

PROJECT MH-_____

_____, Ohio 4_____

OPEN END MORTGAGE

THIS MORTGAGE is made this _____ day of _____, 201__ between _____ (hereinafter called "Mortgagor") and the **OHIO DEPARTMENT OF MENTAL HEALTH and ADDICTION SERVICES** (hereinafter called "Mortgagee"), whose principal offices are located at 30 East Broad Street, Columbus, Ohio.

Mortgagor claims title to the Premises by issuance of the General Warranty Deed dated _____, 20__, and recorded in the Office of the County Recorder of _____ County, Ohio, on _____, 20__, at _: _ p.m. as **File #** _____, (which Premises is more fully described in Exhibit "A", attached hereto and made a part hereof).

WHEREAS, Mortgagor by his certain note (Hereinafter called "Note") bearing the same date as this Mortgage is indebted to Mortgagee in the principal sum of \$ _____.**00** lawful money of the United States of America, disbursed or to be disbursed as reimbursements by Mortgagee to Mortgagor according to the terms and conditions of the Note herein referenced for all purposes; and

WHEREAS, Mortgagee agrees to reimburse Mortgagor for project costs in an amount not to exceed \$ _____.**00** in accordance with the reimbursement provisions pertaining to the project covered by this Mortgage, as delineated in the Contract and which is herein incorporated by reference and is referred to in Section 4.10 below.

NOW THEREFORE, in consideration of said indebtedness provided for herein and for better securing the payment of the same, the interest thereon, and all other sums provided for in the Note or herein, to Mortgagee, and the performance of the covenants and agreements hereinafter expressed, Mortgagor does hereby grant, convey, and mortgage unto Mortgagee the real property (herein called "Site", "Land", or "Premises") described in Exhibit "A" attached hereto and made a part hereof for all purposes.

TOGETHER WITH any and all buildings and improvements erected or hereinafter erected thereon.

TOGETHER WITH all building materials, fixtures, machinery, and equipment delivered on site to the Land during the course of construction of any buildings or improvements there after, if intended for addition thereto, or incorporation therein, or thereon, or if suitable for any such use.

TOGETHER WITH all and singular tenements, hereditaments, and appurtenances belonging to the Land or any part thereof, hereby mortgaged or intended so to be, or in any way appertaining thereto (including but not limited to all income, rents, and profits arising there from), all streets, alleys, passages, ways, watercourses, and all other rights, liberties

and privileges of whatsoever kind or character, the reversions and remainders, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor, in and to all of the foregoing or any or every part thereof (said Land, building improvements, fixtures, machinery, tenements, and other property interests being hereinafter collectively called "Premises").

TO HAVE AND TO HOLD the Premises unto the Mortgagee, its successors and assigns forever.

ARTICLE I

COVENANTS

Mortgagor hereby covenants and agrees with Mortgagee, as follows:

Warranty of Title

- 1.01 Mortgagor warrants that he is the lawful fee simple owner of the land and has the right to convey the same. The Land is free from all liens, encumbrances, easements, rights-of-way, restrictions, covenants, reservations, or other conditions, except as set forth in Exhibit "B", attached hereto and made a part hereof for all purposes.

Mortgagor will warrant and defend said premises, with the above mentioned appurtenances, to the said Mortgagee, its successors and assigns, forever, against all lawful claims or claims and demands whatsoever, except those hereinabove set forth.

Payment of Indebtedness

- 1.02 Mortgagor shall pay to Mortgagee the principal sum of the Note and any and all reimbursements made hereunder according to the terms of the Note secured hereby, reasonable charges fixed by Mortgagee to satisfy and discharge this Mortgage of record, and all other sums hereby secured; and shall keep and perform every other covenant and agreement of such Note and this Mortgage.

Waste and Maintenance of Premises

- 1.03 Mortgagor shall abstain from and not permit the commission of waste in or about the Premises; shall not remove or demolish, or alter the structural character of any building at any time erected on the Premises without the prior written consent of the Mortgagee; shall maintain the Premises in good condition and repair, reasonable wear and tear excepted. Mortgagee shall have the right, but not the duty, to enter upon the Premises at any reasonable hour to inspect the order, condition, or repair thereof including the interiors of any buildings and improvements located thereon.

