

## FACILITY LEASE AGREEMENT

THIS LEASE AGREEMENT (“**Facility Lease**”) is made effective as of the \_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”), between the CITY AND BOROUGH OF SITKA, ALASKA, a home rule municipality organized under the laws of the State of Alaska (“**Lessor**”), and SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM, a non-profit corporation organized under the laws of the State of Alaska and a tribal organization comprised of federally-recognized Alaska Native tribes (“**Lessee**”).

### **I. RECITALS**

A. Lessor is the owner of certain real property, buildings, improvements and fixtures currently operated by Lessor as the Sitka Community Hospital and related healthcare facilities (collectively, the “**Hospital**”) comprised of two buildings (each, a “**Building**”) located on four lots with addresses of 209 Moller Avenue, 302 Gavan Street, 202 Brady Street and 204 Brady Street, Sitka, Alaska 99835 (collectively, the “**SCH Hospital Facility**” and the “**Premises**”). The land on which the Premises is located is legally described on Exhibit A attached hereto (the “**Land**”) and is depicted on Exhibit A-1 attached hereto.

B. Lessor and Lessee have entered into that certain Asset Purchase Agreement dated [\_\_\_\_\_], 2019 (the “**APA**”), pursuant to which, *inter alia*, Lessee will acquire certain assets owned and used by Lessor in connection with the operation of the Hospital and will provide certain expanded health care services in the City and Borough of Sitka, in accordance with the terms of the APA.

C. In furtherance of the foregoing, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Premises, on the terms and conditions set forth in this Facility Lease.

### **II. AGREEMENT**

Based upon the foregoing Recitals which are incorporated herein by reference, and for good and valuable consideration the amount and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows.

#### **1. PROPERTY**

1.1. Premises. Lessor leases to Lessee, and Lessee leases from Lessor, the Premises for the term, the Rent (as defined in Section 3.5), and subject to the terms, covenants and conditions hereinafter provided. This Facility Lease does not include any personal property purchased by Lessee from Lessor pursuant to the terms of the APA. Notwithstanding anything to the contrary herein, Lessee may at any time, upon thirty (30) days prior written notice to Lessor, surrender any portion of the Premises, which may include one or more full Buildings, not actually used by Lessee and not necessary for the provision of services required to be provided by Lessee at the SCH Hospital Facility pursuant to the terms of the APA (any such surrendered premises, the “**Surrendered Premises**”). Any Surrendered Premises shall be surrendered by Lessee to Lessor

in the condition required under Section 2.3 below and shall be securely shut off from the remainder of the Premises. Upon the surrender of any Surrendered Premises pursuant to this Section 1.1, the Surrendered Premises shall no longer be included in the definition of Premises for purposes of this Facility Lease, and Lessee shall have no further obligations with respect thereto, except those obligations hereunder that expressly survive the expiration of the Term or the termination of this Facility Lease. No surrender of any Surrendered Premises shall affect Fixed Rent payable by Lessee pursuant to Section 3 below.

1.2. Quiet Enjoyment. Lessor covenants and agrees that Lessee, upon paying the Rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Facility Lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this Facility Lease without hindrance or molestation from Lessor or anyone claiming by, through or under Lessor.

1.3. Premises Condition. Except as otherwise provided in this Facility Lease, Lessee acknowledges that the Premises will be delivered in their "as is" condition, without any representations or warranties of any kind or nature whatsoever by Lessor. Further, Lessee acknowledges that it has examined the Premises, and knows the condition thereof, and accepts the Premises in its present condition, subject to the completion of Lessor's Work (as defined below), without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy that may be made of them, except as otherwise provided in this Facility Lease. Without limiting the foregoing:

1.3.1. Without implying any representation or warranty, Lessor hereby notifies Lessee that there exists material deferred maintenance with respect to the Premises and building systems as listed in Exhibit B, which is attached to and made a part of this Facility Lease.

1.3.2. Lessor hereby represents and warrants to Lessee that, to the best knowledge of Lessor, except as set forth in Exhibit C, which is attached to and made a part of this Facility Lease, within the twelve months immediately preceding the Effective Date, Lessor has neither given nor received from any other Governmental Authority any written notice that the Premises is not in compliance with all applicable Laws, and Lessor has neither given nor received from any other Governmental Authority any written notice that the buildings, structures, other improvements and fixtures comprising the Premises, and the operations of the Business (as defined in the APA) conducted at the Premises do not conform to all applicable laws.

1.4. Lessor Repairs. Notwithstanding anything to the contrary in this Facility Lease, including without limitation, Section 1.3 above, Lessor hereby agrees to repair those conditions set forth on Exhibit D (collectively, the "**Lessor's Work**"), which is attached to and made a part of this Facility Lease, on or prior to the Effective Time (as defined in Section 1.5(a) of the APA). Lessor's Work shall be performed in a good and workmanlike manner, using new materials and in compliance with all applicable laws, codes and regulations.

1.5. Common Areas. The parking areas, landscaped areas and other portions of the Land not included in the Premises are referred to herein as the “**Common Areas**.” So long as Lessee is the sole tenant of the Buildings, Lessee shall have exclusive use, for the benefit of employees, patients, visitors, agents, contractors and other users of the Premises in connection with the conduct of Business therein, of the Common Areas, including the right (consistent with applicable laws) to impose reasonable rules and regulations relating to the use thereof, and to arrange for the towing or removal of vehicles that are abandoned or parked illegally or in violation of such applicable rules and regulations. If at any time, following the surrender of any Surrendered Premises, there exists any other tenant of any portion of the Buildings, Lessee’s use of the Common Areas shall be non-exclusive and in common with other tenants of the Buildings, and subject to such reasonable rules and regulations as Lessor may from time to time impose, so long as such rules and regulations do not interfere with the conduct of the Business by Lessee and are enforced against all tenants of the Buildings in a non-discriminatory manner.

1.6. No Subsurface Rights. This Facility Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Premises as stated in this Facility Lease. Lessor makes no warranty or representation as to whether the Premises is subject to, open or closed to mineral claims or leases under state or federal law.

## **2. TERM**

2.1. Facility Lease Term. The initial term of this Facility Lease (the “**Term**”) shall begin on the Effective Time and end on the earlier to occur of (a) 60 days following the date on which Lessee delivers Notice (as defined in the APA) to Lessor that all services provided by Lessee at the SCH Hospital Facility have been transferred elsewhere in accordance with the terms of the APA, (b) the five-year anniversary of the Effective Time or (c) as earlier terminated in accordance with the terms of this Facility Lease.

2.2. Hold-over. If Lessee holds-over in possession of the Premises after the expiration of the Term, such tenancy shall be from month-to-month, subject to all the terms, covenants and conditions of this Facility Lease, except that the rent payable under this Facility Lease shall be established at an amount that represents the then-fair market rental value of the Premises as determined by an appraiser selected by Lessor and reasonably acceptable to Lessee. In the event this Section 2.2 applies, the Facility Lease may be terminated by either Lessor or Lessee upon 30 days’ written notice to the other party.

2.3. Surrender of Possession. Upon expiration of the Term or upon the earlier termination of this Facility Lease, Lessee shall promptly and peaceably vacate and surrender the Premises, and all buildings and improvements thereon (to the extent not previously removed by Lessee as permitted hereunder), in their then-current as-is, where-is and with-all-faults condition, subject only to the express maintenance and repair obligations of Lessee under this Facility Lease.

