

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Lafayette Division**

IN RE:

CASE NO. 16-50740

PROGRESSIVE ACUTE CARE, LLC, et al.

CHAPTER 11

DEBTORS

JOINTLY ADMINISTERED

MOTION TO REJECT LEASE OF NONRESIDENTIAL REAL PROPERTY

NOW INTO COURT, comes Progressive Acute Care Avoyelles, LLC (“PAC Avoyelles” or “Debtor”), as debtor and debtor-in-possession, which respectively moves this Court for entry of an order authorizing it to reject an unexpired lease of nonresidential real property (the “Motion”). In support thereof, the Debtor respectfully represents as follows:

Background

1.

On May 31, 2016 (the “Petition Date”), the Debtor filed a petition for voluntary relief under chapter 11 of the Bankruptcy Code. A creditors’ committee has been appointed in the administratively consolidated cases and, the Debtors in each, including PAC Avoyelles, continue to operate their businesses in the ordinary course as debtors-in-possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2.

PAC Avoyelles is the owner and operator of a community-based hospital in Marksville, Louisiana (“the Hospital”), which provides inpatient, outpatient and emergency care, primarily for residents of the immediate region of the Hospital.

Basis for Relief

3.

The Debtor, by this Motion, seeks authority to reject the property lease agreement between it and Goux Holdings, LLC (the "Lease") pursuant to the provisions of 11 U.S.C. §365(a) and (d)(4)(A). A copy of the Lease is attached hereto as Exhibit "A".

Relief Requested

4.

On August 1, 2013, the Debtor and Goux Holdings, LLC ("Goux") entered into a contract wherein the Debtor leased from Goux a medical office building located at 597 Tunica Drive, Marksville, Louisiana 71351 (the "Office Building") for a term of ten (10) years at a rate of \$4,200.00 monthly.

5.

The Debtor vacated the Office Building in November 2015, and no longer has any use for the Office Building. Pursuant to 11 U.S.C. §365(a) and (d)(4)(A), the Debtor desires to reject the Lease *nunc pro tunc* to the Filing Date as the Office Building is not needed for the operations of the Debtor's business. Rejection of the Lease is in the best interest of the estate and its creditors as it will save the estate unnecessary rental expenses.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order granting the relief requested herein and approving the rejection of the property lease agreement between it and Goux Holdings, LLC, and for such other and further relief as may be just and equitable.

Respectfully submitted by:

STEFFES, VINGIELLO & McKENZIE, L.L.C.

By: /s/ Noel Steffes Melancon

William E. Steffes (La. Bar No. 12426)

Barbara B. Parsons (La. Bar No. 28714)

Noel Steffes Melancon (La. Bar No. 30072)

STEFFES, VINGIELLO & McKENZIE, LLC

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*Counsel for Progressive Acute Care, LLC,
Progressive Acute Care Avoyelles, LLC,
Progressive Acute Care Oakdale, LLC, and
Progressive Acute Care Winn, LLC, Debtors*

PROPERTY LEASE AGREEMENT

STATE OF LOUISIANA

PARISH OF AVOYELLES

GOUX HOLDINGS, LLC, as a Landlord, hereby leases and rents unto PROGRESSIVE ACUTE CARE AVOYELLES, LLC d.b.a. AVOYELLES HOSPITAL, as Tenant, that concern commercial premises having the municipal address of 597 Tunica Drive, Marksville, Louisiana 71351 and being 3,224 square feet (the "Leased Premises"), on the following terms and conditions:

- 1. **RENT:** Tenant shall pay monthly rental of \$4,200.00 per month, payable in advance on the first (1st) day of each calendar month during the entire term of the Lease, beginning August 1, 2013. Rent shall be payable to Landlord, or direct deposit to Landlords choice bank account, to be delivered to Lessee. Landlord may from time to time designate other places for the payment of the rent by written notice to Tenant.
- 2. **TERM:** This Lease shall be for the primary term of ten (10) years beginning on August 1, 2013. If either party desires the Lease to terminate at its expiration date, a thirty (30) day written notice shall be given to the other party. If no notice is given, the Lease shall continue on a month-to-month basis. The rent during said month-to-month tenancy shall be the same amount that was last in effect immediately prior to the time said month-to-month tenancy became effective. In such event, either party may terminate the Lease at the end of any month by giving a thirty (30) day written notice to the other party. Landlord allows tenant the right to sublet. Tenant remains liable for all obligations under Lease, including rent payments and insurance if sublet.
- A. **OPTION TO EXIT:** This Lease shall terminate within 90 days written notice for closing on a purchase contract for commercial premises of 599 Tunica Drive and 597 Tunica Drive. This purchase must be executed within the 90 day termination period. Tenant shall have sixty (60) days upon written notice from landlord to exercise right of first refusal to close on purchase property at the same price.

