

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT (“Lease”) is entered by and between PRODIGY DEVELOPMENT, LLC, an Alaska limited liability company, whose address is PO Box 2483, Homer, AK 99603 (“Lessor”), and KENAI PENINSULA BOROUGH, an Alaska Municipal Corporation, whose address is 144 N. Binkley St., Soldotna, AK 99669, on behalf of SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA (“SKPHSA”), hereinafter referred to as either “KPB” or “Lessee,” and SOUTH PENINSULA HOSPITAL, INC., whose address is 4300 Bartlett St., Homer, Alaska 99603, a not-for-profit Alaska corporation, hereinafter referred to as “Sublessee.”

### **1. DEFINITIONS AND TERMS**

- 1.1 Lessor:** PRODIGY DEVELOPMENT, LLC
- 1.2 Lessee:** KENAI PENINSULA BOROUGH
- 1.3 Sublessee:** SOUTH PENINSULA HOSPITAL, INC.
- 1.4 Term:** Ten (10) Years
- 1.5 Commencement Date:** January 1, 2020
- 1.6 Expiration Date:** December 31, 2029
- 1.7 Building:**  
Kachemak Bay Professional Building  
4201 Bartlett Street  
Homer, Alaska 99603

**1.8 Rent:** As defined in Sections 4.1 and 4.2

**1.9 Use:** The Leased Premises will be used by Sublessee SOUTH PENINSULA HOSPITAL, INC., an Alaska non-profit corporation, and any additional Lessee’s permitted Sublessees, for the operation and conduct of medical and business offices, storage, and other hospital related uses.

**1.10 Definitions:**

- a. KPB:** The Kenai Peninsula Borough, a municipal corporation.
- b. KPB Assembly:** The Assembly of the Kenai Peninsula Borough.

**c. SKPHSA:** The South Kenai Peninsula Hospital Service Area.

**2. PREMISES**

**2.1 Leased Premises.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described Leased Premises:

- (a) The entirety of the Kachemak Bay Professional Building together with the right to use and manage the exterior parking areas and grounds all together being the real property described as follows:

**LOT 1-A, BLOCK 9, Fairview Subdivision 2003 Addition, T 6S R 13W Sec. 18 Seward Meridian HM 2004101, located in the Homer Recording District, Third Judicial District, State of Alaska.**

Street address: 4201 Bartlett Street, Homer, Alaska 99603

Assessor's Parcel No.: 17505509

Approximate building area: 11,000 sq. ft.

Hereinafter referred to as "Leased Premises;"

- (b) Together with the exclusive right to use the exterior grounds, driveways and other access for ingress and egress, and the parking areas provided by the Lessor, its successors, or assigns, in the designated areas for the parking of automobiles, which are contiguous to the building in which the leased premises are located.
- (c) Leased premises are delivered "as-is" and are accepted in its current condition.

**3. TERM, RENEWALS, HOLDING OVER, AND SURRENDER OF PREMISES**

**3.1 Commencement of Term; Term.** The Term shall begin on the Commencement Date, January 1, 2020. The Term shall be for a period of ten (10) years from the Commencement Date, ending on December 31, 2029, subject to §3.1(a), §3.1(b), §3.2, and to §14 RIGHT OF FIRST REFUSAL below.

- (a) **Early Termination.** Lessee may terminate the Lease without any cause or reason on ninety (90) days' prior written notice of termination delivered to the address set forth in Section 15.4 below. Termination is effective immediately upon expiration of the ninety days' notice period

without penalty.

- (b) **Subject to KPB Assembly Approval and Annual Appropriation of Funds.** This Lease is subject to KPB Assembly approval and to the annual appropriation and availability of funds. In the event that the KPB Assembly fails to approve this Lease or fails to annually appropriate funds for the obligations due under this Lease, then the Borough may provide ninety (90) days' written notice of termination and this Lease will terminate per Section 3.1(a).
- (c) **Sublessee's Payment of Lessee's Expenditures.** Upon Lessee's sublease of the Leased Premises to Sublessee pursuant to Section 9, the Lessee's expenditures for this lease will be paid by Sublessee for the remaining term of the Sublease and Operating Agreement between the Lessee and Sublessee, and for any extension or renewal of the term of the Sublease and Operating Agreement.

**3.2 Renewal Options.** Provided that this Lease is in full force and effect and Lessee is not in default hereunder, Lessee shall have the right and option to renew this Lease for two (2) successive Additional Terms, with each individual Additional Term being a period of ten (10) years each, and under the same terms, conditions, and provisions herein for the original Term of the Lease, except for Rent. The renewal options to be effective must be exercised by the Lessee by written notice to Lessor in the form and manner provided herein at least six (6) months prior to the commencement date of the renewal term.

**3.3 Holding Over.** Any holding over after the expiration of the term of this Lease without a signed lease agreement shall be construed to be a tenancy from month to month, at the monthly rental applicable to the rent due for the last month under this Lease Agreement, and may not exceed six (6) months' holdover period without execution of an extension, renewal, or replacement lease agreement. The provisions of this Section do not exclude Lessor's rights of reentry or any other right hereunder.

**3.4 Surrender of Premises.** Upon the expiration of or termination of this Lease, the Lessee and Sublessee shall remove all of their property from the leased premises, except plumbing and other permanent fixtures and leasehold renovations, alterations, and

improvements which may have been installed by the Lessee or Sublessee and except as otherwise provided in this Lease, and shall repair any damage caused by removal of any property which it is permitted hereunder to remove, and shall surrender the leased premises to the Lessor “broom clean” in as good order and condition as they were upon Sublessee commencing business, ordinary wear and tear and loss by fire or other unavoidable casualty excepted. Any property left on the premises after the expiration or other termination of this Lease may be disposed of by Lessor in any manner and without any liability to the Lessee or Sublessee.

