

LEASE AND OPERATING
AGREEMENT

FOR

CENTRAL PENINSULA
HOSPITAL,

HERITAGE PLACE,

AND OTHER FACILITIES

Effective January 1, 2008

Approved by Kenai Peninsula Borough Assembly [Date]

Approved by Central Peninsula General Hospital, Inc. Board of Directors
[Date]

**CENTRAL PENINSULA GENERAL HOSPITAL, INC.
 LEASE AND OPERATING AGREEMENT
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**CENTRAL PENINSULA GENERAL HOSPITAL
LEASE AND OPERATING AGREEMENT**

THIS AGREEMENT is made and entered into on this ____ day of _____, 2008, between the Kenai Peninsula Borough, an Alaska municipal corporation, hereinafter referred to as "Borough" or "KPB" or "Lessor," 144 N. Binkley Street, Soldotna, Alaska 99669, and Central Peninsula General Hospital, Inc., an Alaska nonprofit corporation, hereinafter referred to as "CPGH, Inc." or "Lessee/Operator," 250 Hospital Place, Soldotna, Alaska 99669.

WHEREAS, the Borough established the Central Kenai Peninsula Hospital Service Area to assure residents that hospital services would be provided within its boundaries; and

WHEREAS, the Borough through tax levies within that service area has constructed and acquired healthcare facilities located in Soldotna and Kenai, Alaska to meet the needs of the residents; and

WHEREAS, the Borough owns and provides for the operation of Central Peninsula Hospital, and for Heritage Place, the Kenai Health Center and other health facilities, hereinafter referred to as the "Medical Facilities," through the Central Kenai Peninsula Hospital Service Area, hereinafter referred to as the "Service Area;" and

WHEREAS, the Medical Facilities have been administered by CPGH, Inc. under a Lease and Operating Agreement between the Borough and CPGH, Inc., which expires on December 31, 2007; and

WHEREAS, the Borough desires to enter into a new agreement for the lease and operation of the Medical Facilities and to operate them on a nonprofit basis to ensure continued availability of them to the service area residents, and for the provision of other health services and facilities, with CPGH, Inc., as authorized by KPB Ordinance _____ (approving this contract); and

WHEREAS, the parties agree that CPGH, Inc. shall endeavor to operate the Medical Facilities on a self-supporting basis;

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

1. **PRIOR LEASE/OPERATING AGREEMENT SUPERSEDED.** This Lease and Operating Agreement supersedes and replaces the Lease and Operating Agreement effective on January 1, 2003 and all other prior agreements concerning the lease of the property described in this agreement or the operation and management of any or all of the Medical Facilities.

2. DESCRIPTION OF LEASED FACILITIES. Lessor leases the following described property to the Lessee/Operator (hereinafter the "Medical Facilities") for the term of this agreement and any extension thereof:

a. The Central Peninsula General Hospital and its grounds, located at 250 Hospital Place, Soldotna, Alaska, more particularly described as:

In the Southwest one-quarter (SW1/4), Section 29, Township 5 North, Range 10 West, Seward Meridian, within the Jerome Faa homestead in Soldotna, Alaska:

Commencing from the U.S.G.L.O. quarter section corner monument common to Sections 29 and 30, Township 5 North, Range 10 West, of the Seward Meridian, Alaska. Proceed East along the East West center line of Section 29, a distance of 1320.50 feet to the center West 1/16th corner, thence South 0°08' East, 30.00 feet to the true point of beginning, this being a point on the South edge of a 60 foot street right-of-way and corner 1, thence East 270.00 feet to corner 2, thence South 0°08' East, 270.00 feet to corner 3, thence West 270.00 feet to corner 4, thence North 0°08' West 270.00 feet to the true point of beginning, thus embracing 1.674 acres of land, more or less;

and

Commencing from the U.S.G.L.O. quarter section corner monument common to Sections 29 and 30, Township 5 North, Range 10 West, Seward Meridian, thence East along the East-West center line of Section 29 a distance of 1320.50 feet to the center West 1/16th corner, thence South 0°08' East, 360.00 feet to a point, thence East 30.00 feet to the true point of beginning and corner 1 of this survey, thence continue East 600.00 feet to corner 2, thence South 0°08' East, 600.00 feet to corner 3, thence West 600.00 feet to corner 4, thence North 0°08' West 600 feet to the true point of beginning.

b. The Kenai Health Center and its grounds, located at 630 Barnacle Way, Kenai, Alaska, more particularly described as:

Lot 2, Block 1, according to the Amended Plat of Block One First Addition Etolin Subdivision, filed under Plat No. 73-14, in the Kenai Recording District, Third Judicial District, State of Alaska.

c. The Heritage Place and its grounds, located at 232 Rockwell Avenue, Soldotna, Alaska, more particularly described as:

Lot 2, Davidhizar Subdivision, according to the official plat thereof, filed under Plat Number 83-162, Records of the Kenai Recording District, Third Judicial District, State of Alaska.

d. Such other borough facilities, if any, as are authorized for CPGH, Inc. to lease and operate pursuant to this agreement.

The Medical Facilities include all fixtures and appurtenances thereto as of the effective date of this agreement. The Borough warrants that it has good and marketable title to the Medical Facilities leased by the borough pursuant to this agreement, subject only to encumbrances of record prior to the effective date of this agreement.

