.
- 7.2. In the event the Project Manager fails in any manner to perform in accordance with the terms of this Agreement, the Company, without liability, may by written notice of default, terminate the Agreement. In such case, the Project Manager shall not be entitled to receive further payment. This Section shall survive termination of this Agreement.

8. Payments to Project Manager.

- 8.1. Project Manager shall be paid compensation of \$15,000.00 per month for the

Services provided hereunder ("Compensation").

- 8.2. The Compensation shall be paid to the Project Manager in arrears on the last day of each month during the term of this Agreement.
- 8.3. Notwithstanding anything in this Agreement to the contrary, it shall be a condition precedent to any obligation of the Company to pay the Project Manager any Compensation that the Company receive the Financing.
- 8.4. The Project Manager shall be an independent contractor of the Company. The Project Manager shall not be an employee or partner of the Company. The Project Manager hereby acknowledges and agrees that the Company shall not withhold any taxes on behalf the Project Manager, and the Project Manager shall be solely responsible for the payment of any taxes due by the Project Manager in connection with this Agreement.

9. Indemnification. To the fullest extent permitted by law, the Project Manager shall and does agree to indemnify, defend and hold harmless the Company and its board members, shareholders, officers, employees, agents and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by or result from performance of the Project Manager's services hereunder or (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property other than the Project, including the loss of use and consequential damages resulting therefrom, but only to the extent they are caused by any act or failure to act of the Project Manager, anyone directly or indirectly employed by the Project Manager or anyone for whose acts the Project Manager is legally liable.

10. Notice. All notices, demands, requests, consents or approvals and other communications required or permitted hereunder will be in writing, and, to the extent required by applicable law, and will be addressed to such party at the address set forth below or to such other address as any party may give to the other in writing for such purpose:

To Company: HealthFirst Bluegrass, Inc.
 650 Newtown Pike
 Lexington, KY 40508
 Attn: William North, Executive Director

To Project Manager:

All such communications, if personally delivered, will be conclusively deemed to have been received by a party hereto and to be effective when so delivered; if given by mail, on the fourth business day after such communication is deposited in the mail with first-class postage prepaid, return receipt requested; or if sent by overnight courier service, on the day after deposit thereof with such

service; or if sent by certified or registered mail, on the third business day after the day on which deposited in the mail.

11. Duties. Although the Project Manager is a minority member of _____, the owner of the Southland Drive Premises, the Project Manager's duties shall solely run to the Company and not _____ with respect to the matters set forth in this Agreement. The Project Manager represents that he shall at all times consider only the best interests of the Company first and foremost in performing the Services.

12. Confidentiality. Any non-public information furnished by or on behalf of the Company to the Project Manager in connection with this Agreement shall be treated as confidential information. Project Manager agrees for a period of five (5) years following Project close-out not to disclose or use at any time any confidential information concerning the business and affairs of the Company except as required by applicable Law (the "Confidential Information"); *provided*, however, that Confidential Information shall not include: (i) information now generally known or readily available to the public or which becomes so known or readily available without the fault of the Project Manager or any of its respective representatives or (ii) information that is independently developed by the Project Manager without reference to or use of the Confidential Information. The Project Manager further agrees to use its commercially reasonable efforts to safeguard such Confidential Information and to protect it against disclosure in accordance herewith. In the event the Project Manager and/or any of its representatives is required by applicable Law to disclose any Confidential Information, the Project Manager shall promptly notify the Company in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and the Project Manager shall cooperate with the Company to preserve the confidentiality of such information consistent with applicable Law at the Company's cost or expense.

13. Miscellaneous Provisions.

- 13.1. Successors and Assigns. The Company and the Project Manager, each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other parties with respect to all terms of this Agreement. The Project Manager shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the Company.
- 13.2. Entire Agreement. This Agreement, including Exhibits attached hereto and incorporated herein, represents the entire and integrated agreement between the Company and the Project Manager and supersede all prior negotiations, representations or agreements, either written or oral.
- 13.3. Amendments. This Agreement may be amended only by an instrument in writing that explicitly states that it amends this Agreement and is signed by both parties.
- 13.4. Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

- 13.5. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections, hereof.
- 13.6. Precedence. If there are any inconsistencies between the provisions of the Exhibits attached to this Agreement, and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- 13.7. Waiver. No act or failure to act by the Company or Project Manager shall constitute a waiver of any right or duty afforded them under this Agreement, nor shall such act or failure to act constitute approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.
- 13.8. Governing Law. This Agreement has been delivered and accepted at and will be deemed to have been made at Lexington, Kentucky and will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the Commonwealth of Kentucky, without regard to conflicts of law principles.

