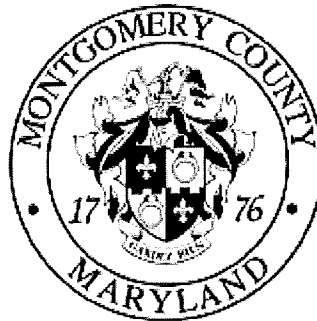


BUILDING AND LAND LEASE AGREEMENT
BETWEEN
MONTGOMERY COUNTY, MARYLAND
AND
POTOMAC HEALTHCARE FOUNDATION, LTD.

Under a Public-Private Partnership Contract
Avery Road Treatment Center Development
14703 Avery Road, Rockville, Maryland 20853



MONTGOMERY COUNTY MARYLAND
DEPARTMENT OF GENERAL SERVICES

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EXHIBITS:

- i. Exhibit A – ARTC Leased Premises (Site Map)
- ii. Exhibit B – ARTC Program Operation and Delivery Agreement
- iii. Exhibit C – ARTC General Development Agreement
- iv. Exhibit D – Mandatory Insurance Requirements

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “**Lease**”) is made this _____ day of _____, 2016, by and between **MONTGOMERY COUNTY, MARYLAND**, a body corporate and politic (the “**County**”) and **POTOMAC HEALTHCARE FOUNDATION, LTD.**, a 501(c)(3) nonprofit corporation (the “**Tenant**”) (County and Tenant together the “**Parties**”).

WITNESSETH:

WHEREAS, the County is seeking a Public-Private Partnership (**P3**) to **finance, design, construct, maintain and operate/manage the current scope or expanded capacity of the Avery Road Treatment Center (“ARTC”) facility**, and the contractor must be willing to enter into a public/private partnership (“**P3**”) with the County and potentially the State of Maryland to build and operate the facility; and

WHEREAS, the County is the owner of fee simple title in certain property located on 14703 Avery Road, Rockville, Maryland, consisting of 12.273 acres of land, identified as Parcel 105 on tax map GR63, account number 01652517 (the “**Property**”; which is shown on **Exhibit A**, attached hereto) (a portion of which, also shown on **Exhibit A**, for the purpose of this document, is the “**Leased Premises**”); and

WHEREAS, the County publicly issued Request for Proposals #1046374 for the development, construction, maintenance and operation of a substance abuse treatment center or approved behavioral health services (as determined necessary by the County) on the Leased Premises, received two (2) qualified responses, and now wishes to enter into this Lease Agreement with the selected private contractor in order to realize the goal of providing a

substance abuse treatment center or approved health and human services facility, and other amenities;

NOW THEREFORE, in consideration of the covenants contained in this Lease, the foregoing recitals which are incorporated herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties mutually agree as follows:

1. LEASED PREMISES: County does hereby (i) ground lease to Tenant, and Tenant hereby ground leases from County, a portion of the 12.273-acre parcel located on 14703 Avery Road, Rockville, Maryland, consisting of _____ acres of land, further identified as part of Parcel 105 on tax map GR63 and as outlined in red on **Exhibit A** (the “**Leased Premises**”)¹, which is attached to this Lease and incorporated as if fully set forth herein; for the sole purpose of the Tenant constructing, maintaining and operating a substance abuse treatment center or approved health and human services facility with associated amenities (the “**Project**”); and (ii) grants to Tenant the right of entry, ingress and egress, for the duration of the term of this Lease, in, across and over the roadways, parking areas and pedestrian walkways on that portion of the Property outside of the Leased Premises (as such roadways, parking areas and pedestrian walkways presently exist and are shown on **Exhibit A**, or as they may subsequently be relocated) for the purpose of providing Tenant, its invitees, employees and contractors with pedestrian and vehicular access to, and ingress and egress from, the Leased Premises to Avery Road; provided that in the event of the relocation of any of the foregoing, the County shall cause roadways and

¹ The Leased Premises will be approximately the area identified on Exhibit A. A metes and bounds description of the Leased Premises will be prepared and attached as Exhibit A in place of the drawing currently attached, and the amount of acreage contained in such area will be inserted into the blank in the preceding line.

pedestrian walkways to be available to Tenant for the purpose of providing such access, ingress and egress. There are three County programs at 14701, 14703, and 14705 Avery Road, located on two parcels: P105 (12.273 acres) and P969 (2.38 acres, on tax map GS61, account number 02927512), in Rockville, Maryland. These properties are owned by Montgomery County with program operations under the oversight of the Montgomery County Department of Health and Human Services. The existing ARTC site area (building and parking), which is part of parcel P105, is the subject of this Lease.

2. LEASE TERM: The term of this Lease shall commence on the later of February 1, 2017 or the date upon which this Lease is approved by the State of Maryland (the “**Commencement Date**”) and shall terminate on the date which is thirty (30) years following the Commencement Date. The Lease Term is conditioned upon no event of default occurring which leads to termination under the Lease or either of the following Exhibits: **Exhibit B** entitled ARTC Program Operation and Service Delivery Agreement, dated the date hereof (the “**Program Agreement**”), or **Exhibit C** entitled ARTC General Development Agreement, dated the date hereof (the “**GDA**”), as each may be amended from time to time. At the end of the Lease Term, the County will have unencumbered ownership of the facility and all improvements made by the Tenant as a result of the GDA and subsequent tenant improvements made during the Lease Term.

3. EARLY TERMINATION:

- A. The Parties acknowledge that this Lease shall terminate in the event that Tenant fails to construct the facility in compliance with the terms and conditions, including completion date, negotiated by the Parties and approved by the County under the GDA.

