

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is entered by and between PRODIGY DEVELOPMENT, LLC, 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:** Six (6) Years, Three (3) Months
- 1.5 **Commencement Date:** June 1, 2024
- 1.6 **Expiration Date:** September, 30, 2030
- 1.7 **Building:** 4251 Hohe 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 and any additional 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 leases to Lessee and Lessee leases from Lessor the following improved real property (collectively “Leased Premises”):
- (a) **Lot Seven (7), Block Seven (7), FAIRVIEW SUBDIVISION, according to Plat No. 56-2936, Homer Recording District, Third Judicial District, State of Alaska (“Real Property”).**

Street address: 4251 Hohe Street, Homer, Alaska 99603
Assessor's Parcel No.: 17505307
Building ("Building") with approximate square footage: 3,238 sq. ft.

- (b) In addition to the Building, Lessee has the exclusive right to use the improvements located on the Real Property, including the driveways and ingress and egress areas, and the parking areas provided by the Lessor, which use shall be in accordance with this Lease.
- (c) The Leased Premises is delivered "as-is" and is accepted in its current condition.
- (d) Unless otherwise noted, any reference to the Leased Premises is inclusive of the Building and parking area.

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

3.1 Commencement of Term; Term. The Term shall be for a period of six (6) years, three (3) months beginning on the Commencement Date and ending on the Expiration Date, subject to §3.1(a) and (c), §3.2, and to §15 RIGHT OF FIRST OFFER 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 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).
- (b) **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. Any such sublease shall not relieve Lessee of its obligations, however.
- (c) **Early Occupancy.** If Lessor is able to make the Leased Premises available to Lessee prior to the Commencement Date, and Lessee wishes to take possession prior to the Commencement Date, then the Parties shall memorialize their arrangement in a subsequent Lease amendment.
- (d) **Delayed Occupancy.** In the event the property is not available for use by the Lessee upon the commencement date of the lease as provided in Section

1.5, the monthly lease rate will be prorated from the date of authorized occupancy through the end of the month. A notice of authorized occupancy shall be delivered to the Lessee providing the date at which the property will be available for the Lessee's possession. This notice must be provided to Lessee not less than 5 business days prior to the authorized occupancy date.

- 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 terms (each an "Additional Term"), 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 must be exercised by the Lessee by providing written notice to Lessor in the form and manner at least six (6) months prior to the commencement date of the renewal term, and must be exercised one at a time, with the Additional Term commencing immediately upon expiration of the then-expired Term. Any unused Additional Terms shall be deemed void upon termination of the Lease. The terms of this Lease shall remain in full force during any Additional Term, except the Rent shall increase as set forth in Section 4.1(c) and the used Additional Term shall be deleted.
- 3.3 Holding Over.** Any holding over after the expiration of the Term without a signed extension shall be construed to be a tenancy from month to month, at 125% of 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. No holdover by Lessee or payment by Lessee after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Lessor from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Lessor is unable to deliver possession of the Premises to a new Lessee, or to perform improvements for a new Lessee, as a result of Lessee's holdover and Lessee fails to vacate the Premises within thirty (30) days after Lessor's written notice of termination and disclosure of the third-party delivery obligation, Lessee shall be liable to Lessor for all damages, including, without limitation, consequential damages, that Lessor suffers from the holdover.
- 3.4 Surrender of Premises.** Upon the expiration of or termination of this Lease, the Lessee and Sublessee shall remove all trade fixtures, equipment, furnishings, furniture and other removable personal property (collectively "Lessee Property") from the Leased Premises. Any improvements or Alterations, defined below, to the Leased Premises that are not Lessee Property, including but not limited to fixtures, shall at Lessor's election become the property of Lessor and remain on the Leased

Premises. Alternatively, at Lessee's cost, Lessor reserves the right to require Lessee restore the Leased Premises to its condition as of the Commencement Date. Lessee shall repair any damage caused by removal of any property which it is permitted to remove and shall surrender the Leased Premises to the Lessor "broom clean" in as good order and condition as they were upon the Commencement Date, ordinary wear and tear and loss by fire or other unavoidable casualty excepted. Any personal property, including the Lessee Property, left on the Leased Premises after the expiration or other termination of this Lease may be disposed of by Lessor, at Lessee's expense, in any manner and without any liability to the Lessee or Sublessee or any third-party, and title to the Lessee Property shall be deemed to be immediately vested in Lessor. Lessee shall reimburse Lessor for any such cost within thirty (30) days of receipt of Lessor's invoice. Lessee shall indemnify, defend and hold Lessor harmless from any against any third-party claims, damages, judgments, or liabilities arising from or related to Lessor's actions or inactions with regard to any Lessee Property remaining in the Leased Premises after termination of Lessee's possession.