3. **PROVISION OF SERVICES.** CPGH, Inc. agrees to operate and manage for the benefit of the Borough the Medical Facilities described in this agreement. CPGH, Inc. agrees that so long as this agreement is in effect it will continuously operate and manage the Medical Facilities as a duly licensed hospital, skilled nursing facility, or healthcare facilities, as applicable, under Alaska licensing laws and in accordance with all applicable state and federal laws, regulations and rules governing hospitals, skilled nursing and other facilities as applicable, and in accordance with the terms and conditions of this agreement. In addition, CPGH, Inc. may provide any other health service and operate any other health facility for the Service Area, to the extent that such services and/or operations of other health facilities are authorized or otherwise approved as provided in paragraph 21 of this Agreement. If authorized, these services may be provided either directly or by contract, and shall be provided in accordance with this agreement and all applicable state and federal laws, regulations and rules governing such health services or health facilities. If CPGH, Inc. enters into an exclusive provider contract with an independent contractor to be the exclusive provider of any program or service, then the contractor shall be required to comply with all applicable terms and conditions of this agreement.

4. **TERM.** This lease/operating agreement shall be in effect from January 1, 2008 to and including December 31, 2017, unless terminated earlier in accordance with the provisions of this agreement. By mutual agreement of the parties this lease/operating agreement may be extended for an additional period, not to exceed ten years. If no notice of termination has been given or no agreement to extend has been signed before December 31, 2016, then a ten-year extension of this lease term shall be deemed to have been agreed upon. The terms of the lease/operating agreement for the additional ten year extension period shall be the same as this lease, with all amendments, unless the parties negotiate new terms before the effective date of the extension, January 1, 2018, and document those new terms in writing.

Upon termination of this agreement or any extension thereof, and in the event there is no successor agreement between the parties, CPGH, Inc. shall reconvey to the Borough, and shall surrender its possession and control of, all real and personal property covered by this agreement. That property includes, but is not limited to, the leasehold interests of CPGH, Inc. in all the Medical Facilities, all fixtures, equipment, materials, supplies, inventory, medical records, business records, revenues, cash, accounts receivable, trust accounts and other property necessary for or associated with the operation of the Medical Facilities. Notwithstanding the foregoing, CPGH, Inc. shall not be required to convey to the Borough such cash, income or other assets, if any, as are received by CPGH, Inc. from sources independent of and unrelated to this agreement.

5. LEASE PAYMENT. CPGH, Inc. shall pay the Borough a lease payment in the sum of one dollar (\$1.00) per year to lease the property described in this agreement. Such payment shall be due in full on or before the 1st day of January 2008 for the first ten year period. If the contract is extended, the payment for the extended term shall be due and payable on January 1st of the first year of the new term.

6. NOTICES. All notices, reports or documents required or allowed to be given by one party to the other party to this agreement, pursuant to this agreement, shall be in writing and delivered personally or by depositing the same in the United States mail, postage prepaid, certified, return receipt requested, and addressed to the parties as hereinafter provided:

FOR THE BOROUGH:
Mayor
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, AK 99669

FOR CPGH, INC.
President, Board of Directors
CPGH, Inc.
250 Hospital Place
Soldotna, AK 99669

Notice shall be effective upon the date of personal delivery or, if mailed, upon the date of delivery as shown by certified receipt. The Borough Mayor shall be responsible for forwarding any such notice, report or document to the Borough Assembly or its designee, the Central Kenai Peninsula Hospital Service Area Board, other interested Borough boards, Borough departments, or any other appropriate individual or agency for consideration or action. The President of CPGH, Inc. shall be responsible for forwarding any such notice, report or document to the CPGH, Inc. board members, chief executive officer, or any other appropriate individual or agency for consideration or action.

7. COMMUNICATIONS WITH BOROUGH. The Lessee/Operator shall provide the following written reports to the Borough Assembly, the Service Area Board ("SAB") chair and the Borough Finance Director: (a) a monthly financial report which shall include a balance sheet, a statement of cash flow, an income statement, and operating statistics; and (b) a quarterly activity report, which shall

include all the items as in the monthly financial report, plus a statement of activities, issues and events, which shall in addition be orally presented by a representative of the Lessee/Operator to the Borough Assembly and the SAB. Monthly reports shall be delivered within 60 days after the end of the month. Quarterly reports shall be delivered within 60 days after the end of the quarter.

8. UTILITIES. The Lessee/Operator shall pay for the utilities necessary to operate the Medical Facilities, including, but not limited to: electricity, heat, water, sewer service, garbage collection, snow removal and sanding, and telephone service.

9. TAXES. CPGH, Inc. shall be responsible for and shall pay before delinquency all governmental taxes, assessments, charges or liens assessed during the term of this agreement against any leasehold interest or property of any kind or income or sales of any kind related to this agreement. The Borough acknowledges that CPGH, Inc. will be entitled to property, income and sales tax exemptions to the extent allowed by law.

10. SUPPLIES, MATERIALS AND INVENTORY.

a. Use of Existing Supplies, Materials and Inventory. During the term of this agreement, all supplies, materials, and inventory located in or on the Medical Facilities shall be subject to the control, consumption, disposition and replacement by the Lessee/Operator for use in its operation and management of those facilities.

b. Repair or Replacement. Supplies, materials and inventory that need to be repaired or replaced will be repaired or replaced by the Lessee/Operator, at its expense, if necessary to the operation and management of the Medical Facilities. At the termination of this agreement, replacement supplies, materials, and inventory shall remain the sole property of the Borough or its successors or assigns, if any.

c. Purchasing Procedures. All purchases made by the Lessee/Operator shall be done in accordance with CPGH, Inc. corporate and operational policies related to purchasing that are in effect on the date of this agreement, as identified in a letter dated _____ provided by CPGH, Inc. to the borough contract administrator. The Lessee/Operator must obtain advance approval from the borough contract administrator before modifying any of these corporate and operational policies related to purchasing, which approval will not be withheld unreasonably. Lessee/Operator is specifically authorized to purchase supplies, materials, equipment and inventory from the Health Trust Purchasing Group, its successors or assigns, provided such purchases are otherwise allowable in this agreement. It is understood and agreed that exclusive service providers hired or contracted with by Lessee/Operator pursuant to this agreement are not required to comply with this provision unless otherwise stated in the contract between the Lessee/Operator and the provider. Finally, Lessee/Operator, per the existing business

practice, agrees to communicate and cooperate with the Borough Purchasing and Contracting Officer on all purchases made that will require assembly approval.

d. Disposal. Disposal of any supplies, materials, and inventory that are owned by the Borough and that are surplus to the needs of the Medical Facilities shall be made in accordance with the Borough Code requirements for disposal of surplus property. Net proceeds from the sale of surplus property shall be returned to the entity that directly provided the funding for the property. Proceeds from the sale of items funded with gifts or grants shall be distributed in accordance with the donor's intent or grant requirements, as applicable. If the intent of a donor cannot be determined then proceeds shall be used by CPGH, Inc. to operate the Medical Facilities.