- B. The Parties acknowledge that this Lease shall terminate in the event that Tenant fails to open the facility and have clients in residence receiving services in compliance with the terms and conditions, including opening date, negotiated by the Parties and approved by the County under the Program Agreement.
- C. In the event that the Lease is terminated a) at the request of Tenant, with the agreement of the County, where no default exists on the part of either of the Parties, or b) due to default of any term of the Lease by Tenant, County shall be under no obligation to reimburse Tenant for any cost or expense incurred by Tenant in the development, construction or operation of the facilities described in the Lease.
- D. Notwithstanding anything to the contrary in this Lease, upon the occurrence of (i) a Non-Appropriation Event (as defined in Section 29 of this Lease), (ii) a Mandatory Referral Event (as defined in Section 40 of this Lease), (iii) a Program Review Event (as defined in Section 3.E of this Lease), (iv) a Condemnation Event (as defined in Section 11.2.9 of this Lease), (v) a Lease Assignment Event (as defined in Section 11.3 of this Lease), or (vi) any other circumstance in which the Mortgagee (as defined in Section 11 of this Lease) is either not entitled to exercise its rights to require a Lease Assignment or in which a Lease Assignment would not be effective (for example, termination of the Lease under circumstances in which the program described in the Program Agreement will no longer be operated on the Leased Premises), then upon the occurrence of any of the

foregoing events the County shall pay on demand the Loan Repayment Amount (as defined below) in accordance with the terms and conditions set forth below in this Section 3.D. The term “Loan Repayment Amount” shall mean an amount equal to the total amount then due or otherwise outstanding under the loan secured by the Leasehold Mortgage (as defined in Section 11) (the “Loan”) and under all documents that evidence or secure the Loan, including without limitation all principal and interest, provided that interest payable shall be limited to interest under the Loan that has accrued from and after the applicable event set forth above in this Section 3.D. The County shall pay the Loan Repayment Amount to the Mortgagee on demand by Mortgagee and in accordance with the Mortgagee’s payment instructions. The Loan Repayment Amount shall be determined by the Mortgagee in a written notice to the County, and Mortgagee’s determination of the Loan Repayment Amount shall be conclusive absent manifest error. The Mortgagee shall provide the County with such information in support of Mortgagee’s determination of the Loan Repayment Amount as the County may reasonably request including, without limitation, information and documentation reasonably necessary to evidence to the County that all amounts advanced under the Loan have been applied to pay Project “hard” and “soft” costs. The Mortgagee is intended by the Parties to be, and is hereby deemed to be, a third party beneficiary of this Lease for the purpose of enforcing this Lease as it relates to Mortgagee’s rights under this Lease. The County

shall not be required to reimburse Tenant for funding provided by any government entity, whether by the state, the County, any local jurisdiction or the federal government. Tenant shall provide a final accounting of all design and construction costs within sixty (60) days after final completion of the new ARTC facility. The County's obligation to pay under this Section 3.D shall not be contingent on appropriation of funding for such purpose in future years.

E. In the event of termination of the Lease as a result of the five year formal review of program operations and scope as required by the Program Agreement (such event being referred to in this Lease as a "Program Review Event"), the County will pay the Loan Repayment Amount in accordance with the terms of Section 3.D.

4. RENEWAL OPTION: The Tenant acknowledges that there are no renewal options included in this Lease.

5. RENT: In consideration of services provided by the Tenant as set forth in this Lease, and for the rights and obligations provided for in this Lease, Tenant shall pay to the County, without offset, deduction or demand, an annual rent of one dollar (\$1.00). The Lease fee shall be payable by check to: Montgomery County, Maryland, Office of Real Estate, P. O. Box 829464, Philadelphia, PA 19182-9464, no later than ten (10) days after the Commencement Date and each year thereafter on the anniversary of the Commencement Date.

6. DESIGN AND CONSTRUCTION OF THE IMPROVEMENTS: The Tenant shall be responsible for the design and construction of the facility and any associated site improvements (the "**Improvements**") in compliance with the GDA.

7. USE OF LEASED PREMISES: Tenant covenants and agrees that the Leased Premises shall be used solely as a substance abuse treatment center, or for behavioral health services and associated amenities approved by the County as a result of the five year formal review of program operations and scope, as required by the Program Agreement. Tenant agrees to ensure compliance with all licensing and operational requirements regulating the use of the Leased Premises described herein. Tenant shall be responsible for obtaining all permits and/or licenses required by state, federal, and local law for operation of the program and the facility. Failure to obtain and maintain any permits required under state, federal, or local law to lawfully operate the facility and the program will constitute a breach of this Lease. Tenant will use and occupy the Leased Premises during the Lease Term for no purpose other than that described herein.

8. INDEMNITY: The Tenant hereby indemnifies, and agrees to pay the cost of defense of and hold harmless, the County and the County's agents, employees and officers (together the "**Indemnitees**") from and against all liabilities, obligations, damages, judgments, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorney's fees, which may be imposed upon, incurred by, or asserted against any of the Indemnitees and arising, directly or indirectly, out of or in connection with (i) the Tenant's breach of its obligations under this Lease; (ii) the acts or negligence of the Tenant, its agents, contractors, or employees in or on the Leased Premises; or (iii) the use or occupancy of the Leased Premises by the Tenant, its agents, servants, employees, contractors, and/or invitees. In case any action or proceeding is brought against any of the Indemnitees by reason of any of the foregoing, the Tenant must reimburse the County the cost of defending such action or

proceeding, or, upon the County's written demand and at the Tenant's sole cost and expense, the Tenant must defend such action and proceeding using counsel approved by the County.

9. HOURS OF OPERATION: Tenant shall maintain continuous operation twenty-four (24) hours per day, three hundred sixty-five (365) days per year consistent with a residential facility.

10. ASSIGNMENT: Except as provided in Section 11 of this Lease, the Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease, or sublet the Leased Premises or any part of the Leased Premises. The Tenant shall have the right to license parts of the Leased Premises to third party vendors and service providers for the provision of goods and services that are customary for the uses allowed in Section 7 above.