- (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.** The base monthly rental payment is calculated at \$3.25 per square foot for 3,238 square feet.

- (a) **Rent for Year 1.** Commencing on the Commencement Date Lessee shall pay monthly base rent as follows, which reflects an annual three (3%) increase after Year 1:

<u>Time Period</u>	<u>Monthly Base Rent</u>	<u>Annual Base Rent</u>
Year 1	\$10,523.50	\$126,282.00
Year 2	\$10,839.21	\$130,070.46
Year 3	\$11,164.38	\$133,972.57
Year 4	\$11,499.31	\$137,991.75
Year 5	\$11,844.29	\$142,131.50
Year 6	\$12,199.62	\$146,395.45

Year 7	\$12,565.61	\$150,787.31
Year 8	\$12,942.58	\$155,310.93
Year 9	\$13,330.85	\$159,970.26
Year 10	\$13,730.78	\$164,769.37

- (b) **Payment Terms** Monthly base rent shall be paid monthly in advance, on the first (1st) 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 base 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 \$250.00. Furthermore, Lessee shall pay interest at a rate of 10.5% per annum, or the maximum legal limit, whichever is less 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. Any sums due to Lessor under this Lease that are not monthly base rent shall be considered "Additional Rent," for which Lessor is entitled to all the same rights and remedies as monthly base rent. Monthly base rent and Additional Rent are collectively "Rent."
- (c) **Renewal Rent**. For each renewal option exercised under §3.2 above, the monthly base rent rate shall be increased 2% annually based on the last applicable monthly base rent rate.
- (d) Without restricting Lessor's rights against Lessee in the event of a default, Lessor agrees that Sublessee shall perform Lessee's obligation to pay Rent to Lessor.

4.2 **UTILITIES; JANITORIAL; TAXES.**

- (a) **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 for the Term, as well as any telecommunications and internet services it requires. Lessee shall be responsible for all lot maintenance, landscaping, lawn maintenance, including snow removal and ice removal, at Lessee's expense. Lessee must use a brine solution for ice removal in the parking area.
- (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. Lessee is solely responsible to ensure that any medical waste or other hazardous materials generated incidental to the permitted use are properly disposed of in accordance with all laws.

- (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 first month's base rent (\$10,524) 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, which deposit shall in no way limit Lessor's ability to recover such sums as it is entitled to under this Lease. If Lessor uses all or a portion of the security deposit pursuant to this Lease, Lessor shall replenish the security deposit in full within thirty (30) days' written notice from Lessor. 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, net or less any loss, costs, fees and expenses which the Lessor may incur by reason of any default by the Lessee, 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) by refund to 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. Lessor shall hold the security deposit as a creditor, may commingle the security deposit with its other business funds, and Lessee is not entitled to any interest generated.

- (a) Sublessee may perform Lessee's obligation to pay the security deposit to Lessor.

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”), or to any medical clinic or provider located in the Building, or to utilize such services 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. Capitalized words not otherwise defined in this section have the meanings provided for under federal law.

5. LEASEHOLD IMPROVEMENTS

5.1 Additions, Alterations, or Improvements to Leased Premises. Lessee shall not make alterations, additions or improvements to the Leased Premises except those alterations expressly agreed to at the onset of this lease (collectively referred to as “Alterations”), including changes that are cosmetic in nature, without first obtaining the written consent of Lessor in each instance, which consent shall not be unreasonably withheld or delayed, provided such Alterations meet the requirements of this Lease and all applicable laws, regulations, ordinances, rules, regulations and orders of any federal, state, or local government or instrumentality (collectively “Laws”). At the time Lessee seeks Lessor’s written consent, and at all times prior to starting any work, Lessee shall furnish Lessor with plans and specifications

