

Introduced by: City Manager
Date: July 13, 2004
Public Hearing: July 27, 2004
Action: Passed
Vote: 6-0

CITY OF BETHEL, ALASKA

ORDINANCE #04-13

AN ORDINANCE AUTHORIZING AMENDMENTS TO THE PROPOSED LEASE OF CITY OWNED PROPERTY TO YUKON-KUSKOKWIM HEALTH CORPORATION FOR AN ASSISTED LIVING HOME FOR THE ELDERLY AND/OR ADULTS WITH DISABILITIES

WHEREAS, the City Council passed Ordinance #03-14 on November 18, 2003, which approved a lease agreement between the City of Bethel and Yukon-Kuskokwim Health Corporation, which was attached to the ordinance;

WHEREAS, Ordinance #03-14 and the approved lease agreement allow for use of City owned property by Yukon-Kuskokwim Health Corporation for an Assisted Living Home for the elderly and/or adults with disabilities;

WHEREAS, Yukon-Kuskokwim Health Corporation has not executed the approved lease, and has instead requested a modification of the lease to delete the term "or elsewhere" in the indemnification provision at ¶ 4.10A(1);

WHEREAS, the City Counsel has considered and agrees to the modification of the previous approved lease, as requested by Yukon-Kuskokwim Health Corporation; and

WHEREAS, the lease was drafted for execution in 2003, and therefore additionally edits to certain dates listed in the lease also need to be amended, and are made to the attached amended lease.

BE IT ORDAINED by the City Council of Bethel, Alaska, that:

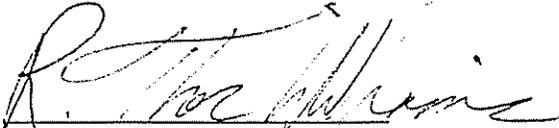
SECTION 1. Classification. This ordinance is not permanent or general in nature and shall not be placed in the Bethel Municipal Code.

SECTION 2. Authorization. In accordance with Section 4.08.030.B of the Bethel Municipal Code, the Mayor is hereby authorized to enter into the attached amended lease on behalf of the City of Bethel. The City finds that the lease as amended is consistent with the public interest to provide an Assisted Living Home for the elderly and/or adults with disabilities, a necessary public service.

SECTION 3. Exemption. Section 4.08.040 of the Bethel Municipal Code shall not apply to the disposal authorized in Section 2 of this Ordinance.

SECTION 4. Effective Date. This ordinance shall become effective immediately.

ENACTED THIS 27th DAY OF July, 2004, by a vote of six in favor and none opposed.



R. Thor Williams, Vice-Mayor

ATTEST:



Selena Malone, Acting City Clerk

ASSISTED LIVING FACILITY GROUND LEASE

This ASSISTED LIVING FACILITY GROUND LEASE (“Lease”) is made and entered into as of _____, 2004 by the City of Bethel (“Lessor”), a second class city whose principal place of business is P.O. Box 1388, Bethel, Alaska 99559, and Yukon-Kuskokwim Health Corporation, an Alaska non-profit corporation (“Lessee”), whose principal place of business is P.O. Box 528, Bethel, Alaska 99559.

RECITALS

WHEREAS, Lessor agrees to lease to Lessee a parcel of land more specifically described below and Lessee desires to lease such parcel of land from Lessor for the term and upon the terms, covenants and conditions set forth in this Lease.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby stipulate and agree as follows:

**ARTICLE 1
LEASED PREMISES AND TERM**

1.01 Leased Premises. Lessor, for and in consideration of the rent, covenants and conditions hereinafter specified to be paid, performed and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Lessor, land described as follows and herein called the “Leased Premises,” together with all rights, easements, privileges, both subterranean and vertical, and appurtenances attaching or belonging to the described land, but subject to the reservation contained in paragraph 1.02 and the reversionary clause contained in paragraph 4.14:

Lot 2, Block 9, Ptarmigan-Tundra View Subdivision, in the Bethel Recording District, Fourth Judicial District, State of Alaska.

1.02 Reservation of Minerals. All oil, gas, coal, geothermal resources and minerals of whatever nature in or under the above-described land are excluded from the Leased Premises and reserved to Lessor; provided, however, that during the term of this Lease, Lessor shall not have the right to enter on the surface of the Leased Premises for the purpose of mining and/or extracting such oil, gas, coal, geothermal resources, or other minerals.

1.03 Lease Term. This Lease shall be and continue in full force and effect for a term of thirty (30) years commencing on _____, 2004 and terminating on _____, 2034, unless earlier terminated in accordance with this Lease (the “Lease Term”).

**ARTICLE 2
RENT**

2.01 Rent. Lessee shall pay to Lessor in legal tender of the United States of America,

without deduction and without notice or demand, seventy-five dollars (\$75.00) per year in annual rent, to be paid in advance before _____ [month and day lease entered into] each year, except as hereinafter modified.