- (a) Absent a request to renew, during the final four (4) months of the Lease’s Term, Lessor shall be permitted to show prospective tenants the leased premises upon giving the Lessee and its Sublessee at least twenty-four (24) hours’ prior notice.

**4. RENT; OTHER FINANCIAL OBLIGATIONS, DEPOSIT; COMPLIANCE**

**4.1 Rent for Premises.**

- (a) **Rent for Years 1 and 2.** Commencing on the Commencement Date and during the years one (1) and two (2) of the Term of this Lease, Lessee shall pay the Annual Rent at fair market value for the Leased Premises in monthly installments, as follows:

<u>Time Period</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
Years 1 and 2	\$22,000	\$264,000

- (b) **Rent for Years 3 through 10.** Commencing on the first day of the third (3rd) year through the tenth (10th) year of the Term of this Lease, Lessee shall pay the Annual Rent at fair market value, adjusted by 2% annually, for the Leased Premises in monthly installments, as follows:

<u>Time Period</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
Years 3 through 10	Prior Year Monthly Rent x 1.02	Prior Year Rent x 1.02
Year 3	\$22,440	\$269,280
Year 4	\$22,888.80	\$274,665.60
Year 5	\$23,346.58	\$280,158.91
Year 6	\$23,813.51	\$285,762.09
Year 7	\$24,289.78	\$291,477.33

Year 8	\$24,775.57	\$297,306.88
Year 9	\$25,271.08	\$303,253.02
Year 10	\$25,776.51	\$309,318.08

- (c) **Payment Terms** Rent shall be paid monthly in advance, on the first (1<sup>st</sup>) day of each month, without notice or demand, to Lessor at the address of Lessor, or at such other place as Lessor shall from time to time designate in writing. In the event the Lessee fails to pay any monthly installment of rent within twenty (20) days of the due date of such installment, Lessee shall pay, in addition to such rent due, a late charge of \$50.00. Furthermore, Lessee shall pay interest at a rate of 1.0% per month on all delinquent unpaid rent after 30 days of the day the monthly installment was due. Such interest shall be calculated from the due date of the installment until the date received by Lessor.
- (d) **Renewal Rent.** For each renewal option exercised under §3.2 above, the Annual Rent, and the corresponding Monthly Rent, shall be adjusted 1% annually.
- (e) Sublessee shall perform Lessee's obligation to pay rent to Lessor.

**4.2 OTHER FINANCIAL OBLIGATIONS.**

- a) Utilities. Lessee agrees to be responsible for and to pay for the cost of electricity, heat, power, fuel, water, sewer and other utility services for the term of this lease. Lessor remains responsible for and liable to pay for all other costs. Lessee shall be responsible for all lot maintenance, landscaping, lawn maintenance, including snow removal and ice sanding, at Lessee's expense.
- b) Janitorial Services. Lessee agrees to keep all rubbish and garbage in containers while on the leased premises and shall dispose of all of such rubbish and garbage in the Dumpster or other containers provided by Lessee. The Lessee shall perform and provide for all of Lessee's janitorial services required inside of the leased premises
- c) Taxes. Lessee is responsible for payment of taxes, if any, on Lessee's business operations. and for payment of Kenai Peninsula Borough and City of Homer real property taxes on the premises. Lessee is not responsible for any other tax related to either Lessor's businesses or property.
- d) Sublessee may perform Lessee's obligation to pay Lessee's financial obligations to Lessor.

**4.3 Security Deposit.** The Lessee shall deposit with the Lessor upon execution of this Lease the sum of \$2,000.00 as security for the payment of rent provided herein and for the observance and performance by Lessee or Sublessee of all of the terms, provisions, and conditions of this Lease on its part to be kept and performed; and further to indemnify the Lessor for any loss, costs, fees and expenses which the Lessor may incur by reason of any default by the Lessee. The Lessor shall repay to the Lessee the security deposit or any balance thereof upon the termination or expiration of the Term of this Lease or any extension thereof, either (1) by crediting the same on account of payment of the rent for the last month of the Lease or additional term, as the case may be; or (2) refunding the security deposit to Lessee, net or less any loss, costs, fees and expenses which the Lessor may incur by reason of any default by the Lessee. In the event of any failure in the payment of rent or other sum, or of any default by the Lessee in the performance of the terms, provisions, and conditions of this Lease, the Lessor shall have the right to apply the security deposit against any loss, costs, fees, and expenses caused thereby. The security deposit shall bear no interest.

- (a) Sublessee may perform Lessee's obligation to pay the security deposit to Lessor.
- (b) Lessor & Lessee acknowledge the \$2,000 Security is in deposit as carry-over from preceding leases between the parties which were superseded by this lease.

**4.4 Compliance with Anti-Kickback & Stark Laws Requirements.** The purpose of this Lease is to provide Lessee and Sublessee with Leased Premises that are suitable for the Permitted Use as provided in Sections 1.9 and 6. The volume or value of any business generated between these parties and Sublessee was not considered, and is not a factor, in determining the fair market value of the annual rental of the Leased Premises for the term of this Lease, and for any Additional Terms. Except as specifically required by duties hereunder, nothing in this Agreement shall be construed to require Lessor, or any Physician, any other health care provider, or any