In the event that any law, rule, regulation, or interpretation thereof by any Federal, State, Parish, City, or other authority, including without limitation any Agent acting on behalf of such Federal, State, Parish, City or other authority, would result in the disallowance of a Tenant-Landlord relationship between GOUX HOLDINGS, LLC and PROGRESSIVE ACUTE CARE AVOYELLES, LLC d.b.a. AVOYELLES HOSPITAL, Tenant shall notify Landlord of such law, rule, regulation, or interpretation thereof in writing and may terminate the Lease by giving (30) day written notice to Landlord. Lease only terminates with closure on the property.

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3. **OPTION TO RENEW:** If Tenant has not been in default under the provisions of this Lease Agreement, Tenant shall have the option to renew this Lease for an additional term of five (5) years at the same rental rate in effect at the time such option is exercised. PROGRESSIVE ACUTE CARE AVOYELLES, LLC d.b.a. AVOYELLES HOSPITAL may exercise Lease of 599 Tunica Drive for thirteen dollars (\$13) per square foot, should current occupant not renew Lease.
4. **LATE CHARGES:** Tenant shall be allowed a 10-day grace period each month, but if any monthly installment is not paid by the 10th day of each month, Tenant shall be liable for a late charge equal to 5% of such monthly installment. All past due installments of rent shall bear interest at the maximum allowable rate from date due until paid.
5. **KIND OF BUSINESS:** The premises herein leased shall be used for commercial business use only and for no other purpose without Landlord's written consent. Tenant shall occupy the premises throughout the full term of the Lease, and the principal business to be conducted at this address is a Commercial business, including but not limited to health care. Tenant shall not use any portion of the Leased Premises for any purpose that is unlawful or in violation of any zoning ordinances or any other laws nor for any purpose that tends to injure or depreciate the property or create a nuisance or interfere with, annoy or disturb any other persons. Nothing shall be placed or done on the premises by Tenant, which shall cause forfeiture of any insurance. Any violation of these provisions shall permit the Landlord at its option to immediately cancel this Lease upon written notice to Tenant.
6. **ALTERATIONS:** Tenant shall make no alterations or additions to the premises without written permission of Landlord. Tenant accepts property in as is condition. Any such additions or changes made to the premises by Tenant shall become the property of Landlord, at the termination of this Lease, without any right of reimbursement therefor. Tenant shall promptly remove any items belonging to Tenant and repair or replace in a like condition the Leased premises on or before the expiration of this Lease, or any extension or renewal thereof. Any alterations or additions made by Tenant to the leased premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements and permits, and without interference with the other tenants or transaction of business in the Building. Tenant shall indemnify and hold Landlord harmless from all claims, liabilities, obligations, and expenses, including attorney fees, arising from or in any way connected with such work. Tenant warrants that the contractor and all subcontractors, laborers and suppliers shall be paid in a timely manner, and Tenant hereby indemnifies Landlord (including attorney fees) against liens for any work performed, material furnished, or obligations incurred by Tenant.
7. **RIGHT OF ENTRY:** Landlord, its employees, agents, successors or assigns shall have the right to enter the premises at all reasonable times for the purpose of

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inspection, or in order to make any repairs required of Landlord, or which may be necessary for the preservation of the property. If locks are changed at any time during the term of this Lease, Landlord or its agent shall be supplied with current keys and/or alarm codes by Tenant. Landlord reserves the right to post "For Lease" signs and show the Leased Premises to prospective tenants one hundred eighty (180) days preceding the expiration of the Lease.

