

ORDINANCE NO. 2024-03

BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF FULTON COUNTY, STATE OF ARKANSAS; AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE APPROVING THE ASSIGNMENT AND LEASE AGREEMENT OF FULTON COUNTY HOSPITAL TO BAXTER HEALTH FULTON COUNTY HOSPITAL; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the Board of Governors of Fulton County Hospital ("Board of Governors") has constructed, maintained, expanded and operated a hospital facility in Salem, Arkansas currently known as Fulton County Hospital ("Hospital") for many years; and

WHEREAS, the Board of Governors has determined that it is in the best interest of the Citizens of Fulton County that the Hospital be leased to a community-based nonprofit organization; and

WHEREAS, following publication of required notice, a public hearing was conducted before the Fulton County Judge and Fulton County Quorum Court and it appears clearly to be in the interest of the County that the County enter into the proposed lease agreement;

WHEREAS, the Quorum Court has determined that certain significant benefits will accrue to the Citizens of Fulton County from such a lease arrangement; and

WHEREAS, an Assignment and Lease Agreement ("Lease") between Baxter Health Fulton County Hospital ("Baxter Health"), an Arkansas nonprofit corporation, and Fulton County has been proposed whereby Baxter Health would lease the hospital facilities and grounds and assume responsibility for Hospital as a going concern; and

WHEREAS, the Quorum Court has determined that such Lease would provide for an orderly transition of control of the Hospital; assure continued local control of the Hospital; increase financing and operating options open to the hospital; allow expansion of health related activities other than inpatient care; and result in other benefits not mentioned herein to the Citizens of Fulton County.

FILED

Office of the
Circuit Clerk

FEB 20 2024

Fulton County
Arkansas

NOW, THEREFORE, BE IT ENACTED by the Quorum Court of Fulton County, Arkansas:

Article 1. The Lease for the Hospital between Fulton County, as Lessor and Baxter Health Fulton County Hospital as Lessee, attached hereto as Exhibit A, is hereby approved and the County Judge is authorized and directed to execute and the County Clerk authorized to attest the execution of said Lease.

Article 2. The County Judge and the County Clerk, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Lease and the performance of any obligations of the County thereunder. The County Judge and County Clerk are authorized and directed, for and on behalf of the County, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or purposes or to evidence the exercise thereof.

Article 3. Baxter Health shall have no authority to assign the Lease without the prior written approval and consent of the County.

Article 4. The term of the Lease shall begin on January 1, 2025.

Article 5. All ordinances and resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Article 6. The provisions of this Ordinance are hereby declared to be severable. In the event any section, provision or part hereof shall be held to be invalid, such invalidity shall not affect the remainder of the Ordinance.

Article 7. It is found and determined by the Quorum Court of Fulton County that there is a need of the citizens of Fulton County to receive continued public health, safety and welfare; and that this Ordinance is immediately necessary because there is a need to ensure continued operation of a hospital in Fulton County. Therefore, an emergency is declared to exist, and that this Ordinance being immediately necessary for the preservation and continuation of a hospital shall become effective on the date of its approval by the Quorum Court as noted below.

APPROVED: February 20, 2024.



County Judge

ATTEST:

Vickie Bishop
County Clerk



CERTIFICATE

The undersigned, County Clerk of Fulton County, Arkansas, hereby certifies that the foregoing pages are true and correct copy of Ordinance No. 2024-03, adopted a regular session of the Quorum Court of Fulton County, Arkansas, held at the regular meeting place of the Quorum Court at 6 pm, on the 20 day of February, 2024, and that said Ordinance is of record in Ordinance Record Book No. 2024-03, Page , now in my possession.

GIVEN under my hand and seal this 20th day of February, 2024.

Vickie Bishop
County Clerk

(SEAL)



**ASSIGNMENT AND LEASE
AGREEMENT**

FULTON COUNTY, ARKANSAS

AND

BAXTER HEALTH FULTON COUNTY HOSPITAL

ASSIGNMENT AND LEASE AGREEMENT

THIS ASSIGNMENT AND LEASE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2024 ("Effective Date"), by and between Fulton County, Arkansas ("Lessor") and Baxter Health Fulton County Hospital ("Lessee").