provider of Designated Health Services retained or employed by Lessor (if any), or who has a financial interest in or financial arrangement with Lessor, to refer patients to South Peninsula Hospital (“Hospital”), to the Medical Clinic or Imaging Service also located in the Building, or to utilize Hospital, Medical Clinic, or Imaging Service to provide inpatient, outpatient or other services to patients, or otherwise generate business for Lessee or for Sublessee or for any of their Medical Facilities or programs, or for Lessee or Sublessee to generate business for Lessor. Notwithstanding any unanticipated effect of any of the provisions herein, the parties intend to comply with 42 U.S.C. §1320a-7b(b), commonly known as the federal Anti-Kickback Statute, 42 U.S.C. §1395nn, commonly known as Stark II, Stark III (“Stark Laws”), and any federal or state law provision governing fraud and abuse or self-referrals under the Medicare or Medicaid programs, or any other federal or state health care program, as such provisions may be amended from time to time. The parties intend that this Lease comply with the conditions for meeting the Anti-Kickback Statute “space rental” safe harbor set forth in 42 C.F.R. §1001.952(b), and comply with the requirements of the “rental of office space” exception to the Stark Laws at 42 CFR §411.357(a), as such regulations may be amended. This Lease shall be construed in a manner consistent with compliance with such statutes and regulations, and the parties agree to take such actions as are necessary to construe and administer this Lease consistent with compliance. In the event any court or administrative agency of competent jurisdiction determines that this Lease violates any of such statutes or regulations, or that the compensation hereunder exceeds reasonable compensation for purposes of any limitations applicable to tax-exempt entities, then the parties agree to take such actions as are necessary to amend this Lease for compliance with the applicable statutes or regulations, as provided herein.

## **5. LEASEHOLD IMPROVEMENTS**

- 5.1 Structural Additions, Alterations, or Improvements to Leased Premises.** Lessee shall manage and determine all space use and function, all parking, all buildout or modification of space, however Lessee and Sublessee shall not make any structural alterations, additions, or improvements in or to the Leased Premises without first obtaining the express written consent of the Lessor. Any

such structural alterations, additions, or improvements approved by Lessor shall be made at Lessee's or Sublessee's expense, except as may be otherwise agreed by those parties in writing; and Lessor may require, as a condition for approval, that Lessee or Sublessee deposit with Lessor sufficient security to protect Lessor from any liens for materials or labor supplied to the Leased Premises and require Lessor or Sublessee to furnish proof prior to the commencement of any work on the premises that the persons employed in connection with the work have workers' compensation insurance and liability insurance. Non-structural alterations or changes in the Leased Premises are addressed in §8.2 below.

6. **USE AND OTHER COMPLIANCE WITH LAWS**

6.1 **General Use and Compliance with Laws.** Lessee certifies that it or its Sublessee shall use the Leased Premises for the operation and conduct of business offices, storage, and an outpatient clinic for the benefit of KPBS and the SKPHSA as defined as the Permitted Use above, and all activities incident thereto, and for no other purposes whatsoever without the written consent of Lessor. Lessor certifies that, to the best of its knowledge, the Leased Premises, Building, and Land, as of the date of delivery of possession of the Leased Premises to Lessee, are or will be in compliance with all applicable laws, ordinances, rules, regulations and orders of any governmental authority, including but not limited to those governing zoning, health, safety and occupational hazards and pollution and environmental control, and with the Americans with Disabilities Act, and with all recorded declarations, restrictions and covenants applicable to the Land. Subject to such certification, Lessee and its Sublessee shall, at their sole cost and expense, comply with all applicable laws and regulations, specifically including, but not limited to, the generation, handling, storage, and disposal of biohazardous medical waste materials and other materials and matter commonly used in the health care industry.

6.2 **Condition of Leased Premises.** The continued possession by Lessee's and its Sublessee's shall be conclusive evidence against Lessee and its Sublessee that the Leased Premises were then in good, safe, and clean order and satisfactory condition. No promise of Lessor to alter, remodel, improve, repair (taking into account the

specific health care nature of the Leased Premises), decorate or clean the Leased Premises or any part thereof, and no representation respecting the condition of the Leased Premises or the Building has been made to Lessee and Sublessee by Lessor, except as made herein.

**7. UTILITIES, MAINTENANCE AND REPAIRS**

**7.1 Utilities.** Lessee or Sublessee shall pay for utilities metered to the leased premises, including electricity, natural gas, telecommunications, water and sewer. Non-metered utilities shall be paid by the Lessor and reimbursed by the Lessee.

**7.2 Maintenance, Repair and Replacement.**

**(a) Lessor Responsibilities.** Lessor shall be responsible for the following:

**(1)** Lessor shall keep, maintain, repair and replace as necessary or appropriate the foundations, roof, and structural portions of the Building in good operating condition and in compliance with all requirements of applicable governmental authorities. Lessor shall keep the exterior and interior of the Building in good repair in a condition comparable to other medical office space in the City of Homer.

**(2)** All equipment, excluding Lessee's and Sublessee's own equipment, including but not limited to heating, air conditioning, electric, water and plumbing equipment and facilities in the Premises, shall be maintained and kept in proper working condition by Lessor at Lessor's sole expense, except that the cost of any repairs to the plumbing and heating lines necessitated by the action of the Lessee or its Sublessee, agents or employees shall be at the expense of the Lessee and Sublessee. Lessor will provide such maintenance and repairs with reasonable promptness and Lessee and Sublessee are prohibited from performing any maintenance or repairs to any of the aforesaid equipment and from hiring any contractors or persons to repair the same without the prior written approval of Lessor except in the case of emergency.

**(3)** Lessor will maintain in a neat and sightly condition the exterior grounds, parking areas, ingress and egress, and shall provide lawn and landscape maintenance, snow removal and ice sanding, trash

removal, parking lot maintenance and repair, and other requisite services as needed to maintain the aesthetic appearance of the Building in a manner comparable to other medical office complexes in the City of Homer.

