

ORDINANCE O-2018-13

AN ORDINANCE AUTHORIZING LEASE OF VILLAGE-OWNED PROPERTY TO HIGHEST BIDDER AND DECLARING AN EMERGENCY

WHEREAS, the Village of Windham has previously established the Village Administration offices in a portion of the building located at 9621 East Center Street; and

WHEREAS, the Village Administration offices have moved to a new location and the former offices are no longer needed to be used for any municipal purpose and are now vacant.

WHEREAS, the Village Council passed Ordinance 2018-10 on March 27, 2018 which authorized advertising for bids to lease the designated portion of the former Village Administration offices, which action was taken in conformity with Ohio Revised Code § 721.03 and 723.121; and

WHEREAS, the time within which to receive bids to lease the designated portion of the former Village Administration offices has been completed; and

WHEREAS, an acceptable bid has been received; and

WHEREAS, the Village Administrator approves the proposed tenant and lease.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Village of Windham, Portage County, Ohio, two thirds or more of the members thereto concurring that:

SECTION 1: At the direction of the Village Council, the portion of the former Village Administration offices, which are no longer needed for any municipal purpose, shall be leased by the Village as provided by Revised Code 721.03 and 723.121 to the highest and best bidder offering at least \$300.00/month for a period of one year and \$500/month for at least one additional year, but only after advertising once a week for five (5) consecutive weeks in a paper of general circulation within the Village.

SECTION 2: MYCHOICE SOLUTIONS, LLC has bid on the leasing the property, in fact was the only bidder, and has submitted a bid which is in all particulars acceptable to the Village.

SECTION 3: The Mayor and the Fiscal Officer are hereby authorized to enter into a lease with MYCHOICE SOLUTIONS LLC in substantial conformity with the Lease attached hereto and marked for identification as Exhibit A.

SECTION 4: This Ordinance is declared an emergency measure becoming effective immediately upon its passage by Council and approval by the Mayor so as to protect the health, safety and general welfare of the Village of Windham, specifically to assure the financial health of the Village, and to increase and continue business activity in the Village of Windham.

SECTION 5: It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that the deliberations of the Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Revised Code of the State of Ohio.

PASSED IN COUNCIL as an emergency this 22nd day of May, 2018.

Vote of Council: Ayes: 6
 Nays: 0

Mayor Deborah Blewitt

ATTEST:

Fiscal Officer Cheree Taylor

Approved as to Form:

Village Solicitor Thomas Reitz

LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into on _____, 2018 by and between Windham Village ("Landlord"), an Ohio municipality, and MYCHOICE SOLUTIONS LLC, an Ohio limited liability company ("Tenant").

1. Leased Premises.

a. Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, certain medical office space (the "Leased Space") located at 9621 East Main Street, Windham Village, Ohio 44288 (the "Premises") for the Tenant's exclusive use during the Term, except that certain Windham Village sponsored Alcoholics Anonymous meetings may continue to take place in the seminar room of the Leased Space at times agreed upon between the Parties.

b. Tenant shall provide its own staff at the Premises at Tenant's sole expense.

2. Rent and Other Services.

a. Tenant agrees to pay to Landlord Three-Hundred Hundred Dollars (\$300.00) per month ("Rent") for the first twelve months of the Lease. After the first twelve months of the lease, Tenant shall pay Landlord Five-Hundred Dollars (\$500.00) in Rent each month. The parties acknowledge and agree that the Rent includes payment for the Landlord's services in this Section, and represents fair market value for the space and services being leased.

b. Tenant agrees to pay the electric utility charges, gas utility charges, phone line and service charges, and internet charges for the Leased Space.

c. Landlord agrees to pay all other utility costs of the Premises and Leased Space including, but not limited to, water charges, waste management charges, and sewer charges. Landlord also agrees allow Tenant to dispose of bio-hazard waste in Landlord's preexisting fire department facility. Landlord shall undertake any and all steps or procedures to ensure compliance with applicable laws and regulations in disposing of bio-hazard waste.

d. Landlord further agrees to pay for all material necessary and for the architect required by Portage County Building Department for the Leased Space to be upgraded to pass required Portage County Building Department inspections or any other inspection either by State or Local Government necessary for Tennant to operate Medical Clinic to be deemed a Medical Clinic ("Improvements"). Landlord's representative shall oversee the Improvements made to the Leased Premises, and Tenant shall hire a private contractor, at its sole discretion, to assist Landlord's representative with the Improvements. Tenant shall be responsible for compensating private contractor.

3. **Term and Termination.** This Lease shall commence on _____, 2018 and shall continue for a one (1) year Term (the "Term") and shall be renewable for a second year at the rent set forth above. At the end of the Term, the parties may renew this Lease upon mutually agreeable terms.

4. **Insurance.** Tenant shall maintain commercial general liability insurance in an amount of not less than One Million Dollars (\$1,000,000), combined single limit. Landlord shall maintain, at Landlord's expense, such fire, extended coverage, and public liability insurance for the Premises as are covered under a standard extended coverage property insurance policy. Landlord

shall insure building for fire, extended coverage, public liability insurance for premises for an amount not less than One Million Dollars (\$ 1,000,000).