[Remainder Of This Page Intentionally Left Blank. Signature Page To Follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the 2nd day of August, 2012.

COMPANY:

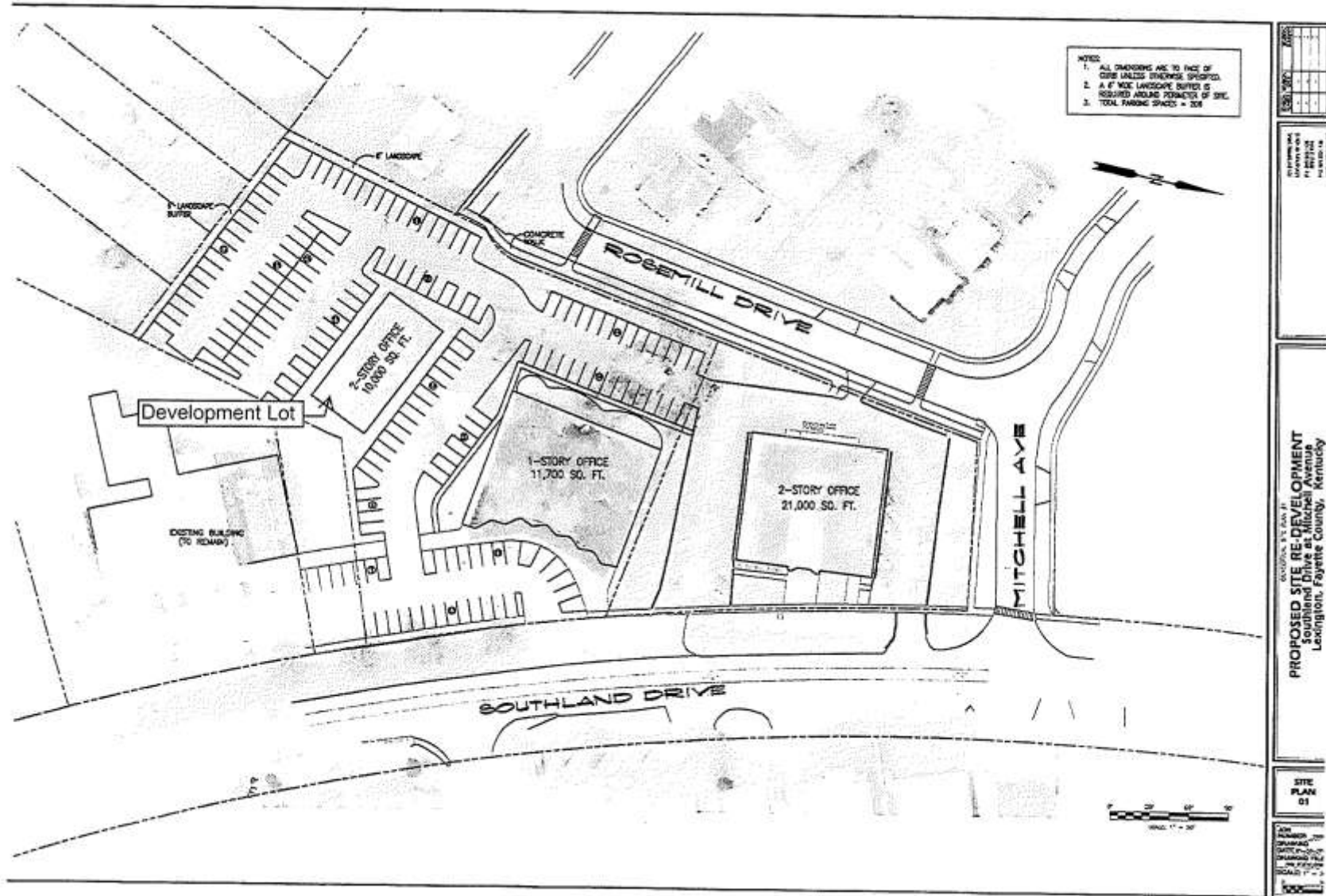
HEALTHFIRST BLUEGRASS, INC.

