

DHH Ex. "A"

LEASE AGREEMENT  
BETWEEN  
THE STATE OF LOUISIANA, THROUGH  
THE DEPARTMENT OF HEALTH AND HOSPITALS  
(OFFICE OF AGING AND ADULT SERVICES) AND  
THE DIVISION OF ADMINISTRATION

AND  
NEW ORLEANS HOME FOR INCURABLES

This lease is entered into by the State of Louisiana as Lessor, hereinafter known as "the State", through its Department of Health and Hospitals, Office of Aging and Adult Services, hereinafter known as "DHH," represented herein by Bruce D. Greenstein, Secretary and its Division of Administration, hereinafter known as "DOA", represented herein by Paul Rainwater, Commissioner of Administration; and,

The New Orleans Home for Incurables, a Louisiana non-profit corporation, as Lessee, hereinafter known as "Home," represented herein by Mary Brooks Rodrigue, its President, as authorized by a Resolution of the Board of Directors of Home, and,

RECITALS

WHEREAS, R.S. 36:254(C) provides that the Secretary of DHH shall have no power to lease property under his control except as may be provided by the general laws of the State or specifically conferred by law upon him; and as such Act Number 933 of the 2010 Regular Session of the Louisiana Legislature ("Act 933") was adopted and authorizes the Secretary of DHH and the Commissioner of Administration to allow for the lease by the State to Home of the property, buildings, equipment, movable assets and appurtenances located at the John J. Hainkel, Jr. Home and Rehabilitation Center (referred to herein as the "Center") located at 612 Henry Clay Avenue in New Orleans, Louisiana; and

WHEREAS, the parties represented herein desire to enter into this Lease Agreement (referred to herein as either "the Lease" or "the Lease Agreement") pursuant to the authority granted by Act 933, a copy of which is attached hereto as Exhibit "A" and made part of this Lease and pursuant to an authorizing resolution by the Board of Directors of the Home dated Nov. 22, 2010 which authorizes Mary Brooks Rodrigue to negotiate and enter into a Lease Agreement with the State on behalf of the Home for the John J. Hainkel, Jr. Home and Rehabilitation Center, a copy of which authorizing resolution is attached hereto as Exhibit "B".

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants contained herein, The State does hereby lease to Home the land,

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buildings and other property described in Section 2 herein and on which is located the John J. Hainkel Home and Rehabilitation Center, together with the certificate of need (CON) of the John J. Hainkel Home and Rehabilitation Center, for the purposes of operating a long term care facility in accordance with the following provisions:

### Section 1.

**Objective.** The objective of the Agreement is to lease to Home the facility known as the John J. Hainkel Home and Rehabilitation Center and the associated CON for long term care beds, and for the Home to provide nursing home level services and adult day health care services, and quality health care services to the general public including, but not limited to, indigent persons, and to serve as a medical and clinical training facility.

### Section 2.

**Applicability.** The provisions of this Lease Agreement are applicable to that tract of land and those buildings, component parts of buildings, and other improvements thereon described as follows (hereafter, the "Leased Premises"):

### LEGAL DESCRIPTION

A certain piece, parcel or lot of ground in Orleans Parish, Louisiana, being more particularly described as follows, to wit:

That portion of ground, together with all the buildings and improvements thereon and all the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging, or in anywise appertaining, situated in the Sixth District of the city of New Orleans, State of Louisiana, Burtheville, being all of Square 22, composed of Lots 1 through 24, bounded by Patton, Constance, Calhoun and Henry Clay, and said square measures 317 feet 8 inches 5 lines (317 feet 6 inches 7 ½ lines title) front on Patton, 311 feet 3 inches 0 lines (311 feet 6 ½ lines title) front on Constance, 289 feet 7 inches 4 lines (289 feet 3 inches 7 lines title) front on Calhoun and 289 feet 10 inches 2 lines (289 feet 7 inches title ) front on Henry Clay, containing 91,063.10 square feet; all in accordance with survey of Joseph F. Varisco, Jr., dated November 14, 1975, resurveyed January 23, 1976. And according to a survey of Joseph F. Varisco, Jr., dated September 14, 1977, revised November 27, 1979, said property has the same actual dimensions, encompasses all of Square 22 and contains improvements known as 612 Henry Clay Avenue.

### Section 3.

**Term.** The term of this Lease shall be five (5) years (the "Primary Term") commencing on April 1, 2011 (the "Commencement Date") and ending on March 31, 2016. Home has an option to extend the term of the Lease for an additional five (5) year period (such five-year period, the "Renewal Period") under the same general terms and conditions as the terms and conditions for the Primary Term, except for the rental. If Home desires to exercise its option to extend the term of the Lease, it shall give the State written notice of the exercise of the option prior to the expiration of the Primary Term.

### Section 4.

**Development.** Home agrees to assume the provision of nursing home and adult day health care services on the Commencement Date of this Lease to ensure no interruption of services for the residents of the Center. The facility shall continue to be known as the John J. Hainkel, Jr. Home and Rehabilitation Center. Effective April 1, 2011, all signage on the Leased Premises will be changed by the parties hereto as necessary to remove any indication that the Center is a State facility. Home shall not hold itself out to be a state facility or use any written materials or other effects which would indicate that the Center is a state operated facility. Failure of the Home to continue to operate the Center as a long term care facility and adult day health care facility, except for any period of time when Home is unable to operate the Center because of fire or other casualty or other force majeure, shall be grounds for termination of the Lease upon thirty (30) days written notice from the State to Home.