## **3. RENT, TAXES, ASSESSMENTS AND UTILITIES**

3.1. Rent. Lessor and Lessee acknowledge and agree that the lease of the SCH Hospital Facility by Lessor to Lessee pursuant to this Facility Lease is an integral part of a larger transaction described in detail in the APA. It is the express understanding of the parties that Lessor is leasing

the Premises to Lessee in consideration of the obligation and undertakings of Lessee hereunder and under the APA, including, without limitation, the obligation to operate the Business at the SCH Hospital Facility as and to the extent set forth herein and in the APA, and that such obligations and undertakings, together with the rent payable hereunder and the consideration paid by Lessee to Lessor under the APA, collectively represent good and valuable consideration for the lease of the Premises to Lessee. Pursuant to Section 1.6(c) of the APA, Lessor may elect one of three options for the payment by Lessee of the total consideration due to Lessor in connection with the transactions contemplated by the APA, and the election made by the Lessor will affect the rent payable by Lessee hereunder. Therefore, upon the making (or deemed making) of such election by Lessor in accordance with Section 1.6(c) of the APA, Lessor and Lessee shall initial below the rental option corresponding to the option selected (or deemed selected) by Lessor under the APA, and the provision so initialed below shall determine the fixed rent payable under this Facility Lease for the Term (the “**Fixed Rent**”):

_____ Lessor	_____ Lessee	If Lessor elects the option set forth in Section 1.6(c)(i) of the APA, then Lessee agrees to pay to Lessor, on or prior to the first day of each calendar month during the Term, Fixed Rent in the amount of \$11,666.66/month (\$140,000.00/year). If the Term begins on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then the Fixed Rent payable for such partial month shall be prorated based on the number of days in such month falling within the Term. The Fixed Rent payable hereunder shall not be subject to reset or escalation during the Term.
_____ Lessor	_____ Lessee	If Lessor elects the option set forth in Section 1.6(c)(ii) or elects (or is deemed to elect) the option set forth in Section 1.6(c)(iii) of the APA, then Lessee agrees to pay to Lessor, on or prior to the Effective Time, a one-time, prepaid Fixed Rental payment in the amount of \$1.00, which shall constitute the only Fixed Rent due and payable for the duration of the Term and any renewals thereof.

3.2. Taxes. Lessee shall be responsible to pay property taxes applicable to the Premises during the Term, subject to any exemption that may be available to Lessee under applicable law.

3.3. Assessments. Lessor represents and warrants to Lessee that there are no improvement districts or other special assessments levied against the Premises and Lessor will not levy any such assessments on the Premises during the Term. If any such assessments are levied against the Premises, such assessments shall be the sole obligation of Lessor.

3.4. Utility Charges. Lessee shall arrange for and pay or cause to be paid all charges for oil, electricity, natural gas, water, sewer, heat, cable, internet connections, telephone, snow removal, refuse removal and any and all other utilities or services used upon the Premises throughout the Term, regardless of whether the utility service is provided by the Lessor or another provider.

3.5. Additional Rent. All other amounts, if any, that Lessee agrees to pay Lessor under this Facility Lease shall, at Lessor's election, be treated as additional rent (and together with the Fixed Rent, is referred to as the "**Rent**"), and, in the event of nonpayment, Lessor shall have all rights and remedies provided in this Facility Lease in the case of nonpayment of Fixed Rent.

4. **USE.** Lessee shall use the Premises for the activities set out in Section 6.15(b) of the APA, for the provision of other healthcare services, and for ancillary administrative purposes (the "**Permitted Use**").

## 5. IMPROVEMENTS

5.1. Alterations and Additions. All improvements and alterations (collectively, "**Alterations**") to the Premises deemed by Lessee to be necessary or desirable in connection with the use of or the operation of the Business at the Premises shall be performed by Lessee at Lessee's sole cost and expenses in accordance with the provisions of this Facility Lease; provided, however, that prior to making any Material Alterations, Lessee shall obtain prior written permission from the City Administrator as described in Section 5.2 below for such Material Alterations. Without limiting the foregoing and subject to the requirements for Lessor's permission set forth in Section 5.2, Lessee may make such Alterations to the Premises as Lessee deems necessary in order to comply with Law or to meet operational or licensing standards applicable to the operation of the Business, or Lessee's use of the Premises, further provided that all such Alterations comply with applicable building codes. Lessee shall keep the Premises free from liens or encumbrances of any nature. Upon the termination of this Facility Lease, all such Alterations, with the exception of Lessee's Property as set forth in Section 6.1, shall remain in place and become the property of Lessor; provided, however, so long as no Event of Default (as defined in Section 14.1) exists hereunder and Lessee is not in default with respect to its obligations under the APA, Lessee may, at any time during the Term, remove any Alteration or fixture made to or installed in the Premises by Lessee for use at MEH, at the MEH Campus (as defined in the APA), or at any other medical facility operated by Lessee in the City and Borough of Sitka and any such Alteration or fixture shall become and thereafter remain the property of Lessee upon installation at MEH, the MEH Campus, or in such other medical facility.

5.2. Notice of and Plans for Construction. With respect to any Material Alteration (as defined below) of the Premises, Lessee shall give Lessor no less than thirty Business Days' (as defined in Section 15.5) written notice prior to the commencement of any Material Alteration, so that Lessor may, in Lessor's sole discretion, consider whether to (i) permit such Material Alteration or (ii) give notice of nonresponsibility pursuant to AS 34.35, as now enacted or hereafter amended. Notwithstanding the foregoing, no prior notice shall be required with respect to any Alteration deemed by either Party to present a "Life Safety Code" violation, as set forth in 2012 NFPA 101 Life Safety Code and the 2012 NFPA 99 Health Care Facilities Code (except chapters 7, 8, 12 and 13) and 7 AAC 12.900. Specifically, 7 AAC 12.900(b)(1), or to repair a condition that poses an imminent danger to the health and safety of employees, visitors or patients. Notwithstanding the foregoing, Lessee shall deliver written notice thereof to Lessor within five Business Days after completion of any such Alteration. Together with the notice required by this Section 5.2, Lessee will provide Lessor with pictures, plans or schematics relating to any Material Alteration proposed by Lessee on the Premises. For purposes hereof, a "**Material Alteration**" shall mean and include

(i) any new structure or expansion of an existing structure, (ii) any Alteration affecting the structure of the existing improvements at the Premises, or (iii) any Alteration anticipated to cost in excess of \$100,000.

5.3. Permits. Lessee shall be solely responsible for obtaining all necessary governmental permits and certificates for the performance of any Alteration. Barring extraordinary circumstances, Lessor anticipates that any permits that are within the control of Lessor will be issued within eight (8) weeks after Lessee submits its final application for the permits. Lessee shall be responsible for payment of all applicable permit fees. If any permits are required to address a “Life Safety Code” violation, as set forth in 2012 NFPA 101 Life Safety Code and the 2012 NFPA 99 Health Care Facilities Code (except chapters 7, 8, 12 and 13) and 7 AAC 12.900. Specifically, 7 AAC 12.900(b)(1), or to repair a condition that poses an imminent danger to the health and safety of employees, visitors or patients, Lessor shall, consistent with applicable laws, use its best efforts to expedite the review and issuance of applicable permits.