11. LEASEHOLD MORTGAGES:

11.1 Mortgage Requirements. Tenant shall deliver to County a true copy of the original of each deed of trust or other instrument creating and effecting a lien on Tenant's leasehold estate in the Leased Premises (the "**Leasehold Mortgage**"), certified by the beneficiary of such Leasehold Mortgage (a "**Mortgagee**") to be a true copy of such instrument, together with the name and post office address of the Mortgagee.

11.2 Mortgagee Protection. Tenant shall have the right at any time and from time to time during the Term, without restriction or the prior consent of County, to mortgage or otherwise encumber this Lease by means of a Leasehold Mortgage. The execution and delivery of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of Tenant's leasehold interest nor shall a Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease so as to require such Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. If Tenant shall

mortgage this Lease and has complied with Section 11.1, the County shall give to each Mortgagee, at the address of such Mortgagee set forth in the notice mentioned in Section 11.1, written notice of each default by Tenant under this Lease either at the same time such notice is sent by County to Tenant under Section 20.2 or at the same time as, and whenever, any such notice shall thereafter be given by County to Tenant, or if Landlord is not required to deliver such a notice to Tenant, then County shall notify Mortgagee in writing of each such Tenant default as and when such default occurs. Each Mortgagee, after its receipt of the foregoing written notice, shall thereupon have a period of ten (10) days, after the expiration of any cure period given to Tenant, in which to remedy Tenant's failure, or cause the same to be remedied, or cause action to remedy a failure by Tenant mentioned in Section 20.1B to be commenced. County shall accept performance by a Mortgagee of any covenant, condition, or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

11.2.1 Cure Rights. Notwithstanding the provisions of Section 11.2 hereof, no Event of Default shall be deemed to exist as long as a Mortgagee, in good faith, (i) shall have promptly commenced or caused to be commenced the cure of a failure by Tenant to perform its obligations hereunder, and prosecutes or causes to be prosecuted the same to completion with reasonable diligence and continuity, or (ii) if possession of the Leasehold interest or any part thereof is required in order to cure such failure by Tenant, shall have notified County of its intention to institute foreclosure proceedings to obtain possession directly or through a receiver, and thereafter within thirty (30) days of the giving of such notice commences such foreclosure proceedings, prosecutes such proceedings with reasonable diligence and continuity (subject to Unavoidable Delays) and, upon obtaining such possession, commences

promptly to cure such failure by Tenant and prosecutes the same to completion with reasonable diligence and continuity (subject to Unavoidable Delays); provided that the Mortgagee shall have delivered to County, in writing, its agreement to take the action as described in clause (i) or (ii) herein and shall have assumed the obligation to cure such failure by Tenant. If delivery of possession of the Leasehold interest shall be made to the Mortgagee or to its nominee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Mortgagee shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, all the covenants and agreements herein contained on Tenant's part to be performed.

11.2.2 Lease Amendment. From and after the date upon which County receives the notice mentioned in Section 11.1, it shall not modify or amend this Lease or cancel or terminate this Lease other than as provided herein without the prior written consent of the Mortgagee which gave such notice, which consent shall not be unreasonably withheld, conditioned or delayed.

11.2.3 Liability of Mortgagee. Except as provided in Section 11.2.1, no Mortgagee shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate created hereby.

11.2.4 Conflict. In the event of any conflict between any of the terms and conditions of Section 11 of this Lease and the other terms and conditions of this Lease, the terms and conditions of this Section 11 shall control.

11.2.5 Intention to Terminate Lease; Assignment of Lease.

11.2.5.1. If, after a Tenant event of default under this Lease (after the passage of applicable notice and cure periods), or for any other reason whatsoever, including, without limitation, any early termination under Section 3 or Section 40 of this Lease, County intends to terminate this Lease, then prior to providing notice of termination, County shall give written notice to any Mortgagee of its intention to terminate this Lease, which written notice shall set forth a detailed statement of all payments due and payable to County by Tenant under this Lease as of the date thereof. Notwithstanding anything to the contrary in this Lease, no purported termination of this Lease by the County for any reason shall be effective unless the County shall have provided notice of its intention to terminate this Lease pursuant to the preceding sentence, and the 20-day period described in Section 11.2.5.2 below shall have expired without an Assignment Request (as defined below) having been given by Mortgagee.

11.2.5.2. Within twenty (20) Days after (a) Mortgagee's receipt of notice that County intends to terminate the Lease, (b) the rejection of this Lease in any bankruptcy proceeding of Tenant, or (c) a foreclosure by Mortgagee of Tenant's interest in this Lease and the recording of a trustee's deed for the Leasehold Interest or the recording of a deed for the Leasehold Interest in lieu thereof, Mortgagee may request in writing (the "**Assignment Request**") that County assign this Lease to Mortgagee, Mortgagee's nominee, or a third party operator proposed by Mortgagee (an "**Assignee**"). Within twenty-one (21) business days after County's receipt of Mortgagee's Assignment Request, County and Assignee shall mutually execute and deliver an assignment of this Lease for the remainder of the term (the "**Lease Assignment**"). The Lease Assignment will provide that upon execution of the Lease Assignment, the Assignee shall pay County a sum of money equal to: (a) all payments due and payable to County by Tenant under this Lease from and after the date of the Lease Assignment

but specifically excluding any amounts that may be due from and after the Lease Assignment but with respect to which County had not notified Mortgagee prior to the execution of the Lease Assignment, and (b) all reasonable expenses, costs and fees, including reasonable attorney's fees, incurred by County as a result of the Lease Assignment and in acquiring possession of the Leased Premises and improvements thereon. The Assignee shall be an entity that is legally qualified (including by possessing all licenses, permits and other approvals required under applicable law and regulation) to operate the Project and is approved by the County, such approval not to be unreasonably withheld, conditioned or delayed.