2.02 Increase in Rent. Lessor may increase the annual rental charge at five year intervals, beginning _____, 2009. Any proposed increase to the annual rent is subject to the following limitations:

Lessor must give the Lessee notice at least thirty (30) days prior to the expiration of each five-year interval of any increase to the annual rent. Any increase in the annual rental charge may not exceed 10% of the annual rental charge for the prior five-year interval.

ARTICLE 3 QUIET ENJOYMENT

Upon timely payment by Lessee of all rent and other payments required to be paid by Lessee under this Lease, and upon full and faithful observance and performance by Lessee of all of its covenants contained in this Lease, and so long as such observance and performance continues, Lessee shall peaceably hold and enjoy the Leased Premises during the Lease Term without hindrance or interruption by Lessor or anyone lawfully claiming by, through, or under it.

ARTICLE 4 LESSEE'S COVENANTS

4.01 Taxes and Assessments.

A. Lessee shall pay, not less than ten (10) days before they become delinquent, all real property taxes, other taxes, and assessments of every description for which the Leased Premises, or any improvement thereon or any use thereof, are now or during the Lease Term may be assessed or become liable, whether assessed to or payable by Lessor or Lessee. Such taxes and assessments include, but are not limited to, all real property tax increases resulting from any classification of the Leased Premises during the Lease Term to a higher use (other than a classification occurring at the initiative of Lessor or its agents) for which classification Lessee shall be deemed to be the petitioner and upon request by Lessor shall so notify the appropriate governmental authorities. Such real property taxes and assessments shall be prorated as of the dates the Lease Term begins and ends.

B. If at any time during the Lease Term any new or additional taxes (other than federal or state net income taxes or any other taxes existing on the effective date hereof) are assessed against the Leased Premises, or any improvement thereon, or any rents payable to Lessor under this Lease, or against Lessor with respect thereto, Lessee shall pay to the taxing authority or Lessor, not less than ten (10) days before they become delinquent and as additional rents, all of such new taxes.

C. Lessee shall pay, not less than ten (10) days before they become delinquent, all rates and other charges of every description for which the Leased Premises or any

improvement on it or any use of it, may be assessed or become liable during the Lease Term, whether made by governmental authority or by any public utility or community service company and whether assessed to or payable by Lessor or Lessee.

D. Lessor may elect, in its sole discretion and after giving written notice to Lessee and any Qualified Mortgagee (as defined in subparagraph 7.02.B, below), to pay any delinquent tax, assessment or charge for which Lessee is liable under this paragraph 4.01 for the account and at the expense of Lessee, and may further elect, upon such payment: (1) to terminate this Lease under Article 8, after giving sixty (60) days written notice and allowing an opportunity for cure as provided therein, and bring an appropriate action against Lessee for recovery of the sum paid; (2) to continue this Lease in force and charge the Lessee with the payment as additional rent; or (3) to continue this Lease in force and bring an appropriate action against Lessee for recovery of the sum paid. The above-enumerated elections are not in derogation of, and do not limit, any other rights or remedies Lessor may have under this Lease or applicable law. Nothing in this subparagraph 4.01.D requires Lessor to pay any delinquent tax, assessment, or charge for which Lessee is liable.

4.02 Improvements Required by Law. Lessee, at Lessee's own expense, during the Lease Term and subject to the requirements of this Lease, shall make, build, maintain and repair all fences, sewers, drains, roads, road widening, driveways, sidewalks, water, underground electric and telecommunication lines, curbs, gutters and other installations which may be required by law to be made, built, maintained, or repaired upon, or adjoining and in connection with, or for use of the Leased Premises or any part of it, and regardless of whether the same were erected by Lessor or in existence at the inception of this Lease. In case any such installations required by law shall be made, built, maintained or repaired by Lessor after giving the required notice provided for in paragraph 4.06, and if Lessee does not complete the required work within the time frame provided for in the notice, Lessee shall reimburse Lessor for the reasonable cost thereof plus twenty-five percent (25%) to cover Lessor's overhead, upon presentation of a bill therefor, as additional rent.

4.03 Construction or Removal of Improvements, Additions and Alterations.

A. "Significant work," as used in this paragraph 4.03, means all work which (1) involves the excavation, filling, or other alteration of the grade or drainage of the Leased Premises, or (2) involves the construction, demolition, or removal on or from the Leased Premises of any building or other improvement, or any addition or alteration to any building or improvement.

B. Except as otherwise provided in subparagraph 4.03.C below, Lessee shall not begin any significant work on the Leased Premises costing more than twenty thousand dollars (\$20,000.00) without first obtaining the prior written approval of Lessor, which approval shall not be unreasonably withheld, with respect to such work, the preliminary plans for such work, if any, and the final plans and specifications for such work.

