

REQUESTFORBOARDACTION
HENDERSONCOUNTY
BOARDOF COMMISSIONERS

MEETINGDATE: 3 October 2011
SUBJECT: "Clubhouse" lease
PRESENTER: Charles Russell Burrell
ATTACHMENT(S): Draft lease

SUMMARYOFREQUEST:

As directed by the Board at its last meeting, the attached lease has been drafted. It calls for a lease term of three years, ending 31 October 2014, with rolling one year extensions unless either side opts out in writing by not later than 30 June. Sixth Avenue Psychiatric Rehabilitation Partners, Inc., requested a five year lease with three five-year options. The lease as drafted is of the same term as that previously executed by the County for the "Clubhouse".

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the lease (with modifications as desired).

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the lease as drafted in the agenda item for this matter.

or

I move that the Board approve the lease as drafted in the agenda item for this matter, with the following amendment(s): _____.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("LEASE AGREEMENT") is made and entered into this ____ day of October, 2011, by and between Landlord and Tenant.

1. Certain Definitions. The following definitions and specifications shall apply in this Lease Agreement:

a. Landlord: Henderson County, North Carolina, a body corporate and politic.

b. Tenant: Sixth Avenue Psychiatric Rehabilitation Partners, Inc., a North Carolina not-for-profit corporation

c. Addresses: For the landlord 1 Historic Courthouse Place, Suite 5
Hendersonville, NC 28792

For the tenant 2110 Woodridge Drive
Hendersonville, NC 28739

d. Building: The structures located at 2110 Woodridge Drive, Hendersonville, NC 28739, as such structure may hereafter be expanded, renovated or improved, together with any other rentable separate or connected structure that may hereafter be constructed on the land located at 2110 Woodridge Drive, Hendersonville, NC.

e. Demised Premises: 2110 Woodridge Drive, Hendersonville, North Carolina, and all improvements constructed or hereinafter to be constructed therein.

f. Term: From the date hereof through and including 31 October, 2014. This lease shall automatically renew thereafter for a period of one year, and from year to year thereafter, unless notice is given in writing to the other party by not later than 30 June prior to the end date on 31 October of each year.

g. Rent: \$35,166.00 per year, or any portion thereof, payable in advance. This amount may be modified during any renewals of this Lease by the agreement of the parties.

h. Use: Tenant may use the Demised Premises for mental health "clubhouse" purposes related to the provision of mental health services, but for none other without Landlord's prior written consent, but in no event shall Tenant make use of the property which is in violation of any lawful governmental laws, rules or regulation insofar as they might relate to Tenant's use and occupancy of the premises, nor may Tenant make any use of the premises not permitted by any restrictive covenants which apply to the Demises Premises, or which is or might constitute a nuisance or trespass, or which increases the fire insurance premiums (or makes such insurance unavailable to Landlord) on the building.

2. Lease of Premises. Landlord, in consideration of the covenants and agreements to be performed by Tenant, and upon the terms and conditions hereinafter stated, does hereby rent and lease to Tenant, and Tenant does hereby rent and lease from Landlord, the Demised Premises.

3. Term. The Term shall commence on the date hereof and, unless sooner terminated as provided in this Lease Agreement, shall end on the expiration of the period designated in Article 1.f above.

Clubhouse Lease

4. Inspection. Tenant stipulates that it has had a reasonable opportunity to become familiar with the condition thereof. Tenant further stipulates that the Demised Premises are in acceptable condition, and are safe and sound for the use(s) listed in Article 1.h, above.

5. Rent. Tenant shall pay to Landlord as rent, in legal tender of the United States, in the manner hereinafter provided, Rent specified in Article 1.g above, which shall be payable in annual installments, due in advance upon the execution hereof.

6. Services to be Provided by Tenant. Tenant shall pay for all its own services, including utilities, which it requires for its purposes. Landlord shall have no responsibility for continuation or quality of utilities service or of any other service.

7. Moving of Heavy Objects and Use of Premises For Storage. Tenant shall not unduly overload the floor or any part of the Premises and any heavy object stored or used therein shall be stored and placed only at such place or locations as Landlord, if it so elects, shall designate in writing.

8. Use. Tenant shall have the right to use and occupy the Demised Premises for the purpose described in Article 1.h hereof. In addition, the Demised Premises shall be used only in accordance with all applicable laws, ordinances, rules and regulations of governmental authorities. Landlord may determine in Landlord's reasonable discretion if Tenant's activities constitute a disturbance under this lease.