reasonably acceptable to Lessor; names of contractors reasonably acceptable to Lessor (provided that Lessor may designate specific contractors with respect to specific Building systems); copies of contracts; necessary permits and approvals including but not limited to demonstration that the Alterations meet fire marshal approval and comply with all Laws; and evidence of contractor's and subcontractor's insurance in amounts reasonably required by Lessor. Changes to the plans and specifications must also be submitted to Lessor for its approval. Lessor shall have a maximum of ten (10) days to review and either approve or disapprove of the plans. If Lessor disapproves of the plans, Lessor shall provide Lessee with the reason(s) for withholding approval and where reasonably possible, suggest changes that would make the plans acceptable. Should Lessor fail to respond to the Lessee within the ten (10) day period, the Lessor's failure to respond shall deem such plans approved as submitted by Lessee to Lessor. Alterations shall be constructed in a good and workmanlike manner using materials of a quality that is at least equal to the quality designated by Lessor as the minimum standard for the Building, and cosmetic finishes must be the same as those existing in the Building as of the Commencement Date; if such finishes are unavailable then Lessee shall consult with Lessor as to reasonable replacements of the same quality and meeting Lessor's subjective aesthetic preferences. Lessor may designate reasonable rules, regulations and procedures for the performance of work in the Building. Lessee shall give Lessor at least fifteen (15) days' prior notice before beginning any Alterations so that Lessor may post or record notices of non-responsibility.

Upon completion, Lessee shall furnish "as-built" plans (except for cosmetic alterations), completion affidavits, full and final waivers of lien and receipted bills covering all labor and materials. Lessee shall assure that the Alterations comply with all insurance requirements and all applicable laws. Lessor's approval of an Alteration shall not be a representation by Lessor that the Alteration complies with applicable laws or will be adequate for Lessee's use.

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.

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 uses permitted in Section 1.9 for the benefit of KPB 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, with no further duty

of inquiry or investigation, 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 and with all recorded declarations, restrictions and covenants applicable to the Leased Premises. Lessee's use shall not cause a nuisance. Lessee and its Sublessee shall, at their sole cost and expense, comply with all Laws, including but not limited to those related to the generation, handling, storage, and disposal of biohazardous medical waste materials and other materials and matter commonly used in the health care industry, as well as the Americans with Disabilities Act, and with all recorded declarations, restrictions and covenants applicable to the Leased Premises. Lessee and Sublessee, within ten (10) days after receipt, shall provide Lessor with copies of any notices it receives regarding violation or alleged violation of any Laws involving the Leased Premises.

6.2 Condition of Leased Premises. Lessee's and its Sublessee's taking possession of the Leased Premises 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 has been made to Lessee and Sublessee by Lessor, except as made herein.

7. MAINTENANCE AND REPAIRS

7.1 Maintenance, Repair and Replacement.

(a) **Lessee Responsibilities.** It is the intent of the Parties that Lessee is solely responsible for the cost to keep, maintain, repair and replace all aspects of the Leased Premises. Without limiting the expansiveness of the foregoing, Lessee shall be responsible for the following:

(1) Lessee shall keep, maintain, repair and replace as necessary or appropriate the parking lot, foundations, roof, and structural portions of the Building, in good operating condition and in compliance with all requirements of applicable Laws and in the same if not better condition as on the Commencement Date. Lessee 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, including but not limited to heating, air conditioning, electric, water and plumbing equipment and facilities in the Leased Premises, shall be maintained on a regular schedule and kept in proper working condition at Lessee's sole expense. If equipment needs to be replaced, then Lessee is responsible for replacement after notice and

approval from Lessor that the replacement meets or exceeds the quality of the original equipment. Lessee will provide such maintenance and repairs with reasonable promptness using third-party contractors approved by Lessor. Lessee shall not take any action that voids any warranty applicable to any equipment, fixtures, or aspects of the Building.

- (3) Lessee will maintain in a neat and slightly 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) Lessee shall maintain the Leased Premises in a good, neat and clean condition, including but not limited to all floors, ceilings, walls, doors, door frames, windows and Lessee 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. Lessee shall be responsible for its own routine maintenance, upkeep, and fix-its including lightbulb replacement, toilet maintenance, locks, hot-cold balancing, and sidewalk servicing.
- (5) Lessee shall dispose of all rubbish, trash and garbage in dumpsters or other containers specified by the Lessor. Lessee shall, in all matters, act in compliance and conformity with all Laws 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 all Laws and in conformity with generally accepted health and safety standards, and shall not be disposed of in any respect in any area of the Leased Premises. Sublessee, and 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 owners, members, officers, directors, employees, agents, licensees, and 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 Laws 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. Any such sublease shall not relieve Lessee of its obligations, however. Lease termination shall not relieve Lessee of its obligation for any deferred maintenance, repair or replacement obligations arising prior to Lease termination.