11.2.5.3. County Not Liable to Deliver Possession. Nothing herein contained shall be deemed to impose any obligation on the part of County to deliver to any party physical possession of the Leased Premises and improvements, to the extent County does not have such physical possession. County agrees, however, that in the event of a Lease Assignment, County will, at the sole cost, expense, and risk of the party(ies) claiming entitlement to such possession, cooperate in the prosecution of summary proceedings to evict the Tenant or any other occupants of the Leased Premises. The party(ies) claiming possession (jointly and severally, if more than one) shall indemnify, defend, and save County harmless from all costs, claims, counterclaims or cross-claims, damages, and expenses (including, but not limited to, reasonable counsel fees, which shall include, also, the fair market value of County's in-house legal counsel) arising out of County's rendering any such cooperation. The terms of this Section shall survive the expiration or termination of this Lease.

11.2.5.4. Transfers to Assignee. Upon the execution and delivery of a Lease Assignment to an Assignee pursuant to this Section 11.2.5, all improvements, subleases, or other agreements pertaining to the Leased Premises and the improvements thereon

shall be deemed transferred by County to such Assignee. Between the dates of the Assignment Request and execution of the Lease Assignment, County shall not cancel any sublease or accept any cancellation, termination, or surrender (unless such termination shall be effective as a matter of law on the termination of this Lease) without the consent of such Assignee, except for the purpose of entering into a lease with another occupant who will occupy not less than the same amount of demised space as was covered by the canceled sublease, on terms not less than the rental rates per square foot and not otherwise less favorable to the lessor, and for at least the remainder of the unexpired term of the canceled sublease.

11.2.6 No Cancellation of Lease. No cancellation or surrender of this Lease by Tenant shall be effective unless consented to in writing by such Mortgagee.

11.2.7 Survival. The provisions of this Section 11 shall survive any termination of this Lease.

11.2.8 Fee Interest. County shall not place any mortgage, deed of trust or other lien instrument on County's fee interest in the Leased Premises without Mortgagee's prior written consent.

11.2.9 Condemnation. Notwithstanding anything in this Lease to the contrary, in the event of a taking of the Leased Premises (a "Condemnation Event"), the County shall pay the amount due under Section 3.D in the manner described therein. The County acknowledges that, to the extent of any amounts due in connection with the Leasehold Mortgage, such amount has been assigned by Tenant to Mortgagee, and shall be paid to Mortgagee.

11.3 Notwithstanding anything in this Lease to the contrary, in the event that Mortgagee makes an Assignment Request (as defined in Section 11.2.5.2) of the County, then if such Lease Assignment with Mortgagee or any such Assignee is not fully executed and delivered

by the County and Mortgagee or such Assignee (including without limitation any purchaser at a foreclosure sale or its nominee, and further including any third party purchaser from Mortgagee of tenant's interest under this Lease) and recorded within 60 days after Mortgagee shall have requested a Lease Assignment, for any reason whatsoever (including, without limitation, as a result of any approval process required by County as to the proposed Assignee under the Lease Assignment) (any such event being referred to as a "Lease Assignment Event"), then County shall thereafter pay to Mortgagee within 5 business days following demand therefor, in immediately available funds, the Loan Repayment Amount in accordance with Section 3.D.

11.4 Notwithstanding anything to the contrary in this Section 11, in the event that the County has the right to terminate this Lease and Mortgagee requests that County enter into a Lease Assignment with an Assignee, then, in the event that Tenant shall not have assigned this Lease to the Assignee within fifteen (15) business days following County's request therefor, Tenant hereby appoints Mortgagee as Tenant's attorney in fact, coupled with an interest, solely for the purpose of assigning this Lease to Assignee.

12. CONDITION OF LEASED PREMISES: Tenant accepts the Leased Premises in "as is" condition. Tenant agrees to maintain the Leased Premises in good condition and free of clutter and trash throughout the Lease Term. Tenant acknowledges and agrees that at the end of the Lease Term, the Leased Premises shall be returned to the County in the same condition as when Tenant accepted the Leased Premises, as improved by the Improvements, normal wear and tear excepted.

13. COMPLIANCE WITH LAWS: It is understood, agreed and covenanted by and between the Parties that Tenant, at Tenant's expense, shall promptly comply with, observe and perform all of the requirements of all of the statutes, ordinances, rules, orders and regulations

now in effect or hereinafter promulgated whether required by the federal government, State of Maryland, Montgomery County Government, or any municipality in which the Leased Premises are located, including without limitations the Montgomery County Department of Environmental Protection and the Montgomery County Fire Marshal's Office (the "**Applicable Laws**").

14. REPAIRS: The Tenant shall make all repairs and replacements to the Improvements, whether required as a result of damage, destruction, or normal wear and tear. The Tenant shall keep the Improvements safe, including life safety systems, security system, etc. The County shall have no obligation whatsoever for any maintenance or repairs.

The County reserves the right, at any time during the Lease Term, to inspect the Premises. Such Inspection may be conducted by a third-party inspection service if the County so desires.

In the event that Tenant fails to perform its repair and maintenance obligations, the County, after ten (10) days' notice to Tenant, has the right, but not the obligation, to perform such repair and maintenance at the cost of Tenant, and Tenant agrees to reimburse County the cost of such repairs or maintenance within fifteen (15) days of receipt of invoice for such services.

15. ALTERATIONS AND ADDITIONAL IMPROVEMENTS: Tenant shall not be permitted to undertake any alterations or improvements to the Leased Premises costing in excess of Fifty Thousand Dollars (\$50,000) without the written approval of the County, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall submit plans and specifications to the County in the event Tenant wishes to make such alterations or improvements. Any alterations or improvements to the Leased Premises shall be at Tenant's sole cost and expense.

