

## TRIPLE NET LEASE AGREEMENT

This Triple Net Lease Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between **the City of Bolivar, Missouri**, (hereinafter referred to as "Landlord") and **Burrell, Inc., d/b/a Burrell Behavioral Health**, (hereinafter referred to as "Tenant," whether one or more). The Tenant's address is: PO Box 315, Bolivar, Missouri 65613.

**PURPOSE:** The purpose of this Agreement is to obligate the Landlord to lease to the Tenant certain real estate as identified herein, and to do so in accordance with the terms herein, and to obligate the Tenant to compensate the Landlord for possession of the real estate in accordance with the terms herein, and to establish the Landlord's and Tenant's respective obligations to one another with respect to the lease of said real estate.

### LANDLORD AND TENANT MUTUALLY AGREE TO THE FOLLOWING TERMS AND CONDITIONS

**1. Property to be Leased:** Landlord does hereby lease and demise unto Tenant, and Tenant does hereby take and hire from Landlord, certain real estate and improvements located at 4476 Airport Drive, Bolivar, Missouri 65613 (hereinafter referred to as the "Subject Property"). The real estate wherein the Subject Property is located is more particularly described by legal description in **Exhibit "A"** attached hereto and made a part hereof by reference.

**2. Term of Lease:** The term of this Agreement will commence immediately upon the execution of this Agreement by all parties; and this Agreement will expire on the 30<sup>th</sup> day of November, 2013.

**3. Rent:** Tenant will pay to Landlord, in advance of or on the first day of each year during the term of this Agreement, base rent in the sum of **One and no/100s Dollars (\$ 1.00)** annually.

In addition to base rent, the Tenant agrees to pay **additional rent** as follows:

- a. **Real Estate Taxes:** Tenant will pay to Landlord a sum equal to the State, County and City real estate taxes or assessments lawfully levied and assessed against the property. Landlord shall notify Tenant of the amount of such taxes by not later than 15 days following the receipt of a statement for taxes or assessments, and such sum shall be payable to Landlord by not later than 15 days prior to the due date thereof. Tenant shall also pay to the Landlord all amounts of interest or penalties which may be incurred as a result of the Tenant's failure to deliver the required funds within the time allowed herein.
- b. **Insurance:** On or before the first day of each month during the term of this Agreement, Tenant will pay to Landlord a sum equal to the property, casualty and liability insurance premiums on the property; and in this connection, Landlord shall cause the premises to be insured for their full insurable value against loss by fire, windstorm, losses under extended coverage, and vandalism in a company rated no lower than "A" for financial soundness by the A.M Best Company, or the comparable rating of any other nationally recognized insurance company rating service. The Tenant may carry any additional insurance it chooses for the value of its leasehold improvements, if any, and its contents. The insurance policy shall provide liability coverage for no less than \$3,000,000 per person and per incident. The parties acknowledge that, as of the beginning of the initial term of this Agreement, the property, casualty and liability insurance premiums on the property would equal approximately \$150.00 per month. The parties acknowledge that the amount of compensation for such property, casualty and liability insurance may be adjusted by the

parties annually if requested by either party (to be effective on January 1<sup>st</sup> of each year during the term of this Agreement), and the adjusted compensation amount will be calculated by obtaining insurance quotes on such property from at least two (2) separate insurance providers of the Tenant's choosing and one (1) insurance provider of the Landlord's choosing; and by using the average of all such quotes as the compensation amount. In the event that no party requests an insurance compensation adjustment on or before December 1<sup>st</sup> of any given year during the term of this Agreement, then the compensation amount will remain the same for the next year.

