

**SUBSIDY AGREEMENT
FOR A
COMBINED CLINIC AND HOSPITAL FACILITY**

THIS AGREEMENT FOR A COMBINED CLINIC AND HOSPITAL FACILITY ("Agreement") is made and entered into as of the 6th day of ^{May} ~~March~~, 2009 ("the Effective Date") by and between **PeaceHealth**, a Washington nonprofit corporation that is qualified as exempt from federal income taxation pursuant to Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, ("PeaceHealth") and the **San Juan County Public Hospital District No. 1** (the "District"), a Washington State Public Hospital District organized pursuant to the Revised Code of Washington Title 70, Chapter 44. PeaceHealth and the District are jointly referred to hereinafter as "the Parties".

[Handwritten signatures and initials]

RECITALS

A. PeaceHealth is organized for the charitable purpose of promoting health. It owns and operates hospitals and medical clinics in the Pacific Northwest, including St. Joseph Hospital and the PeaceHealth Medical Group-Whatcom Region that are located in Bellingham, Washington.

B. Through its hospital and physician clinics in Bellingham, PeaceHealth has long provided medical care to a significant percentage of residents of the District when they found it necessary to leave the District for medical care.

C. PeaceHealth has expertise in constructing, licensing, securing regulatory approvals for, staffing and operating combined critical access hospitals and hospital based physician clinics in settings similar to San Juan Island.

D. The District has the authority under RCW 70.44.003 to provide hospital services and other medical services to residents of the District and other persons.

E. The District has the power, under RCW 70.44.060 (3) and RCW 70.44.240 to contract with other corporations for the services provided by said hospital district.

F. The District has taxing authority, under RCW 70.44.060(6), pursuant to which it may collect regular property taxes and has taxing authority, under RCW 84.55.010, pursuant to which it may increase the amount of its regular property taxes on an annual basis without voter approval subject to statutory limits.

G. Pursuant to the provisions of RCW 84.55.050 and subject to statutory limits, the District may also collect additional taxes through temporary levy increases as approved by the voters. In 2000, the voters of the District did approve a temporary levy

increase that will expire at the end of calendar year 2015 and the District anticipates collecting taxes pursuant to that temporary levy increase until its expiration.

H. The District owns a medical clinic building and an emergency medical services facility which are located at 550 and 540 Spring Street, respectively, in Friday Harbor, San Juan Island, Washington where it operates both the Inter Island Medical Center (the "IIMC") and the San Juan County Public Hospital District No. 1 emergency medical services facility ("EMS").

I. The District has concluded that the size and design of its current medical clinic building is inadequate to meet future needs, the real estate on which it is located is not large enough for construction of a new, larger medical facility to accommodate the current and future needs of residents of, and visitors to, the District, who would benefit from the provision of an expanded range of health care services, including limited inpatient care.

J. The District has further concluded that the IIMC is not financially sustainable as currently configured. The operational losses of the IIMC are again exceeding the amount of tax revenue available to the District to cover those losses, and these losses are projected to increase annually.

K. Based on analysis by healthcare consultants jointly hired by the District and PeaceHealth, the District has concluded that if a larger clinic were combined with a critical access hospital ("combined clinic/hospital facility") and operated by a larger healthcare system with experience with combined clinic/hospital facilities in rural and underserved areas, that could bring economies of scale to the purchasing, information technology and support service functions, the combined clinic/hospital facility would achieve long-term financial sustainability.

L. The District desires to enable a long-term, financially sustainable healthcare solution for its residents while expanding the range of health care services by providing a subsidy to PeaceHealth in exchange for its agreement to purchase real estate, construct, license, secure regulatory approvals for, staff and operate a new combined clinic/hospital facility that would be located on a larger site.

M. The District further desires to co-locate its EMS with the combined clinic/hospital facility in an adjacent structure, which would be built by PeaceHealth and which the District would subsequently purchase, along with the underlying land and infrastructure improvements, at fair market value.

N. PeaceHealth believes it can further its charitable purpose of providing health care services to District residents and visitors by purchasing real estate, constructing, licensing, securing regulatory approvals for, staffing and operating the combined clinic/hospital facility, as well as constructing a co-located facility suitable for purchase by the District and use by EMS, subject to the conditions of: (1) receiving at least ten million dollars of initial philanthropic assistance from the San

Juan Hospital Committee; (2) receiving a long-term subsidy from the District; and (3) selling to the District at fair market value the portion of its real estate, and the infrastructure improvements thereto, on which it has built a new facility suitable for the EMS and enough land for the future construction of an adjacent helipad.

O. The Parties intend that their mutual understandings be set forth in this Agreement.

P. In furtherance of the recitals above, the District desires to contract with PeaceHealth and PeaceHealth desires to contract with the District, both doing so upon the mutually agreed terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the recitals above, the mutual benefits to be derived and all terms, conditions and covenants set forth in this Agreement, the adequacy of which is acknowledged, and intending to be legally bound, the Parties agree as follows:

SECTION 1 **OBLIGATIONS AND RIGHTS OF PEACEHEALTH**

1.1 Obligations of PeaceHealth. PeaceHealth shall have the following obligations:

1.1.1 Acquisition of Real Estate. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in, acquiring real property upon which the combined clinic/hospital facility and the co-located EMS facility can be located (the "Property"), subject to the prior receipt of a financial donation in the amount of the property's purchase price or, at PeaceHealth's discretion, prior receipt of a gift of real estate that PeaceHealth deems suitable. PeaceHealth further agrees that it shall confer with the District concerning real property acquisition for the combined clinic/hospital facility, that the District shall have the right to provide input concerning selection and that PeaceHealth shall give good faith consideration to such input.

1.1.2 Annexation and Re-Zone of Real Property. Subject to receipt of adequate philanthropic donations to cover its expenses, PeaceHealth shall assume all responsibility for, and shall exercise due diligence in effecting, the Property's annexation to the city of Friday Harbor and zoning that will permit the use of the property for the combined clinic/hospital facility and an EMS facility. PeaceHealth shall consult

with the District board on a regular basis concerning the accomplishment of these obligations.

- 1.1.3** Provision of Utilities. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in, providing utilities to the Property. The utilities shall include city water and sewer, electricity, standard telephone service and T1 telephone connection or its equivalent.
- 1.1.4** Design and Permitting of the Combined Clinic/Hospital Facility. PeaceHealth shall assume all financial responsibility for, and exercise due diligence in, developing architectural plans and specifications and applying for construction permits for the combined clinic/hospital facility. PeaceHealth agrees that the combined clinic/hospital facility shall, at a minimum, contain space to accommodate ten inpatient beds, six full time practicing physicians, onsite digital imaging, including computerized tomography ("CT"), an emergency medicine department, and procedure rooms and supporting services; provided that the District and PeaceHealth may mutually amend those specifications. PeaceHealth further agrees that the District board shall have the right to review the plans and specifications for the combined clinic/hospital facility and provide input concerning them.
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- 1.1.5** Design and Permitting of the EMS Facility and Associated Infrastructure. PeaceHealth shall assume all financial responsibility for, and exercise due diligence in, developing architectural plans and specifications and applying for construction permits for the EMS facility. PeaceHealth further agrees that the District board shall have the right to review the plans and specifications for the combined clinic/hospital facility and provide input concerning them.
- 1.1.6** Certificate of Need. PeaceHealth shall assume all financial responsibility for, and exercise due diligence in, securing any required certificate of need from the State of Washington for the combined clinic/hospital facility.
- 1.1.7** Construction and Licensing. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in constructing and licensing, the combined clinic/hospital facility and the EMS facility. PeaceHealth shall complete construction by not later than four (4) years after receipt of a letter of intent from the state of Washington for a CON.
- 1.1.8** Provision of Furniture, Equipment and Supplies. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in, providing all furniture, equipment, information technology

equipment and software and supplies reasonably necessary for the provision of high quality, safe and compassionate healthcare at the combined clinic/hospital facility.

- 1.1.9** Provision of Signage and Operational Identity. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in, providing signage for the combined clinic/hospital facility. The Parties agree that the combined clinic/hospital facility shall be operated under PeaceHealth's name and in accord with PeaceHealth's naming and branding standards.
- 1.1.10** Critical Access Hospital and Hospital Based Provider Clinic Designations. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in securing government designation as a critical access hospital and as a hospital based provider clinic.
- 1.1.11** Creation, Appointment and Education of a Governing Board for the Combined Clinic/Hospital Facility. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in, establishing, appointing and orienting/educating a governing board for the combined clinic/hospital facility. A majority of the members of the governing board shall be residents of the District. The governing board shall operate according to delegated authority from the PeaceHealth board of directors to: (1) consistent with policy established by the PeaceHealth board of directors, establish policy; (2) assure access; (3) oversee service, quality and operating performance; (4) grant and terminate medical staff membership and privileges; and (5) collaborate with the medical staff in the design and ongoing implementation of an effective process for medical staff credentialing, privileging and peer review. For the first governing board, PeaceHealth shall appoint a nominating committee, consisting of a majority of District residents that shall nominate new candidates for governing board appointment, and the PeaceHealth board of directors shall give good faith consideration to all such nominations. Thereafter, the governing board shall appoint the nominating committee and the same process shall be followed.
- 1.1.12** Provision of Management and Administration. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in providing, all reasonably necessary administrative and management services for operation of the combined clinic/hospital facility.
- 1.1.13** Provision of Clinical Services and Clinical Staff. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in providing, all clinical personnel reasonably necessary to provide

high quality, safe and compassionate healthcare at the combined clinic/hospital facility. PeaceHealth agrees that such clinical services shall, at a minimum, include the following items: primary care, emergency care, imaging services, diagnostic services, observation services, and simple medical admissions, provided that the District and PeaceHealth may mutually amend those specifications.