### Section 5.

**Rental during the Primary Term.** For and in consideration of the lease to Home of the Leased Premises, the CON, and use of the Center, Home agrees to pay to the State through DHH during the Primary Term an annual rental equal to the actual out-of-pocket annual costs and expenses ("Costs and Expenses") incurred by DHH and related to the to the Center up to a maximum of \$400,000.00 for any lease year, provided that if the Annual Costs are less than \$150,000 for any lease year, the minimum annual rental will be \$150,000.00. As used herein, the term "lease year" means the period beginning on April 1 during the term of the Lease and ending on March 31. These Annual Costs will include LEAF Payoff, Termination Pay, Unemployment Compensation, Premiums Payable to the Office of Risk Management, Elevator Maintenance Contract, Retiree Group Insurance, and any other unanticipated cost. Payment of annual rental shall be made quarterly in arrears. Quarterly payments shall be due and payable on July 1, 2011, October 1, 2011, January 2, 2012, April 1, 2012 and on the first day of every quarter thereafter. If the first day of any quarter is a weekend or legal holiday, the payment shall be due on the next business day. The State, through DHH shall provide written notice to Home of the amount of the quarterly payment due at least 15 days prior to the payment due date and shall provide

documentation of actual expense supporting the amount of the Costs and Expenses in support of the quarterly payment. The maximum amount of each quarterly payment shall be \$100,000.00, and if Costs and Expenses for any quarter exceed \$100,000.00, they shall be due with the next quarterly payment, subject to the maximum of \$400,000.00 in any lease year. To the extent authorized and allowed by state laws and the state budget, payments received by the State through DHH in accordance with this Lease Agreement will be used by DHH for continuing expenses related to the John J. Hainkel Jr. Home and Rehabilitation Center and other program expenses of the Office of Aging and Adult Services.

**Rental during the Renewal Period.** During the Renewal Period, payments of the annual rental shall be made quarterly in arrears, and shall be due and payable as of the 15<sup>th</sup> day following the end of each rate quarter. Rate quarters shall begin on April 1<sup>st</sup>, July 1<sup>st</sup>, October 1<sup>st</sup>, and January 1<sup>st</sup> for any rental renewal period. If the 15<sup>th</sup> day of any rate quarter is a weekend or legal holiday, the payment shall be due on the next business day. Quarterly payments of the annual rental during the Renewal Period shall be calculated as the total number of resident days based on dates of service that occur during the applicable rental quarter, regardless of payer type, multiplied by an amount equal to fifty percent (50%) of the Louisiana Medicaid Private Nursing Home Case Mix Capital Component rate from the most current facility specific Nursing Home Case Mix Medicaid reimbursement rate sheet for the rate quarter. The Louisiana Medicaid Private Nursing Home Case Mix Capital Component rate will be based on a Fair Rental Value Calculation as described in: LAC 50:VII.1301-1311 and as calculated by Myers and Stauffer LC or the successor Medicaid rate and audit contractor in the event that Myers and Stauffer LC is no longer the Medicaid rate and audit contractor. The State, through DHH, shall provide written notice to Home of the amount of the Louisiana Medicaid Private Nursing Home Case Mix Capital Component. Home will be subject to audit by DHH auditors and audit adjustments could result in retroactive changes to prior rate quarter payments.

**Quarterly Payment.** Payments shall be mailed to the following address or any such place as DHH may designate from time to time in writing:

Assistant Secretary  
DHH Office of Aging and Adult Services  
P.O. Box 2031  
Baton Rouge, LA 70821-2031

**Revenues and Expenses.** All revenues earned through provision of services at the Center prior to midnight on April 1, 2011 shall belong to DHH and all billings and collections of said revenues shall be DHH's responsibility. All revenues earned through provision of services at the Center after midnight on April 1, 2011 shall belong to the Home and all billings for and collections of said revenues shall be the responsibility of Home. Except as otherwise provided herein, all expenses incurred in

connection with the operation of the Center prior to midnight on April 1, 2011 shall be the responsibility of DHH and after midnight on April 1, 2011 shall be the responsibility of Home.

### Section 6.

**Insurance.** Home shall obtain and maintain during the term of this Lease, the insurance coverages described and in the amounts set forth in Exhibit "C," which is incorporated herein and made a part hereof. Between the date of execution of this Lease and March 1, 2011, and as part of the Readiness Criteria to be negotiated between Home and DHH, Home will submit to DHH proposed insurance coverages described and in the amounts set forth in Exhibit "C" that will be effective on April 1, 2011. If, in the reasonable judgment of DHH, the proposed insurance coverages are not reasonably acceptable to DHH, DHH shall give Home written notice thereof stating the reasons why the insurance coverages are not acceptable. Home shall thereafter have twenty (20) days within which to cure any objections. If Home does not do so, then either party may cancel this Lease by written notice to the other, and neither party shall have any further liability to the other hereunder.

DHH shall maintain self-insurance through the DOA , Office of Risk Management, in the amounts and coverages set forth in Exhibit "D" incorporated herein and made a part hereof.

### Section 7.

**Indemnity.** Home accepts the entire Leased Premises in its present condition, and the State shall not be responsible for damage of any kind to any person or property arising out of or resulting from the Home's use of the Leased Premises except for damage arising solely by virtue of the State's negligence. Home further agrees to indemnify and to hold the State harmless against any loss, claim or liability for injury to or death of persons or damage to property of others, including costs and expenses incident thereto, arising wholly or in part from or in connection with the use of the Leased Premises or any of the rights granted herein, except from loss, claims or liability resulting solely from the State's negligence. Each party shall notify the other promptly in writing upon becoming aware of any claim or lawsuit alleging injury to or death of persons or loss or damage to property of others. Home will, at the State's request, appear and defend any suit arising from any such loss, claim or liability at its own sole cost and expense and will pay any judgment that may be entered Home will, at the State's request, appear and defend any suit arising from any such loss, claim or liability at its own sole cost and expense and will pay any judgment that may be entered against the State therein when said suit is finally determined for such loss or liability resulting from the Home's use of the Leased Premises that does not result solely from the State's negligence.