11. MAINTENANCE AND REPAIR.

a. Routine Repair. The Lessee/Operator shall be responsible for all routine maintenance and repair of the leased property, including the upkeep and maintenance of the walkways, roads and grounds.

b. Major Repairs. All major repairs to borough owned Medical Facilities must be authorized by the Borough, subject to the appropriation and availability of funds. Such repairs may be made by the Lessee/Operator upon approval by the Borough. The Borough agrees to provide major repairs necessary to keep the leased property in good condition, subject to the availability and appropriation of funds.

12. PROPERTY AND EQUIPMENT PURCHASES.

a. Purchases and Replacement. The Lessee/Operator shall be responsible for either requesting the borough to purchase new equipment or property, or replacing Medical Facilities' property, improvements, fixtures and equipment itself, in a timely manner. The Lessee/Operator may replace such items at the end of either the projected or the actual useful life following the purchasing procedures described in paragraph 10(c) of this agreement. Subject to availability and appropriation of funds the Borough may replace such items at its own expense, at the end of either the projected or the actual useful life. Such property, improvements, fixtures or equipment shall be owned by the Borough, subject to the leasehold interest of CPGH, Inc. during the term of this agreement.

b. Capital Improvements and Equipment. For purposes of this agreement, capital improvements include permanent facility improvements and expansions, and capital equipment includes equipment with an expected useful life of more than one year and costing more than the hospital defined capital limit which is currently \$2,500. CPGH, Inc. will promptly advise the Borough of any change in that amount. To the extent approved and appropriated by the Borough Assembly and the availability of

funds, the Borough will provide capital improvements and capital equipment to the leased property necessary for the provision of services and functions to meet the needs of the residents of the Service Area. The Lessee/Operator may submit proposals for such capital improvements and capital equipment, either through the annual Service Area capital budget process, the fund described in paragraph 13(b) of this agreement, or otherwise; and the Borough may consider any such proposal.

Prior to expending funds in excess of \$150,000 for the purpose of analyzing and/or planning for capital improvement projects expected to cost in excess of \$1.0 Million, the Lessee/Operator shall first notify and confer with the Borough Contract Administrator or his designee.

All capital improvement projects expected to cost in excess of \$250,000 using funds not previously appropriated for that purpose must be approved by the Borough Assembly after consideration by the service area board. All capital improvement projects costing less than \$500,000 using funds previously appropriated by the Borough Assembly for such purpose do not require additional assembly approval. All such purchases shall be reported to the service area board and the assembly within one month of the expenditure. All capital improvement projects costing more than \$500,000 must be separately approved by the assembly, whether or not funds have previously been appropriated.

All equipment purchases, whether for capital equipment or other equipment, costing in excess of \$250,000 using funds not previously appropriated for that purpose must be considered by the Service Area Board and approved by the Borough Assembly. Equipment purchases costing less than \$500,000 using funds previously appropriated by the Borough Assembly for such purpose do not require additional assembly approval. All such purchases shall be reported to the service area board and the assembly within one month of the expenditure. All equipment purchases costing more than \$500,000 must be separately approved by the assembly, whether or not funds have previously been appropriated.

Further, all facility improvement/expansion projects shall be completed under the management of the borough capital projects director or CPGH, Inc. personnel, as determined by mutual agreement of the parties. If the parties cannot agree, then the determination will be made by the borough capital projects director.

c. At the termination of this agreement, the Borough will retain ownership of all equipment, property, improvements, fixtures and capital improvements described herein.

13. FINANCES.

a. Operating Revenue. During the term of this agreement, all revenue and cash collections from patients, third-party payers, including, but not limited to,

Medicaid and Medicare, and all other sources billed and collected by CPGH, Inc., and arising out of or related to services rendered during the term of this agreement, or any renewal or extensions thereto, shall first be used by Lessee/Operator to pay the usual and customary expenses of operating the Medical Facilities leased and programs operated by CPGH, Inc. for the Service Area pursuant to this agreement, and the expenses of compliance with the terms and conditions of this agreement. CPGH, Inc. shall maintain an operating reserve of not more than ninety (90) days cash on hand (“the operating reserve amount”). For purposes of the operating reserve amount, “cash on hand” is calculated based on the “days cash on hand ratio” used in the health care industry. On a quarterly basis, CPGH, Inc. shall transfer all accumulated revenues in excess of the operating reserve amount to the paragraph 13(b) fund. If accumulated revenues are less than the operating reserve amount at any time, then CPGH, Inc. may transfer an amount from the paragraph 13(b) fund to its operating reserve to maintain the operating reserve amount, by CPGH, Inc. Board action. The plant, replacement and expansion fund shall continue to be invested with borough funds provided that the interest earned on that fund will remain with the fund.

b. Plant, Replacement and Expansion Fund. CPGH, Inc. shall maintain a fund designated as a source of funds for major repairs, for replacement of Medical Facilities, improvements, fixtures, and equipment, for acquisition of new Hospital property, improvements, fixtures and equipment, and to replenish the operating reserves, as provided in paragraph 13(a), above. Except for purposes of replenishing the operating reserve and capital items approved by the Borough Assembly, CPGH, Inc. shall not spend or transfer funds in excess of \$250,000 per item from this designated fund without the prior approval of the Borough Assembly by ordinance. Any transfer in or out of this fund shall be approved by the CPGH, Inc. Board.