## 6. **PERSONAL PROPERTY**

6.1. Lessee’s Ownership of Personal Property. Any of Lessor’s furniture, fixtures, equipment, supplies, leasehold improvements and other tangible personal property located on or included in the Premises at the beginning of the Term (the “**Existing Personal Property**”) shall become Lessee’s property at the Effective Time, except as otherwise provided in the APA. All of Lessee’s movable trade fixtures, furniture, fixtures, equipment, supplies, leasehold improvements and other tangible personal property placed on or used at the Premises by Lessee (or any permitted sublessee or assignee) shall be and remain the property of Lessee, or such permitted sublessee or assignee, as applicable (collectively, “**Lessee’s Property**”). Lessee shall have the right to use, remove, replace or dispose of any Existing Personal Property at any time during the Term, which may include, without limitation, transferring any Existing Personal Property to MEH, to the MEH Campus, or to any other medical facility operated by Lessee. However, if during the Term, Lessee determines that any Existing Personal Property is not useful to Lessee and is not appropriate for re-sale, Lessee shall use reasonable efforts to offer such Existing Personal Property to such charities, social service agencies, citizens of Sitka, or others, as Lessee determines may be in the furtherance of Lessee’s goals of community support, local development and other charitable objectives. Any Existing Personal Property or Lessee Property not removed after thirty (30) days have passed after termination of this Facility Lease shall be deemed abandoned, and at Lessor's option, shall become the property of Lessor. Lessee shall reimburse Lessor for any costs of removing such Lessee’s Property or Existing Personal Property from the Premises if Lessor does not exercise such option.

## 7. **ASSIGNMENT AND SUBLETTING**

7.1. Assignment without Consent Generally Prohibited. Except as provided in Section 7.2, Lessee shall not voluntarily assign or encumber its interest in the Premises, or sublet all or any part of the Premises, without first obtaining Lessor’s written consent. Except as provided in Section 7.2, any assignment, encumbrance or sublease without Lessor’s consent shall be voidable and, at Lessor’s election, shall constitute an Event of Default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this Section 7.1.

Any assignment made pursuant to this Section 7.1 shall be effective only upon the assignee's assumption of Lessee's obligations hereunder pursuant to a written agreement in form and substance reasonably acceptable to Lessor.

7.2. Subletting; Licensing; Concessions. Notwithstanding the general prohibitions set forth in Section 7.1, Lessee may, without Lessor's consent, sublet, license, grant a concession with respect to, or otherwise permit occupancy of any portion of the Premises by, any Person (as defined in the APA) with which Lessee contracts for or with respect to the provision of medical or related services at the Premises or at MEH, or on the MEH Campus. Lessee shall be responsible for ensuring that any Person providing such services at the Premises acknowledges that the terms and conditions of this Facility Lease apply to such Person. Upon written request of Lessor, Lessee shall provide to Lessor a list of any such sublessee, licensee, concessionaire, contractor or service provider occupying space at the Premises from time to time, and shall provide any additional information with respect thereto as Lessor may reasonably require. Lessee shall ensure that all agreements for such subletting, licensing, or concessions include a provision requiring that upon the termination of this Facility Lease, any such subletting, licensing or concessions shall automatically terminate. However, notwithstanding any other provision of this Lease, including this Section 7.2, Landlord acknowledges and agrees that Tenant may sublease the Premises to the Indian Health Service under section 105(l) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5324(l).

## **8. LIENS**

8.1. Prohibition of Liens. Lessee shall not suffer or permit any liens, including without limitation, mechanic's or materialman's liens, to be recorded against the Premises, except for Permitted Encumbrances (as defined in the APA). If any such unpermitted liens shall be recorded against the Premises, Lessee shall cause the same to be removed; provided, however, Lessee may diligently and in good faith contest any such lien by any lawful means, but in such case Lessee shall indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in any event, cause any such lien to be discharged and removed prior to any foreclosure or execution of judgment with respect thereto. Nothing contained in this Facility Lease shall be construed to be a waiver of the provisions of AS 09.38.015(c) with respect to unpermitted liens, as may be amended from time to time. For the avoidance of doubt, any liens recorded against the Premises arising in connection with Lessor's covenants under this Lease, shall not be deemed to have been "suffered" or "permitted" by Lessee.

## **9. INDEMNITY**

9.1. Lessee's Indemnity. Lessee agrees to protect, defend, indemnify and hold Lessor harmless from and against any and all liability arising from acts or omissions of Lessee, its council members, officers, directors, employees, agents or contractors occurring on or relating to the Premises, the Common Areas or the operation of Lessee's business in the Premises, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including reasonable attorneys' fees, incident to the defense of and by Lessor therefrom; provided, however, Lessor shall not be entitled to indemnification hereunder for any losses, liability or damages to the extent resulting or deriving from the negligence or willful misconduct of Lessor or its assembly members,

officers, directors, employees, agents or contractors, or any default in the performance by Lessor of any of its obligations under this Facility Lease (including but not limited to, the obligations of Lessor under Section 10.2 and/or Section 10.3 hereof), the APA or any other agreement or undertaking of Lessor, its council members, officers, directors, employees, agents or contractors for the benefit of Lessee in connection with any of the foregoing. If any action or proceeding is brought against Lessor with respect to which Lessor or any one or more of its council members, officers, directors, employees, agents or contractors are entitled to indemnification hereunder, Lessor shall promptly notify Lessee in writing of such action or proceeding.

9.2. Lessor's Indemnity. Lessor agrees to protect, defend, indemnify and hold Lessee and harmless from and against any and all liability arising from the negligence or willful misconduct of Lessor, its assembly members, officers, employees, agents or contractors occurring at or in connection with the Premises or the Common Areas or in connection with the performance of Lessor's obligations under this Facility Lease, and from any expense, including reasonable attorneys' fees, incident to the defense of and by Lessee therefrom; provided, however, Lessee shall not be entitled to indemnification hereunder for any losses, liability or damages to the extent resulting or deriving from the negligence or willful misconduct of Lessee or its council members, officers, directors, employees, agents or contractors, or any default in the performance by Lessee of any of its obligations under this Facility Lease (including but not limited to the obligations of Lessee under Section 10.1 and/or Section 10.3 hereof), the APA or any other agreement or undertaking of Lessee, its assembly members, officers, employees, agents or contractors, for the benefit of Lessor in connection with any of the foregoing. If any action or proceeding is brought against Lessee with respect to which Lessee is entitled to indemnification hereunder, Lessee shall promptly notify Lessor in writing of such action or proceeding.

