

21-151

EXHIBIT
A

REAL ESTATE PURCHASE AGREEMENT

DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY, as Seller

and

CHILDREN'S HOSPITAL MEDICAL CENTER OF AKRON, as Buyer

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made on _____, 2021 ("Effective Date"), by and between the **Development Finance Authority of Summit County** ("Authority" or "Seller"), a port authority and body corporate and politic duly organized and validly existing under the laws of the State of Ohio, with its principal place of business at 47 N. Main St., Akron, Ohio 44308 and the **CHILDREN'S HOSPITAL MEDICAL CENTER OF AKRON**, a non-profit corporation duly organized and validly existing under the laws of the State of Ohio ("ACH" or "Purchaser"), with its principal place of business located at One Perkins Square, Akron, OH 44308. The Seller and Purchaser shall collectively be known as the Parties.

WHEREAS, the Seller currently owns the Properties (herein defined) and desires to sell the Properties;

WHEREAS, the Purchaser desires to purchase the Properties;

WHEREAS, the Seller desires to sell the Properties to the Purchaser pursuant to the terms and conditions provided in this Agreement and as authorized by Resolution No. ____ , adopted by Seller's Board of Directors on _____, 2021; and

WHEREAS, the Purchaser agrees to purchase the Properties from the Seller pursuant to the terms and conditions provided in this Agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DESCRIPTION OF PROPERTIES;
AGREEMENT OF PURCHASE AND SALE

1.1 Purchase and Sale; Properties. In exchange for the consideration described in Section 2.1 herein and pursuant to the terms and conditions of this Agreement, the Seller agrees to convey to Purchaser the following:

- (a) Approximately 2.08 acres of land, including structures and improvements, recorded as Summit County Fiscal Office Permanent Parcel No. 6763390, situated between North Main Street and North High Street in the City of Akron, as further described in the legal description which is attached hereto and incorporated herein by reference as Exhibit A (identified in a certain Cooperative Agreement

SECTION 3. TITLE AND SURVEY; INSPECTION

3.1 Title. Seller shall, at Closing, convey to the Purchaser title to the Properties by limited warranty deed.

3.2 Title Commitment. Within fifteen (15) days after the Effective Date, Purchaser shall have the option to obtain a commitment ("Title Commitment") for an Owner's Policy of Title Insurance for the Properties issued by a title company ("Title Company") setting forth the condition of title to the Properties, the cost of which shall be paid or reimbursed by Seller at Closing. Purchaser shall have ten (10) days after receipt of the Title Commitment ("Title Review Period") to review the condition of title to the Properties. If during the Title Review Period the Purchaser determines that there is any matter or condition in the Title Commitment which, in Purchaser's reasonable opinion, renders the Properties unfit for its intended use, Purchaser shall provide written notice to Seller on or before the expiration of the Title Review Period of any such matter or condition ("Purchaser's Title Objection Notice"). Seller shall have no obligation to correct or cure such objections, but may at its sole option, elect to cure or correct such objections. Within fourteen (14) days after receipt of Purchaser's Title Objection Notice, Seller shall advise Purchaser in writing whether or not Seller will correct or cure such matter or condition ("Seller's Response"). If Seller elects to correct or cure such matter or condition, Seller shall commence such cure with due diligence and shall have the right to extend the Closing for a reasonable period of time to complete such cure. If Seller elects not to correct or cure such matter or condition, Purchaser shall have the right, upon written notice to Seller within fourteen (14) days after receipt of Seller's Response, to either (a) agree to waive any objection to such matter or condition and proceed to Closing without any cure of such matter or condition and without any reduction in the Purchase Price; or (b) elect to terminate this Agreement, in which event, the parties shall have no further obligations except as specifically provided in this Agreement. Purchaser's failure to deliver Purchaser's Title Objection Notice on or before the expiration of the Title Review Period shall constitute a waiver by Purchaser of any right to object to any matter or condition relating to the Title Commitment or the condition of title to the Properties and any right to terminate this Agreement based upon the same, with all such matters or conditions becoming an encumbrance on the Properties permitted by the Seller.

3.3 Due Diligence. For a period commencing upon the execution of this Agreement and continuing until sixty (60) days thereafter ("Inspection Period"), Purchaser together with Purchaser's agents, employees and authorized representatives ("Purchaser's Agents"), shall have the right, at Purchaser's sole cost, to enter upon the Properties to conduct such inspections and other tests as Purchaser may desire and to determine the condition of the Properties, the suitability for intended use, whether the Properties are in compliance with all applicable federal, state, or local laws, rules, ordinances, regulations, and codes, and any other matters which Purchaser desires to inspect ("Inspections").

(a) During the Inspection Period and upon reasonable notice, the Seller grants to Purchaser and Purchaser's Agents, the right and permission to enter upon the Properties to conduct Inspections and related tests; provided that (a) such Inspections and tests shall not cause any material damage the Properties; (b) such Inspections and tests shall be conducted at Purchaser's cost and expense; and (c) Purchaser shall release, forfeit and not bring any causes of

action against the Seller for any liabilities, claims for damage to persons or property, or any costs and expenses related to or arising from the Inspections and tests.

(b) If during the Inspection Period the Purchaser determines from the Inspections that there is any matter or condition which, in Purchaser's reasonable opinion, renders the Properties unfit for its intended use, Purchaser shall provide written notice to the Seller on or before the expiration of the Inspection Period of any such matter or condition, together with a copy of any applicable report or survey describing such matter ("Purchaser's Objection Notice"). Seller shall have no obligation to correct or cure such objections, but may at its sole option, elect to cure or correct such objections. Within fourteen (14) days after receipt of Purchaser's Objection Notice, Seller shall advise Purchaser in writing whether or not Seller will correct or cure such matter or condition ("Seller's Response"). If Seller elects to correct or cure such matter or condition, Seller shall commence such cure with due diligence and shall have the right to extend the Closing for a reasonable period of time to complete such cure. If Seller elects not to correct or cure such matter or condition, Purchaser shall have the right, upon written notice to Seller within fourteen (14) days after receipt of Seller's Response, to either (a) agree to waive any objection to such matter or condition and proceed to Closing without any cure of such matter or condition and without any reduction in the Purchase Price; or (b) elect to terminate this Agreement, in which event, Purchaser shall deliver to Seller all originals and copies of any tests, surveys, or written reports generated as a result of the Inspections, and the parties shall have no further obligations hereunder, except as specifically provided in this Agreement. Purchaser's failure to deliver Purchaser's Objection Notice on or before the expiration of the Inspection Period shall constitute a waiver by Purchaser of any right to object to any matter or condition of the Properties and any right to terminate this Agreement based upon the same.