c. State of Alaska Grants or Revenue. With the assistance of CPGH, Inc. the Borough shall apply, on an annual basis, to the State of Alaska for state aid to municipalities for hospitals and skilled nursing facilities, and state municipal assistance funds or grants, and may pay over any such funds received for the use and benefit of the Service Area to CPGH, Inc.

d. Service Area Revenues. Service Area Revenues shall be used to support operations of the service area, including operational and capital support of Medical Facilities and programs operated by CPGH, Inc. for the Service Area, and other services and projects approved by the assembly, subject to the appropriation and availability of funds.

e. Debt Service. The Borough, or Service Area, shall be ultimately obligated to pay debt service due on any debt issued to finance the acquisition of more medical facilities, expansions of medical facilities, and equipment, to the extent such debt is authorized by the Borough Assembly or its designee. For purposes of this agreement, capital leases shall be considered debt obligations if they obligate the

Borough, the Service Area, or CPGH, Inc. for such debt entered pursuant to its performance of this agreement, for more than a one year period, and are in excess of \$250,000. The Lessee/Operator must receive authorization from the Borough Assembly or its designee prior to entering into any such debt obligation. This paragraph applies to both operating and capital leases as well as other debt incurred by CPGH, Inc. to finance the acquisitions described above in this subparagraph.

f. Cash Management. All cash reserves in excess of the ninety (90) cash on hand described in paragraph 13(a) shall be deposited and managed pursuant to the parties' Memorandum of Agreement dated September 18, 2001, or successor agreement, a copy of which is attached hereto and incorporated herein by reference.

14. OTHER REVENUE.

a. Gifts. In the event that contributions of money or property are made to the Lessee/Operator for the purchase of equipment or other articles specifically for use or location within the Service Area, the Lessee/Operator may accept such gifts on behalf of the Borough, and the Lessee/Operator shall comply with the wishes of the donor insofar as they are compatible with the operation of the Medical Facilities or programs operated by CPGH, Inc. for the Service Area. Any expenditure in excess of \$250,000 per item from a gift requires the approval of the Borough Assembly, and must be purchased in accordance with borough purchasing code requirements. Lessee/Operator shall obtain approval from the borough contract administrator before accepting any gifts other than cash for use on behalf of the service area projects managed by Lessee/Operator. It is agreed and understood that any gifts or charitable contributions received from Central Peninsula Health Foundation must be used or expended in accordance with donor's intent, and are not the property of CPGH, Inc. upon termination of this Agreement unless consistent with donor's intent. This subparagraph does not apply to governmental grants or other governmental financial assistance.

b. Grants or Financial Assistance from Other Governmental Agencies. The parties agree that in the event the Borough has received or makes application for and receives financial assistance or grants of operating or capital funds from any government agency for Service Area activities administered by CPGH, Inc., other than state aid to municipalities for hospitals or for skilled nursing facilities or municipal assistance, the Lessee/Operator will abide by and fulfill the applicable operational assurances given by the Borough in its application for such financial assistance or grant; provided, however, that all applications for financial assistance or grants shall be approved by the Lessee/Operator before the submission thereof to a government or governmental agency. If CPGH, Inc. materially breaches the terms of the grant agreement, the Borough in its sole discretion may determine such breach to be a material breach of this Agreement.

15. SERVICE AREA BUDGET.

a. CPGH, Inc. Budget Proposal. CPGH, Inc. shall prepare and submit a proposal to the SAB and the Borough administration containing anticipated funding needs from service area funds for the medical facilities and programs operated by CPGH, Inc. for the Service Area.

The Borough shall notify CPGH, Inc. in advance of the dates when the CPGH, Inc. budget must be submitted to the service area board and the administration. CPGH, Inc. shall assist as requested by the borough mayor in presenting the budget to the administration and assembly.

b. Service Area Budget Proposal. The Service Area Board shall prepare and submit a proposal to the Borough administration for the annual Service Area budget, including debt service payment on Hospital, Heritage Place or other Service Area property and equipment, property insurance, audit fees, and operating expenses of compliance with the Borough's duties under this agreement. CPGH, Inc. may provide assistance at the request of the SAB. The SAB budget shall give preference to anticipated funding needs for the medical facilities and programs operated by CPGH, Inc. for the Service Area pursuant to this contract. This shall include repairs, renovations or additions to those facilities. It is recognized that the Service Area Board budget proposal may not necessarily include all items recommended by CPGH, Inc. and visa versa.

c. Service Area Final Budget. The Borough Administration shall review the Service Area operating and capital budget proposals, and adopt a Service Area budget, designating revenues available to fund Service Area capital expenditures and operations, and the mill rate necessary to fund the Service Area's portion of the budget. Subject to assembly approval and the availability of funds, funding shall be provided by appropriation with preference for the operational and capital requirements of those facilities operated by CPGH, Inc. as needed to ensure continued viable operations and the desired level of local public medical services, and the programs operated by CPGH, Inc. for the Service Area, considering the cost of such services.