- 1.1.14** Provision of Ancillary Services. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in providing state of the art diagnostic, imaging and laboratory equipment and services appropriate to the size and type of combined clinic/hospital facility.
- 1.1.15** Provision of an Electronic Medical Record. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in providing, an electronic medical record ("EMR") that is comparable to, and integrated with, that installed throughout the clinics and hospitals in its other regions. In addition, PeaceHealth will offer access to its EMR to other healthcare providers on San Juan Island so as to enhance the provision of coordinated patient care and further collaboration among healthcare providers. Access to PeaceHealth's EMR shall be offered to other healthcare providers on San Juan Island at a fair market value fee consistent with that charged providers for similar connectivity services in the other communities that PeaceHealth serves and on terms consistent with all applicable laws and regulations, including the Health Insurance Portability and Accountability Act ("HIPAA").
- 1.1.16** Internal Operational Standards. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in continuously providing, healthcare services pursuant to this Agreement in a manner that is consistent with its mission, vision, values and ethical policies, as they may be amended.
- 1.1.17** External Operational Standards. PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in securing and continuously maintaining, all licenses required by the state of Washington and accreditation by the Joint Commission, or such other quality assurance organization as the Parties may mutually agree upon. In addition, PeaceHealth shall assure that the combined hospital/clinic facility shall continuously participate in the Medicare and Medicaid programs.
- 1.1.18** Hours of Operation. As of the date PeaceHealth shall commence operations at the combined clinic/hospital facility and throughout the term of this Agreement, PeaceHealth shall assume all financial responsibility for, and shall exercise due diligence in providing: (1)

primary care services (scheduled office visits with primary care providers) no fewer than five (5) days per week, with the hours of operation averaging forty (40) hours per week; and (2) emergency care and inpatient care consistent with the limitations upon critical access hospitals services seven (7) days per week, twenty-four (24) hours per day, three hundred and sixty five (365) days per year.

1.1.19 Fees. PeaceHealth shall charge fees for its professional and technical services that are no more than those charged by like facilities in the State of Washington providing like services in like circumstances.

1.1.20 Charity Care and Treatment of Medicare/Medicaid Patients. PeaceHealth shall provide medical care at the combined clinic/hospital facility regardless of patients' ability to pay and PeaceHealth shall not discriminate against Medicare or Medicaid patients who request medical services through the combined clinic/hospital facility.

1.1.21 Medical Collaboration. PeaceHealth shall strive to collaborate with medical providers residing within the District and beyond the District, including the emergency medical response providers, in the provision of healthcare services.

1.1.22 Compliance with Law. PeaceHealth shall comply with all rules, regulations, and requirements of federal, state and city law now in force or which may hereafter come into force pertaining to the services it provides pursuant to this Agreement.

* **1.1.23** Use of District Payments. PeaceHealth shall utilize all payments from the District exclusively for the provision of healthcare services within the District.

* **1.1.24** Semi-Annual Reports to the District. PeaceHealth shall provide the District with semi-annual reports on the combined clinic/hospital facility. The reports shall include the number of patient's served; the healthcare service lines provided; the number and types of clinical providers employed; the nature and results of quality initiatives implemented; the results of patient satisfaction surveys; the amount of charity care provided; and the financial viability of the operation, including all information required of the District by any state audit, applicable statutes and all publicly accessible information that PeaceHealth is required to provide to the State of Washington; provided that PeaceHealth shall not be required to provide any protected health information, except as in compliance with HIPAA, nor proprietary/confidential information of a competitively sensitive nature, including strategic plans and detailed financial information. Subject to the foregoing, PeaceHealth further agrees to maintain communications with the District Superintendent

concerning information needed by the District to exercise its rights hereunder.

1.1.25 Offers of Employment to IIMC Personnel. PeaceHealth shall offer employment to all staff who are employed by the District at the IIMC immediately prior to PeaceHealth's initiation of operations at the combined clinic/hospital facility; provided, that each such individual shall meet PeaceHealth's established employment criteria and that PeaceHealth shall have a need for each person's skills at the combined hospital/clinic facility. Such offers of employment shall become effective at the time the combined clinic/hospital facility shall commence operations.

1.1.26 Receipt and Maintenance of Medical Records from the IIMC. PeaceHealth shall accept and maintain in accordance with state and federal law the patient medical records from the IIMC.

1.1.27 Interim Educational Offerings. Between the Effective Date of this Agreement and the date that PeaceHealth shall commence operation of the combined clinic/hospital facility, PeaceHealth shall make information on educational offerings available to District employees at the IIMC, so that those employees may attend relevant professional education and training programs offered to PeaceHealth physicians and employees at PeaceHealth facilities in Whatcom County.

1.1.28 Provision of Visiting Specialists. PeaceHealth shall make available medical office space for visiting specialists and shall use good faith efforts to arrange for regular clinic visits by specialty physicians.

1.2 Rights of PeaceHealth.

1.2.1 Right of First Opportunity to Purchase Furniture, Equipment and Supplies from the IIMC. In the event the District shall declare them surplus, PeaceHealth shall have a right of first opportunity to acquire at appraised fair market value all furniture, equipment and supplies located in the IIMC at the time PeaceHealth shall commence operation of the combined clinic/hospital facility. Appraisal shall be by a mutually agreed appraiser or, if the Parties cannot agree on an appraiser, each Party shall select its own appraiser and the appraisal value shall be established by averaging the appraisals of the two appraisers so selected.

1.2.2 Review of Prospective Tenants. PeaceHealth shall have the right to review and approve in writing all prospective tenants of any property the District may subsequently purchase from PeaceHealth and that is adjacent to that on which the combined clinic/hospital facility is located in

order to avoid uses of such property that would be incompatible with PeaceHealth's provision of services under this Agreement; provided, that such approval shall not be unreasonably withheld and further provided that PeaceHealth hereby approves the EMS services of the District as such a tenant.

1.2.3 Right to All Revenue from the Combined Clinic/Hospital Facility. PeaceHealth shall have the exclusive right to all fees and revenues generated from the operation of the combined clinic/hospital facility, including but not limited to professional and technical fees for the provision of clinical and ancillary services (such as imaging and laboratory) under this Agreement.

* **1.2.4** Sub-Contracts. PeaceHealth may subcontract with other persons or entities to perform any part of the services required of PeaceHealth hereunder.

* **1.2.5** Right of First Refusal to Provide Additional Healthcare Services. In the event the District shall decide to purchase healthcare services within the District, other than emergency medical response services, PeaceHealth shall have, and the District hereby grants, a right of first refusal to provide those services at the prices and on terms equal to or better than those offered to the District by any third party. This right of first refusal shall include, but not be limited to: home health, hospice, physician services, nursing services, physical therapy, occupational therapy, oncology services, dietary and the direct or indirect provision of ancillary services such as imaging or laboratory.

* **1.2.6** Non-Compete for Subsidized Services. The District shall not compete with PeaceHealth in the provision of those healthcare services that are provided in the combined clinic/hospital facility and for which the District has contracted in this Subsidy Agreement.

SECTION 2 **OBLIGATIONS AND RIGHTS OF THE DISTRICT**

2.1 Obligations of the District.

2.1.1 Cooperation and Support. The District shall fully cooperate with, and provide all reasonably requested support to, PeaceHealth throughout its efforts to acquire: (1) a certificate of need from the State of Washington for the combined clinic/hospital facility; (2) a critical access hospital designation by CMS; and (3) a hospital based physician clinic designation by CMS, including any requisite survey by the Joint Commission.

2.1.2 Subsidy. Effective as of the date that PeaceHealth shall commence operation of the combined clinic/hospital facility and throughout the term of this Agreement, the District agrees to take all actions necessary and within its power, to include in its budget and levy annually within the constitutional and statutory limitations provided by law without a vote of the electors of the District on all taxable property within the District in an amount sufficient, together with other revenues of the District available and to be used therefore, to pay when due an annual subsidy to PeaceHealth to assist PeaceHealth in providing healthcare services to the District's residents according to the terms of this Agreement. The subsidy shall be in the amount of One Million Four Hundred and Eighty-Three Thousand Eighty-Two Dollars (\$1,483,082.00) dollars for the first calendar year in which the combined clinic/hospital shall operate and shall thereafter annually increase on a compound basis according to the rate shown for the Hospital Only subcomponent of the Consumer Price Index for All Urban Consumers ("CPI-U") published annually in January for the immediately preceding calendar year by the United States Bureau of Labor (hereinafter "the Annual Subsidy"); provided, however, that at such time as the current temporary levy increase approved by the electors of the District in 2000 shall expire and at any subsequent time that a temporary levy increase which has been designated for the combined clinic/hospital facility shall expire, the Annual Subsidy shall be reduced by an amount equal to the difference between the District's actual tax levy in the final year of such temporary levy increase and the amount that would have been the District's tax levy in that year without the temporary levy increase.