C. Lessee may, at its own cost, construct an assisted living home for the elderly and/or adults with disabilities and improvements to service the needs of such elderly

and/or adults with disabilities on the Leased Premises, provided they shall be constructed in accordance with all applicable laws. Until the expiration or sooner termination of this Lease, title to any improvements constructed by Lessee shall remain in Lessee.

4.04 Repair and Maintenance. Lessee shall, at Lessee's expense and without notice from Lessor at all times during the Lease Term, keep all improvements now or hereafter built on the Leased Premises, in good order, condition, maintenance, operability, and repair and of a neat, clean, and pleasing appearance to Lessor. Lessee shall be responsible for snow removal on the Leased Premises.

4.05 Observance of Laws.

A. Lessee, at all times during the Lease Term, at its own expense, and with all due diligence shall observe and comply with all laws, ordinances, rules, and regulations which are now in effect or may later be adopted by any governmental authority, and which may be applicable to the Leased Premises or any improvement on it or any use of it, and shall promptly furnish such evidence of compliance with such laws, ordinances, rules and regulations as Lessor may request from time to time.

B. In furtherance, and not in limitation, of the foregoing subparagraph 4.05.A, Lessee must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Leased Premises during the Lease Term or any holdover thereafter, Lessee, at its own expense, must clean and restore the Leased Premises to the satisfaction of Lessor and any governmental body or court having jurisdiction of the matter. However, Lessee shall not be responsible for the clean up or restoration of the Leased Premises resulting from any discharge, leakage, spillage, emission or pollution to the Leased Premises from surrounding or adjacent premises unless Lessee's actions caused in whole or in part such discharge, leakage, spillage, emission or pollution, in which case Lessee shall be responsible for the portion of such discharge, leakage, spillage, emission or pollution which was caused by Lessee.

C. Lessee agrees to indemnify, hold harmless and defend Lessor against all liability, cost and expense (including, without limitation, any fines, penalties, clean up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against Lessor as a result of Lessee's breach of this paragraph 4.05, or as a result of any discharge, leakage, spillage, emission or pollution on or discharged from the Leased Premises, without regard to whether such liability, cost or expense arises during or after the Lease Term. Lessee shall pay all amounts owed Lessor under this paragraph 4.05 within ten (10) days after any such amount becomes due.

4.06 Inspection and Repair by Lessor. Lessee shall repair, maintain and make good all conditions required under the provisions of this Lease to be repaired or maintained within: (1) five (5) working days from the date of written notice from Lessor with regard to removal of trash or debris, landscape or yard maintenance, pavement or sidewalk sweeping, snow removal or cleaning, or parking lot lighting replacement and repair, and (2) thirty (30) days from the date of written notice from Lessor with regard to all other matters. If Lessee refuses or

neglects to repair or maintain the Leased Premises as required under the terms of this Lease to the reasonable satisfaction of Lessor after written demand, then Lessor, without prejudice to any other right or remedy it has under this Lease or otherwise may perform such maintenance work or make such repairs without liability to Lessee for any loss or damage that may accrue to Lessee's property or Lessee's business by reason of the work or repairs. Upon completion of any such repair or maintenance, and no later than ten (10) days after presentation of a bill therefor, Lessee shall pay as additional rent Lessor's costs for making such repairs or performing such maintenance plus twenty-five percent (25%) to cover its overhead. However, Lessee shall not be responsible for the replacement or repair of any street lights that may illuminate the Premises.

4.07 Waste and Wrongful Use. Lessee shall not commit or suffer any waste of the Leased Premises or any unlawful, unsafe, improper, or offensive use thereof or any public or private nuisance thereon.

4.08 Setback. Lessee shall observe all setback lines applicable to the Leased Premises and shall not construct or maintain any building or other structure between any street boundary of the Leased Premises and any setback along such boundary, except for fences or walls approved by Lessor.

4.09 Liens. Lessee shall not commit or suffer any act or neglect whereby the Leased Premises or the interest of Lessor or Lessee therein at any time during the Lease Term may become subject to any attachment, execution, lien, charge, or other encumbrance, other than a statutory lien for non-delinquent real property taxes or assessments, or a Leasehold Mortgage approved by Lessor, and shall indemnify and hold Lessor harmless against all losses, costs, and expenses, including reasonable attorneys' fees, paid or incurred by Lessor in connection therewith.