Insurance Obligation

- 1.04 Mortgagor will procure, deliver to, and maintain for the benefit of Mortgagee during the continuance of this Mortgage and until the same is fully satisfied and released, a policy or policies of insurance insuring the buildings and improvements now existing or hereafter erected on the said Land against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicle, smoke, and such other hazards, casualties, and contingencies as Mortgagee may designate, including but without limitation, war risks (as, when and to the extent insurance against war risks is obtainable from the United States of America or any agency thereof). If the Premises are located in a designated Flood Plain, the Mortgagor is required to insure against such hazard.

All policies of insurance required hereunder shall be in such form, companies, and amounts as Mortgagee may accept, and shall contain the Ohio standard or other Mortgagee clause acceptable to the Mortgagee, with loss payable to Mortgagor and Mortgagee as their interest may appear. Mortgagor will promptly pay when due any premiums on any policy or policies of insurance required hereunder, and will deliver to Mortgagee renewals of such policy or policies at least ten (10) days prior to the expiration date(s) thereof; the said policies and renewals to be marked "paid" by the issuing company or agent. Upon Mortgagor's failure to comply with the requirement of this paragraph, Mortgagee may, in its discretion, effect any insurance required hereunder and for the premiums due therefore, and any amounts so paid by Mortgagee shall become immediately due and payable by Mortgagor with interest at the rate of eight (8) percent per annum and shall be secured by this Mortgage. In addition, advances or reimbursements made, with respect to the mortgaged premises, for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the mortgaged premises.

In the event of any loss or damage, Mortgagor will give prompt notice thereof to Mortgagee. All proceeds of insurance, in the event of such loss or damage, shall be payable jointly to the Mortgagor, its successors and assigns, and the Mortgagee. All funds will be utilized by Mortgagee to reimburse the Mortgagor to the extent necessary to restore the Premises to substantially the same condition, as the Premises existed prior to the loss or damage.

Payment of Taxes and Other Charges

- 1.05 Mortgagor shall pay all real estate taxes, water and sewer rents, other similar claims and liens assessed or which may be assessed against the Premises or any part thereof, without any deduction, defalcation, or abatement, not later than ten (10) days before the date on which such taxes, water and sewer rents, claims and liens commence to bear interest or penalties, and not later than such dates, shall produce to Mortgagee receipts for the payment thereof in full and shall pay every other tax, assessment, claim, lien, or encumbrance which may at any time be or become a lien upon the Premises prior to the lien of the Mortgage; provided, however, that if

Mortgagor shall in good faith, and by proper legal action, contest any such taxes, claims, liens encumbrances, or other charges or the validity thereof, and shall have established on its books, or by deposit of cash with Mortgagee (as Mortgagee may elect) a reserve for the payment thereof in such amount as Mortgagee may require, then Mortgagor shall not be required to pay the same, or to produce such receipts, during the maintenance of said reserve and as long as such contest operates to prevent collection, and is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Mortgagor.

Security Agreement

- 1.06 This Mortgage creates a security interest in the property included in Premises and constitutes a security agreement under the Uniform Commercial Code. Mortgagor shall execute, file and re-file such financing statements, or other security agreements, as Mortgagee shall require from time to time with respect to property included in Premises.

Condemnation and Arbitration

- 1.07 If any part of the Premises but less than all are taken or acquired, either temporarily or permanently, by any condemnation proceeding or the right of eminent domain, any award or payment received by the Mortgagor shall be made payable to the Mortgagee. Such payment or award shall be first utilized to restore or repair any damage to the Premises occasioned by said taking. Thereafter, the Mortgagee shall retain that proportion of the award or payment that the award or payment shall bear to the sum of \$ _____ .00.

However, if Mortgagee determines that the monies will be used for approved mental health services, then the remaining portion of any payment or award may be paid to the Mortgagor by the Mortgagee; otherwise, it may be retained by Mortgagee free and clear of all claims of Mortgagor.

In the event that all of the Premises are so taken or acquired by any condemnation proceedings or by the right of eminent domain, any award or payment received by the Mortgagor shall be paid to the Mortgagee for application against the then existing balance and any remaining portion of the award or payment shall be retained by the Mortgagor.

