

Introduced by:	Mayor at Request of
	S.P.H.S.A.B.
Date:	02/18/03
Shortened Hearing:	03/11/03
Action:	Enacted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2003-08**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A SUBLEASE AND
OPERATING AGREEMENT WITH SOUTH PENINSULA HOSPITAL, INC. FOR
SOUTH PENINSULA HOSPITAL**

- WHEREAS,** South Peninsula Hospital has been operated by South Peninsula Hospital, Inc. (“SPHI”), a private nonprofit corporation since 1970, with the present five-year Sublease and Operating Agreement scheduled to expire in March 2003; and
- WHEREAS,** South Peninsula Hospital is situated on property leased by the borough from the City of Homer under a fifty-five year lease that will expire June 30, 2024; and
- WHEREAS,** SPHI and the South Peninsula Hospital Service Area Board (“SAB”) have negotiated a new five-year Sublease and Operating Agreement with a five-year renewal option effective upon either mutual consent or inaction; and
- WHEREAS,** the proposed Sublease and Operating Agreement continues to allow for an operating subsidy as needed to cover losses on service area operations, subject to the appropriation and availability of funds, while requiring SPHI to use its best efforts to operate the hospital without an operating subsidy from the service area; and
- WHEREAS,** the proposed Sublease and Operating Agreement continues to authorize SPHI to make capital expenditures, not on the approved annual capital budget and without further SAB approval, of up to \$20,000 per item or project and not exceeding the approved annual capital budget by more than 25 percent; and
- WHEREAS,** in approving the proposed Sublease and Operating Agreement, the assembly again delegates to the SAB the authority to approve SPHI requests to lease additional property off-premises as needed for hospital purposes; and
- WHEREAS,** the proposed new agreement is in substantially the same form as the prior agreement, with changes including an updated legal description, a requirement that vacancies in the SPHI board be publicly noticed, a revised 180-day notice of intent to terminate provision, and rewording of the termination provision to clarify material breaches; and

WHEREAS, the assembly finds that entering the proposed Sublease and Operating Agreement, attached hereto as Exhibit A and incorporated by reference, is in the best interests of the borough and the South Peninsula Hospital Service Area; and


WHEREAS, a hearing on shortened time for this ordinance is requested so that the agreement may be executed before the current agreement expires;

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

SECTION 1. The Sublease and Operating Agreement, attached as Exhibit A, to be entered between South Peninsula Hospital, Inc. and the borough in conjunction with the South Peninsula Hospital Service Area Board, is approved. The mayor is authorized to execute a Sublease and Operating Agreement substantially in the form of Exhibit A, and to take such actions as are necessary to implement its terms and conditions.

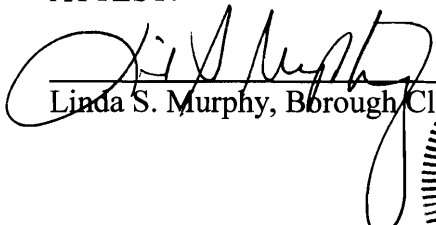
SECTION 2. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 11TH DAY OF MARCH, 2003.

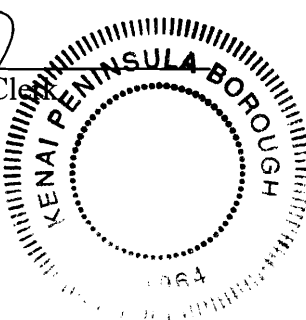


Pete Sprague, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk



SUBLEASE AND OPERATING AGREEMENT
FOR SOUTH PENINSULA HOSPITAL

This Sublease and Operating Agreement is made and entered into on this 8th day of ~~March~~ April, 2003, between the Lessor, Kenai Peninsula Borough (Borough), an Alaska municipal corporation, acting in conjunction with and through the South Peninsula Hospital Service Area Board (SAB); and the Lessee, South Peninsula Hospital, Inc. (SPHI), an Alaska private, non-profit corporation. This Agreement supersedes and replaces all pre-existing agreements between the parties, including the Sublease and Operating Agreement dated March 30, 1998 and all amendments thereto.

DEFINITIONS

"Borough" is the Kenai Peninsula Borough which acts through the SAB, unless the context of this agreement dictates otherwise. The Borough provides final approval of the budget, establishes the mill rate, collects taxes and appropriates funds on behalf of SAB within the South Peninsula Hospital Service Area.