RECITALS

WHEREAS, Lessor owns, and heretofore has operated through its Board of Governors, a hospital facility known as Fulton County Hospital ("Hospital");

WHEREAS, Lessee has operated Hospital on behalf of Lessor pursuant to an Interim Management Agreement entered into on or about August 15, 2023; and

WHEREAS, Lessee is a community-based nonprofit hospital entity which desires to lease the Hospital and operate it as a private nonprofit concern; and

WHEREAS, both Lessor and Lessee desire to assure continued medical services in the community; and

WHEREAS, Lessor has determined, after management of the Hospital and consultation with the Board of Governors of the Hospital, that certain significant benefits will accrue to the citizens of Fulton County if this Agreement is executed; and

WHEREAS, both Lessor and Lessee desire that the operations of the Hospital be transferred as a going concern, subject to the terms of this Agreement, and that such transfer take place with minimum disruption; and

WHEREAS, both Lessor and Lessee desire to enter into this Agreement for the purpose of providing for and promoting the delivery of quality health care services to the citizens of Fulton County;

NOW, THEREFORE, in consideration of the terms, conditions and provisions hereinafter set forth, the parties mutually agree as follows:

1. Leased Premises and Term. Lessor, for and in consideration of the rents, covenants and agreements hereinafter contained, does by these presents, demise, lease and rent to the Lessee certain property situated in Fulton County, Arkansas, described on **Exhibit A** hereto, for a term of twenty-five (25) years beginning on _____, 2024.

2. Consideration. The Lessee, for and in consideration of the use and possession of said premises for said period, does hereby agree to pay unto the Lessor rent in the amount of Twenty-Five and no/00 Dollars (\$25.00) per year, payable to Lessor on or before the first day of July of each year of this Agreement and any renewal hereof.

The amount of the annual rents herein required to be paid by Lessee, having been approved by the Quorum Court of Fulton County, Arkansas, by its Ordinance Number _____, approved on the _____ day of _____, 2024, together with the commitment of Lessee, hereby made, to maintain and operate a hospital on and in the premises above-described, thereby obviating the necessity that Fulton County and its Board of Governors provide personnel and funds, other than those collected from the sales taxes authorized by Ordinance Number 2004-1, Emergency Ordinance Number 2005-9, constitute consideration for this Agreement.

3. Payment of Dividend. It is understood and agreed that Lessee is a non-profit corporation, organized and existing pursuant to the Arkansas NonProfit Corporation Act, that has obtained, or is obtaining, tax-exempt status from the Internal Revenue Service pursuant to Section 501(c)(3), and that no gain or profit which may accrue to it shall ever be paid or distributed by it as a dividend or distribution of earnings to any person, firm or corporation, but the same, if any there be, shall at all times be devoted to Lessee's corporate purposes according to its governing documents and to the obligation hereby assumed by Lessee.

4. Use. Lessee agrees to use the leased premises for the purpose of carrying on therein and thereon the business of running a critical access hospital, or for any other purpose incidental or related to the provision of health care to the citizens of Fulton County.

5. Maintenance. Lessee agrees to maintain the leased premises including the grounds, furnishings and equipment in suitable condition, to the extent that Lessee shall deem advisable, taking into consideration the extent of deterioration through use, said maintenance, however, being left to the judgment of the Lessee, and the amount of expenditures from time to time therefor shall be determined in accordance with the income of, and volume of business done in, the hospital. Subject to obtaining any necessary regulatory approvals, Lessee agrees to maintain and provide all equipment, furnishings, supplies and other personal property required for the proper operation, maintenance and repair of the hospital in an economical and efficient manner, consistent with generally acceptable medical facilities comparable to the hospital. Lessee agrees that the equipment and supplies furnished by it shall conform to the standards approved by the appropriate state licensing authorities, and Lessee will strive, to the extent in this clause provided, to so maintain and replace such equipment and supplies that the same shall at all times be approved by the aforesaid licensing authorities. Any personal property obtained pursuant to this Lease shall remain the property of Lessee while any maintenance to the physical plant shall be for the benefit of Lessor.