By: 
T.A. Lester, Chairman

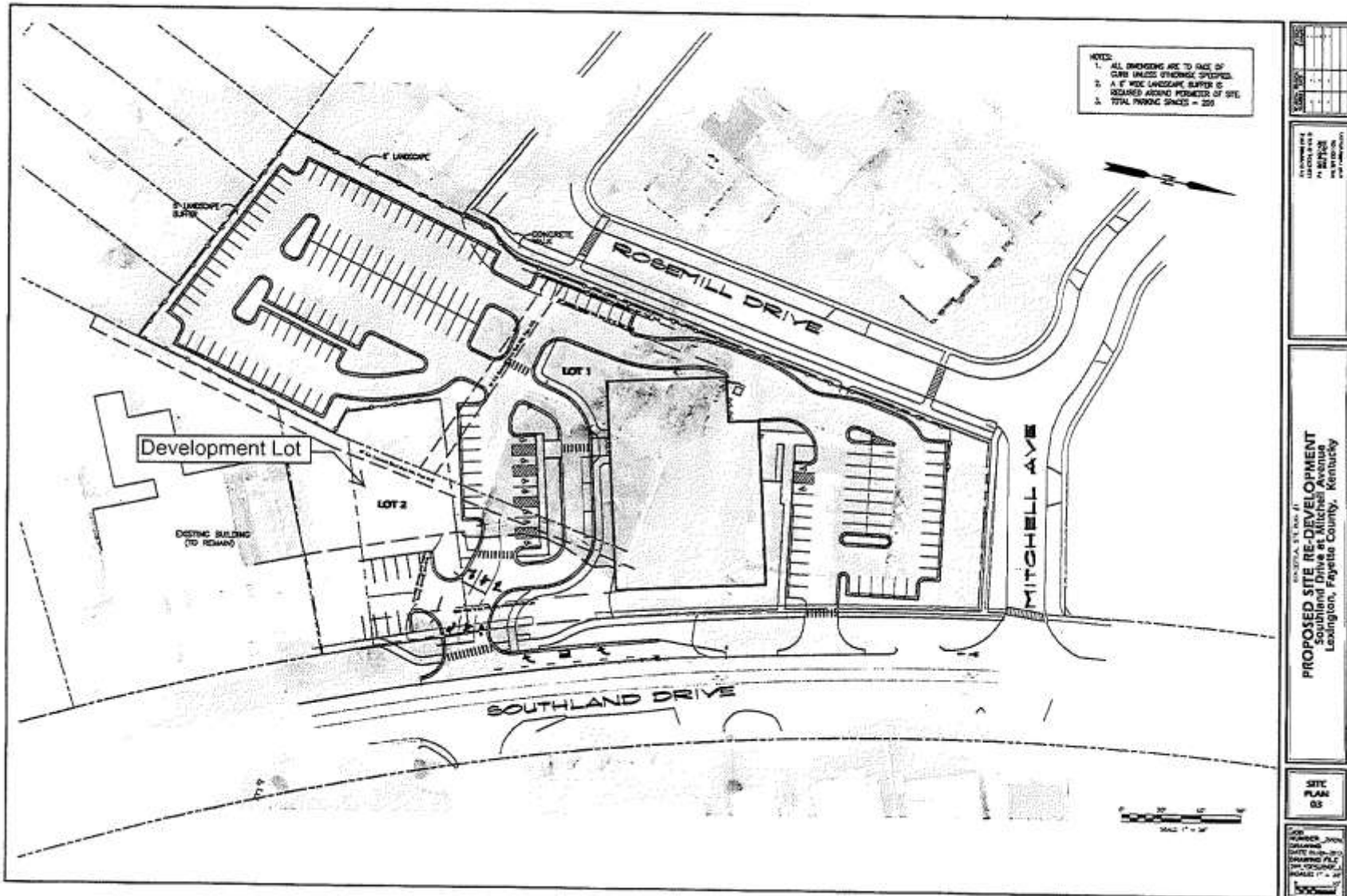
PROJECT MANAGER:

By: _____

Existing Lease Site Plan



Proposed Lease Site Plan



HEALTHFIRST BLUEGRASS, INC. RESPONSE



Our mission is to provide quality health care for all who need us

July 23, 2013

Honorable Adam H. Edelen
Auditor of Public Accounts
209 St. Clair Street
Frankfort, KY 40601-1817

Brian Lykins, Executive Director
Office of Technology and Special Audits

RE: Examination of Certain Policies, Procedures, Controls, and Financial Activity of HealthFirst Bluegrass, Inc.

Dear Auditor Edelen:

This letter serves as the response to your draft report, *Examination of Certain Policies, Procedures, Controls, and Financial Activity of HealthFirst Bluegrass, Inc.*, and the Observations, Findings and Recommendations contained within the report. The report identifies four areas for HealthFirst Bluegrass, Inc., (HealthFirst) to address as a result of your review. Our response to each finding is included in the attached pages. We have also included a number of clarifications of items contained within the report for your consideration. Finally, we are providing you with additional documentation to support the clarifications we have identified in our response.

We wish to thank your staff for the professionalism and consideration they took while handling HealthFirst's very sensitive and confidential information. They were thorough in their efforts, fair in their assessments, and thoughtful in their evaluation of the information that was required by this review. It was our intent to be transparent and open with the documents and with the individuals who were asked to provide responses to your staff. We are pleased that you reviewed all of the concerns and issues.

The examination of all the information presented through documents and interviews led your auditors to conclude that, beyond the minor and potential findings identified by your team, there are no concerns or issues that resulted in any improprieties. We thank you for the opportunity your review and audit created to allow us to strengthen the public's confidence in HealthFirst's name and activities. We take our mission very seriously. Our patients and community trust are our highest priorities.

Sincerely,

T.A. Lester, Chairperson
HealthFirst Board of Directors

Tom Burich, Chairperson
HealthFirst Building Committee



650 Newtown Pike, Lexington, Kentucky 40508-1197
(859) 288-2425 Phone (859) 288-7516 Admin Fax (859) 288-7510 Medical Fax



Finding 1: A candidate for Project Manager appears to have been preselected prior to the solicitation process for the contracted position.

Response:

HealthFirst will ensure that all procurement activity follow the intended procurement practices adopted by the HealthFirst Board and those required by any granting agency. HealthFirst will review the procurement process and determine whether the procurement process for a Project Manager should be re-performed. HealthFirst will contact HRSA to determine what actions, if any, are required to maintain compliance with applicable federal regulations.

Clarifications:

1. Page 8, Paragraph 1. The Building Committee directed the Executive Director to provide an initial scoring of the candidates based upon the criteria included in the advertisement in the Lexington Herald Leader. This information was presented to the Building Committee. The criteria were designed to favor the selection of a competent individual and screen out the candidates who did not meet minimum requirements.
2. Page 8, Paragraph 2. The vote by the Building Committee on July 12, 2013 was to negotiate price, terms and conditions with an individual, not the landlord, and not a company. This is important since the individual would be hired as an independent contractor per Building Committee direction. It also clarifies why no bidding process was undertaken since HealthFirst has hired individuals under the independent contractor status, without competitive bidding under the Competitive Bidding Exceptions of the Procurement Policy Item 2, Services of a visiting speaker, professor, expert witness or other such professional.
3. Page 8, Paragraph 2. HRSA Requirements for Project Manager. The original grant submitted to HRSA (referenced section attached) and approved grant award included a Project Manager employed by the partner in the original grant, Bluegrass Regional Mental Health/Mental Retardation Board, Inc. (BRMH). Two issues are identified here. First, the approved grant did not require a competitive bid for the Project Manager position. In fact there was no selection process at all. Second, there was an obvious conflict of interest by having the project manager who works for BRMH run the project. HRSA's direction in these instances is to have us follow the procurement guidelines, but approval suggests there is some flexibility in these instances. HRSA raised no objection to the conflict in the grant.
4. Page 9, Paragraph 1. The formal scoring criteria were established by the Building Committee when it approved the advertisement for the Project Manager Position. The weighting of each criterion was determined by the Building Committee based on the relatively higher importance of direct Project Manager Experience and Owner/Developer Experience (30 and 25 points, respectively) to this project. It was determined that an individual with ownership experience, managing his or her own project, would provide a higher quality result based on that experience, than a company that may not have a dedicated staff assigned to the project.