### Section 8.

**Surface/Mineral Leases.** The State is allowing the use of the Leased Premises subject to all existing surface leases, mineral leases, servitudes, rights-of-way, permits or any other contracts, whether recorded or unrecorded, affecting the Leased Premises. The State reserves all rights of whatever nature and kind in and to all minerals on or under the Leased Premises. These rights include, but are not limited to, all operations which are necessary, useful or convenient for the exploration, exploitation, drilling, mining, production, development, storage and transportation of all oil, gas, sulphur and other minerals, on or under the Leased Premises or any other lands under the control of the State.

Home is prohibited from entering into any sale of timber on the Leased Premises. If timber removal is required for the purposes of the Lease, Home shall obtain prior approval from DHH. Any funds obtained through sale of timber on the Leased Premises shall be the property of DHH.

#### **Section 9.**

**Reversion to State.** The State agrees that it shall continue and complete all previously funded or obligated capital outlay repairs and renovations to the Center, specifically including the projects for roof replacement and elevator upgrade. The Home agrees that all development, construction, additions and improvements that are made by the Home and that are related to the Home's use of the Leased Premises shall become the property of the State at the termination of this Agreement with the Home waiving all rights to compensation therefor, if any. In any event, the Leased Premises shall be restored by Home to good and clean order in the event of the termination of the Lease or the Home's departure from the Leased Premises.

#### **Section 10.**

##### **Termination.**

A. **For Cause.** Either party may cancel this Lease for cause based on failure of the other party to comply with the terms and/or conditions of the Lease, provided that the canceling party shall first give the other party written notice specifying the other party's failure, and the party shall have the opportunity to attempt to correct the failure within thirty (30) days after receipt of such notice. If the failure is of such a nature that it cannot reasonably be corrected within thirty (30) days, the defaulting party shall have such further reasonable time to cure the default, provided that the defaulting party commences to cure the default within thirty (30) days and diligently pursues the curing of the default to completion as soon as practicable thereafter. If the Lease is terminated by the State for cause, the Leased Premises shall be surrendered by the Home to the State and all Home property shall be removed from the Leased Premises by the end of the thirty (30) day notification period or within such further reasonable period of time as may be agreed between the State and Home.

B. For Non-Readiness. Either party may cancel this Lease upon written notice to the other party, if the Home has not met, by March 1, 2011, the readiness assessment criteria negotiated between the State and Home.

C. For Non-Compliance with Fiscal Agreement. The State agrees that, subject to approval by the Centers for Medicare and Medicaid Services, the Medicaid rate shall be set at the rate as of March 19, 2010, and shall be set at such rate for one year from April 1, 2011 and for any period after one year from April 1, 2011, the Medicaid rate shall be set at the rate which would be paid under the nursing home reimbursement methodology for private nursing homes. In the event that the Medicaid rate is not set at the rate as of March 19, 2010 for one year from April 1, 2011, Home shall have the right to terminate the Lease.

#### Section 11.

Loss of Use of Building. If, prior to the termination of this Lease, through no fault, neglect or design of Lessee, the Leased Premises and/or said building be destroyed by fire or other casualty, or be unfit for occupancy, then this Lease shall be cancelled ipso facto, unless the Leased Premises can be rendered fit for occupancy within one hundred and eighty (180) days from the happening of such fire or other casualty, in which event the State shall repair the same with reasonable diligence and Home shall be entitled to such reduction or remission of rent as shall be just and proportionate. If the Leased Premises and/or said building be only so slightly injured by fire or other casualty as not to render the Leased Premises unfit for occupancy, this Lease shall not terminate, and the State agrees that same shall be repaired with reasonable diligence, in which event Lessee shall be entitled only to such reduction in rent that is proportionate to the area of the Leased Premises that Home cannot use as a result of the casualty.

#### Section 12.

Stewardship. Home agrees to use the Leased Premises as a good and careful administrator. This includes maintaining the Leased Premises in a neat, clean and orderly manner at all times. Home and any authorized sublessee shall maintain the Center in the same manner in which it was maintained prior to the execution of the Lease and shall seek to maintain the Center as a five star quality rated facility. State is authorized to enter upon the Leased Premises at any time for the purpose of making reasonable inspections concerning the use of the Leased Premises. Home at its own expense shall maintain compliance with DOA's requirements for building maintenance, which include Office of Risk Management loss prevention requirements for preventive maintenance of fire alarm systems, emergency generator, air conditioners, boilers, chillers, ERU's, air handling units and associated chill water lines, elevators and electrical distribution systems. These DOA Office of Risk Management Requirements are contained at the following website:

<http://doa.louisiana.gov/orm/pdf/EquipmentManagement.pdf>.

Any substantial renovation of the Center will be performed within all applicable code requirements, and is subject to review and approval of the State and the DOA , Office of Facility Planning and Control.

DHH shall enforce any warranties applicable to the roof, elevators, equipment, machinery and fixtures at the request of Home.

DHH represents that it has provided Home with (i) copies of the maintenance records applicable to the roof, elevators, equipment, machinery and fixtures and (ii) copies of all warranties applicable to the roof, elevators, equipment, machinery and fixtures.

DHH acknowledges receipt of the Property Condition Assessment Report of Gurtler Bros. Consultants, Inc. dated November 15 and 16, 2010 and the parties acknowledge that the Property Condition Assessment Report fairly represents the condition of the Leased Premises as of its date.

### Section 13.

**Affiliations.** Home agrees to maintain college and university affiliations for training, including geriatric fellows and medical, RN, LPN, and therapy students. Insofar as possible, Home shall maintain a service contract with the Veterans, Administration for the nursing facility and, if possible, for the adult day health care services. Home shall participate to the extent practicable in federal Quality Improvement Organization programs.