6. Operating Costs. Lessee agrees to hold the Lessor harmless against any and all deficits arising out of the operation of the hospital after _____, 2024, and it assumes and agrees to pay all operating expenses. Nothing in this Agreement shall be construed to authorize Lessee to obligate Lessor to any third party nor to authorize Lessee to pledge the full faith and credit of Lessor without specific, written approval of Lessor.

7. Insurance Coverage. Lessee agrees to secure and maintain at all times during the term of this Agreement adequate fire and extended coverage insurance upon the leased premises and the contents thereof from one or more reputable insurance companies authorized to transact business in the State of Arkansas. In the event of an insured loss of the leased premises and/or any of the personalty therein supplied by Lessor, the proceeds payable therefor by the insurers shall, to the extent thereof, be used to restore and replace said loss or losses, but in no event shall either Lessor or Lessee be required to contribute any sums toward said replacement or restoration. The policy or policies issued from time to time to protect the building and property of Lessor shall contain loss payable clauses to Lessor and Lessee, and Lessor binds itself that the proceeds thereof shall be applied to the restoration of any losses; provided, should Lessee reasonably conclude that the proceeds of said policies should be insufficient to reasonably restore any insured loss and that, by reason thereof, said building or buildings and equipment may no longer be suitable to the operation of a hospital, then at the option of Lessee, the proceeds of said insurance shall be delivered to Lessor and this Agreement shall terminate.

8. Additional Buildings and Equipment. It is agreed that should the Lessor desire to erect and furnish on the leased premises additional facilities for any purpose, then such structure and equipment will be delivered to Lessee to be used, managed, maintained and operated by Lessee in accordance with the terms and provisions of this Agreement. Prior to erecting and furnishing any additional facilities, Lessor will consult and advise with Lessee. Lessee is given a full right and privilege to make alterations and renovations in any structures erected by Lessor suitable to or desirable by it in the maintenance and operation of the hospital and to make additions to any structures erected by Lessor.

Lessor hereby authorizes Lessee to erect and furnish additional facilities on the leased premises for any purpose so long as all such structures generally conform to the architecture of the existing structure. Any such structures and equipment shall be used, managed, maintained and operated by Lessee in accordance with the terms and provisions of this Agreement.

9. Title to Property. All additional structures constructed on the Premises shall become the property of Lessor upon the expiration or sooner termination of this Agreement. Any personal property purchased by Lessee pursuant to this Lease shall remain the property of Lessee. All licenses, permits, billing and/or provider numbers and agreements, medical records and such other property necessary or related to the operation of the Hospital are leased pursuant to this Agreement and shall revert to the property of Lessor upon the expiration or sooner termination of this Agreement; however, Lessee will continue to have access to the medical records and billing records for purposes of defending audits, litigation, or responding to patient requests. Any personal property owned by Lessor at the execution of this Agreement shall remain the property of Lessor but may be utilized by Lessee until such personal property reaches obsolescence. A list of items owned by Lessor will be compiled within sixty (60) days of execution of this Agreement and attached to this Agreement as **Schedule A**. The

parties agree that any personal property utilized for use within the Hospital that is not included on such list is the personal property of Lessee.

10. Management of the Hospital. Except as provided to the contrary herein, Lessee shall have full and complete charge of the administration, management and operation of the hospital, and shall have the exclusive right to determine and make all fiscal, technical and professional policies relating thereto, including the assignment of rooms to patients. Should any gains be derived through the operation of said hospital, the same shall inure to and be the property of Lessee subject to **Paragraph 9** herein.

The amount of free patient work performed by the hospital shall be left to the discretion of the Lessee; but Lessee will use its best efforts to maintain at least historical levels of free treatment and hospitalization subject to the determination of the Lessee in its sole judgment, that such levels are practicable in the light of funds which may be available. Should Arkansas or the Federal government fully require universal coverage be adopted, the foregoing requirements concerning free care shall automatically terminate.