5. Page 10, Paragraph 1. The scoring sheet used for the Project Manager candidates did include categories for overall experience (project manager and owner/operator experience represented 55 points of the total maximum points available). The overall experience was broken down into these two categories. Lexington Experience (15 points maximum), and Projects of at least \$10 million (15 points maximum) are included in columns 4 and 5 of the scoring sheet. Ability to Collaborate (10 points maximum) represents the overall knowledge of and ability to navigate the real estate market and federal requirements to completion.
6. Page 10, Paragraph 3. Section 1, General Conditions, 4. Award of Contract identifies that the *contract shall be awarded to the responsible offeror whose offer conforming to the solicitation provides the best value*. The advertisement identifies, "Please submit a resume". The candidate tentatively selected for further consideration had the resume that most closely conformed to the solicitation. The candidate then participated in a negotiation regarding the position to determine if a final offer would be made.

Section 1, Subsection 2, Competitive Bidding Exceptions, Item 2, *Services of a visiting speaker, professor, expert witness, or other such professional*, more closely aligns with the process undertaken by the Building Committee than Subsection 11, Competitive Negotiations. The guidelines offered by this section provide a framework to proceed with in determining who to hire as the Project Manager, as an exception to competitive bidding.

7. Page 12, Paragraph 1. HealthFirst consulted with our commercial realtor and real estate attorney when completing the selection process. We reviewed typical costs for project manager work in the private sector and in public settings. After consulting with various local industry professionals, a rate was determined. The negotiation with the successful candidate resulted in a contract that we believe is far less than typically found in the marketplace.

Finding 2: The Project Manager has a conflict of interest functioning as both HealthFirst landlord and Project Manager.

Response:

HealthFirst will reconsider contracting with a Project Manager that may, in appearance or in reality, create a conflict of interest. HealthFirst will inquire of HRSA whether such a conflict would be prohibited under federal regulations and, if so, whether the funding and use of the capital development grant may be negatively impacted.

Clarifications:

1. Page 12, Paragraph 1, Page 13, Paragraph 3. The Project Manager has a 10% non-voting ownership interest in the property on Southland Dr., which could be characterized as non-controlling but is not the same. HealthFirst has been aware of the conflict of interest from the beginning and limited the decision making authority of the Project Manager for this reason.

2. Page 12, Paragraph 2. The HealthFirst commercial realtor and real estate attorney negotiated with the 90% voting member of the property and his legal counsel. The Project Manager provided technical expertise but did not participate in the negotiation. The audit report narrative identifies that the Project Manager represented the landowners in lease negotiations which is not accurate.
3. Page 14, Paragraph 4. HealthFirst Standards of Conduct for Board Members, Section IV Procurement Standards does not prohibit conflicts of interest as long as HealthFirst is responsive to the solicitation most advantageous to HealthFirst in terms of price, quality and other factors. The results of the Project Manager's efforts provide evidence of this value. The situation with the current Project Manager aligned such that the work was acceptable and advantageous to HealthFirst. In fact, no actions taken by the Project Manager suggest that there is an issue with the work performed by the Project Manager in line with the project.

Finding 3: The amended lease draft does not require exclusive parking for HealthFirst.

Response:

HealthFirst will review the lease agreement prior to it being finalized to ensure that any parking spaces on the premises are dedicated solely for HealthFirst's clinic. HealthFirst will discuss this with HRSA to ensure approval before the lease agreement is finalized. HealthFirst will review and discuss the lease terms related to cross-easement and parking issues within the Development Lot to ensure that these terms will not result in any compliance problems with the capital development grant.