8. **DELIVERY OF PREMISES:** Landlord warrants that the Leased Premises are in a condition adequate for Lessors intended purpose. Tenant accepts property in as-in condition. Upon occupancy, Tenant accepts premises in such condition and agrees to return them to the Landlord in the same condition at the termination of the Lease, normal decay, wear and tear accepted. Landlord agrees to leave the existing phone system, security system, office furniture, and medical equipment in Leased Premises at no additional cost to Tenant. Included in the Lease term are office furniture, and medical equipment, currently being used by Goux Family Medicine.
9. **CONDITION AND UPKEEP OF PREMISES:** Tenant agrees not to store merchandise or leave trash outside the Leased Premises. All trash shall be kept in containers. Should Tenant be in default of the requirements of this provisions, Landlord may, after written notice by Tenant, remedy such default at Tenant's expense, and such expense shall be treated as additional rental due under this Lease by Tenant.
10. **MAINTENACE, REPAIRS AND REPLACEMENTS:** Landlord will pay for any repairs to, or replacement of, the heating or air conditioning system, exterior walls, windows and doors, parking structure, flooring, plumbing, or kitchen fixtures and to the roof, not deemed to be caused by Tenant's abusive use or treatment thereof. Tenant responsible for general minor items. Tenant may make alterations and improvements, including painting with the consent of Landlord, which will not be unreasonably withheld. Landlord assumes full and complete responsibility for all routine maintenance of the Leased Premises, including, plumbing, electrical, painting, wall covering, and floor covering of the Leased Premises. Tenant assumes full and complete responsibility for grounds maintenance including mowing services. Tenant shall pay for water, and sewerage services to the leased premises, and for the routine replacement of HVAC, and dumpster servicing.
11. **FIRE AND CASUALTY:** Should the premises be wholly destroyed, or materially damaged so as to render it wholly unfit for occupancy, by fire or other unforeseen event not due to any fault or neglect of Tenant or its agents, employees, contractors, patrons or visitors, them this Lease shall terminate and end, and both Tenant and Landlord shall be relieved of any further responsibility hereunder for the remaining unexpired term of this Lease. In that event, any advance rent shall be pro rated and returned to Tenant.

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Should the premises, through no fault or neglect of Tenant or its agents, employees, contractors, patrons or visitors, only be partially destroyed or partially damaged by fire or other casualty so as to render the premises untenable, the rent herein shall abate thereafter until such time as the premises are made tenantable by Landlord or Landlord may neglect at its sole option to terminate the Lease. If only a portion of the premises is untenable, a pro rata abatement of the rent shall be made.

12. **INDEMNITY:** Tenant agrees to indemnify and save and hold forever harmless the Landlord against all suits, claims, damages and actions (including attorney's fees and costs and expenses of litigation), including but not limited to personal injury, bodily injury, property damage, contamination by hazardous substances, environmental damage or otherwise, occasioned, arising, out of or in any manner related to the condition of the Leased Premises, or any business or operation conducted thereupon by Tenant, or any of Tenant's agents, servants, or employees or otherwise related in any way to Tenant's use or occupancy of the Leased Premises. This obligation of indemnity and defense shall extend to and encompass and all suits, claims, demands, actions, and causes of action of whatever kind or character whatsoever, including, but not limited to, claims or suits alleging the fault, negligence or liability of Landlord, either solely, or in conjunction with others.
13. **EXPENSES:** Tenant shall pay expenses pertaining to the Leased Premises, including but not limited to, electricity, telephone, janitorial services and building insurance, charges, and costs arising out of Tenant's use of the Leased Premises or incurred by Tenant. Landlord shall be responsible for paying expenses pertaining to property taxes.
14. **TAXES AND INSURANCE:** Landlord shall be responsible for all real property taxes assessed against the land and building comprising the Leased Premises. Tenant shall be responsible for property liability insurance.
15. **ATTORNEY'S FEES AND EXPENSES:** All obligations of Tenant are joint, several, and in solid, and in case an attorney is employed to protect any rights of Landlord under this property lease agreement, Tenant shall pay reasonable attorney's fees.

Tenant hereby accepts that Landlord shall have the rights provided for protection of interests under Louisiana law, and in addition shall have a possessory lien on all goods, equipment and other property of Tenant located upon the premises for payment of all rental and other sums due by Tenant to Landlord by reason of this Lease. The foregoing provisions are without prejudices to any remedy which might otherwise be used under the laws of Louisiana for arrears of rent or breaches of contract, or to any lien to which Landlord may be entitled.

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Landlord's failure to strictly and promptly enforce these conditions shall not operate as a waiver of Landlord's right, Landlord hereby expressly reserving the right to always enforce prompt payment of rent, or to cancel this Lease regardless of any indulgences or extensions previously granted.