Lessee shall have the full and exclusive charge of the employment and dismissal of personnel, including, but not limited to, administrator, managers and nurses, and shall fix the duties and prescribe the working conditions of each.

Lessee agrees that the hospital, to the extent of its available facilities and personnel, shall be open at all times to patients without discrimination because of race, creed, color, sex, national origin or disability.

Lessee shall have the full power and exclusive authority to determine the type of cases which shall be admitted to and treated in the hospital.

Lessee shall have the full power and exclusive authority to prescribe the qualifications for membership on and the composition of the medical staff of the hospital; it being contemplated, however, that Lessee shall require high standards and will operate said hospital in a manner and upon such basis as to create and maintain an efficient and qualified hospital organization.

11. Subordination. Lessor hereby subordinates its interest in the leased property and this Agreement to the lien of any encumbrance which Lessee might cause to be imposed on said property for the purpose of financing improvements to the leased premises.

12. Assignment of this Lease. This Agreement shall not be assigned by Lessee without the written approval and consent of the Lessor. In the event assignment is made, the assignee shall have the rights and privileges, and shall be subject to the obligations of the Lessee as set forth in this Agreement.

13. Termination by Lessee. This Agreement may be terminated by the Lessee prior to its expiration date for any of the following reasons:

- (a) for Lessor's failure to comply substantially with its obligations under the terms of this Agreement. Should this above condition occur, Lessee shall give Lessor notice in writing to correct any such condition, and should Lessor fail to do so within six (6) months from the date of said notice, this Agreement shall be terminated.
- (b) should at any time the citizens of Fulton County vote to eliminate or reduce the sale tax utilized for the operation of the Hospital as set forth in Ordinance Number 2004-1 and Emergency Ordinance Number 2005-9, Lessee may terminate this Agreement within sixty (60) days of such vote.
- (c) the exclusion, revocation, debarment or suspension of Hospital's provider number in any governmental sponsored program including, without limitation, Medicare or Medicaid, due to actions prior to the Effective Date of this Agreement, this Agreement may be terminated within sixty (60) days of such notice.
- (d) if the whole or any part of the Premises shall be taken or condemned by eminent domain, condemnation, compulsory acquisition or similar proceedings by any competent governmental authority for any public or quasi-public use or purpose, or if such a portion thereof shall be taken or condemned as to make it imprudent or unreasonable, in Lessee's opinion, to operate such Hospital in the remaining portion of the type and class existing immediately prior to such taking or condemnation, this Agreement may be terminated within sixty (60) days of such action.
- (e) if a demand or judgment, which with other outstanding judgments against Hospital exceeds an aggregate of \$250,000.00 shall be rendered against Hospital for actions occurring prior to the Effective Date, and either (i) enforcement proceedings shall have been commenced, or (ii) judgment has been entered, this Agreement may be terminated within sixty (60) days of such action.
- (f) if in Lessee's sole judgment that continued operation of the Hospital is not financially feasible.
- (g) if Hospital should lose its critical access hospital designation.

14. Termination by Lessor. This Agreement may be terminated by the Lessor prior to its expiration date for any of the following reasons:

- (a) Gross mismanagement or misconduct of the hospital by Lessee as evidenced solely by written correspondence from a State or Federal Agency placing hospital's license in jeopardy; or
- (b) Insolvency of Lessee.

Should either of the conditions above occur, Lessor shall give Lessee notice in writing to correct any such condition or conditions, and should Lessee fail to do so within six (6) months from the date of said notice, this Agreement shall be terminated.