4.10 Indemnification.

A. Lessee shall indemnify, defend, and hold Lessor harmless from and against any and all claims arising from (1) Lessee's use of the Leased Premises, or from the conduct of Lessee's business, or from any activity, work or things done, permitted or suffered by Lessee in or about the Leased Premises; (2) any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease; (3) any negligence of Lessee, or any of Lessee's agents, contractors, customers, residents, employees, or any person claiming by, through or under Lessee; and (4) any accident on or in connection with the Leased Premises, or any fire thereon, or any nuisance made or suffered thereon. Lessee shall further indemnify, defend, and hold Lessor harmless from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any proceeding brought against Lessor by reason of any such claim. Lessee, upon notice from Lessor, shall defend any of the above-described claims at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Leased Premises, arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor, except to the extent that such damage or injury is caused by Lessor's sole negligence. However, this paragraph 4.10 does not require Lessee to indemnify, defend, and hold harmless Lessor from and against any portion of a claim to the extent that

portion of the claim is caused by Lessor's negligence, or the negligence of Lessor's agents, contractors, customers, or employees arising from Lessor's activities on the Leased Premises. Lessor shall indemnify, defend, and hold harmless Lessee from and against any portion of a claim to the extent that portion of the claim is caused by Lessor's negligence, or the negligence of Lessor's agents, contractors, customers, or employees arising from Lessor's activities on the Leased Premises.

B. Lessee acknowledges that before entering into this Lease it has fully inspected or been provided with an opportunity to fully inspect the Leased Premises and all documents in the possession of Lessor relating to the condition of the Leased Premises, and to test or examine all conditions of or on the Leased Premises. Lessee further acknowledges that, at the time this Lease is entered into and on the basis of the foregoing inspection or opportunity to inspect, Lessee is as knowledgeable about the physical condition of the Leased Premises as Lessor and, on that basis, assumes all risks relating to the condition of the Leased Premises, including but not limited to latent defects that may be unknown both to Lessee and Lessor at the time this Lease is entered into. Lessor represents and warrants that it has provided Lessee with an opportunity to inspect all documentation maintained by Lessor in its records concerning the condition of the Leased Premises.

4.11 Costs and Expenses of Lessor. Lessee shall forthwith pay to Lessor all costs and expenses, including reasonable attorneys' fees, which are (1) paid or incurred by Lessor but are required to be paid by Lessee under any provision of this Lease; (2) paid or incurred by Lessor in enforcing any covenant of Lessee contained in this Lease, in protecting itself against or remedying any breach thereof, in recovering possession of the Leased Premises or any part thereof, or in collecting or causing to be paid any delinquent rents, taxes, assessments, or rates; (3) incurred by Lessor in reviewing any matter for which Lessor's approval is sought and in processing such approval under this Lease; or (4) incurred by Lessor in connection with any other action related to this Lease, the Leased Premises, or Lessee's actions or omissions on the Leased Premises, other than a condemnation action filed by or against Lessee, to and in which Lessor is made a party but not adjudicated to be at fault. The term "costs and expenses" as used in this Lease shall include but not be limited to all of Lessor's out-of-pocket expenditures attributable to the matter involved. Except as otherwise expressly provided herein, all costs and expenses of Lessor shall be payable by Lessee to Lessor forthwith after mailing or personal delivery of statements therefor to Lessee. Such obligations and interest shall constitute additional rents.

4.12 Surrender of Leased Premises and Improvements. Upon the expiration or termination (including termination resulting from Lessee's breach) of this Lease, Lessee, without further notice, shall deliver up to Lessor, possession of the Leased Premises. At the expiration or termination of the Lease Term, or any extended term thereof; Lessee, shall remove, demolish or otherwise dispose of all Lessee's improvements within two hundred and seventy (270) days of expiration or termination, unless the Lessor agrees otherwise, and leave the Leased Premises in a clean and cleared condition. In the event of failure or refusal of Lessee to surrender possession of the Leased Premises, Lessor shall have the right to reenter the Leased Premises and remove therefrom Lessee or any person, firm, or corporation claiming by, through, or under Lessee and to remove Lessee's improvements therefrom and to obtain damages for trespass from Lessee.

4.13 Holdover. If Lessee remains in possession of the Leased Premises after expiration

of the Lease Term without the execution of a new lease and in such a manner as to create a valid holdover tenancy, and if no notice of termination has been delivered by Lessor to Lessee, Lessee shall be deemed to occupy the Leased Premises only as a lessee at will from month-to-month, upon and subject to all of the provisions of this Lease which may be applicable to a month-to-month tenancy, including but not limited to the provisions of Article 2 and of paragraph 4.12 of this Lease.

4.14 Use and Restrictions. Lessee shall continuously operate an assisted living home for the elderly and/or adults with disabilities on the Leased Premises. Lessee shall not cease operations of its assisted living home on the Leased Premises without prior notice to the Lessor. If the Leased Premises are no longer used to operate an assisted living home for the elderly and/or adults with disabilities, or if the Leased Premises is used for any other purpose other than an assisted living home for the elderly and/or adults with disabilities, the leasehold interest shall revert to Lessor and terminate in accordance with Article 8 of this Lease.

4.15 Utility Service. Lessee shall arrange for its own utility services and bear all costs for utilities for the Leased Premises.