3.4 Reports. Purchaser acknowledges and agrees that any tests, surveys, reports, or other documents relating to the Inspections or otherwise delivered by Seller to Purchaser or its agents ("Reports") are confidential and Purchaser or its agents shall not disclose or reveal the Reports to any other person, entity, governmental authority or other association without the prior written consent of Seller, except as may be required by law or in a court of competent jurisdiction. In the event this Agreement is terminated for any reason, Purchaser or its agents shall promptly return to Seller all originals and copies of the Reports.

3.5 PURCHASER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTIES PURSUANT TO THIS AGREEMENT IS AND SHALL BE MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE BY SELLER, INCLUDING WITHOUT LIMITATION THE CONDITION OR VALUE OF THE PROPERTIES OR THE SUITABILITY OF THE PROPERTIES FOR PURCHASER'S INTENDED USE. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER HAS AFFORDED PURCHASER THE OPPORTUNITY FOR FULL AND COMPLETE INVESTIGATIONS, EXAMINATIONS AND INSPECTIONS OF THE PROPERTIES AND THAT PURCHASER SHALL ACQUIRE THE PROPERTIES SOLELY ON THE BASIS OF PURCHASER'S OWN REVIEW AND INSPECTION OF THE PROPERTIES. BY EXECUTING THIS AGREEMENT, PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES TO THE FOREGOING PROVISIONS OF THIS PARAGRAPH, WHICH ARE MATERIAL, NEGOTIATED TERMS OF THIS

AGREEMENT WITHOUT WHICH SELLER WOULD NOT ENTER INTO THIS AGREEMENT WITH PURCHASER.

SECTION 4. CONDITIONS TO CLOSING

4.1 Conditions. The obligations of the parties to close the transaction contemplated by this Agreement are subject to the following conditions:

(a) The condition precedent set forth in Section 1.2, above, has been met, as acknowledged by the parties in writing.

(b) The representations and warranties of the parties contained in Section 5 of this Agreement shall be true on the date of Closing as though those representations and warranties were made on that date.

(c) Neither Purchaser nor Seller shall have breached any affirmative covenant contained in this Agreement to be performed by them on or before to the date of Closing.

(d) Purchaser approves and finds satisfactory all of the matters set forth in Section 3, including Purchaser's right to obtain a title report setting forth the condition of title to the Properties and Purchaser's right to enter upon the Properties to conduct inspections and other tests as Purchaser may desire to determine the condition of the Properties, or Purchaser has waived the same as set forth in Section 3. In the event the Purchaser has delivered written objections prior to the Closing in the manner and within the time period provided in this Agreement, or if Seller has not remedied Purchaser's objections prior to Closing, then Purchaser waives all objections and Seller has no obligations under Section 3 herein.

(e) Seller shall have timely delivered to Purchaser in satisfactory form the documents and all other items referred to in Section 6 below.

(f) Purchaser shall have executed and delivered such other documents and agreements as may be necessary or required in the reasonable opinion of Seller's counsel.

SECTION 5. REPRESENTATIONS, WARRANTIES, RELEASE

5.1 Seller's Representations. Seller makes the following representations to Purchaser as of the date of this Agreement and the date of the Closing:

(a) a port authority and body corporate and politic duly organized and validly existing under the laws of the State of Ohio and has all the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) Seller has duly authorized the execution, delivery and performance of this Agreement.

(c) There are no suits, actions, or proceedings pending or to the best of Seller's knowledge, contemplated against or concerning the Properties.

(d) Seller's execution, delivery and performance of this Agreement shall not constitute a default under any agreement, lease, indenture, order or other instrument or document by which Seller may be bound.

5.2 Purchaser's Representations. Purchaser makes the following representations to the Seller as of the date of this Agreement and the date of the Closing:

(a) Purchaser is a non-profit corporation duly organized and validly existing under the laws of the State and has all necessary power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) Purchaser has duly authorized the execution, delivery and performance of this Agreement.

(c) There are no suits, actions, or proceedings pending or to the best of Purchaser's knowledge, contemplated against or concerning the Purchaser which would have a material and adverse impact upon Purchaser's ability to enter into and perform this Agreement.

(d) Purchaser's execution, delivery and performance of this Agreement shall not constitute a default under any agreement, lease, indenture, order or other instrument or document by which Purchaser may be bound.

5.3 Purchaser's Release for Environmental Matters. To the best of its knowledge, the Seller represents and warrants that the Properties are not in violation of any environmental laws and the Seller has no knowledge of (i) the presence on or about the Properties of any hazardous materials, other than the possible existence of asbestos, lead paint and other hazardous materials as set forth in a certain Limited Asbestos/Universal/Hazardous Materials Survey Conducted by The Cardinal Group and dated February 3, 2021, which has been provided to Purchaser prior to the Effective Date, and of which Purchaser acknowledges receipt; (ii) the presence on or about the Properties of asbestos, lead paint and other hazardous materials within building materials generally consistent with the type and nature of building materials and buildings of similar vintage; (iii) any release or threatened release of any hazardous materials on or affecting the Properties; or (iv) the existence of any underground storage tanks on or about the Properties.

The Seller has received no notice of any investigation or proceeding by any governmental agency concerning the presence or alleged presence, release or threatened release of hazardous materials on the Properties.

The Purchaser may obtain an environmental phase I, environmental phase II or asbestos abatement for the Properties at its sole cost. The Purchaser shall agree to release the Seller and County of Summit ("County") for any liabilities and financial obligations in any action or proceeding pertaining to the condition of the Properties, including the existence of hazardous substances in violation of any environmental laws.

Purchaser (and its respective successors and assigns) shall release, forfeit any rights and will not bring any causes of actions against Seller or County, and their respective directors, officers, agents, and employees (collectively the "Released Parties" and, individually, a "Released Party") for any and all claims, demands, causes of action, administrative proceedings (formal or informal), losses, damages, expenses (including, without limitation, sums paid in settlement and reasonable fees for attorneys, consultants, experts and accountants), injuries, judgments, liabilities, penalties, fines or claims of any other kind or, foreseen or unforeseen, which may be imposed upon, incurred by or asserted against the Released Parties and brought with respect to the environmental condition of the Properties or the existence or release of any Hazardous Substances in violation of any Environmental Laws resulting from Purchaser's use of the Properties or its negligent acts or omissions affecting the Properties after Closing and Purchaser taking possession of the Properties. "Environmental Laws" means any and all current and future federal, state, local, municipal or other applicable constitutions, laws, ordinances, principles of common law, regulations, statutes or treaties designed to regulate, minimize, prevent, punish or remedy the consequences of actions that damage or threaten the environment or public health and safety, including without limitation, all applicable federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto, including, without limitation, RCRA, CERCLA, the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401, *et seq.*), Chapters 3704, 3734 and 6111 of the Ohio Revised Code and the rules and regulations promulgated or adopted under any of the foregoing statutes. "Hazardous Substance" means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, *et seq.*), as enacted and from time to time amended, RCRA, the Toxic Substance Control Act (15 U.S.C. §§ 2601, *et seq.*), as enacted and from time to time amended, or any other applicable Environmental Law and in the regulations adopted pursuant thereto now or in the future.