9. Maintenance by Landlord. Landlord shall maintain the roof, foundation, exterior wall, and common areas of the Building, together with the Building's plumbing, sewer, heating, air conditioning, ventilation, electrical, wiring and mechanical systems. Landlord is also responsible for maintenance of all parking lots serving the Building and for snow and ice removal from the parking lots and all sidewalks. Tenant agrees that it shall promptly notify Landlord of need for any such maintenance and repairs. Notwithstanding anything in the Lease to the contrary, Tenant shall be solely responsible for all repairs, maintenance and replacement of the Demised Premises, Building and Common Areas, occasioned by the gross negligence or willful misconduct of Tenant, its servants, agents or employees to the extent not paid to Landlord or Landlord's lender under the terms of any fine, extended coverage, public liability or other insurance. If any repairs are required because of the gross negligent treatment or willful misconduct by Tenant, its agents, invitees, guests, clients or employees, then Landlord may at its option (i) perform the repairs and charge the cost of such repairs to Tenant, or (ii) require Tenant to promptly perform such repairs.

10. Repairs and Alterations by Tenant. Tenant covenants and agrees that it will take good care of the Demised Premises, its fixtures and appurtenances, and suffer no waste or injury thereto and keep and maintain same in good clean condition, reasonable wear and tear and damage by fire or other casualty excepted. Tenant shall make no alterations in, or additions to, the Demised Premises without first obtaining in writing, Landlord's consent for such alterations or additions which consent shall not be unreasonably withheld. All such alterations or additions shall be at the sole cost and expense of Tenant and shall become part of the Demised Premises and shall be the property of the Landlord

11. Landlord's Right of Entry. Landlord shall retain duplicate keys to all doors of the Demised Premises and Landlord and its agents, employees and independent contractors shall have the right to enter the Demised Premises at reasonable hours upon notice to inspect and examine same, to make repairs, additions, alterations and improvements, to exhibit the Demised Premises during the last six (6) months of the Lease Term to prospective purchasers or tenants, and to inspect the Demised Premises to ascertain that Tenant is complying with all of its covenants and obligations hereunder; provided, however, that Landlord shall, except in case of

emergency, afford Tenant such prior notification of an entry to the Demised Premises as shall be reasonably predictable under the circumstances, and the exercise of any right under this Article shall not unreasonably interfere with the Tenant's business operations in the Demised Premises.

During such time as any emergency work is being carried on in or about the Demised Premises, the rent provided herein shall not abate, and Tenant waives any claim or cause of action against Landlord for damages by reason of interruption of Tenant's business or loss of profits therefrom because of the prosecution of any such work or any part thereof.

12. Insurance.

a. Tenant shall carry at its sole expense and during the Term fire and extended coverage insurance insuring Landlord's interest in the Building and the improvements thereto, such insurance coverage to be in an amount equal to the full replacement value of the Building and improvements thereto, as such may increase from time to time.

b. Tenant shall carry during the Term one or more policies of insurance, insuring the Tenant, Landlord and any other person reasonably designated by Landlord against any and all liability for injury to, or death of, a person or persons, or for damage to property as follows:

i. general liability coverage insuring Tenant, Landlord and any other person reasonably designated by Landlord against any and all liability for injury to or death of a person or persons or for damage to property occasioned by or arising out of construction work on the Demised Premises by a contractor hired by it, or arising out of the condition, use, or occupancy of the Demised Premises, or in any way occasioned by or arising out of the activities of its agents, contractors, employees, guests, or licensees in the Demised Premises, such policy or its policies to have combined single limit of not less than \$1,000,000.00; and

ii. umbrella liability coverage insuring Tenant, Landlord, and any other person reasonably designated by Landlord, which policy shall not be in the amount of less than \$1,000,000.00, with such coverage to be secondary to the coverage afforded by the general liability policy or policies referred to in subsection (i) above.

c. All insurance policies procured and maintained by each party pursuant to this Article shall name the other party and any additional parties designated by the other party as additional insureds shall be carried with companies licensed to do business in the State of North Carolina reasonably satisfactory to the other party and shall be non-cancelable except after twenty (20) days' written notice to the other party. Such policies or duly executed certificates of insurance with respect thereto, accompanied by proof of payment of the premium therefore, shall be delivered to the other party prior to the Rental Commencement date, and renewals of such policies shall be delivered to the other party at least thirty (30) days prior to the expiration of each respective policy term.

