

Prepared by and Return to: Durham County Attorney's Office (WD)
200 E. Main St. Durham 2nd Fl., NC 27701

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**LEASE AGREEMENT
309 Crutchfield Street**

This **LEASE AGREEMENT** is made and entered into this ____ day of _____, 2018, by and between the **COUNTY OF DURHAM**, a political subdivision of the State of North Carolina hereinafter referred to as "Landlord," and **ALLIANCE BEHAVIORAL HEALTHCARE**, a political subdivision of the State of North Carolina, hereinafter referred to as "Tenant."

WITNESSETH:

WHEREAS, Landlord is the owner of a certain parcel of real property located at 309 Crutchfield Street, Durham, North Carolina; and

WHEREAS, Tenant desires to lease said property in order to provide mental health, intellectual/developmental disability or substance abuse services including a walk-in crisis center available 24 hours a day; and

WHEREAS, Landlord and Tenant desire to enter into this Lease Agreement in order to effectuate that purpose and to set forth their respective rights and liabilities in connection with said property;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

- 1. Demise of Premises:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the property located at 309 Crutchfield Street, Durham, North Carolina (hereinafter the "Premises"), being a lot approximately 4.099 acres with a 26,280 square foot building to be located thereupon, which may be referred to herein as the **"Recovery Response Center "** or **"RRC"**, and is further described as Lot 5 on that certain instrument recorded in Plat Book 189 page 204, Durham County Registry.

2. **Use of Premises:** Tenant shall use and occupy the Premises for the sole purpose of providing the RRC, a mental health, developmental disability or substance abuse service facility including a walk-in crisis center available for emergency situations 24 hours a day. Tenant shall provide Landlord with quarterly reports showing utilization of the facility with trends and analysis.
3. **Term:** The term of this Lease shall commence on January 1, 2019 (the "Commencement Date") and shall continue until 11:59 pm on June 30, 2023, unless earlier terminated in accordance with this Lease (hereinafter the "Term").
4. **Rental:** Beginning on July 1, 2019, and for the remainder of the term of the agreement, Tenant shall pay to Landlord the rental amount of One Dollar (\$1.00) per fiscal year. Landlord hereby acknowledges and has accepted Tenant's payment of Rent through June 30, 2019 under the prior lease agreement.
5. **Alterations and Additions:** Tenant shall seek consent and approval of Landlord before making any changes, alterations or renovations that may impact the roof, the foundation or structural integrity of the premises. Any changes, alterations or renovations shall be at Tenant's expense and the same, if affixed to the property, shall become the property of Landlord. Tenant hereby agrees to be responsible for any damage done to the building as a result of making such changes, alterations or renovations.

6. **Personal Property:**

All personal property belonging to Tenant in or near the Premises or parking lot, shall be at the Tenant's sole risk, and the Landlord shall not be liable for any damage done to or loss of such personal property unless caused by Landlord's negligence or willful act. Landlord shall not be liable for damage or loss suffered by the business or occupation of the Tenant arising from any act or omission of occupants of or visitors to the Premises. Upon the expiration of the Term of this Lease, or termination of this Lease for any reason whatsoever, Tenant shall, on or before said date, remove all such personal property from the Premises, and all property not so removed shall be deemed abandoned by the Tenant. In such event, Landlord may reenter the Premises and, after reasonable notice to Tenant, remove such property therefrom without formal process, Landlord being absolved of any liability or claim for damages in doing anything reasonable, necessary or appropriate in connection therewith. Without limiting any other rights which Landlord may exercise under the terms of this Lease or at law, Landlord may, at its option and after reasonable notice to Tenant, store such personal property at Tenant's expense, or leave same in such place as is reasonably certain that said property will be removed by the local garbage pick-up service.

7. **Trade Fixtures:** Tenant shall be permitted to install trade fixtures in and about the Premises. In addition, Tenant shall be permitted to remove said trade fixtures from the Premises upon the termination of this Lease; provided that if Tenant does so remove such trade fixtures, Tenant shall return the Premises to the same condition as existed at the time of original entry, ordinary wear and tear excepted. This provision is not intended to allow Tenant to remove approved improvements made by Tenant from the Premises. All such improvements belong to Landlord

at the termination hereof and shall not be removed nor damaged by Tenant's removal of trade fixtures. If Tenant does not remove the trade fixtures at termination, Landlord shall have the option either to declare such fixtures abandoned and Landlord the owner thereof or to demand Tenant remove same at Tenant's expense returning the Premises to the condition required herein.