2.1.2.1 In the event that PeaceHealth shall commence operation of the combined clinic/hospital facility other than on January 1, the Annual Subsidy payable by the District for the partial year shall be prorated by multiplying the Annual Subsidy amount by a fraction in which the numerator is the number of days that PeaceHealth operated the combined clinic/hospital facility in the partial calendar year and in which the denominator is 365.

2.1.2.2 Payment of the Annual Subsidy shall be made in equal, semiannual installments on June 15 and December 15 of each year, with the first payment due upon the first such date occurring after the date on which PeaceHealth shall commence operation of the combined clinic/hospital facility.

2.1.2.3 Notwithstanding the foregoing, the amount of the Annual Subsidy payable by the District to PeaceHealth shall in no event exceed ninety-seven percent (the "Maximum Limit") of

all of the regular property taxes, as defined in RCW 84.04.140, received by the District in the applicable calendar year, including any additional property taxes received by the District as a result of the current temporary levy increase and any temporary levy increase which shall have been designated for the combined clinic/hospital facility and approved by the electors of the District during the term of this Agreement (pro rated for any partial year of operation of the combined clinic/hospital facility per the formula set forth in section 2.1.2.1 above); provided that at the five year anniversary of the date on which PeaceHealth commenced operation of the combined clinic/hospital facility and every five years thereafter throughout the duration of this Agreement either PeaceHealth or the District may require an independent audit of the District's reasonable and customary administrative expenses and the Maximum Limit shall be adjusted up or down as deemed necessary by the auditor in order to provide adequate but not excess funds needed by the District to meet its reasonable and customary administrative expenses; further provided, that in no event shall such adjustment to the Maximum Limit ever reduce it to less than ninety-five percent of the District's annual tax revenue.

2.1.2.4 For the duration of this Agreement, PeaceHealth shall keep an accounting of the aggregate amount by which each Annual Subsidy due from the District shall exceed the Maximum Limit for each year (hereinafter "the Shortfall") and, in the event that the Maximum Limit of the District's tax revenue shall subsequently exceed the Annual Subsidy in any calendar year, all such excess shall be paid by the District to PeaceHealth to reduce the Shortfall, if one shall exist.

2.1.2.5 Upon request, PeaceHealth shall have the right to review the financial records of the District, audit the same and receive copies of all audits conducted by outside parties on the District.

2.1.3 Purchase of EMS Facility. As soon as possible, but no later than two (2) years after PeaceHealth shall have received an occupancy permit for the EMS facility it is to construct, the District shall purchase it from PeaceHealth at fair market appraised value; provided, that if there shall exist a Shortfall, as defined in section 2.1.2.4, at the time the District shall receive the proceeds from the sale of the IIMC and the former EMS facility and if the price paid to PeaceHealth for purchase

of the EMS facility shall be less than the proceeds of the sale of the IIMC and former EMS facility, then such excess proceeds as are necessary to eliminate the Shortfall shall be paid by the District to PeaceHealth.

- 2.1.4** Interim Lease of EMS Facility. Between the time that PeaceHealth shall have received an occupancy permit for the EMS facility it is to construct and the purchase of it by the District, the District shall rent the EMS facility constructed by PeaceHealth according to the triple net lease terms set forth in Attachment 1 hereto.
- 2.1.5** Provision of Access to Records and Information. Subject to applicable state and federal laws, including those applicable to confidentiality, the District shall provide to PeaceHealth reasonable access to the IIMC and its patient charts, books, records and staff in order that PeaceHealth may perform due diligence and exercise its rights and obligations under this Agreement.
- 2.1.6** Closure of the IIMC and Termination of Employment. On the day immediately preceding that on which PeaceHealth shall commence operation of the combined clinic/hospital facility, and subject to PeaceHealth's compliance with all provisions of section 1.1, above, that shall have come due by that time, the District shall close the IIMC and terminate the employment of all IIMC clinical providers located there; provided that the District may continue to employ a Superintendent in an administrative role.
- 2.1.7** Sale of District Properties. The District shall assume all financial responsibility for, and shall exercise due diligence in, selling the IIMC and EMS buildings and the land on which they are located in accordance with the statutory requirements of RCW 70.44.300. The District shall exercise good faith in seeking to so sell and close the sale of those assets prior to or as soon as possible following the date upon which PeaceHealth shall commence operation of the combined clinic/hospital facility and the receipt of an occupancy permit for the EMS building that PeaceHealth shall construct.
- 2.1.8** Transfer of Medical Records from the IIMC. Subject to applicable state and federal laws, including those applicable to confidentiality, on or before the date on which PeaceHealth shall begin operation of the combined clinic/hospital facility, the District shall transfer to PeaceHealth all patient medical records from the IIMC and shall direct any electronic medical record vendors it may have to collaborate with PeaceHealth so as to successfully transfer any such electronic records.

2.1.9 Collection of Accounts Receivable. The District shall assume all financial responsibility and shall be solely responsible for the collection of any and all accounts receivable from the IIMC; provided that at the District's option PeaceHealth shall enter a Services Agreement for the collection of such accounts receivable on a contract basis.

2.2 Rights of the District.

2.2.1 Right to All Revenue from the IIMC. The District shall have the exclusive right to all fees and revenues generated from the operation of the IIMC prior to PeaceHealth's operation of the combined clinic/hospital facility.

2.2.2 Right to Recommend Future Services. The Parties recognize that over the term of this Agreement healthcare will change substantially due to ongoing medical and technological developments. The District shall have the right to provide input on an annual basis concerning the nature and scope of services and procedures provided through the combined clinic/hospital facility and to confirm that all payments from the District are used exclusively for the provision of healthcare services with the District in compliance with Section 1.1.23 hereof. PeaceHealth agrees to give good faith consideration to such District input.

2.2.3 Right of First Opportunity to Purchase the Combined Clinic/Hospital Facility and Its Contents. If at any time PeaceHealth shall cease to operate the combined clinic/hospital facility, other than as provided in section 7.7, below, then the District shall have a right of first opportunity to acquire it, the land upon which it is located and all furniture, equipment and supplies located in it (this right shall not apply to any proprietary assets of PeaceHealth, such as software licenses) at fair market appraised value for a period of one year following the date upon which PeaceHealth ceased to operate it; provided that if the District shall exercise its right of first opportunity, the terms of the purchase and sale agreement shall provide that, at the District's option, PeaceHealth will loan the amount of the purchase price to the District at prime plus one percent for a period of up to three (3) years following the date on which the District exercised its right of first opportunity.

2.2.3.1 In recognition of the fact that the combined clinic/hospital was originally funded in part by philanthropic gifts from the community, the District shall be entitled to apply a potential credit against the purchase price from PeaceHealth (the "Philanthropy Credit"). The Philanthropy Credit shall be calculated in four steps, as follows:

Step One shall be to calculate the total amount of philanthropic gifts received by PeaceHealth from the San Juan Community Hospital Committee no later than the opening day of the combined clinic/hospital facility that were designated or used for the purchase, improvement and annexation of land and the original construction and equipping of the combined clinic/hospital facility (the "Original Philanthropy"). The Original Philanthropy shall not include any amount of philanthropic gifts that were designated or used for the purchase, improvement and annexation of land that PeaceHealth shall have sold to the District and the construction and equipping of the EMS or other facilities that PeaceHealth shall have sold to the District.

Step Two shall be to create a fraction (the "Fraction of Philanthropic Contribution") in which the numerator shall be the Original Philanthropy and the denominator shall be the total amount of money expended to fund the purchase, improvement and annexation of land (excluding any land that shall have been sold to the District for the EMS facility) and the original construction and equipping of the combined clinic/hospital facility.

Step Three shall be to multiply the Fraction of Philanthropic Contribution times the total cumulative losses incurred by PeaceHealth in its operation of the combined clinic/hospital facility pursuant to this Agreement, the result of which shall be called the "Attributed Losses". For purposes of this calculation, the total cumulative losses incurred by PeaceHealth shall mean the total cumulative losses incurred by PeaceHealth after taking into consideration the Annual Subsidy payments made by the District pursuant to the terms of this Agreement.

Step Four shall be to subtract the Attributed Losses from the Original Philanthropy, with the any positive result constituting the Philanthropy Credit and any negative result being disregarded.

- 2.2.3.2 For purposes of illustrating the application of the calculations described in section 2.2.3.1, above, the following example is provided. Assume that the amount of Original Philanthropy were \$10 million; the total amount of money expended to purchase, improve and annex land and to fund the original

construction and equipping of the combined clinic/hospital facility were \$30 million and the total cumulative losses incurred by PeaceHealth in its operation of the combined clinic/hospital facility pursuant to this Agreement were \$6 million. Under these assumed facts, Step one would result in an amount of Original Philanthropy of \$10 million. In Step two, the Fraction of Philanthropic Contribution would be 33% (\$10 million divided by \$30 million). In Step three the Attributed Losses would be \$2 million (33% x \$6 million). In Step 4 the Attributed Losses of \$2 million would be subtracted from the Original Philanthropy of \$10 million, which would result in a Philanthropy Credit of \$8 million.