In case any action or proceeding is brought against a Released Party in respect of which payment or reimbursement may be sought hereunder, the Released Party seeking payment or reimbursement promptly shall give written notice of that action or proceeding to the Purchaser and the Purchaser upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure to give that notice shall not relieve the Purchaser from any of its obligations under this section. At its own expense, a Released Party may employ separate counsel and participate in the defense.

5.4 Survival. Each of the covenants, warranties, representations, agreements and releases contained in this Agreement shall be made as of the date hereof and shall be deemed renewed on the date of Closing and shall survive the date of Closing, the payment of the Purchase Price, the filing of the deeds for record and shall not be merged into the deeds of any of the Properties.

SECTION 6. CLOSING AND TRANSFER OF TITLE

6.1 Closing. Unless extended by written agreement of the parties and provided that all Conditions to Closing under Section 4 herein have been satisfied, the closing ("Closing") for the delivery of Seller's deed, payment of the Purchase Price, as adjusted by the Reserve Credits or Closing adjustments, and delivery of the other instruments provided for in this Agreement, shall be February 28, 2022. Seller may, in Seller's sole discretion, extend the Closing up a period of six (6) months to complete the County Property Improvements by providing written notice of the same to Purchaser. The Title Company shall serve as escrow agent for the Closing of the transaction.

6.2 Seller's Documents; Other Deliveries. At Closing, Seller shall execute and/or deliver the following:

(a) A limited warranty deed transferring the Properties to Purchaser.

(b) Such other documents or instruments as may be reasonably requested by Purchaser, required by other provisions of this Agreement or reasonably necessary to effectuate the Closing. All of the documents and instruments to be delivered by Seller shall be in the form and substance reasonably satisfactory to counsel for Purchaser.

6.3 Purchaser's Documents; Other Deliveries. At Closing, Purchaser shall deliver to the Seller any documents and instruments necessary to consummate the sale and which shall be in form and substance reasonably satisfactory to counsel for the Seller.

SECTION 7. POSSESSION

7.1 Seller shall deliver exclusive possession of the Properties to the Purchaser at Closing.

SECTION 8. PRORATIONS AND EXPENSES

8.1 Real Estate Taxes and Assessments. Real property taxes (if any), general and special assessments and assessments for the Properties shall be prorated between Seller and Purchaser as of the date of Closing, and Seller shall deliver to the Title Company a check drawn upon the Operating Reserve Fund and/or Capital Reserve Fund, as the same are defined in the Cooperative Agreement to the extent funds are available in such funds to pay the same as set forth in the Cooperative Agreement. To the extent funds are not available to pay the pro-rated taxes and assessments out of the Operating Reserve Fund or Capital Reserve Fund, the same shall be paid by Seller out of the proceeds of the sale of the Properties.

8.2 Closing Costs. Seller shall pay the following costs associated with the sale of the Properties, including, but not limited to, (a) costs and fees for the Title Commitment and the Title Policy if obtained; (b) the real property transfer taxes and conveyance fees for the Properties, if any; (c) all recording fees for the limited warranty deed and any other documents;

(d) all of the escrow fee; (e) any costs related to removing any encumbrances from the Properties; and (f) other ordinary and customary fees associated with the Closing (collectively, the "Closing Costs"). Seller shall deliver to the Title Company a check drawn upon the Operating Reserve Fund and/or Capital Reserve Fund, as the same are defined in the Cooperative Agreement to the extent funds are available in such funds to pay the Closing Costs as set forth in the Cooperative Agreement. To the extent funds are not available to pay the Closing Costs out of the Operating Reserve Fund or Capital Reserve Fund, the same shall be paid by Seller out of the proceeds of the sale of the Properties.

At Closing, the parties shall execute and deliver to each other an agreed-upon closing statement which reflects the allocation of costs, adjustments due to credits or prorations, and disbursement of the Purchase Price, all as set forth more fully in this Agreement.

8.2 Utility Expenses. Charges for utilities for the Properties shall be prorated between Seller and Purchaser as of the date of Closing. Seller shall pay to all utility companies final payments to be drawn upon the Operating Reserve Fund and/or Capital Reserve Fund, as the same are defined in the Cooperative Agreement to the extent funds are available in such funds to pay the pro-rated utilities as set forth in the Cooperative Agreement. To the extent funds are not available to pay the pro-rated utilities out of the Operating Reserve Fund or Capital Reserve Fund, the same shall be paid by Seller out of the proceeds of the sale of the Properties.

8.3 Legal Fees and Costs of Financing. Seller shall pay its reasonable legal fees out of the Operating Reserve Fund upon execution of this Agreement, as set forth in the Cooperative Agreement. Purchaser shall pay its legal fees and the costs of any financing of the purchase of the Properties separately.

SECTION 9. NOTICES

All notices permitted or required under this Agreement shall be in writing and shall be deemed properly delivered immediately upon hand delivery or three business days after being deposited in the United States mail sent certified with return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below or as they may otherwise specify by written notice delivered in accordance with this Section:

As to Seller: Development Finance Authority
 of Summit County
 47 N. Main St.
 3rd Floor
 Akron, Ohio 44308
 Attn: Chris Burnham, President

Brouse McDowell LPA
388 S. Main St.
Suite 500
Akron, OH 44308
Attn: Dan Silfani

As to Purchaser: Akron Children's Hospital
One Perkins Square
Akron, OH 44308
Attn: Lisa Aurilio, Chief Operating Officer

with a copy to: Akron Children's Hospital
One Perkins Square
Akron, OH 44308
Attn: Timothy Ziga, Associate General Counsel

SECTION 10. MISCELLANEOUS

10.1 Damage or Destruction. If any buildings or other improvements on the Properties are substantially damaged or destroyed prior to the Closing (other than as part of the County Property Improvements), Purchaser or Seller shall have the option within 10 days of notice to the other party: (a) to proceed with Closing without reduction of the Purchase Price; or (b) to immediately terminate this Agreement by providing written notice. If either party terminates this Agreement pursuant to clause (b), both parties shall be released from all further obligations under this Agreement except as specifically provided herein.

10.2 Entire Agreement. This Agreement constitutes the entire contract between the parties and supersedes all prior understandings, if any, there being no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution of this Agreement and none have been relied upon by either party. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties.

10.3 Successor and Assigns; Assignment. This Agreement shall be binding and inure to the benefit of the successors, agents, representatives and assigns of the parties hereto, provided however that, neither party may assign its rights hereunder without the prior written consent of the other party.