## **10. INSURANCE**

10.1. Lessee's Insurance. Lessee shall maintain the following insurance coverage with respect to the Premises and its use of the Premises: (i) Commercial General Liability Insurance, protecting Lessor as an additional insured and insuring it on a per occurrence basis against liability in limits of \$1,000,000 combined single limit bodily injury/property damage, which might arise from the construction on, occupancy of, or use of the Premises and the operations conducted on it, and \$14,000,000 excess umbrella liability insurance, and (ii) property insurance covering Lessee's Property located in the Premises in an amount determined by Lessee in the exercise of its reasonable business judgment. Said Commercial General Liability Insurance shall insure performance by Lessee of the indemnity provisions of Section 9.1. For purposes of clause (ii) above, Lessor and Lessee acknowledge that the long term intent of the parties, as reflected in the APA, is to relocate certain services currently provided at the Premises to MEH, the MEH Campus or another location in the City and Borough of Sitka. Therefore, Lessee may determine that insuring the Existing Personal Property and/or Lessee's Property to its full replacement value may not be a necessary or efficient in which case Lessee may elect (upon prior notice to Lessor and with Lessor's prior consent, not to be unreasonably withheld, conditioned or delayed) to reduce the level of insurance on any such items. For the avoidance of doubt, Lessee shall have no obligation to insure the buildings, improvements and fixtures comprising the Premises.



10.2. Lessor's Insurance. Lessor shall maintain the following insurance coverage with respect to the Premises: property insurance covering the buildings, improvements and fixtures comprising the Premises, including any Alterations thereto, in an amount determined by Lessor in the exercise of its reasonable business judgment and consistent with the terms of such insurance coverage of Lessor as of the Effective Date.

10.3. Named Insured, Notices to Lessor and Lessee, and Waiver of Subrogation. All liability insurance policies required to be maintained by Lessee under Section 10.1 shall name Lessor as an additional insured. All policies required under Section 10.1 and Section 10.2 shall contain an agreement by the insurers that such policies shall not be canceled without at least 20 days prior written notice (or ten days in the case of nonpayment of premiums), to Lessor in the case of policies required by Section 10.1 and to Lessee in the case of policies required by Section 10.2, and certificates or copies of all such insurance policies shall be furnished to the party entitled to such notice under this Section 10.3 promptly after the issuance thereof. All policies required under Section 10.1 and Section 10.2 shall contain a waiver of any subrogation rights any insurer might have against Lessor or Lessee, respectively.

10.4. Medical Malpractice. Lessor acknowledges that medical malpractice claims arising from the performance of medical or related activities provided by employees of Lessee acting within the scope of their employment and by doing so carrying out Lessee's compact and annual funding agreement with the Indian Health Service are deemed to be claims against the United States and are covered by the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2401, and 2671-2680, pursuant to 42 U.S.C. § 233; 25 U.S.C. § 450f(d); 25 U.S.C. § 1680c(d); and § 314 of P.L. 101-512, as amended. Lessee intends to submit all such claims to the United States. However, Lessor understands that neither Lessee nor the United States provides malpractice insurance or similar protection for any independent practice or consulting work performed by an employee. Lessee does not represent or warrant that any or every claim against its employees will be covered by the FTCA or that the United States will agree to defend or indemnify Lessee's employees for any or every such claim. To address risk, Lessee shall secure FTCA "wrap around" malpractice and excess malpractice insurance policies an amount determined by Lessee in the exercise of its reasonable business judgment.

## **11. CARE OF PREMISES**

11.1. Lessee's Maintenance and Repair Obligations. Except in the case of a casualty, in which case Lessor shall be obligated to restore the Building and the Premises to the extent set forth in Section 11.3 and the applicable provisions of the APA, Lessee shall at its own cost and expense keep the Premises (excluding any Surrendered Premises), and every part thereof, including without limitation all improvements comprising the Premises and all structural, mechanical, plumbing and electrical systems serving the Premises, in such condition as Lessee reasonably deems appropriate under the circumstances to safely provide health care services as required in Section 6.15(b)(ii) of the APA. Lessee understands that Lessor will use the Premises for other purposes after this Facility Lease termination, so that Lessee's obligation is to perform maintenance and repair at a level that ensures the Lessee leaves the Premises in clean and safe condition, compliant with applicable law; provided, however, Lessee's obligation to maintain the Premises in compliance with any applicable licensing requirements shall be limited to any licenses required or maintained by Lessee

for Lessee's use of the Premises, and Lessee shall be under no obligation to maintain the Premises to any higher licensing standard in anticipation of a future use by Lessor.

11.2. Common Areas. Lessor shall at its own cost and expense keep the Common Areas, and every part thereof, including without limitation, parking areas, in good and safe condition, in compliance with all applicable laws, ordinances and regulations. Notwithstanding the foregoing, Lessee shall be responsible for removal of snow and ice from the parking areas included in the Common Areas. Lessor and Lessee understand that the access drive to and from Moller Drive is shared between the Premises and the building located at 210 Moller Avenue, and that a portion of such drive is located on the Land and a portion is located on land owned by the owner of 210 Moller Avenue ("**210 Owner**"). Lessor has informed Lessee that Lessor has historically maintained the access drive, including snow and ice removal, but that there is no written agreement with 210 Owner with respect thereto. For the avoidance of doubt, Lessee shall be under no obligation to perform snow and ice removal on the portion of the access drive not included in the Land unless Lessor provides Lessee with a written consent from 210 Owner, in form and substance acceptable to Lessee, pursuant to which 210 Owner permits access to its property for purposes of such snow and ice removal and releases Lessee from any liability related to the adequacy of any such snow and ice removal or any damage to 210 Owner's property in connection therewith, except to the extent such damage results from the negligence or willful misconduct of Lessee or its employees, agents or contractors.

11.3. Termination of Lessee's Obligation to Operate the Business. In the event a Force Majeure event, a Catastrophic Material Casualty or a Material Condemnation (all as defined in the APA) occurs, the obligations of Lessor and Lessee shall be as set forth in Section 6.15(b) of the APA. If Lessee's obligation to operate the Business at the Premises is terminated pursuant to Section 6.15(b) of the APA, then Lessee shall take commercially reasonable steps to secure the Premises and notify Lessor of any condition Lessee has reasonably determined (a) constitutes an imminent risk of personal injury, or (b) has resulted in damage to the property of any third party. If Lessee's obligation to operate the Business at the Premises is not terminated pursuant to Section 6.15(b) of the APA, or in the case of a casualty that is not a Force Majeure or a Catastrophic Material Casualty, Lessor shall, as promptly as reasonably practical, restore the Premises to the extent necessary for Lessee to perform those services that Lessee is still required to provide at the Premises for so long as such obligation continues.

11.4. Access Rights of Lessor. Subject to applicable law and reasonable restrictions necessary for the privacy and safety of patients, Lessor, its agents, servants or employees, shall have the right to enter into and upon the Premises and all buildings or improvements situated thereon upon reasonable notice to Lessee and during business hours for the purpose of inspecting the Premises and all buildings and improvements situated thereon for compliance with the terms of this Facility Lease.

11.5. Nuisances Prohibited. Lessee shall not permit any nuisance or public nuisance as defined by the Municipal Code of the City and Borough of Sitka, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City and Borough of Sitka (but excluding environmental nuisances), to exist or to be created or maintained on the

Premises that did not exist as of the Effective Time. This Section 11.5 shall not apply in the case of casualties, which shall be governed by Sections 11.1 and 11.3 above.