- (4) Lessor shall not be required to make any such repairs occasioned by an act or negligence of Lessee, or Sublessee, their agents, employees, invitees, or licensees, except to the extent that Lessor is reimbursed therefore under any policy of insurance permitting waiver of subrogation in advance of loss.

(b) **Lessee Responsibilities.** Lessee will be responsible for the following:

- (1) Lessee shall maintain the Leased Premises in a good, neat and clean condition, including but not limited to all doors, door frames, windows and tenant improvements. Lessee shall comply with all requirements of law, ordinance, health officer, fire marshal or building inspector regarding its use of the Leased Premises. Lessee shall permit no waste, damage, or injury to the Leased Premises and shall, at its own cost and expense, replace any plate or window glass which may become broken in its Suites in the Leased Premises. Lessee shall be responsible for its own maintenance, upkeep, and fix-its including lightbulb replacement, toilet maintenance, locks, hot-cold balancing, and sidewalk servicing.
- (2) Lessee shall keep the Leased Premises and exterior grounds, driveways and parking areas free and clean from rubbish, trash, and garbage at all times; shall provide routine maintenance for the Leased Premises; and shall keep all rubbish, trash and garbage within the Building in containers, and shall dispose of all rubbish, trash and garbage in dumpsters or other containers specified by the Lessor.
- (3) Lessee shall, in all matters, act in compliance and conformity with all Federal, State, and local laws and regulations and in conformity with generally accepted health and safety standards. Any and all hazardous medical wastes materials and other materials and matter commonly used in the health care industry shall be generated, dealt with, handled, stored, and disposed of by Sublessee at Sublessee's sole cost and expense in conformity with said Federal, State, and

local laws and regulations and in conformity with generally accepted health and safety standards, and shall not be disposed of in any respect in any area of the property. To the extent permitted by law and to the extent funds have been appropriated by the Assembly for indemnification of Lessor, Lessee agrees to indemnify, defend, and hold harmless Lessor, its Managing Agent, and any of their officers, directors, employees, agents, licensees, or invitees from and against any and all claims, demands, liabilities, suits, actions, judgments, losses, costs, damages, and any expenses, including, without limitation, attorneys' fees, arising or resulting from, or suffered, sustained or incurred by said parties with respect to violation of any Federal, State, and local laws and regulations or violation of any generally accepted health and safety standards.

- (4) Lessee may assign by sublease the Lessee's Responsibilities to the Sublessee, including the Lessor's indemnity obligation, and Sublessee may perform Lessee's Responsibilities, including the obligation to indemnify Lessor.

**7.3 Inspection of Premises and Access.** Lessor, at reasonable times with the consent of Lessee or its Sublessee (excepting emergencies, as to which no consent shall be required), which consent shall not be unreasonably withheld, may enter the Leased Premises to complete improvements undertaken by Lessor on the Leased Premises or Building, to inspect, clean, maintain or repair the same, and for other reasonable purposes. Lessor shall give Lessee or its Sublessee at least twenty four (24) hours' notice prior to any entry into the Leased Premises (excepting emergencies, as to which such notice, if any, as is reasonable under the circumstances shall be given, and Lessor's entry shall be solely for the purpose of taking necessary actions to remedy and/or repair the emergency situation), and in no event shall Lessor unreasonably interfere with access to or use of the Leased Premises or Parking Area by Lessee, its Sublessee, its agents, employees or invitees.

8. **FIXTURES AND NON-STRUCTURAL ALTERATIONS; MECHANICS LIENS**

**8.1 Fixtures.** Lessee and its Sublessee may install any trade fixtures, equipment, furnishings, furniture and other fixtures or removable personal property in the Leased Premises, provided, that the same are installed and removed without permanent or structural damage to the Building. All such property shall remain Lessee's or Sublessee's property and shall be removed by Lessee and its Sublessee upon expiration or termination of this Lease.

**8.2 Other Non-Structural Alterations.** Lessee or Sublessee may make other non-structural alterations or changes in or to the Leased Premises with prior notification to and written consent of the Lessor, provided that Lessor may require Lessee or Sublessee to remove them upon expiration or termination of this Lease, at Lessee's or Sublessee's expense and without damage to the Leased Premises. Except as may be otherwise provided in §5.1 above, Lessee and its Sublessee shall not make alterations or changes to the Leased Premises affecting the structure of the Building without Lessor's prior written consent.

**8.3 Mechanic's Liens.** No person shall be entitled to any lien upon the Leased Premises or the Land, in whole or in part, or any interest or estate in any such property, by reason of any work, labor, services or material claimed to have been performed or furnished to or for Lessee or Sublessee, or otherwise on account of any act or failure to act on the part of Lessee or its Sublessee, and Lessee and its Sublessee shall neither cause nor permit the filing of any such lien. If any such lien claim or notice shall be filed, Lessee or its Sublessee shall cause the same to be released or provide other satisfactory security to Lessor with respect to the same (which may be in the form of a bond, title insurance endorsement or other assurance reasonably satisfactory to Lessor) within sixty (60) days; and if not so released or secured, Lessor, at its option, may pay up to the full amount of such lien claim to cause its release, and such amount, together with interest thereon from the date of payment at a rate of 1.0% per month, shall be deemed due and payable by Lessee immediately. Nothing in this Lease shall be deemed or construed to constitute consent to or request to any party for the performance of any labor or services or the furnishing of any

materials for the improvement, alteration or repairing of the Leased Premises; nor as giving Lessee and its Sublessee the right or authority to contract for, authorize or permit the performance of any labor or services or the furnishing of any material that would permit the attaching of a valid mechanic's lien.