10.4 Counterparts. This Agreement may be executed by all parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement.

10.5 Governing Law. This Agreement shall be construed, and the rights and obligations of the parties shall be determined, in accordance with the laws of the State of Ohio.

10.6 Waiver. The waiver of or failure to enforce any provision of this Agreement shall not be a waiver of any further breach of such provision or of any other provision hereof.

10.7 Modifications. No change or addition to this Agreement or any part hereof shall be valid unless in writing and signed by each of the parties.

10.8 Headings. The headings in this Agreement are for convenience only and shall not be used to interpret this Agreement.

10.9 Time: Calculation of Time Periods. Time is of the essence in the performance of this Agreement. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Properties are located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., Akron, Ohio time.

IN WITNESS WHEREOF, the parties below have executed this Agreement effective as of the date hereinabove.

SELLER:

DEVELOPMENT FINANCE AUTHORITY
OF SUMMIT COUNTY

By: _____
Chris Burnham, President

PURCHASER:

CHILDREN'S HOSPITAL MEDICAL
CENTER OF AKRON

By: _____
Lisa Aurilio, Chief Operating Officer

EXHIBIT A

Legal Description

County Property

EXHIBIT B

Legal Description

Authority Property

COOPERATIVE AGREEMENT

among

COUNTY OF SUMMIT, OHIO

and

DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY

and

CITY OF AKRON, OHIO

and

CHILDREN'S HOSPITAL MEDICAL CENTER OF AKRON
dba AKRON CHILDREN'S HOSPITAL

Dated as of

_____, 2021

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT is made and entered into as of _____, 2021 (“Effective Date”) by and among the COUNTY OF SUMMIT, OHIO, a county duly organized and validly existing under the laws of the State and its Charter (the “County”), the DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY, a port authority and body corporate and politic duly organized and validly existing under the laws of the State (the “Authority”), the CITY OF AKRON, a municipal corporation duly organized and validly existing under the laws of the State (the “City”), and CHILDREN’S HOSPITAL MEDICAL CENTER OF AKRON dba AKRON CHILDREN’S HOSPITAL, a non-profit corporation duly organized and validly existing under the laws of the State (“ACH”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

RECITALS

A. The County is the owner of certain real property located in the City and identified as Parcel Number 6763390 in the Summit County Records (the “County Property”), consisting of 2.08 acres situated between North Main Street and North High Street and containing (i) certain uncovered parking areas and driveways for ingress and egress to and from North Main Street (the “Parking Areas”), (ii) a former open-air trolley-barn structure currently used for covered parking (the “Parking Barn”) and (iii) a two-story building used for parking and storage that runs along North High Street (the “High Street Building”). Attached and incorporated by reference as Exhibit A is a map depicting the County Property and the Parking Areas, Parking Barn and High Street Building contained therein; and

B. The Authority is the owner of certain real property located in the City and identified as Parcel Number 6763392 in the Summit County Records (the “Authority Property”), and more commonly known as 47 North Main Street, Akron, Ohio 44308, consisting of .73 acres, and containing of a six-story office building and certain additional uncovered parking, which is also depicted on the attached Exhibit A; and

C. The Authority currently leases to ACH certain portions of the Authority Property, including the first and second floors of the office building thereon, and, pursuant to a certain license agreement dated March 31, 2011 between the County and the Authority, ACH utilizes the County Property for parking related to its use of the Authority Property; and

D. ACH desires to acquire the County Property from the County and the Authority Property from the Authority, and the County and Authority desire to sell the same to ACH; and

E. The Cooperative Parties desire to set forth in this Cooperative Agreement the terms and conditions by which ACH will acquire the County Property from the County and the Authority Property from the Authority, which shall include the following:

- i. The County will first transfer the County Property to the Authority;

- ii. Upon acquisition of the County Property by the Authority, the Authority and ACH will enter into a Real Estate Purchase Agreement (“Purchase Agreement”) whereby ACH will purchase the County Property and the Authority Property from the Authority for the purchase price of Four Million Five Hundred Thousand (\$4,500,000.00);
- iii. The Purchase Agreement will require as a condition of closing that the Authority undertake certain improvements to the County Property as more fully set forth in this Cooperative Agreement as the County Property Improvements;
- iv. The City will provide the Authority a reimbursable grant in an amount not to exceed \$1,400,000.00 to be used by the Authority to reimburse itself for the cost of the County Property Improvements (the “City Grant”);
- v. The County will provide the Authority with a loan in the amount of up to \$1,800,000.00 to fund the initial cost of the County Property Improvements, up to \$1,400,000.00 of which will be repaid by the Authority as it draws upon the City Grant, and, any amount borrowed above \$1,400,000.00 will be forgiven by the County, as set forth below (the “County Loan”);
- vi. Following the completion of the County Property Improvements and the subsequent closing of the sale of the County Property and the Authority Property to ACH, the Authority will pay to the County the proceeds of such sale in satisfaction of an existing mortgage on the Property in favor of the County, which has been filed in the Summit County Records as Instrument Number 55770046;
- vii. Such other transactions as further set forth in this Cooperative Agreement; and

F. The Cooperative Parties further desire and intend to undertake the transactions described above and set forth in this Cooperative Agreement, subject to the terms and conditions of this Cooperative Agreement. The Cooperative Parties believe that the undertakings of each transaction contemplated by this Agreement will support governmental functions, enhance and promote the public health, safety and welfare, and promote and support development in City and the County, and each of the Cooperative Parties has full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on its respective part to be performed and observed.

AGREEMENT

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, and subject to the terms and limitations of this Agreement, the Cooperative Parties agree as follows:

ARTICLE I

Definitions

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2 Definitions. As used herein:

“Agreement” or “Cooperative Agreement” means this Cooperative Agreement as amended and supplemented from time to time.

“Cooperative Parties” means, collectively, the County, the Authority, the City and ACH.

“Legislative Authority” means, (i) as to the County, the Council of the County; and (ii) as to the City, the Council of the City, (iii) as to the Authority, the Board of Directors of the Authority.

“Notice Address” means:

- | | |
|----------------------|--|
| as to the County: | County of Summit, Ohio
Ohio Building, 8th Floor
175 South Main Street
Akron, Ohio 44308
Attn: Ilene Shapiro, County Executive |
| with a copy to: | County of Summit, Ohio
Ohio Building, 8th Floor
175 South Main Street
Akron, Ohio 44308
Attn: Deborah S. Matz, Director of Law and Risk Management |
| as to the Authority: | Development Finance Authority
of Summit County
47 N. Main St.
3 rd Floor
Akron, Ohio 44308
Attn: Chris Burnham, President |
| with a copy to: | Brouse McDowell LPA
388 S. Main St. |

Suite 500
Akron, OH 44308
Attn: Dan Silfani

as to the City: City of Akron
166 S. High St.
2nd Floor
Akron, OH 44308
Attn: Daniel Horrigan, Mayor

with a copy to: City of Akron
Department of Law
161 S. High St.
Suite 202
Akron, OH 44308

as to ACH Akron Children's Hospital
One Perkins Square
Akron, OH 44308
Attn: Lisa Aurilio, Chief Operating Officer

with a copy to: Akron Children's Hospital
One Perkins Square
Akron, OH 44308
Attn: Timothy Ziga, Associate General
Counsel

or such additional or different address, notice of which is given under Section 4.1 of this Agreement.