16. ACCOUNTING/AUDIT/REPORTING.

a. Accounting. CPGH, Inc. shall account for all financial transactions involving Service Area funds and all other funds received from the operation of, or to operate, the Medical Facilities and programs operated by CPGH, Inc. for the Service Area. Both parties shall maintain accounting records involving Service Area operations in a manner that complies with generally accepted accounting principles.

b. Investment of Funds. Investment of funds received must meet the requirements established by KP.B 5.10, "Investment of Moneys," and any policies adopted pursuant to it.

c. Audit. The Borough shall perform annual audits of the Hospital operations, at its expense, to comply with single audit requirements and to incorporate into the Borough's financial statements, through an independent auditing firm selected by the Borough. The auditing firm shall submit written annual audit reports to the CPGH, Inc. Board of Directors and the Service Area Board, and shall make a verbal presentation to the CPGH, Inc. Board of Directors. CPGH, Inc. shall invite the SAB members to attend the presentation.

d. Chief Executive Officer or Management Contract. CPGH, Inc. shall hire a chief executive officer or shall enter into a contract for the management of the Hospital and Heritage Place. The term of any such employment or management contract shall not exceed the term of this agreement, unless the contract contains a clause which terminates the contract if and when this Agreement is terminated, and not extended or renewed. A copy of the Management Contract or Employment Contract shall be provided to the borough contract administrator immediately upon its execution.

17. RATES. CPGH, Inc., shall have the exclusive right to establish rates, fees and charges for services provided at medical facilities administered by CPGH, Inc. CPGH, Inc. will use its best efforts to ensure that the rates, fees and charges it has established will cover the operating expenses of the Medical Facilities and CPGH, Inc.'s other obligations under this agreement.

18. INSURANCE.

a. Lessee/Operator's Insurance. During the term of this agreement the Lessee/Operator, at all times, shall maintain, provide and submit proof of the following insurance coverage, in amounts approved by the Borough:

- i. Workers' compensation insurance coverage as required by Alaska law;
- ii. Comprehensive general liability insurance for the Medical Facilities and operations provided by CPGH, Inc. pursuant to this agreement;
- iii. Medical malpractice or errors and omissions by CPGH, Inc. and its employees; and
- iv. Officers and directors liability insurance.

CPGH, Inc. may purchase additional insurance coverage that it deems to be appropriate to insure the management and operation of the Medical Facilities and

other services provided by CPGH, Inc., after receiving written approval from the Borough Contract Administrator, which approval shall not be unreasonably withheld.

Unless otherwise agreed, the Borough shall be named as an additional insured on all policies.

b. **Borough Insurance.** During the term of this agreement the Borough shall, at all times, maintain and provide fire and property damage insurance in amounts sufficient to replace the leased property and contents. The Lessee/Operator must provide an updated schedule of all Borough property and contents located in or on the Medical Facilities, when requested by the Borough.

c. **Notice of Claims.** Each party shall immediately notify the other party to this agreement of any lawsuits or claims asserted against CPGH, Inc., any of the Medical Facilities or the Borough, related to operations of CPGH, Inc. under this agreement or of any potential claims that may be asserted.

d. **Extended Reporting Period or Tail Coverage.** Except as otherwise provided below, the Borough shall obtain, carry and maintain tail or extended reporting period coverage for all types of insurance coverage obtained pursuant to paragraph 18(a) of this agreement, effective as of the date of termination of this agreement, in the same amounts as or more than existing coverage at the time of termination for the named insured's. The Borough is not required to obtain such tail or extended reporting period coverage for workers' compensation insurance or for other coverage obtained on a per occurrence basis. CPGH, Inc. and all of its directors who served as directors during the term of this agreement shall be named insured's. The Borough may contract with a subsequent operator of the hospital and Heritage Place to provide such tail or extended reporting period coverage through operating revenues of the hospital and Heritage Place, or may authorize CPGH, Inc. to provide such tail or extended reporting period coverage through operating revenues of the hospital and Heritage Place.

19. **RISK MANAGEMENT.** The Lessee/Operator shall establish a program of training and loss prevention designed to maintain high quality medical care in the Medical Facilities operated by CPGH, Inc. and to prevent unnecessary expense from liability.

20. **DESTRUCTION OF THE PREMISES.** In the event of damage to, or destruction of all or part of the leased property, the Lessee/Operator shall have authority to make such arrangements as reasonably necessary to continue to operate the Hospital or Heritage Place or provide the services it was providing, provided that no more than \$500,000 is spent and a full report of all such expenses shall be made at the next regular assembly meeting occurring more than two weeks after the event. In such event, the Lessee/Operator shall have authority to suspend or reduce services it determines cannot be provided until such time, if any, building, repair or replacement

of the Hospital facility or the Heritage Place facility or other facilities has been completed. Lessee/Operator shall immediately notify the Borough of any suspension or reduction in services as a result of damage or destruction.

21. LEVEL OF SERVICES AND OTHER BUSINESS ACTIVITIES.

a. Existing Level of Services. The parties acknowledge that the existing scope and level of services at the Medical Facilities are approved and consented to by both parties.

b. Expansion of Services/New Services. The parties agree that Lessee/Operator may provide for expanded or new Service Area health services at the Medical Facilities, in accordance with powers authorized for the Service Area pursuant to the KPB Code of Ordinances, as now enacted or as may be amended, including but not limited to joint ventures, or ownership participation or management participation in other health care services, and other business arrangements with other health care providers and businesses. The Lessee/Operator shall give the borough contract administrator prior notice of new or expanded services that have an expected total capital cost in excess of \$250,000 on an annual basis. Notice may be provided orally unless the borough contract administrator requests written confirmation thereof, provided, however, that the parties will first consider and discuss the potential adverse competitive impacts of premature public disclosure on such new or expanded services. Service area board consideration and assembly approval shall be required to the extent it would otherwise be required in this agreement. Expansion of services or new services do not include changes in the method of delivering existing services or the use of new technology or techniques to provide those services even if this may involve additional personnel or training or enhancement of current capabilities to meet standards for proper patient care, or changes required to meet basic accreditation standards and licensing for the hospital. Any change in the level or type of services provided shall be included in the next quarterly report regardless of the cost.