"SAB" is a nine-member board elected by voters of the South Peninsula Hospital Service Area, having fiduciary responsibility for expenditure of funds for provision of hospital services as delegated by the Borough, and is chief administrator of this agreement for the Borough.

"SPHI" is a not-for-profit Alaska corporation, formed to operate and manage the business affairs of South Peninsula Hospital, under contract with the Borough.

"Hospital" and "hospital services" shall be interpreted to include programs and services permitted under ¶4(a) of this Agreement, provided that such programs and services have been authorized by the SAB under ¶16 of this Agreement.

RECITALS

WHEREAS, the Borough has leased certain lands containing South Peninsula Hospital from the City of Homer until June 30, 2024; and,

WHEREAS, the Borough has delegated responsibility and power to provide for hospital services within the South Peninsula Hospital Service Area to SAB by Ordinance 73-33; and,

WHEREAS, the voters of the South Kenai Peninsula Hospital Service Area approved a ballot proposition on October 4, 1994, expanding the SAB authority to provide certain services within the service area; and,

WHEREAS, on June 1, 1995, the Kenai Peninsula Borough Assembly enacted Ordinance No. 95-05 which granted the SAB the expanded powers permitted by the ballot proposition; and,

WHEREAS, the parties desire for SPHI to sublease the hospital from the Borough, to lease other Borough-owned adjacent properties and to operate South Peninsula Hospital;

WHEREFORE, the parties enter into the Agreement set forth herein.

AGREEMENT

1. Duration

This Agreement shall be effective for five years from the date of execution unless extended or terminated in accordance with all Borough requirements and provisions of this Agreement. By mutual agreement of the parties, this lease/operating agreement may be extended for an additional period of five years. If no action has been taken to extend or terminate this agreement within 180 days of the expiration of the initial five-year term, the five-year extension shall be deemed to have been agreed upon. The terms of the lease/operating agreement for the additional five year period shall be the same as this lease, unless the parties negotiate new terms before the effective date of the renewal. If any of the parties to this agreement intend not to extend or renew the Agreement, written notice of that intent must be provided to the other parties at least 180 days prior to the expiration date of the contract. If for any unusual and sufficient reason the notice to terminate can not be provided at least 180 days prior to the expiration of the contract, it is understood by all parties that the expiration date shall be extended to allow for the 180 day transition period.

2. Purpose

The purpose of this Agreement is to provide publicly-owned premises to SPHI for its operation of a non-profit hospital, open to the public, and to provide financial assistance to SPHI from the South Peninsula Hospital Service Area of the Kenai Peninsula Borough.

This Agreement specifies the terms and conditions under which SPHI may occupy the premises and conduct its operations, and the terms and conditions under which funding from the South Kenai Peninsula Hospital Service Area ("Service Area Funds") will be provided to SPHI for continued operation of South Peninsula Hospital. Service Area Funds may include service area taxes and related revenues, state revenue sharing income and interest income.

3. Description of Premises

The subleased property consists of the premises of South Peninsula Hospital, hereinafter

referred to as Hospital, located in Homer, Alaska, described as:

Tract A, South Peninsula Hospital Subdivision, Plat 98-41, Homer Recording District, Third Judicial District, State of Alaska.

The subleased premises includes all equipment and fixtures located in or attached to the physical plant of the hospital. Also, the following property and buildings owned by the Borough are leased to SPHI:

Lots 2, 3, 4, 5 and 6, Block 7; Lots 1 and 4, Block 8, Fairview Subdivision Plat No. 56-2936 Volume 8, Page 196, Homer Recording District, S.M. AK

Any other property subsequently acquired by the Borough and designated for use as part of the hospital and its operations may be added to this agreement by mutual written consent.