Home agrees to interview current employees of the Center for consideration in hiring and shall offer those employees who are employed by the John J. Hainkel, Jr., Home and Rehabilitation Center at the commencement of the lease first priority for employment. Home does not, however, guarantee that the salary and benefits that will be provided to such employees will be the same as the salary and benefits that they currently are provided by DHH.

### Section 14.

#### **Miscellaneous Provisions.**

A. Home shall maintain books and records in connection with its use, occupancy, management and operation of the Center, and related to all revenues and expenses in connection with the Center.



B. Home shall be responsible for all state, local, and federal taxes associated with operation of the facility. It is the intention of the parties that the Home shall pay all state and local ad valorem and personal property taxes. Home shall pay all expenses for maintenance and preventive maintenance of the building and furniture, fixtures and equipment and all other charges and expenses pertaining to the use and operation of the facility, except as otherwise set out with specificity herein. Home agrees throughout the term of the Lease to take good care of and maintain the leased premises, both inside and outside, and the structure (except as otherwise herein provided) from time to time and except as herein otherwise provided, at the cost of Home to keep and maintain the premises in the same condition as received by Home and to keep the plumbing, water pipes and connections free from obstructions. Home shall, at the termination or expiration of the term of the Lease deliver to the State the Leased Premises and all buildings and fixtures owned by the State in good order and condition, reasonable wear and tear from normal use excepted.

C. Home shall promptly pay all gas, light, power, water, sewage, garbage disposal, telephone, internet and other utility bills as they are incurred in connection with the use of the Center from April 1, 2011 until the termination of the Lease.

D. Home agrees that it will permit the State free and unfettered access to the Leased Premises at any reasonable time and upon reasonable notice for the purpose of examination and inspection of the same. Home shall maintain and give access to the State to preventive maintenance records required for site audits and verification of ongoing maintenance of the buildings and equipment.

### Section 15

**Subleasing.** The Home agrees that it shall not assign this Lease or sublet any portion of the land or buildings herein leased without the express prior written consent of the Secretary of DHH, the Commissioner of Administration, and approval of the Senate and House committees on Health and Welfare, meeting jointly or separately.

### Section 16.

**Notifications.** For purposes of notifications required under the provisions of this Agreement, the parties shall use the following addresses, respectively, until notified in writing of changes as follows (notification to State shall be through DOA and DHH):

DOA                      Commissioner of Administration  
                                 P.O. Box 94095  
                                 Baton Rouge, LA 70804-9095

DHH                      Assistant Secretary, Office of Aging and Adult Services

Department of Health and Hospitals  
P.O. Box 2031  
Baton Rouge, Louisiana 70821-2031

HOME      New Orleans Home for Incurables  
612 Henry Clay Avenue  
New Orleans, Louisiana 70118  
Attention: Mary Brooks Rodrigue, President

**Section 17.**

**Licensing and Regulation.** The Home shall comply with all federal, state and local laws and ordinances for purposes of regulating public health and safety. Home shall operate the nursing facility and the adult day health care facility in compliance with all applicable regulations of the DHH Bureau of Health Services Financing, Health Standards Section, the State Fire Marshal, and the DHH Office of Public Health. Home shall obtain all necessary licenses, and shall obtain or act as successor to the Center's Medicare/Medicaid Provider agreements.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK;  
SIGNATURES FOLLOW ON THE FOLLOWING PAGE.

Section 18.

**Choice of Law.** This Lease shall be interpreted under Louisiana law. Any legal proceedings must be brought in the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

THUS DONE AND SIGNED, this 5 day of January, 2011, at New Orleans, Louisiana by:

WITNESSES:

Eligaleth Eaton

[Signature]

STATE OF LOUISIANA  
DEPARTMENT OF HEALTH  
AND HOSPITALS

BY: [Signature]  
Bruce D. Greenstein, Secretary  
Department of Health and Hospitals

THUS DONE AND SIGNED, this 6 day of January, 2011, at Baton Rouge, Louisiana by:

WITNESSES:

[Signature]  
Kara Allan

[Signature]  
Theresa Melancon

STATE OF LOUISIANA  
DIVISION OF ADMINISTRATION

BY: [Signature]  
Paul Rainwater, Commissioner

THUS DONE AND SIGNED, this \_\_\_\_\_ day of \_\_\_\_\_,

2011, at \_\_\_\_\_, Louisiana by:

WITNESSES:

Angela Riley  
RB

New Orleans Home for Incurables

BY: Mary Brooks Rodrigue  
Mary Brooks Rodrigue, President

AMENDMENT NUMBER ONE TO  
LEASE

THIS AMENDMENT NUMBER ONE TO THAT CERTAIN LEASE TITLED "LEASE AGREEMENT BETWEEN THE STATE OF LOUISIANA, THROUGH ITS DEPARTMENT OF HEALTH AND HOSPITALS(OFFICE OF AGING AND ADULT SERVICES) AND THE DIVISION OF ADMINISTRATION and NEW ORLEANS HOME FOR INCURABLES" signed by Bruce Greenstein, Secretary of the Department of Health and Hospitals on January 5, 2011 (this "Amendment"), is made and entered into this 18 day of February, 2011 (the "Amendment Effective Date") by and between the State of Louisiana, through the Department of Health and Hospitals and through the Division of Administration, and the New Orleans Home for Incurables, hereinafter referred to as "Home". It amends the Lease between the parties herein. The Lease is amended as follows:

Section 14 - add paragraphs "E" and "F" to read as follows:

E. It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors, during the term of this Lease and for a three-year period following termination of this Lease and after reasonable prior notice to Home, shall have the option of auditing the books and records of Home in order to determine Home's compliance with the provisions of this Lease.