5. Condition of Premises Tenant. Tenant shall keep, or cause to be kept, the Premises in good order and in a clean, sanitary and safe condition, in accordance with all applicable laws, directions, rules and regulations at no cost or expense to Landlord (unless otherwise provided herein). Tenant shall permit no waste or nuisance upon or damage or injury to the Premises, except for ordinary wear and tear

6. Condition of Premises, Landlord. Landlord shall keep, or cause to be kept, the Premises in good order and in a clean, sanitary and safe condition, in accordance with all applicable laws, directions, rules and regulations at no cost or expense to Tenant (unless otherwise provided herein). Landlord shall permit no waste or nuisance upon or damage or injury to the Premises, except for ordinary wear and tear. Landlord shall make all repairs necessary to maintain the Premises, including the Leased Space, Common Areas, roof, structural portions, parking areas, and general exterior of the Premises and building in good condition and repair. Additionally, Landlord is responsible for the cost of repairs to all major structural and mechanical components associated with the Premises, including, but not limited to, the foundation, downspouts, gutters, electrical systems, and HVAC.

7. Surrender of Premises. At the expiration or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean and in the same condition as the Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted. Tenant shall at such time remove all of Tenant's property from the Premises.

8. Destruction of Premises. In case the Premises are destroyed or damaged by fire, the elements or any other cause, so as to be unfit for occupancy and such damage or destruction cannot be repaired within a period of thirty (30) days, either party may terminate this Lease. If the Premises can be repaired within such thirty (30) day period, or if both of the parties hereto choose not to terminate this Lease, Landlord shall repair such damage as promptly and as reasonably possible, and the Rent shall be abated proportionally.

9. Notices. Any notices or demands to be given pursuant to the Lease shall be sent to Landlord or Tenant, respectively, shall be sent to the respective parties at the addresses listed below.

If to Landlord:

Mayor, Deborah Blewitt
9083 North Main Street _____
Windham, Ohio 44288 _____

With a copy to:

Thomas Reitz, Esq.
Reitz, Paul & Shorr
215 West Garfield Road, Suite 230
Aurora, Ohio 44202

If to Tenant:

Ruth Skocic
MyChoice Solutions LLC
PO Box 329
Garrettsville, Ohio 44231

With a copy to:

Laura Fryan, Esq.
Brouse McDowell, LPA
388 South Main Street, Suite 500
Akron, Ohio 44311

Such notices shall be sent by personal delivery or nationally recognized courier (i.e. Federal Express) and shall be deemed sent on the day of such personal delivery or two (2) business days after being deposited with any nationally recognized courier.

10. Relationship of the Parties. Nothing in this Lease shall create a partnership, joint venture, employment relationship, borrower and lender relationship, or any other relationship between Landlord and Tenant, other than the relationship of landlord and tenant.

11. Counterparts; Electronic Signature. This Lease may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. For purposes of executing this Lease, a document signed and transmitted by e-mail or facsimile machine shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document.

12. Miscellaneous.

a. **Quiet Enjoyment.** Landlord agrees that Tenant will, for the specific times provided for herein during the Term, have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from Landlord or any persons except for those described herein.

b. **Severability.** This Lease is intended to constitute a valid and enforceable legal instrument. In the event any provision hereof is declared invalid, such provision will be deemed severable from the remaining provisions of this Lease, all of which will remain in full force and effect.

c. **Compliance.** It is the intent of the parties to fully comply with all applicable federal and state laws regulating health care fraud, including but not limited to the federal Anti-Kickback Law, 42 U.S.C. § 1320a-7b, the Stark I and Stark II Laws, 42 U.S.C. § 1395nn, as amended, and the False Claims Act, 31 U.S.C. § 3729. et seq. Each of the parties shall comply with all such laws in the performance of their respective obligations under this Agreement, including but not limited to the requirement that the rental charges are consistent with fair market value. Accordingly, no part of any consideration paid hereunder is a prohibited payment for the recommending or arranging for the referral of business or the ordering of items or services, nor are the payments intended to induce illegal referrals of business.

d. **Entire Agreement; Amendment; Waiver.** This instrument constitutes the entire Lease between the parties hereto and supersedes all previous understandings and agreements between the parties, if any. No provision of this Lease shall be modified except by a written instrument executed by both parties. Waiver of any provision hereof in one instance shall not constitute a waiver of any other instance.

e. **Assignment.** Neither party shall voluntarily, involuntarily or by operation of law, assign, mortgage or otherwise encumber all or any part of its interest in this Lease or in the Premises or sublet the whole or any part of the Leased Space or allow any other person or entity to occupy any portion of the Leased Space without the prior written consent of the other party.

f. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Ohio.

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IN WITNESS WHEREOF, the parties have executed this Lease as of the dates set forth below their respective signatures.

LANDLORD
WINDHAM VILLAGE

By: _____

Its: Mayor _____

And

Its: Fiscal Officer

Date: _____

Approved as to Form:

Thomas Reitz, Village Solicitor

TENANT
MYCHOICE SOLUTIONS, LLC

By: _____

Its: _____

Date: _____