SECTION 3 **LIABILITIES AND INSURANCE**

- 3.1 No Obligation by PeaceHealth for Prior Expenses and Claims.** Regardless of when they shall be submitted or made, PeaceHealth shall have no obligation for expenses or claims of any nature that shall have arisen or may arise in the future related to operation of the IIMC or the condition of the land or building where it is located. This provision shall apply to all claims of any nature whatsoever, including, but not limited to, clinical liability claims, claims arising from the construction, operation or condition of the buildings and adjacent grounds, environmental liabilities, workers compensation, unemployment compensation, sick leave, vacation pay, retirement benefits, Social Security benefits, or any other employee benefits payable to or for employees. The District agrees to defend and hold PeaceHealth harmless from all such claims.
- 3.2 No Obligation by the District for Expenses and Claims Related to the Combined Clinic/Hospital Facility.** Except for its Annual Subsidy obligation set forth in section 2.1.2 and its Shortfall obligation set forth in section 2.1.2.4, above, and regardless of when they shall be submitted or made, the District shall have no obligation for expenses or claims of any nature related to operation of the combined clinic/hospital facility or the condition of the land or building where it is located. This provision shall apply to all claims of any nature whatsoever, including, but not limited to, clinical liability claims, claims arising from the construction, operation or condition of the buildings and adjacent grounds, environmental liabilities, workers compensation, unemployment compensation, sick leave, vacation pay, retirement benefits, Social Security benefits, or any other employee benefits payable to or for employees. PeaceHealth agrees to defend and hold the District harmless from all such claims.
- 3.3 Responsibilities for Future Liabilities.** Each of the Parties hereto agrees to be liable for its own conduct and its obligations under this Agreement. In the event that loss or damage results from the future conduct of more than one Party, each

Party agrees to be responsible for its own proportionate share of the claimant's damages under the laws of the State of Washington.

- 3.4 Purchase of Tail Insurance by the District.** By or before the time of closing the IIMC, the District shall have purchased tail insurance coverage on behalf of the IIMC and all physicians employed there for general liability, employment practices liability and entity and individual professional liability.
- 3.5 Purchase of Construction Insurance by PeaceHealth.** PeaceHealth shall purchase or self-insure a commercially reasonable policy of construction insurance to protect against loss of the combined clinic/hospital buildings, the EMS building and their contents prior to issuance of the occupancy permit.
- 3.6 Purchase of Property Insurance by PeaceHealth.** PeaceHealth shall purchase or self-insure a commercially reasonable policy of all risk property insurance to protect against loss of the combined clinic/hospital buildings and their contents following issuance of the occupancy permit.
- 3.7 Purchase of General Liability Insurance by PeaceHealth.** PeaceHealth shall purchase or self-insure general liability insurance for the combined clinic/hospital facility and operations; provided that such insurance shall have annual limits of not less than one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) aggregate.
- 3.8 Purchase of Professional Liability Insurance by PeaceHealth.** PeaceHealth shall purchase or self-insure professional liability insurance for the clinical care it provides through the combined clinic/hospital facility; provided that such insurance shall have annual limits of not less than one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) aggregate.

SECTION 4 **TERM & TERMINATION OF THE AGREEMENT**

- 4.1 Initial Term.** Unless sooner terminated in accordance with its provisions, this Agreement shall remain in effect for a period of fifty (50) years after the Effective Date; provided that at any time seven years after PeaceHealth shall have received an occupancy permit for the combined clinic/hospital facility PeaceHealth shall have the right at will to provide three years written notice of termination and at the expiration of such three-year notice period the Agreement shall automatically terminate. (For example, the earliest a PeaceHealth termination could be effective pursuant to such notice would be ten years after PeaceHealth shall have received an occupancy permit for the combined clinic/hospital facility it is to construct.)

4.2 Termination Due to External Events. At any time between May 1, 2010 and September 1, 2010, PeaceHealth shall have the right to terminate this Agreement in the event:

4.2.1 PeaceHealth shall not have received from the State of Washington a letter of intent to issue a certificate of need ("CON") for the combined clinic/hospital facility, any portion of it or any services to be provided in it that require such a CON; or

4.2.2 PeaceHealth shall not have received philanthropic donations, and/or pledges for donations that in its sole discretion it deems reliable, committed and available in support of and on a timeline consistent with PeaceHealth's construction and equipping needs of the combined clinic/hospital facility in an amount of not less than ten million dollars (\$10,000,000.00 USD), inclusive of any donations related to PeaceHealth's purchase of the real estate for the combined clinic/hospital facility or the fair market value of real estate that may have been donated for such purpose and inclusive of any donations related to annexation to the city of Friday Harbor and zoning; provided that PeaceHealth agrees that the earliest any pledges for subsequent donations shall be due and payable will be sixty days after PeaceHealth shall have made its decision hereunder; or

4.2.3 There shall have been a material adverse change in the qualifications for, or reimbursement resulting from, designation by CMS and the State of Washington as a critical access hospital or a hospital based physician clinic; or

4.2.4 PeaceHealth shall have made a good faith determination, in its sole discretion, that it cannot access the tax-exempt bond market at acceptable rates and on acceptable terms in order to secure financing for the combined clinic/hospital facility; or

4.2.5 The District shall have materially reduced the core operation of the IIMC from what it was at the time of executing this Agreement; or

4.2.6 PeaceHealth has not received a purchase and sale agreement for the land on which the combined clinic/hospital facility shall be built that, in PeaceHealth's sole discretion, is satisfactory; or

4.2.7 PeaceHealth has not received an annexation agreement from the City of Friday Harbor that, in PeaceHealth's sole discretion, is satisfactory.

The dates set forth above may be amended upon mutual written agreement between the Parties.

4.3 **Termination for Cause.** Either Party may terminate this Agreement in the event the other Party has failed to perform any material term or condition of this Agreement, if such failure has continued for one hundred and five (105) days after the Party seeking termination has delivered formal written notice pursuant to section 6.1, below, of intent to mediate such failure to the other Party.

4.4 **Violation of Law or Placing Tax-Exempt Status in Jeopardy.** In the event the performance by either Party of this Agreement should be determined by a state or federal court or governmental agency to be in violation of any statute, ordinance, or be otherwise deemed illegal ("Jeopardy Event"); or, in the event that counsel to PeaceHealth shall opine that this Agreement or any provision of it would place PeaceHealth's tax-exempt status or the tax-exempt status of any current or future PeaceHealth debt instruments in jeopardy ("Jeopardy Event"); then the Parties shall use their best efforts to meet and attempt to negotiate an amendment to this Agreement to remove or negate the effect of the Jeopardy Event. In the event the Parties are unable to negotiate such an amendment, despite their best efforts to do so, within one hundred and twenty (120) days following written notice by either Party of the Jeopardy Event, then either Party may terminate this Agreement; provided that the Parties will use best efforts to transition the responsibilities under this Agreement so as to maintain the continuity of quality patient care through the combined clinic/hospital facility to the community.

4.5 **Material Change in Federal Healthcare Reimbursement System.** In the event that a material change in the federal healthcare reimbursement system were enacted such that revenue received by PeaceHealth for services rendered through the combined clinic/hospital facility were to decrease by twenty-five (25%) or more during a period of twenty-four months following the change, when compared to the twenty-four months preceding the change, PeaceHealth may terminate this Agreement upon three years written notice. In the event that a material change in the federal healthcare reimbursement system were enacted such that revenue received by PeaceHealth for services rendered through the combined clinic/hospital facility were to increase by twenty-five (25%) or more during a period of twenty-four months or less, when compared to the twenty-four months preceding the change, PeaceHealth agrees to utilize the net revenue from such enhanced funding solely for the purpose of providing healthcare in the District.

SECTION 5
REPRESENTATIONS AND WARRANTIES

- 5.1 District Representations and Warranties.** The District represents and warrants as of the date hereof and during the term of this Agreement that:
- 5.1.1 Organization and Qualification.** It is a public hospital district duly organized, validly existing and qualified to conduct its business affairs under the laws of the State of Washington.
 - 5.1.2 Power and Authority.** It has the requisite power and authority to execute and deliver this Agreement and the Lease of the EMS facility (the "Lease") and to consummate the transactions contemplated in this Agreement and the Lease.
 - 5.1.3 Authorization.** The execution, delivery, and performance of this Agreement and the Lease by the District have been duly authorized pursuant to all necessary action on the part of the District. Specifically, the District has validly adopted resolutions by the Board of Commissioners approving the execution, delivery and performance of this Agreement, the Lease and the transactions contemplated in them in accordance with all applicable laws.
 - 5.1.4 No Additional Vote or Consent Required.** No vote, consent, approval, authorization, order, registration or qualification of or with any court, regulatory authority, other governmental body or any other third party, including residents of the District, is required for the consummation of the actions to be taken by the District in this Agreement or the Lease.
 - 5.1.5 Binding and Enforceable Obligations.** This Agreement and the Lease, once they have been duly executed and delivered by both Parties, are valid and binding obligations of the District, enforceable in accordance with their respective terms.
 - 5.1.6 No Violation.** Neither the execution and delivery of this Agreement and the Lease nor the consummation of the transactions contemplated in them will (a) violate any provision of the District's organizational documents or (b) violate any judgment, decree or order of any federal, state, or local court, regulatory authority or other governmental body, or any statute, rule or regulation, applicable to the District.
 - 5.1.7 Litigation.** There are no actions, suits, proceedings, or investigations of any nature pending or, to the District's knowledge, threatened, against it or any of the assets. To the District's knowledge, there is no basis for any such action, suit, proceeding or investigation. The District is not subject to

or in default under any outstanding judgment, order, writ, injunction or decree of any court or of any governmental agency or instrumentality, and there is no such judgment, order, writ, injunction, or decree of any kind in effect enjoining or restraining the District from taking any action of any kind.