**4. Landlord's Covenants:** Landlord hereby covenants as follows:

- a. Ownership of the Subject Property: Landlord covenants and warrants that they are the sole owner of the Subject Property; that they have good right to lease and same; that the premises are free and clear of all liens and encumbrances except ***encumbrances of record***; and that they will indemnify and hold the Tenant harmless from all costs, expenses or damages incurred as a result of claims or demands against the Tenant or the leasehold estate.
- b. Quiet Enjoyment: Landlord covenants and warrants that Tenant may peacefully hold and enjoy the Subject Property during the term hereof without any interruption by the Landlord, or any other person claiming by, through or under the Landlord, so long as the Tenant observes and performs the several covenants, provisions and conditions of this Agreement; provided, however, that the Landlord, their agents, or other persons or entities with interest in the Subject Property will have the right to inspect the Subject Property at reasonable times and intervals and upon reasonable notice. In addition, Landlord, their agents, or other persons or entities with interest in the Subject Property may take reasonable steps, within the sixty (60) days prior to the expiration of this Agreement, to procure subsequent Tenants, such as displaying signs on the Subject Property notifying potential Tenants that the Subject Property will soon be available for lease, or allowing potential Tenants to inspect the Subject Property with the Landlord or their agents at reasonable times and upon reasonable notice. The Subject Property may also be entered at reasonable times and intervals and upon reasonable notice by Landlord or other persons or entities with interest in the Subject Property for the purpose of exhibiting the Subject Property to prospective purchasers.
- c. Authorized Use of Premises: Landlord covenants that the Subject Property is properly zoned for the Tenant's intended use thereof as set forth in this Agreement; and that there are no restrictive covenants which would prevent or impair such intended use.
- d. Real Estate Taxes: Landlord will, if necessary, pay all State, County or City real estate taxes or assessments lawfully levied and assessed against the Subject Property during the lease term, subject to reimbursement for such taxes from Tenant as provided in Paragraph 4(a) of this Agreement. Tenant will be responsible for all personal property taxes associated with its operations and the Subject Property.
- e. Property and Casualty Insurance: Landlord will maintain such property, casualty and liability insurance premiums on the property as it deems necessary to protect its interests, subject to reimbursement for such insurance from Tenant as provided in Paragraph 4(b) of this Agreement. Landlord will have no obligation to insure the leasehold improvements, if any, of the Tenant; nor any of the Tenant's fixtures or contents.

- f. Assessment Changes: If the Landlord receives any notice of an increase in the assessed valuation of the Subject Property, they shall promptly notify Tenant of such change, and the amount thereof. Landlord shall further notify the Tenant whether or not they intend to contest such assessment. If Landlord elects not to contest the change in assessment, Tenant may do so in the name of the Landlord, but at the sole cost and expense of the Tenant; and in this connection, the Landlord hereby appoints the Tenant as their agent and limited attorney-in-fact for this purpose only. Landlord shall cooperate fully in any protest proceedings initiated by Tenant on Landlord's behalf.

**5. Tenant's Covenants:** Tenant hereby covenants as follows:

- a. Payment of Rent: Tenant will pay all rental amounts to Landlord when due as provided for in this Agreement.
- b. Payment of Utilities: Tenant covenants and agrees to pay for the utility charges incurred as a result of the use or consumption upon the Subject Property as such charges become due, including but not limited to those costs and fees associated with water, sewer, gas, electricity, trash and waste removal, and telephone services. In the event that any utility or service provided to the Subject Property is not separately metered, Landlord will pay the amount due for any such utility or service and separately invoice Tenant for Tenant's pro-rata share of such costs and fees.
- c. Maintenance, Upkeep, and Repairs: Tenant shall keep both the interior and exterior of the Subject Property in good condition and repair at their sole cost and expense, excepting only repairs necessitated by insured causes, or by acts of God or vandalism over which the Tenant has no control, whether or not such cause of causes are insured.
- d. Property and Casualty Insurance: **TENANT IS HEREBY ADVISED TO OBTAIN PROPERTY AND CASUALTY INSURANCE TO PROTECT ITS PROPERTY AND INTERESTS.** Tenant will at all times be solely responsible for carrying such Property and Casualty Insurance as Tenant deems necessary to protect its interests, including losses to leasehold improvements, and to Tenant's fixtures and contents. Tenant acknowledges that Landlord has no obligation to provide coverage for any losses to the Tenant's improvements or property, and releases the Landlord from all damages or losses which it might sustain as a result of any such losses or damages.
- e. Compliance with Worker's Compensation Laws: If applicable to its use of the Subject Property, Tenant will comply with all workers' compensation and labor laws; and Tenant will be responsible for providing all applicable, necessary and adequate employer worker's compensation insurance.
- f. Use of Subject Property: The parties acknowledge that Tenant will use the property as a production, packaging and assembly facility. The Subject Property will, in all events, be used in strict compliance with all applicable zoning and subdivision regulations, and with all restrictive covenants, if any. Tenant will not use the Subject Property for the purposes of storing, manufacturing or selling any explosives, flammables, or other inherently dangerous substance, chemical, thing, or device.

