

**FIFTH AMENDMENT TO THE OPERATING AGREEMENT
FOR CENTRAL PENINSULA HOSPITAL, HERITAGE PLACE, KENAI HEALTH
CENTER, AND OTHER HEALTH FACILITIES**

This amendment to the Operating Agreement (“Operating Agreement”) is by and between Central Peninsula General Hospital, Inc., an Alaska nonprofit corporation, of 250 Hospital Place, Soldotna, Alaska 99669, (referred to as “CPGH, Inc.”) and the Kenai Peninsula Borough (hereinafter referred to as “KPB” or “Borough”), an Alaska municipal corporation of 144 N. Binkley, Soldotna, Alaska 99669, on behalf of Central Kenai Peninsula Hospital Service Area (“Service Area”), collectively referred to as the Parties.

WHEREAS, this Fifth Amendment to the Operating Agreement is made for the purpose of providing clear expectations and responsibilities for real property acquisition due diligence as well as required provisions for leases in which CPGH, Inc. is the sole lessee;

WHEREAS, CPGH, Inc. board of directors, at its _____, meeting, approved this fifth amendment; and

WHEREAS, at its regular meeting on _____, the KPB Assembly adopted Resolution 2026-_____ approving this fifth amendment to the Operating Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

1. That Paragraph 10(d) of the Operating Agreement is hereby amended to read as follows:

d. Property Lease List. The *Property Lease List* shall include a list of all real property leases, regardless of term length or cost, and of all other operating and capital leases with terms greater than one year. This shall apply to all leases entered into by CPGH, Inc. as lessee or lessor. At a minimum, the list must identify the leased property (including the address or legal property description), lessor/lessee, term, and cost. This list will include all leases CPGH, Inc. has entered into for the purposes of contract labor housing. CPGH, Inc. shall provide copies of any leases related to the services provided under the terms of this Agreement upon ~~[request by the Borough Contract Administrator]~~ within five business days of execution to the Land Management Officer.

2. That Paragraph 14 of the Operating Agreement is hereby amended to read as follows:

14. REAL PROPERTY ACQUISITIONS

a. Real Property Acquisitions. For the purposes of this Agreement, a real property acquisition is defined as acquiring any interest in real property that may obligate the Borough in any way. In accordance with Borough Code, Borough Assembly approval is required prior to acquiring an interest in real property. Negotiations to acquire an interest in real property shall be

conducted by the Borough unless CPGH, Inc. is given written authorization to do so by the Borough Contract Administrator.

Requests for acquisition of any real property interest shall be conveyed to the Borough Contract Administrator and the ~~[Borough Planning Director]~~ Borough Land Management Officer. CPGH, Inc. is authorized to conduct operational assessments of a property's ability to meet operational needs~~[and]~~. This assessment may include acquisition of a competent property appraisal upon concurrence of the Land Management Officer. However, CPGH, Inc. may not directly initiate negotiations for the acquisition of any such interest unless it has been given written authorization to do so by the Borough Contract Administrator. [In any event,] All acquisitions of any interest in real property ~~[shall only]~~ must be in furtherance of the purposes of this Agreement, and within the authorized powers of the Service Area.

i. Testing Prior to Occupancy

The Borough will determine the type and scope of site testing due diligence required prior to closing of any proposed acquisition and will provide those requirements to CPGH, Inc. in writing, if any. The scope of testing must be reasonably related to relevant legal regulations and the age, condition and type of improvements and history of the property to be acquired. CPGH, Inc. is responsible for contracting, completing, and paying for all work necessary to meet the requirements established by the Borough. CPGH, Inc. will provide copies of all completed reports and compile and deliver to the Borough's Land Management Officer a complete list of all findings, deficiencies, and recommendations identified in any property condition assessments, building inspections, environmental site assessments, or other due diligence inspections conducted on the property (collectively, "Inspection Findings").

Prior to CPGH, Inc. taking possession of the property, CPGH, Inc. must provide the Borough Land Management Officer written evidence to the Borough demonstrating that all material Inspection Findings have been remediated, mitigated, or otherwise resolved in accordance with applicable regulations and codes and the recommendations of the applicable inspectors, consultants, or regulatory agencies. Acceptable written evidence of remediation or mitigation must include completion reports or closeout documentation from the CPGH, Inc. Maintenance Department or licensed contractors.

