

RESOLUTION #74-2011

Resolution offered by Finance and Insurance Committee.

Resolved by the Board of Supervisors of Oneida County, Wisconsin:

WHEREAS, Oneida County owns the property and building located at 1991 Winnebago Street, Rhinelander (the "Property") which has been operated as the Koinonia AODA facility by The Human Service Center; and

WHEREAS, there has not been a formal lease arrangement between The Human Service Center and Oneida County for the Property; and

WHEREAS, the Human Service Center seeks to privatize the provision of services that they currently provide at Koinonia on the Property; and

WHEREAS, in order to complete this effort to privatize the services at Koinonia the Human Service Center needs to sublease the Property; and

WHEREAS, Oneida County and The Human Service Center need to enter the attached lease in order to execute a proper, legally binding sub-lease of the Property.

NOW, THEREFORE, BE IT RESOLVED, by the Oneida County Board of Supervisors that the attached lease is approved to be entered into for the Koinonia facility.

BE IT FURTHER RESOLVED, that the County Board Chairman and County Clerk shall have the authority to sign the attached lease.

Vote Required: Majority = _____ 2/3 Majority = _____ 3/4 Majority = _____

The County Board has the legal authority to adopt: Yes _____ No _____ as reviewed by the Corporation Counsel, _____, Date: _____

Approved by the Finance and Insurance Committee this _____ day of _____, 2011.

Offered and passage moved by:

Supervisor

Supervisor

Supervisor

Supervisor

Supervisor

_____ Ayes
_____ Nays
_____ Absent
_____ Abstain
_____ Adopted

52 by the County Board of Supervisors this _____ day _____, 2011.
53
54 _____ Defeated
55
56 _____
57 Mary Bartelt, County Clerk Ted Cushing, County Board Chair

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement ("Lease") is made and effective _____, by and between **Oneida County** ("Landlord") and **The Human Service Center** ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as **1991 Winnebago Street, Rhinelander, Wisconsin 54501** and legally described as follows (the "Property"):

A parcel of land located in the NW ¼ of the SW ¼, Section 33, Township 37 North, Range 9 East, City of Rhinelander, Oneida County, Wisconsin, described as follows:

Commencing at an Oneida County Monument marking the W ¼ corner of said Section 33, thence along the E-W ¼ line S 86° -32' 07" E a distance of 1154.92' to a point on the westerly right of way line of Chippewa Drive, thence along said right of way line S 2° -07' -16" W a distance of 554.71' to an iron pipe and the point of beginning, thence continuing along said right of way line S 2° -07' 16" W a distance of 600.00' to an iron pipe, thence leaving said right of way line S 89°-24' 14" W a distance of 726.00' to an iron pipe, thence N 2°-07' -16" E a distance of 600.00' to an iron pipe, thence N 89°-24' -14" E a distance of 726.00' to the point of beginning.

Parcel contains 10.00 acres.

Subject to easements, restrictions, reservations and right of way of record or in use.

Landlord makes available for lease the Building designated as **the Koinonia Facility** (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term.

A. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning **January 1, 2012** and

ending **December 31, 2012**. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall I make no other claim against Landlord for any such delay.

B. Tenant may renew the Lease for five extended terms of 12 months. Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the Initial Term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

2. **Rental.**

A. Tenant shall pay to Landlord during the initial term rental of **One Dollar (\$1.00)** per year. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

B. The rental for any renewal lease term, if created as permitted under this Lease, shall be calculated at the time notice of renewal is given

3. **Use**

The premises are to be used solely for the provision of AODA and mental health services. Use for any other purpose will be cause for termination of this lease. Tenant shall not carry on or permit any activity in the premises which is a violation of any federal or state laws or the ordinances of the municipality in which the Leased Premises are located, and Tenant shall not carry any stock of goods or do anything in or about the premises which will in any way impair or invalidate the obligation of any policy of insurance relating to the Leases Premises.

4. **Sublease and Assignment.**

Tenant shall have the right without Landlord's consent, to assign this Lease to a corporation with which Tenant may merge or consolidate, to any subsidiary of Tenant, or to any corporation under common control with Tenant. Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed.