4. Duties of SPHI

- a. To operate a non-profit hospital, including inpatient and outpatient hospital services, personal care attendant services, inpatient long term care services, home and community-based health care services, preventive medical care and wellness programs, and health education programs within the service area in accordance with state, federal and local laws. SPHI may lease property off premises that is needed for hospital purposes, subject to SAB approval by resolution.
- b. To account for all financial transactions of Service Area funds and all other funds received. Investment of funds received must meet the requirements established by KPB 5.10, *Investment of Monies*, and policies adopted pursuant to it, unless and to the extent otherwise authorized by the SAB and Borough.
- c. To assure compliance with the Borough purchasing code unless and to the extent otherwise authorized by the SAB and Borough.
- d. To establish policies and procedures necessary to govern the operation of the hospital and to make such policies and procedures available to the SAB, hospital staff, medical staff and the public.
- e. To establish policies for the admission of practitioners to membership on the Medical or Allied Health professional staff and for the granting of practice privileges for each practitioner, in accordance with the Bylaws, Rules and Regulations of the organized Medical or Allied Health professional staff as approved by the Board of SPHI.

- f. The Board of Directors of SPHI shall in all instances determine who may or may not be appointed to the Medical or Allied Health professional staff.
- g. To use funds derived from the operation of authorized service area activities or service area funds only for purposes of operating the hospital, and other authorized service area services and providing the level of service prescribed by the SAB.
- h. To maintain accounting records in accordance with generally accepted accounting principles, including maintaining separate accounting records for activities beyond the level of service as defined by the SAB.
- i. To cooperate with the independent accounting firm selected by the Borough so that the annual audit may be conducted.
- j. To conform to federal and state single audit requirements, if any.
- k. To provide monthly financial reports to the SAB reflecting revenues, expenses and changes in the operating and reserve funds; and, as required by the SAB, regarding those activities of SPHI which are separate from the operation of the hospital so that the SAB can determine if any such activity may have an adverse financial impact on the hospital and other service area operations.
- l. To pay for necessary utilities including, but not limited to, electricity, heat, water, sewer and telephone.
- m. To be responsible for minor maintenance and routine repair of the subject property, including the upkeep and maintenance of the walkways, roads, and grounds.
- n. To purchase, maintain and replace minor equipment and supplies from operating funds.
- o. To prepare and submit annual proposals for the operating budget to the SAB and such other reports as required for the Borough and SAB to meet their obligations under this agreement.
- p. To propose an annual capital budget for major equipment, repairs, renovations and additions to the hospital. This budget shall contain a description of the projects and their justification to allow proper consideration by the SAB and Borough Assembly. Submission shall be timely to meet the calendar requirements of the SAB and Borough.

- 1) In the event SPHI wishes to make additional capital expenditures not on the approved annual capital budget, it will be permitted to do so without further SAB approval, with the following restrictions:
 - a) SPHI must submit to and obtain from the SAB approval for any proposed additional capital expenditure for an item or capital project costing more than \$20,000; and
 - b) SPHI may not exceed the approved capital budget by more than 25%, without first submitting to and obtaining from the SAB approval for a revised capital budget for additional capital expenditures expected for the remaining portion of the fiscal year.
 - c) Any capital expenditures requiring additional funding in excess of available service area funds are subject to prior Borough Assembly appropriation and the availability of said funds.
- 2) The obligation to obtain SAB approval of capital expenditures, as set forth above, applies regardless of the source of revenue to be used for the expenditures.
- 3) On at least a quarterly basis, SPHI will:
 - a) submit to the SAB a current report of all capital expenditures made during the fiscal year; and
 - b) submit to the Kenai Peninsula Borough Finance Director, a request to be reimbursed for all reimbursable capital expenditures. SPHI need not wait until the end of a quarter to request such reimbursement but every effort shall be made to keep reimbursement requests current on at least a quarterly basis. However, any failure to do so will not prejudice SPHI's right to seek reimbursement at a later time.

5. Duties of SAB

In accordance with and subject to Borough ordinances, regulations and applicable statutes, the SAB has the following duties under this agreement:

- a. To provide continued possession and use of South Peninsula Hospital, its premises and physical plant for use by SPHI to operate a non-profit hospital and other approved services.
- b. To provide for funds for capital repairs necessary to maintain the facility in good

repair, and in compliance with all federal, state and local codes, subject to appropriation and availability of funds.

