

Introduced by: Mayor
Date: 06/15/21
Action: Adopted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-045**

A RESOLUTION AUTHORIZING THE KENAI PENINSULA BOROUGH, ON BEHALF OF THE SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA, TO ENTER INTO A LEASE AGREEMENT WITH FIRST RIGHT OF REFUSAL AND OPTION TO PURCHASE, FOR OFFICE SPACE AT 4117 BARTLETT STREET IN HOMER

WHEREAS, South Peninsula Hospital, Inc. (“SPHI”) subleases and operates South Peninsula Hospital (“SPH”) pursuant to the Operating Agreement (“OA”) with the Kenai Peninsula Borough (“borough”) on behalf of the South Kenai Peninsula Hospital Service Area (“SKPHSA”); and

WHEREAS, the OA authorizes the SKPHSA Board to approve by resolution leases of real property by SPHI for its operation of programs for SKPHSA; and

WHEREAS, the borough currently leases from Westwing, LLC approximately 1,500 square feet of office space within the Women’s Clinic Building in Homer and subleases that space to SPHI; and

WHEREAS, the current lease agreement, as amended on June 27, 2019, is between Westwing, LLC, as Lessor, the borough as Lessee and SPHI, as Sublessee, and terminates on June 30, 2021; and

WHEREAS, SPHI has requested a new lease term for continued operations of the Women’s Health Clinic; and

WHEREAS, the borough may enter into the lease on behalf of the SKPHSA and subsequently sublease it to SPHI; and

WHEREAS, pursuant to borough code and the OA, assembly approval of this lease agreement may be by resolution upon receipt of a planning commission recommendation; and

WHEREAS, the SPHI Board at its regularly scheduled meeting of May 26, 2021, recommended approval of this lease of office space; and

WHEREAS, the SKPHSA Board at its regularly scheduled meeting of June 8, 2021, recommended approval by passage of SKPHSAB Resolution 2021-02; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of June 14, 2021, recommended approval by unanimous consent;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the borough mayor is authorized to execute the lease agreement with a first right of refusal and option to purchase by and between Westwing, LLC as Lessor, the borough as Lessee and Sublessor, and SPHI as Sublessee, of the following office space:

Approximately 1,500 square feet within the Women's Clinic Building, located at 4117 Bartlett Street, Homer, Alaska, and more particularly described as:

Lot 4, Block 10, Fairview Subdivision, Plat No. 56-2936, Homer Recording District, Third Judicial District, State of Alaska (Assessor's Parcel No.: 175-061-04).

SECTION 2. The purpose of this acquisition is to provide space for SPHI's Women's Health Clinic.

SECTION 3. That pursuant to KPB 17.10.080(C), no land classification is proposed for this rental property.

SECTION 4. That the mayor is authorized to execute a lease agreement, substantially in the form of the agreement attached hereto and incorporated by reference, and to make any other agreement deemed necessary in accordance with this resolution.

If the OA terminates during the term of the lease, the borough may sublet the property to another entity subject to approval by the owner.

The lease shall be for a term of five years and includes five one-year renewal options. Monthly rental shall be \$3,000.00 subject to the appropriation and availability of funds, plus utilities and snow removal services, as described in the lease agreement.

SECTION 5. That expenditures for the lease will be paid by SPHI for the term of the Sublease Agreement and the Operating Agreement, including any extension or renewal thereof, or until this lease is terminated, whichever occurs first.

SECTION 6. Exercise of the option to purchase is subject to separate authorizations, in accordance with KPB 17.10, and the appropriation and availability of funds.

SECTION 7. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 15TH DAY JUNE, 2021.

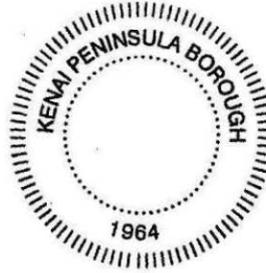


Brent Hibbert, Assembly President

ATTEST:



Jonni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Johnson, Hibbert
No: None
Absent: Elam

WOMEN’S CLINIC LEASE AGREEMENT
(With Right of First Refusal and Option to Purchase)

THIS WOMEN’S CLINIC LEASE AND SUBLEASE AGREEMENT (“Lease”) is entered by and between WESTWING, LLC, an Alaska limited liability company, whose address is PO BOX 537, 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 PENINSULA SERVICE AREA (“SKPHSA”), hereinafter referred to as either “KPB” or “Sublessor” together with SOUTH PENINSULA HOSPITAL, INC. (“SPHI” or “Subessee”), an Alaska nonprofit corporation whose address is 4300 Bartlett Street, Homer, Alaska 99603.