“Person” or words importing persons means firms, associations, partnerships (including without limitation general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or other governmental bodies, other legal entities and natural persons.

“State” means State of Ohio.

Section 1.3 Interpretation. Any reference herein to the County, the Authority, the City, ACH or to a Legislative Authority or to any member or officer of the same includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable

solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Cooperative Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4 Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

ARTICLE II

Representations and Covenants

Section 2.1 Representations of the County. The County represents that: (a) it is a county duly organized and validly existing under the laws of the State and its Charter; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the County, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound which would have an adverse effect on the County's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by the County, will constitute the legal, valid and binding obligations of the County, enforceable against it in accordance with the respective terms thereof.

Section 2.2 Representations of the Authority. The Authority represents that: (a) it is a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the Authority, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the Authority is a party or by which it is bound which would have an adverse effect on the Authority's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by the Authority, will constitute the legal, valid and binding obligations of the Authority, enforceable against it in accordance with the respective terms thereof.

Section 2.3 Representations of the City. The City represents that: (a) it is a municipal corporation duly organized and validly existing under the laws of the State and its Charter; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the City, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound which would have an adverse effect on the City's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by the City, will constitute the legal, valid and binding obligations of the City, enforceable against it in accordance with the respective terms thereof.

Section 2.4 Representations of ACH. ACH represents that: (a) it is a non-profit corporation duly organized and validly existing under the laws of the State; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to ACH, and does not, and will not, conflict with or result in

a default under any agreement or instrument to which ACH is a party or by which it is bound which would have an adverse effect on ACH's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Board of Directors has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by ACH, will constitute the legal, valid and binding obligations of ACH, enforceable against it in accordance with the respective terms thereof.

(End of Article II)

ARTICLE III

Cooperative Arrangements

Section 3.1 Cooperative Arrangements. For the reasons set forth in the Recitals to this Agreement, the Cooperative Parties have determined to cooperate with one another in accordance with the terms of this Agreement.

Section 3.2 Transfer of County Property to Authority. Within fifteen (15) days following execution of this Cooperative Agreement, the County shall execute and file with the Summit County Fiscal Officer a quit-claim deed (the "County Property Deed") whereby the County will transfer to the Authority the County Property for the consideration of \$1.00, which shall be paid to the County upon the filing of the County Property Deed. The County shall notify the other Cooperative Parties immediately upon the filing of the County Property Deed.

Section 3.3 Sale of County Property and Authority Property to ACH. Within fifteen (15) days following the filing of the County Property Deed, the Authority and ACH shall execute a Real Estate Purchase Agreement (the "Purchase Agreement"), in the form set forth as Exhibit B, whereby ACH shall purchase from the Authority the County Property and Authority Property in the amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00), less a credit in the amount of the balance in the Operating Reserve Fund and Capital Reserve Fund, as defined in Section 3.8, below, as of the date of the closing of the sale of the County Property and Authority Property (the "Closing"), which may be reduced to pay certain costs as further set forth in this Agreement.

The Purchase Agreement shall contain a pre-condition to the Closing, which will require the Authority to undertake and complete the County Property Improvements, as set forth in Section 3.4, below, which must occur prior to the Closing, which the parties anticipate to be completed by February 28, 2022 (the "Closing Date"). The Purchase Agreement shall provide the Authority the right, in its sole discretion, to extend the Closing Date for an additional six (6) months to complete the County Property Improvements.

The Purchase Agreement shall also provide ACH with the right, during an inspection period, to enter upon the County Property and Authority Property to conduct any necessary inspections thereon, but shall require ACH to repair and pay for any damage made during the inspection and release the County and Authority from any arising claims or liabilities arising as a result of said inspection. The Purchase Agreement shall require the Authority to pay all costs, fees and expenses related to the sale of the County Property and Authority Property, including, but not limited to title examination fees, title insurance, escrow fees, recording fees, conveyance fees and taxes, and its own attorney fees and the attorney fees of the County, but excluding therefrom the attorney fees of ACH, provided that the Authority may pay the same out of any available funds in the Operating Reserve Fund and Capital Reserve Fund held by the Authority as set forth under Section 3.8, below, to the extent any such funds are available as of the Closing Date, and otherwise the same shall be paid by the County. Assessments, taxes and utilities, if any, shall be prorated as of the date of the Closing, and all sums due for the period prior to the Closing may be paid by the Authority out of available funds in the Operating Reserve Fund and Capital Reserve Fund held by the Authority as set forth under Section 3.8, below, to the extent any such funds are available as

of the Closing Date, and otherwise the same shall be paid by the County. Further terms and conditions of the Purchase Agreement shall be set forth in the attached Exhibit B.

Section 3.4 Authority to Undertake County Property Improvements. Following execution of the Purchase Agreement, and prior to the Closing Date, as the same may be extended, the Authority shall undertake certain improvements to the County Property, which shall include (i) the abatement and demolition of the Parking Barn, (ii) the abatement and demolition of the High Street Building, (iii) repairs to the retaining wall that runs along North High Street, (iv) installation of storm sewers, grading and site work to the land below the High Street Building, (v) pavement resurfacing, (vi) such other necessary repairs and improvements to the County Property, and (vii) any ancillary and/or related repairs and improvements to the Authority Property undertaken as part of the improvements and repairs to the County Property, all of which are more fully set forth and detailed in a report prepared by Hasenstab Architects (the "Hasenstab Report"), which is attached hereto as Exhibit C and incorporated herein (the "County Property Improvements").

In undertaking the County Property Improvements, the Authority shall enter into agreements for the design, construction, demolition and abatement of the County Property Improvements with the appropriate parties after undertaking the Authority's previously-adopted procurement and contracting process and procedures. The Authority shall initially pay all costs related to the County Property Improvements out of a fund established by the Authority specifically for that purpose (the "County Property Improvements Fund"). The proceeds of the County Loan in the amount of up to \$1,800,000.00, which will be loaned to the Authority by the County as set forth in Section 3.7, below, will be deposited into the County Property Improvements Fund as the Authority draws upon the same, and shall subsequently be used by the Authority to undertake the County Property Improvements.