8. **Title to Improvements:** Alterations and permanent improvements to the Premises shall immediately become and be the sole and absolute property of Landlord and shall remain on the Premises and shall not be removed unless otherwise determined by Landlord; and, at the expiration or sooner termination of this Lease, the same shall be surrendered to Landlord in good condition and repair, reasonable wear and tear excepted, unless otherwise determined by Landlord.
9. **Mechanic's Liens:** Tenant shall not do or suffer anything to be done whereby the Premises may be encumbered by any mechanics or materialsman's lien. Whenever and as often as any mechanic's lien is filed against said Premises purporting to be for labor or material furnished or to be furnished to Tenant, Tenant shall discharge same of record within ten (10) days after the date of filing. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or materialsman's lien or other security interest of any kind whatsoever for any such labor or materials shall attach to or affect Landlord's interest in and to the Premises.
10. **Repairs and Maintenance:**
 - a.) Tenant agrees and hereby stipulates with Landlord that the Premises are in good and tenable condition on the Commencement Date of this Lease. Tenant accepts the Premises in "as is" condition.
 - b.) Landlord and Tenant Maintenance Responsibilities. the Parties shall assume the maintenance and repair obligations as set forth in Attachment A, attached hereto and incorporated herein.

Provided however, in no event shall Landlord be liable or responsible for any Capital Maintenance or Repairs caused by or deemed necessary as a result of the negligent, intentional or reckless acts of Tenant or Tenant's employees, agents, subtenants, licensees or invitees.

Tenant further agrees to purchase and maintain all equipment and software necessary to directly monitor and control the Building Automation System (BAS) and maintain thermostat settings in accordance with the schedule in Attachment B attached hereto and incorporated herein and provide regular reports from the BAS as requested by the Landlord, in compliance requirements of the Landlord's Performance Contract for this building.

- c.) Right of Access. Landlord may enter the Premises at any time during the Term to perform its obligations under this Lease.

- d.) Standard of Care. Tenant shall perform its obligations hereunder relating to the maintenance and repair of the Premises in a first-class, efficient, and proper businesslike manner consistent with industry standards for the operation of comparable facilities.
- e.) Landlord's Inspections. Landlord may enter the Premises at any time during the Term to inspect the Premises for proper care and maintenance required by the Tenant under this Lease.
- f.) Request for Maintenance. In the event Landlord or Tenant determines that adequate Routine Maintenance is not being provided as required hereunder, Landlord or Tenant shall provide the other with a report of findings including any Routine Maintenance that has been neglected or performed in a poor or improper manner and the requesting party's request to correct the neglected, poor or improper maintenance. The responsible party shall perform or cause to be performed the Routine Maintenance requested in a timely manner, but in no event shall Tenant take more than ten (10) calendar days to provide the maintenance. A shorter time may be necessary if the neglected poor or improper maintenance is a hazard to the occupants of the Premises.

In the event the responsible party fails or refuses to perform its maintenance obligations, Landlord may perform said obligations and charge the responsible party the actual cost of the work performed.

- g.) Inspections and Reporting. Tenant shall conduct regular inspections of the Premises to ensure that the Premises are being properly maintained as set forth in this Lease. Tenant shall document and photograph, if requested, any conditions that it believes requires Landlord to maintain or repair and provide a copy of the documentation and photographs Landlord. Landlord shall provide any Maintenance and Repairs deemed necessary in a timely manner. If Landlord requires the alteration or closure of any portion of the Premises in order to perform its obligations hereunder, Landlord shall notify Tenant immediately to allow Tenant a reasonable time to make the necessary arrangements for closure or alteration. Tenant shall provide regular reports from the BAS as requested by the Landlord, in compliance with the requirements of the Landlord's Performance Contract for the Premises.

11. Damage or Destruction:

- a.) In the event the Premises is damaged or destroyed and such damage is not covered by insurance as provided in this Lease, the Landlord shall not be required to restore same; provided that if the damage or destruction is to an extent greater than twenty percent (20%) of the then replacement value of improvements on the Premises (exclusive of any Tenant trade fixtures and equipment) then Landlord may elect not to restore and to terminate this Lease, regardless of whether insurance benefits are available to restore the Premises.
- b.) Landlord must provide Tenant written notice of its election not to restore within thirty (30) days from the date of damage and if not given, Landlord shall be deemed to have elected to restore and in such event shall repair any damage as soon as reasonably possible.

- c.) Landlord's obligation to restore shall not include the restoration or replacement of any Tenant trade fixtures, equipment, merchandise or any improvements or alterations made by Tenant to the Premises.