1. DEFINITIONS AND TERMS

- 1.1 **Lessor:** WESTWING, LLC.
- 1.2 **Lessee/Sublessor:** KENAI PENINSULA BOROUGH.
- 1.3 **Sublessee:** SOUTH PENINSULA HOSPITAL, INC.
- 1.4 **Term:** Five (5) years.
- 1.5 **Commencement Date:** July 1, 2021.
- 1.6 **Expiration Date:** June 30, 2026.
- 1.7 **Building:** Women’s Clinic Building
4117 Bartlett Street
Homer, Alaska 99603.
- 1.8 **Land:** The real property described in Section 2.1.
- 1.9 **Rent:** a) **Annual Rent:** \$36,000.00.
b) **Monthly Rent:** \$2.00 per s.f., 1500 s.f., for \$3,000.00 per month.
- 1.10 **Premises/Leased Premises:** The land and building, including appurtenances, described in Section 2.1.
- 1.11 **Permitted Use:** The Leased Premises will be used by SOUTH PENINSULA HOSPITAL, INC., an Alaska non-profit corporation, and Lessee’s permitted Sublessee, for the operation and conduct of a Women’s Clinic for the benefit of KPB and the SKPHSA.
- 1.12 **KPB:** The Kenai Peninsula Borough, a municipal corporation.

1.13 **KPB Assembly:** The Assembly of the Kenai Peninsula Borough.

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

2. **INTERPRETATION.** Pursuant to this Lease, and per the Operating Agreement between SPHI and the KPB, SPHI agrees to sublease the premises subject to this lease from the KPB, with consent of the Lessor, and to assume, pay and perform all obligations of the KPB. For purposes of performance and interpretation, the term Lessee shall include SPHI and the terms “Lessee” and “Sublessee” shall be considered interchangeable, unless context specifically requires performance by KPB.

3. **PREMISES**

3.1 **Leased Premises.** Lessor hereby leases to the KPB and consents to the KPB subleasing to Sublessee, SPHI, the following described Leased Premises:

The Women’s Clinic Building that is situated on the real property, and the real property described as follows:

**T 6S R 13W SEC 18 Seward Meridian HM 0562936 FAIRVIEW SUB
LOT 4 BLK 10**

Street address: 4117 Bartlett Street, Homer, Alaska 99603

Assessor’s Parcel No.: 17506104;

Hereinafter referred to as “Leased Premises”.

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

4.1 **Commencement of Term; Term.** The Term shall begin on the Commencement Date, July 1, 2021. The Term shall be for a period of five (5) years from the Commencement Date, ending on June 30, 2026, subject to 3.1(a) and to §14 RIGHT OF FIRST REFUSAL; OPTION TO PURCHASE below.

(a) **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 is required to appropriate funds for the Rent payments and 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. Termination is effective immediately upon expiration of the ninety days’ notice period without penalty.

- 4.2 **Renewal Options.** Provided that this Lease is in full force and effect and Lessee and Sublessee are not in default hereunder, Lessee and Sublessee shall have the right and option to renew this Lease for five (5) successive Additional Terms, with each individual Additional Term being a period of one year, 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 and/or Sublessee by written notice to Lessor in the form and manner provided in §15.4 at least six (6) months prior to the commencement date of the renewal term.
- 4.3 **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.
- 4.4 **Surrender of Premises.** Upon the expiration of or prior termination of this Lease, the Lessee and Sublessee shall remove all property of the Lessee and Sublessee from the leased premises, except plumbing and other 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 they are permitted 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, or were placed by Lessee or Sublessee thereafter, 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) 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.

5. **RENT, OTHER FINANCIAL OBLIGATIONS, SECURITY DEPOSIT AND COMPLIANCE**

- 5.1 **Rent.** Monthly Rent shall be paid monthly in advance, on the first (1st) day of each month, without notice or demand, 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 \$30.00. Furthermore, Lessee shall pay interest, assessed at the Federal Discount Rate but not exceeding 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.