16. SERVICES AND OPERATING EXPENSES:

- A. Tenant agrees to maintain and operate, at Tenant's sole cost and expense, the Improvements in a prudent and economical manner, in accordance with the terms of the Program Agreement (defined in Section 2), and to keep the Leased Premises in a condition that reflects the same standards as private facilities that provide similar services.
- B. Tenant shall have full and complete authority to manage the Improvements subject to policies determined by Tenant; provided the same do not conflict with any of the provisions of this Lease or any applicable laws.
- C. Tenant shall be fully responsible, at the Tenant's sole cost and expense, for all operating expenses for the Leased Premises, including, but not limited to: utility bills, safety lighting, trash removal, pest control, all janitorial services, and any grounds maintenance that is required beyond County grass mowing and snow and ice removal of areas other than the parking lot. Tenant shall also be responsible for preventive and day-to-day maintenance of all building systems, including mechanical, electrical, plumbing, structural, water protection, and roofing.
- D. The County shall be fully responsible for grass mowing and parking lot maintenance, including parking lot lighting, site security system, and snow removal. The County shall not be responsible for the personal security of any staff, client or visitor on the site.

17. LIABILITY, PROPERTY DAMAGE AND FIRE INSURANCE:

- A. **LIABILITY:** Tenant shall indemnify, protect, defend and save (or hold) harmless Montgomery County against all liabilities, loss, damages, judgments and expenses, including court costs and attorney's fees incurred or suffered by the County as a result of the negligence or failure of Tenant, its licensees, contractors, invitees or employees for any claims, lawsuits, actions, injuries or property damage to person or property occurring upon the Leased Premises and/or its appurtenances, or arising out of any operations which take place on the Leased Premises prior to termination of this Agreement. The provisions of indemnification shall survive the termination of this Agreement. Tenant must maintain liability insurance as stipulated on **Exhibit D**.
- B. **County's Insurance:** The County will maintain its normal fire and liability insurance on the Leased Premises. The County reserves the right to self-insure.
- C. **Certificate of Insurance:** The Tenant must, within forty-five (45) days from execution of this Lease Agreement, deliver to the County a certificate(s) of insurance evidencing the coverages required under this Lease Agreement and, if requested by the County, complete and accurate copies of all insurance policies. The certificates must be issued to: Montgomery County, Maryland, mailed to the Department of General Services, Attn: Chief, Division of Real Estate, 101 Monroe Street, 9th Floor, Rockville, Maryland 20850.

- D. The Tenant must provide, on an annual basis, evidence that is satisfactory to the County of the insurance coverages required under this Lease Agreement, and, if requested by the County, provide copies of the insurance policies.
- E. Subrogation: If a casualty or other occurrence that should be covered by the insurance required by this Lease Agreement occurs, the Tenant must look solely to its insurer for reimbursement and the Tenant must ensure that such insurance is so written that the Tenant's insurer waives all rights of subrogation and shall have no cause of action against the County, its agents or employees as a result of such casualty or occurrence. The Tenant waives and releases all right of recovery that it might otherwise have against Montgomery County, its contractors, agents or employees by reason of any loss or damage resulting from such casualty or other occurrence, to the extent that the Tenant would be covered by insurance if the Tenant complied with the requirements of this Lease Agreement pertaining to insurance.
- F. APPLICATION OF INSURANCE PROCEEDS. Notwithstanding anything in this Lease to the contrary, any proceeds from property insurance maintained by Tenant shall be applied in accordance with the applicable terms and conditions of the Leasehold Mortgage and the other documents that evidence and secure the loan secured by the Leasehold Mortgage.

18. RESPONSIBILITIES OF TENANT: Tenant covenants and agrees as follows:

- A. Tenant shall not keep gasoline or other flammable material or any explosive within the Leased Premises that will increase the rate of fire insurance on the Leased Premises beyond the ordinary risk established for the type of operations described in Section 7, above. Any such increase in the insurance rate due to the above, or due to Tenant's operations within the Leased Premises, shall be borne by Tenant. Tenant shall not willfully do any act or thing in or about the Leased Premises which may make void or voidable any insurance on the Leased Premises, and Tenant, upon receipt of the same in writing, agrees to conform to all rules and regulations established from time to time by the County, the Maryland Insurance Rating Bureau, or any other authority having jurisdiction over such matters.
- B. Tenant shall not use or allow the Leased Premises or any part thereof to be used for any illegal, unlawful or improper purpose or for any act or thing that may cause waste or damage to the Leased Premises, adjacent properties or the adjacent neighborhood.
- C. Tenant shall not place upon the Leased Premises any placard, sign, or lettering except such, and in such place and manner, as shall have been first approved in writing by the County and which complies with applicable laws.
- D. Tenant acknowledges that all responsibilities of Tenant relating to the use or misuse of the Leased Premises and anything therein shall be construed to include use or misuse thereof by Tenant's agents and employees, guests

and invitees, and shall include use or misuse which is inconsistent with the provisions of the Lease.

- E. Tenant, upon receipt of the same in writing, shall comply with all reasonable rules and regulations with regard to the use of the Leased Premises that may be from time to time promulgated by the County, and any violation of said rules and regulations upon the expiration of any applicable notice and cure period shall be deemed to constitute a violation of this Lease. It is understood that such rules and regulations shall not unreasonably interfere with or prevent the intended uses of the Leased Premises as set forth in this Lease. The County shall not discriminate against Tenant in the enforcement of any rule or regulation. If there shall be a conflict between this Lease and the rules and regulations, the terms of this Lease shall govern.
- F. The Tenant is responsible for on site management of the Leased Premises.
- G. The Tenant must not permit any trade or occupation to be carried on or use made of the Leased Premises outside the scope of this Lease.
- H. The Tenant will not knowingly employ an individual to work or volunteer to participate in activities on the Leased Premises if he or she is a registered sex offender, or if he or she has pleaded (1) guilty, (2) “**no contest,**” or (3) nolo contendere to a crime involving sexual misconduct (whether or not resulting in a conviction). The Tenant hereby agrees that the above requirements are not unreasonable.