c. Elimination of Services. The Lessee/Operator may eliminate services or levels of care being provided at the Medical Facilities or otherwise pursuant to this agreement, but only after 60 days prior written notice to the Borough. The Borough may then direct that the Lessee/Operator continue to provide such services or level of care, if deemed in the best interest of the residents of the Service Area, even when not economically feasible; however, if the Borough decides to continue an economically unfeasible service or level of care, it shall consider providing an operating subsidy to the Lessee/Operator equivalent to at least the loss associated with providing such service or level of care; however, if the Borough decides not to provide any such operating subsidy, then CPGH, Inc. is not obligated to provide such services or level of care.

d. Disclosure of Other CPGH, Inc. Business. In the event that CPGH, Inc. engages in other business activities unrelated to the activities required or

authorized by this agreement, CPGH, Inc. shall notify the Borough Contract Administrator of the nature and extent of such other business activities, including upon request a disclosure of financial reports reflecting revenues and expenses, so that the Borough Contract Administrator may determine that they do not conflict with this agreement, or otherwise impair either parties' rights or obligations under this agreement. It is agreed that records of such other business activities are not public records. Disclosure to the contract administrator of records under this provision shall not be deemed to convert such records to public records, to the extent allowed by law. In no case will the assets generated or provided through this agreement be used to capitalize or otherwise fund any activities of CPGH, Inc. conducted outside the scope of this agreement.

22. APPOINTMENTS TO THE MEDICAL STAFF. CPGH, Inc. shall establish written policies for privilege to practice in the Hospital, Heritage Place or other facility in which application for privilege to practice is required. These written policies must prohibit discrimination against applicants on the basis of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood, or any other classification prohibited by law. The language in this paragraph does not prohibit CPGH, Inc. from entering into an exclusive contract for the professional services of a specialist, or to require health care providers to be CPGH, Inc. employees rather than independent contractors, if CPGH, Inc. deems there to be business justification for the exclusive contract or employment model or relationship.

23. NONDISCRIMINATION IN ADMISSIONS. All persons in need of medical care shall be admitted to the appropriate Medical Facilities without regard to race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, or the financial ability to pay for such medical care to the extent required by law.

24. MEDICAL RECORDS. During the term of this agreement, Lessee/Operator shall have the full use and control of all medical records, and shall be responsible for the complying with all applicable federal and state laws regarding the maintenance, security and privacy thereof. Medical records shall remain on the Hospital premises, the Heritage Place premises or other facility under the supervision and control of the Lessee/Operator so long as it is the Operator as provided for in this agreement; provided, however, that CPGH, Inc. may make arrangements for electronic storage and back up of electronic records. If the Lessee/Operator ceases at any time to be the Operator as provided for herein, the Borough shall reacquire the full use and control of such medical records, and shall be required to preserve the same for such period of time as is required by Alaska or Federal laws, but, in any event, a minimum of five (5) years following the date on which the Lessee/Operator ceases to be the Operator. After the Lessee/Operator ceases to be the Operator and so long as such medical records are preserved by the Borough as required above, the Lessee/Operator shall at all times be provided free and complete access to such medical records and

may copy all or any part of the same, and may maintain electronic records, for such purposes as are consistent with its prior duties and responsibilities as the Lessee/Operator and in connection with any investigation or litigation in which the Lessee/Operator may be involved or may become involved.

25. OTHER GOVERNMENTAL ACCESS TO BOOKS AND RECORDS.

In order to assure that any expense which might be incurred by or on behalf of the Hospital, Heritage Place or other authorized Service Area activity administered by CPGH, Inc. pursuant to this Agreement is included to the extent appropriate in determining the reasonable costs incurred by Medicare and Medicaid programs, or other similar governmental programs, both parties shall retain and make available upon request for a period of four (4) years after the furnishing of such services as are described in this contract, the contract, books, documents, and records which are necessary to certify the nature and extent of the services provided and the cost thereof when requested by the Secretary of Health and Human Services, Department of Health and Human Services (“D.H.H.S.”) of the United States, or the Comptroller General of the United States, or the Commissioner, Department of Health and Social Services (“D.H.S.S.”), State of Alaska, or any of their duly authorized representatives. CPGH, Inc. also agrees that if it subcontracts for any of the duties under this Agreement with a related organization at a value or cost of \$10,000.00 or more over a 12-month period, the subcontract shall contain a clause to the effect that the related organization must make available, upon written request to D.H.H.S., to the Comptroller General, to D.H.S.S., and to their duly authorized representatives, the subcontract, and the books, documents, and records of the related organization that are necessary to verify the nature and extent of the services provided and the costs thereof for a period of four years after the services have been furnished or costs have been incurred under the subcontract. These terms relating to the above retention and production of documents are included because of the possible application of Section 1861(v)(1)(I) of the Social Security Act to this Agreement; if this should be found to be inapplicable, then these terms shall be deemed to be inoperative and without force and effect.

26. PUBLIC ACCESS. Recognizing that CPGH, Inc. is operating publicly owned facilities under this agreement, CPGH, Inc. shall make all meetings of its board of directors open to the public, and copies of non-confidential board materials shall be made available to the public at or before the meeting, unless the subject matter under discussion involves privileged or confidential information. Nothing in this section shall be construed as affecting the status of CPGH, Inc. as a §501(c)(3) non-profit, private corporation or bringing CPGH, Inc. within the scope of the Alaska Open Meetings Act, AS 44.62.310-.312.

a. Privileged or Confidential Information. As used herein, the term “privileged or confidential information” means the following records or information in the possession of CPGH, Inc.:

- i. Medical records, patient information and patient billing files, except patient information that may be disclosed without violating patient privacy rights;
- ii. Medical review organization information and records prepared and retained pursuant to AS 18.23.010 – 18.23.070;
- iii. Employee records and information including but not limited to background and reference checks, substance abuse tests, employee credit checks, employee grievances, employee disciplinary actions and workplace investigations;
- iv. Physician and other health-care provider records and information including but not limited to credentials and disciplinary files;
- v. Director records and information except the name, mailing address of each director, and term of office of each director;
- vi. Records and information regarding pending or threatened litigation by or against CPGH, Inc. or the Borough, the disclosure of which could adversely affect the finances or litigation strategy of CPGH, Inc., the Borough, the Hospital, Heritage Place or other leased facilities;
- vii. Records and information regarding the business plans of CPGH, Inc., the disclosure of which could be used by competitors or others to the detriment of CPGH, Inc., the Borough, the Hospital, Heritage Place or other leased facilities;
- viii. Information and records that pertain exclusively to CPGH, Inc. and not to activities performed pursuant to this agreement; and
- ix. All other records and information that CPGH, Inc. is required or permitted by applicable federal, state or local law to keep confidential.