**9. ASSIGNMENT AND SUBLETTING**

Lessor hereby approves subletting this Lease to SOUTH PENINSULA HOSPITAL, INC. ("Sublessee") under the terms and conditions of this Lease and of the Operating Agreement between Lessee and Sublessee, as may be amended from time to time. Except as previously approved herein, Lessee shall not assign, mortgage, encumber or otherwise transfer this Lease or its interests hereunder, in whole or in part, or sublet the Leased Premises in whole or in part, without the prior written consent of Lessor as to both the terms of such assignment or sublease and the identity of such assignee or Sublessee, which consent will not be unreasonably withheld. The Lessor and the Lessee also agree that if the Operating Agreement terminates without renewal before this Lease Agreement terminates, then the Lessee may sublease the Leased Premises to another entity with the written consent of the Lessor, which consent shall not be unreasonably withheld. In the event Lessor consents to any such transaction, Lessee shall remain fully liable to perform all the obligations of Lessee under this Lease, including but not limited to payment of Rent, unless the Lessor has also consented in writing to the release of Lessee from this Lease.

**10. INSURANCE AND INDEMNIFICATION**

**10.1 Lessor's Insurance.** During the Term, and any Additional Terms, Lessor, at its sole cost and expense, agrees to keep the Land, Building, and improvements (including the Leased Premises) insured against loss or damage by fire or other casualty insurable under standard fire and extended coverage insurance in an amount equal to the full current replacement cost of said building(s).

**10.1 Lessee's Insurance.**

(a) Lessee shall, at its own cost and expense, keep and maintain in full force during the Term, and any Additional Terms, the following:

(1) Comprehensive general liability insurance, insuring Lessee's activities in or about the Leased Premises against loss, damage or liability for personal injury or death of any person or loss or damages to property occurring in, upon or about the Leased Premises covering bodily injury in the amounts of not less than One Million Dollars

(\$1,000,000) per person and not less than One Million Dollars (\$1,000,000) per claim or occurrence, and covering property damage in the amount of not less than Two Million Dollars (\$2,000,000), in aggregate or combined single limit coverage. Lessor shall be named as an additional insured on such policy or policies of insurance; and

- (2) Insurance coverage for Lessee's or Sublessee's fixtures, furniture, equipment, machinery, goods, supplies, contents, and other personal property on the Leased Premises or used in connection with Lessee's business.
- (b) Lessee may assign to Sublessee the Lessor's insurance obligation, and Sublessee may perform Lessee's obligation to provide insurance.

**10.2 Indemnification of Lessor.**

- (a) To the extent permitted by law and subject to Assembly appropriation of funds for indemnification, Lessee shall indemnify, defend and save harmless Lessor from and against any and all claims, demands, causes of action, law suits, judgments, losses, and liabilities for personal injury, death or property damage, and from and against all expenses incident thereto or incurred by Lessor as a result thereof, including attorney's fees and costs, that arise out of or relate to Lessee's use and occupation of the Premises during the Term or any Additional Terms of this Lease. Notwithstanding the preceding sentence, however, Lessee shall not be required to indemnify, defend or save harmless Lessor from or against any claim, demand, cause of action, law suit, judgments, loss, and liability to the extent it results from or is alleged to result from any negligent or intentional conduct of Lessor, Lessor's agents, employees or independent contractors.
- (b) Lessee may assign to Sublessee the Lessor's indemnity obligation, and Sublessee may perform Lessee's obligation to indemnify Lessor.
- (c) To the extent permitted by law, Lessor shall indemnify, defend and save harmless Lessee from and against any and all claims, demands, causes of action, lawsuits, judgments, losses, and liabilities for personal injury, death or property damage, and from and against all expenses incident thereto or incurred by Lessee as a result thereof, including attorney's fees and costs, that arise out of or relate to Lessor's use and occupation of the Premises during the Term or any Additional Terms of the Lease.

Notwithstanding the preceding sentence, however, Lessor shall not be required to indemnify, defend or save harmless Lessee from or against any claim, demand, cause of action, lawsuit, judgements, loss, or liability to the extent it results from any negligent or intentional conduct of Lessee or Sublessee, their agents, employees, or independent contractors.

**10.3 Insurance Certificates.** At the Lessor's request, Lessee or Sublessee shall provide Lessor with a certificate or certificates of insurance evidencing the insurance coverage required under Section 10.3, and Lessee or Sublessee shall promptly notify the Lessor of any cancellation, reduction, or other material change in the amount or scope of any coverage required hereunder.

## **11. DAMAGE AND DESTRUCTION**

**11.1 Damage and Restoration.** If either the Leased Premises or Building is damaged or destroyed to the extent that Lessor or Lessee reasonably determines that it cannot, with reasonable diligence, be fully repaired or restored by Lessor within one hundred eighty (180) days after the date of such damage or destruction, either Lessor or Lessee may terminate this Lease. Lessor or Lessee shall notify the other party of any such determination in writing, within thirty (30) days after the date of such damage or destruction. If Lessor so determines that the Building can be fully repaired or restored within the one hundred eighty (180) day period, or if Lessor so determines to the contrary but neither party terminates this Lease, then this Lease shall remain in full force and effect and Lessor shall, to the extent insurance proceeds are not required to be applied to mortgage indebtedness on the Building or Land, diligently repair or rebuild the Leased Premises and/or Building to return such improvements to the condition in which it/they existed immediately prior to such damage or destruction, as soon as possible and within the maximum period of one hundred eighty (180) days, if applicable.

**11.2 Rent Abatement.** Rent due and payable hereunder shall be abated proportionately during any period in which, by reason of any such damage or destruction to the Leased Premises or the Building, the operation of Lessee's business in the Leased Premises experiences substantial interference, and that continuation of all or part of

Lessee's business in the Leased Premises is not practical pending reconstruction. In such event, the Rent payable hereunder, or an equitable proportion thereof in the event Lessee continues to conduct business in the Leased Premises, shall abate from the date of damage or destruction until Lessee is able to conduct its full business operations in the Leased Premises.