F. Home agrees to adhere to the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and the Americans with Disabilities Act of 1990.

Home agrees not to discriminate in its employment practices, and will render services without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Home, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Lease.

This Amendment contains all revised terms and conditions agreed upon by the parties.. Except as expressly amended hereby, all other provisions of the Lease remain in full force and effect.

IN WITNESS THEREOF, this Amendment is signed on the dates indicated below. All other terms and conditions of the LEASE remain in full force and effect.

New Orleans Home for Incurables

Witnesses

RB

Hy L

Mary Brooks Rodrigue 2/17/11  
Date  
Mary Brooks Rodrigue  
President, New Orleans Home for Incurables

\_\_\_\_\_  
Notary Public

State of Louisiana- DHH

Witnesses

*[Handwritten Signature]*

*[Handwritten Signature]*

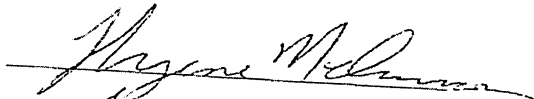
*[Handwritten Signature]* 2/18/11  
Date  
Bruce D. Greenstein  
Secretary of the Louisiana Department of  
Health and Hospitals

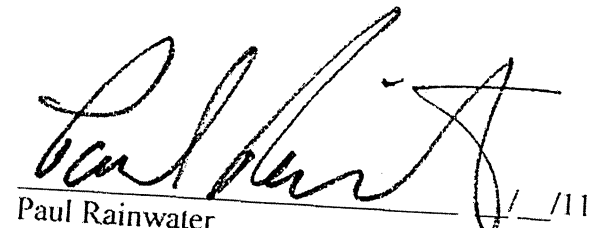
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Notary Public

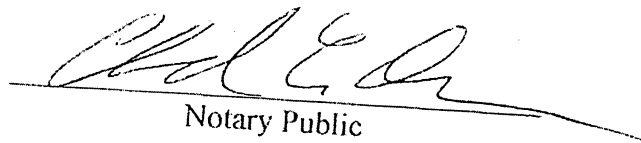
State of Louisiana- DOA

Witnesses

  
Kara Allan

  
Theogene Melancon

  
Paul Rainwater  
Commissioner of the Division of  
Administration

  
Notary Public

**CHAD C. DYER**  
Notary ID # 78601  
Parish Of East Baton Rouge, State of LA  
My Commission is Issued For Life



**AMENDMENT NUMBER TWO TO  
LEASE**

THIS AMENDMENT NUMBER TWO TO LEASE (this "Amendment"), is made and entered into this 18 day of March, 2011 (the "Amendment Effective Date") by and between the State of Louisiana, through the Department of Health and Hospitals and through the Division of Administration, and the New Orleans Home for Incurables, hereinafter referred to as "Home". It amends the Lease between the parties herein. The Lease is amended as follows:

**Section 3 – change the first sentence to read as follows:**

"Term. The term of this Lease shall be five (5) years (the "Primary Term") commencing on April 19, 2011 (the "Commencement Date") and ending on April 18, 2016."

**Section 4 – change the third sentence to read as follows:**

"Effective April 19, 2011, all signage on the Leased Premises will be changed by the parties hereto as necessary to remove any indication that the Center is a State facility."

**Section 5 – First paragraph, change the second, fifth, and sixth sentences to read as follows:**

"As used herein, the term "lease year" means the period beginning on April 19 during the term of the Lease and ending on April 18."

"Quarterly payments shall be due and payable on July 19, 2011, October 19, 2011, January 19, 2012, April 19, 2012 and on the 19th day of every quarter thereafter."

"If the 19th day of any quarter is a weekend or legal holiday, the payment shall be due on the next business day."

- **Second paragraph, change the 1<sup>st</sup> through 3<sup>rd</sup> sentences to read as follows:**

"During the Renewal Period, payments of the annual rental shall be made quarterly in arrears, and shall be due and payable as of the 19th day following the end of each rate quarter. Rate quarters shall begin on April 19th, July 19th,

October 19th, and January 19<sup>th</sup>, for any rental renewal period. If the 19th day of any rate quarter is a weekend or legal holiday, the payments shall be due on the next business day."

- Change the fourth paragraph to read as follows:

**Revenues and Expenses.** All revenues earned through provision of services at the Center prior to midnight on April 18, 2011 shall belong to DHH and all billings and collections of said revenues shall be DHH's responsibility. All revenues earned through provision of services at the Center after midnight on April 18, 2011 shall belong to the Home and all billings for and collections of said revenues shall be the responsibility of Home. Except as otherwise provided herein, all expenses incurred in connection with the operation of the Center prior to midnight on April 18, 2011 shall be the responsibility of DHH and after midnight on April 18, 2011 shall be the responsibility of Home."

Section 6 – first paragraph, change "March 1, 2011" to "March 30, 2011" and change "April 1, 2011" to "April 19, 2011".

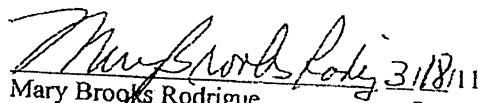
Section 10 – paragraph B., change "March 1, 2011" to "March 30, 2011"

- Paragraph C., change "April 1, 2011" to "April 19, 2011" throughout the paragraph

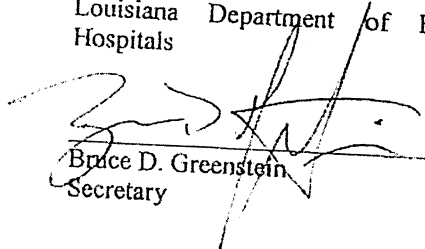
Section 14 – paragraph C, change "April 1, 2011" to "April 19, 2011"

This Amendment contains all revised terms and conditions agreed upon by the parties. IN WITNESS THEREOF, this Amendment is signed on the dates indicated below.

