

LEASE AGREEMENT

Between

**WINCHESTER MUNICIPAL FACILITIES BUILDING CORPORATION
LESSOR**

and

**CITY OF WINCHESTER, INDIANA
LESSEE**

Executed this ____ day of _____, 2017

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter called "Lease") entered into this ____ day of _____, 2017, between Winchester Municipal Facilities Building Corporation, an Indiana corporation (hereinafter called "Lessor"), and the City of Winchester, Indiana, a municipal corporation, existing under the laws of the State of Indiana and located in Randolph County, Indiana (hereinafter called "Lessee"), WITNESSETH THAT:

1. Premises, Term and Warranty. The Lessor does hereby lease, demise and let to Lessee the real estate in Randolph County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof, and the building to be acquired, renovated and equipped thereon by Lessor according to plans and specifications prepared by the Lessor's consultants (hereinafter called the "Leased Premises").

The above mentioned plans and specifications may be changed, additional renovation work may be performed and equipment may be acquired by Lessor, but only with the approval of Lessee, and only if such changes or modifications or additional renovation work or equipment do not alter the character of the building or reduce the value thereof. Any such additional renovation work or equipment shall be part of the property covered by this Lease. The above mentioned plans and specifications have been filed with and approved by Lessee.

TO HAVE AND TO HOLD the Leased Premises with all rights privileges, easements and appurtenances thereunto belonging, unto Lessee, for (i) a term of ~~six (6) years~~ six (8) years during the BAN Term (as hereinafter defined) and (ii) a term of twenty (20) years during the Bond Term (as hereinafter defined). The "BAN Term" is that period of time beginning on the date on which the Lessor acquires fee simple title to real estate from proceeds of its bond anticipation notes issued for such purpose (the "BANs") and ending on the day prior to such date ~~six (6) years~~ six (8) years thereafter. The "Bond Term" is that period of time beginning on the date on which the

bonds issued to refinance the BANs (the "Bonds") are issued and ending on the day prior to such date twenty (20) years thereafter. However, the term of this Lease, whether the BAN Term or Bond Term, will terminate at the earlier of (a) the exercise by the Lessee of the option to purchase the Leased Premises and the payment of the option price, or (b) the payment or defeasance of the BANs and all first mortgage bonds issued (i) to finance or refinance the cost of the Leased Premises, (ii) to refund such first mortgage bonds, (iii) to refund such first mortgage refunding bonds, or (iv) to improve the Leased Premises.

The date the Lessor acquires fee simple title to the real estate described in Exhibit A shall be endorsed on this Lease at the end hereof by parties hereto as soon as the same can be done after such acquisition, and such endorsement shall be recorded as an addendum to this Lease. The Lessor hereby represents that it is possessed of, or will acquire, a good and indefeasible estate in fee simple to the above described real estate, and Lessor warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of Lessee or its assigns. The date the building is completed and ready for occupancy shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after such completion, and such endorsement shall be recorded as an addendum to this Lease.

2. Rental Payments During BAN Term and Bond Term. During the BAN Term of the Lease, the Lessee agrees to pay rental for said Leased Premises at the rate of [\$25,000] per year. During the Bond Term of the Lease, the Lessee agrees to pay rental for said Leased Premises at the rate of [\$100,000] per year. The first rental installment for the BAN Term shall be due on the day that the building to be renovated and equipped is completed and ready for occupancy or January 15, 2018, whichever is later. If the completion date is later than January 15, 2018, the first rental payment shall be in an amount calculated at the annual rate from the

date of payment to the next January 15 or July 15. Thereafter, rental during the BAN Term shall be payable in advance in semiannual installments of [\$12,500] on January 15 and July 15 of each year. The first rental installment for the Bond Term shall be the first January 15 or July 15 occurring prior to the first interest payment date on the Bonds. Thereafter, rental during the Bond Term shall be payable in advance in semiannual installments of [\$50,000] on January 15 and July 15 of each year. The last semiannual rental payment due before the expiration of the BAN Term and the Bond Term of this Lease shall be adjusted to provide for rental at the annual rate specified above from the date such installment is due to the date of the expiration of such BAN Term or Bond Term of this Lease, as the case may be.

The Lessor and Lessee understand and agree that the obligation of the Lessee to pay the rental payments under this Lease shall constitute a current expense of the Lessee payable from its debt service fund or any other funds that are legally available for that purpose and shall not in any way be construed to be a debt of the Lessee in contravention of any applicable constitutional or statutory limitation.