7.2 **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 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 Lessee 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, and Lessee or its Sublessee shall repair any damage caused by such removal.

8.2 **Mechanic's Liens.** No person shall be entitled to any lien upon the Real Property, inclusive of the Leased Premises, 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

9.1 Non-Sublessor Transfer. Besides to Sublessor, Lessee shall not assign, sublease, transfer or encumber any interest in this Lease or allow any third party to use any portion of the Leased Premises (collectively or individually, a "Transfer") without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Without limitation, it is agreed that Lessor's consent shall not be considered unreasonably withheld if: (a) the proposed transferee's financial condition does not meet the criteria Lessor uses to select Building tenants having similar leasehold obligations; (b) the proposed transferee's business is not suitable for the Building considering the business of the other tenants and the Building's prestige; (c) the proposed transferee is an entity with sovereign immunity; (d) the proposed Transferee is negotiating with Lessor, or has negotiated with Lessor to lease space in other property owned by Lessor or an affiliate during the six (6) month period immediately preceding the date Lessor receives Lessee's request for consent; (e) the proposed Transfer shall take effect prior to the date that is twenty-four (24) months after the Commencement Date; (f) Tenant is in default after the expiration of the notice and cure periods in this Lease; or (g) any portion of the Leased Premises would likely become subject to additional or different Laws as a consequence of the proposed Transfer. Lessee shall not be entitled to receive monetary damages based upon a claim that Lessor unreasonably withheld its consent to a proposed Transfer and Lessee's sole remedy shall be an action to enforce any such provision through specific performance or declaratory judgment. Any attempted Transfer in violation of this Section 9 shall, at Lessor's option, be void. Consent by Lessor to one or more Transfer(s) shall not operate as a waiver of Lessor's rights to approve any subsequent Transfers. In no event shall any Transfer or Permitted Transfer release or relieve Lessee from any obligation under this Lease.

Each time that Lessee requests Lessor's consent to a Transfer, Lessee shall provide Lessor at least thirty (30) days prior written notice of the proposed Transfer, enclosing a full and complete copy of the proposed assignment, sublease and other contractual documents applicable to the proposed Transfer and financial statements for the proposed transferee, further, shall provide any other information applicable to the proposed Transfer as Lessor may reasonably request. Lessor shall, by written notice to Lessee within thirty (30) days of its receipt of the required information

and documentation, either consent to the Transfer by the execution of a consent agreement in a form reasonably designated by Lessor or reasonably refuse to consent to the Transfer in writing, stating the reasons consent is withheld. Lessee shall pay Lessor's actual reasonable costs and expenses (including reasonable attorney's fees) in connection with Lessor's review of any Permitted Transfer or requested Transfer, in an amount not to exceed Three Thousand Dollars (\$3,000.00).

Lessee shall pay Lessor fifty percent (50%) of all rent and other consideration which Lessor receives as a result of a Transfer that is in excess of the Rent payable to Lessor for the portion of the Premises and Term covered by the Transfer. Lessee shall pay Lessor for Lessor's share of any excess within thirty (30) days after Lessee's receipt of such excess consideration. Lessee may deduct from the excess all reasonable and customary expenses directly incurred by Lessee attributable to the Transfer (other than Lessor's review fee), including brokerage fees, legal fees and construction costs. In the event that Lessee receives additional compensation from a Transferee for items other than for Rent (i.e. furniture, phones, shared receptionist, IT services, etc.), the Lessor shall not be entitled to any portion of that additional compensation. If Lessee is in default of this Lease, Lessor may require that all sublease payments be made directly to Lessee, in which case Lessee shall receive a credit against Rent in the amount of any payments received (less Lessor's share of any excess, if applicable).

- 10.** Except as provided below with respect to a Permitted Transfer, if Tenant is a corporation, limited liability company, partnership, or similar entity, and if the entity which owns or controls a majority of the voting shares/rights at any time changes for any reason (including but not limited to a merger, consolidation or reorganization), such change of ownership or control shall constitute a Transfer. The foregoing shall not apply so long as Tenant is an entity whose outstanding stock is listed on a recognized security exchange, or if at least eighty percent (80%) of its voting stock is owned by another entity, the voting stock of which is so listed.