- g. Compliance with Applicable Laws: Tenant will not use the Subject Property in violation of any Federal, State or Local/Municipal environmental statute, ordinance, rule or regulation, nor will it permit the Subject Property to be so used. In addition, Tenant's use and possession of the Subject Property will comply with all other Federal, State or Local/Municipal statutes, ordinances, rules and regulations now in effect or as may be enacted subsequent to the execution of this Agreement. Tenant will be absolutely liable for and will indemnify Landlord for all claims, demands, causes of action, damages, costs and expenses (including Landlord's reasonable attorney's fees and all penalties, fines, and clean up costs) incurred or paid by the Landlord as a result of Tenant's actual or alleged violation of any environmental or other Federal, State or Local/Municipal law, rule or regulation arising in connection with Tenant's use or possession of the Subject Premises.
- h. Care of Subject Property: Tenant will take good care of and maintain the Subject Property in a good and safe condition, and will keep the same neat, clean and free of debris, trash or other waste products except those from current operations, or that which is in containers awaiting pickup and disposal; and Tenant will keep the Subject Property free of conditions which are unreasonably dangerous, or likely to cause fire or explosion.
- i. Liens: Tenant agrees to pay promptly for any work done by Tenant (or material furnished for such work) in or about the Subject Property, and Tenant shall not permit or suffer any lien to attach to the Subject Property and shall promptly cause any such lien, or any related claim to be released; provided, however, that in the event Tenant contests any such lien, Tenant agrees to indemnify Landlord and, if requested, to deposit with Landlord cash or a surety bond in form and company satisfactory to Landlord in an amount equal to twice the amount of such contested claim.
- j. Condition of Property and Return of Property: Tenant acknowledges that they have had the opportunity, prior to the execution of this Agreement, to inspect the Subject Property. Except for any defects in the Subject Property, if any, that have been put in writing and signed by the Tenant on or before the date of this Agreement, and attached hereto as an addendum to this Agreement, the Tenant acknowledges that the Subject Property is in good condition and repair. At the termination of this Lease, Tenant will return the Subject Property in as good condition and repair as when received, excepting only usual and ordinary wear and tear. Any damages caused by the erection, use or removal of trade fixtures or equipment will be repaired at the sole cost and expense of the Tenant, and Tenant hereby assumes responsibility for such costs and expenses.
- k. Structural Alterations, Signs, and Remodeling: Tenant shall make no structural alterations to the Subject Property without the prior written consent of the Landlord after Landlord has had the opportunity to review and approve construction plans for such work. Tenant may erect signs, but shall obtain the written consent of Landlord to the appearance, size, location and means of erection prior to installing the same. Any non-structural improvements to the premises in the nature of painting, wallpapering, installation of floor coverings and like changes must be approved by the Landlord in writing prior to the commencement of such work; and all such improvements shall become a permanent part of the premises, and at the termination of this Lease, shall remain with, and become the property of, the Landlord. Any structural alterations, erected signs, or non-structural improvements on the Subject Property that are approved