**12. EMINENT DOMAIN**

**12.1 Permanent Taking.** In the event of a taking by an entity of competent jurisdiction of all or materially all of the Leased Premises, or the determination by the Lessor that all or materially all of the Leased Premises is necessary for a public purpose, this Lease shall terminate on the earlier of vesting of title in, or the taking of possession by condemner, or the written determination of the Lessor.

**12.2 Partial Condemnation.** If less than materially all of the Leased Premises is taken or if the Lessor determines that it needs less than all of the Leased Premises for a public purpose (herein called a "partial taking") but such partial condemnation renders the Leased Premises unusable for the full and normal conduct of the business of Lessee, or constitutes a substantial portion of the Building, as reasonably determined by Lessor or Lessee, then the Lease shall terminate as of the date of the title vesting in such proceeding or conveyance in lieu of any proceeding and Rent shall be prorated to the date of termination. Otherwise, Lessor shall promptly restore the Leased Premises to a condition comparable to its condition immediately prior to such partial Condemnation, less the portion thereof lost in such partial Condemnation, and this Lease shall continue in full force and effect, except that after the date of such title vesting, the Rent shall be proportionately reduced to reflect the percentage of the Leased Premises, Building and/or the Parking Area Condemned.

**12.3 Notices and Award.** Lessor shall, immediately upon receipt of notice in connection with any condemnation or potential condemnation, give Lessee notice in writing thereof. If Lessee receives notice of any such occurrence, Lessee shall immediately notify Lessor thereof. If the Leased Premises are wholly or partially

Condemned, Lessor shall be entitled to the entire award paid for such condemnation, except as set forth herein. Lessee shall have the right to claim such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all costs or loss that Lessee would incur in removing Lessee's furniture, fixtures, leasehold improvements and equipment to a new location.

**12.4 Temporary Taking.** If the whole or any part of the Leased Premises or of Lessee's interest under this Lease is taken by any competent authority for its temporary use or occupancy, this Lease shall not terminate by reason thereof and Lessee shall continue to pay all rental payments and other charges payable by Lessee hereunder and to perform all other terms, covenants, and conditions contained herein, except to the extent Lessee is prevented from so doing by the terms of the order of the taking authority. In the event of a temporary taking, Lessee shall be entitled to receive the entire amount of the award and shall be obligated, at its sole expense, to restore the Leased Premises as nearly as may be reasonably possible to the condition in which they existed immediately prior to such taking; provided, however, that if the period of temporary use or occupancy extends beyond the expiration of the Lease Term, the award shall be apportioned between Lessor and Lessee as of said date of expiration, after Lessor shall have received the entire portion of the award attributable to physical damage to the Leased Premises and any improvements thereon and to the restoration thereof to the condition existing immediately prior to the taking or condemnation.

**12.5 Casualty.** If the improvements on the Leased Premises shall be damaged or rendered wholly or partially unusable for Lessee's or Sublessee's business purposes by fire or other casualty during the Term of this Lease, Lessee may terminate this Lease by giving notice to Lessor within ninety (90) days of the date of the fire or other casualty. If Lessee does not terminate this Lease, no rent shall abate after the date of the casualty, whether the Leased Premises is usable or not, and Lessee shall promptly rebuild or repair the improvements to substantially their former condition.

### 13. DEFAULT

**13.1 Events of Default.** Each of the following shall constitute an “Event of Default” on the part of Lessee and Sublessee:

- (a) **Non-Payment.** Failure to pay any installment of Rent or other monies when due and payable under this Lease, if such failure continues for a period of thirty (30) days after written notice of such failure from Lessor to Lessee;
- (b) **Non-Performance.** Except as otherwise set forth below, if default in the performance of any of Lessee’s or Sublessee’s non-payment obligations or covenants under this Lease, including Lessee’s or Sublessee’s compliance with the Permitted Use as defined in Sections 2.0 and 6, continues for thirty (30) days after written notice thereof from Lessor to Lessee and Sublessee, provided, however, that if the obligation or covenant to be performed by Lessee and Sublessee cannot reasonably be performed or cured within such thirty (30) day period, such default shall not constitute an Event of Default if Lessee or Sublessee commences such performance or cure within said thirty (30) day period and thereafter diligently undertakes to complete, and does so complete, the required performance or cure within a reasonable time;
- (c) **Assignment.** A general assignment by Lessee or Sublessee for the benefit of creditors;
- (d) **Bankruptcy.** The filing of a voluntary petition by Lessee or Sublessee seeking the rehabilitation, liquidation or reorganization of Lessee or Sublessee under any law relating to bankruptcy, insolvency or other relief of debtors, or the filing of an involuntary petition by any of Lessee’s or Sublessee’s creditors seeking any such relief, if not dismissed or otherwise removed within ninety (90) days;
- (e) **Receivership.** The appointment of a receiver or other custodian to take possession of substantially all of Lessee’s assets or Sublessee’s assets or of this leasehold, if not dismissed or otherwise removed within ninety (90) days;
- (f) **Dissolution.** Entry of a court decree or order directing the winding up or liquidation of Lessee or Sublessee or of substantially all of either of their assets, if not reversed or otherwise removed within ninety (90) days; or any action by Lessee or Sublessee toward the dissolution or

winding up of its affairs; or

- (g) **Attachment.** Attachment, execution or other judicial seizure of substantially all of Lessee's or Sublessee's assets or this leasehold, if not dismissed or otherwise removed within ninety (90) days.