12. Utilities: Landlord shall pay the cost of water, gas, electricity, light, heat, and electric power utilities rendered or supplied upon or in connection with the Premises. All utilities shall be subject to Maintenance and Operation guidelines and restrictions provided by the Landlord (Note Attachment B). Landlord will invoice the Tenant for utilities, which shall be due to Landlord within 30 days from receipt.

13. Telephone, Cable and Miscellaneous Expenses: Tenant shall be responsible for the cost of the following and any other utilities not included, under Section 12 above, rendered or supplied upon or in connection with the Premises, and to the extent permitted by law shall indemnify Landlord against any liability or damages on such account:

Telephone
Cable television/computer networking
Computer support
Physical security
Event services
Insurance
Furnishings

14. Taxes:

- a.) All assessments levied against the Premises by any governmental entity, including any special assessments imposed on or against the Premises for the construction or improvement of public works in, on, or about the Premises, shall be paid before they become delinquent, by Tenant.
- b.) Tenant shall pay, prior to delinquency, all taxes assessed against and levied upon any trade fixtures, furnishings, equipment and all other personal property of Tenant contained in or on the Premises or elsewhere and shall pay all taxes attributable to any leasehold improvements which may be made to the Premises by Tenant. When possible, Tenant shall cause said trade fixtures, furnishings, equipment, personal property and leasehold improvements to be separately assessed. If, however, any or all of same shall be assessed and taxed with Landlord's property, Tenant shall pay to Landlord such taxes as are attributable to Tenant's trade fixtures, furnishings, equipment, personal property and leasehold improvements within fifteen (15) days after receipt of an invoice from Landlord advising Tenant of the taxes applicable to Tenant's property.

15. Insurance:

- a.) Tenant shall maintain, at its expense, the following minimum insurance coverage throughout the Term of the Lease:

\$1,000,000 --- Bodily Injury Liability, and

\$ 100,000 --- Property Damage Liability, or
\$1,000,000 ---Combined Single Limit Bodily Injury and Property Damage

Tenant upon request by Landlord shall furnish a certificate of insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to Landlord verifying the existence of any insurance coverage required by Landlord. The certificate will provide for thirty-(30) days advance notice in the event of a decrease in coverage, termination or cancellation of coverage. The limits of coverage under each insurance policy maintained by the Tenant shall not be interpreted as limiting the Tenant's liability and obligations under the Lease. Notwithstanding the foregoing, nothing contained in this section shall itself be deemed to constitute a waiver of the sovereign immunity of the Landlord or Tenant, which immunity is hereby reserved to the Landlord and Tenant.

- b.) Landlord shall be free from all liability and claim for damages by reason of any injury to any person or persons, including Tenant or its agents, or property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes whatsoever and to whomsoever while upon or in any connected with the Premises during the term of this Lease or any extension or renewal thereof.

16. Events of Default:

- a.) The occurrence of any of the following shall constitute an Event of Default and breach of this Lease:

- (i) Any failure by Tenant to pay the rent or to make any other payment required to be made by Tenant hereunder (where such failure continues for three (3) days after written notice thereof by Landlord to Tenant).
- (ii) Tenant abandons or vacates the Premises without written notification to the Landlord.
- (iii) Tenant utilizes the Premises in a manner not consistent with this Lease.
- (iv) Failure by either Party to observe and perform any other obligation of this Lease, other than the failure of Tenant to pay rent or make any other payment required to be made by Tenant hereunder, where such failure continues for thirty (30) days after written notice thereof by the non-breaching party to the breaching party; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period a party shall not be deemed to be in default if that party shall within such period commence such cure and thereafter diligently prosecute the same to completion.

b.) **Landlord's Remedies**

- . The terms and conditions of this Lease shall be enforceable by actions for specific performance or injunction in addition to any other remedies available at law or in equity. If an Event of Default has occurred, Landlord may, without further notice or demand,

terminate this Lease, and Tenant shall surrender the Premises to Landlord immediately. If Tenant fails to do so, Landlord shall have the right, without waiving any other remedy for possession or arrears in payments, to enter upon and take control of the Premises and to expel or remove Tenant and any other person who may be occupying the Premises. Pursuit of any remedy under this Lease shall not preclude the pursuit of any other remedy provided for in this Lease or any other remedy provided in law or equity, nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any amounts due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions, and covenants contained in this Lease.

- c.) **Tenant's Remedies.** Upon the occurrence and during the continuance of any Event of Default by Landlord, Tenant shall have the right, in addition to all other rights and remedies available to Tenant at law or in equity, to terminate this Lease. No other property or assets of Landlord, disclosed or undisclosed, shall be subject to levy, execution, or the enforcement procedure for the satisfaction of Tenant's remedies. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, Landlord or its officers, elected officials, or their respective heirs, legal representatives, successors, and assigns on account of this Lease or any covenant, undertaking, or agreement in this Lease.