- c. To provide for funds for capital improvements and equipment necessary for the provision of the services and functions authorized or required, subject to appropriation and availability of funds.
- d. To provide for supplementation of the operating revenues derived by SPHI as necessary to cover losses on operations of the hospital or authorized services or as necessary to maintain sufficient cash flow for continued proper operation of the hospital as provided in Paragraph 13 of this agreement subject to appropriation and availability of funds.
- e. To establish an account for an operating subsidy based on projections submitted by SPHI and to provide for transfer of funds as necessary to cover operating losses or to maintain cash flow for the facility in accordance with the provisions of subparagraph 5.d. of this agreement.
- f. To approve annually the line items in the capital expenditure budget paid directly from Service Area funds held by the Borough.
- g. To consider and act promptly upon proposals submitted by SPHI for expansion of services or the hospital.
- h. To review the proposed operating budget for the hospital, and adopt a Service Area budget.
- i. To establish limits on the amount of public funds held in various reserve accounts by SPHI.

6. Indemnification and Insurance

During the life of this agreement the Borough shall at all times insure the physical structure and contents of the facility for fire and property damage.

During the life of this agreement SPHI shall at all times:

- a. Maintain and provide workers' compensation insurance coverage as required by Alaska law.
- b. Maintain and provide comprehensive general liability insurance for the premises and its operations in amounts approved by the Borough.

- c. Maintain an adequate program of insurance for medical liability or errors and omissions for the hospital and its employees, as approved by the Borough.
- d. Ensure that members of the Medical or Allied Health Professional staff practicing at SPHI maintain adequate levels of professional liability insurance.
- e. Purchase insurance providing liability coverage for its officers and directors arising from the performance of their duties.
- f. Immediately notify the SAB and Borough of any lawsuits or claims filed against the hospital.
- g. Provide the Borough with schedules of insurable assets on an annual basis.

7. Destruction of the Premises

In the event of damage to, or destruction of, all or any part of the hospital, SPHI shall have authority to make such arrangements as are reasonably necessary to continue to operate the hospital and provide services. In such event, SPHI shall have the authority to suspend or reduce services it determines cannot be provided until such time as repair or replacement of the premises has been completed. SPHI shall immediately notify the SAB of any suspension or reduction in services due to damage or destruction.

8. Supplies and Equipment

SPHI shall be entitled without charge to continued possession and use of all supplies, materials, equipment and inventory on hand. At the termination of this agreement, the supplies, materials, movable equipment and inventory on hand shall, without charge, remain the sole property of the Borough.

Disposition by SPHI of any surplus equipment or supplies shall be made in accordance with the Borough code, unless and to the extent otherwise authorized by the SAB and Borough. Proceeds will be returned to the operating account of SPHI.

9. Termination of Agreement for Cause

Either of the parties may terminate this agreement for the reasons set forth below, by giving the other party ninety (90) days' written notice sent by certified mail. A material breach of this agreement shall be considered to exist:

- a. When such a breach has not been remedied within 90 days of notification.
- b. When SPHI, because of conditions beyond its control, is unable to obtain or retain

professional practitioners to adequately support the level of service defined by the SAB; or

- c. When either party requests a modification of this agreement to relieve it from financial loss in the proper conduct, operation and management of the hospital, and is unable to obtain the consent of the other party to a reasonable change or modification sufficient to alleviate such condition.

10. Continuation of Agreement

If for any reason SPHI cannot carry out its duties under this agreement, SAB will assume the management and operation of the hospital until another suitable operator can be found.

In the event SAB should be dissolved by the Borough, this agreement will continue in force and the Borough will assume all duties of the SAB set forth herein.

11. Independent Status of SPHI

SPHI is an independent business. The operation of the hospital is the business of SPHI and not that of the Borough nor SAB. No employees of SPHI shall be deemed to be employees of the Borough. SPHI does not act as the agent of the Borough by virtue of any provision of this agreement.

12. Reasonable Rates

SPHI will use its best efforts to operate the hospital without an operating subsidy from the Service Area. Prices for hospital services shall be established to accomplish this objective. SPHI will take into account the need as required by law to provide a reasonable amount of services without charge to eligible persons.

13. Operating Losses and Surpluses

Requests for transfers of funds from the Service Area subsidy account shall be supported by written justification showing the need for such funds. Funds must be requested by SPHI with as much advance notice as possible. Such notice shall be not less than five (5) working days, except in an emergency.