15. Effect of Termination and Expiration of the Term. (a) Upon termination or expiration of this Agreement as provided herein, Lessee's right, title and interest in and to the Premises shall terminate and shall revert to Lessor. Lessee shall peaceably quit, deliver up and surrender the Premises to Lessor free of all claims and liens other than liens consented to in writing by Lessor. Lessee shall use commercially reasonable efforts to assist Lessor in transferring any and all licenses, permits and other authorizations required by any federal, state or local governmental authority with respect to Lessor's operation of the Premises and the Hospital after termination hereof or the expiration of the Term. It is Lessor's obligation, and only Lessor's obligation, to obtain any new licenses, permits or other authorizations necessary to operate the Hospital.

(b) Lessee shall, not less than ninety (90) days prior to the termination hereof or expiration of the Term, provide to Lessor a detailed list of all items personal property within the Premises (the "Personal Property"). Within thirty (30) days thereafter, Lessor shall identify in writing the Personal Property a fair market value appraisal of which shall be obtained, and Lessor and Lessee shall cooperate in good faith to obtain such appraisal. Upon receipt of the appraisal, Lessor shall, within twenty (20) days thereof, notify Lessee of the Personal Property Lessor will purchase from Lessee at the appraised fair market value. Further, Lessee shall provide a fair market appraisal of the depreciated value of any improvements to the real property performed by Lessee as of the date of termination of the Agreement. Lessor agrees that should a third party assume operation or lease the Premises and/or Hospital, that such third party shall pay to Lessee the amount identified in the fair market appraisal. Any items purchased to replace items listed on **Schedule A**, shall be transferred to Lessor pursuant **Paragraph 9** above.

(c) Lessee shall, not less than ninety (90) days prior to the termination hereof or the expiration of the Term, deliver to Lessor with a description of those contracts, leases, agreements, instruments and other obligations (collectively, the "Contracts") of Lessee relating to, or entered into by Lessee in connection with its use of the Premises and operation of the Hospital. Within thirty (30) days thereafter, Lessor shall accept assignment of all Contracts related to the operation of the Hospital that are assignable and become obligated as of the termination hereof or expiration of the Term. Effective as of the date of termination hereof or the expiration of the Term, Lessor shall assume and discharge when due all of Lessee's rights, duties, liabilities and obligations which accrue from and after the termination or expiration hereof under such Contracts.

(d) Lessee will own all accounts receivable which result from the operation of the Hospital through, but not including the date of termination or expiration hereof including any reimbursement arising from any costs reports for such time period and settlements with third party payors resulting from the operation of the Hospital for such period. Lessor will own all accounts receivable from and after the date of termination or

expiration hereof including any reimbursement arising from any costs reports for such time period and settlements with third party payors resulting from the operation of the Hospital for such period. The parties agree and covenant to cooperate in good faith with each other with respect to their respective accounts receivable, reimbursement and settlement and to use its commercially reasonable efforts to make any and all required filings and submissions related thereto.

16. Assumption and Assignment of Personal Property. Subject to any necessary approvals from third parties, Lessor transfers, assigns and conveys to Lessee its Medicare provider number, personal property and mixed property of any or every kind that is used in the operation of the Hospital, except as set forth in **Schedule A**. The parties agree that Lessor will relinquish all ownership interest it should claim in such personal property not set forth in **Schedule A**.

17. Potential Purchase of Hospital. If the Parties determine that it is in the best interest of the community for Lessee to purchase the real property associated with this Lease, and such purchase is approved by the voters of Fulton County, Arkansas, the Parties will seek a real estate appraisal by a mutually agreed upon third party. The purchase price of the Hospital shall be the value of the real estate appraisal minus any deficit suffered by the Lessee in the operation of the Hospital. Such purchase is subject to final approval by the voters of Fulton County, Arkansas.

18. Reports. Lessee shall supply Lessor with a copy of the IRS Form 990 filed annually with respect to operation of Hospital.

19. Option to Renew. This Agreement shall automatically renew upon the same terms and conditions as are herein set forth for two (2) successive terms of twenty-five (25) years each, unless at least sixty (60) days before the expiration of any lease term Lessee gives to Lessor written notice of its intent to terminate this Agreement.