- (a) Sublessee may perform Lessee's obligation to pay rent to Lessor.
- (b) **Renewal Rent.** For each renewal option exercised under §3.2 above, the Annual Rent, and the corresponding Monthly Rent, shall be adjusted to the then existing fair market value by mutual agreement of the parties based upon the opinion of a real estate broker who does business in Homer, Alaska, which agreements shall be amendments or addenda to this Lease signed by the parties. If the parties are unable to agree upon a rent adjustment for any such one year period utilizing the opinion of a real estate broker, then the parties will agree upon a qualified appraiser who will determine fair market value for the Annual Rent and the corresponding Monthly Rent. In that event, the appraiser's determination shall be documented in an amendment or addendum to this Lease that is executed by the parties. The parties agree that if an appraisal is obtained, then Lessor and Sublessee shall each pay 50% of the cost of the appraisal.

5.2 Security Deposit. The Lessee or Sublessee shall deposit with the Lessor upon execution of this Lease the sum of \$1,000.00 in cash as security for the payment of rent provided herein and for the observance and performance by Lessee and 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 depositing Lessee or Sublessee 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 depositing Lessee or Sublessee, net or less any loss, costs, fees and expenses which the Lessor may incur by reason of any default by the Lessee or Sublessee. In the event of any failure in the payment of rent or other sum, or of any default by the Lessee or Sublessee 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.

5.3 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 Lessee's Sublessee to establish and operate a Women's Clinic in the City of Homer, Alaska, in order to provide services to patients, which is a community benefit to the SKPHSA. 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 Women's Clinic located on the Leased Premises, or to utilize Hospital or Women's Clinic to provide inpatient, outpatient or other services to patients, or otherwise to 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 and 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.

6. **LEASEHOLD IMPROVEMENTS**

6.1 **Leasehold Improvements.** There will be no leasehold improvements prior to Lessee's occupancy. The parties agree that the Leased Premises do not require leasehold improvements to suit Lessee's and Sublessee's use prior to Lessee's and Sublessee's occupancy.

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

7.1 **General Use and Compliance with Laws.** Lessee certifies that it or its Sublessee shall use the Leased Premises for the operation of a Women's Clinic 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.

8. **UTILITIES, MAINTENANCE AND REPAIRS**

8.1 **Utilities.** Lessee agrees to be responsible for and to pay for the cost of electric light, heat, power, fuel, water and sewer and other utility service to the Leased Premises, and to any exterior storage, if any, as agreed as of the Commencement Date.

(a) Sublessee may perform Lessee's obligation to pay the utilities.

8.2 **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 buildings in the City of Homer.

- (2) All equipment, excluding Lessee'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. Lessor will provide such maintenance and repairs with reasonable promptness and Lessee is 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) The Lessor will maintain in a neat and slightly condition the exterior grounds, parking areas, ingress and egress, 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, its 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, and together with other lessees and occupants, if any, shall maintain the Common Areas in a good, neat and clean condition, including but not limited to 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 the Leased Premises.
- (2) Lessee shall keep the Leased Premises, and together with other lessees and occupants, if any, shall keep the Common Areas and exterior grounds, driveways and parking areas free and clean from rubbish,

trash, and garbage at all times; shall provide lawn and landscape maintenance, snow removal, trash removal, shall provide routine maintenance for the Leased Premises; and together with other lessee and occupants, if any, 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 Lessee or its Sublessee at Lessee's or 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. 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) Sublessee may perform Lessee's Responsibilities for maintenance, repair and replacement. Lessee may assign to Sublessee the Lessor's indemnity obligation, and Sublessee may perform Lessee's obligation to indemnify Lessor.

8.3 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) hour 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.

9. FIXTURES AND ALTERATIONS

- 9.1 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 property and shall be removed by Lessee and its Sublessee upon expiration or termination of this Lease.
- 9.2 Alterations.** Lessee may make non-structural alterations, additions or changes in or to the Leased Premises with prior notification to and written consent of the Lessor, provided that Lessor may require Lessee to remove them upon expiration or termination of this Lease, at Lessee's expense and without damage to the Leased Premises. Lessee and its Sublessee shall not make alterations, additions or changes to the Leased Premises affecting the structure of the Building without Lessor's prior written consent.
- 9.3 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, assessed at the Federal Discount Rate but not exceeding 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.

10. SUBLEASE TO SPHI.

Lessor hereby approves subletting this lease to SOUTH PENINSULA HOSPITAL, INC. (“Sublessee” or “SPHI”) under the terms and conditions of the Operating Agreement between Lessee and Sublessee, as may be amended from time to time. The Lessee hereby sublets the entire Leased Premises to the Sublessee. The Sublessee hereby assumes all of the Lessee’s rights, responsibilities and obligations under this Lease.