4.16 Discrimination Prohibited. Lessee will not discriminate in allowing access to and use of the Leased Premises on the grounds of race, color, religion, national origin, ancestry, marital status, age, disability, gender, or other legally protected status.

4.17 Underground Conditions and Water Drainage. Lessee has made, or prior to the construction of any improvements on the Leased Premises will make, its own soil tests of the Leased Premises. This Lease is made subject to and without any liability on the part of the Lessor, its agents or employees because of or resulting from any fill or any subsurface or soil condition on the Leased Premises. Lessee shall not drain or discharge water from the Leased Premises onto adjoining land. The Leased Premises shall be graded and drained to cause the discharge of all water on the Leased Premises at a location or locations approved by Lessor, or into an established drainage easement, if any, on the Leased Premises.

ARTICLE 5 INSURANCE

5.01 Liability Insurance. During the entire Lease Term, and during any holdover thereafter, whether or not authorized by Lessor, Lessee shall keep in full force and effect a policy or policies of general liability and property damage insurance which satisfies coverage requirements set by Lessor with respect to the Leased Premises and the business operated by Lessee in which the limit of bodily injury, death, and property damage liability shall be not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, and not less than TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate, or such higher limits as Lessor may specify; provided, however, that no such limit shall in any way limit Lessee's liability or be construed as a representation of sufficiency to fully protect Lessee or Lessor. The policy or policies purchased pursuant to this paragraph shall name the Lessee as insured and the Lessor as additional insured with respect to the Leased Premises and the business operated by Lessee on the Leased Premises. A copy of each policy shall be provided to Lessor within three days of the date this Lease is entered into.

5.02 Policy Provisions. Each policy of comprehensive general liability described in paragraph 5.01 shall:

A. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim, any right of setoff; counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for Lessor, Lessee, for any person claiming by, through, or under any of them.

B. Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings and other improvements is increased, whether or not within the knowledge or control of; or because of any breach of warranty or condition or any other act or neglect by Lessor, Lessee, or any person claiming by, through, or under any of them.

C. Provide that such policy may not be cancelled, whether or not requested by Lessee, unless the insurer first gives not less than thirty (30) days prior written notice thereof to Lessor.

D. Contain a waiver by the insurer of any right of subrogation to any right of Lessor or Lessee against either of them or against any person claiming by either of them.

ARTICLE 6 EMINENT DOMAIN

6.01 Permanent Taking.

A. In the event of a taking by an entity of competent jurisdiction of all or materially all of the Leased Premises, or the determination of the Lessor that all or materially all of the Leased Premises is necessary for a public purpose, this Lease shall terminate on the earlier of vesting of title in, or the taking of possession by the condemner, or the written determination of the Lessor.

B. If less than materially all of the Leased Premises are taken or if the Lessor determines that it needs less than materially all of the Leased Premises for a public purpose (herein called a "partial taking"), this Lease shall continue in effect except as to the portion so taken or condemned, but the rent to be paid by Lessee shall thereafter be reduced by a percentage equal to the proportion that the number of square feet in the Leased Premises so taken bears to the number of square feet of Leased Premises before the partial taking.

6.02 Disposition of Proceeds. Lessor is entitled to all proceeds of condemnation except those proceeds specifically allocated for Lessee's improvements.

6.03 Temporary Taking. If the whole or any part of the Leased Premises or of Lessee's interest under this Lease is taken by any competent authority for its temporary use or occupancy, this Lease shall not terminate by reason thereof and Lessee shall continue to pay all rental payments and other charges payable by Lessee hereunder and to perform all other terms, covenants, and conditions contained herein, except to the extent Lessee is prevented from so doing by the terms of the order of the taking authority. In the event of a temporary taking, Lessee shall be entitled to receive the entire amount of the award and shall be obligated, at its sole expense, to restore the Leased Premises as nearly as may be reasonably possible to the condition

in which it existed immediately prior to such taking; provided, however, that if the period of temporary use or occupancy extends beyond the expiration of the Lease Term, the award shall be apportioned between Lessor and Lessee as of said date of expiration, after Lessor shall have received the entire portion of the award attributable to physical damage to the Leased Premises and any improvements thereon and to the restoration thereof to the condition existing immediately prior to the taking or condemnation.

ARTICLE 7 ASSIGNMENTS AND MORTGAGES

7.01 Lessor's Consent Required. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Leased Premises without Lessor's prior written consent. Lessor's consent shall not be unreasonably withheld. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a breach of this Lease.

7.02 Mortgage of Leasehold Interest. Lessee shall have the right at any time, and from time to time, to subject the leasehold estate and any or all of the Lessee's improvements situated on the Leased Premises to one or more mortgages or assignments as security for a loan or loans or other obligations of Lessee (each of which instruments are herein called a "Leasehold Mortgage"), provided that:

A. The Leasehold Mortgage and all rights acquired under it shall be subject to each and all the covenants, conditions, and restrictions stated in this Lease, and to all rights and interests of Lessor, except as otherwise provided in this Lease.