Privileged or confidential information and records may be discussed by the CPGH, Inc. board of directors privately, in executive session. Nothing herein shall be deemed as precluding the CPGH, Inc. board of directors from holding private work sessions, training sessions and informational meetings at which no board action is taken.

b. Board of Director Meetings. It is agreed and understood that prior to final board action on any matter referred to a board committee, the board will fully disclose either verbally or in the text of a resolution, at the discretion of the board, the substance of committee consideration of the matter, except for any of the above-

referenced confidential matters. The parties further agree that the board's executive committee has authority to take action on behalf of CPGH, Inc. in between regular Board meetings to the extent allowed by law and CPGH, Inc.'s Bylaws. All such final actions that are not required or permitted to be kept confidential shall be disclosed to the board in a public meeting of the board.

c. Public Comment. Members of the public who wish to comment upon policies or proposed actions of the CPGH, Inc. board of directors shall be given a reasonable opportunity to do so, during the "Public Comment" section of the regular Board meeting open to the public, before final action is taken and after applicable information concerning the matter, if any, has been made available to the public.

d. Notice of Meetings and Agenda. The proposed agenda of all regular and special meetings of the CPGH, Inc. board of directors, including the date, time, place and proposed agenda of the meeting, shall be posted on the public bulletin board of the Hospital and Heritage Place and a copy made available for posting by the Borough Clerk at least forty-eight (48) hours prior to the time set for the meeting. Should an emergency or other bona fide issue requiring immediate attention arise, a special meeting may be held with notice posted for less than the forty-eight (48) hours otherwise required by this section.

e. Meetings Unrelated to This Agreement. Nothing in this provision shall be construed to require meetings of the CPGH, Inc. Board of Directors to be open to the public or to the Borough Contract Administrator when the subject matter discussed is not related to this agreement.

f. Records. It is further agreed and understood that records of the Medical Facilities managed and operated by CPGH, Inc. pursuant to this agreement are subject to the Public Records Act, AS 40.25.100 – 40.25.220 and to KPB 2.54.010 – 2.54.070, including all requirements and exceptions contained therein or listed above, because of its status as an independent contractor of the borough. Nothing in this section shall be construed to compel public disclosure of internal CPGH, Inc. documents not related to the management and operation of the Hospital and other leased facilities, nor shall CPGH, Inc. be deemed a public entity or quasi-public corporation unless required by law.

27. EMPLOYEES AND CONTRACTORS. Lessee/Operator is an independent business and is not an employee or agent of the Borough, either by virtue of this agreement or otherwise. Lessee/Operator's activities conducted in the Medical Facilities leased in this agreement are the activities of the Lessee/Operator as an independent contractor, and not that of the Borough or the Service Area. Lessee/Operator has the exclusive authority to hire and fire employees of the Medical Facilities administered by CPGH, Inc., and such employees are the employees of the Lessee/Operator and not the Borough or Service Area. Lessee/Operator shall in no transaction or endeavor make any representation that it has authority to act for the

Borough in any capacity or that it has authority to bind the Borough in any manner through its actions. The Lessee/Operator shall not advertise or hold out its activities under this agreement as being an operation of the Borough. The decisions and actions permitted and authorized under this lease and operating agreement are those of Lessee/Operator and not those of the Borough or the Service Area. The restrictions in this agreement on Lessee/Operator's activities are imposed for the protection of the public funds contributed by the Borough as provided in this agreement.

28. INSPECTION. The Borough reserves the right to enter and inspect the books and records of the Hospital, Heritage Place, the leased premises, and any other authorized Service Area activity or facility operated by CPGH, Inc. at any reasonable time during normal business hours for administrative personnel, for the purpose of ensuring compliance with this agreement and determining the adequacy of the maintenance, upkeep and repair of the Borough's property, and any other matters relating to this agreement. This does not authorize the borough to inspect medical, personnel or other records legally considered confidential without other authorization.

29. ASSIGNMENT AND SUBLEASING. The Lessee/Operator shall not have any power to assign its rights or interests under this agreement without the prior approval of the Borough. The Lessee/Operator may not lease or sublease all or any part of the property it manages and operates, unless the Borough first approves such lease or sublease, and such lease or sublease is in furtherance of the purposes of this agreement.

30. AMENDMENT. The parties may amend any term in this agreement by written agreement signed by both parties subject to approval by the assembly by resolution.

31. GOOD FAITH AND FAIR DEALING. The respective contract administrators for the parties will interpret the provisions of this agreement in good faith. The parties will act in accordance with good faith and fair dealing in carrying out their obligations under this agreement.

32. BREACH AND REMEDIES.

a. By Lessor. If the Borough breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from CPGH, Inc., CPGH, Inc. may terminate this lease.

b. By Lessee/Operator. If CPGH, Inc. breaches this agreement by failing to comply with any of the terms and conditions herein, and has not cured the breach within sixty (60) days of receipt of written notice thereof from the Borough, the Borough may terminate this lease.