- 5.1.8** Continuing Operation of the IIMC. The District has, and will continue until time of closure as provided in section 2.1.6, above, operated the IIMC in its normal and ordinary course, in accordance with commonly accepted business practices for medical clinics.
- 5.1.9** No Material Change to IIMC Core Operations. Until time of closure as provided in section 2.1.6, above, the District shall not materially reduce the core operation of the IIMC from what it was at the time of executing this Agreement.

5.2 PeaceHealth Representations and Warranties. PeaceHealth represents and warrants as of the date hereof and during the term of this Agreement that:

- 5.2.1** Organization and Qualification. It is a non-profit corporation duly organized, validly existing and qualified to conduct its business affairs under the law.
-
- 5.2.2** Power and Authority. It has the requisite power and authority to execute and deliver this Agreement and the Lease and to consummate the transactions contemplated in this Agreement and the Lease.
- 5.2.3** Authorization. The execution, delivery, and performance of this Agreement and the Lease by the PeaceHealth have been duly authorized pursuant to all necessary action on the part of PeaceHealth. Specifically, PeaceHealth has validly adopted resolutions by the Whatcom Region Governing Board and the PeaceHealth Board of Directors approving the execution, delivery and performance of this Agreement, the Lease and the transactions contemplated in them in accordance with all applicable laws.
- 5.2.4** No Additional Vote or Consent Required. As of the date hereof, no vote, consent, approval, authorization, order, registration or qualification of or with any court, regulatory authority, other governmental body or any other third party is required for the consummation of the actions to be taken by PeaceHealth in this Agreement or the Lease.
- 5.2.5** Binding and Enforceable Obligations. This Agreement and the Lease, once they have been duly executed and delivered by both Parties, are valid and binding obligations of PeaceHealth, enforceable in accordance with their respective terms.

- 5.2.6** No Violation. Neither the execution and delivery of this Agreement and the Lease nor the consummation of the transactions contemplated in them will (a) violate any provision of the articles or bylaws of PeaceHealth or (b) violate any judgment, decree or order of any federal, state, or local court, regulatory authority or other governmental.
- 5.2.7** Litigation. There are no actions, suits, proceedings, or investigations of any nature pending or to the PeaceHealth's knowledge threatened against it or any of the assets that would prevent it from performing its obligations set forth in this Agreement. PeaceHealth is not subject to or in default under any outstanding judgment, order, writ, injunction or decree of any court or of any governmental agency or instrumentality, and there is no such judgment, order, writ, injunction, or decree of any kind in effect enjoining or restraining PeaceHealth from taking any action required by this Agreement.
- 5.2.8** Tax Exemption. PeaceHealth is exempt from federal income taxation under Section 501(c) (3) of the Code and is not a private foundation as defined in Section 509 of the Code.

SECTION 6
DISPUTE RESOLUTION

- 6.1** Mediation. In the event of any alleged breach of this Agreement the Parties shall, within fifteen (15) days of one or both Parties giving the other notice of intent to mediate ("Notice"), designate a neutral third party ("Mediator"). If the Parties cannot agree on a Mediator within such fifteen (15) day period, they shall submit the matter to the Judicial Dispute Resolution organization in Seattle, Washington and agree to utilize the services of a Mediator assigned by that organization. The Mediator shall facilitate discussions between the Parties in an effort to reach a mutually acceptable agreement and the venue for mediation shall be Seattle, Washington. The Parties shall share equally the cost of the Mediator. If the Parties are unable to reach an agreement for whatever reason within ninety (90) days following the date of the Notice, either may proceed to binding arbitration.
- 6.2** Arbitration. In the event of any dispute under this Agreement, the Parties agree to binding arbitration in Seattle, Washington in accordance with the Commercial Arbitration Rules of the American Arbitration Association and with discovery being governed by the Federal Rules of Civil Procedure applicable in the United States District Court for the Western District of Washington. One arbitrator will be named by each party and a third neutral arbitrator will be named by the arbitrators so chosen. Judgment upon the award rendered by the arbitrators may be entered into the judgment docket of any court having jurisdiction thereof. The cost of arbitration shall be shared equally by the parties to it. Each party shall be

solely responsible for its attorneys' fees, if any. The obligations set forth under this section shall survive the termination or expiration of this Agreement.

SECTION 7

MISCELLANEOUS PROVISIONS

- 7.1 Independent Medical Decision Making.** The Parties acknowledge and agree that, subject to the requirements set forth in their employment or contract agreements concerning compliance with the medical standard of care and compliance with law, the professional clinical personnel whom PeaceHealth employs or with whom it contracts for services shall be responsible for and shall have complete authority, responsibility, supervision and control over the provision of all medical care provided at the combined clinic/hospital facility.
- 7.2 Relationship of the Parties.** In the performance of this Agreement, the relationship created between PeaceHealth and the District is strictly that of independent contractors. Nothing contained herein shall be construed as creating a partnership or joint venture between the Parties, nor should any employee of the District be considered an employee or agent of PeaceHealth, and no employee of PeaceHealth should be considered an employee or agent of the District. Neither Party, nor any employee of either Party, shall have any claim under this Agreement or otherwise against the other Party for workers compensation, unemployment compensation, sick leave, vacation pay, retirement benefits, Social Security benefits, or any other employee benefits payable for employees of such other Party.
- 7.3 Applicable Law.** This Agreement shall be governed by and interpreted in accordance with Washington State law. Any State or Federal action arising under this agreement shall be filed in Seattle, Washington; provided, however, all suits brought against the District by PeaceHealth shall be brought in San Juan County to the extent required by RCW 70.44.060(8) or successor legislation.
- 7.4 Expenses.** Whether or not the transactions contemplated by this Agreement are consummated and except as provided in other written documents between the Parties, the District and PeaceHealth shall each pay its own fees and expenses incident to the negotiation, preparation, execution and performance of this Agreement, including the fees and expenses of its own legal counsel, accountants, and other experts.
- 7.5 Binding Effect.** This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.
- 7.6 Entire Agreement; Amendments.** This Agreement and the Lease and their attachments referred to herein (all of which are incorporated in this Agreement

by reference) contain the entire agreement between the Parties with respect to its subject matter and supersede any and all previous negotiations, commitments and agreements, whether written or oral. This Agreement cannot be altered or otherwise amended except by a written instrument signed by both Parties.

7.7 Force Majeure. Neither Party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service or employment resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, tsunamis, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions by PeaceHealth or its employees or any other cause beyond the reasonable control of either Party; provided that both Parties shall make good faith efforts to perform under this Agreement in the event of any such circumstance.

7.8 Headings; Construction. Headings and subheadings in this Agreement are inserted for convenience and reference only and are not to be considered in the construction of the provisions of this Agreement. This Agreement shall apply to the Parties according to the context and without regard to the number or gender of words or expressions used in this Agreement.

7.9 Notices. Any and all notices or other communications provided for in this Agreement shall be in writing and shall be deemed to have been given when presented personally, as documented by a contemporaneous affidavit of service, or when deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the Parties as follows (or to such other address as may be designated by a party in a written notice given in accordance with this Section 7.9).

<p>If to PeaceHealth: Nancy Steiger Regional CEO/CMO and Senior Vice President c/o St. Joseph Hospital 2901 Squalicum Parkway Bellingham, Washington 98225</p>	<p>With a copy to: Stuart P. Hennessey Senior V.P. of Legal Affairs c/o PeaceHealth 14432 SE Eastgate Way, Suite 300 Bellevue, Washington 98007-6412</p>
<p>If to the District: Beth Gieger, Superintendent c/o San Juan County Public Hospital Dist. No.1 550 Spring Street Friday Harbor, San Juan Island, WA</p>	<p>With a copy to: Bradley Berg Foster Pepper PLLC 1111 3rd Ave., #3400 Seattle, Washington 98101-3299</p>

7.10 Waiver. No waiver of any right of any party hereto shall be effective unless set out in a writing signed by each party hereto.

7.11 **Authority.** Each party to this Agreement represents that the execution, delivery and performance by that party of this Agreement have been duly authorized by all necessary action of that Party's governing body. A copy of the resolution of the District commissioners is attached hereto as **Attachment 3A** and a copy of the resolution adopted by the PeaceHealth board of directors is attached hereto as **Attachment 3B**.

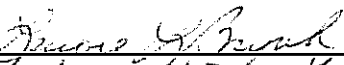
7.12 **Third Parties.** It is the express intent of the District and PeaceHealth that this Agreement does not create any rights or expectations in any persons or entities other than the District and PeaceHealth, as a corporation, This Agreement does not create any rights or expectations in any employees or officers of the District.