by Landlord or otherwise allowed by this Agreement shall be done solely at the Tenant's expense. Tenant will be solely responsible for the cost of all labor and materials to make approved changes to the Subject Property. Tenant shall indemnify and hold the Landlord harmless from all costs, expenses or damages incurred as a result of claims, demands or liens against the Landlord or the leasehold estate which result from the approved acquisition or construction of improvements (including reasonable attorney's fees) by or at the request of Tenant. Tenant shall, from time to time during construction and as requested by the Landlord, provide Landlord with proof in the form of paid receipts or lien waivers that it has paid all costs for labor or materials used in connection with any approved improvements to the Subject Property. All improvements to the Subject Property will remain with the Subject Property at the expiration of this Agreement, and will be the property of the Landlord.

**6. Indemnification – Liabilities and Losses:** Tenant hereby indemnifies Landlord against all liability, loss, cost, damage, or expense sustained by Landlord, including attorney's fees and all expenses of litigation, arising prior to termination of the lease term and delivery to Landlord of possession of the Subject Property for the following reasons:

- a. On account of or through the use of the Subject Property or improvements or any part thereof by Tenant, or by anyone acting by or under the actual or purported authority of the Tenant, inconsistent with the provisions of this Lease;
- b. Arising out of, or directly or indirectly due to any failure of Tenant in any respect to promptly and faithfully satisfy Tenant's obligations under this lease;
- c. Arising out of, or directly or indirectly due to, any accident or other occurrence causing injury to any person or persons or property resulting from the use of the Subject Property and improvements or any part thereof; or
- d. For which the Subject Property and improvements or any part thereof may hereafter without fault by Landlord become liable or foreclosed upon, and especially, but not exclusively, any such liability, loss, cost, damage, or expense that may arise under any statutory or common law, ordinance, or regulation, including those relating to liens and charges which may at any time be set up or asserted against the Subject Property, arising from any actual or alleged act, conduct or omission of the Tenant.

**7. Damage to Subject Property:** 65535 In the event the improvements which are a part of the Subject Property are damaged from an insured cause to such an extent that the same may be repaired within thirty (30) working days, the Landlord will cause the same to be repaired as soon as may be practical, and there will be adjustment in the base rent corresponding to the time, and to the extent to which, that the Subject Property is not usable, or not fully usable, for its intended purposes. In the event the improvements are damaged from an uninsured cause which is the responsibility of the Tenant to repair under this Lease, Tenant must repair the same with all due speed, and there will be no adjustment in the rentals due hereunder. In the event that improvements which are necessary to the use of the Subject Property for its intended purpose are destroyed, or are damaged to such an extent that they cannot be repaired within thirty (30) working days, this Lease may, at the option of the Tenant, be terminated by giving the Landlord written notice of termination; and in that event, all rentals due hereunder will be pro-rated to the date of loss. Tenant releases Landlord, his successors, assigns and insurers, from all liability for losses of every type (including lost profits) caused by fire, rain, wind, hail, snow, ice or other weather phenomenon.

**8. Condemnation:** If the Subject Property is fully taken under any condemnation or eminent domain proceeding, or if the Subject Property is partially taken under any condemnation or eminent domain proceeding and immediately following such taking, the continued use of the Subject Property for its intended purpose by the Tenant is substantially impaired, this Agreement will terminate as of the date of taking. In this event, all rentals will be pro-rated to that date. Tenant will have no right to any damages awarded as a result of the taking, except damages for leasehold improvements and business interruption. If the Subject Property is partially taken under any condemnation or eminent domain proceeding and immediately following such taking, the continued use of the Subject Property for its intended purpose by the Tenant is not substantially impaired, this Agreement will continue in full force and effect, but the base rent will be equitably adjusted corresponding to the extent to which the Subject Property is taken, and its use is lost to the Tenant. All damages for partial taking will belong to the Landlord, except those, if any, for the value of leasehold improvements, or business interruption.