20. Assumption and Assignment. Subject to any necessary approvals from third parties, Lessor transfers, assigns and conveys to Lessee its personal property and mixed property of any or every kind that is used in the operation of the hospital, and Lessee assumes all contractual liabilities, both tangible and intangible, of Lessor with respect to its operation of the hospital. A summary of such personal property shall be prepared by both parties. The parties agree that Lessor will relinquish all ownership interest it should claim in such personal property during this Lease.

21. Subletting or Subcontracting. Lessee shall have the right and power to sublet or subcontract up to twenty-five percent (25%) of the leased premises so long as Lessee, in its sole discretion, determines that such subletting or subcontracting is necessary and appropriate to bring a new service to the hospital that would be beneficial to the operations of the hospital and otherwise in compliance with applicable laws. Subletting or subcontracting in excess of such percentage may only be done with the express approval of Lessor. For computation purposes, the above subletting or subcontracting percentages shall not include space sublet or subcontracted to physicians or other healthcare practitioners or their professional corporations for the purpose of

providing patient services nor shall it include space sublet or subcontracted to parent or subsidiary organizations of Lessee. Subletting or subcontracting shall not relieve Lessee of any of its obligations under this Agreement.

22. Relocation of Hospital. Lessee agrees not to relocate the hospital without the express written approval of Lessor.

23. Taxes. Lessee agrees to pay, before they become delinquent, all taxes (both general and special), assessments or governmental changes (hereinafter collectively referred to as "taxes") lawfully levied or assessed against the premises or any part thereof; provided, however, Lessee may, at its sole cost and expense (in its own name or in the name of Lessor or both), dispute and contest the same, and in such case, such disputed item need not be paid until finally adjudged to be valid. At the conclusion of such contest, Lessee shall pay the items contested to the extent that they are held valid, together with all items, court costs, interest and penalties relating thereto.

24. Indemnification. Lessee agrees to indemnify and hold Lessor harmless from against any and all claims and/or suits arising out of Lessee's operation of the Hospital.

25. Amendment of Agreement. This Agreement may be amended only by written agreement of Lessor and Lessee.

26. Interpretation. This Agreement shall be interpreted according to the laws of the State of Arkansas.

27. Notices. All notices required to be sent hereunder shall be deemed sufficient if in writing and if personally delivered or if mailed by United States mail, postage prepaid, to:

Lessor: Fulton County Judge
 123 South Main Street
 Salem, AR 72576

Lessee: Attn: Administrator
 Baxter Health Fulton County Hospital
 624 Hospital Drive
 Mountain Home, Arkansas 72653

28. Entire Agreement. This agreement constitutes the entire understanding of the parties hereto and is intended as a final expression of their agreement and a complete statement of the terms thereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and the seals on the date first above written.

FULTON COUNTY, ARKANSAS

BY: _____
County Judge

ATTEST:

County Clerk

FULTON COUNTY HOSPITAL, INC.

BY: _____
ADMINISTRATOR

ATTEST:

Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF FULTON)

On this ____ day of _____, 2024, before me, _____,
a Notary Public, duly commissioned, qualified and acting, within and for said County
and State, appeared in person the within named _____ and
_____, to me personally well known, who stated that they
were the _____ and _____ of Baxter Health Fulton County
Hospital, an Arkansas nonprofit corporation and 501(c)(3) tax exempt entity, and were
duly authorized in their respective capacities to execute the foregoing instrument for
and in the name and behalf of said corporation, and further stated and acknowledged

that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal
this _____ day of _____, 2024.

Notary Public

My Commission Expires:

(SEAL)

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF FULTON)

On this ____ day of _____, 2024, before me, _____,
a Notary Public, duly commissioned, qualified and acting, within and for said County
and State, appeared in person the within named _____ and
_____, to me personally well known, who stated that they
were the County Judge and County Clerk of Fulton County, Arkansas, and were duly
authorized in their respective capacities to execute the foregoing instrument for and in
the name and behalf of said corporation, and further stated and acknowledged that they
had so signed, executed and delivered said foregoing instrument for the consideration,
uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal
this ____ day of _____, 2024.

Notary Public

My Commission Expires:

(SEAL)