- 16. LANDLORD NOT LIABLE:** Landlord shall not be liable or responsible to Tenant, its employees, invitees, licensees, permittees or other for any loss of any kind, damage, or inconvenience to any property or person occasioned by theft, fire, act of God, public enemy, fuel, insurrection, vandalism, sabotage, war, court order, requisition, or order of Government body or authority unless attributable to Landlord's negligence or fault; or for any loss, damage or inconvenience which may arise through repair or alteration of any part of the Leased Premises, failure to make any such repairs, malfunction or failure of any equipment or component, or interruption of services to the Leased Premises, provided that Landlord is acting in a prompt and diligent manner to remedy all such deficiencies.
- 17. CONDEMNATION:** Landlord and Tenant mutually covenant and agree that if the whole or any part of the Premises shall be taken by Federal, State, Parish, City, or other authority for public use, or under any statute or by right of eminent domain or expropriation, Tenant shall not be entitled to any part of any award that may be made for such taking, nor for any damages, except that portion of any award or damages paid, which is directly attributable to leasehold improvements installed and paid for by Tenant. Tenant shall be entitled to pursue such claims directly. In the event of partial taking, rent shall be reduced as of the date of such taking by a percentage equal to the percentage obtained by reletting the space taken to the total space leased hereby, and if such taking renders the remainder of the Premises untenable for Tenant's purposes, Tenant shall have the option, to be exercised by notice in writing to Landlord within sixty (60) days after said taking, of terminating this Lease. Such termination shall take place not later than thirty (30) days after receipt of such notice by Landlord. Landlord shall notify Tenant in writing within ten (10) days of the receipt of official notice of commencement of condemnation proceedings.
- 18. SIGNS:** Tenant shall be permitted to display, at its expense, signage with the prior consent of Landlord, which shall not be unreasonably withheld.
- 19. INSURANCE:** It is agreed that the Landlord shall be under no obligation to maintain insurance of any kind or amount on the property of Tenant or for any personal injury liability of Tenant. For the mutual protection of Landlord and Tenant, Tenant at its sole expense agrees to carry and maintain general liability insurance and to furnish Landlord a certificate of insurance issued by a company authorized to do business in the state of Louisiana in the minimum coverage amounts of \$500,000 each person, \$1,000,000 per occurrence, \$2,000,000 annual aggregate and \$500,000 property damage. Tenant shall further be responsible for securing its own contents insurance coverage and Landlord shall have no liability

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whatsoever for any damage to Tenant's contents ("Contents" shall include any and all Tenant property including without limitation, furniture, fixtures, equipment, and inventory).

20. SUBORDINATION: This Lease is subject to any mortgages or other encumbrances, which now or hereafter encumber or affect the Building and/or the land on which the Building is situated, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and a mortgagee or Landlord need require no further instrument of subordination. In confirmation of such subordination, however, Tenant shall, at Landlord's request promptly execute any appropriate certificate or instrument that Landlord may request. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact to execute any such certificate or instrument for and on behalf of Tenant. In the event of the enforcement by the holder of any such instrument of the remedies provided for by law or by such mortgage or other encumbrance, Tenant will, upon request of any other person or party succeeding to the interest of Landlord as a result of such enforcement, automatically become the Tenant of such successor in interest without change in the terms or other provisions of this Lease. Upon request by such successor in interest, Tenant shall execute and deliver an instrument confirming the attornment herein provided for.

21. ESTOPPAL CERTIFICATES: Tenant agrees at any time and from time to time, upon not less than ten (10) business days' prior written notice by Landlord to execute, acknowledge and deliver to Landlord or to such person(s) as may be designated by Landlord, a statement in writing (i) certify that Tenant is in possession of the Premises, has unconditionally accepted the same and is currently paying rents reserved hereunder, (ii) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), (iii) stating the dates to which the rent and to other changes hereunder have been paid by Tenant and (iv) stating whether or not to the best knowledge of Tenant, Landlord is in default in the performance of an covenant, agreement or conditions contained in this Lease, and, if so, specifying each such default of which notices to Landlord should be sent. Any such statement delivered pursuant hereto may be relied upon by any owner, prospective owner, prospective purchaser, mortgagee or prospective mortgagee of the Building(s) or of Landlord's interest therein, or any prospective assignee of any such mortgagee.


22. ASSIGNMENT BY LANDLORD: Landlord shall have the right to transfer and assign, in whole or in part, all of Landlord's rights and obligations hereunder, as well as the Building and property referred to herein, and in such event the transferor or assigner shall have no further liability or obligation hereunder. Nothing contained in this paragraph shall limit or prevent any assignment of this Lease or the revenue derived therefrom to any lender.