10.1

- 10.2** **Sublessor.** Lessor approves subletting this Lease to SOUTH PENINSULA HOSPITAL, INC. ("Sublessee") subject to Lessor's review of the Sublease and Operating Agreement between Lessee and Sublessee, as may be amended from time to time, with Lessor's prior written consent which shall not be unreasonably conditioned, withheld or delayed provided such amendment shall not diminish any right of Lessor under this Lease. Nothing in this assignment shall limit or restrict Lessor's rights against Lessee, regardless of whether Lessee has assigned such obligations to Sublessor. The Lessor and the Lessee also agree that if the Sublease and Operating Agreement terminates 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.

11. **INSURANCE AND INDEMNIFICATION**

11.1 Lessor's Insurance. During the Term, and any Additional Terms, Lessor, at its sole cost and expense, agrees to keep 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 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) General liability insurance against loss or liability for personal injury, death, or property damage arising or resulting from activities on the Leased Premises or the actions and omissions of Lessor and Sublessee, with liability limits of \$3,000,000.00 for any one occurrence and \$5,000,000.00 general aggregate. 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 improvements, fixtures, furniture, equipment, machinery, goods, supplies, contents, and other personal property on the Leased Premises or used in connection with Lessee's or Sublessee's business with coverage for perils as set forth under the Causes of Loss-Special Form, in an amount equal to full insurable replacement.

(3) Worker's compensation insurance as required by law.

(b) **General Provisions of Lessee's Insurance.** Any company writing any of Lessee's insurance shall be financially sound and authorized to do business in Alaska. All commercial general liability insurance policies shall name Lessee as a named insured and Lessor (or any successor), and their respective members, principals, partners, officers, directors, employees, and agents of Lessor as the interest of such designees shall appear, as additional insureds. For all policies of Lessee's Insurance, Lessee shall give Lessor and its designees at least thirty (30) days' advance written notice of any change, cancellation, termination or lapse of insurance. Lessee shall provide Lessor with a certificate of insurance evidencing Lessee's insurance prior to the earlier to occur of the Commencement Date or the date Lessee is provided with possession of the Leased Premises for any reason, and upon renewals at least fifteen (15) days prior to the expiration of the insurance

coverage. All Lessee insurance shall be primary and non-contributory to any policy held by Lessor. The policies of insurance described must have endorsements waiving and releasing all rights of subrogation against Lessor and its members, agents, and employees. Lessee or Sublessee, as the case may be, shall inform the Lessor within twenty-four (24) hours of any change to the insurance coverages. The limits of Lessee's insurance shall not limit such party's liability under this Lease.

- (c) Lessee may assign to Sublessee the Lessor's insurance obligation, and Sublessee may perform Lessee's obligation to provide insurance.
- (d) During the Term of this Lease, and any Additional Term, Lessor may, upon written notice to Lessee, increase the insurance coverages required, or the limits of coverages required, to ensure the insurance maintained by Lessee is reasonably consistent with insurance required for similar properties in Homer, Alaska. Lessor shall not exercise this right more than once every two (2) years.
- (e) Notwithstanding anything in this Lease to the contrary, Lessor and Lessee shall cause their respective insurance carriers, including without limitation, a carrier providing workers' compensation coverage, to waive any and all rights of recovery, claim, action or causes of action against the other and their respective trustees, principals, beneficiaries, partners, officers, directors, agents, and employees, for any loss or damage that may occur to Lessor or Lessee or any party claiming by, through or under Lessor or Lessee, as the case may be, including without limitation, with respect to Lessee Property, the Leased Premises, or any contents, improvements, Alterations thereof, including all rights of recovery, claims, actions or causes of action arising out of the negligence of any of the Parties, which loss or damage is (or would have been, had the insurance required by this Lease been carried) covered by insurance.

11.3 Indemnification of Lessor.

- (a) Sublessee, and to the extent permitted by law and subject to Assembly appropriation of funds for indemnification, Lessee, shall indemnify, defend and save harmless Lessor, its members, employees, agents, licensees, invitees, successors and assigns (collectively "Indemnitees"), from and against any and all claims, demands, damages, 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 Indemnitees as a result thereof, including attorney's fees and costs, that arise out of or relate to Lessee or Sublessee's use and occupation of the Premises during the Term or any Additional Terms of this Lease, Lessee's or

Sublessee's performance or failure to perform any of its obligations under this Lease, or any negligence or intentional misconduct of Lessee or Sublessee, or their officers, employees, agents, contractors or subcontractors. Notwithstanding the preceding sentence, however, Lessee's obligations shall be limited to the extent of negligent or intentional misconduct of Lessor, Lessor's agents, employees or independent contractors.