**9. Default by Tenant:** The Landlord may declare the Tenant to be in breach and this Agreement in default for any one or more of the following reasons:

- a. If Tenant fails to pay any rent or additional rent at the time that it is due, or within ten (10) days thereafter; or
- b. If Tenant fails to observe and perform any other provision or agreement hereunder, or is in violation of any covenant, and such violation continues for a period of ten (10) days after Landlord delivers notice in writing to Tenant of any such violation; provided, however, if the nature of Tenant's noncompliance or nonperformance is such that more than ten (10) days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant commenced such cure within said ten (10) day period and thereafter diligently pursues such cure to completion; provided, that if such violation is of such a nature that there is a significant risk of damage to the Subject Property, no written notice need be given prior to declaring the Agreement in default, and exercising the remedies granted Landlord hereunder, or by law; or
- c. If Tenant files a petition in bankruptcy under any chapter of the United State Bankruptcy Code; or is declared bankrupt; or makes an assignment for the benefit of creditors; or seeks relief under any other State or Federal debtor protection law, and is the subject of any involuntary proceedings under any such law.

**10. Landlord's Remedies for Default by Tenant:** 65535In the event the Tenant defaults or is declared to be in default under the terms of this Agreement, Landlord may take any one or more of the following remedial actions:

- a. Landlord may take any action, the duty of which is that of the Tenant hereunder, and, with or without declaring the Agreement in default, and without waiver of the Landlord's right to so declare the Agreement in default, charge the Tenant with all costs of taking that action, together with all lawful costs, charges, and expenses (including reasonable attorney's fees) which the Landlord may pay or incur in connection therewith; and for this purpose, the Landlord will have the full right of access to and temporary possession of the Subject Property in order to take any such action;
- b. Landlord may file a proceeding for possession of the Subject Property, and, after obtaining an order of possession, seek all lawful means and authorities to dispossess the Tenant;

- c. Landlord may terminate this Agreement by giving written notice thereof;
- d. Landlord may re-take possession of the Subject Property and, without terminating the Agreement, re-lease the Subject Property, and apply the net rentals resulting from such re-leasing to the rentals and damages due Landlord; or
- e. Landlord may exercise any other remedy, which is provided at law, or in equity.

No failure to act by the Landlord following a default by the Tenant will constitute a waiver of his right to do so at a later date if the default is not cured; nor will the Landlord's forbearance in the case of a default waive his rights to act in the event of a later default of the same, or of a different, nature.

**11. Default By Landlord:** 65535Landlord will be in default if Landlord is responsible for a material violation of any covenant of this Lease made by Landlord, or if Landlord fails to perform any act which is Landlord's obligation to provide hereunder; however, Landlord will be in default only in the event that any of the above-mentioned violations continue for a period of ten (10) days following delivery of written notice of any such violations, with said notice to be delivered to the Landlord from the Tenant. Landlord will not be in default unless it is provided with notice pursuant to this paragraph, and thereafter fails to cure any such violations.

**12. Tenant's Remedies for Default by Landlord:** In the event of a material default by Landlord that has not been timely cured as provided in this Agreement, Tenant may, at its option, either terminate this Agreement by giving written notice of termination, or perform any act which is the obligation of the Landlord to perform, and withholding the reasonable costs of performance from the rent until such costs have been fully re-couped.

**13. Abandonment of Property:** If at any time during the term of this Agreement Tenant abandons the Subject Property or any part thereof, Landlord may, at their option, enter the Subject Property by any means without being liable for any prosecution therefore, and without becoming liable to Tenant for damages or for any payment of any kind whatever, and may, at their discretion, as agent for Tenant, relet the Subject Property, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting. If Landlord's right of re-entry is exercised following abandonment of the Subject Property by Tenant, then Landlord may consider any personal property belonging to the Tenant and left on the premises to also have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and is hereby relieved of all liability for doing so.

**14. Costs, Expenses, and Attorney Fees:** A party which is in default hereunder shall pay all of the non-defaulting party's costs, expenses and attorney's fees which are either incurred or paid to determine their rights hereunder, at law or in equity, to attempt to remedy any default, or to exercise any one or more of such party's rights under this Agreement, or as otherwise granted to that party.