Except as previously approved herein, the Sublessee 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 and the Lessee, which will not be unreasonably withheld. In the event Lessor consents to any such transaction, Sublessee 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 Sublessee or Lessee from this Lease.

11. INSURANCE AND INDEMNIFICATION

11.1 Lessor’s Insurance. During the Term, and 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).

11.2 Lessee’s Property and Fixtures. Lessee and its Sublessee assume the risk of damage to any of their fixtures, furniture, equipment, machinery, goods, supplies contents, and their other personal property on the Leased Premises or used in connection with Lessee’s or Sublessee’s business or as to which Lessee or Sublessee retains the right of removal from the Leased Premises.

11.3 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 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 Lessee's insurance obligation, and Sublessee may perform Lessee's obligation to provide insurance.

11.4 Indemnification of Lessor.

(a) Sublessee shall indemnify, defend and save harmless Lessor and the KPB 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 of the KPB 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.

11.5 Insurance Certificates. At the Lessor's request, Lessee or Sublessee shall provide Lessor with a certificate or certificates of insurance or letter of self-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.

12. DAMAGE AND DESTRUCTION

12.1 Damage and Restoration. If either the Leased Premises or Building is damaged or destroyed to the extent that Lessor 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 shall notify Lessee 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 mortgagee 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.

12.2 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 Sublessee's business in the Leased Premises experiences substantial interference, and that continuation of all or part of Sublessee'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 Sublessee continues to conduct business in the Leased Premises, shall abate from the date of damage or destruction until Sublessee is able to conduct its full business operations in the Leased Premises.

13. EMINENT DOMAIN

13.1 Total Condemnation. If the whole of the Building is acquired or condemned by eminent domain or inversely condemned or sold in lieu of condemnation, for any public or quasi-public use or purpose ("Condemned"), then this Lease shall terminate as of the date of title vesting in such proceeding or conveyance in lieu of any proceeding, and Rent shall be prorated to the date of such termination.

13.2 Partial Condemnation. If less than the whole of the Building is Condemned, but such partial condemnation renders the Leased Premises unusable for the full and normal conduct of the business of Sublessee, or constitutes a substantial portion of the Building, as reasonably determined by Lessor, 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.

13.3 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 and Sublessee would incur in removing Lessee's and Sublessee's furniture, fixtures, leasehold improvements and equipment to a new location.

14. **DEFAULT**

14.1 **Events of Default.** Each of the following shall constitute an "Event of Default" on the part of Lessee:

- (a) **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) **Performance.** Except as otherwise set forth below, Default in the performance of any of Lessee's and Sublessee's non-payment obligations or covenants under this Lease, including Lessee's and Sublessee's compliance with the Permitted Use defined in Section 1.11, if such default continues for thirty (30) days after written notice thereof from Lessor to Lessee, provided, however, that if the obligation or covenant to be performed by Lessee and Lessee is of such nature that the same cannot reasonably be performed or cured within such thirty (30) day period, such default shall not constitute an Event of Default if Lessee 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 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 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 its assets, if not reversed or otherwise removed within ninety (90) days; or any action by Lessee 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.

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

- (a) Without terminating this Lease or Lessee's obligations hereunder, including but not limited to the Lessee's obligation to pay rents, and with or without legal process, peaceably re-enter and retake possession of the Leased Premises, and remove Lessee's and Sublessee's property therefrom and store or dispose of such property at the expense of the Lessee, all without liability to Lessor or other persons for any such property so removed at the time of re-entry, except if caused solely by the willful act or gross negligence of Lessor;
- (b) Terminate this Lease by written notice to the Lessee, without terminating Lessee's obligations hereunder, including but not limited to the Lessee's obligation to pay Rent;
- (c) Relet the Leased Premises or any part thereof following repossession of the Leased Premises by Lessor, whether or not this Lease has been terminated, and without duty to so relet, 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 under this Lease;
- (d) Following termination of this Lease, recover from Lessee 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 failure to perform its obligations under this Lease;
- (e) 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, 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. Lessee also shall be liable for and agrees to pay to Lessor interest assessed at the Federal Discount Rate but not exceeding 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.

14.3 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) days after written notice thereof from Lessee. 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 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 to effect such cure. Provided, however, that Lessee'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 and 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; (C) Lessee or Sublessee shall submit a written notice of their 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; and (D) Lessee's and Sublessee's right of offset during any period of twelve (12) consecutive months shall be limited to fifty percent (50%) of the total Rent payments payable during such twelve (12) month period.