During the course of undertaking the County Property Improvements, the Authority shall not authorize, approve, agree to or execute any agreement, contract, addendum, amendment or change order ("County Property Improvements Contract") that will cause the total cost of the County Property Improvements to exceed the sum of \$1,800,000.00, except as set forth in this paragraph. In the event that the Authority is presented with any County Property Improvements Contract that will cause the cost of the County Property Improvements to exceed \$1,800,000.00, the Authority shall deliver a copy of the same, together with detailed accounting of all sums expended or contractually obligated through that date, to the County and ACH for their review and approval. In the event that the County and ACH each approve of the Authority entering into the County Property Improvements Contract that will cause the cost of the County Property Improvements to exceed \$1,800,000.00, each shall by deliver written notice to the Authority of its approval. In the event either or both of the County and ACH are unwilling to approve such a County Property Improvements Contract, then the Cooperative Parties agree to use good faith efforts to resolve any disagreement regarding the same and/or to work collaboratively to revise the County Property Improvement Contract(s) to a scope and/or amount that both the County and ACH will approve in writing. For the avoidance of doubt, the Authority shall obtain approvals from the County and ACH as set forth in this paragraph for each County Property Improvements Contract that exceeds \$1,800,000.00, including those that are presented to the Authority after the County and ACH may have already approved County Property Improvement Contracts exceeding \$1,800,000.00.

To the extent that the County Property Improvements Fund has insufficient funds to fully fund all County Property Improvements through the use of the County Loan because the same exceed \$1,800,000.00, and the Authority has received the necessary written approvals as set forth in the preceding paragraph, then the Authority shall first use funds in the Capital Reserve Fund as set forth in Section 3.8, below, and then, in the event all funds in the Capital Reserve Fund are expended, the Authority shall use funds in the Operating Reserve Fund, as set forth in Section 3.8, below. If, after expending all funds in the County Property Improvements Fund, Capital Reserve Fund and Operating Reserve Fund, in that order, any costs of the County Property Improvements remain unpaid, and the Authority has received the necessary written approvals as set forth in the preceding paragraph, then the Authority shall pay the same and shall be reimbursed by the other Cooperative Parties through a cost overrun reimbursement plan ("Reimbursement Plan") that shall be developed and agreed to by the other Cooperative Parties at or before the time that the County and ACH agree in writing to the County Property Improvement Contracts exceeding the amount that would require the development of the Reimbursement Plan

In addition to all other notices required by this Section, following the execution of the Purchase Agreement, and prior to the Closing Date, the Authority shall provide the other Cooperative Parties with a written monthly report to the Notice Address, not later than the 15th of each month, notifying the other Cooperative Parties of (i) the status of the procurement of all agreements necessary to undertake the County Property Improvements, (ii) the status of all County Property Improvements being undertaken by the Authority, (iii) a statement of all costs incurred by the Authority related to the County Property Improvements, (iv) a statement of all costs related to the County Property Improvements paid by the Authority out of the County Property Improvements Fund, Capital Reserve Fund and Operating Reserve Fund, and (v) a statement of the current outstanding balance in the County Property Improvements Fund, Capital Reserve Fund and Operating Reserve Fund, and (vi) a statement of the amount of the County Loan that has been drawn by the Authority, and any amounts repaid to the County. Following the completion of the County Property Improvements, the Authority shall provide to the other Cooperative Parties a written final report containing the same information as the written monthly report, which shall be provided to the parties no later than five (5) days prior to the Closing Date. Additionally, if, at any time, the total cost of the County Property Improvement Contracts authorized, approved, agreed to or executed exceeds \$1,600,000.00, then the Authority shall provide the other Cooperative Parties notice of the same, together with a written report containing all information set forth in this paragraph, and detail as to the County Property Improvement Contracts that have been authorized, approved, agreed to or executed by the Authority.

Section 3.5 County to Serve as Authority's Owner's Representative. The County, through its Department of Administrative Services - Division of Capital Projects Administration, shall serve as the Authority's owner's representative to provide such services that are standard and customary in that role in connection with the County Property Improvements, including the following:

- i. Initial Review. Review the Hasenstab Report and confirm that the opinions of Hasenstab Architects contained therein are reasonable and appropriate. Additionally, assist the Authority in review of any additional designs, drawings, plans, specifications and construction drawings developed by Hasenstab Architects or any other party for:

- a. Completeness and sufficiency.
 - b. Quality, suitability and constructability of the materials and systems specified.
 - c. General compliance with applicable building codes and requirements.
 - d. Identification of any perceived design omissions that may negatively affect the County Property or the Authority Property or the undertaking of the County Property Improvements.
 - e. Review of required building permits and application process.
- ii. Assistance in Procurement. Assist the Authority in the Authority's procurement of all agreements necessary to undertake the County Property Improvements, including reviewing and advising the Authority on all requests for proposals, bidding solicitations and any proposals or bids, respectively, submitted in response to the same. Further assist the Authority in the development of terms and conditions of any agreements necessary for the County Property Improvements.
- iii. Construction Observation Services. Provide weekly (or more frequent, if necessary) inspections of progress of the County Property Improvements, including review of contractor progress reports and site observation visits to assess progress and general quality of work. Following site visits, provide an opinion that will include the following:
- a. Review of the County Property Improvements to determine general compliance with plans and specifications and construction documents.
 - b. General evaluation of workmanship and progress on the County Property Improvements.

County will also review all disbursements requests/applications for payment from contractors and provide an opinion as to the approval of disbursement of funds requested by the contractors. The opinion may include any comments relative to payment amounts indicated on the disbursement requests/applications for payment and will address whether the completion values represent an accurate percentage or value of work in place and provide an explanation of any deviations relative to the requested disbursement amounts.

Section 3.6 City Grant Contribution Towards the County Property Improvements. To facilitate the County Property Improvements, the City shall provide the City Grant in an amount not to exceed \$1,400,000.00. Contemporaneous with the execution of this Cooperative Agreement, the City and the Authority shall execute the agreement attached hereto as Exhibit D ("City Grant Agreement") whereby the City shall grant to the Authority the City Grant pursuant to the terms set forth in the City Grant Agreement. All sums paid by the City to the Authority pursuant to the City Grant Agreement shall be on a reimbursement basis and shall only reimburse

costs related to the County Property Improvements. The Authority shall adhere, at all times, to the terms and conditions set forth in the City Grant Agreement.

Section 3.7 County Loan to Initially Fund the Costs of County Property Improvements.