Clarifications:

1. Page 15, Paragraph 1. Since this lease has not been signed and the finding is future oriented, HealthFirst can review the specifics of the lease agreement with HRSA prior to finalizing the lease agreement changes. This provision of avoiding private inurement has been included in all of the discussions and negotiations having to do with the lease agreement.
2. Page 16, Paragraph 4. The final budget submitted for approval and the final budget to close the project will include unallowable costs as part of the accounting process. Based on this report HealthFirst will seek more guidance from HRSA regarding the status of the costs that have been incurred to date. Unallowable costs will not be charged to the grant.

Finding 4: HealthFirst's financial stability is threatened by untimely Medicaid payments and less than budgeted patient revenue.

Response:

HealthFirst leadership has been working with Medicaid to address the shortfall in cash that has occurred from delays in MCOs credentialing providers. The bulk of those balances go back to July of 2012, although a number go all the way back to November 1 of 2011. The Medicaid automatic payment system implemented May 1, 2013 is still not working even though HealthFirst is set up for the automatic clearing house (ACH) payments. Based on discussions

with Medicaid, HealthFirst was notified on July 22, 2013 that the next Medicaid payment will be for \$389,000. This payment is welcome news and addresses a portion of the backlog of outstanding balances. As the new system is implemented, HealthFirst expects to come current on the remaining backlog of balances or receive another supplemental payment from Medicaid during the interim if the system is not functioning. We are cautiously optimistic as the new enrollment date of October 1, 2013 approaches.

Page 18, Paragraph 2. The HealthFirst budget approved on January 17, 2013 included expansion of our pediatric inpatient services and adding an additional 4 school-based clinics, in addition to the start-up of the new Regency Road clinic. The budget was revised effective July 1, 2013 with the implementation of the staff reorganization on July 16, 2013 which reduced full time equivalent staff. This reorganization included restructuring to place employees into Patient-Centered Medical Home teams to focus on patients as well as outreach/enrollment for healthcare reform. There have been no other changes to the 2013 budget.

Page 18, Paragraph 3. A large percentage of the original 38% increase in budgeted revenues for 2013 was back loaded to the second half of the year for the pediatric inpatient, school clinics, and Regency Road expansions. As of July 1, 2013, the budgeted pediatric inpatient revenues decrease by \$326,000 since the program won't be implemented. School clinic revenues decrease by \$336,000 with the reduction in the number of new clinics from 4 to 2. Additionally, pharmacy service revenues are lower by \$541,000 as the number of prescribers has fallen in 2013.

Page 20, Paragraph 1. HealthFirst provides financial information to the Board of Health through the Executive Director's monthly report. The Executive Director is the Program Director for the operating and capital development grants, responsible for implementation on behalf of the HealthFirst Board and the Board of Health. This will continue in order to meet the grant and program requirements of HRSA. Information, including financial information, is presented to the Board of Health after it has been received and approved by the HealthFirst Board of Directors. This assures the independence and autonomy of the HealthFirst Board as required by HRSA.

The Joint Committee made up of board members and staff of HealthFirst, members of the Board of Health, and staff of the Health Department has met regularly since the beginning of May after the submission of the Action Plan to HRSA. The Joint Committee is identified as the group to discuss a broad range of issues concerning the relationship between HealthFirst and the Board of Health, including such items as the status and potential impact of Medicaid accounts receivable, monthly budget comparisons and cash flows. This information sharing is appropriate given the difficulties caused by the lack of information from the Health Department earlier this year.

The Joint Committee is discussing processes and developing procedures to follow if either HealthFirst or the Health Department is unable to meet monthly obligations and to mitigate any damage to the other party should problems occur. A review of cash flows for both organizations has been approved by the Joint Committee. This was approved to assure conservative and appropriate projections of revenues and expenses are made visible by both organizations and reduce the risk that projections cannot be relied upon for planning purposes.