**13.2 Lessor's Remedies.** Upon the occurrence of an Event of Default, Lessor may, at its option:

- (a) Terminate this Lease by written notice to the Lessee, without terminating Lessee's and Sublessee's obligations hereunder, including but not limited to the Lessee's obligation to pay Rent;
- (b) Relet the Leased Premises or any part thereof following repossession of the Leased Premises by Lessor, whether or not this Lease has been terminated, for such term or terms, which extend beyond the Term, at such rental or rentals and upon such other terms and conditions, as Lessor in its sole discretion shall determine, and making such alterations and repairs to the Leased Premises as Lessor may reasonably determine to be necessary in connection therewith, provided that the net amount, if any, realized by Lessor from such reletting shall be credited against the amounts owed by Lessee and Sublessee under this Lease;
- (c) Following termination of this Lease, recover from Lessee and Sublessee all rent and other amounts due and unpaid under the terms of this Lease as of the date of termination, together with such other amounts as may be recoverable under applicable law to compensate Lessor for all damages proximately caused by Lessee's and Sublessee's failure to perform their obligations under this Lease;
- (d) Exercise or seek any other right or remedy allowed at law or in equity under the statutes or common law of the state in which the Land is located.

In connection with any of the foregoing, Lessor shall be entitled to recover from Lessee and Sublessee, promptly upon demand, any and all costs and expenses incurred by Lessor, including but not limited to reasonable attorneys' fees and costs of reletting, following any such Event of Default by Lessee and Sublessee. Lessee and Sublessee, jointly and severally, also shall be liable for and agree to pay to Lessor interest at a rate of 1.0% per month, with respect to the following: (1) all Rent under this Lease remaining unpaid for thirty (30) days after the due date, from the due day until paid; (2) all costs and expenses incurred by Lessor following any Event of Default, from the date paid or incurred by Lessor until reimbursed; and (3) all other amounts at any time

becoming due and payable hereunder, from the date due and payable until paid.

**13.3 Lessor's Default.** It shall be a default under this Lease by Lessor if Lessor shall fail to perform or observe any obligation or covenant required to be performed or observed by it under this Lease for a period of thirty (30) or more days after written notice thereof from Lessee or Sublessee. Upon the occurrence of any such default, if the same has not been reasonably cured by Lessor within said period of thirty (30) or fewer days (provided, however, that if no emergency exists and the default is of such nature that the same cannot reasonably be cured within a thirty (30) day period, such cure period shall be extended for a reasonable time if Lessor commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same), then Lessee or Sublessee may, at its option cure the default and offset against the rents next due and payable hereunder the reasonable costs, if any, advanced by Lessee and Sublessee to effect such cure. Provided, however, that Lessee's and Sublessee's right of offset shall be subject to the following limitations: (A) The subject default must be of a nature that materially affects Lessee's or Sublessee's parking, access to the Building or Leased Premises, or ability to conduct its Permitted Use in the Leased Premises; (B) Lessee or Sublessee shall submit to Lessor a written statement of their actual expenditures incurred to effect the cure of the default, and Lessor shall not have paid the same within fifteen (15) days after receipt of said statement; and (C) Lessee or Sublessee shall submit a written notice of its exercise of said right of offset at the time the Rent payment or portion thereof against which the right is exercised otherwise would be due;

**13.4 Remedies Cumulative; No Waiver.** Each right and remedy provided to a party under this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not constitute a waiver of any other right or remedy provided for in this Lease or now or hereafter existing at law in equity or by statute or otherwise. No failure by a party to

insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment by a party during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. The waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Lease nor shall it be considered a waiver by such party of any other covenant, condition or promise hereunder. The waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

**14. RIGHT OF FIRST REFUSAL.**

**14.1 Right of First Refusal.** In consideration of this Lease, in the event that the Lessor receives an offer to purchase the building and land described in § 2.1 during the term of this Lease or any Additional Terms, and while Lessee is in compliance with the Lease, the Lessor agrees to first offer the property to Lessee for the same price and on the same terms and conditions as the offer made by the third party to Lessor.

- (a) Lessor agrees to notify Lessee in writing, as provided in §15.4, of the offer to purchase the land and building described in § 2.1, including all terms and conditions of the intended sale.
- (b) Lessee shall have ninety (90) days from the date of receipt of Lessor's written notice in which to exercise Lessee's right of first refusal by written notice to Lessor, as provided in §15.4, of Lessee's acceptance or rejection of the intended sale upon the same price, terms, and conditions as the offer made by the third party to Lessor.
- (c) If Lessee determines to exercise the right of first refusal by acceptance of the intended sale, then, to be valid and binding, Lessee must deliver written notice of its acceptance of the intended sale to Lessor, as provided in §15.4, before the ninety-first (91st) day following the date of Lessee's receipt of Lessor's written notice of intended sale.
- (d) If Lessee determines to exercise its right of first refusal by rejection of the intended sale, then Lessor may accept the offer from the third party and the land and building described in §2.1 may be sold, transferred and conveyed to the third party free and clear of any right of first refusal in Lessee under this Lease. In addition, at Lessor's request, Lessee agrees

to execute any other instrument suitable for recording, if necessary, to document for the record Lessee's rejection of the intended sale and termination of its right of first refusal.

- (e) The parties agree that if Lessee does not provide written notice to Lessor of Lessee's exercise of its right of first refusal by acceptance or rejection of the intended sale before the ninety-first (91st) day following the date of Lessee's receipt of written notice of intended sale from Lessor, or if Lessee does not provide an instrument suitable for recording to document its rejection of the intended sale and the termination of its right of first refusal before the ninety-first (91st) day following the date of Lessee's receipt of written notice of intended sale from Lessor, then Lessee's right of first refusal will terminate automatically as of the ninety-first (91st) day following the date of Lessee's receipt of written notice of the intended sale from Lessor, and this right of first refusal shall terminate without any need for further action or documentation by Lessor or Lessee.
- (f) The termination of the right of first refusal does not terminate this Lease.