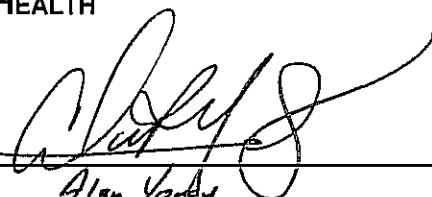
7.13 **Assignment.** The District agrees that PeaceHealth may assign this Agreement to any of its affiliated entities, including a member corporation, limited liability company, subsidiary or to a successor corporation with which it may merge, which it may acquire or by which it may be acquired; provided, that such entity shall be a not-for-profit entity with a charitable purpose functionally equivalent to PeaceHealth's and the assignee's operating experience and financial stability shall be reasonable similar to or better than PeaceHealth's. PeaceHealth agrees that the District may assign this Agreement to another municipal corporation; provided that such entity shall have a tax base and financial resources equivalent to or better than the District's.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate original:

SAN JUAN COUNTY PUBLIC HOSPITAL
DISTRICT NO. 1

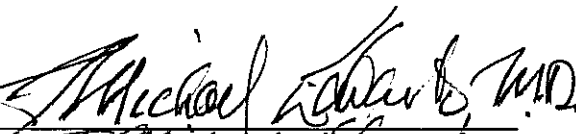
PEACEHEALTH

By: 
Name: Lenore L. Bayak
Title: Commission Chair

By: 
Name: Alan Yodanis
Title: President

Dated: 5-6-09

Dated: 6 May 2009

By: 
Name: J. Michael Edwards
Title: Secretary of the Commission

Dated: 5/6/2009

Attachment 1

COMMERCIAL LEASE AGREEMENT for EMS

DATE: _____, 200_

PARTIES: **San Juan Public Hospital District Number One,**
hereinafter referred to LESSEE; and

PeaceHealth,
hereinafter referred to as LESSOR.

In consideration of the mutual covenants and agreements herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Occupancy

1.1 Leased Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, subject to all terms and conditions hereinafter set forth, the following described property (the "Premises"), AS IS, WHERE IS:

Real property and improvements located at _____
consisting of approximately _____ rentable square feet as further set forth on Exhibit "A".

1.2 Public Areas. Lessor also grants to Lessee the rights of ingress and egress to and from the Premises to adjoining public rights of way.

1.3 Term. Lessee's right to possession and obligations under the lease shall commence on the date on which Lessor shall acquire an occupancy permit for the Premises or the date on which Lessor shall begin operation of the combined clinic/hospital facility described in the Subsidy Agreement for a Combined Clinic Hospital Facility between PeaceHealth and San Juan County Hospital District No. 1 dated March 6th, 2009 (the "Subsidy Agreement"), whichever is later, (hereinafter the "Commencement Date") and shall continue for a period of two (2) years thereafter, provided that it shall automatically terminate upon purchase of the Premises, as provided in the Subsidy Agreement to which this lease has been made an attachment.

[Handwritten signatures and initials over the text]

Section 2. Rent

- 2.1 Base Rent.** During the term of the lease, Lessee shall pay to Lessor without deduction or offset a monthly base rent ("Base Rent"). The parties agree that the fair market value for this monthly Base Rent shall be determined by calculating the annual amount of amortization over a twenty year period of Lessor's total cost for the Premises, including land acquisition, utilities and infrastructure improvements, design, permitting and construction, and then dividing the annual amortization figure by twelve to arrive at a monthly Base Rental amount. Base Rent shall be payable in advance on the first day of each month at such place as may be designated by Lessor.
- 2.2 Additional Rent.** All taxes, insurance costs, special assessments, repairs and maintenance and utility charges that Lessee is required to pay by this lease, and any other sum(s) that Lessee is required to pay to Lessor or third parties shall be additional rent ("Additional Rent").
- 2.3 Interest and Penalties.** All Base Rent payable by Lessee to Lessor under this lease shall be due in advance on the 1st day of every month during the term of this lease. All Additional Rents shall be payable within thirty days after receipt of invoice. Any sums payable by Lessee to Lessor under this lease not paid within ten (10) days after the same shall become due shall bear interest at 12% per annum from date due until paid; in addition to interest, and because of administrative expenses incident to delinquent payments, Lessee shall pay to Lessor a late charge of three percent (3%) of the total rents, Base Rent, Additional Rents and any other sums payable by Lessee to Lessor under this lease when not paid within ten (10) days after the same shall be due.

Section 3. Use of the Premises

- 3.1 Permitted Use.** The Premises shall be used for emergency medical services and for no other purpose without Lessor's prior written consent, which consent shall not be unreasonably withheld.
- 3.2 Restrictions on Use.** In connection with the use of the Premises, Lessee shall:
- (1) Conform to all applicable laws and regulations of any public authority now in force, or which may hereafter be in force, affecting the Premises and its use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use, but Lessee shall not be required to make any structural changes to effect such compliance; and

(2) Refrain from any activity that would tend to create a nuisance.

3.3 Reserved to Lessor. Lessor reserves air rights over the Premises and the right to install and use pipes, ducts, sidewalks, parking areas, conduits and wires leading to or through the Premises. The Premises are part of a larger project constructed by Lessor (the Project) and Lessor reserves the right at any time to make alternations and additions to the Project and construct other buildings in the Project, provided Lessor has no right to relocate the Premises.

3.4 Continuous Operation. Lessee shall occupy the Premises continuously for the purpose stated in this lease. This shall not prevent Lessee from closing for brief periods when reasonably necessary for legitimate purpose related to the business carried on, or when closure is the result of a labor dispute, however caused, or other factors not within Lessee's control.

3.5 Hazardous Substances. Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used in the prudent and safe operation of the business specified in Section 3.1. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. The term Environmental Law shall mean any federal, state or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

Section 4. Repairs and Maintenance

4.1 Lessor Obligations. Lessor shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements to the Premises after performance of the work to be performed by Lessor pursuant to the Subsidy Agreement; provided that Lessor agrees if any repairs for which Lessee is obligated in section 4.2, below, shall be covered by a builder's warranty running to Lessor, Lessor

will make a good faith effort to pursue accomplishment of, or recovery for, the repair under such warranty and to the extent moneys are recovered under such warrant will pay them to Lessee as reimbursement for the repair cost.

- 4.2 Lessee Obligations.** Lessee, at its expense, shall keep the Premises, including without limitation the roof and exterior paint, in good repair, operating condition, working order, and appearance.
- 4.3 Reimbursement for Repairs.** If Lessee fails or refuses to make repairs that are required by this Section 4, Lessor shall make the repairs and charge the actual costs of repairs to Lessee. Such expenditures by Lessor shall be reimbursed by Lessee on demand as part of Additional Rent, payable in full on the first day of the month following the expenditure by Lessor.
- 4.4 Manner of Making Repairs.** In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Lessor shall not cause unreasonable interference with use of the Premises by Lessee. Lessee shall have neither right to abatement or rent nor any claim against Lessor for any inconvenience or disturbance resulting from Lessor's activities performed in conformance with the requirement of this provision.
- 4.5 Inspection of Premises.** Lessor shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. To the extent possible, Lessor shall give to Lessee prior advance notice of any such entry and schedule such entry to least interfere with Lessee's business. Approximately every six (6) months during the term of this lease, a 'walk-through' inspection of the entire Premises shall be scheduled between Lessor and Lessee to ensure continued safety, maintenance and habitability of the Premises.

Section 5. Alterations

- 5.1 Alterations Prohibited.** Lessee shall make no alterations, installations, removals or improvements on the Premises of any kind without first obtaining Lessor's written consent, which consent shall not be unreasonably withheld. If Lessor gives such prior written consent, all such alterations, installations, removals or improvements shall be made at Lessee's sole cost and expense; all alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. Lessor or Lessor's agents shall have the right at all reasonable times to inspect the quality and progress of such work. It shall not be considered unreasonable for Lessor to require that the persons or

entities performing such work or furnishing materials for such be either financially responsible or post a performance bond.

- 5.2 Ownership of Alterations.** All improvements and alterations performed on the Premises by Lessee shall become the property of Lessee upon Lessee's purchase of the Premises.
- 5.3 Equipment.** Lessee shall be responsible for the cost, maintenance and repair of all mechanical, structural, or electrical system modifications (a) necessary for high voltage or high amperage equipment or machinery, or (b) necessary for heavy or oversized equipment, or (c) necessary for heating, cooling or ventilation requirements in excess of those contained in the original plans or specifications for the building.