The Health Department's Business Services Officer has been participating in discussions at the Joint Committee to provide information regarding the Health Department's financial position and participate in discussions regarding HealthFirst. The Business Services Officer was invited to

attend the Finance Committee several months ago and has been attending regularly. In addition, the Board of Health members, Commissioner of Health, and Business Services Officer have been invited to attend all Building Committee meetings. HealthFirst has identified a number of administrative positions required to operate independently, with Human Resource Management the priority at this time to transfer personnel in 2014. The expansion of administrative positions, including a senior financial officer, will occur as HealthFirst's financial capabilities allow.

| | | | |
|---|-----------------------------|---|--------|
| Project #66857-01: Primary Care Integrated Care Construction | | | |
| As of 8/25/2010 1:06:04 AM | | | |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES Health Resources and Services Administration Project Cover Page | FOR HRSA USE ONLY | | |
| | Application Tracking Number | Grant Number | |
| | 00066857 | H80CS00546 | |
| | Project Number | Project Type | |
| | 66857-01 | Construction (new site or expansion of existing site) | |
| Project Title | | | |
| Primary Care Integrated Care Construction | | | |
| 1. Site Information | | | |
| Current Square Footage | 60000 | Cost per square foot | 277.97 |
| 2. Project Management | | | |
| <p>a. Explain the administrative structure and oversight for the project, including the role and responsibilities of the health center's key management staff and governing board regarding the proposed FIP project.</p> <p>b. Indicate the qualifications of the individual (the Project Manager) who will be responsible for managing the project and the individuals (Project Team) who will be implementing the project.</p> <p>c. Describe how the Project Team has the expertise and experience necessary to successfully manage the project within the timeline outlined and achieve the goals and objectives established for this project.</p> <p>d. If the organization is at an early stage in the development of the project, indicate how the team will manage the project.</p> <p>e. Describe the ongoing institutional (e.g., governing board, management) commitment to the proposed improvement or enhancements.</p> <p>f. Maintain documentation that an alternatives analysis was conducted; the documentation should show at least three alternatives were considered and the rationale for selection of the proposed project.</p> <p>g. Maintain documentation on the organization's acquisition strategy; if the strategy does not include competition, provide a rationale.</p> | | | |
| <p>Bluegrass Regional Mental Health – Mental Retardation Board and the Lexington-Fayette County Health Department Primary Care Center are collaborating on this project. Both agencies' governing boards and executive management staff will support a successful, timely completion of the project. A steering committee, comprised of members of both agencies, will be created. The Health Department is the lead applicant. Bluegrass Board is a monetary contributor as they own and will provide the site for construction. Additionally, Bluegrass staff will serve as Project Manager overseeing construction. Bluegrass Board's ability to assume this task is evidenced by their successful history at managing several construction projects. In August, 2009, Bluegrass Board opened the Joseph A. Toy Center, a 37,000 square foot outpatient behavioral health clinic with on-site Pharmacy and administrative space. The Toy Center offers adult counseling, SPMI services, children services and substance abuse services. The new proposed facility will house a primary care clinic, a crisis stabilization unit for mentally ill individuals requiring a brief treatment encounter and a substance abuse residential program. Bluegrass' Toy Center will assist in promoting the PCC's ability to meet the behavioral, substance abuse and medical needs of the medically underserved in the Lexington/Fayette County community. Bluegrass Board has overseen other construction projects including 2 duplexes in Lincoln County which house SPMI populations; 4 Out Patient, Therapeutic Rehabilitation Programs and Children's Services in Harrison, Scott, Estill and Lincoln Counties – with a fifth one currently underway in Clark County; and 3 apartment complexes housing SPMI populations in Madison, Franklin and Boyle Counties. Bluegrass is also a preferred vendor for HUD. Bluegrass Board meets all HUD guidelines and has been the recipient of HUD funding to construct and rehab many diverse projects. Bluegrass Board will guide the acquisition process from pre-proposal development all the way to selecting a vendor. Through a competitive bidding process, the project manager will evaluate and compare vendor estimates and select the best match. The Project Manager will provide documentation of the decision process. The Project Manager will evaluate and compare the benefits and risks of each solution against the organization's goals. Decisions will be derived from a set of customized goals and include the technical approach, implementation risks, and vendor support. Offers will be treated equitably. The core primary care team who will oversee the project's implementation include Dr. Rice Leach, M.D., Executive Director, Dr. Deborah Stanley, M.D. Primary Care Medical Director, and Kyle Black, MPH, Primary Care Operations Officer. The team will be guided by the governing council, Dr. Leach has served as Commissioner of the Kentucky Department of Public Health for 12 years and was a Commissioned Officer in the United States Public Health Service from 1966 to 1993. Dr. Stanley has served as the PCC Medical Director for 4 years and has been on staff as a pediatrician since 1993. She was the principal investigator for a 3 year federal grant that recruited and trained physicians in child abuse and implemented the use of telemedicine for consultation and peer review. Kyle Black came to the PCC in January, 2007 from five years of service in FQHC in Michigan. While serving as COO, he helped Baldwin Family Health grown from a \$ 9 million organization in 2002 to an \$ 18 million dollar organization in 2006.</p> | | | |
| 3. Contact Information | | | |
| 3a. Identify the individual at the health center who will be responsible for managing this project. | | | |