19. DESTRUCTION OF LEASED PREMISES: In the event of damage to or destruction of the Leased Premises or any part of the Leased Premises by fire, storm, flood or other casualty which does not require the Tenant to suspend entirely the operation of the Building, the Tenant shall, as soon as practicable after said damage or destruction, repair and restore the Leased Premises to the condition they were in immediately prior to said damage or destruction. Should such damage or destruction of said Leased Premises or any substantial part of the Leased Premises render the Leased Premises wholly unavailable for use by the Tenant for its intended use, the County shall terminate this Lease within thirty (30) days following the date of the destruction of the Leased Premises as described above by sending a termination notice to the Tenant. Notwithstanding the foregoing, (i) in fulfilling its obligations under this Section 19, Tenant shall not be required to expend more funds than the amount of insurance proceeds received by Tenant, plus the amount of any deductible; (ii) in the event that the County is required to terminate the Lease under the second sentence of this Section 19, Tenant shall have the option to agree to repair and restore the Leased Premises, in which case the County shall not terminate this Lease, but it shall continue, with rent abated until Tenant shall have completed repair and restoration of, and shall have occupied and commenced its operations in, the Improvements, at which time rent shall again become due.

20. DEFAULT:

20.1 Tenant shall be considered in default of this Lease and County may terminate this Lease upon the occurrence of any of the following:

- A. Failure to perform under any term, covenant or condition of this Lease, which default (i) in the event of a failure by Tenant to pay any sum it is required to pay hereunder, shall have continued for more than 5 days

following notice by County to Tenant of such failure; and (ii) in the case of any other failure of Tenant hereunder, shall have continued for 30 days following notice by County to Tenant of such failure, provided that if such failure is not reasonably capable of cure within such 30-day period, then such failure shall not constitute a default by Tenant so long as Tenant commences efforts to cure such failure within such 30-day period, and thereafter diligently and continuously pursues such cure;

- B. The commencement of any action or proceeding for the dissolution or liquidation of Tenant, or for the appointment of a receiver or trustee of Tenant's property;
- C. The making of any assignment for the benefit of Tenant's creditors;
- D. The abandonment of the Leased Premises by Tenant for more than seven (7) days;
- E. Use of the Leased Premises by the Tenant or with the consent of Tenant, for uses other than those permitted under Section 7; and
- F. The use of the Leased Premises by Tenant or by Tenant's agents, employee, contractors, or guests, for any unlawful purpose.

20.2 If any Event of Default described in Section 20.1 shall occur and County, at any time thereafter (subject to the terms of Section 11.2.5.1 regarding provision by the County of notice of its intention to terminate this Lease), at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than ten (10) days after the giving of such notice, and if, on the date specified in such notice, Tenant shall have failed to cure the default which was the basis for the

Event of Default, then this Lease and the Term and all rights of Tenant to possession of the Leasehold interest under this Lease shall expire and terminate as if the date specified in such notice were the date herein definitely fixed for the expiration of the Term and Tenant immediately shall quit and surrender the Leasehold interest and the provisions of Article 22 shall apply, but Tenant shall remain liable as hereinafter provided. After such termination, without further notice, the County may dispossess Tenant by summary proceedings or otherwise.

21. ACCESS: Tenant shall allow County and County's employees or agents to have unlimited access to the Leased Premises at all times for the purpose of inspection, or in the event of fire or other property damage, or for the purpose of performing any work required to be performed by the County, or which the County considers necessary or desirable, or for any other purpose pursuant to the reasonable protection of the Leased Premises. The County shall have the right but not the obligation to access the Leased Premises for performance of such work as described in this Section. Further, the County shall have the right to recover its costs by invoicing the Tenant the costs of performing such work.

22. SURRENDER OF POSSESSION: Tenant covenants and agrees that, at Tenant's sole cost and expense, at the expiration or other termination of this Lease, Tenant will: remove all goods and effects from the Leased Premises not the property of County; remove all non-standard alterations except as County has agreed with Tenant to leave on the Leased Premises, and; yield up to County the Leased Premises and all keys, gate cards, security cards, locks and other fixtures connected therewith (except property belonging to Tenant). All of the foregoing items must be left in good repair, order and condition in all respects, excepting reasonable wear and use thereof, damage by fire or other casualty, and/or damage from any risk with respect to which Tenant is not herein expressly made liable (which exceptions do not apply to any casualty

damage as to which Tenant is required to maintain insurance coverage under the provisions of this Lease). Any of Tenant's equipment, non-standard alterations, goods, personal property and effects not so removed may, at the County's election and without limiting the County's right to compel removal thereof, be deemed abandoned and may be retained by the County as its property or be disposed of at Tenant's sole cost and expense, without accountability, in such manner as the County may see fit.

23. NOTICE OF ACCIDENTS, DEFECTS OR DAMAGES: Tenant shall give to the County prompt verbal notice of accidents in or damages to the Leased Premises within twenty-four (24) hours of the occurrence or receipt of the notice, as the case may be, and the Tenant shall follow up with a detailed written report to the County of such accidents, damages or notice within five (5) business days.

24. WAIVER: The waiver at any time by either of the Parties of any particular covenant, condition, obligation, or duty under this Lease shall extend to the particular case only, and for the particular time and in the particular manner specified, and such waiver must not be construed or understood as waiving any further or other rights of either Party.

25. NON-DISCRIMINATION: The Tenant agrees to comply with the non-discrimination requirements of County contracts as required by Section 11B-33 and Chapter 27 of the Montgomery County Code (2004), as amended, as well as all other federal, state and local laws and regulations regarding discrimination. By signing this Lease Agreement, the Tenant assures the County that, in accordance with the Applicable Laws, it does not, and agrees that it will not, engage in any discrimination in violation of the above sections of the Montgomery County Code or any other federal, state or local laws, rules and regulations.