Compliance with Ordinances

- 1.08 Mortgagor shall comply with any and all municipal ordinances, statutes, rules, regulations or any other law affecting the premises within 30 days after notice thereof unless an extension of time is requested and granted by the municipality or other authority.

Use of Facility

- 1.09 Mortgagor shall use the facility to be constructed under this Mortgage exclusively for mental health services for the term of this Mortgage and Mortgagee has the

authority to determine whether such services are acceptable under this Mortgage.

Mortgagee will not unreasonably determine that such services are unacceptable under this Mortgage.

Terms of the Mortgage

- 1.10 The term of this Mortgage shall be **thirty (30) years**, commencing on the effective date of this Mortgage, and that in the event the use of the facilities under this Mortgage is changed prior to the expiration of **thirty (30) years** to a use other than the provision of approved mental health services as determined by the Mortgagee, Mortgagor will pay to the Mortgagee an amount equal to \$ _____**.00**, minus one three hundred sixtieth per month in which the site and project were used for the mental health services as approved by Department to the total term of this Mortgage which is **thirty (30) years**.

ARTICLE II

Default and Breach

- 2.01 The following shall constitute Events of Default hereunder.
- (a) The failure of the Mortgagor to pay any sum required to be paid in the Note or in this Mortgage when the same is payable.
 - (b) The failure of the Mortgagor to perform any covenant or Agreement in the Note or in this Mortgage.
 - (c) Any assignment for the benefit of Mortgagor's creditors, or other proceedings intended to liquidate, reorganize or rehabilitate Mortgagor's estate, or Mortgagor's becoming insolvent within the meaning of the federal bankruptcy law, or the rendering of any judgment or execution or the appointment of a receiver.
 - (d) The occurrence of any Event of Default as defined in the Note or Contract.
 - (e) The mortgaging or encumbering of the Premises subsequent to this Mortgage, without the express written permission of the Mortgagee, voluntarily or involuntarily.
 - (f) The changing of the use of the Premises by the Mortgagor prior to **thirty (30) years** from the effective date of this Mortgage to a use other than providing approved mental health services as determined by Mortgagee.
 - (g) The happening or occurrence of any event or act which in any manner

violates the purpose and/or implementation of this Mortgage, legal or otherwise, or which jeopardizes or otherwise lessens the value of the security provided for herein with or without fault on the Mortgagor's part.

- (h) In the event that the need for the original use of the mortgaged premises no longer exists, the failure of the Mortgagee and Mortgagor to come to a mutual agreement on a use similar to the original use of the mortgaged premises or a new use for the mortgaged premises.

Remedies for Default

2.02 Upon happening of any one or more of said Events of Default, the entire unpaid balance of the principal, and all other sums and/or reimbursements secured by the Mortgage shall, at the option of the Mortgagee, become immediately due and payable without notice or demand, and in any such Event of Default, Mortgagee may forthwith:

- (a) Institute an action of Mortgage foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement thereof is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire unpaid balance of said sum, together with all other sums and/or reimbursements secured by this Mortgage, all costs of suit, and costs of Sheriff's sale of the Premises (which Premises may be sold in one parcel or in such parcels, manner, or order as the Mortgagee shall elect).

Possession and Receivership

- (b) Enter into possession of the Premises, with or without legal action, lease the same; collect all rents and profits therefrom and, after deducting all costs of collection and administration expense, apply the net rents and profits to the payment of taxes, waste and sewer rents, charges and claims, insurance premiums, and all other carrying charges (including but not limited to agents' receivers) and to the maintenance, repair or restoration of the Premises, or on account and in reduction of the principal hereby secured, in such order and amounts as Mortgagee may elect; and have a receiver appointed to enter into possession of the Premises, collect the rents and profits therefrom, and apply the same as the court may direct. Mortgagee shall be liable to account only for rents and profits actually received by Mortgagee. For such purposes Mortgagor hereby authorizes any attorney of any court of record to appear for Mortgagor to sign an agreement for entering an amicable action of ejectment for possession of the Premises, and to confess judgment therein against Mortgagor in favor of Mortgagee, whereupon a writ may forthwith issue for the immediate possession of the Premises, without any prior writ or proceeding whatsoever; and for so doing this Mortgage or a

copy hereof verified by affidavit, shall be sufficient warrant.