AUDITOR'S REPLY TO EXAMINATION RESPONSE FROM
HEALTHFIRST BLUEGRASS, INC.

We appreciate HealthFirst's acknowledgement that audit staff professionally and thoroughly considered the information and documentation gathered during this examination, which, as stated in its response, led to fair assessments of the information provided for this review. Though HealthFirst's response provides information that presents its viewpoint of certain issues, we believe the report's findings and other information fairly and accurately present the information gathered through various sources during the examination. We are specifically replying below to certain items in HealthFirst's response to this examination to provide further clarification.

Related to Report Finding 1:

HealthFirst Clarification 1

Auditor's Reply: According to the July 12, 2012 Building Committee meeting minutes:

[Board Chair] motioned to set a meeting with [landlord] to negotiate price, terms, conditions, forthwith and bring back to committee for approval and submit to HRSA.

This motion was seconded and carried. It names the landlord specifically and does not refer to individuals or companies in a general nature.

HealthFirst Clarification 3

Auditor's Reply: While we recognize that the original project approved by HRSA in 2010 included a Project Manger that would be employed by BRMH, many changes to the project have been made since that time. Significant changes should have caused HealthFirst to fully reconsider all necessary qualifications for the position. Considering this position was changed from an employee of a partner involved in the original grant to selecting an independent contractor, such qualifications should have been included in a well developed RFP.

HealthFirst Clarification 4

Auditor's Reply: As indicated in the report, the advertisement did not adequately represent the criteria that were used to score the candidates, nor did the approval of the advertisement by the Building Committee constitute their active role in developing scoring criteria or the weighting that was used for each category.

HealthFirst Clarification 6

Auditor's Reply: Contracting for professional services can be considered an exemption from the competitive bidding process, but it does not prohibit it. At a minimum, exemption from competitive bidding only indicates that another procurement process approved within the policies should be used. This ensures an openness and consistency in the procurement practices of publicly funded organizations. In this instance, competitive negotiation still appears to most closely resemble the process followed by HealthFirst when selecting a Project Manager, but it was lacking aspects of this procurement process as identified in the report.

Related to Report Finding 2:

HealthFirst Clarification 1

Auditor's Reply: Regardless of the terminology used to describe the landlord's interest in the company that owns the property leased by HealthFirst, the conclusions of the finding remain the same.

HealthFirst Clarification 2

Auditor's Reply: Interviews with various Building Committee members, the HealthFirst realtor, and the HealthFirst attorney all indicate that the landlord/Project Manager was the primary contact throughout the process of reviewing property and determining the details of the lease. Interviews further indicate that the majority property holder had limited contact with HealthFirst representatives during the lease negotiation process, though he did have final approval over all details of the lease before it was finalized.

HealthFirst Clarification 3

Auditor's Reply: We recognize that the Procurement Standards within the Board's Standards of Conduct do not specifically prohibit conflicts of interest, but they do state:

HealthFirst will be sensitive to, and seek to avoid, organizational conflicts of interest or non-competitive practices among contractors.

This standard appears to be based on 45 CFR § 74.43, which is further quoted on page 11 of the report and correlates to 45 CFR § 74.42 that is cited on page 15 of the report.

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