## 12. LAWS

12.1. Compliance with Laws. Lessee shall comply with all Laws now or hereafter in any manner affecting Lessee's activities on the Premises, the Common Areas or any buildings or other improvements which may be situated on the Land, whether or not any such Laws that may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same; provided, however, Lessee may, in good faith, appeal or contest the applicability of any Law to Lessee, the Premises or any service provided at the Premises and, if any Law may be rendered inapplicable to the Premises by the relocation of any service offered at the Premises to MEH, the MEH Campus or any other medical facility operated by Lessee in the City and Borough of Sitka, Lessee may relocate such service in lieu of complying with such Law as it relates to the Premises. Lessee shall obtain and maintain, at its sole cost and expenses, all licenses, permits or other governmental approvals required by the lawful conduct of Lessee's activities on the Premises. Lessee shall be responsible for any violation caused by Lessee's acts or omission and shall remove any violation placed against the Premises by any federal, state or local authority upon notice in writing by Lessor to Lessee. Lessee shall remove such violation with 30 days after receipt of said notice from Lessor. In the event of the failure to remove such violation, Lessor shall have the right to enter the Premises in order to cause such violation to be removed and charge the cost of the removal to Lessee as Additional Rent.

## 13. CONDEMNATION

13.1. Condemnation. In the event that there occurs any taking of any portion of the Premises or conveyance of any portion of the Premises after receipt of written notice of an offer to purchase under a threat of condemnation by power of eminent domain (any of the foregoing, a "**Condemnation**"), the interests of Lessor and Lessee in the award or consideration for such Condemnation shall be as provided in this Article 13. In the event of Material Condemnation (as defined in the APA), this Facility Lease shall terminate. In the event of a Condemnation that is not a Material Condemnation, this Facility Lease shall continue in effect with respect to any portion of the Premises not taken in connection with such Condemnation.

13.2. Compensation. Lessor and Lessee acknowledge that the SCH Hospital Facility provides essential services to residents of the City and Borough of Sitka. Lessor and Lessee acknowledge that, if Lessee is deprived of the ability to operate the Business on the Premises due to a Condemnation of the Premises, the costs and expenses likely to be incurred by Lessee in relocating the operation of the Business to an alternative site, or suspending operations, are likely to substantially exceed the market value of the leasehold created by this Facility Lease as determined in accordance with standard methods of valuation and will significantly frustrate Lessee's ability to successfully construct, operate, and finance the cost of health care services in the SCH Hospital Facility and at the MEH Campus for several reasons, including (but not limited to) the following ("**Transition Impacts**"): (i) the loss of staff, possible staff severance costs, and a need for the subsequent replacement of lost staff; (ii) significant staff recruitment costs (Lessor's current experience indicates that such cost could exceed \$50,000 per employee); (iii) additional regulatory

compliance burdens and attendant costs associated with a cessation of all or some services; (iv) increases in the per unit costs of services provided; (v) increased patient transport costs; and (vi) increased patient co-insurance, deductibles and bad-debts. In the case of any eminent domain proceeding commenced by Lessor (or transfer in lieu thereof), subject to Section 13.4 below, all compensation related thereto shall be paid to Lessee. In the case of an eminent domain proceeding commenced by any other governmental authority including Lessor (or transfer in lieu thereof), any compensation received or payable as a result of eminent domain proceedings or a transfer in lieu thereof shall be apportioned to Lessor and Lessee as follows: (a) Lessor shall be entitled to such portion of the compensation attributable to Lessor's ownership interest in the Premises, and Lessor's interest in any improvements to the Premises; and (b) Lessee shall be entitled to such portion of the compensation attributable to the value of Lessee's leasehold and impact to Lessee's business, taking into account to the extent applicable the considerations set forth in this Section 13.2, and Lessee's interest in improvements to the Premises. Lessee shall have the right to claim and recover from the condemning authority compensation for any loss to which Lessee may be entitled for Lessee's moving expenses, interference with Lessee's business, and damages relating to any Lessee's Property; provided, however, that such compensation can be claimed only if separately awarded in the eminent domain proceeding or transfer in lieu thereof, and not as a part or in reduction of the compensation recoverable by Lessor.

13.3. Obligation to Continue Business. In the event of Material Condemnation, the obligations of Lessor and Lessee shall be as set forth in Sections 6.15(b) of the APA. In the event of a Condemnation that is not a Material Condemnation, if a portion of the Premises is taken and the services previously rendered therein cannot be relocated to another portion of the Premises (or doing so in turn interferes with another service), or if the Premises is subject to a temporary taking that interferes with the provision of any service therein, Lessee's obligation to operate the Business pursuant to the APA shall be abated until such time as the Premises can be restored to a condition sufficient to permit the Business to be re-commenced therein. In the event of a threat of Condemnation (whether or not a Material Condemnation) in which Lessor is not the condemning authority, Lessor and Lessee will take all good faith steps available to that respective party to oppose the threat of Condemnation.

13.4. Waiver of Eminent Domain Right. To the maximum extent permitted by applicable Law, so long as no Event of Default exists and Lessee is not in default under any of its obligations under the APA, Lessor agrees that it shall not commence any eminent domain proceeding against the Premises for the duration of the Term. For the avoidance of doubt, Lessee reserves any and all right it may have to contest or defend any eminent domain proceeding, including any defenses based on jurisdiction or sovereign immunity. Further, in the event of Lessor's breach of this Section 13.4, in addition to any other remedies, Lessee shall be entitled to the remedies set forth in Section 9.12 of the APA.

## 14. DEFAULT

14.1. Default. Each of the following events shall be deemed an "**Event of Default**" by the Lessee under this Facility Lease and a breach of the terms, covenants and conditions of this Facility Lease:

- 14.1.1. The failure to pay any Rent due under this Facility Lease that continues for a period of 15 Business Days following written notice from Lessor;
- 14.1.2. The failure to perform any other term, covenant or condition on the part of the Lessee to be kept, performed or observed for a period of 30 days after Lessor gives to Lessee a written notice specifying the particular default or defaults; provided, however, that any default on the part of Lessee in the performance of work or acts required by him to be done, or conditions to be modified, shall be deemed to be cured if steps shall have been taken promptly by Lessee to rectify the same and shall be prosecuted to completion with diligence and continuity;
- 14.1.3. The filing of a petition by or against Lessee for adjudication as a bankrupt under the Federal Bankruptcy Code, as now enacted or hereafter amended, or for arrangement pursuant to Chapter XI of the Bankruptcy Code, which petition is not dismissed within 90 days following the filing thereof;
- 14.1.4. The making by Lessee of an assignment of this Facility Lease or its interest in the Premises for the benefit of creditors;
- 14.1.5. The appointment of a receiver by a court of competent jurisdiction for the Business or the Premises;
- 14.1.6. The levy upon execution or attachment by process of law of the leasehold interest of Lessee in the Premises;
- 14.1.7. The use of the Premises for purposes other than those enumerated herein without the consent of Lessor, which use continues for a period of 15 Business Days following Lessor's written notice thereof; or
- 14.1.8. The abandonment of the Premises by Lessee.

14.2. Lessor's Remedies. Upon the occurrence of an Event of Default by Lessee, Lessor shall have all of the below enumerated rights and remedies, all in addition to any rights and remedies that Lessor may have at law or in equity. All rights of Lessor shall be cumulative, and none shall exclude any other right or remedy. Lessor's rights and remedies include the following:

- 14.2.1. Lessor may declare the Term ended by written notice to Lessee. Upon termination of this Facility Lease, Lessee shall surrender possession and vacate the Premises immediately and deliver possession thereof to Lessor, and Lessee hereby grants to Lessor full and free license to enter into and upon the Premises in such event with or without process of law and to repossess Lessor of the Premises and to expel or remove Lessee and any others who may be occupying or within the Premises and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Lessor's right to rent or any other right given to Lessor hereunder or by operation of law.