26. PUBLIC EMPLOYMENT: The Tenant understands and agrees that, unless authorized under Sections 11B-52 and Chapter 19A of the Montgomery County Code 2004, as amended, it is unlawful for any person or entity transacting business with Montgomery County, Maryland, to employ a public employee contemporaneous with his or her public employment.

27. MAILING NOTICES: All notices required or desired to be given hereunder by either party to the other shall be given by certified or registered mail and shall be deemed to be effective when received or refused by the addressee. Notices to the respective Parties shall be addressed as follows:

Tenant:

Potomac Healthcare Foundation, Ltd.
9701 Keysville Road, P. O. Box 136
Emmitsburg, MD 21727
Attn: Mr. William J. Roby
Chief Operating Officer

County:

Montgomery County, Maryland
Department of General Services
101 Monroe Street, 9th Floor
Rockville, Maryland 20850
Attn: Chief, Division of Real Estate

With a copy, that does not constitute Notice, to:

Montgomery County, Maryland
Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
Attn: County Attorney

28. PROHIBITION OF HAZARDOUS SUBSTANCES: The Tenant agrees not to store or bring hazardous substances onto the Leased Premises. The Tenant agrees to remain in compliance with all applicable laws and regulations with regard to any hazardous substance. The Tenant indemnifies the County against any and all claims of any personal injuries or personal

and real property damage as a result of any hazardous substance being brought on the Leased Premises by the Tenant, its agents, contractors, employees or guests.

29. NON-APPROPRIATION: Any obligation or liability of the County arising in any way from this Lease is subject to, limited by, and contingent upon the appropriation and availability of funds (the occurrence of any such failure to appropriate funds or other limitation on the availability of funds to the County being referred to in this Lease as a “Non-Appropriation Event”), as well as the damage caps and notice requirements stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. §§ 5-301, et seq. (2006 Repl. Vol.) (the “**LGTC**A”); Md. Code Ann. Art. 25A, § 1A (2011 Repl. Vol.); and Md. Code Ann., Cts. & Jud. Proc. § 5-509 (2006 Repl. Vol.), (together the “**County Indemnification Statutes**”), all as amended from time to time. Any indemnification given by the County in this Agreement is not intended to create any rights or causes of action in any third parties or to increase the County’s liability above the caps provided in the County Indemnification Statutes, as applicable.

30. AMERICANS WITH DISABILITIES ACT AND OTHER REQUIREMENTS: Tenant agrees that the Improvements and any future modifications made to the Leased Premises by Tenant shall be made in conformance with the requirements of the Americans with Disabilities Act, the Federal Fair Housing Act, and all safety and accessibility requirements in federal, state, and county laws and regulations. Tenant must obtain all required permits prior to constructing the Improvements or making any modifications to the Leased Premises and must comply with all applicable building and safety codes.

31. EMINENT DOMAIN: The Tenant is not entitled to any condemnation award granted to the County for County’s property rights in the Leased Premises. In the event that the Leased Premises shall be taken by any governmental or quasi-governmental authority pursuant to

its power of eminent domain or sold under threat of such taking, the Tenant will not be entitled to recover from the County any capital expenditures for improvements and betterments made by the Tenant to the Leased Premises at the Tenant's expense.

32. FORCE MAJEURE: Neither Party will be deemed in default with respect to the performance of any terms, covenants, and conditions of this Lease if the same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or upsurged power, sabotage, inability to obtain any material or service, through natural or other cause beyond the control of either party; provided, however, that this provision shall not excuse any non-payment of Lease Fees. For purposes of this provision, lack of funds shall not be considered a cause beyond the control of a Party except to the extent that the same is expressly made conditioned upon the appropriation of future funds.

33. ENTIRE AGREEMENT: This Lease, including **Exhibits A–D** hereto, is the entire agreement between the Parties, and no representation, inducement, or agreement, oral or otherwise, between the Parties not contained in this Lease shall be of any force or effect. In addition to this Lease, the other agreement documents that are part of the entire agreement are attached hereto as Exhibits. The documents that constitute the entire agreement are:

- General Development Agreement (GDA),
- Building and Land Lease,
- Program Operation and Delivery Agreement, and
- Request for Proposals, RFP# 1046374 (applicable sections TBD)

34. MODIFICATION: This Lease (other than the applicable rules and regulations, which may be changed from time to time) shall not be modified, waived or supplemented in any manner except by an instrument in writing executed by both Parties with the same formality as

this Lease, and consented to in writing by the Mortgagee, and no such modification, waiver or supplement shall be effective without the written consent of all such parties.

35. GOVERNING LAW: This Lease and its performance is to be governed, interpreted, construed and regulated by the laws of Montgomery County and the State of Maryland. Both Parties agree and acknowledge that the Montgomery County Circuit Court shall have exclusive jurisdiction and venue as to any claims or suits filed with respect to the matters addressed in this Lease.

36. CLAIMS: Any action brought by or on behalf of either Party in connection with the performance of this Lease must be filed and maintained in a court of competent jurisdiction in Montgomery County, Maryland.

37. WAIVER OF JURY TRIAL: BOTH PARTIES AGREE TO, AND HEREBY DO, WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIMS OR SUITS RELATING TO THIS LEASE.

38. TENANT'S CERTIFICATION OF AVAILABLE FUNDS: Tenant, by its execution of this Lease, hereby certifies and represents to the County that Tenant has funds available for construction of the Improvements and Operations and Maintenance, as set forth in **Exhibits B and C** to this Lease.

