

AGENDA

SPECIAL MEETING OF THE FAYETTEVILLE CITY COUNCIL SEPTEMBER 8, 1998

A meeting of the Fayetteville City Council will be held on September 8, 1998, at 4:30 p.m. in the City Administration Building, 113 West Mountain Street, Room 326, Fayetteville, Arkansas.

The following item will be considered:

- A. LEASE AGREEMENT:** A resolution to review, comment, and approve a lease agreement for the Town Center between the City of Fayetteville and the Advertising and Promotion Commission.

Only items presented by the City Council or City Staff may be discussed during the meeting. If you have an item you wish to discuss, please contact your alderman to have it presented at the next City Council Agenda Session. For further assistance, please contact Heather Woodruff, City Clerk, at 575-8323.

9/8/98	LEASE AGREEMENT		<i>overhaul</i>	<i>agreement</i>	
	<i>Roll</i>				
SCHAPER	<i>A</i>				
DANIEL	✓		✓	✓	
YOUNG	✓		✓	✓	
TRUMBO	✓		✓	✓	
PETTUS	<i>A</i>			✓	
MILLER	✓		✓	✓	
WILLIAMS	✓		✓	✓	
MAYOR HANNA	✓		✓		
			<i>5-1-0.</i>	<i>5-0-0</i>	
ADJORNMENT					
SCHAPER					
DANIEL					
YOUNG					
TRUMBO					
PETTUS					
MILLER					
WILLIAMS					
MAYOR HANNA					

AGENDA SESSION DISTRIBUTION CHECKLIST

DATE: _____

HANDOUTS: _____

DISTRIBUTED TO:

☒ STEPHEN MILLER

☒ KIT WILLIAMS

☒ CYRUS YOUNG

☒ TRENT TRUMBO

☒ DONNA PETTUS

☒ LEN SCHAPER

☒ HEATHER DANIEL

☒ MAYOR HANNA

☒ NANCY HENDRICKS

☒ BEN MAYES

☒ KEVIN CROSSON

☒ CHARLIE VENABLE

☒ JERRY ROSE

☒ ALETT LITTLE

☒ STEVE DAVIS

☒ NWAT

☒ MORNING NEWS

☒ KIX

☒ DEMOCRAT-GAZETTE

☒ *mailing*
ROBYN/LANA

☒ DEBBIE

☒ *Heather Woodruff*
☒ *Parko*

NOTES: _____

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

MEMO

To: Mayor Hanna
City Council

From: Ben Mayes 

Date: September 3, 1998

Subject: Lease and Agreement

Attached for your review and approval is a copy of the latest revision of the Lease and Agreement between the City of Fayetteville and the Advertising and Promotion Commission of the City of Fayetteville. Included in this draft is Alderman Williams' language for Section 507. If you have any questions, please call me at 575-8330.

BRM:mm

LEASE AND AGREEMENT

Between

CITY OF FAYETTEVILLE, ARKANSAS

and

ADVERTISING AND PROMOTION COMMISSION
of the CITY OF FAYETTEVILLE, ARKANSAS

Dated as of

LEASE AND AGREEMENT

TABLE OF CONTENTS

ARTICLE I DEFINITIONS

Section 101	Definitions
-------------	-------------

ARTICLE II DEMISING CLAUSES, DURATION OF LEASE TERM AND RENTAL PROVISIONS

Section 201	Demise of Leased Premises
Section 202	Term of Lease and Agreement
Section 203	Basic Rent; Additional Rent

ARTICLE III INSURANCE

Section 301	Insurance Required
-------------	--------------------

ARTICLE IV REPAIRS AND MAINTENANCE OF LEASED PREMISES AND ALTERATIONS

Section 401	Lessee Obligated to Maintain Improvements
Section 402	Lessee Has Right to Make Additions, Alterations and Changes
Section 403	Structural Improvements and Alterations Become Property of Lessor; Machinery, Equipment and Other Property Installed at Lessee's Expense Remain Its Property With Right of Removal
Section 404	Lessee to Pay Public Utility Charges

ARTICLE V
USE OF LEASED PREMISES -
COMPLIANCE WITH ORDERS, ETC.