Possession and Use

- (c) Enter into possession of the Premises, with or without legal action, and use said Premises for approved mental health services as determined by the Mortgagee. The Mortgagee may elect to take fee simple absolute title in the Premises, which Mortgagor shall deliver, to Mortgagee upon demand. Should the Mortgagee so elect, the debt secured by this Mortgage shall be cancelled upon delivery of title and the Mortgagor shall not be entitled to any monies whatsoever that might be attributable to its equity in the Premises. Thirty days after demand of title, this Mortgage deed may be used by Mortgagee to transfer title in the Premises to the Mortgagee if not otherwise transferred.

Remedy for Breach

- 2.03 If Mortgagor fails to pay any tax, claim, lien or encumbrance which shall be or become prior in lien to this Mortgage, or to pay any insurance premium as aforesaid, or to keep the Premises in repair, as aforesaid, or commits or permits waste, then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax assessment, or premium, with right of subrogation there-under, may make such repairs and take such steps as it deems available to prevent or cure such waste, or may appear in any action or proceeding with respect to any of the foregoing and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of said purposes Mortgagee may advance such sums of money as it deems necessary. Mortgagor will pay to Mortgagee, immediately and without demand, all sums of money advanced by Mortgagee pursuant to this paragraph, and all such sums shall be secured hereby.

Assignment of Leases and Rents

- 2.04 As further security for payments of the indebtedness and performance of the obligations, covenants, and agreements secured hereby, Mortgagor hereby assigns to Mortgagee all leases already in existence and to be created in the future, together with all rents to become due under existing or future leases. This assignment, however, shall be operative only in the event of occurrence of a default hereunder, or under the note or other instrument collateral hereto, remaining uncured at the expiration of the grace period, if any, provided above in respect to such default; and in any such case Mortgagor hereby confers on Mortgagee the authority to act as agent, or to appoint a third person, to act as agent or Mortgagor, with power to take possession of, and collect all rents arising from Premises, and apply such rents, at the option of Mortgagee, to the payment of the Mortgage debt, taxes, costs of maintenance, repairs, expenses incident to managing, and other expenses, in such order of priority as Mortgagee may determine, and to turn any balance remaining over to Mortgagee; but such collection of rents shall not operate as an affirmation of

the tenant or lease in the event Mortgagor's title to the Premises should be acquired by Mortgagee. Mortgagee shall not be liable to account for rents and profits actually received by Mortgagee when these are applied to maintain the premises as a mental health facility.

In exercising any of the powers contained in this paragraph, Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Premises and used by Mortgagor in the rental or leasing thereof or any part thereof.

Liability

- 2.05 In the event of a default under this Mortgage or under the Note, which it secures, the holders of such Note will look only to the property secured by this Mortgage to enforce the payment of the indebtedness evidenced by such Note or by this Mortgage. However, the foregoing notwithstanding, in the event that the default is negligent, reckless, intentional, or tortuous, and jeopardizes or otherwise lessens the security herein, as determined by Mortgagee, the Mortgagee shall not be bound by the aforesaid restriction.

ARTICLE III

SATISFACTION AND RELEASE

Satisfaction of Mortgage

- 3.01 If Mortgagor complies with the provisions of this mortgage and pays to Mortgagee said principal sum, and all other sums payable by Mortgagor to Mortgagee as are hereby secured, in accordance with the provisions of the Note and in the manner and at the times therein set forth, without deduction, fraud, or delay, then and from thenceforth this Mortgage, and the estate hereby granted, shall cease and become void, anything hereinbefore contained to the contrary notwithstanding.

Transfer of Title of Further Encumbrance

- 3.02 Any transfer by sale, gift, devise, operation of law, or otherwise of the fee title interest in all or any portion of the Mortgage of Premises or any other property secured hereunder shall have the same consequences as an Event of Default respecting the indebtedness secured hereby, and upon such transfer, Mortgagee, without prior notice or the elapse of any period of grace or the right to cure shall have the right to declare all sums secured hereby immediately due and payable, and, upon failure by Mortgagor to make such payment within thirty (30) days of written demand therefore, Mortgagee shall have the right to exercise all remedies provided in the Note, this Mortgage, or otherwise at law without limitation.