- (b) Lessee may assign to Sublessee the Lessee's indemnity obligation, and Sublessee may perform Lessee's obligation to indemnify Lessor. However, any such assignment shall not relieve Lessee of its obligations.
- (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 misconduct of Lessee or Sublessee, their agents, employees, or independent contractors.

11.4 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.

11.5 LIMITATION OF LIABILITY. Lessor shall not be liable to Lessee or Sublessee, waive their right to claim damages to or loss of Lessee Property, or other personal property owned by Lessee or Sublessee or their employees, agents, contractors, subtenants or invitees, or anyone else, or any damage to Lessee's or Sublessee's business, regardless of the cause of the loss or damage, including the negligence of Lessor. Without limiting the expansiveness of the foregoing, this expressly includes a waiver of damages arising from: (a) wind or weather; (b) the failure of any sprinkler, heating or air-conditioning equipment, any electric wiring or any gas, water or other pipes; (c) the backing up of any sewer pipe or downspout; (d) the bursting, leaking or running of any tank, water closet, drain or other pipe; (e) water, snow or ice upon or coming through the roof, skylight, stairs, doorways, windows, walks or any other place upon or near the Building; (f) any causes not reasonably

within the control of Lessor. Tenant shall insure itself against such losses under this Lease. In no event shall Lessor be liable for indirect, consequential, or punitive damages, including, without limitation, any damages based on lost profits. Lessor shall not have any personal liability with respect to any of the provisions of the Lease or the Leased Premises. If Lessor is in breach or default with respect to Lessor's obligations under the Lease, Lessee and Sublessee shall look solely to the equity interest of Lessor in the Leased Premises for the satisfaction of Lessee's or Sublessee's remedies or judgments. No other real, personal, or mixed property of Lessor, wherever situated, shall be subject to levy to satisfy such judgment.

12. DAMAGE AND DESTRUCTION

12.1 Damage and Restoration. If the Leased Premises 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, however Lessee shall have no right to exercise this termination right if the damage or destruction was caused by the negligence or intentional misconduct of Lessee, Sublessee, or either entity's subtenants, employees, agents, contractors, invitees and licensees (such event being a "Lessee Casualty"). Lessor or Lessee, if applicable, 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 Leased Premises, diligently repair or rebuild the Leased Premises to return such improvements to substantially 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. Except in the event of a Lessee Casualty, Rent due and payable shall be abated proportionately during any period in which, by reason of any such damage or destruction to the Leased Premises, 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 and provided it was not caused by a Lessee Casualty, the Rent payable, 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.

12.3 Limitations. Notwithstanding anything to the contrary contained in this Lease, if the Lease Premises are partially or wholly destroyed or damaged during the last twelve (12) months of the Term or an Additional Term, Lessor may elect to terminate this Lease as of the date such destruction or damage occurred, with no liability to Lessee or Sublessee, by serving on Lessee within thirty (30) days from the date such destruction or damage occurred, written notice of Lessor's election to terminate this Lease. Notwithstanding anything contained herein to the contrary, in the event of damage to or destruction of all or any portion of the Leased Premises that is not fully covered by insurance for the benefit of Lessor, Lessor may terminate this Lease by written notice to Lessee, given within ninety (90) days after the date of the damage or destruction.

13. EMINENT DOMAIN

13.1 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.

13.2 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 Leased Premises, 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 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 would incur in removing Lessee's furniture, leasehold improvements and equipment to a new

location.

13.4 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, Lessor 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.

14. DEFAULT

14.1 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 ten (10) 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.

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

- (a) Retake possession of the Leased Premises without terminating this Lease.
- (b) 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;
- (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, for such term or terms, which extend beyond the Term and any Additional Terms, 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;
- (d) 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;

- (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 Leased Premises 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, including but not limited to restoration and repairs to the Leased Premises, marketing, and leasing commissions, following any such Event of Default by Lessee or Sublessee. Lessee and Sublessee, jointly and severally, also shall be liable for and agree to pay to Lessor interest at a rate of 10.5% per annum, or the maximum legal rate, whichever is less, 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) 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) (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;

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. Each party waives the right to seek consequential, punitive, or special damages against the other.