- 17. Termination:** In the event Tenant is unable to use the Premises for the purpose of operating Recovery Response Center before the expiration of this Lease, then this Lease shall be immediately terminated upon 10 days written notice. On or before the termination date or date of expiration, Tenant shall vacate and surrender the Premises to Landlord. All keys to the Premises shall be delivered to the Landlord at that time.

- 18. Condition of Premises upon Termination/Holding Over:** Upon the termination or expiration of this Lease, Tenant shall return the Premises to Landlord substantially in the same condition as received ordinary wear and tear and approved improvements excepted. If Tenant does not surrender possession of the Premises at the expiration or earlier termination of the Term, Landlord shall be entitled to recover compensation for such use and occupancy at the monthly rate equal to Fair Market Value (as hereinafter defined) for the property at the expiration or earlier termination of the Term, and Tenant shall be liable to Landlord for any loss or damage it may sustain by reason of Tenant's failure to surrender possession of the Premises immediately upon the expiration or earlier termination of the Term. For the purposes of this Lease, "Fair Market Value" shall be the monthly rent that a willing user would pay and a willing owner would accept in an arm's length, bona fide negotiation for a monthly lease of the Premises.

- 19. Indemnity:** To the extent permitted by law Tenant shall indemnify, defend and hold harmless Landlord, its Board, agents and employees from any and all claims arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work or things which may be permitted or suffered by Tenant, its invitees, clients or visitors in or about the Premises and shall further indemnify, defend and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provision of this Lease or arising from any negligence of Tenant

its licensees, invitees, agents, contractors or employees. Notwithstanding the foregoing nothing contained in this section shall itself be deemed to constitute a waiver of the sovereign immunity of the Tenant, which immunity is hereby reserved to Tenant.

- 20. Subordination:** This Lease, in the event Landlord so notifies Tenant in writing, shall be subordinate to any ground lease, deed of trust or other hypothecation for security now or hereafter placed upon the real property of which the Premises is a part and to any and all advances made on the security thereof and to all renewals, modifications, replacements and extension thereof. Tenant agrees to promptly execute any documents that may be required to effectuate such subordination. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall observe and perform all of the provisions of this Lease.
- 21. Use of Parking Facilities:** Tenant may use the parking facilities available on the Premises.
- 22. Condemnation:** If the Premises or any portion thereof are taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of said power (all of which is herein referred to as "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first or Landlord may terminate Lease in its entirety at Landlord's option when the condemning authority takes title or possession. If this Lease is not terminated by either Landlord or Tenant, then it shall remain in full force and effect as to the portion of the Premises remaining, provided the rental shall be reduced in proportion to the floor area of the buildings taken within the Premises as bears to the total floor area of all buildings located on the Premises. In the event this Lease is not so terminated, Landlord agrees to at Landlord's sole cost, as soon as reasonably possible, restore the Premises to a complete unit of like quality and character as existed prior to the condemnation. All awards for the taking of any part of the Premises or any payment made under the threat of the exercise of power of eminent domain shall be the property of Landlord, whether made as compensation for diminution of value of the Leasehold or for the taking of the fee or as severance damages; provided, however, that Tenant shall be entitled to any award for loss of or damage to Tenant's trade fixtures and removable personal property.
- 23. Assignment and Sublease:** Tenant shall not assign, mortgage or encumber this Lease, the Premises or any improvements on the Premises. The Tenant shall not sublet the Premises nor any part thereof, without the prior written consent of the Landlord which consent shall not be unreasonably withheld. Any attempted subletting without the Landlord's consent shall be null and void. Notwithstanding the foregoing, Landlord hereby consents to a sublease, which sublease shall be subject to the terms and conditions of this Lease, between Tenant and Recovery Innovations, Inc, for the operation of the Recovery Response Center.
- 24. Applicable Law:** This Lease is entered into in North Carolina and shall be construed under the laws, statutes and ordinances of this State. All actions relating in any way to this Lease shall be brought in the General Court of Justice in the County of Durham and State of North Carolina.

25. Compliance with Laws: Tenant represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented.

26. Severability: The provisions of this Lease are independent covenants and should any provision or provisions contained in this Lease be declared by a court or other tribunal of competent jurisdiction to be void, unenforceable or illegal, then such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force effect.