13. Nonliability of Landlord. Landlord and or its agents shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying any part of the Building adjacent to or connected with the Demised Premises hereby leased or any other part of the Building or any persons transacting any business in the Building or present in the Building for any purpose, or for any loss or damage resulting to Tenant or its property from burst, stopped or leaking water, gas, sewer, sprinkler or steam pipes or plumbing fixtures or from any failure of or defect in any electric line, circuit, or facility unless due to the acts or omissions of Landlord, its agents, employees or representatives or the failure of Landlord to fulfill its

obligation under this Lease. In addition, Landlord shall not be liable for any property stolen or taken from the Premises by any person or persons, except any agent, servant, or employee of Landlord.

14. Default. The following events shall be deemed to be events of default by Tenant under this Lease Agreement: if

- a. Tenant shall fail to comply in any material respect with any term, provision, covenant or warranty by Tenant under this Lease Agreement, other than the payment of the rent or any other charge or assessment payable by Tenant, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant, unless such matter cannot reasonably be cured within thirty (30) days, in which event Tenant shall not be in default so long as Tenant undertakes such cure within thirty (30) days and completes such cure in a timely and diligent manner thereafter;
- b. Tenant or any guarantor of this Lease Agreement shall become insolvent, or shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors;
- c. Tenant shall file a petition under the federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or shall be filed against Tenant or any guarantor of this Lease Agreement a petition in bankruptcy or insolvency or similar proceeding that is not dismissed within ninety (90) days, or Tenant or any guarantor shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any such guarantor;
- d. A receiver or trustee shall be appointed for the Demised Premises or for all or substantially all of the assets of Tenant or of any guarantor of this Lease Agreement;
- e. Tenant shall abandon or vacate all or any portion of the Demised Premises or fail to take possession thereof as provided in this Lease Agreement; or
- f. Tenant shall do or permit to be done anything which creates a lien upon the Demised Premises that is not released or bonded off within thirty (30) days after Tenant receives notice thereof;
- g. Tenant does not comply with all of the rules and regulations in whole set forth in this Lease and as may be amended by Landlord.

15. Waiver of Breach; Cumulative Rights. No waiver by either party of any breach of the covenants, warranties, agreements, provisions, or conditions contained in this Lease Agreement shall be construed as a waiver of said covenant, warranty, provision agreement or condition or of any subsequent breach thereof, and if any breach shall occur and afterwards be compromised, settled or adjusted, this Lease Agreement shall continue in full force and effect as if no breach had occurred. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative to, but restrictive of, or in lieu of those conferred by law.

16. Assignment – Sublease. Tenant may not encumber this Lease, and may not assign this Lease, sublet any part or all of the Demised Premises. Tenant is not, may not become, and shall never represent itself to be an agent of Landlord, and Tenant expressly recognizes that Landlord's title is paramount, and that it can do nothing to affect or impair Landlord's title.

17. Destruction. (a) If the Demised Premises are damaged by fire or other casualty, Landlord shall use its best efforts to have the same repaired or rebuilt as speedily as practical under the circumstances, unless this Lease Agreement is terminated as provided in Subparagraph (b) of this Article, and during the period required

for restoration, a just and proportionate part of rent and all other charges reserved hereunder shall be abated until the Demised Premises are repaired or rebuilt.

a. If the Demised Premises are

i. damaged to such an extent that repairs cannot reasonably be completed within one hundred twenty (120) days after the date of after the casualty or

ii. damaged or destroyed as a result of a risk which is not insured under standard fire insurance policies with extended coverage endorsement, or

iii. damaged or destroyed during the last six (6) months of the Lease Term and Tenant does not exercise any option to renew this Lease for a succeeding term,

then and in any such event Landlord or Tenant may at either party's option terminate this Lease Agreement by notice in writing to the other party within sixty (60) days after the date of such occurrence. Unless Landlord or Tenant elects to terminate this Lease Agreement as hereinabove provided, this Lease Agreement will remain in full force and effect and Landlord shall repair such damage at its expense as expeditiously as possible under the circumstances.