15. RIGHT OF FIRST OFFER.

15.1 Right of First Offer. In the event Lessor decides to sell to a third-party or put the Leased Premises on the market, then Lessor shall give notice to Lessee of its intent to sell and intended listing or negotiated sales price. Lessor and Lessee shall have thirty (30) days after such notice to meet and confer and enter into a purchase agreement for a mutually agreeable sales price, not to exceed the confirmed third party negotiated sale price and comparable terms or intended listing amount, with closing to occur no later than ninety (90) days after the date of the fully executed agreement, and on other terms and conditions to be agreed upon. If the parties are unable to execute a binding agreement to purchase the Leased Premises within 30 days of notice, then Lessee's right of first offer shall lapse and be of no further effect. If the Leased Premises is marketed after the lapse of the right of first offer, then Lessee may separately pursue a purchase of the Leased Premises, on the same footing as any prospective buyer, but shall have no further rights or preferences. This right of first offer may be referenced in any recorded memorandum of lease, provided such reference expressly states that the right of right refusal shall expire automatically upon termination of the Lease without further need for memorialization of termination. The Right of Offer is not applicable during any period Lessee is in default, and termination of the Lease terminates the right of first offer.

16. HAZARDOUS MATERIAL.

16.1 Use of Hazardous Material on the Property

(a) Lessee shall not cause or permit any Hazardous Material (as defined herein) to be brought upon, kept or used in or about the Leased Premises by Lessee or its authorized representatives or invitees, except to the extent that such Hazardous Material is necessary or useful to Lessee's lawful and authorized use of the Leased Premises.

(b) Any Hazardous Material permitted on the Leased Premises as provided in this paragraph, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material. Such Hazardous Material shall be handled only by properly trained personnel.

(c) Lessee agrees that it shall be fully liable for all costs and expenses related to the handling, use, storage and disposal of Hazardous Material brought or kept on the Property by the Lessee, its employees, agents, suppliers, customers, invitees, contractors, subsidiaries or subLessees.

16.1 Indemnification of LESSOR. Any other provision of this Lease to the contrary notwithstanding, Lessee shall defend, indemnify and hold harmless Lessor and its representatives, from and against any claims, demands, penalties, fines judgments, liabilities, settlements, damages, costs or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to: the presence, disposal, release, or threatened release of any Hazardous Material; any bodily injury, death or property damage arising out of or related to such Hazardous Material; any claim or lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; any violation of any laws, ordinances, regulations, or orders applicable to such Hazardous Material; and/or any violation of the requirements of Section 16.2 of this Lease. This Section 16.1 shall apply only if the acts giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs or expenses are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on, from, or related to the Leased Premises by Lessee or its employees, agents, suppliers, customers, invitees, contractors, subsidiaries or sublessees. The provisions of this Section 16.1 shall survive the termination of this Lease.

16.2 Hazardous Material Defined. "Hazardous Material" is any substance that is toxic, ignitable, reactive, or corrosive, and that is or becomes regulated by any local government, the State of Alaska, or the United States government. "Hazardous Material" includes medical waste.

17 SUBORDINATION; ESTOPPEL; SALE

17.1 Subordination and Attornment. This Lease is and shall be subordinate to any encumbrance now of record or recorded after the date of this Lease affecting the Leased Premises and the land on which the Leased Premises is located. Such subordination is effective without any further act of Lessee or Sublessee. Such subordination, however, shall not allow for Lessee or Sublessee to be dispossessed of

the Leased Premises before the expiration of the Term or any Additional Term that has gone into effect so long as (1) Lessee and Sublessee fulfill all of their obligations under this Lease, and (2) Lessee and Sublessee agree to attorn to Lessor's lender or to any successor of Lessor to whom the lender causes the Leased Premises to be transferred. At the request of Lessor's lender, Lessor, Lessee and Sublessee shall execute subordination and attornment agreements regarding Lessee's and Sublessee's occupancy of the Leased Premises.