All rentals payable under the terms of this Lease shall be paid by the Lessee (i) during the BAN Term to the Lessor or to such other entity as it may designate by assignment to receive such payments to effectuate payment of interest expense on the BANs and (ii) during the Bond Term by to the bank selected as Trustee (hereinafter called "Trustee") under the Trust Indenture between it and the Lessor (hereinafter called "Indenture") or to such other bank or trust company as may from time to time succeed such bank as Trustee under the Indenture securing the first Bonds to be issued by the Lessor to refinance the BANs. All payments so made by the Lessee shall be considered as payment to the Lessor of the rentals payable hereunder. The bank selected as Trustee shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the

same can be done after selection, and such endorsement shall be recorded as an addendum to this Lease.

With respect to the Bond Term, after the sale of the Bonds, the annual rental provided for in the first paragraph of this Section 2 for the Bond Term shall be reduced to an amount equal to the multiple of \$1,000 next higher than the sum of principal and interest due on such Bonds in each twelve-month period ending on February 1 in order to pay the debt service when due, plus Five Thousand Dollars (\$5,000) payable in semiannual installments. Such amount of reduced annual rental shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after the sale of said Bonds and such endorsement shall be recorded as an addendum to this Lease.

3. Additional Rental Payments. The Lessee shall pay as further rental for said Leased Premises all taxes and assessments levied against or on account of the Leased Premises and/or the receipt of lease rental payments. Any and all such payments shall be made and satisfactory evidence of such payments in the form of receipts shall be furnished to the Lessor by the Lessee, at least three (3) days before the last day upon which the same must be paid to avoid delinquency. In case the Lessee shall in good faith desire to contest the validity of any such tax or assessment, and shall so notify the Lessor, and shall furnish bond with surety to the approval of the Lessor conditioned for the payment of the charges so desired to be contested and all damages or loss resulting to the Lessor from the nonpayment thereof when due, the Lessee shall not be obligated to pay the same until such contests shall have been determined. The Lessee shall pay as further rental the amount calculated by or for Lessor as the amount required to be rebated or paid as a penalty in lieu of rebate to the United States Treasury, after taking into account other available moneys, to prevent the Bonds issued to refinance the BANs from

becoming arbitrage obligations under Section 148 of the Internal Revenue Code of 1986, as amended.

4. Abatement of Rent. In the event the Leased Premises shall be partially or totally destroyed, whether by fire or any other casualty, or are taken under the exercise of the power of eminent domain, so as to render them unfit, in whole or part, for use or occupancy by the Lessee, it shall then be the obligation of the Lessor to restore and rebuild the Leased Premises as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessor excepted; provided, however, that the Lessor shall not be obligated to expend on such restoration or rebuilding more than the amount of the proceeds received by the Lessor from the insurance provided for in Section 6 hereof or the condemnation proceeds received by the Lessor, whichever is applicable.

If there is in force on the date of partial or total destruction or taking, insurance on the Leased Premises and the rental value thereof, in accordance with the provisions of Section 6 hereof, the rent shall be abated for the period during which the Leased Premises or any part thereof are unfit or unavailable for occupancy and shall be in proportion to the percentage of floor area which is unfit or unavailable for occupancy.

5. Maintenance, Alterations and Repairs. The Lessee assumes all responsibility for maintenance, repairs and alterations to the Leased Premises. At the end of the term, Lessee shall deliver the Leased Premises to Lessor in as good condition as at the beginning of the term, reasonable wear and tear only excepted. Equipment or other personal property which becomes worn out or obsolete may be discarded or sold by Lessee. The proceeds of the sale of any personal property shall be paid to the Trustee. Lessee may trade in any obsolete or worn out personal property or replacement property which replacement property will belong to Lessee

upon payment to the Trustee of an amount equal to the trade-in value of such property. Lessee need not replace worn out or obsolete personal property, but may replace such property at its own expense, and the replacement property shall belong to Lessee.

6. Insurance. Lessee, at its own expense, will, during the full BAN Term of the Lease and the full Bond Term of the Lease, keep the Leased Premises insured against physical loss or damage, however caused, with such exceptions as are ordinarily required by insurers of buildings or facilities of a similar type, with good and responsible insurance companies acceptable to Lessor. Such insurance shall be in an amount equal to the lesser of (i) one hundred percent (100%) of the full replacement cost of the Leased Premises; or (ii) one hundred percent (100%) of the redemption price of the outstanding bonds on the effective date of such insurance and on or before April 1 of each year thereafter as certified by the Lessor Representative (as defined in the Indenture). During the full BAN Term of this Lease and the full Bond Term of this Lease, Lessee will also, at its own expense, maintain rent or rental value insurance in amount equal to the full rental value of the Leased Premises for a period of two (2) years against physical loss or damage of the type insured against pursuant to the preceding requirements of this clause. During the full BAN Term of this Lease and the full Bond Term of this Lease, Lessee will also, at its own expense, carry combined bodily injury insurance, including accidental death, and property damage with reference to the Leased Premises in an amount not less than Three Million Dollars (\$3,000,000) on account of each occurrence with one or more good and responsible insurance companies. The public liability insurance required herein may be by blanket insurance policy or policies.