27. Notices: All notices and written consents required under this Lease shall be in writing and shall be sent to the Landlord at Attn: Open Space and Real Estate, 201 East Main Street, 5th Floor, Durham, North Carolina 27701, and to the Tenant, Attn: General Counsel, 5200 West Paramount Pkwy, Morrisville, NC 27560.

28. Waiver: Failure or delay of either party to insist upon the strict performance of the covenants, agreements, or conditions of this Lease, or any of them, shall not be construed as a waiver or relinquishment of that party's right to enforce such, but the same shall continue in full force and effect.

29. Entire Agreement: This Lease contains the entire and only agreement between the parties and no oral statements or representations or prior written matter not contained in this agreement shall have any force or effect. This Lease shall not be modified in any way except by writing executed by both parties.

IN TESTIMONY WHEREOF, This Lease has been executed by the parties hereto, as of the date first above written.

Landlord:
COUNTY OF DURHAM

Tenant:
**ALLIANCE BEHAVIORAL
HEALTHCARE**

BY: _____
Wendell M. Davis
County Manager

BY: _____
Rob Robinson, CEO

(SEAL)

ATTEST:

ACKNOWLEDGEMENT OF LANDLORD:

NORTH CAROLINA
DURHAM COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that _____, personally came before me this day and acknowledged that she is clerk to the Board of Commissioners of Durham County, a political subdivision of the State of North Carolina, and that by authority duly given and as the act of the County, the foregoing instrument was signed in its name by its Manager, sealed with the County seal, and attested by _____, Clerk to the Board of Commissioners.

Witness my hand and official stamp or seal, this _____ day of _____, 2018.

Notary Public (SEAL/STAMP)

My commission expires: _____

ACKNOWLEDGEMENT OF TENANT:

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for the aforesaid County and State, do hereby certify that Rob Robinson personally appeared before me this day and acknowledged that he is CEO of Alliance Behavioral Healthcare, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him.

Witness my hand and notarial seal this _____ day of _____, 2018.

Notary Public

My commission expires: _____

ATTACHMENT A
LANDLORD AND TENANT MAINTENANCE RESPONSIBILITIES

1. **Landlord's Responsibilities:** Landlord shall be responsible for the following maintenance and repairs in consideration of the rent paid by Tenant:
 - Roof annual inspection and necessary repairs and maintenance
 - Foundation maintenance and repair as needed
 - Parking lot repairs, maintenance, restriping, and snow removal

2. **Tenant Responsibilities:** Tenant shall provide maintenance and repairs to the following:
 - Exterior walls, including pressure cleaning and painting on an as needed basis
 - Floor tile, ceiling tile and carpet replacement as needed
 - Electrical and plumbing maintenance
 - Electronic security card access system, Intrusion system inspection
 - Fire alarm and sprinkler testing, maintenance and monitoring
 - Concrete walkways and pavement repairs
 - Emergency Generator testing and maintenance
 - Trash pick-up, including dumpster rental
 - Landscaping weekly maintenance and enhancements
 - Fence repairs
 - Signage and sign changes required by code
 - Interior painting
 - Non-structural weather/storm issues including snow removal and ice treatment on sidewalks and walkways, limb clean-up, etc.
 - Janitorial services, including floor tile, ceiling tiles and carpet cleaning
 - False intrusion or fire alarm fines
 - Pest control
 - Locks, keys, cards or electronic security services
 - Consumables (lamps, ballasts, fuses, gaskets)
 - Repairs required due to deliberate destruction or vandalism
 - Kitchen appliance maintenance and repair (Note: there is no obligation for the Tenant to use the kitchen for meals at the facility)
 - Washer & dryer maintenance and repair
 - HVAC service and maintenance
 - Electrical Systems
 - Backflow device maintenance, repairs and testing

ATTACHMENT B
MAINTENANCE AND OPERATION GUIDELINES

309 Crutchfield Building Schedule of Operations						
	Resident Section Schedule		Office Schedule		Lobby and Conference area Schedule	
Day Type	Switched to Occupied Mode	Switched to Unoccupied Mode	Switched to Occupied Mode	Switched to Unoccupied Mode	Switched to Occupied Mode	Switched to Unoccupied Mode
Weekday	Always - 24/7	Never	7:00 AM	5:00 PM	7:00 AM	10:00 PM
Weekend	Always - 24/7	Never	8:00 AM	9:00 AM	8:00 AM	9:00 AM
Conference AHU 1 Temperatures			Offices AHU 2 Temperatures			
Operating Mode	Occupied Set Point	Unoccupied Set Point		Operating Mode	Occupied Set Point	Unoccupied Set Point
Cooling	72	76		Cooling	72	76
Heating	70	60		Heating	70	65