- 14.2.2. Lessor may by written notice declare Lessee's right to possession of the Premises terminated without terminating this Facility Lease. Upon such termination of Lessee's right to possession, Lessor shall have the right to repossess the Premises and remove Lessee and Lessee's property as set forth in Section 14.2.1.
- 14.2.3. Lessor may relet the Premises in whole or in part for any period equal to or greater or less than the remainder of the term of this Facility Lease, for any sum which Lessor may deem reasonable, except as provided in Section 14.2.5.2.
- 14.2.4. Lessor may collect any and all rents due or to become due from subtenants or other occupants of the Premises.
- 14.2.5. Lessor may recover, whether this Facility Lease be terminated or not, from Lessee, damages provided for below:
  - 14.2.5.1. reasonable attorney's fees and other expenses incurred by Lessor by reason of the breach or default by Lessee;
  - 14.2.5.2. an amount equal to the amount of all Fixed Rent and Additional Rent payable under this Facility Lease for the period prior to termination, if applicable; and
  - 14.2.5.3. an amount equal to the amount of all Fixed Rent and Additional Rent payable under this Facility Lease for the period following termination, if applicable, less any amounts actually collected by Lessor as the proceeds of re-letting the Premises or such amount as Lessee proves could reasonably have been collected by Landlord through the exercise of commercially reasonable and diligent efforts to relet the Premises.
- 14.2.6. Reentry or reletting of the Premises, or any part thereof, shall not be deemed a termination of this Facility Lease, unless expressly declared to be so by Lessor.
- 14.2.7. If this Facility Lease shall be deemed terminated, Lessee's liabilities shall survive and Lessee shall be liable for damages as provided in Section 14.2.5.

14.3. Lessor's Right to Cure Lessee's Default. Upon the occurrence of an Event of Default resulting from Lessee's failure to make any payment required to be made by Lessee or failure to perform any term, covenant or condition of this Facility Lease involving the expenditure of money by Lessee, Lessor, at Lessor's option, may, but shall not be obligated to, make such payment or, on behalf of Lessee, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended by Lessor, with interest thereon at the rate of 12% per year from the date of such expenditure until repaid, shall be, and shall be deemed to be, Additional Rent and shall be repaid by Lessee to Lessor, on demand; provided, however,

that no such payment or expenditure by Lessor shall be deemed a waiver of Lessee's default, nor shall it affect any remedy of Lessor by reason of such default.

## 15. GENERAL PROVISIONS

15.1. Estoppel Certificates. Either party shall at any time and from time to time upon not less than 30 days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Facility Lease is unamended and in full force and effect (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments), that there are no defaults existing (or, if there is any claimed default, stating the nature and extent thereof), and stating the dates to which the Fixed Rent and other charges have been paid in advance.

15.2. Conditions and Covenants. All the provisions of this Facility Lease shall be deemed as running with the land and shall be construed to be "conditions" as well as "covenants," as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

15.3. No Waiver of Breach. No failure by either Lessor or Lessee to insist upon the strict performance by the other of any term, covenant or condition of this Facility Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach shall affect or alter this Facility Lease, but each and every term, covenant and condition of this Facility Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

15.4. Time of Essence. Time is of the essence of this Facility Lease and of each provision.

15.5. Computation of Time. The time in which any act provided by this Facility Lease is to be done is computed by excluding the first day and including the last, unless the last day is not a Business Day, in which case such period shall end on the next succeeding Business Day. The term "**Business Day**" shall mean any day that is not a Saturday, a Sunday or other day on which government offices are required or authorized by Law to be closed in Sitka, Alaska.

15.6. Successors in Interest. Each and all of the terms, covenants and conditions in this Facility Lease shall inure to the benefit of and shall be binding upon the successors in interest of Lessor and permitted successors in interest of Lessee.

15.7. Entire Agreement. This Facility Lease, together with the APA and the other documents and agreements entered into in connection therewith, contains the entire agreement of the parties with respect to the matters covered hereby.

15.8. Governing Law/Jurisdiction/Venue. This Facility Lease shall be governed by, construed and enforced in accordance with the laws of the State of Alaska.

15.9. Specific Performance; Injunctive Relief. The parties agree that irreparable damage may occur in the event any of the provisions of this Facility Lease were not performed in accordance with their specific terms or were otherwise breached or threatened to be breached and that an award

of money damages may be inadequate in such event. Accordingly, it is acknowledged that the parties, without proof of actual damages, may obtain relief, including an injunction or order for specific performance to prevent breaches of the provisions of this Facility Lease, and to enforce specifically the terms and provisions of this Facility Lease, in addition to any other remedy to which they are entitled at law or in equity as a remedy for any such breach or threatened breach. Each party further agrees that neither party nor any other Person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 15.9, and each party (a) irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument and (b) agrees to cooperate fully in any attempt by the other party in obtaining such equitable relief.

15.10. Partial Invalidity. If any provision of this Facility Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such provisions are considered by Lessee to be integral to Lessee's use of the Premises for the purposes stated herein, in which case Lessee will have the authority to terminate this Facility Lease upon 30 days' written notice to Lessor.

15.11. Relationship of Parties. Nothing contained in this Facility Lease or the APA shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Lessor and Lessee and neither the method of computation of rent, nor any other provision contained in this Facility Lease nor any acts of the parties, shall be deemed to create any relationship between Lessor and Lessee other than the relationship of Lessor and Lessee.

15.12. Interpretation. The language in all parts of this Facility Lease shall in all cases be simply construed according to its fair meaning and not for or against Lessor or Lessee as both Lessor and Lessee have had opportunity for the assistance of attorneys in drafting and reviewing this Facility Lease. In this Facility Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural. "Shall," "will," and "agrees" shall be interpreted as mandatory; "may" shall be interpreted as permissive. Captions of the paragraphs of this Facility Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Facility Lease.

15.13. Amendment. This Facility Lease may not be amended except in writing executed by all parties hereto.

15.14. Notices. Any notice, request, demand, waiver, consent, approval or other communication (any of the foregoing, a "Notice") that must or may be given pursuant hereto must be in writing and will be deemed given only as follows: (1) on the date established by the sender as having been delivered personally; (2) on the date delivered by a commercial overnight courier as established by the sender by evidence obtained from the courier; (3) if sent by email, then upon confirmation of transmission thereof; or (4) on the third Business Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid; and be addressed (depending upon the method of Notice) as follows:



If to the Lessor:

Keith Brady  
Municipal Administrator  
City and Borough of Sitka  
100 Lincoln Street  
Sitka, Alaska 99835  
keith.brady@cityofsitka.org

With a copy to:

Schwabe Williamson & Wyatt  
1420 5<sup>th</sup> Avenue, Suite 3400  
Seattle, WA 98101  
Attention: Sandra Johnson  
Email: sjohnson@schwabe.com

If to Lessee:

SouthEast Alaska Regional  
Health Consortium  
3100 Channel Drive  
Suite 300  
Juneau, Alaska 99801-7837  
Attention: Dan Neumeister  
Email: dann@searhc.org

With a copy to:

K&L Gates LLP  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98101  
Attention: Carla DewBerry  
Email: carla.dewberry@klgates.com

Notwithstanding the foregoing contact information set forth in this Section 15.14, either party is permitted to validly deliver a Notice pursuant hereto to such other address or to the attention of such Person or Persons as the recipient party has specified by prior Notice (in accordance with this Section 15.14) to the sending party (or, in the case of counsel, to such other readily ascertainable business address as such counsel might hereafter maintain). If more than one method for sending Notice as set forth above is used, then the earliest Notice date established as set forth in this Section 15.14 will control for purposes of determining when such Notice is deemed to have been given.