The proceeds of the public liability insurance required herein (after payment of expenses incurred in the collection of such proceeds) shall be applied toward extinguishment or

satisfaction of the liability with respect to which such insurance proceeds are paid. Such policies shall be for the benefit of persons having an insurable interest in the Leased Premises, and shall be made payable to the Lessor or to such other person or persons as the Lessor may designate. Such policies shall be countersigned by an agent of the insurer who is a resident of the State of Indiana, and such policies (or certificates of insurance for each policy) shall be deposited with the Lessor. If, at any time, the Lessee fails to maintain insurance in accordance with this Section, such insurance may be obtained by the Lessor and the amount paid therefor shall be added to the amount of rental payable by the Lessee under this Lease; provided, however, that the Lessor shall be under no obligation to obtain such insurance and any action or non-action of the Lessor in this regard shall not relieve the Lessee of any consequence of its default in failing to obtain such insurance, including its obligation to continue the rental payments in case of total or partial destruction of the buildings as provided in Section 4 hereof.

7. Eminent Domain. If title to or the temporary use of the Leased Premises, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any net proceeds received from any award made in such eminent domain proceedings (after payment of expenses incurred in such collection) shall be paid to and held by Lessor.

Such proceeds shall be applied in one or more of the following ways:

- (a) The restoration of the Leased Premises to substantially the same condition as it existed prior to the exercise of said power of eminent domain, or
- (b) The acquisition, by construction or otherwise, of other improvements suitable for the Lessee's operations on the Leased Premises and which are in furtherance of the purposes of Indiana Code, Title 36, Article 1, Chapter 10 (which

improvements shall be deemed a part of the Leased Premises and available for use and occupancy by the Lessee without the payment of any rent other than as herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby).

Within ninety (90) days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the Lessee shall direct Lessor in writing as to which of the ways specified in this Section the Lessee elects to have the net proceeds of the condemnation award applied. Any balance of the net proceeds of the award in such eminent domain proceedings not required to be applied for the purposes specified in subsections (a) or (b) above shall (i) during the BAN Term be applied to repayment of the BANs and (ii) during the Bond Term be deposited by Lessor in the Sinking Fund held by the Trustee under the Indenture.

Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof and will to the extent it may lawfully do so permit the Lessee to litigate in any such proceedings in its own name or in the name and on behalf of the Lessor. In no event will Lessor voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof without the written consent of the Lessee, which consent shall not be unreasonably withheld.

8. General Covenants. The Lessee shall not assign this Lease or sublet the Leased Premises herein described without the written consent of Lessor. Lessee shall use and maintain the Leased Premises in accordance with the laws and ordinances of the United States of America, the State of Indiana, and all other proper governmental authorities. Except as hereinafter provided in this Section 8, the Lessee covenants that in any contracts entered into by the Lessee

providing for the use of the Leased Premises, which involve the conduct of a separate trade or business, (a) the Leased Premises would be used only (i) by a Governmental Unit within the meaning of Section 141 of the Internal Revenue Code of 1986 (the "Code") or (ii) by non-Governmental Units on the same basis as other members of the general public or (b) would not in the aggregate result in payments to the Lessee in an amount in excess of 5% of the principal of and interest on the Bonds issued under the Indenture. Notwithstanding anything in this Section 8 to the contrary, the Lessor consents to and agrees to the sub-letting of the Leased Premises by Lessee to Volunteers of America of Indiana, Inc., a 501(c)(3) organization under the Code, during either or both of the BAN Term and the Bond Term for use of the Leased Premises as a social service facility to provide drug addiction treatment to inhabitants in and around the City of Winchester, Indiana.

9. Option to Renew. Lessor hereby grants to Lessee the right and option to renew this Lease for a further like or lesser term upon the same or like conditions as herein contained, and applicable to the portion of the premises for which the renewal applies, and Lessee shall exercise this option by written notice to Lessor given upon any rental payment date prior to the expiration of this Lease.

10. Option to Purchase. Lessor hereby grants to Lessee the right and option, on any rental payment date, upon sixty (60) days' written notice to Lessor, to purchase the Leased Premises at a price equal to the amount required to enable Lessor to liquidate by paying all indebtedness, including all premiums payable on the redemption thereof and accrued and unpaid interest, and by paying the expenses and charges of liquidation. In no event, however, shall such purchase price exceed the capital actually invested in such property by Lessor represented by outstanding securities or existing indebtedness plus the cost of transferring the property and

liquidating the Lessor. The phrase “capital actually invested” as used herein shall be construed to include, but not by way of limitation, the following amounts expended by the Lessor: organization and incorporation expenses, financing costs, carry charges, legal fees, architects’ fees and reasonable costs and expenses incidental thereto.