B. Lessee shall give Lessor prior notice of any such Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage. Upon Lessor's written consent to the Leasehold Mortgage, the mortgage shall become a "Qualified Mortgage" as that term is used in this Lease.

ARTICLE 8 DEFAULT AND DEFEASANCE

8.01 Event of Default. Each of the following events shall be a default by Lessee and breach of this Lease:

A. Failure to Build and Continuously Operate Assisted Living Home. Failure to build and continuously operate an assisted living home for the elderly and/or adults with disabilities throughout the Lease Term.

B. Failure to Perform Lease Covenants. Abandonment or surrender of the Leased Premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or any other sum required by this Lease to be paid by Lessee, or to perform as required or conditioned by any other covenant or condition of this Lease.

C. Appointment of Receiver. The appointment of a receiver or trustee to take possession of the Leased Premises or improvements or of the Lessee's interest in the leasehold estate or of Lessee's operations on the Leased Premises for any reason, including but not limited to, assignment for benefit of creditors, but not including receivership pursuant to administration of the estate of any deceased or incompetent Lessee.

D. Default in Mortgage Payment. Default or delinquency in the payment of any loan secured by a Leasehold Mortgage permitted by the Lease.

8.02 Notice and Right to Cure.

A. Notices. As a precondition to pursuing any remedy for an alleged default by Lessee, Lessor shall, before pursuing any remedy, give notice of default to Lessee and to all Qualified Mortgagees whose names and addresses were previously give to Lessor by Lessee or a Qualified Mortgagee.

B. Method of Giving Notice. Lessor shall give notice of default in accordance with subparagraph 8.02.A by mailing by first class mail, a copy of the same notice to each such party at the same address.

C. Lessee's Right to Cure Defaults. If the alleged default is nonpayment of rent, taxes, or other sums, Lessee shall have thirty (30) days after the notice is given to cure the default. For the cure of any other default, Lessee shall promptly and diligently after the notice commence curing the default and shall have sixty (60) days after notice is given to complete the cure.

D. Mortgagee's Right to Cure Defaults. Each Qualified Mortgagee under a Leasehold Mortgage then in force under provisions of this Lease permitting mortgages relating to purchase or construction of improvements, shall have sixty (60) days after service of notice of default within which, at the Qualified Mortgagee's election, either: (1) to cure the default if it can be cured by the payment or expenditure of money; or (2) if the Qualified Mortgagee does not elect to cure by the payment or expenditure of money, or if the default cannot be so cured, to cause the prompt initiation of foreclosure, to prosecute it diligently to conclusion, and to perform and comply with all other covenants and conditions of this Lease requiring the payment or expenditure of money by Lessee until the leasehold estate created by this Lease shall be released or reconveyed from the effect of the Leasehold Mortgage, or until it shall be transferred or assigned pursuant to the Leasehold Mortgage.

8.03 Non-Waiver. Acceptance by Lessor or its agents of any rents shall not be deemed to be a waiver by it of any breach by Lessee of any of its covenants contained in this Lease or of the right of Lessor to reenter the Leased Premises or to declare a forfeiture for any such breach. Waiver by Lessor of any breach by Lessee shall not be deemed to be a waiver of the right of Lessor to declare a forfeiture for any other breach or of any other covenant.

8.04 Right of Lessor to Protect Against Default. If Lessee fails to observe or perform any of its covenants contained herein, Lessor, at any time thereafter and with seven (7) days notice, or in the case of a situation determined by Lessor to constitute an emergency, without

notice, shall have the right but not the obligation to observe or perform such covenant for the account and at the expense of Lessee, and shall not be liable to Lessee or anyone claiming by, through, or under it for any loss or damage by reason thereof to the occupancy, business, or property of any of them. All costs and expenses paid or incurred by Lessor in observing or performing such covenant shall constitute additional rents, which Lessee shall forthwith pay to Lessor upon statements therefor.

8.05 Lessor's Remedies. If any default by Lessee shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default under paragraph 8.02 of this Lease, Lessor has the following remedies in addition to all other rights and remedies provided by law or equity or other provisions of this Lease, to which Lessor, may resort cumulatively or in the alternative. The election of one remedy for any one default shall not foreclose an election of any other remedy for another default or for the same default at a later time.

A. Termination In The Event of Default. Lessor may, at Lessor's election, terminate this Lease in the event of default by giving Lessee and all Qualified Mortgagees notice of termination in accordance with the procedures specified in paragraph 8.02.B of this Lease. On the giving of the notice, all Lessee's rights in the Leased Premises shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Leased Premises and all improvements not required to be removed, and Lessor may reenter and take possession of the Leased Premises and all remaining improvements. Termination under this paragraph shall not relieve Lessee, or any of its guarantors, insurers, or sureties, from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee, or any other relief available to Lessor.