Section 6. Insurance

- 6.1 Fire Insurance.** Lessor shall, during the entire term of this Lease, including any extensions or renewals thereof, keep the Premises insured against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage; provided that Lessee shall reimburse Lessor for the premium cost of such insurance as Additional Rent.
- 6.2 Liability Insurance.** Lessee shall, at Lessee's sole expense during the entire term of this Lease, including any extensions or renewals thereof, maintain and keep in effect a policy or policies of comprehensive public liability and property damage insurance insuring against liability for damages to persons or property on or outside of the Premises resulting directly or indirectly from a condition thereon or from the use or possession thereof by Lessee and its agents, employees, contractors and invitees. The amounts of insurance shall not be less than One Million (\$1,000,000) per claim, and not less than Three Million (\$3,000,000) in the aggregate; and not less than replacement value for damage to the property. All insurance required to be maintained by Lessee shall be effected by valid and enforceable policies issued by insurance companies authorized to do business in the State of Washington, shall name Lessor as Additional Insured and shall contain provisions that it not cancel or change the insurance without at least thirty (30) days prior written notice to Lessor. Lessee shall provide Lessor with certificates evidencing such insurance policies upon request.
- 6.3 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with and extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the

other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 7. Taxes; Utilities

- 7.1 Property Taxes.** Lessee shall pay when due all personal property taxes assessed against its personal property, equipment or trade fixtures on the Premises. Lessee shall pay all real property taxes and assessments levied against the Premises. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Lessor or Lessee.
- 7.2 Contest of Taxes.** Lessee shall be permitted to contest the amount of any tax or assessment so long as such contest is conducted in a manner that does not cause any risk that Lessor's interest in the Premises will be foreclosed for non-payment. Lessor shall cooperate in any reasonable manner with such contest by Lessee.
-
- 7.3 Special Assessments.** If an assessment for a public improvement is made against the Premises, Lessor may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes as per Section 7.1.
- 7.4 Proration of Taxes.** Lessee's share of real property taxes and assessments for the years in which this lease commences or terminates shall be prorated based on the portion of the tax year that this lease is in effect.
- 7.5 Payment of Utilities Charges.** Lessee shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including (but not limited to) charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. If any utility services are provided by or through Lessor, charges to Lessee shall be comparable with prevailing rates for comparable services. If the charges are not separately metered or stated, Lessor shall apportion the charges on an equitable basis and Lessee shall pay its apportioned share on demand. Lessor shall not be liable for any loss, injury or damage to person or property caused by or resulting from any interruption or failure of utilities or services due to any cause whatsoever, including without limitation electrical surges or failure to make repairs. No temporary

interruption or failure of such services incident to making of repairs or alternations or due to accident, strike or condition beyond Lessor's reasonable control shall be deemed an eviction of Lessee or relieve Lessee from obligations hereunder or give Lessee a right of action against Lessor for damages.

Section 8. Damage and Destruction

- 8.1 Damage or Destruction.** If the Premises are damaged or destroyed, the Premises shall be repaired or rebuilt by Lessor at Lessor's expense. Repairs shall be accomplished with all reasonable dispatch under the circumstances subject to interruptions and delays from labor disputes and matters beyond the control of Lessor.
- 8.2 Rent Abatement.** Rent shall be abated during the repair of any damage to the extent the Premises are untenable, except there shall be no rent abatement where the damage occurred as the result of the fault of Lessee, its agents, servants or employees.

Section 9. Eminent Domain

- 9.1 Definition of Terms.** The term "takes by (or taken or taking by) eminent domain" shall include the exercise of any power of condemnation, whether by public authority or private corporation and any purchase or other acquisition in lieu of condemnation. The expression "date of taking" means the date the order adjudicating public use becomes final or the date the authority exercising its right of "eminent domain" shall agree to the purchase price in lieu of condemnation.
- 9.2 Total or Substantial Taking.** If a condemning authority takes by eminent domain all of the Premises, or a portion thereof sufficient to render the remaining Premises reasonably unsuitable for the use which Lessee was then making of the Premises, the term of the lease shall terminate as of the date of taking. Neither Lessee, nor the agents or representatives, licensees, concessionaires nor tenants of Lessee shall have any claim against Lessor or the condemning authority for the value of any unexpired term of this Lease.
- 9.3 Less Than Substantial Partial Taking.** If a portion of the Premises is taken by eminent domain or by agreement in lieu thereof, which is not extensive enough to render the Premises unsuitable for the business of Lessee, then Lessor shall promptly restore the Premises to a condition comparable to its condition on the date of taking less the portion lost in the taking, and this Lease shall continue in full force and effect without any reduction or abatement of rent. If the Premises are rendered unsuitable for conducting business of Lessee, the rent shall be reduced to reflect the

reduction in use of the Premises by Lessee. If the parties are unable to mutually agree upon such reduction in rent, the issue shall be submitted to arbitration in accordance with any local, state or federal ordinances, regulations or laws.

9.4 Award. In the event of any taking by eminent domain as aforesaid, whether whole, partial or affecting parking facilities or other buildings outside the Premises, Lessee shall not be entitled to any part of the award paid for such taking and Lessor is to receive the full amount of such award, whether for diminution in the value of the leasehold or for the fee of the Premises, Lessee hereby expressly waiving any right or claim to any part thereof. Nothing herein shall be construed to preclude Lessee from receiving compensation or damages from the condemning authority for its relocation expenses, the taking of its moveable trade fixtures and removable personal property and the interruption of or damage to, Lessee's business, provided that such claim does not diminish Lessor's award.

9.5 Waiver of Eminent Domain. Lessee agrees to waive any right of eminent domain it might have as to the Premises.

Section 10. Liability and Indemnity.

10.1 Liens

- (1) Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as Additional Rent. Any amount so added shall bear interest at the rate of 9% per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.
- (2) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 Indemnification. Lessee agrees to indemnify, defend, and hold harmless Lessor, its agents, servants, and employees from any and all claims

arising from the use of the Premises by Lessee or from the conduct of Lessee's business or from any activity, omission or work permitted or suffered by Lessee in and about the Premises (excluding work performed by Lessor, its agents, servants, and employees), and shall further indemnify and hold harmless Lessor against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease or arising from any act or negligence of Lessee, its agents, servants or employees, and from and against any loss, attorney fees, expenses, liabilities or claims incurred in or with respect to any such claim or any action or proceeding brought thereon. In case of any action or proceeding being brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, shall defend the same at Lessee's expense. Lessor agrees to indemnify, defend and hold harmless Lessee, its employees, permitted successors and assigns of and from any loss, attorney fees, expenses, liabilities or claims arising out of any and all defaults by Lessor under this lease, or arising out of the negligence or willful misconduct of Lessor or its agents, employees, or contractors. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

Section 11. Subordination; Attornment

- 11.1 Subordination.** This Lease is and shall be subject to and subordinate to any mortgages that are now or may hereafter be placed on the Premises and to all modifications, renewals, extensions and replacements thereof, provided that the mortgagees shall agree to recognize this Lease in the event of foreclosure or sale if Lessee is not in default. Lessee will promptly execute, acknowledge and deliver any instrument requested by Lessor to assure the subordination of this Lease.
- 11.2 Attornment.** In the event the Premises are sold in connection with the judicial or non-judicial foreclosure of any mortgage or by voluntary conveyance by Lessor, Lessee shall, attorn to the purchaser as Lessor herein and this Lease shall continue in full force and effect notwithstanding that it may have been terminated by said foreclosure.
- 11.3 Estoppel Certificate.** Either party will, within twenty (20) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 12. Assignment and Subletting.

12.1 Prohibition. No part of the Premises may be assigned, mortgaged, or subleased by operation of law or otherwise or mortgage, encumber, or pledge the same, or sublet the Premises in whole or in part, or allow all or a portion of the Premises to be used by a third party, without the prior written consent of Lessor, which may be withheld at Lessor's sole discretion. In no event shall any such assignment or sublease ever release Lessee or any guarantor from any obligation or liability hereunder. No assignee or subtenant of the Premises or any portion thereof may assign or sublet the Premises or any portion thereof except pursuant to the terms of this Section. All renewal or extension rights, expansion rights, termination rights, exclusive rights, or other rights or options contained in this Lease shall be personal to the original Lessee executing this Lease and shall terminate upon any assignment or sublease affecting all or a portion of the Premises.

12.2 Assignment. If Lessee desires to assign or sublet all or any part of the Premises, it shall notify Lessor at least sixty (60) days in advance of the date on which Lessee desires to make such assignment or sublease. At the time Lessee submits such a request, Lessee shall pay to Lessor its processing fee and shall reimburse Lessor for all legal fees incurred in connection with Lessee's request. Lessee shall provide Lessor with a copy of the proposed assignment or sublease and such information as Lessor requests concerning the proposed subtenant or assignee to allow Lessor to make an informed judgment as to the financial condition, reputation, operations, and general desirability of the proposed subtenant or assignee. Within sixty (60) days after Lessor's receipt of Lessee's proposed assignment or sublease and all required information concerning the proposed subtenant or assignee, Lessor shall have the following options: (1) cancel this Lease as to the Premises or portion thereof proposed to be assigned or sublet; (2) consent to the proposed assignment or sublease, and, if the rent due and payable by any assignee or subtenant under any such permitted assignment or sublease (or a combination of the rent payable under such assignment or sublease plus any bonus or any other consideration or any payment incident thereto) exceeds the rent payable under this Lease for such space, Lessee shall pay to Lessor all such excess rent and other excess consideration within ten (10) days following receipt thereof by Lessee; or (3) refuse to consent to the proposed assignment or sublease, which refusal shall be deemed to have been exercised unless Lessor gives Lessee written notice providing otherwise. In the event all or any part of the Premises are assigned or sublet, Lessor may, at its option, collect directly from the assignee or subtenant all rents becoming due to Lessee by reason of the assignment or sublease, and Lessor shall have a security interest in all properties on

the Premises to secure payment of such sums. Any collection directly by Lessor from the assignee or subtenant shall not be construed to constitute a novation or a release of Lessee or any guarantor from the further performance of its obligations under this Lease.