Upon request of the Lessee made not less than sixty (60) days prior thereto, the Lessor agrees to furnish an itemized statement setting forth the amount required to be paid by the Lessee on the next rental payment date in order to purchase the Leased Premises in accordance with the preceding paragraph. Upon the exercise of the option to purchase granted herein, Lessor will upon payment of the option price deliver, or cause to be delivered, to the Lessee documents conveying to the Lessee all of the Lessor's title to the property being purchased, as such property then exists, subject to the following: (i) those liens and encumbrances (if any) to which title to said property was subject when conveyed to Lessor; (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented, and liens for taxes or special assessments not then delinquent; and (iii) those liens and encumbrances on its part contained in this Lease.

In the event of purchase of the Leased Premises by the Lessee or conveyance of the same to the Lessee, the Lessee shall procure and pay for all surveys, title searches, abstracts, title policies and legal services that may be required, and shall furnish at the Lessee’s expense all documentary stamps or tax payments required for the transfer of title.

Nothing contained herein shall be construed to provide that Lessee shall be under any obligation to purchase the Leased Premises, or under any obligation in respect to the creditors, shareholders, or security holders of the Lessor.

11. Transfer to Lessee. In the event the Lessee has not exercised its option to renew in accordance with the provisions of Section 9 hereof, and has not exercised its option to purchase the Leased Premises in accordance with the provisions of Section 10 hereof, and upon the full discharge and performance by the Lessee of its obligations under this Lease, the Leased Premises shall thereupon become the absolute property of the Lessee and upon the Lessee's request, Lessor shall execute proper instruments conveying to the Lessee all of Lessor's title thereto.

12. Defaults. If the Lessee shall default (a) in the payment of any rentals or other sums payable to the Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor; or (b) in the observance of any other covenant, agreement or condition hereof, and such default shall continue for sixty (60) days after written notice to correct the same; then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy; or the Lessor, at its option, without further notice, may terminate the estate and interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to resume possession of the Leased Premises and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by the Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

13. Notices. Whenever either party shall be required to give notice to the other under this Lease, it shall be sufficient service of such notice to deposit the same in the United States mail, in an envelope duly stamped, registered and addressed to the other party or parties at the following addresses: (a) to Lessor: Winchester Municipal Facilities Building Corporation, Attention: President, _____, _____, Winchester, Indiana ; (b) to Lessee: City of Winchester, Attention: Clerk-Treasurer, 113 East Washington Street, Winchester, Indiana 47394; (c) to Trustee: at the address shown on the Addendum referred to in the first paragraph of Section 2 hereof.

Lessor and Lessee may by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

14. Successors or Assigns. All covenants of this Lease, whether by Lessor or Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

15. Construction of Covenants. Lessor was organized for the purpose of renovating and erecting buildings and leasing the same to Lessee under the provisions of Indiana Code, Title 36, Article 1, Chapter 10. All provisions herein contained shall be construed in accordance with the provisions of said statutes, and to the extent of inconsistencies, if any, between the covenants and agreements in this Lease and the provisions of said statutes, said statutes shall be deemed to be controlling and binding upon Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed for and on their behalf the day and year first hereinabove written.

WINCHESTER MUNICIPAL FACILITIES
BUILDING CORPORATION

By: _____
_____, President

Attest:

_____, Secretary

CITY OF WINCHESTER, INDIANA

By: _____
Shon Byrum, Mayor

Attest:

By: _____
Vicki Haney, Clerk-Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF RANDOLPH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____, personally known to me to be the President and Secretary, respectively, of the Board of Directors of Winchester Municipal Facilities Building Corporation, and acknowledged the execution of the foregoing Lease for and on behalf of said building corporation.

WITNESS my hand and notarial seal this _____ day of _____, 2017.

(Written Signature)

(Printed Name) Notary Public

(Seal)

My Commission Expires:

My County of Residence:

STATE OF INDIANA)
) SS:
COUNTY OF RANDOLPH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Shon Bryum and Vicki Haney, personally known to me to be the Mayor and Clerk-Treasurer, respectively, of the City of Winchester, Indiana, and acknowledged the execution of the foregoing Lease for and on behalf of said City.

WITNESS my hand and notarial seal this _____ day of _____, 2017.

(Written Signature)

(Printed Name)

Notary Public

(Seal)

My Commission Expires:

My County of Residence:

EXHIBIT A

LEGAL DESCRIPTION

The Leased Premises is more particularly described as follows:

[INSERT LEGAL DESCRIPTION FOR PROPERTY AT 313 S. MERIDIAN STREET,
WINCHESTER, INDIANA]

I affirm, under penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. /s/ Dennis H. Otten

This instrument was prepared by Dennis H. Otten, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, IN 46204.