Section 501	Permitted Use of Leased Premises and Compliance With Laws, etc.
Section 502	Use by Local Groups
Section 503	Operating charges, revenues and costs of the Project
Section 504	Compliance with City/County Tourist Meeting and Entertainment Facilities Assistance Law
Section 505	Compliance with Internal Revenue Code of 1986
Section 506	Compliance with Freedom of Information Act
Section 507	Annual report requirement and City Council review

ARTICLE VI
LESSOR MAY PERFORM LESSEE'S OBLIGATIONS

Section 601	Lessor May Perform Lessee's Obligations; Lessee to Reimburse Lessor for Costs and Expenses Incurred in Doing So
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ARTICLE VII
INSPECTION OF LEASED PREMISES
BY LESSOR AND TRUSTEE

Section 701	Lessor and Trustee to Have Right of Inspection and Right to Perform Work Subject to Certain Restrictions
-------------	--

ARTICLE VIII
DAMAGE AND DESTRUCTION

Section 801	Lessee to Restore in Event of Damage or Destruction; Application of Insurance Moneys
-------------	---

ARTICLE IX
ASSIGNMENT

Section 901	Assignment and Subletting Permitted But Lessee Not Relieved of Obligations.
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ARTICLE X DEFAULT PROVISIONS

Section 1001	Events of Default
Section 1002	Remedies
Section 1003	Remedies Not Exclusive
Section 1004	Rental, Damages and Reletting Handled as Provided in Lease and Agreement and Indenture

ARTICLE XI NOTICES

Section 1101	Notices
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ARTICLE XII GENERAL

Section 1201	Arkansas Law Applicable
Section 1202	Severability
Section 1203	Provisions Binding on Successors and Assigns
Section 1204	Lease Agreement Constitutes Entire Agreement
Section 1205	Lease Agreement Not to Waive Sovereign Immunity

LEASE AND AGREEMENT

This LEASE AND AGREEMENT made as of _____, by and between the CITY OF FAYETTEVILLE, ARKANSAS ("Lessor" or "City") and the ADVERTISING AND PROMOTION COMMISSION OF THE CITY OF FAYETTEVILLE, ARKANSAS ("Lessee" or "Commission");

WITNESSETH:

1. WHEREAS, Lessor is a duly organized and existing municipality, a city of the first class, under the laws of the State of Arkansas with full and lawful power and authority to enter into this Lease and Agreement; and
2. WHEREAS, Lessee is authorized under the laws of the State of Arkansas to enter into this Lease and Agreement and to perform all covenants and obligations on its part and to be performed under and pursuant to this Lease and Agreement; and
3. WHEREAS, at a special election held on August 5, 1997 the electors of the City approved the issuance of a \$6,950,000 bond issue to finance the construction of the Fayetteville Town Center as a new, multi-purpose, civic center for meetings, conventions, exhibitions, entertainment events, related uses and parking; and
4. WHEREAS, the Bonds are issued by the City but are largely/primarily to be funded by the Advertising and Promotion Commission through the pledge of the City's one cent Hotel and Restaurant Gross Receipts Tax approved by the voters in 1977; and
5. WHEREAS, the Commission agrees to contribute \$1,000,000 toward the construction of the Town Center; and
6. WHEREAS, upon completion, the Town Center will be owned by the City; and

7. WHEREAS, the Commission is willing to manage the Town Center and to assume the financial burden, if any , incurred in such management for the purpose of fulfilling their statutory purpose of advertising and promoting the City and for maintaining and operating a convention center and/or tourist promotion facility in the City; and

8. WHEREAS, the City believes it is in the best interests of the citizens of Fayetteville for the Commission to manage the Town Center on behalf of the City,

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged by Lessor and Lessee, and in consideration of the mutual benefits and covenants herein contained, Lessor and Lessee AGREE as follows:

ARTICLE I

DEFINITIONS

Section 101. In addition to the words and terms elsewhere defined in this Lease Agreement, the following words and terms as used in this Lease Agreement shall have the following meanings unless the context clearly indicates a different meaning or intent:

“Bonds” - The City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Bonds, Series 1998, issued under and secured by the Indenture, to provide funds to construct and equip the Project. .

“Indenture” or “Trust Indenture” - the Trust Indenture and First Supplemental Trust Indenture between the City and the Trustee, which sets forth the details pertaining to the Bonds, the nature and extent of the security and the rights, duties and obligations of the City, the Trustee and the holders and registered owners of the Bonds and the terms under which the Bonds are secured.

"Lease Agreement" - The within Lease and Agreement.

"Lease term" or "Term" - the term of the Lease Agreement set forth in Section 202.