B. Reentry Without Termination. Lessor may, at Lessor's election, reenter the Leased Premises, and, without terminating this Lease, at any time and from time to time relet the Leased Premises and improvements or any part of them, for the account and in the name of Lessee or otherwise. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name and shall be entitled to all rents from the use, operation, or occupancy of the Leased Premises or improvements or both. Lessor shall apply all rents from reletting as provided in paragraph 8.07 of this Lease. Lessee shall nevertheless pay to Lessor on the due dates specified in this Lease, the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the proceeds of any reletting. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease unless Lessor gives Lessee notice of termination.

C. Recovery of Rent. Lessor shall be entitled, at Lessor's election, to each installment of rent or to any combination of installments for any period before termination, plus interest at the rate of two percent (2%) above the prime rate charged at the time by the Wells Fargo Bank in Bethel, Alaska, or the maximum legal rate, whichever is less, from the due date of each installment. If Lessor elects to relet the Leased Premises without terminating this Lease, the proceeds of such reletting shall be applied, when received, as provided in paragraph 8.07 of this Lease.

D. Lessee's Personal Property. Lessor may, if Lessee failed to remove personal property and/or Lessee's improvements within the time allowed in paragraph 4.12, use

Lessee's personal property, Lessee's improvements and trade fixtures on the Leased Premises, or any of such property and fixtures, without compensation and without liability for use or damage, or store them for the account and at the cost of Lessee.

E. Damages. Lessor shall also be entitled, at Lessor's election, to damages in the following sums: (1) all amounts that would have fallen due as rent between the time of termination and the time the Leased Premises are relet, provided that Lessor shall exert reasonable efforts to relet the Leased Premises; and (2) the amount, if any, by which the rent under this Lease exceeds the rent under any subsequent lease upon reletting calculated over the Lease Term; and (3) all administrative, marketing, brokerage, maintenance, repair, cleaning and similar costs incurred by Lessor.

8.06 Assignment of Subrents. Lessee assigns to Lessor all subrents and other sums falling due from sublessees, licensees and concessionaires (referred to as "Sublessees" in this paragraph 8.06) during any period in which Lessor has the right under this Lease, whether exercised or not, to reenter the Leased Premises for Lessee's default and Lessee shall not have any right to such sums during that period. This assignment is subject and subordinate to any and all assignments of the same subrents and other sums made before the default in question to a Qualified Mortgagee under any Leasehold Mortgage permitted by provisions of this Lease relating to purchase or construction of improvements for the Lease Premises. Lessor may at Lessor's election reenter the premises and improvements with or without process of law, without terminating this Lease, and either, or both, collect these sums or bring actions for the recovery of the sums directly from Sublessees. Lessor shall apply all such collected subrents as provided in paragraph 8.07. Lessee shall nevertheless pay to Lessor on the due dates specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the sums assigned and actually collected under this paragraph 8.06. Lessor may proceed to collect either the assigned sums or Lessee's balances, or both, or any installment or installments of them, either before or after expiration of the Lease Term, but the period of limitations shall not begin to run on Lessee's payments until the due date of the final installment to which Lessor is entitled under this Lease, nor shall it begin to run on the payments of the sums assigned under this paragraph 8.06, until the due date of the final installment due from the respective Sublessees.

8.07 Application of Sums Collected by Lessor. Lessor shall apply all subrents and proceeds of reletting as follows: first, to the payment of reasonable expenses (including attorneys' fees and brokers' commissions or both) paid or incurred by or on behalf of Lessor. In recovering possession, placing the Leased Premises and improvements in good condition, and preparing or altering the Leased Premises or improvements for reletting; second, to the reasonable expense of securing new lessees; third, to the fulfillment of Lessee's covenants to the end of the Lease Term; and fourth, to Lessor's uses and purposes.

8.08 Costs. In the event Lessee shall be in default in the performance of any of its obligations under this Lease, and Lessor takes any action to enforce this Lease, including, but not limited to, court action, Lessee shall pay Lessor all the expenses incurred by Lessor in taking such action including full and reasonable attorneys' fees.

ARTICLE 9 GENERAL PROVISIONS

9.01 Lessor's Right to Entry, Inspection and Repair. Lessor may enter and inspect the Leased Premises, other than the interior of Lessee's Improvements, at any time during regular business hours, with or without the presence of Lessee or its authorized representative, after giving twenty-four (24) hours advance notice to Lessee of such inspection. To protect the confidentiality of Lessee's clients, Lessor may not enter or inspect the interior of Lessee's Improvements except in an emergency or upon agreement by Lessee, such agreement not to be unreasonably withheld or refused. In the event of an emergency, Lessor may enter and inspect the Leased Premises on reasonable notice to Lessee (including no notice if the circumstances warrant) and make such repairs or institute such measures, on the account and at the expense of Lessee, as may be necessary to avert or terminate the emergency. An emergency is any action, event, or condition, either extant or imminent, that threatens significant damage to property or injury to persons on or near the Leased Premises, and includes but is not limited to, flood, fire, explosion, avalanche, earthquake, uncontrolled or dangerous discharge or release of water or other fluids, unauthorized or illegal placement of hazardous or toxic materials on the Leased Premises, and shifting settling or loss of earth or support on the Leased Premises. The provisions of this paragraph 9.01 apply to Lessor solely in its capacity as Lessor hereunder and not in any other capacity.