ARTICLE IV

MISCELLANEOUS

Notice

- 4.01 A notice which is mailed by certified mail to Mortgagor or to the person or persons who are then the owner or owners of the Premises at the Premises, or at such other address as Mortgagor shall designate to Mortgagee in writing, shall be sufficient notice when required under this Mortgage.

Waiver of Defenses and Certain Notices

- 4.02 Mortgagor hereby waives and releases: (a) all errors, defects, and imperfections in any proceedings instituted by Mortgagee under this Mortgage; (b) all benefit that might accrue to Mortgagor by virtue of any present or future laws exempting the Premises, or any part of the proceeds arising from any sale thereof, from attachment, levy, or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment; and (c) all notices not herein elsewhere specifically required, of Mortgagor's default or of Mortgagees exercise or election to exercise, any option under this Mortgage.

Cumulative Rights and Remedies

- 4.03 The rights and remedies of Mortgagee as provided herein, or in said Note, and the warrant therein contained, shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Mortgagee, and may be exercised as often as occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.
- 4.04 This Mortgage shall be construed under and in accordance with the laws of the State of Ohio, and all obligations of the parties created hereunder are performable in _____ County, Ohio.

Parties Bound

- 4.05 This Mortgage shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Mortgage.

Severability

- 4.06 In case any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity,

illegality, or unenforceability shall not affect any other provision hereof and this Mortgage shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Time of Essence

- 4.07 Time is of the essence in this Mortgage.

Construction

- 4.08 The words "Mortgagor" and "Mortgagee" include singular, or plural, individual or corporation, and the respective heirs, executors, administrators, successors, and assigns of Mortgagor and Mortgagee, as the case may be. The use of any gender applies to all genders. If more than one party is named as Maker, the obligation hereunder of each such party is joint and several.

Captions

- 4.09 The captions herein are inserted only for convenience of reference and in no way define, limit or describe the scope of intent of this Mortgage or any particular paragraph or section hereof, nor the proper construction hereof.

Future Reimbursements

- 4.10 This Mortgage is given for the purpose of securing reimbursements and future reimbursements which Mortgagee is or may be obligated to make to Mortgagor pursuant to and subject to the terms and provisions of a certain contract between Mortgagor and Mortgagee effective _____, **201**_ which contract is hereby incorporated herein and made a part hereof by this reference. The parties hereto intend that this Mortgage shall secure reimbursements and future reimbursements made after the Mortgage is delivered to the recorder for record whether such reimbursements are made pursuant to an obligation of Mortgagee or otherwise. The parties also intend that this Mortgage secure unpaid advances in the manner and according to the conditions provided for herein. The parties hereto agree that Mortgagee is under no obligation, legal or otherwise, to make any disbursement directly to any person or parties other than Mortgagor in the form of reimbursement pursuant to the certain contract between Mortgagor and Mortgagee. The reimbursements made by Mortgagee to Mortgagor will be evidenced by note or notes from said Mortgagor. The maximum amount of unpaid reimbursement, which may be outstanding at any one time, is \$ _____**.00**.

Nothing in this Mortgage or any other document related hereto is intended to confer upon any person other than the parties hereto and their successors any rights or remedies by reason of this Mortgage or any related document.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and has caused its corporate name to be subscribed hereto by _____, **Executive Director** and _____, **Board Chair** thereunto duly authorized by resolution of its Board of Trustees, this _____ day of _____, **20**__.

Witness: _____ By: _____

Executive Director

Witness: _____ By: _____

Board Chair

ACKNOWLEDGMENT

STATE OF OHIO
COUNTY OF _____

BE IT REMEMBERED that on this _____ day of _____, 20__, before me the subscribed, a Notary Public in and for said County personally came _____, **Executive Director** and _____, **Board Chair**, and acknowledged the signing of the foregoing Mortgage to be their and its voluntary act and deed, individually and corporately pursuant to authority of its Board of Trustees.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

NOTARY PUBLIC

This instrument was prepared by:

The Ohio Department of Mental Health & Addiction Services
Columbus, Ohio 43215-3430

MORTGAGE.MH-
1/23/17

Exhibit A