"Leased Premises" - the lands, buildings, improvements, and facilities covered by the Lease Agreement and defined in Section 201 hereof.

"Lessee" - the Advertising and Promotion Commission of the City of Fayetteville, Arkansas.

"Lessor" - The City of Fayetteville, Arkansas, a city of the first class and located in Washington County, Arkansas.

"Project" - The lands, buildings, improvements, and facilities constituting a multi-purpose civic center for meetings and conventions, exhibitions, entertainment events and related uses, and related parking facilities, collectively to be known as the Fayetteville Town Center financed out of proceeds of the Bonds and other monies and leased under this Lease Agreement. The lands included in the Project are described as Exhibit A attached hereto.

"Rent" or "Rents" - the Basic Rent (provided for in Section 203(a) hereof) and the Additional Rent (provided for in Section 203(b) hereof), unless the context clearly indicates both are not intended.

"Trustee" - The Trustee for the time being, whether original or successor with the original Trustee being Bank of Oklahoma, N.A., Tulsa, Oklahoma who is a party to the Indenture.

ARTICLE II

DEMISING CLAUSES, DURATION OF LEASE TERM AND RENTAL PROVISIONS

Section 201. Lessor, for and in consideration of the rents, covenants and agreements herein reserved, mentioned and contained, on the part of Lessee to be paid, kept and performed, agrees to and does hereby lease to Lessee, and Lessee agrees to, and does hereby lease, take and hire from Lessor, subject to the terms, conditions and provisions of this Lease Agreement expressed, the following:

- (a) The lands situation in Washington County, Arkansas, described in Exhibit A attached hereto (the "lands");
- (b) The buildings, structures and other improvements now or at any time hereafter erected and installed on the lands; and
- (c) All accretions, easements, rights of way and appurtenances belonging to the lands and/or the improvements described in (a) and (b) above.

The properties described in (a), (b), and (c) above are herein collectively referred to as the "Leased Premises".

TO HAVE AND TO HOLD the Leased Premises unto the Lessee for the term of this Lease Agreement as hereafter set forth.

Section 202. The term of this Lease Agreement shall commence upon substantial completion of the Project and shall run for a period of twenty-two (22) years.

Section 203. (a) Basic Rent. Lessee covenants to pay to Lessor, Basic Rent of one dollar per year. (b) Additional Rent. During the term hereof, Lessee shall pay as Additional Rent all expenses, liabilities, obligations and other payments of whatever

nature which Lessee has agreed to pay or assume under the provisions of this Lease Agreement.

ARTICLE III

INSURANCE

Section 301. A. Lessor party shall, at Lessor's sole cost and expense,

keep the Leased Premises and the furniture, fixtures and equipment insured:

- (i) Against the perils of fire and the hazards ordinarily included under broad form extended coverage endorsements in amounts not less than 90% of the full insurable value thereof within the terms of applicable policies.
- (ii) If there are boiler or pressure vessels, from boiler or pressure vessel explosion in an amount customarily carried in the case of similar industrial operations.

The term "full insurable value" means such value as shall be determined from time to time at the request of Lessor, Lessee or Trustee (but not required more frequently than once in every forty-eight (48) months) by one of the insurers selected by. Lessor.

B. At all times during the term, Lessee shall, at no cost or expense to Lessor, maintain or cause to be maintained:

- (i) General Public Liability insurance against claims for bodily injury or death occurring upon, in or about the Leased Premises, with such insurance to afford protection to the limits of not less than \$1,000,000 in respect of bodily injury or death to any one person and to the limit of not less than \$2,000,000 In respect to any one accident; and
- (ii) Property damage insurance against claims for damage to property occurring upon, in or about the Leased Premises with such insurance to afford protection to the limit of not less than \$50,000 in respect of damages to the property of any one owner.

C. The insurance required by this Article III shall be maintained in full force and effect at all times during the term of this Lease Agreement;

D. Copies or certificates of the insurance provided for by this Article or elsewhere in this Lease Agreement shall be delivered to the parties. And, in the case of expiring policies throughout the term, copies or certificates of any new or renewal policies shall be delivered to the parties.

E. All insurance required by this Section 301 shall be effected with insurance companies qualified to do business in the State of Arkansas. Appropriate provisions shall be inserted in each insurance policy making each policy noncancellable without at least ten (10) days prior written notice to Lessor, Lessee and the Trustee.