**15. Notices:** Any notices authorized or required to be given hereunder may be personally delivered to the person or persons whose names appear below, or by depositing the same in the United States mail, postage fully prepaid, certified, return receipt requested, and if intended for Landlordaddressed as follows:

City of Bolivar  
 ATTN: City Administrator  
 P.O. Box 9  
 Bolivar, Missouri 65613

and if intended for Tenant addressed as follows:

Burrell, Inc.  
ATTN: CEO/General Manager  
1300 Bradford Parkway  
Springfield, MO 65804

Either party will notify the other party as soon as is practicable upon the change of address for notification purposes. If properly addressed and mailed pursuant to the terms of this paragraph, delivery of notices will conclusively be deemed to have been made two days after mailing.

**16. Assignment and Sub-Leasing:** Tenant shall neither assign this lease nor sublet the Subject Property without the prior written consent of the Landlord. Any unauthorized assignment or subletting of the Subject Property shall, at the option of the Landlord, be deemed a default. No permitted assignment or sub-lease shall relieve the Tenant of their obligation hereunder without the express written agreement of Landlord.

**17. Waiver:** All parties to this Agreement agree that the failure of any party to this Agreement to strictly enforce any term of this Agreement will not ever result in a waiver of such party to subsequently enforce the conditions of this Agreement.

**18. Severability:** In the event that any provision, paragraph, sub-paragraph, sentence, or clause of this Agreement is declared to be invalid for any reason, it will not affect the validity of any other provision of this Agreement, and all other provisions, paragraphs, sub-paragraphs, sentences, or clauses will remain in full force and effect.

**19. Complete Agreement:** It is agreed and understood by all parties to this Agreement that this instrument constitutes the entire agreement between the parties, and that the terms and provisions of this Agreement are contractual and not mere recitals. No additional promises, agreements, and conditions have been entered into other than those expressly set forth in this Agreement. This Agreement may not be modified or amended without the written, signed consent of all parties to this Agreement.

**20. Authority to Execute:** Each of the parties certifies and warrants to the other that this Agreement has been duly authorized by its governing board in the manner required by law.

**21. Governing Law and Choice of Venue:** This Agreement will be construed and enforced under the laws of the State of Missouri. All parties to this Agreement agree that the primary venue for any court proceeding of any nature that may arise for the enforcement of or collection pursuant to this Agreement will be in the County of Polk, in the State of Missouri, and all parties hereby submit to the jurisdiction of the courts of Polk County, Missouri as the venue for adjudication of any disputes arising from the enforcement of or collection pursuant to this Agreement.

**22. Binding Effect:** This Agreement will be binding upon and will inure to the benefit of the Landlord, and their respective personal representatives, successors, heirs and assigns, and upon the Tenant, and their heirs, personal representatives, successors and assigns.

THIS IS A BINDING LEGAL DOCUMENT. BEFORE SIGNING BELOW, THE PARTIES TO THIS AGREEMENT DECLARE THAT THEY ARE OF SOUND MIND AND ARE OTHERWISE LEGALLY CAPABLE OF ENTERING INTO THIS AGREEMENT, THAT THEY HAVE COMPLETELY READ THIS INSTRUMENT, AND THAT THEY FULLY UNDERSTAND ALL OF THE TERMS CONTAINED HEREIN.



**IN WITNESS WHEREOF**, this Agreement has been signed on the date or dates indicated opposite the signature of each party hereto.

**City of Bolivar, LANDLORD**

Date: \_\_\_\_\_

By: **John F. Best, Mayor**

**ATTEST**

Date: \_\_\_\_\_

By: **Kimberly Strader, City Clerk**

**Burrell, Inc., d/b/a Burrell Behavioral Health, TENANT**

Date: \_\_\_\_\_

By: **Authorized Agent**