9.02 Notices. Any notice, other than notice of default under subparagraphs 8.02.A and 8.02.B of this Lease, or demand to Lessor or Lessee provided for in this Lease may be given sufficiently for all purposes in writing, mailed by first class mail and addressed to such party or its agent at its mailing address specified herein or at the last such address specified by such party in writing to the other, or may be delivered personally within the State of Alaska to such party or its agent. Except as otherwise expressly provided herein, such notice shall be conclusively deemed to have been given on the date of such mailing or personal delivery. When the Lessee is more than one person or entity, any notice given by Lessor to any of them shall constitute notice to all of them, and any agreement or approval with or in favor of Lessor made or given by any of them shall bind all of them.

9.03 Covenants and Conditions. Every provision in this Lease which imposes an obligation upon Lessee or invests an option, power, or right in Lessor shall be deemed to be a covenant of Lessee in favor of Lessor, and the time of observance and performance by Lessee of each such covenant shall be of the essence. Full and faithful observance and performance by Lessee of each of its covenants contained in this Lease shall be a condition of this Lease.

9.04 Integration and Amendments. Except as otherwise expressly provided in this Lease, this Lease is a complete integration of every agreement and representation made by or on behalf of Lessor and Lessee with respect to the Leased Premises, and no implied covenant or prior oral or written agreement shall be held to vary the provisions of this Lease, any law or custom to the contrary notwithstanding. No amendment or other modification of the provisions of this Lease shall be effective unless incorporated in a written instrument duly executed and acknowledged by Lessor and Lessee.

9.05 Survival and Severability. The rights and obligations of Lessor and Lessee provided in paragraphs 4.05 and 4.10 through 4.12, except to the extent expressly varied or superseded by a subsequent instrument executed by Lessor and Lessee, shall survive the expiration or earlier termination of this Lease. If any provision of this Lease is held to be void or otherwise unenforceable by any court or other tribunal of competent jurisdiction, other than at the initiative or with the support of Lessor, within thirty (30) days after receipt of written notice of such holding Lessor shall have the right and option, exercisable by written notice thereof to Lessee, to terminate this Lease effective as of the date of such written notice of exercise. It is understood and agreed that otherwise this Lease, except for such provision so held to be void or otherwise unenforceable, shall remain in full force and effect.

9.06 Binding Effect. This Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns. The designations "Lessor" and "Lessee" include their respective successors and assigns and shall be so construed that the use of the singular number includes the plural number, and vice versa, and the use of any gender include the other genders. If at any time during the Lease Term Lessee is more than one person or entity, including persons who are partners and operate Lessee as a partnership, their liability hereunder shall be joint and several.

9.07 Lessor's Authority to Convey Fee Title. Lessor retains the absolute and unconditional right to convey fee title in the Leased Premises or an interest or estate therein, subject to this Lease and the interest of any Qualified Mortgagee.

9.08 Lessee's Authority to Execute Lease. The Lessee represents that the person signing this Lease on its behalf, its President/Chief Executive Officer ("CEO"), has been duly authorized by Lessee's Board of Directors to sign this Lease on behalf of the Lessee.

9.09 Captions. The captions of the articles and paragraphs are for convenience only, are not an operative part hereof, and neither limit nor amplify in any way the provisions hereof.

9.10 Execution and Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

9.11 Governing Law/Construction. This Lease shall be construed and governed by the laws of the State of Alaska. This Lease was negotiated between the parties and shall not be strictly construed against either party. In the event that a question, dispute, or requirement for interpretation or construction should arise with respect to this Lease, jurisdiction and venue shall lie exclusively with the Superior Court in the Fourth Judicial District for the State of Alaska, at Bethel, Alaska.

9.12 Waiver of Sovereign Immunity. Lessee expressly waives, relinquishes, and promises not to assert as a defense its sovereign immunity or any other form of immunity for the purpose of enforcing this Lease. Lessee's relinquishment and waiver herein is limited to the sole purpose set forth in the preceding sentence.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed and acknowledged this Lease.

DATED: _____

LESSOR
CITY OF BETHEL

By: _____
Its: Vice Mayor
Printed Name: R. Thor Williams

DATED: _____

LESSEE
Yukon-Kuskokwim Health Corporation

By: _____
Its: President/CEO
Printed Name: Gene Peltola