New Orleans Home for Incurables

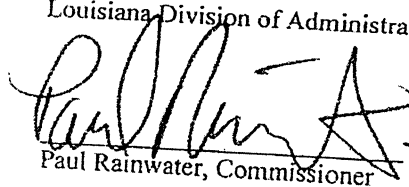
  
Mary Brooks Rodrigue 3/18/11  
President Date

Louisiana Department of Health and Hospitals

  
Bruce D. Greenstein  
Secretary

3/18/11  
Date

Louisiana Division of Administration

  
Paul Rainwater, Commissioner

3/21/11

**NOHI Invoices**

**DHH  
Ex. "B"**

<b>April-June 2011</b>		<b>INVOICED</b>	<b>PAID</b>
ORM	68,762.99	<b>335,356.12</b>	<b>80,219.78</b>
Term Pay	225,270.65		
Post Retirement	41,322.48		

<b>July-Sept 2011</b>		<b>INVOICED</b>	<b>PAID</b>
ORM	64,532.25	<b>135,010.79</b>	<b>100,000.00</b>
Retiree Ins	47,609.82		
Unemployment	22,868.72		

<b>Oct-Dec 2011</b>		<b>INVOICED</b>	<b>PAID</b>
ORM	64,532.25	<b>154,401.30</b>	<b>100,000.00</b>
Retiree Ins	50,621.58		
Unemployment	31,433.19		
Elevator Maintenance	4,080.88		
Salary & Benefits	3,733.40		

<b>Jan-Mar 2012</b>		<b>INVOICED</b>	<b>PAID</b>
ORM	64,532.25	<b>147,714.45</b>	<b>100,000.00</b>
Retiree Ins	46,883.55		
Unemployment	25,614.90		
Underground Storage Maint.	5,665.00		
Salary & Benefits	5,018.75		

<b>Apr-June 2012</b>		<b>INVOICED</b>	<b>PAID</b>
ORM	64,532.25	<b>141,200.05</b>	<b>100,000.00</b>
Retiree Ins	46,883.55		
Unemployment	23,520.03		
Elevator Maintenance	504.00		
Salary & Benefits	5,760.22		

<b>July-Sept 2012</b>		<b>INVOICED</b>	<b>PAID</b>
ORM	70,272.00	<b>132,977.87</b>	<b>100,000.00</b>
Retiree Ins	46,970.46		
Unemployment	9,899.15		
Salary & Benefits	5,836.26		

<b>Oct-Dec 2012</b>		<b>INVOICED</b>	<b>PAID</b>
ORM	70,272.00	<b>124,942.70</b>	<b>100,000.00</b>
Retiree Ins	46,970.46		
Unemployment	1,836.98		
Salary & Benefits	5,863.26		

<b>Jan-Mar 2013</b>		<b>INVOICED</b>	<b>PAID</b>
ORM	70,272.00	<b>118,671.42</b>	<b>100,000.00</b>
Retiree Ins	43,064.10		
Unemployment	233.98		
Salary & Benefits	5,101.34		

	INVOICED	PAID
<b>Apr-June 2013</b>	<b>116,855.10</b>	<b>100,000.00</b>
ORM	70,272.00	
Retiree Ins	43,064.10	
Unemployment	-2,344.00	
Salary & Benefits	5,863.00	

	INVOICED	PAID
<b>July-Sept 2013</b>	<b>114,714.59</b>	<b>100,000.00</b>
ORM	66,518.00	
Retiree Ins	43,064.10	
Unemployment	-36.51	
Salary & Benefits	5,169.00	

	INVOICED	PAID
<b>Oct-Dec 2013</b>	<b>112,295.00</b>	<b>100,000.00</b>
ORM	63,286.00	
Retiree Ins	43,065.00	
Salary & Benefits	5,944.00	

	INVOICED	PAID
<b>Jan-Mar 2014</b>	<b>103,876.57</b>	<b>0.00</b>
ORM	51,588.25	
Retiree Ins	43,065.00	
Unemployment	-526.68	
Underground Storage Maint.	3,806.00	
Salary & Benefits	5,944.00	

	INVOICED	PAID
<b>Apr-June 2014</b>	<b>105,498.66</b>	<b>0.00</b>
ORM	51,588.25	
Retiree Ins	43,065.00	
Maintenance Fees	4,893.00	
Salary & Benefits	5,952.41	

	INVOICED	PAID
<b>July-Sept 2014</b>	<b>89,731.13</b>	<b>0.00</b>
ORM	36,570.00	
Retiree Ins	40,688.22	
Maintenance Fees	900.00	
Carryover from prior quarter	5,498.66	
Salary & Benefits	6,074.25	

FISCAL YEAR	INVOICED	PAID	
2011	335,356.12	80,219.78	
2012	578,326.59	400,000.00	
2013	493,447.09	400,000.00	
2014	436,384.82	200,000.00	
2014	89,731.13	0.00	
	<u>1,933,245.75</u>	<u>1,080,219.78</u>	<b>(853,025.97)</b>
			<b>Difference</b>

**NOHI ORM Premium Charges**

July-Sept 2011		
ORM	64,532.25	
Oct-Dec 2011		
ORM	64,532.25	
Jan-Mar 2012		
ORM	64,532.25	
Apr-June 2012		
ORM	64,532.25	
FY12 Total Billed	258,129.00	

July-Sept 2012		
ORM	70,272.00	
Oct-Dec 2012		
ORM	70,272.00	
Jan-Mar 2013		
ORM	70,272.00	
Apr-June 2013		
ORM	70,272.00	
FY13 Total Billed	281,088.00	

July-Sept 2013		
ORM	66,518.00	
Oct-Dec 2013		
ORM	63,286.00	
Jan-Mar 2014		
ORM	63,286.00	only charged \$51,588.25
Apr-June 2014		
ORM	63,286.00	only charged \$51,588.25
FY14 Total Billed	256,376.00	Total Charged \$232,980.50

July-Sept 2014		
ORM	36,520.00	
Oct-Dec 2014		
ORM	36,520.00	
Jan-Mar 2015		
ORM	36,520.00	
Apr-June 2015		
ORM	36,520.00	
FY13 Total Billed	146,080.00	

**SETTLEMENT AGREEMENT**

.....  
**IN RE: JOHN J. HAINKEL JR. HOME AND REHABILITATION CENTER**  
.....