ARTICLE IV

REPAIRS AND MAINTENANCE OF LEASED PREMISES AND ALTERATIONS

Section 401. Lessee shall throughout the term, at no cost and expense to Lessor, maintain, or cause to be maintained, and at the expiration of the term hereof, yield up or cause to be yielded up, in good and tenantable repair, order and condition, reasonable wear and tear excepted, the improvements now or at any time erected on the lands included in the Leased Premises; and promptly at no cost and expense to Lessor make or cause to be made all necessary repairs, interior and exterior, structural and non-structural, foreseen as well as unforeseen to such improvements.

Section 402. Lessee shall have the right from time to time to make additions, alterations and changes in or to the improvements constituting part of the Leased Premises and shall have the right to construct new improvements with the prior written approval of the Lessor. Such approval shall not be unreasonably withheld. It is understood and agreed that in the event the Lessee makes any additions, alterations and changes in or to the improvements constituting part of the Leased Premises as authorized

by this Section, the Lessee shall be under no obligation at the expiration of the term to restore the Leased Premises to their original condition prior to such additions, alterations or changes.

Section 403. All structural improvements and alterations made on the Leased Premises by or on behalf of Lessee shall immediately upon completion thereof be and become the property of the Lessor without payment therefor by Lessor but subject to this Lease Agreement. All machinery and equipment, trade fixtures, movable partitions, furniture and furnishings and other property installed at the expense of Lessee shall become the property of the Lessor.

Section 404. Lessee agrees to pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat or power, telephone or other service used, rendered or supplied to or for the Lessee upon or in connection with the Leased Premises throughout the term of this Lease Agreement.

ARTICLE V

USE OF LEASED PREMISES - COMPLIANCE WITH ORDERS, ETC.

SECTION 501. Subject to the following provisions of this Section, Lessor and Lessee agree that Lessee shall use the Leased Premises for a multi-purpose civic center for meetings and conventions, exhibitions, entertainment events and related uses and related parking facilities. Lessee shall during the term promptly comply with all valid statutes, laws, and requirements of all federal, state, local and other governments or governmental authorities, including the Bond Indenture and Ordinance, now or hereafter applicable to the Leased Premises. Lessee shall during the term comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried

under the provisions of this Lease Agreement.

SECTION 502. The Lease Premises and Portions thereof should be made available by the Lessee for use by 501(c)(3) designated non-profit groups located in the City of Fayetteville, Arkansas, for such events as civic receptions and community meetings during those times when the Lease Premises is not reserved to be utilized for the purposes set forth in Section 501 above. With respect to this Section, a non-profit may not reserve the Lease Premises in excess of thirty (30) days prior to the date it will utilize the Lease Premises.

Section 503. The Lessee covenants that it will operate or cause to be operated the facilities constituting the Project in a prudent and financially responsible manner, and will fix, charge and collect reasonable rates, fees and charges for the use of the facilities constituting the Project and for services performed by the Lessee in connection therewith, recognizing that 501(c)(3) groups located in the City of Fayetteville are to be given a reduced rate, fee and/or charge. The rates, fees and charges for such 501(c)(3) groups shall be approved by the Lessor (Fayetteville City Council). Said approval shall not be unreasonably withheld. The rates, fees and charges for such 501(c)(3) groups shall be approved by the Lessor (Fayetteville City Council). Said approval shall not be unreasonably withheld. To the extent that revenues from the facilities constituting the Project are insufficient therefore, all operating costs of the Project will be paid by the Lessee.

Section 504. Lessee covenants that it will at all times operate the Project as a convention center within the requirements of the Advertising and Promotion Commission Act, Ark. Code Ann. Section 26-75-601 through 618 so that the Lessor will qualify

under the provisions of the City-County Tourist Meeting and Entertainment Facilities Assistance Law (Ark. Code Ann. Section 14-171-210 through 217) for turnback funds.

Section 505. Lessee covenants for the benefit of the Lessor and the holders of Lessor's outstanding Hotel and Restaurant Gross Receipts Tax Bonds that in operating the Project it will comply with all requirements of the Internal Revenue Code of 1986, as amended, which are required for interest on the Bonds to be excludable from gross income for federal income taxation purposes.