Revenues received in excess of the operating expenses and not needed for current operation of hospital services shall be placed in an operating reserve account. Such reserve account funds exceeding ninety (90) days cash on hand ("the operating reserve amount"), will be used to offset operating losses before SPHI will receive an operating

subsidy. For the 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, SPHI shall transfer all accumulated revenues in excess of the operating reserve amount to the Plant Replacement and Expansion fund. If accumulated revenues are less than the operating reserve amount at any time, then SPHI may, by Board action, transfer an amount from the Plant Replacement and Expansion fund to its operating reserve to maintain the operating reserve amount.

To the extent funds are available, SPHI shall maintain the Plant Replacement and Expansion fund for major repairs; for replacement of Hospital and other service area property, improvements, fixtures, and equipment; for acquisition of new hospital property, improvements, fixtures and equipment; and to replenish the operating reserves, as provided above. Except for purposes of replenishing the operating reserve, and acquisition of approved budgeted capital items, SPHI shall not spend or transfer funds in excess of \$20,000 per item from this designated fund without the prior approval of the SAB. Any transfer in or out of this fund shall be approved by the SPHI Board.

14. Revenues and Fund Balances

At the expiration of this agreement all remaining balances in the operating and reserve accounts shall remain the property of the Borough for the benefit and use of the Service Area and the fulfillment of any legal obligations such as pension plan funding required by the Employee Retirement Income Security Act of 1974 or professional liability insurance reserves required by contract.

15. Risk Management

SPHI shall maintain high quality medical care in the hospital and use its best efforts to prevent unnecessary liability.

16. Level of Service

The SAB has the right and the responsibility to determine the level of services that SPHI shall provide. SPHI will notify the SAB sixty (60) days prior to the elimination of any approved service; unless a shorter notification period is mutually agreed upon by SPHI and the SAB. SPHI shall obtain the approval of the SAB prior to subcontracting the delivery of an entire level of service to a third party.

In order for SPHI to offer a new program or service, that program or service must be within the scope of services permitted under ¶4(a) of this Agreement. The SAB must specifically approve and authorize any new program or service which SPHI wishes to add after execution of this Agreement. The SAB reserves the right to review each new

program or service at the time it is proposed to determine whether the proposal is appropriate and acceptable. The SAB also reserves the right to contract with other parties for providing any service or program included in the scope of services permitted under ¶4(a). This reservation is made to allow the SAB to reevaluate changing conditions and determine whether provision of the service is best accomplished through SPHI at that time. The general parameters of the service or program to be provided by SPHI, and any conditions and restrictions imposed by the SAB concerning it shall be set forth in a Letter of Understanding to be executed by authorized representatives of the SAB and SPHI, and by the Borough Mayor with Borough Clerk attestation. Such Letters of Understanding shall be deemed incorporated by reference as enforceable provisions of the Operating Agreement, and shall be filed with the borough Clerk as attachments to the Sublease and Operating Agreement.

17. Surrender on Termination

Upon termination of this agreement SPHI shall quit, surrender and return to the Borough all of the property of the Borough in the same condition as on the effective date of this agreement, normal wear and tear excepted.

18. Inspection

The SAB reserves the right to enter and inspect the hospital at any reasonable time during normal business hours for the purpose of determining the adequacy of the maintenance, upkeep and repair of the Borough's property, and any other matters relating to this agreement.

19. Assignment and Subleasing

SPHI shall not assign its rights or interests under this agreement, or lease or sublease all or any part of the property it manages and operates, without the prior approval of the Borough. The City of Homer must also approve the sublease of property in which it has an ownership interest.

20. Medical Records

The original medical records maintained at the hospital shall belong to the Borough and remain on the premises under the supervision and control of SPHI. Upon termination of this agreement, the Borough shall retain all such original medical records for such period of time as is required by state and federal laws, but, in any event, a minimum of five (5) years following the termination of this agreement. SPHI shall at all times be provided free and complete access to such records.

21. Final Accounting

Upon termination of this agreement there shall be a complete accounting and final payment and settlement of accounts within (90) days following the submission of the final accounting report by SPHI.

22. Grants or Financial Assistance

SPHI shall comply with the requirements accompanying any grants or other forms of financial assistance. Such grant or financial assistance funds must be accounted for separately from other funds. Any grant agreement that obligates the SAB and Borough shall have prior approval of both entities.