14.4 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.

15. RIGHT OF FIRST REFUSAL; OPTION TO PURCHASE.

15.1 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, 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 its 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 their 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.

15.2 Grant of Option to Purchase. The Lessor, as part of the consideration herein, hereby grants to Lessee the exclusive option to purchase the land and building described in §2.1 ("Option") upon the terms and conditions stated herein and/or to be stated in a written Purchase and Sale Agreement to be executed by Lessor and Lessee.

- (a) **Option Period.** The Option shall run with the land and building described in §2.1 ("Leased Premises") during the term of this Lease or any Additional Terms thereof.
- (b) **Exercise of Option.** The Option to purchase must be exercised within three years from the first day of the initial Term ("option period") by written notice to the Lessor as provided in §15.4. However, the option to purchase cannot be exercised after the Lessee receives notice from the Lessor of an offer to purchase under § 14.1. But if the Lessor does not close a sale in connection with that offer, then the Lessee may exercise the option to purchase during the option period.
- (c) **Purchase Price and Terms.** The purchase price shall be the Fair Market Value for the Leased Premises. Such Fair Market Value will be based on the appraised value of the Leased Premises as established by a qualified appraiser, whose assignment is agreed to by the Lessor and Lessee. The purchase price shall be payable in full to Lessor at Closing. The Lessor shall convey marketable title to the Leased Premises, by good and sufficient

Warranty Deed in fee simple absolute, on or before Closing; said title to be free, clear, and unencumbered, except for restrictions and easements of record. Title to be insured by a policy of title insurance acceptable to Lessee and Sublessee. All other terms and conditions applicable to the sale and purchase of the Lease Premises shall be in a Purchase and Sale Agreement to be executed by Lessor and Lessee.

- (d) **Specific Performance.** It is acknowledged and agreed that the remedy of damages for breach of performance by either party is inadequate and therefore either party is entitled to the remedy of specific performance of this option.

16. **MISCELLANEOUS**

- 16.1 **Quiet Possession.** If Lessee 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.
- 16.2 **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 that shall include the §14 RIGHT OF FIRST REFUSAL; OPTION TO PURCHASE.
- 16.3 **Signage.** The Sublessee shall be able to install and maintain reasonable signage for Sublessee's business on the Leased Premises and in Building with the consent of Lessor, which consent shall not be unreasonably withheld.
- 16.4 **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:
Westwing, LLC
Attn: Members
PO BOX 537
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.

- 16.5 Parties.** This Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon Lessor, Lessee, and Sublessee, and their respective heirs, successors, assigns and legal representatives.
- 16.6 Time.** Time is of the essence of every provision hereof.
- 16.7 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.
- 16.8 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.
- 16.9 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 lawsuit between these parties arising out of this Agreement shall be in the Trial Courts for the State of Alaska in the Third Judicial District, Homer Venue District.
- 16.10 Entire Agreement.** This Lease sets forth all covenants, promises, agreements, conditions and understandings between Lessor, Lessee, and Sublessee concerning the subject matter of the lease of the Leased Premises, Building and Land, and there are no covenants, promises, agreements, conditions or understandings, either oral

or written, between Lessor, Lessee, and Sublessee as to that subject 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, Lessee, or Sublessee unless reduced to writing and signed by the parties.

16.11 Agreement not to be Construed Against Drafter. The 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.

16.12 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.

16.13 Counterparts. This Lease may be executed in several or separate counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

**WESTWING, LLC
LESSOR**

SONJA MARTIN YOUNG, Member

**KENAI PENINSULA BOROUGH
LESSEE/SUBLESSOR**

CHARLIE PIERCE, Mayor

**SOUTH PENINSULA HOSPITAL, INC.
SUBLESSEE**

RYAN SMITH, Chief Executive Officer

ATTEST:

**APPROVED AS TO FORM & LEGAL
SUFFICIENCY:**

Johni Blankenship, MMC
Borough Clerk

Colette G. Thompson
Borough Attorney

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by **SONJA MARTIN YOUNG**, Member of **WESTWING, LLC**, an Alaska limited liability company, on behalf of the company.

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

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by **CHARLIE PIERCE**, Mayor of the **KENAI PENINSULA BOROUGH**, an Alaska municipal corporation, on behalf of the corporation.

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

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, 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: _____