15.15. Recordation. This Facility Lease or a memorandum thereof may be recorded by Lessor or by Lessee, at the electing party's expense, in the [Sitka Recording District, State of Alaska].

15.16. Lessor's Lien and Security Interest. Lessor hereby waives any security interest in any personal property of Lessee to which Lessor may otherwise be entitled under applicable Law.

15.17. Brokers. Lessor and Lessee each represent and warrant that there are no brokers involved on behalf of each party in the procurement or negotiation of this Facility Lease, and each indemnifies, defends and holds the other harmless for, from and against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through or under such party. The foregoing indemnity shall survive the expiration or earlier termination of this Facility Lease.

## **16. NONDISCRIMINATION**

16.1. Lessee Will Not Discriminate. Lessee agrees that in its use and occupancy of the Premises it will not, on the grounds of race, color, religion, national origin, ancestry, age, or sex, discriminate

or permit discrimination against any prospective occupant, patron, customer, employee, applicant for employment or other person or group of persons in any manner prohibited by federal, state or local law or regulations promulgated thereunder. Consistent with Section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), nothing in this Section 16.1 shall preclude the preferential employment of Indians and Alaska Natives as set forth in Lessee's policies as they exist on the Effective Date of this Facility Lease.

## **17. HAZARDOUS MATERIALS**

17.1. Condition of Premises. Lessee has had full opportunity to examine the Premises for the presence of any Hazardous Material and accepts the Premises in the condition described, and subject to the representations and warranties set forth, in Section 1.3. Lessee acknowledges that Lessor, its agents, authorized representatives or employees have made no representations as to the physical conditions of the Premises, including but not limited to the subsurface and soil conditions. Lessee accepts the Premises in an "as is" condition. Lessee does not accept or assume responsibility or liability for pre-existing subsurface and/or soil conditions, including, but not limited to Hazardous Materials and/or Environmental contamination existing at the beginning of the Term, and shall have no liability hereunder with respect to any preexisting contamination or condition at the Premises, whether known or unknown, except to the extent any such contamination or condition is exacerbated due to the negligence, gross negligence or willful misconduct of Lessee. For the avoidance of doubt, any change in the condition of the Premises to the extent such change is related to an action or failure to act by Lessee consistent with Section 11.1 hereof, is not negligence, gross negligence or willful misconduct.

### 17.2. Use of Hazardous Materials on the Premises.

- 17.2.1. Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Lessee, its assignees or sublessees, or their respective officers, directors, employees, agents or contractors, except for such Hazardous Material as is necessary, useful or customary to Lessee's Permitted Use of the Premises.
- 17.2.2. Any Hazardous Material permitted on the Premises as provided in this Section 17.2, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material.
- 17.2.3. Lessee shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if the nature and extent of the release of such material (as reasonably determined by the Lessor, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or safety of persons, whether located on the Premises or elsewhere, or (b) the condition, use or enjoyment of the Premises or any other real or personal property.

17.2.4. Lessee hereby agrees that to the extent any such contamination or condition is exacerbated due to (i) the negligence, gross negligence or willful misconduct of Lessee and (ii) Lessee's failure to satisfy the requirements of Section 11.1, Lessee shall be fully liable for all costs and expenses related to the use, storage and disposal of Hazardous Material kept on the Premises by Lessee or its agents, contractors or other representatives (as opposed to pre-existing Hazardous Materials or Hazardous Materials introduced by any other party), to the extent required with applicable law, and Lessee shall give prompt notice to Lessor of any violation or potential violation of the provisions of Section 17.2. Without limiting the foregoing, Lessee may, for example, continue the use of any storage tanks presently located at the Premises for the same use and in the same manner as Lessor's previous use, and such use shall not be deemed a violation of Lessee's obligations under this Section 17.2, and Lessee shall not incur any liability to Lessor in connection therewith, except to the extent that Lessee's actions negligently or willfully exacerbate any existing condition and such actions are also a violation of Section 11.1.

17.3. Indemnification of Lessor by Lessee for Environmental Contamination. Lessee agrees to forever protect, defend, indemnify and hold harmless Lessor from and against any and all losses, claims, investigations, assertions, liens, demands and causes of action of every kind and character (including without limitation any assertions or claims made against Lessor, Lessee or third parties, by government agencies or third parties), related to the release or threatened release of Hazardous Materials on or in connection with the Premises in violation of the terms of Section 17.2, and all costs thereof (including without limitation costs of removal action, remedial action, other "response costs" as that term is defined under applicable federal and state law, attorney's fees, penalties, damages, interest and administrative/court costs incurred by Lessor in response to and defense of same) arising in favor of any party, including Lessor, and arising from or connected with Lessee's activities under this Facility Lease or Lessee's use of or presence on the Premises, whether such activities, use or presence are those of Lessee, its sublessees, or their respective officers, directors, employees, agents or contractors. Lessee acknowledges that this indemnification clause shall survive termination of this Facility Lease, and that it applies regardless of the basis of liability alleged by or against any party, including strict liability under AS 46.03.822 or federal law. Lessee's obligations under this section may be discharged, however, by performance of whatever degree of site investigation for environmental contamination (in Lessor's sole discretion) is necessary to render the Premises suitable for Lessor to release Lessee from these obligations, which release must be granted in writing by Lessor.

17.4. Hazardous Material Defined. "**Hazardous Material**" means any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the state of Alaska, or the United States government. "Hazardous Material" includes any and all material or substances which are defined as "hazardous waste," "extremely hazardous waste" or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder.

“Hazardous Material” includes but is not restricted to asbestos, polychlorobiphenyls (“PCB’s”) and petroleum and petroleum products.

17.5. Liability of Releases/Threatened Releases of Hazardous Materials. Lessee agrees that at all times while this Facility Lease is in effect, for purposes of potential liability under AS 46.03.822 or any similar law:

- 17.5.1. Lessee, not Lessor, shall be deemed the owner of and person having control over any hazardous substances used by Lessee or on the Premises for business reasons of Lessee; and
- 17.5.2. Lessee, not Lessor, shall be deemed the owner of the possessory interest under this Facility Lease, and the operator of the Premises as a facility under AS 46.03.822(a)(2); and
- 17.5.3. Lessee, not Lessor, shall be deemed the generator, transporter, or both, of any hazardous substances generated or transported by Lessee in connection with the enjoyment of its rights under this Facility Lease.

For purposes of this section, “Lessee” shall include Lessee, its sublessees, and their respective council members, officers, directors, employees, agents and contractors.

17.6. Compliance with Environmental Laws. Lessee covenants full compliance with any federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future.