23. Severability

If one or more provisions of this agreement are determined to be invalid, the remainder shall remain in force.

24. Public Meetings and Public Participation

The public shall be afforded reasonable notice of and access to regular business meetings of the Board of SPHI. SPHI will provide public notice, and will solicit applications for all positions that come up for reappointment and/or vacancy on its Board of Directors. Public notice will be made by public service announcements via local newspaper and/or radio.

25. Miscellaneous Provisions

The covenants and conditions of this agreement shall bind the parties, their successors and assigns and the actions of the parties pursuant to it shall be in full compliance with all applicable Borough ordinances and resolutions as may now exist or as may be amended or enacted during the term of this agreement.

Time is of the essence in this agreement.

All notices required by this agreement shall be in writing and delivered personally or mailed to:

Mayor, Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, Alaska 99669

President, SPHI
4300 Bartlett St.
Homer, Alaska 99603

Chairman, SAB
4300 Bartlett St.
Homer, Alaska 99603

Mayor, City of Homer
491 E. Pioneer Avenue
Homer, Alaska 99603

KENAI PENINSULA BOROUGH

By: Dale T Bagley
Its: Mayor
Dated: 4/8/03

ATTEST:

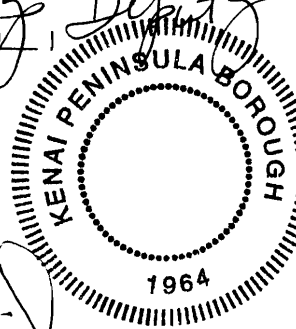
Sherry Bigg, Deputy
Borough Clerk

SOUTH PENINSULA HOSPITAL, INC.

By: Olaf Sam
Its: President
Dated: April 3, 2003

ATTEST:

Ingrid V. April
Secretary



SOUTH PENINSULA HOSPITAL
SERVICE AREA BOARD

By: David W. Green
Its: Chairman
Dated: April 3, 2003

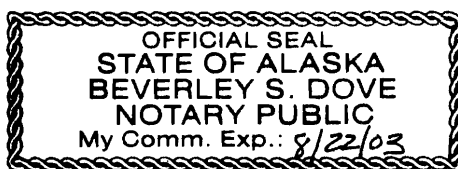
ATTEST:

Julie Wedemeyer
~~Secretary~~ Vice-Chair

ACKNOWLEDGMENT

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on this 8th day of April, 2003, by Dale Bagley, whose title is Mayor, for the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.




Beverly S. Dove
Notary Public for State of Alaska
My Commission Expires: August 22, 2003

ACKNOWLEDGMENT

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

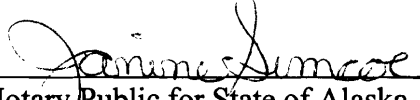
The foregoing instrument was acknowledged before me on this 3rd day of April, 2003, by Fred Lau, whose title is President, for South Peninsula Hospital, Inc., an Alaska nonprofit corporation, on behalf of the corporation.


Notary Public for State of Alaska
My Commission Expires: 6/12/05

ACKNOWLEDGMENT

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on this 3rd day of April, 2003, by David Green, whose title is Chair, for the South Peninsula Hospital Service Area, on behalf of the service area.


Notary Public for State of Alaska
My Commission Expires: 6/12/05

CONSENT TO SUBLEASE

The City of Homer, Alaska, as Lessor under that certain Lease of Homer Hospital entered into on the 10th day of November, 1969, between the City of Homer and the Kenai Peninsula Borough (The "Lease"), hereby consents to the Sublease and Operating Agreement for South Peninsula Hospital entered into on April 8, 2003, between the Kenai Peninsula Borough and South Peninsula Hospital, Inc., upon the express conditions that (a) this Consent shall not be deemed a waiver or relinquishment of the covenant against assignment or subletting set forth in Section 14 of the Lease; and (b) the City of Homer does not hereby consent to any further assignment or subletting of the premises; and (c) this Consent shall not release the Kenai Peninsula Borough from the full performance of the provisions of the Lease, as now existing or as may hereafter be amended.

Dated this 14th day of August, 2003.

CITY OF HOMER

By: Walt Wedel

Its: CITY MANAGER

ATTEST:

Frank S. Calhoun
City of Homer - City Clerk