Given the reimbursable nature of the City Grant, the County shall provide the Authority with the County Loan in an amount not to exceed \$1,800,000.00 to fund and pay the initial costs of the County Property Improvements. Contemporaneous with the execution of this Cooperative Agreement, the County and Authority shall execute a loan agreement (the "County Loan Agreement") and a promissory note (the "County Note"), in the forms attached hereto as Exhibits E and F, respectively. The Authority shall draw upon the County Loan pursuant to the terms and conditions set forth in the County Loan Agreement to initially fund the County Loan Improvements and shall repay all sums loaned and subsequently owed to the County pursuant to the terms and conditions of the County Loan Agreement and County Note. Specifically, the Authority shall repay the first \$1,400,000.00 loaned by the County under the County Loan through the use of the proceeds of the City Grant. To the extent that the Authority draws more than \$1,400,000.00 of the County Loan to undertake and complete the County Property Improvements, the County shall forgive all loaned amounts in excess of \$1,400,000.00 at the time of the Closing.

Section 3.8 Operating Reserve Fund; Capital Reserve Fund; Use and Priority of Use of Funds.

The Authority currently maintains a fund whereby it deposits a certain portion of the rental payments made by the tenants of the Authority Property, including ACH, to pay the costs of the ongoing capital needs of the Authority Property and County Property ("Capital Reserve Fund"). The Authority also maintains a fund whereby it deposits a certain portion of the rental payments made by the tenants of the Authority Property, including ACH, to pay the costs of operating expenses of the Authority Property and County Property ("Operating Reserve Fund"). As of the Effective Date of this Cooperative Agreement, the Capital Reserve Fund has a balance of \$ _____, and the Operating Reserve Fund has a balance of \$ _____. Between the Effective Date of this Cooperative Agreement and the Closing of the Purchase Agreement, the Authority shall continue to make routine deposits into the Capital Reserve Fund and Operating Reserve Fund and shall continue to make routine payments for capital items and operating expenses, respectively, from the same.

Commented [JD1]: Will stay blank until execution date – I believe this fund has approximately \$75k.
Commented [JD2]: Will also stay blank until execution date – I believe this fund has \$200k+.

As set forth in section 3.4, above, the Authority shall pay all costs related to the County Property Improvements out of the County Property Improvements Fund, as the same will be funded by draws upon the County Loan of up to \$1,800,000.00, to the extent that funds are available in said fund to pay all costs of the County Property Improvements. To the extent that the cost of the County Property Improvements exceed the funds available in the County Property Improvements Fund, and following receipt of written approval from the County and ACH as set forth in Section 3.4, above, then the Authority shall use the funds then-available in the Capital Reserve Fund to pay the same. To the extent that the cost of the County Property Improvements exceed both the funds available in the County Property Improvements Fund and the Capital Reserve Fund, and following receipt of written approval from the County and ACH as set forth in Section 3.4, above, then the Authority shall use the funds then-available in the Operating Reserve Fund to pay the same, but shall also maintain sufficient funds in the Operating Reserve Fund to pay the routine operating expenses of the Authority Property. If, after expending all funds in the County Property Improvements Fund, Capital Reserve Fund and Operating Reserve Fund, some of the costs of the

County Property Improvements remain unpaid, and following receipt of written approval from the County and ACH as set forth in Section 3.4, above, then the Authority shall pay the same and shall be reimbursed by the other Cooperative Parties through a cost overrun reimbursement plan ("Reimbursement Plan") that shall be developed and agreed to by the other Cooperative Parties at or before the time that the County and ACH agree in writing to the County Property Improvement Contracts exceeding the amount that would require the development of the Reimbursement Plan.

Upon the Closing of the Purchase Agreement, the Authority shall pay the final payment of all routine operating expenses of the building. The Authority shall also pay, upon the Closing of the Purchase Agreement, all costs required to be paid by the Authority pursuant to the Purchase Agreement, including closing costs, pro-rated taxes and assessments, and all other costs set forth in the Purchase Agreement first out of funds then-available in the Capital Reserve Fund. In the event there are insufficient funds available in the Capital Reserve Fund to pay all costs required to be paid by the Authority pursuant to the Purchase Agreement in the Capital Reserve Fund, then the Authority shall pay the same out of the funds then-available in the Operating Reserve Fund. In the event there are insufficient funds in both the Capital Reserve Fund and Operating Reserve Fund to pay all costs required to be paid by the Authority pursuant to the Purchase Agreement, then any unpaid costs shall be paid out of the proceeds of the sale of the Authority Property and County Property prior to paying the same to the County pursuant to Section 3.9, below.

Upon Closing of the Purchase Agreement and payment of all costs as set forth in this Section and elsewhere in this Agreement from the Capital Reserve Fund and Operating Reserve Fund, any balance within the Capital Reserve Fund and Operating Reserve Fund shall be paid by the Authority to the County.

Section 3.9 Disposition of Proceeds of Sale; Satisfaction and Release of Mortgage Encumbering the Authority Property. Upon the Closing of the Purchase Agreement, and the receipt of the proceeds of the sale of the Authority Property and County Property, the Authority shall distribute the same as follows:

- (i) First, to pay for any costs required to be paid by the Authority pursuant to the Purchase Agreement, including closing costs, pro-rated taxes and assessments, and all other costs set forth in the Purchase Agreement not paid out of the Capital Reserve Fund or Operating Reserve Fund, as set forth in Sections 3.3 and 3.8, above.
- (iii) Second, the balance of the proceeds, which shall be assigned and paid to the County at Closing.

The payment of the balance of the proceeds of the sale of the Authority Property and County Property to the County by the Authority shall represent both additional compensation for the County Property and the repayment of a certain loan made by the County to the Authority as of March 31, 2011 in the original principal amount of \$2,490,000.00, with a current outstanding balance of \$2,056,035.00 ("Prior County Loan"). At the Closing, the County shall deliver and file with the Summit County Fiscal Officer a satisfaction and release of the mortgage currently encumbering the Authority Property as security for the Prior County Loan, said mortgage being previously filed and recorded in the Summit County Records as Instrument Number 55770046

("County Mortgage Satisfaction"). The County Mortgage Satisfaction shall be in the form attached hereto as Exhibit G.

Section 3.10 Transfer of County Property from Authority to County in the Event Closing Does Not Occur. In the event the Closing of the Purchase Agreement does not occur by the Closing Date, as the same may be extended, then the Authority shall transfer to the County the County Property no later than ten (10) days after the Closing Date, as the same may be extended. The Cooperative Parties acknowledge and agree that the obligations of the Authority as set forth in this Section are absolute and any breach of this Section by the Authority shall subject the Authority to an action for specific performance by the County. Furthermore, in such event that the Authority is required to transfer the County Property to the County pursuant to this Section, and upon the occurrence of (i) the transfer of the County Property to the County by the Authority, (ii) the payment by the City to the Authority of all City Grant proceeds as set forth in Section ____ above, (iii) the payment by the Authority of all City Grant proceeds to the County to satisfy any outstanding balance of the County Loan, up to the amount of City Grant Proceeds actually received, and (iv) payment by the Authority of all costs of the County Property Improvements, then the County shall forgive the balance of the County Loan.