CPGH, Inc. may not take occupancy of the property until all obligations set forth in this Agreement have been met.

ii. Site Control After Taking Occupancy

Pursuant to this Agreement, CPGH, Inc., upon taking possession or occupancy of the property, will have exclusive possession, occupancy, and site control of premises operated and maintained under this Agreement during the term of the Agreement. The Borough will be allowed to enter

the property for facility inspections upon reasonable notice to CPGH, Inc. in accordance with the terms of this Agreement.

b. Leases in Which CPGH, Inc. is the Lessee. Subject to the terms of this paragraph, and for the purpose of providing health and community services under this Agreement, CPGH, Inc. may use Operating Reserve Funds to lease real property in its capacity as an independent entity. Leases in the name of CPGH, Inc. may not attempt to impose any obligation upon the Borough, either express or implied, and therefore are not subject to the requirements in paragraph 14(a) of this Agreement. Any such lease may not attempt to obligate the Borough to perform, assume, or novate to any legal duty. Written approval by the Borough Contract Administrator is required for all such leases costing \$100,000 or more annually. Total cumulative annual costs of such leases shall not exceed \$1,400,000 (Lease Cap). Increases to Lease Cap must be approved by the Borough Assembly by resolution. The Lease Cap does not include leases entered into by CPGH, Inc. for the purposes of providing contract labor housing. Notwithstanding, CPGH, Inc. contract labor housing leases must contain the paragraph 14(c) requirements. Rights of first refusal must be assigned to the Borough if obtained from the lessor.

~~[Leases in the name of CPGH, Inc. in which CPGH, Inc. is the Lessee and no obligation whatsoever is imposed upon the Borough, either express or implied, are not subject to the requirements in subparagraph 14.a. of this agreement. Under no circumstances shall such leases obligate the Borough in any way whatsoever without advance Borough Assembly approval. All such leases shall contain a clause stating: "In the event that the Operating Agreement between CPGH, Inc. and the Kenai Peninsula Borough is terminated and not renewed or extended, and the Kenai Peninsula Borough either assumes operation of the Medical Facilities or contracts with another entity to continue such operation, the continuation of this lease with the Borough or a subsequent operator is subject to Borough Assembly approval and the availability and appropriation of funds." In any event, written approval by the Borough Contract Administrator is required for all such leases costing \$100,000 or more annually. Total cumulative annual costs of such leases shall not exceed \$550,000. This total annual cost ceiling for leases does not include leases entered into by CPGH, Inc. for the purposes of providing contract labor housing. Increases to the cumulative annual limitation must be approved by the Borough Assembly by resolution.]~~

c. Required lease provisions. Required lease provisions must be materially similar to those provided below, any material deviations must be approved by the Contract Administrator, unless waived in entirety by the Contract Administrator. Subject to the preceding sentence, any lease entered into pursuant to paragraph 14(b), must include the following:

- i. *No Privity of Contract.* Any such lease must include the following clause: "The parties to this Lease affirm that: (1) this Lease is not enforceable against the Kenai Peninsula Borough (Borough); (2) the Borough is not a party to this contract, is not a third party beneficiary, and the rights or obligations contained herein do not obligate the Borough in any way; and (3) in the event that the Operating Agreement between Central Peninsula General Hospital, Inc. and the Kenai Peninsula Borough is terminated and not renewed or extended, the continuation of this Lease is subject to

negotiation between the Borough and Lessor, Borough Assembly approval, and the availability and appropriation of funds."

- ii. Right of First Refusal. CPGH, Inc., will make commercially reasonable efforts during lease negotiations to include the following language:

"Right of First Refusal: In the event Lessor elects to sell to a third-party in an arms-length transaction or to list the Leased Premises for sale, the Lessor must provide written notice to Lessee of its intent to sell. Lessor will provide the Lessee and/or assigns, 30 days to review a confirmed offer and agree to purchase the property at the confirmed third party negotiated sales price and comparable terms. Consideration will be given to the Lessee towards the purchase price for any Lessor approved tenant improvements paid for by the Lessee. Value of the consideration will be based on the total documented cost of the approved tenant improvements, depreciated over the full term of the lease, beginning from the completion date of the improvements. If the Lessee and/or assigns is unwilling to enter into a binding agreement under comparable terms within the 30 day review period, the Lessee's right of first refusal provision will lapse and be of no further effect. In the event the offer presented to Lessee fails to close under original disclosed terms, the Lessee's right of first refusal will be reinstated. This right of first refusal may be referenced in any recorded memorandum of lease, provided such reference expressly states that the right of first refusal will expire automatically upon termination of the Lease without further need for memorialization of termination. The Lessee may subordinate this interest as may be necessary at the request of the Lessor. This Right of first refusal is assignable. Notice of assignment will be provided to the Lessor. This Right of First Refusal is not applicable during any period Lessee is in default, and termination of the Lease terminates the right of first refusal.

All remaining terms and conditions of the Operating Agreement shall remain in full force and effect.

KENAI PENINSULA BOROUGH

CENTRAL PENINSULA GENERAL
HOSPITAL, Inc.

Peter A. Micciche
Borough Mayor

Angela Hinnegan
CEO

ATTEST:

ATTEST:

Michele Turner, CMC
Borough Clerk

Board Secretary

Approved as to Form
and Legal Sufficiency:

Sean Kelley, Borough Attorney