This Settlement Agreement sets forth the terms and conditions of an agreement reached between the following parties:

The Louisiana Department of Health and Hospitals ("DHH"), a body corporate and Department within the Executive Branch of the government of the State of Louisiana, statutorily empowered to enter into this agreement, with its domicile in the Parish of East Baton Rouge, State of Louisiana, through its duly authorized representative, Kathy Kliebert, Interim Secretary of the Department; and

New Orleans Home for the Incurables d/b/a John J. Hainkel Jr. Home and Rehabilitation Center, ("Hainkel Home"), which operates as a licensed and Medicaid enrolled nursing home at 612 Henry Clay Avenue, New Orleans, Louisiana, 70118, through its duly authorized representative, Mary Brooks Rodrigue, Chairman of the Board of Directors for New Orleans Home for the Incurables.

This Settlement Agreement results from certain actions taken by DHH for surveys conducted at Hainkel Home on June 13, 2011, October 19, 2011, October 28, 2011, December 2, 2011, December 21, 2011, March 16, 2012, and June 8, 2012, as well as the response(s) and corrective action taken by Hainkel Home. The effective date of this Settlement is **July 9, 2013**. Below are the terms and conditions to which DHH and Hainkel Home have agreed:

**I. Nursing Home Administrator**

- A. The Administrator shall continue to meet at least monthly with facility leadership, including, but not limited to, the Operational Board of Directors and Director of Nursing. Hainkel Home shall document said meetings in writing, and provide meeting agendas to DHH upon request.

- B. The Administrator shall report to the Operational Board of Directors of Hainkel Home.
- C. Implementation and Reporting: For a twelve month period from the effective date of this Agreement, Hainkel Home shall implement any recommendations of the Operational Board of Directors within thirty (30) days of such recommendation. Upon request, Hainkel Home shall provide to DHH a copy of the meeting agenda reflecting the Operational Board of Director's recommendations as well as Hainkel Home's implementation of recommendations.

## II. Consultant Services

- A. Independent Consultant
  - 1. Hainkel Home will continue engagement of an independent Consultant. In the event of a change in consultants, Hainkel Home shall provide copies of the current resume` (including nursing and consulting experience) of any newly hired independent Consultant to DHH within five (5) days of hiring such consultant(s).
  - 2. The independent Consultant will perform consultation services at the facility for eight (8) hours per month for the period of six months, or such shorter period as determined by DHH. In addition, the Consultant must be available for consultation telephonically or electronically on an as needed basis and for participation in committee meetings as may be appropriate under the circumstances.
  - 3. The independent Consultant will report to the Administrator and the Operational Board of Directors of Hainkel Home.
  - 4. Hainkel Home shall continue to conduct monthly Quality Assurance Performance Improvement Committee Meetings to systematically review all systems within the facility. The meeting agenda will be provided to the independent Consultant for review.
  - 5. Consultants' Reports and Implementation: Hainkel Home shall implement any recommendations of the independent Consultant within thirty (30) days of such recommendation. Hainkel Home shall provide to the DHH a copy of the

independent Consultant's recommendations as well as minutes of meetings reflecting implementation of recommendations upon request.

### **III. Annual Licensing and Monitoring Surveys**

- A. Annual Survey. DHH will conduct the 2013 Annual Life Safety Code & Standard health Survey ("Annual Survey") at Hainkel Home as required under Louisiana laws and regulations for licensed long term care facilities. This Annual Survey must demonstrate that Hainkel Home is in substantial compliance with all nursing home licensing regulations. For the purposes of Section III, substantial compliance is defined as: (1) no Immediate Jeopardy deficiencies; (2) no Actual Harm deficiencies; and (3) no repeat of the same deficiencies, defined as deficiencies with the same factual basis and substantive findings occurring within the last (18) months.
  
- B. Monitoring Survey. In addition to the Annual Survey, DHH will conduct one (1) unannounced monitoring survey at Hainkel Home at the expense of the facility. This monitoring survey shall be conducted within a twelve month period commencing on the effective date of this Settlement Agreement. This monitoring survey must demonstrate that Hainkel Home is in substantial compliance with all nursing home licensing regulations as defined in Paragraph III(A).
  - 1. Hainkel Home agrees to pay the ordinary, reasonable costs of the monitoring survey. DHH shall bill Hainkel Home at its current hourly rate of fifty-three dollars (\$53.00) per hour per surveyor for the following tasks, including, but not limited to: time for traveling to and from Hainkel Home, on-site time conducting the survey, and off-site time preparing any required documentation including the Statement of Deficiencies. The hourly rate set forth herein is only the current hourly rate charged by DHH and such rate may vary in the future.
  
  - 2. DHH shall send an invoice to Hainkel Home within thirty (30) days after each completed survey. Hainkel Home shall pay each such invoice within thirty (30) days of receipt of the invoice.



- C. The Annual Survey and Monitoring Survey shall be in addition to any survey that DHH is required to conduct by law or regulation.