33. **TERMINATION.** Either of the parties hereto may for the reasons hereinafter set forth in this paragraph terminate this agreement by giving the other party ninety (90) days' prior notice in writing, sent by certified mail, return receipt requested, or personally delivered. Grounds for such termination are:

a. A breach of any of the terms and conditions herein contained when such breach is not remedied as herein provided; or

b. When and if either party, because of conditions beyond its control, is unable to obtain or retain medical doctors to adequately staff the Medical Facilities administered by CPGH, Inc. either directly or through a contract; or

c. When either party requests a modification of the terms hereof necessary to relieve it from financial loss in the proper conduct, operation and management of the Medical Facilities, and is unable to obtain the consent of the other party to a reasonable change or modification sufficient to alleviate such condition; or

d. If the Borough Contract Administrator becomes dissatisfied with the performance or results of CPGH, Inc.'s operation of any of the Medical Facilities or services provided pursuant to this contract, the Borough Contract Administrator may issue a written notice describing the problem and requesting it be remedied. If the Borough Contract Administrator determines that CPGH, Inc. has failed to take reasonable action to remedy the problem within 60 days of the written notice, this failure constitutes cause and the Borough may terminate this agreement. Assembly approval by resolution shall be required to terminate this agreement.

34. **SURRENDER ON TERMINATION.** The Lessee/Operator, upon termination of this agreement pursuant to the provisions hereof, shall quit, surrender and return to the Borough all of the property of the Borough in as good a state and condition that such property was in on the effective date of this agreement, normal wear excepted.

35. **FINAL ACCOUNTING.** Upon termination of this agreement for any reason there shall be complete accounting and final payment and settlement of accounts within ninety (90) days following the submission of the accounting report covering the full year of operation by the Lessee/Operator.

36. **SEVERABILITY.** No provision of this operating agreement shall be effective which is in violation of any state or federal law or regulation or agreement heretofore entered into between the Borough and any state or federal agency, relating to the use or operation of the Medical Facilities administered by CPGH, Inc.; provided, however, if one or more provisions of this agreement are hereinafter determined to be invalid and unenforceable, this shall not operate to defeat or invalidate the remainder of the agreement unless the lack of enforceability or invalidity has the effect of

substantially changing the terms and conditions of this agreement or operates in such a manner as to invalidate or defeat the primary purpose or objectives of this agreement.

37. **SUCCESSORS AND ASSIGNS BOUND.** The covenants and conditions herein contained shall apply to bind the successors and assigns of the parties hereto.

38. **TIME OF THE ESSENCE.** Time is declared to be of the essence in this agreement and each and every term and provision hereof.

39. **WAIVER.** The waiver by a party hereto of any term covenant or condition herein contained shall not be deemed to be a waiver of such term, condition, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

40. **VENUE.** Any suit regarding enforcement or application of this agreement shall be filed and prosecuted in Kenai venue district, Third Judicial District, State of Alaska.

41. **NO RIGHTS CONFERRED.** Nothing in this agreement shall be construed to confer any right or cause of action or suit, either at law or in equity, upon any person, group of persons, firm, corporation or public officer, other than the parties signing this contract, and the Lessee/Operator shall have no authority to bind the Borough or create any liability on the Borough's part, unless expressly authorized in this agreement.

42. **NON-COMPETITION.** The parties understand and agree that, except as authorized by the borough assembly after consideration by the service area board, CPGH, Inc. and any successor organization shall not engage in any activities that compete with hospital service area activities within the boundaries of the service area during the term of this agreement, any extension thereof, and for a period of two years from the date the agreement is terminated. Borough assembly authorization of such activities may be in the form of a resolution unless an ordinance is otherwise required by law, and may be considered granted if the assembly appropriates funds for such an activity. The parties agree that all activities performed by CPGH, Inc. as of the date of execution of this agreement are approved under this provision.

Nothing herein shall be deemed as precluding any person who serves or served as an officer or director of CPGH, Inc. from engaging in the practice of medicine or other healthcare-related endeavors. However, no such person may use any "privileged or confidential information" whatsoever gained from their involvement with CPGH, Inc. as an officer or director, to compete with CPGH, Inc. or CKPHSA activities while serving as an officer or director, or for a period of two years from the date the person ends their service as an officer or director of CPGH, Inc., within the boundaries of the service area. "Privileged or confidential information" has the meaning defined in § 26

PUBLIC ACCESS ¶a Privileged or confidential information, above. Any information in the public domain or that becomes part of the public domain as a public record, pursuant to § 26 **PUBLIC ACCESS ¶f Records**, above, is not “privileged or confidential information.”

43. **CONTRACT ADMINISTRATION.** The Borough Mayor is the Borough Contract Administrator under this agreement. The President of CPGH, Inc. is the administrator of this agreement on behalf of CPGH, Inc.

44. **INTEGRATION.** This agreement constitutes the entire agreement between the parties. This Agreement supersedes all previous communications, memoranda, correspondence, proposals, understandings, agreements and contracts, both verbal and written, between these parties. Both parties specifically acknowledge that, in entering into and executing this agreement, they rely solely upon the representations and agreements contained in this agreement and no others. No oral statements or prior written material not specifically incorporated herein shall be recognized by either party or bind either party unless incorporated herein by amendment, such amendment to become effective on the date stipulated in such amendment. Further, this agreement may not be enlarged, modified, amended, supplemented, or altered except by amendment pursuant to this agreement.

KENAI PENINSULA BOROUGH

CENTRAL PENINSULA GENERAL HOSPITAL, INC.

By: _____
HONORABLE JOHN WILLIAMS
Its: Mayor
Date: _____

By: _____
LORETTA R. FLANDERS
Its: President, Board of Directors
Date: _____

Approved by KPB Ord. _____
Date: _____

Approved by Board Res. _____
Date: _____

ATTEST:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Borough Clerk

By: _____
Borough Attorney