39. THE COUNTY'S TITLE AND COVENANT OF QUIET ENJOYMENT: The County covenants that it has, to the best of its knowledge, full right and power to execute and perform this Lease, and that it shall put Tenant into complete and exclusive possession of the Leased Premises, as set forth herein. The County covenants and agrees that, if Tenant pays all rent and performs all of its obligations under this Lease, Tenant shall, at all times during the

Lease Term, have the peaceable and quiet enjoyment and possession of the Leased Premises for the purposes stated in this Lease.

40. MANDATORY REFERRAL: The Tenant acknowledges that the County will submit the Project to the City of Rockville Planning Commission and/or the Montgomery County Planning Board (whichever has jurisdiction) for review under Mandatory Referral or other applicable statute. The County reserves the right to alter or terminate this Lease based on recommendations received from the planning body as a result of this review process, provided that no such alteration to this Lease shall increase costs to be incurred or obligations to be performed by Tenant or otherwise adversely affect the scope of the Project, the construction costs or construction schedule for the Project or Tenant's rights hereunder, under the Program Agreement and/or under the GDA. Notwithstanding anything to the contrary, (i) Tenant shall not be obligated to incur any hard costs related to construction of the Project until the Project shall have been approved through the Mandatory Referral or other applicable statute; and (ii) if this Lease is terminated by the County under this Section 40, or if any alteration of this Lease shall increase costs to be incurred or obligations to be performed by Tenant or otherwise adversely affects the scope of the Project, the construction costs or construction schedule for the Project as provided in this Section 40, then upon the occurrence of any of the foregoing events (the occurrence of any such event being referred to as a "Mandatory Referral Event"), the County shall pay on demand the Loan Repayment Amount (as defined in Section 3.D) in accordance with the terms of Section 3.D.

41. NO MERGER: The parties expressly agree that absent the express written agreement of County and Tenant, the fee estate of County in the Leased Premises, and the

leasehold estate of Tenant in the Leased Premises shall not merge during the term of this Lease regardless of whether the same person is the owner of more than one estate.

42. RECORDATION OF LEASE: Either County or Tenant shall be permitted to record a memorandum of this Lease, in form and substance reasonably acceptable to the other party, and executed by County and Tenant, at Tenant's sole expense. Upon the expiration or sooner termination of this Lease, Tenant covenants that it will, at the request of County, execute, acknowledge and deliver an instrument canceling any memorandum of Lease which is recorded and all other documentation required to record same. If, as to the expiration of this Lease only, Tenant fails or refuses to execute, acknowledge and deliver such instrument of cancellation, then Tenant hereby appoints County as Tenant's attorney in fact, coupled with an interest, solely for the purpose of executing, acknowledging and delivering such instrument of cancellation at the expiration of the Lease on Tenant's behalf. If such memorandum is canceled following a termination of this Lease, County shall, upon the request of Mortgagee, record a new memorandum with respect to any Lease Assignment entered into under this Lease, at Mortgagee's sole cost and expense.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the Parties have caused this agreement to be properly executed.

WITNESS:

COUNTY:
MONTGOMERY COUNTY,
MARYLAND

By:

Julie L White

By:

Ramona Bell-Pearson
Ramona Bell-Pearson, Assistant
Chief Administrative Officer

Date:

11/16/16

RECOMMENDED

By:

David E. Dise
David E. Dise, Director
Department of General Services

Date:

11/10/16

APPROVED AS TO FORM &
LEGALITY
OFFICE OF THE COUNTY
ATTORNEY

By:

County Attorney

Date:

11/10/16

WITNESS:

TENANT:

Potomac Healthcare Foundation, Ltd.

By:

By:

William J. Kelly

Title:

Exec. V.P.

Date:

11/10/16

LEASED PREMISES (SITE MAP)



EXHIBIT B

ARTC PROGRAM OPERATION AND DELIVERY AGREEMENT

(see attached)

EXHIBIT C

ARTC GENERAL DEVELOPMENT AGREEMENT

(see attached)

EXHIBIT D

MANDATORY MINIMUM INSURANCE REQUIREMENTS

Building and Land Lease Including Maintenance – 30 years - \$1.00/year for the P-3 (Public-Private Partnership) Agreement - For the Sole Purpose of Tenant Constructing Maintaining and Operating a Substance Abuse Treatment Center or Approved Health and Human Services and Associated Amenities

Prior to the execution of the contract by the County, the proposed awardee/contractor must obtain, at their own cost and expense, the following minimum (not maximum) insurance coverage with an insurance company/companies licensed to conduct business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of proposed awardee / contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary.

Commercial General Liability

In an amount of not less than ***two million dollars (\$ 2,000,000) per occurrence and five million dollars (\$5,000,000) aggregate***, for bodily injury and property damage coverage including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations
- Fire Legal Liability

Automobile Liability Coverage

A minimum limit of liability of ***one million dollars (\$1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

All Risk Property

Insuring the Improvements against loss or damage by fire, windstorm, tornado and hail and all other hazards covered by an “**all risk**” policy, including, without limitation, coverage for loss or damage by water, flood, subsidence and earthquake and including boiler and machinery and sprinkler leakage coverage, and shall be in an amount not less than one hundred percent (100%) of the full replacement cost of the Improvements, less the costs of excavation, foundations and footings, but including the cost of demolition, debris removal and replacement of all equipment, without deduction for physical depreciation, such full replacement cost to be determined by the

insurers from time to time; no omission on the part of Landlord to request any such determination shall relieve Tenant of its obligation to have such full replacement cost determined as aforesaid.

Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

Bodily Injury by Accident - \$100,000 each accident

Bodily Injury by Disease - \$500,000 policy limits

Bodily Injury by Disease - \$100,000 each employee

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on Contractor's commercial general, automobile insurance, and contractor's excess/umbrella insurance if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the minimum insurance coverage specified.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County, Maryland
Building, Design and Construction/Lisa Alderson
101 Monroe St, 11th floor
Rockville, Maryland 20850
4832-9497-2987, v. 3