#### IV. Voluntary Dismissal and Termination of Actions

- A. Upon the execution of this Settlement Agreement, DHH will lift/rescind the license revocation action of Hainkel Home's nursing home license, and Hainkel Home will voluntarily dismiss any administrative or judicial actions pending on these matters involving any of the surveys listed in this Settlement Agreement, including the administrative appeal bearing the DAL Docket number of 2013-19111-HH, with each party bearing its own costs, expenses, and attorneys' fees. The termination and dismissal by DHH and Hainkel Home, respectively, shall not allow the Parties to litigate or otherwise reopen issues resolved by this Settlement Agreement.
- B. Upon execution of this Settlement Agreement, DHH agrees to lift/rescind any actions or claims purporting to revoke Hainkel Home's Medicaid Provider Agreement and shall dismiss the appeal pending at the United States Fifth Circuit Court of Appeals bearing docket number 12-31249 with prejudice, each party bearing its own costs, expenses, and attorney's fees. ~~Dismissal with prejudice shall not allow the Parties to litigate or otherwise reopen issues resolved by this Settlement Agreement.~~
- C. DHH expressly reserves its right to proceed with revocation of Hainkel Home's license should Hainkel Home fail to maintain substantial compliance with licensing and/or certification requirements or should Hainkel Home fail to comply with any of the provisions contained in this Settlement Agreement.
- D. Hainkel Home, through its Board of Directors, expressly reserves its rights to assert claims and proceed with any action as may be appropriate to enforce its due process and other rights if DHH fails to comply with its obligations under this Settlement Agreement.

#### V. Civil Monetary Penalties/Fines/Sanctions

DHH has assessed and Hainkel Home has paid all outstanding state civil money penalties, fines, sanctions arising out of or associated with the surveys conducted at Hainkel Home on June 13, 2011, October 19, 2011, October 28, 2011, December 2, 2011, December 21, 2011, March 16,

2012 and June 8, 2012. Hainkel Home agrees not to appeal the imposition of such state civil monetary penalties/fines/sanctions.

**VI. Meetings with DHH**

Hainkel Home, including its facility leadership (the Administrator, Director of Nursing and Chairman or one member of the Operational Board of Directors) with its attorneys, agrees to attend meetings with DHH staff/personnel if DHH, in its discretion, determines that a meeting is necessary. Meetings, to the extent possible, will be scheduled with ten (10) days advance notice.

**VII. OAAS Program Review**

Hainkel Home will cooperate with program monitoring reviews that may be conducted by the DHH Office of Aging and Adult Services ("OAAS") and will respond to any recommendations provided by OAAS.

**VIII. Survey Compliance Committee**

- A. Hainkel Home agrees to continue to maintain its Survey Compliance Committee (aka: Tag Committee), composed of department heads, for at least six months from the effective date of this Settlement Agreement.
- B. Hainkel Home agrees that the Survey Compliance Committee will continue to meet monthly to identify systems to prevent re-occurrence of deficiencies and a system of monitoring to prevent any new deficiencies.

**IX. Notifications to DHH**

- A. Hainkel Home provided a list of members, including contact information, of the Operational Board of Directors of the Hainkel, which membership has not changed. Hainkel Home shall notify DHH in writing of any change of membership of the Operational Board of Directors.
- B. Hainkel Home shall notify DHH in writing if there is a change in the entity/board/committee that oversees the nursing home operations of Hainkel Home within five (5) days of such change.

**X. General Provisions**

- A. This Settlement Agreement is entered into in the spirit of amicable compromise and settlement.
- B. This Settlement Agreement shall not have any effect on any and all claims, causes of action, and/or allegations which have been brought or may be brought, filed and/or investigated by other agencies or instrumentalities, including but not limited to, the Office of the Louisiana Attorney General, agencies of the federal government, or other State licensing boards, and any penalties whether civil, criminal and/or administrative which may be imposed by those agencies in connection with their review of this provider.
- C. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Louisiana and of the United States. In the event any provision of this Settlement Agreement is found to be in contravention of controlling law, this Settlement Agreement shall not be rendered null and void; rather, the subject provision shall be revised to conform to the applicable law.
- D. The Parties acknowledge that because all parties had an opportunity for their counsel to participate in negotiating and drafting this Settlement Agreement, no rule of construction shall apply to this Settlement Agreement which construes ambiguous or unclear language in favor of or against any party.
- E. This Settlement Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- F. This Settlement Agreement and its terms and conditions shall be construed and given full legal effect under the laws of Louisiana existing at the time of its execution. Any interpretation of this document shall be made with such an understanding.
- G. Notice: Any notice required by this Settlement Agreement shall be provided, as follows:

DHH: Cecile Castello  
Director of Health Standards Section  
Department of Health and Hospitals  
602 N. Fifth Street, 2<sup>nd</sup> Floor  
Baton Rouge, LA 70802

Fax: (225) 342-5073  
Email: cecile.castello@la.gov

Hainkel Home: Robert Rodrigue  
Administrator  
John J. Hainkel Home and Rehabilitation Center  
612 Henry Clay Avenue  
New Orleans, LA 70118  
Fax: (504) 896-5984  
robert.rodrigue@hainkelhome.com

**IN WITNESS WHEREOF**, this Settlement Agreement has been executed originally by the parties on the date(s) below, effective on the Effective Date stated above.

**JOHN J. HAINKEL JR. HOME AND REHABILITATION CENTER**

By: Mary Brooks Rodrigue  
Name: MARY Brooks Rodrigue  
Title: President + Chairman of the Board  
Date: 7/9/13

**LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS**

By: Kathy Kliebert  
KATHY KLIEBERT, ~~INTERIM~~ SECRETARY  
Date: 7-16-13