Section 506. Lessee covenants all its records, reports, accounts, writing, and operations are and shall be covered by the Freedom of Information Act as set out in Arkansas Code Annotated Section 25-19-101, and shall be open for inspection and copying at all times as set forth in that Act. Any further subleases or management agreements between Lessee and Lessor or between Lessee and third parties shall contain this clause.

Section 507. Lessee covenants it will make annual reports to Lessor and its sitting City Council on each anniversary date of this agreement. This report will include documentation on how and whether the Town Center has been managed to accomplish the following goals: (1) generate increased tourism for Fayetteville; (2) remain financially viable with all debts and obligations paid timely; (3) serve the Fayetteville community by its use for local non-profit groups and other community events such as dances, dinners, receptions, and other meetings. If the City Council determines the Lessee has failed to properly accomplish one of the three stated goals, Lessee shall be given written notice of such failure and a special review to determine if corrective action taken by the Lessee has resolved any failure will be conducted after six months. If the City Council then

determines the problem has been resolved to its satisfaction, the report process will continue as stated above. If the City Council determines the failure has not been satisfactorily resolved, the City Council can allow additional time to Lessee to resolve the problem, or City Council may declare Lessee to be in default and Lessor may re-enter and take possession of the Leased as provided in Section 1002.

Section 508. At the request of either Lessor or Lessee, but no more frequent than once a year, a meeting may be called for the purpose of proposing amendments to this agreement. Lessor and Lessee agree to be present at said meeting and to negotiate in good faith over any proposed amendments.

ARTICLE VI

LESSOR MAY PERFORM LESSEE'S OBLIGATIONS

Section 601. If Lessee shall fail to keep or perform any of its obligations as provided in this Lease Agreement in respect of (a) maintenance of insurance; (b) repairs and maintenance of the Leased Premises; (c) compliance with legal or insurance requirements; and (d) making of any other payment or performance of any other obligations, then Lessor may (but shall not be obligated to do so), upon the continuance of such failure on Lessee's part for thirty (30) days after written notice to Lessee, and without waiving or releasing Lessee from any obligation, and as an additional but not exclusive remedy, make any such payment or perform any such obligation (not under circumstances where such payment or performance would defeat any rights, herein specifically given to Lessee, to withhold such performance or to contest such obligation to the extent herein provided), and all sums so paid by Lessor and all necessary incidental costs and expenses

incurred by Lessor in making such payment or performing such obligation shall be deemed Additional Rent and shall be paid to Lessor on demand.

ARTICLE VII

INSPECTION OF LEASED PREMISES BY LESSOR AND TRUSTEE

Section 701. Lessee shall permit Lessor and the Trustee or either of them, by their respective authorized representatives, to enter the Leased Premises at all reasonable times during usual business hours for the purpose of inspection, and for the performance of any work therein made necessary by reason of Lessee's default under any of the provisions of this Lease Agreement.

ARTICLE VIII

DAMAGE AND DESTRUCTION

Section 801. A. Lessee covenants and agrees that in the event of damage to or destruction of the Leased Premises, or any part thereof, by fire or other casualty, the Lessee shall immediately notify the Lessor and the Trustee.

If the Leased Premises sustain "major damage or destruction," (as hereafter defined) either party may terminate this Lease Agreement by written notice to the other party and the Trustee given within 45 days after casualty and Rents shall be paid to the date of the casualty.

If the damage does not constitute major damage or destruction, Lessee shall proceed to restore, repair, rebuild or replace the Leased Premises as nearly as possible to the condition they were in immediately prior to such damage or destruction.

B. The term "major damage or destruction" as used in this Section is defined to mean any damage or injury to or destruction of the Leased Premises or any part thereof (whether or not resulting from an insured peril) such that the Leased Premises cannot reasonably be restored to its condition immediately preceding such damage, injury or destruction within a period of ninety (90) working days, or which would prevent Lessee from carrying on its operations therein for a period of ninety (90) working days or the restoration cost of which would exceed the total amount of insurance carried on the Leased Premises in accordance with the provisions of Article III hereof.

C. All insurance money paid on account of such damage or destruction shall be paid to the Lessor and applied only to the payment of the cost of the restoration, repairs, replacements or rebuilding, including expenditures made for temporary repairs or for the protection of property pending the completion of permanent restoration, repairs, replacements, or rebuilding or to prevent interference with the business operated thereon (sometimes referred to as the "restoration").