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- 23. WAIVER OF LIABILITY:** Anything in this Lease to the contrary notwithstanding, to the extent that a Waiver of Subrogation Clause is obtainable under their respective insurance policies, Landlord and Tenant hereby waive any and all rights to recovery, claims, actions or causes of action, against each other, their respective agents, officers, or employees, for any loss or damage that may occur to the Premises, or which the Premises are a part, or any improvements thereto, or any other cause which could be insured against under extended coverage insurance policies, regardless of cause or origin.
- 24. COMPLIANCE WITH LAWS:** Tenant shall, at Tenant's sole expense, comply with all laws, rules, regulations, requirements, and recommendations of all Parishes. Municipal, State, Federal and other applicable governmental authorities now or hereafter in force, including, without limitation, the Americans with Disabilities Act of 1990 ("ADA"), as they relate to the Premises and the conduct of Tenant's business therein. To the extent required by the ADA, Tenant at its sole expense, shall place appropriate signage (with respect to the Premises) on the interior of the Premises, and with Landlord's prior consent, on the exterior of the Premises. Tenant agrees to indemnify Landlord for all damages, losses, fines, and expenses, including reasonable attorney's fees, incurred by Landlord as a result of Tenant's failure to comply with any provision of this paragraph.
- 25. ENVIRONMENTAL COMPLIANCE:** Tenant shall not cause or permit the presence, use disposal, storage, or release of any hazardous or environmentally unsafe substances on or in the Leased Premises. Tenant shall not do, or allow anyone else to do, anything affecting the Leased Premises. Tenant shall not do, or allow anyone else to do, anything affecting the Leased Premises in violation of any State or Federal Environmental laws and regulations. Tenant agrees to indemnify and hold Landlord harmless against all claims and liabilities arising from Tenant's breach of this covenant, costs associated with cleanup and or remediation, as well as attorney's fees and other legal costs that may be incurred by Landlord.
- 26. NUISANCE:** Tenant agrees to conduct its business and control its agents, employees, invitees, and visitors in such manner as not to create any nuisance, or interfere with, annoy or disturb any other Tenant or Landlord in this operation of Building. If any such breach of this provision is called to Tenant's notice in writing, Tenant shall correct same at once or the Landlord has the following options: (a) this Lease may be terminated by the Landlord or (b) the Landlord may correct same and submit all expenses related thereto to Tenant, who shall be obligated to pay such expenses within five days.
- 27. CONFLICTS:** If there is any conflict between the printed portions and the typewritten or handwritten portions, the typewritten portion shall prevail.
- 28. PARTIAL INVALIDITY:** If any provision of this Lease or application thereof to any person or circumstance shall, to any extent, be invalid, the remainder of

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this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be effected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

- 29. BINDING EFFECT:** This Lease, and each and every term and provision hereof, shall be for the benefit of and be binding upon the parties hereto, and each of them, and their respective heirs, successors, executors, administrators, and assigns.
- 30. ADDITIONAL PROVISIONS OF LEASE:** All terms and conditions of this Lease are included herein and no verbal agreements are to be considered as a part of this transaction. This Lease may not be altered, changed or amended, except by an instrument in writing signed by both parties hereto.
- 31. GOVERNING LAW:** This Lease is to take effect in Louisiana, and is to be governed and controlled by the laws of Louisiana.
- 32. SURVIVAL OF RENT:** The covenant to pay any rent or additional rent shall survive the termination of this Lease.
- 33. NOTICES:** Any notice required or permitted to be given hereunder shall be in writing and may be served via U.S. certified mail return receipt hand delivery, or overnight courier, addressed to Landlord and Tenant respectively at the addresses set forth below, as well as notice to the Tenant at the address of the Premises (if different from the address stated below). Such notices shall be deemed served when received or five business days after placing in the United States mail, postage prepaid, by certified mail return receipt requested. The addresses of the parties are:

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**TO LANDLORD:
GOUX HOLDINGS, LLC
1 CRYSTAL SPRINGS COURT
UNIT G
THE HILLS, TEXAS 78738
ATTENTION: VINCENT PAUL GOUX**

**TO TENANT:
AVOYELLES HOSPITAL
P.O. BOX 249
MARKSVILLE, LA 71351
ATTENTION: DAVID MITCHEL
AND TO:
PROGRESSIVE ACUTE CARE, LLC
2210 SEVENTH STREET
MANDEVILLE, LA 70471
ATTENTION: DANIEL RISSING**

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28th June

THUS DONE AND PASSED by Tenant, in multiple originals, on the 1st day of August, 2013, in the presence of the undersigned competent witnesses, after due reading of the whole.

WITNESSES:

[Signature]
Catherine Bennett

**TENANT: PROGRESSIVE ACUTE
CARE AVOYELLES, LLC d.b.a.
AVOYELLES HOSPITAL**

BY: David M. Mitchell
NAME: DAVID MITCHEL
TITLE: CEO

THUS DONE AND PASSED by Tenant, in multiple originals, on the 1st day of August, 2013, in the presence of the undersigned competent witnesses, after due reading of the whole.

WITNESSES:

[Signature]
Mona Rahalawi

LANDLORD: GOUX HOLDINGS, LLC

BY: Vincent Paul Goux
NAME: VINCENT PAUL GOUX
TITLE: MANAGING MEMBER

Tenant Initials: [Signature]

Landlord Initials: [Signature]