17.7. Access to Premises. Lessee authorizes Lessor to enter upon the Premises to make such reasonable inspections and tests as Lessor may deem appropriate to determine compliance with this Facility Lease; any such investigations or tests shall be for Lessor’s purposes only, and shall not be construed to create any responsibility or liability on Lessor’s part to Lessee or any person.

17.8. Report of Events. Lessee specifically agrees to report all releases, threatened releases, discharges, spills or disposal of Hazardous Materials, in whatever quantity, promptly to the appropriate regulatory authorities and simultaneously to Lessor, and to keep Lessor fully informed of any communication between Lessee and any person or agency concerning potential environmental contamination and hazardous substances.

*Signatures Appear on Following Pages*

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates herein below set forth, with the Effective Date of this Facility Lease as set forth in the initial paragraph hereof.

LESSOR:

CITY AND BOROUGH OF SITKA

Date: \_\_\_\_\_

By: \_\_\_\_\_

City Administrator

Attest: \_\_\_\_\_

Clerk

STATE OF ALASKA )  
 ) SS.  
FIRST JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (name) Mayor of the City and Borough of Sitka.

Seal

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) SS.  
FIRST JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (name) Clerk of the City and Borough of Sitka.

Seal

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

*Signatures Continue on Following Page*

LESSEE:

SOUTHEAST ALASKA REGIONAL  
HEALTH CONSORTIUM

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and representative capacity

STATE OF ALASKA            )  
  ) SS.  
FIRST JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (name) \_\_\_\_\_ (title) of SouthEast Alaska Regional Health Consortium, an Alaska non profit corporation and a tribal organization comprised of federally recognized Alaska Native tribes, on behalf of the corporation.

Seal

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

Lots 2, 3, 14 and "Sitka Hospital Site", Block D, U.S. Survey 225, MOORE MEMORIAL ADDITION Sitka Recording District, Frist Judicial District, State of Alaska.

EXHIBIT A-1  
DEPICTION OF THE LAND

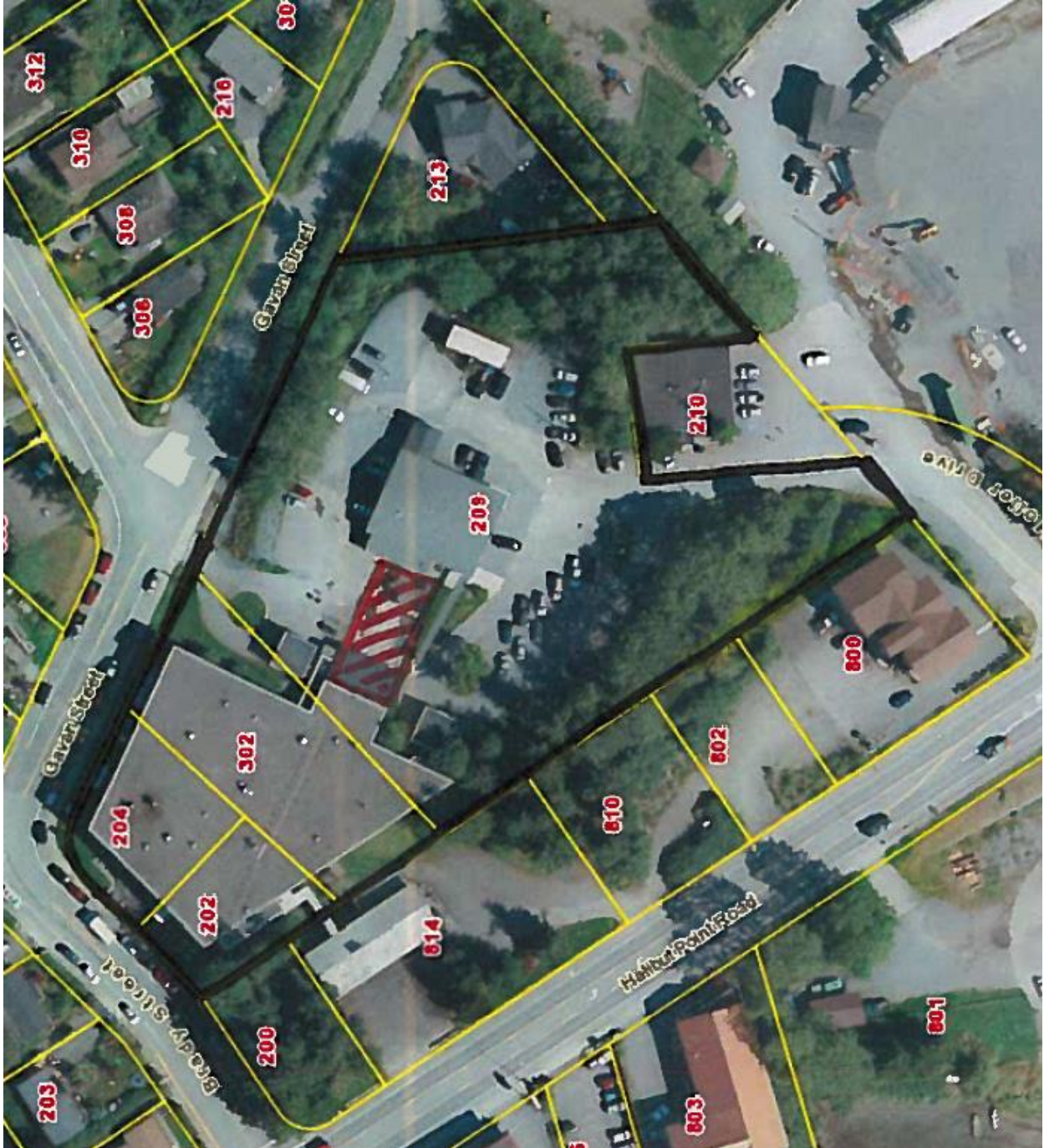


Exhibit A-1



## EXHIBIT B

### DEFERRED MAINTENANCE

1. Replacement of four main electrical automatic transfer switches related to emergency power;
2. Replacement of main air handlers 1, 3 &4 (#2 was replaced in 2017);
3. Replacement of 30 large picture windows with double casements including all patient rooms and other various locations on the main floor (all windows are original to the 1984 building);
4. Branch Circuit corrections within the electrical service infrastructure (see attached electrical assessment report dated 5/17/16);
5. Main parking lot and entrance driveway repaving;
6. South side of clinic repaving;
7. Steam boiler feed water piping system replacement;
8. Replacement of de-aeration tank (component of feed water system);
9. Replacement of medical air compressor;
10. Scullery grease interceptor installation (main kitchen);
11. Replacement of day tank for emergency generator;
12. Renovation and upgrades (including floor replacements) of 4 primary acute care patient rooms;
13. Floor replacement in in-patient rehab room;
14. Roof issues on Mountainside clinic building;
15. Replacement of CT machine, x-ray and portable x-ray machines in Imaging;
16. Replacement of nurse call system.

## EXHIBIT C

### GOVERNMENT NOTICES OF NONCOMPLIANCE

1. Life safety survey from DHSS/CMS dated 9/18/18;
2. AKOSH survey of 7/27/17.

## EXHIBIT D

### LESSOR'S WORK

1. Replacement of four main electrical automatic transfer switches related to emergency power.
2. Branch Circuit corrections within the electrical service infrastructure (see attached electrical assessment report dated 5/17/16).
3. Scullery grease interceptor installation (main kitchen)