ARTICLE IX

ASSIGNMENT

Section 901. A. Lessee may not assign this Lease Agreement or sublet the Leased premises or part thereof for a period longer than 60 days without the prior written consent of Lessor. No such assignment or subletting and no dealings or transactions

between the Lessor and any sublessee or assignee shall relieve the Lessee of any of its obligations under this Lease Agreement and Lessee shall remain as fully bound as though no assignment or subletting had been made, and performance by any assignee or sublessee shall be considered as performance pro tanto by Lessee.

ARTICLE X

DEFAULT PROVISIONS

Section 1001. The following shall be "events of default" under this Lease Agreement and the terms "event of default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(a) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, (i) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee by the Lessor unless the Lessor shall agree in writing to an extension of such time prior to its expiration or (ii) for such longer period as may be reasonably necessary to remedy such default provided that the Lessee is proceeding with reasonable diligence to remedy the same.

Section 1002. Whenever any event of default shall happen and then be continuing, the Lessor may take any of the following remedial steps:

(a) The Lessor may re-enter and take possession of the Leased Premises without terminating this Lease Agreement, and sublease the Leased Premises for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by the Lessee hereunder.

(b) The Lessor may terminate the term, exclude the Lessee from possession of the Leased Premises and use its best efforts to lease the Leased Premises to another for the account of the Lessee, holding the Lessee liable for all rent and other payments due up to the effective date of any such leasing.

(c) The Lessor shall have access to and inspect, examine and make copies of the books and records relating to the Leased Premises.

(d) The Lessor may take whatever action at law or in equity may appear necessary or desirable to collect the rent and any other amounts payable by Lessee hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease Agreement.

Section 1003. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement as now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time as often as may be deemed expedient.

Section 1004. The foregoing provisions of this Article relating to the receipt of moneys by Lessor as the result of an acceleration, upon a reletting or otherwise are each to be construed as providing that all such payments by Lessee or others shall be handled as provided in this Lease Agreement and in the Indenture.

ARTICLE XI

NOTICES

Section 1101. All notices, demands and requests which may or are required to be given by either party to the other or to the Trustee shall be in writing, and each shall be deemed to have been properly given when served personally on an executive officer of the party to whom such notice is to be given, or when sent postage prepaid by certified mail by deposit thereof in a duly constituted United States Post Office or branch thereof located in one of the present states of the United States of America in a sealed envelope

addressed as follows:

If intended for Lessee:

Chairman
Advertising and Promotion Commission
City of Fayetteville, Arkansas
113 W. Mountain
Fayetteville, AR 72701

If intended for Lessor:

Mayor
City Administration Building
113 W. Mountain
Fayetteville, AR 72701

If intended for Trustee:

Bank of Oklahoma, N.A.
Corporate Trust
P.O. Box 880
Tulsa, OK 74101-0880

Any party or the Trustee may change the address and the name of addressee to which subsequent notices are to be sent by notice to the other parties given as aforesaid.

ARTICLE XII

GENERAL

Section 1201. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Arkansas.

Section 1202. If any provision of this Lease Agreement or the application thereof to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Lease Agreement and the application of its provisions to persons or circumstances other than those as to which it has been determined to be

invalid or unenforceable, shall not be affected thereby, and each provision of this Lease Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

Section 1203. The provisions of this Lease Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, assigns and sublessee.

Section 1204. The within Lease Agreement constitutes the entire Agreement between these parties relating to the Leased Premises described herein, and recites the entire consideration given and accepted, paid and to be paid, by the parties, and no representations not expressed herein have been made by either party or their agents, and no representative of either party shall have any authority to bind the party allegedly represented concerning any modifications, additions, amendments or changes in this Agreement in view of the fact that the parties now agree that all amendments shall be in writing as amendments to this document and duly executed by the authorized representatives of both parties in order to have any effectiveness.

Section 1205. Nothing in this Lease Agreement shall be construed to waive the sovereign immunity of the State of Arkansas or any entity thereof and nothing herein shall be construed to waive the statutory tort immunity of Lessor.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed in several counterparts, each of which may be considered an original without the presentation of the others, by their duly authorized officials and officers as of the day and year first hereinabove written.

CITY OF FAYETTEVILLE, ARKANSAS
LESSOR

Mayor

ATTEST:

City Clerk

ADVERTISING & PROMOTION
COMMISSION OF THE CITY OF
FAYETTEVILLE, ARKANSAS, LESSEE

Chairman

ATTEST:

(Title)

(SEAL)