b. If the Landlord should elect or be obligated pursuant to subparagraph (a) above to repair or rebuild because of any damage or destruction, such obligation shall be limited to the original Demised Premises. If the cost of performing such repairs exceeds the actual proceeds of insurance paid or payable to Landlord (or that would have been payable had Landlord maintained the coverage under Article 16 of this Lease) on account of such casualty, Landlord may terminate this Lease Agreement unless Tenant, within fifteen (15) days after demand therefore, deposits with Landlord a sum of money sufficient to pay the difference between the cost of repair and the proceeds of the insurance available for such purpose.

c. In no event shall Landlord be liable for any loss damage sustained by Tenant by reason of casualties mentioned hereinabove or any other accidental casualty not caused by negligent act or omission of Landlord.

d. If Landlord should elect or be obligated pursuant to subparagraph (a) above to repair or rebuild because of any damage or destruction, and such repair or rebuilding is not substantially completed with one hundred eighty (180) days after the date of the casualty, the Tenant may elect terminate this Lease Agreement by notice in writing to the other party within fifteen (15) days after the date of such occurrence.

18. Removal of Fixtures, Equipment and Effects. Tenant shall, upon expiration or termination of the Lease Term or any renewal thereof, remove all personalty, trade fixtures and equipment which it has placed upon the Demised Premises, and Tenant shall restore the Demised Premises to the condition immediately preceding the time of installation thereof, reasonable wear and tear, damage by fire or other casualty and repairs the Landlord is required to make hereunder, excepted. If Tenant shall fail or refuse to remove all of Tenant's effects, personalty, trade fixtures and equipment from the Demised Premises within 5 days of the expiration or termination of this Lease Agreement for any cause whatsoever, Landlord may, at its option, remove the same in any reasonable manner that Landlord shall choose and store said effects, equipment and personalty without liability for any loss or damage thereto, and the Landlord shall provide the Tenant with written notification of the location of such property. Tenant shall pay Landlord on demand any and all reasonable expenses incurred

by Landlord in such removal and storage, including, without limitation, court costs, reasonable attorney's fees at hourly rates customarily charged, and storage charges. Landlord, at its option, may deem such stored property of the Tenant to be abandoned if, after thirty (30) days written notice to Tenant by Landlord, Tenant has failed to retrieve the same, and Landlord in such case may thereafter proceed, without notice, to sell said effects, equipment and personalty or any part thereof at public or private sale and without legal process for such price as Landlord may obtain, and apply the proceeds of such sale to any amounts due under this Lease Agreement from Tenant to Landlord after first paying the expense incident to the removal, storage and sale of said effects, equipment and personalty. The covenants and conditions of this Article shall survive any expiration or termination of this Lease Agreement.

19. Subordination, Attornment and Nondisturbance.

a. Tenant agrees that this Lease Agreement shall be subordinate to any mortgage, deed of trust or other security instrument now or hereafter encumbering the Demised Premises or any component thereof, and to all advances made or hereafter to be made upon the security thereof so long as the mortgagee and any other necessary parties shall agree in writing reasonably satisfactory to the Tenant that the Tenant's permitted use of the Demised Premises and its other rights and remedies under this Lease Agreement will not be disturbed so long as the Tenant is not in default hereunder beyond any applicable cure period. The terms of this provision shall be self-operative and no further instrument of subordination shall be required. Tenant, however, upon request of any party in interest, shall execute promptly an instrument substantially in the form as is reasonably required to carry out the intent hereof, whether said requirement is that of Landlord or any other party in interest, including without limitation, mortgages. In the event of foreclosure of any mortgage covering the Demised Premises or any part thereof, or in the event of termination of any lease under which Landlord may hold title, Tenant shall attorn to the purchaser at foreclosure or under power of sale, or to the assignee or transferee of the Landlord's interest to the Landlord upon such lease termination, as the case may be.

b. Within fifteen (15) days after request therefore by Landlord, Tenant agrees to execute and deliver to landlord in recordable form an estoppel certificate prepared by Landlord and addressed to any mortgagee or assignee or Landlord's interest in, or purchaser of, the Demised Premises or any part thereof, certifying (if such be the case) that this Lease Agreement is unmodified and is in full force and effect (and if there have been modifications, that the same is in full force and effect as modified and stating said modifications); that there are no defenses or offsets against the enforcement thereof or stating those claimed by Tenant; and stating the date to which rent and other charges have been paid. Such certificate shall also include such other information as may reasonably be required by such mortgagee, proposed mortgagee, assignee, purchaser or Landlord.

20. Quiet Enjoyment. If Tenant promptly and punctually complies with each of its obligations hereunder within any applicable cure period, it shall peacefully have and enjoy the possession of the Demised Premises during the Term of this Lease.

21. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given, whether actually received or not, on the third day after the date deposited, postage prepaid, in the United States Mail, certified, return receipt requested, and addressed to Landlord or Tenant at their respective address set forth hereinabove or at such other address as either party shall have theretofore given to the other by notice as herein provided or upon receipt if hand-delivered to such address.

22. Damage or Theft of Personal Property. All personal property brought into Demised Premises by Tenant, or Tenant's employees or business visitors, shall be at the risk of Tenant only, and Landlord shall not be liable for theft thereof, or any damage thereto, occasioned by any act of co-tenants, occupants, invitees or other users of the Building.

23. Force Majeure. Except as expressly provided herein, in the event of strike, lockout, labor trouble, civil commotion, Act of God, or any other cause beyond the Landlord's control (collectively "force majeure") resulting in Landlord's inability to supply the services or perform the other obligations required of Landlord hereunder, this Lease Agreement shall not terminate and Tenant's obligation to pay rent and all other charges and sums due and payable by Tenant shall not be affected or excused except as otherwise provided in this Lease and Landlord shall not be considered to be in default under this Lease Agreement. If, as a result of force majeure, Tenant is delayed in performing any of its obligations under this Lease Agreement, other than Tenant's obligation to take possession of the Demised Premises on or before Rental Commencement Date and to pay rent and all other charges and sums payable by Tenant hereunder, Tenant's performance shall be excused for a period equal to such delay and Tenant shall not during such period be considered to be in default under this Lease Agreement with respect to the obligation, performance of which has thus been delayed.

24. Landlord's Liability. Landlord's personal liability with respect to the provisions of this Lease Agreement shall be limited only to the extent of the fair market value of the Building net of the amount owned by Landlord on any mortgage or mortgages in a commercially reasonable principal amount secured by the Building.

25. Indemnification. Tenant hereby indemnifies Landlord, its agents and employees from, and agrees to hold Landlord, its agents and employees harmless against any and all liability, loss, cost, damage or expense, including all reasonable attorney's fees at hourly rates customarily charged and other reasonable expenses incurred by the Landlord in defense of any claim in connection with the Demised Premises and involving damage or injury to Landlord or Landlord's successors or assigns, the Demised Premises, or any other party or parties, person or persons, for whatever cause. The provisions of this Article shall survive any termination of this Lease Agreement.

26. Submission of Lease. The submission of this Lease Agreement for examination does not constitute an offer to lease and this Lease Agreement shall be effective only upon execution hereof by Landlord and Tenant.

27. Severability. If any clause or provision of the Lease Agreement is illegal, invalid or unenforceable under present or future laws, the remainder of this Lease Agreement shall not be affected thereby.

28. Entire Agreement. This Lease Agreement contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of either party to exercise any power given either party hereunder, or to insist upon strict compliance by either party with any obligation of the other party hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of each party's right to demand exact compliance with the terms hereof.

29. Headings. The use of headings herein is solely for the convenience of indexing the various paragraphs hereof and shall in no event be considered in construing or interpreting any provision of this Lease Agreement.

30. Landlord's Performance of Tenant's Covenants. Notwithstanding any provisions contained herein to the contrary, should Tenant, after any required notice from Landlord, fail to do any of the things required to be done by it under the provisions of this Lease, Landlord in addition to any and all other rights and remedies, may, but shall not be required to, do the same or cause the same to be done, and the reasonable amount of any money

expended by Landlord in connection therewith shall constitute additional Rent for the Lease Term or either of the Extended Lease Terms, due from Tenant to Landlord and shall be payable as Rent on the date for payment of such rent immediately following such expenditure.

31. Title and Authority of Landlord. Landlord represents and warrants to Tenant that Landlord owns fee simple title to Demised Premises and Building and that Landlord has all requisite authority to enter into this Lease with Tenant.

32. Former Premises. Tenant will quit its former premises, located at 714 Sixth Avenue West, Hendersonville, North Carolina, by not later than 30 November 2011, and removed from there all items of its property by such date.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

HENDERSON COUNTY

By: _____ Date _____
J. MICHAEL EDNEY
Chairman, Board of County Commissioners

Attest:

Secretary to the Board of Commissioners Date _____

Tenant:

By: _____(SEAL) Date _____

Title: _____

Witness _____ Date _____

Clubhouse Lease