5. **Repairs.**

During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

6. **Alterations and Improvements.**

Tenant, at Tenant's expense, shall have the right following Landlord's consent to

remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

7. Property Taxes.

Tenant shall pay any and all real estate taxes if applicable, including any special assessments, levied or assessed against the Property or Leases Premises, with out delinquency. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Leased Premises. Tenant shall also pay for all license fees related to operations, permit costs, business taxes, occupational taxes, and any and all other charges assessed by reason of Lessee's use or occupation of the Property or Leased Premises.

8. Insurance.

A. If the Leased Premises or any other party of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or a bated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts, as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.

C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration. Landlord shall

not be required to maintain insurance against thefts within the Leased Premises or the Property.

9. Utilities.

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. In the event that any utility or service provided to the Leased Premises is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant's pro rata share of the charges. Tenant shall pay such amounts within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Tenant shall not use any equipment or devices that utilize excessive electrical energy or which may, in Landlord's reasonable opinion overloads the wiring or interferes with electrical services proper functions. Tenant, at Tenant's sole expense, shall provide for or contract for janitorial services.

10. Signs.

Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

11. Entry.

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises.

13. Damage and Destruction.

Subject to Section 8 A. above, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the

reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

14. Default.

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

15. Quiet Possession.

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

16. Condemnation.

If any legally, constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

17. Subordination.

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such

mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

18. Notice.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States Post certified mail, return receipt requested, addressed as follows:

If to Landlord to:

Mary Bartelt, County Clerk
P.O. Box 400
Rhineland, WI 54501

If to Tenant to:

David Bast, Director
The Human Service Center
P.O. Box 897
Rhineland, WI 54501

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

19. Waiver.

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

20. **Memorandum of Lease.**

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

21. **Headings.**

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

22. **Successors.**

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

23. **Consent.**

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

24. **Performance.**

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lessor of twelve percent (12%) per annum or the then highest lawful rate. If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

25. **Compliance with Law.**

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

26. **Indemnity**

Tenant will indemnify and save Landlord harmless against all claims and damages and costs and expenses, including attorney's fees, arising (1) out of any injury or damage to the persons or property in connection with the operation of the premises, (2) out of loss or injury, however caused, to goods stored at the Lease Premises, or (3) out of any claims or actions brought by any person, firm, governmental body, or other entity, alleging, or in any way connected with, contamination or adverse effects

on the environment, or violation of any Federal, State or Local law or provision dealing with regulation or protection of the environment, and including any order of any government or judicial entity arising out of the operation of the property. It is further understood and agreed that Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by the Tenant, its employees or agents, resulting from the condition of the Leased Premises or any building or improvements thereon or any fixtures or equipment therein, or such as may result from any accident in or about said building or the Leased Premises, except if caused by natural disaster/weather/or regular wear and tear/age. Landlord and Tenant mutually agree to notify and assure each other, in writing, of any problems of which either party has knowledge that may cause such damage.

27. Amendment

No amendment of this contract shall be binding unless in writing and signed by all of the parties.

(a) Termination: Landlord may terminate this Lease without any right by Tenant to reinstate Tenant's rights by payment of rent due or other performance of the terms, covenants and conditions of this Lease. Upon such termination, Tenant shall immediately surrender possession of the Leased Premises to Landlord. Any such termination shall be without prejudice to any claim or right of Tenant to recover, in addition to any other damages or recovery to which Landlord may be entitled, damages for any unpaid rent due or to become due under this lease.

(b) Reletting: With or without terminating this Lease, as Landlord may elect, Landlord may re-enter and repossess the Premises or any part thereof, and lease the same to any other person or entity upon such terms as Landlord shall deem reasonable for a term within or beyond the term of this lease.

If the Premises are at the time of default sublet or leased by Tenant to others, Landlord may, as Tenants agent, collect rents dues from any subtenant or other tenant and apply such rents to the rent and other obligations due under this Lease without in any way affecting Tenant's obligations to Landlord under this lease. Such agency, being given for security, is hereby declared to be irrevocable.

28. Severability

The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement or any Task Order. Any void provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and

enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

29. Remedies

If Tenant shall default under this Lease, Landlord at any time thereafter may exercise any one (1) or more of the following remedies:

30. Final Agreement.

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

Landlord: Oneida County

Ted Cushing, County Board Chairman

Mary Bartelt, County Clerk

(Seal)

Tenant: The Human Service Center

David Bast, Executive Director

Human Service Center Board Chairman