## 15. **MISCELLANEOUS**

**15.1 Quiet Possession.** If Lessee or Sublessee shall perform all of the covenants and obligations herein provided to be performed by Lessee, either directly or through Sublessee, Lessee and its Sublessee shall at all times during the Term have the peaceable and quiet enjoyment of possession of the Leased Premises without any manner of hindrance from Lessor or any persons lawfully claiming under Lessor.

**15.2 Taxes and Assessments.** For this Lease Agreement, Lessee is responsible for the real property taxes for the land and improvements leased hereby. It is expressly agreed that Lessee shall not be obligated to pay any other assessment, income tax, profits tax, excise tax, personal property tax, capital gains tax, or other tax or charge that may be payable by or chargeable to Lessor or to Lessor's separate businesses, under any present or future law of the United States or of the State of Alaska or of any political or taxing subdivision thereof, or of any other governmental agency, upon or with respect to Lessor's separate businesses or Lessor's rental income under this Lease.

**15.3 Signage.** The Lessee and Sublessee shall be able to install and maintain reasonable signage for Lessee or Sublessee's business on the Leased Premises without need for the consent of Lessor.

**15.4 Notices.** All notices, demands and other communications authorized or required

under this Agreement shall be given in writing, and shall be given by (i) personal delivery, or (ii) registered or certified mail, postage prepaid, and return receipt requested, or (iii) delivery by commercially recognized courier service. Notice shall be considered given on the date of delivery or refusal to accept delivery. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

**Lessor:**  
PRODIGY DEVELOPMENT, LLC  
PO Box 2483  
Homer, AK, 99603

**Lessee:**  
KENAI PENINSULA BOROUGH  
Attn: Mayor  
144 N. Binkley St.  
Soldotna, AK 99669

**Sublessee:**  
SOUTH PENINSULA HOSPITAL, INC.  
Attn: Chief Executive Officer  
4300 Bartlett Street  
Homer, AK 99603

The foregoing addresses for purposes of notice may be changed by giving notice of such change to the other parties as provided herein.

**15.5 Parties.** This Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon Lessor and Lessee, and their respective heirs, successors, assigns and legal representatives.

**15.6 Time.** Time is of the essence of every provision hereof.

**15.7 Captions.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

**15.8 Severability.** If any provision of this Lease shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**15.9 Governing Law, Forum and Venue.** This Lease, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the internal laws of the State of Alaska and in accordance with any applicable federal laws. The forum and venue for any law suit between these parties arising out of this Agreement

shall be in the Trial Courts for the State of Alaska in the Third Judicial District, Kenai Venue District.

**15.10 Entire Agreement.** This Lease sets forth all covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Leased Premises, Building and Land, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Lessor and Lessee as to those subjects other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by Lessor and Lessee.

**15.11 Agreement Not to be Construed Against Drafter.** All parties to this Lease have had a full opportunity to obtain legal advice concerning this Lease or have declined to obtain such advice. The fact that this Lease may be drafted by an attorney for one of the parties or by one of the parties is a matter of convenience to all parties. Accordingly, the parties agree that the rule of construction that an instrument or document is to be construed and interpreted most strictly against the drafter of the instrument or document shall not apply in the construction or interpretation of this Lease.

**15.12 Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

**15.13 Counterparts.** This Lease may be executed in several or separate counterparts, whether by facsimile or PDF signature or otherwise, each of which when so executed shall constitute an original and all of which together shall be deemed an original and all of which together shall constitute but one and the same instrument.

**15.14 Replaces and Supersedes Prior Leases.** This Lease replaces and supersedes two lease agreements concerning portions of the premises, dated May 23, 2011 and September 1, 2012, as amended on April 24, 2018.

**15.15 Memorandum of Lease.** The parties agree that they will not record this Lease at full length, but may record a Memorandum of Lease in compliance with AS 40.17.120.

IT IS SO UNDERSTOOD AND AGREED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PRODIGY DEVELOPMENT, LLC,  
LESSOR,

\_\_\_\_\_  
By: MARK D. HALPIN, Member

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by MARK D. HALPIN, Member of PRODIGY DEVELOPMENT, LLC, an Alaska Limited Liability Company, on behalf of the LLC.

\_\_\_\_\_  
Notary Public in and for State of Alaska  
My Commission Expires: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PRODIGY DEVELOPMENT, LLC,  
LESSOR,

\_\_\_\_\_  
By: B. ISABEL HALPIN, Member

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by B ISABEL HALPIN, Member of PRODIGY DEVELOPMENT, LLC, an Alaska Limited Liability Company, on behalf of the LLC.

\_\_\_\_\_  
Notary Public in and for State of Alaska  
My Commission Expires: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

KENAI PENINSULA BOROUGH,  
LESSEE,

\_\_\_\_\_  
By: CHARLIE PIERCE, Mayor

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by CHARLIE PIERCE, Mayor of KENAI PENINSULA BOROUGH, an Alaska municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for State of Alaska  
My Commission Expires: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JOHNI BLANKENSHIP, Borough Clerk

\_\_\_\_\_  
Sean Kelley, Deputy Borough Attorney

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

SOUTH PENINSULA HOSPITAL, INC.,  
SUBLESSEE,

\_\_\_\_\_  
By: RYAN SMITH, Chief Executive Officer

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by RYAN SMITH, Chief Executive Officer of SOUTH PENINSULA HOSPITAL, INC., an Alaska nonprofit corporation, on behalf of the Corporation.

\_\_\_\_\_  
Notary Public in and for State of Alaska  
My Commission Expires: \_\_\_\_\_