17.2 Estoppel Certificate. Within ten (10) days after request by Lessor, or if on any sale, assignment or hypothecation by Lessor of Lessor's interest in the Leased Premises, the land on which the Leased Premises is located, or any portion thereof, an estoppel certificate shall be required, Lessee and Sublessee shall deliver, in such form as may be reasonably requested by prospective lenders or purchasers, an estoppel certificate to any proposed mortgagee, purchaser, sublessee or assignee and to the Lessor. Failure to deliver said certificate in time shall constitute a material default under this Lease giving Lessor the rights and remedies provided upon default, including the option to terminate. Further, failure to deliver the certificate in time shall be conclusive upon the non-requesting party that (i) this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance and the non-requesting party has no right of offset, counterclaim or deduction against Rent hereunder, and (iii) no more than one installment of monthly Rent has been paid in advance.

17.3 Sale of Lessor's Interest. In the event of any sale or transfer by Lessor of the Leased Premises or the land of which the Leased Premises is a part, and assignment of this Lease by Lessor, Lessor shall be and is relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Leased Premises or this Lease occurring after the consummation of such sale or transfer, provided the purchaser or transferee shall assume expressly all of the covenants and obligations of Lessor under this Lease. If any security deposit or prepaid rent has been paid by Lessee, Lessor may transfer the same to Lessee's successor and, upon such transfer, Lessor shall be relieved of any and all further liability with respect thereto.

18. MISCELLANEOUS

18.1 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. However, Lessor has the right (but not the obligation) to temporarily close the Building or portions if Lessor reasonably determines that there is an imminent danger of significant damage to the Building or of personal injury or of a public health risk. The circumstances under which Lessor may temporarily close the Building or portions thereof shall include, without limitation,

earthquakes, civil disturbances and disease or virus. A closure of the Building or portions under such circumstances shall not constitute a constructive eviction nor entitle Tenant to an abatement or reduction of Rent.

18.2 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.

18.3 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, except signage shall not be bolted to the Building or otherwise permanently affixed without Lessor's prior written approval as to the installation method. Upon the earlier of termination of the Lease or Lessee vacating the Leased Premises, Lessee shall, at its sole cost and expense, remove all signs and repair all damage caused by such removal.

18.4 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.

18.5 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. This Lease shall create only the relationship of Lessor and Lessee between Lessor and Lessee, and not a partnership, joint venture or any other relationship. No third-party shall have the right to enforce any provision of this Agreement.

18.6 Time. Time is of the essence of every provision hereof.

18.7 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.

18.8 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.

18.9 Governing Law, Forum and Venue; Attorney Fees. 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. If either party institutes a suit against the other for violation of or to enforce any covenant or condition of this Lease, or if either party intervenes in any suit in which the other is a party to enforce or protect its interest or rights, the prevailing party shall be entitled to all of its costs and expenses, including, without limitation, reasonable actual attorneys' fees.

18.10 Entire Agreement. This Lease, including all exhibits which by this reference are expressly incorporated and made part of the Lease, sets forth all covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Lessor and Lessee as to the Leased Premises 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. This Lease shall not be recorded, but the Parties may elect to record a memorandum of lease. The expiration of the Term, whether by lapse of time or otherwise, shall not relieve either party of any obligations which accrued prior to or which may continue to accrue after the expiration or early termination of this Lease, including but not limited to any insurance and indemnification obligations.

18.11 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.

18.12 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, an estoppel or waiver of any subsequent breach of the same or other provision hereof.

18.13 Counterparts. This Lease may be executed in several or separate counterparts, whether by electronic, 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.

18.14 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.

18.15 No Brokers. Each Party warrants and represents that it has not had any dealings in connection with the negotiation of this Lease with any realtor, broker or agent, and shall pay, indemnify, defend, protect and hold the other party harmless from and against any cost, expense or liability (including attorneys' fees) on account of or in connection with any compensation, commissions or charges claimed by any realtor, broker or agent with respect to this Lease and/or the negotiation

18.16 Rules and Regulations. Lessor reserves the right to institute reasonable rules and regulations governing the use of the Leased Premises, as may be amended from time to time, provided such change does not unreasonably infringe upon Lessee's rights under the Lease. Lessee and Sublessee shall also cause its agents, contractors, subcontractors, employees, invitees, and licensees, to comply with all rules and regulations.

Signatures to follow.

Signature Page 1 of 3.

DATED this _____ day of _____, 2024.

LESSOR: **PRODIGY DEVELOPMENT, LLC**

By: _____
MARK D. HALPIN, Member

By: _____
B. ISABEL HALPIN, Member

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2024, by MARK D. HALPIN and B. ISABEL HALPIN.