Section 3.11 Attorney Fees. The Cooperative Parties understand and agree that all attorney fees of the Authority and the County, in the amount of up to \$20,000.00 and \$20,000.00, respectively, related to this Cooperative Agreement, the Purchase Agreement or any of the other agreements and transactions set forth herein shall be paid from the Operating Reserve Fund following the execution of the Purchase Agreement.

(End of Article III)

ARTICLE IV

Miscellaneous

Section 4.1 Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or delivered by overnight courier service, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to any Cooperative Party shall also be given to the other Cooperative Parties. The Cooperative Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail or courier service, any notice required to be mailed or delivered by courier service by the provisions of this Agreement shall be given in such other manner as in the judgment of the Cooperative Party shall most effectively approximate mailing thereof or delivery by courier service, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for delivery under this Section. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 4.2 Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Cooperative Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future officer, official, employee or agent of the County, Authority, the City or their respective Legislative Authorities, in other than its official capacity, and neither the members of any Legislative Authorities nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the County, the Authority or the City contained in this Agreement.

Section 4.3 Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Cooperative Parties and their respective permitted successors and assigns. This Agreement may be enforced only by the Cooperative Parties, their assignees and others who may, by law, stand in their respective places.

Section 4.4 Amendments and Supplements. Except as otherwise expressly provided in this Agreement, no provision of this Agreement may be effectively amended, changed, modified, altered or terminated unless set forth in a writing signed by all of the Cooperative Parties.

Section 4.5 Execution Counterparts/PDF. 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. Copies of signatures sent or provided electronically in portable document format (PDF) shall be deemed to be originals for purposes of execution and proof of this Agreement.

Section 4.6 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 4.7 Limitation of Rights. With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any Person other than the Cooperative Parties any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Cooperative Parties, as provided herein.

Section 4.8 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in a State court sitting in the County.

Section 4.9 Entire Agreement. This Cooperative Agreement, and the agreements contemplated herein, constitute the entire agreement between the parties and supersedes all prior understandings or agreements regarding the County Property and Authority Property. There are no conditions or inducements relied upon by the parties prior to the execution of this Compensation Agreement.

(End of Article IV)

IN WITNESS WHEREOF, the Cooperative Parties have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

COUNTY OF SUMMIT, OHIO

By: _____
Ilene Shapiro, Executive

Approved as to form and correctness:

Deborah Matz, Director
Department of Law and Risk Management

**DEVELOPMENT FINANCE AUTHORITY
OF SUMMIT COUNTY**

By: _____
Christopher Burnham, President

CITY OF AKRON

By: _____
Daniel Horrigan, Mayor

Approved as to form and correctness:

Eve Belfance, Director of Law

**CHILDREN'S HOSPITAL MEDICAL CENTER
OF AKRON dba AKRON CHILDREN'S
HOSPITAL**

By: _____
Lisa Aurilio, Chief Operating Officer

FISCAL OFFICER'S CERTIFICATE
COUNTY OF SUMMIT, OHIO

The undersigned, Fiscal Officer of the County of Summit, Ohio, hereby certifies that the moneys required to meet the obligations of the County during the year 2021 under the Agreement have been lawfully appropriated by the Legislative Authority of the County for such purposes and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Fiscal Officer
County of Summit, Ohio

Dated: _____, 2021

Fiscal Officer's Certificate

DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY

The undersigned, Fiscal Officer of the Development Finance Authority of Summit County, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2021 under the Agreement have been lawfully appropriated by the Legislative Authority of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Fiscal Officer
Development Finance Authority of Summit County

Dated: _____, 2021

FISCAL OFFICER'S CERTIFICATE
CITY OF AKRON, OHIO

The undersigned, Finance Director of the City of Akron, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2021 under the Agreement have been lawfully appropriated by the Legislative Authority of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Finance Director
City of Akron, Ohio

Dated: _____, 2021

EXHIBIT A

MAP OF COUNTY PROPERTY AND AUTHORITY PROPERTY



EXHIBIT B

PURCHASE AGREEMENT

See attached.

EXHIBIT C
HASENSTAB REPORT

See attached.

EXHIBIT D
CITY GRANT AGREEMENT

See attached.

EXHIBIT E
COUNTY LOAN AGREEMENT

EXHIBIT F
COUNTY NOTE

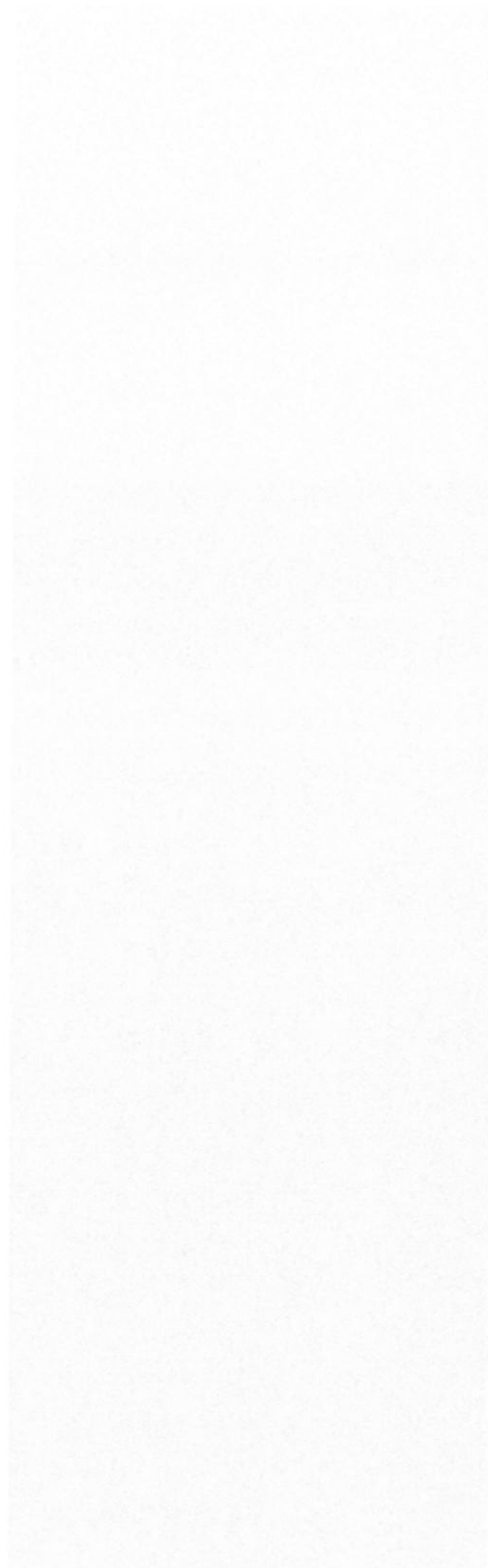


EXHIBIT G
COUNTY MORTGAGE SATISFACTION