12.3 Assumption. Each assignee or subtenant of Lessee shall assume and be deemed to have assumed this Lease and be and remain liable jointly and severally with Lessee for all payments and for the due performance of all terms, covenants and conditions on Lessee's part to be performed or adhered to. Any assignee shall be subject to all of the covenants, conditions and restrictions contained in this Lease, including, without limitation, the restrictions contained in Section 3, and shall deliver to Lessor, upon Lessor's request, an instrument in recordable form containing a covenant of assumption by the assignee, but the failure or refusal of any such assignee to execute the same shall not release the assignee from its liability as set forth herein.

12.4 Right to Assign to Affiliates. Notwithstanding any provision of this Lease to the contrary, Lessee shall be entitled to assign this Lease or sublease all or a portion of the Premises without Lessor's consent, but only after written notice to Lessor, to a corporation or entity (and "Affiliate") ~~in control of, controlled by, or under common control with Lessee, and only~~ if such corporation or entity at all times thereafter remains an Affiliate of Lessee. As used herein, control shall require the ownership of fifty percent (50%) or more of the ownership interests in the entity in question. In addition, Lessee shall be entitled to assign this Lease in connection with a merger, consolidation, or other business combination transaction, without Lessor's consent but only after written notice to Lessor, provided that the tangible net worth of the surviving entity in any merger, consolidation, or business reorganization transaction is not less than the tangible net worth of Lessee immediately prior to such transaction and such surviving entity executes an agreement, in form and substance satisfactory to Lessor, that memorializes that such surviving corporation shall be fully liable for the performance of the obligations of Lessee under this Lease. Lessee shall provide Lessor audited or certified financial statements to evidence the satisfaction of the tangible net worth requirement provided above.

Section 13. Default.

The following shall be events of default:

13.1 Default in Rent. Failure of Lessee to pay any rent, Additional Rent or other charge payable hereunder or any other sums required to be paid by Lessee pursuant to this Lease, however incurred or arising, and such

default shall continue for ten (10) days after the same becomes due under the terms of this Lease.

13.2 Default in Other Covenants. Failure of Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than payment of rent or other charges) within twenty (20) days after written notice by Lessor specifying the nature of the default. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

13.3 Insolvency. Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; and adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

13.4 Abandonment. Failure of Lessee for seven (7) days or more to occupy the Premises for the purpose permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 14. Remedies on Default.

14.1 Termination. In the event of default the Lease may be terminated at the option of Lessor by written notice to Lessee. Whether or not the Lease is terminated by the election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default, and Lessor may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

14.2 Reletting. Following reentry or abandonment, Lessor may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character of use of the Premises, but Lessor shall not be required to relet for any use or purpose considered injurious to the Premises, the reputation of Lessor, or to any lessee that Lessor may reasonably consider objectionable. Lessor may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon

any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

14.3 Damages. In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Lease term, the following amounts as damages:

- (1) The loss of rental from the date of default until a new lessee is, or with the exercise of reasonable efforts could have been, secured and paying out.
- (2) The reasonable costs of reentry and reletting, including without limitation, the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, costs incurred under Section 14.5, or any other expense occasioned by Lessee's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.
- (3) Any excess of the value of the rent and all of Lessee's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Washington banks in effect on the date of trial.

14.4 Lessor's Right to Cure Defaults. If Lessee fails to perform any obligation under this Lease, Lessor shall have the option to do so after thirty (30) days' written notice to Lessee. All of Lessor's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of 9% per annum from the date of expenditure by Lessor. Such action by Lessor shall not waive any other remedies available to Lessor because of the default.

14.5 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

Section 15. Miscellaneous

15.1 Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

15.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, including action for unlawful detainer of the premises, for the recovery of any rents due under the provisions of this lease, or because of the breach of any other covenant or condition herein contained on the part of Lessee or of the licensees, agents or representatives, or tenants of Lessee to be kept and performed, or if either party shall bring legal proceedings against the other based on or relating to the terms hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs in any such action or proceeding including its reasonable attorney's fees on any appeal therefrom.

Lessee also agrees to pay and discharge all of Lessor's costs and expenses, including Lessor's attorney fees, that shall arise from enforcing any provisions or covenants of this lease, including collection of any rent due, even though no suit or action is instituted and from enforcing Lessor's rights hereunder in any proceeding under any insolvency or bankruptcy law, provided lessee shall only be liable for such costs and expenses if Lessor first makes demand upon Lessee for performance of the provision or covenant to which such Lessor's cost and expenses relate.

15.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or forty-eight (48) hours after deposited in the United States mail as certified mail addressed to the address stated below, or that first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

Lessor:

Nancy Steiger
Regional CEO/CMO and Senior VP
c/o St. Joseph Hospital
2901 Squalicum Parkway
Bellingham, Washington 98225

With Copy to:

Stuart P. Hennessey
Senior VP of Legal Affairs
c/o PeaceHealth
14432 SE Eastgate Way, #300
Bellevue, Washington 98007-6412

Lessee:

Jim Cole
Chief, San Juan County District 1
EMS
540 Spring Street
Friday Harbor, WA 98250

With Copy to:

Bradley Berg
Foster Pepper PLLC
1111 3rd Ave., #3400
Seattle, Washington 98101-3299

- 15.4 Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
- 15.5 Recordation.** This lease shall not be recorded without the written consent of Lessor.
- 15.6 Entry for Inspection.** Lessor shall have the right to enter upon the Premises at any time to determine Lessee's compliance with this lease, to make necessary repairs to the building, or to the Premises, or to show the Premises to any prospective tenant or purchaser.
- 15.7 Proration of Rent.** In the event of commencement or termination of this lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee or paid on its account.
- 15.8 Time of Essence.** Time is of the essence of the performance of each of Lessee's obligations under this lease.
-
- 15.9 Entire Agreement.** This lease and the Exhibits attached hereto and forming a part hereof set forth all the covenants, promises, conditions, and understandings between Lessor and Lessee concerning the Premises and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between them other than herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by them.
- 15.10 Validity.** If a court of competent jurisdiction rules invalid or unenforceable any of the provisions hereof, each such provision shall be disregarded, but the remainder of this lease shall be given full force and effect.
- 15.11 Governing Law.** This lease shall be governed by and construed in accordance with the laws of the State of Washington.
- 15.12 Mediation.** In the event of any alleged breach of this lease the Parties shall, within fifteen (15) days of one or both Parties giving the other notice of intent to mediate ("Notice"), designate a neutral third party ("Mediator"). If the Parties cannot agree on a Mediator within such fifteen (15) day period, they shall submit the matter to the Judicial Dispute Resolution organization in Seattle, Washington and agree to

utilize the services of a Mediator assigned by that organization. The Mediator shall facilitate discussions between the Parties in an effort to reach a mutually acceptable agreement and the venue for mediation shall be Seattle, Washington. The Parties shall share equally the cost of the Mediator. If the Parties are unable to reach an agreement for whatever reason within ninety (90) days following the date of the Notice, either may proceed to binding arbitration.

15.13 Arbitration. In the event of any dispute arising from or regarding this Lease, the Parties agree to binding arbitration in Seattle, Washington in accordance with the Commercial Arbitration Rules of the American Arbitration Association and with discovery being governed by the Federal Rules of Civil Procedure applicable in the United States District Court for the Western District of Washington. One arbitrator will be named by each party and a third neutral arbitrator will be named by the arbitrators so chosen. Judgment upon the award rendered by the arbitrators may be entered into the judgment docket of any court having jurisdiction thereof. The cost of arbitration shall be shared equally by the parties to it. Each party shall be solely responsible for its attorneys' fees, if any. The obligations set forth under this section shall survive the termination or expiration of this lease.

15.14 Authority. Each party represents and warrants to the other that it has the power and authority to enter into this lease and that the person(s) signing this lease on its behalf were duly authorized to do so.

15.15 Force Majeure. Landlord shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligation hereunder if such is due to causes beyond its reasonable control, including without limitation, acts of God, acts of terrorism, embargoes, fires, floods, windstorms, earthquakes, strikes, lockouts or other labor disturbances, or governmental acts.

IN WITNESS WHEREOF, the parties here to have executed this lease agreement on this _____ day of _____, 2009.

LESSOR:

LESSEE:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Commission Chair

Dated: _____

Dated: _____

By: _____
Name: _____
Secretary of the Commission

Dated: _____



Direct Phone (206) 447-8970
Direct Facsimile (206) 749-1908
E-Mail bergb@foster.com

Attachment 2A.

May 6, 2009

San Juan Public Hospital District No. 1
Friday Harbor, Washington

PeaceHealth
Bellevue, Washington

Re: Subsidy Agreement for a Combined Clinic and Hospital Facility

Ladies and Gentlemen:

We have acted as special counsel to San Juan Public Hospital District No. 1 (the "District") in connection with the Subsidy Agreement for a Combined Clinic and Hospital Facility dated as of May 6, 2009, by and between PeaceHealth and the District (the "Subsidy Agreement"). This opinion letter is being delivered to you at the request of the District pursuant to Attachment 2A to the Subsidy Agreement. Capitalized words and phrases not otherwise defined herein shall have the meanings ascribed thereto in the Subsidy Agreement.

I. Documents Reviewed

In connection with this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, records, certificates and statements of government officials, officers and other representatives of the persons referred to therein, and such other documents as we have deemed relevant or necessary as the basis for the opinions herein expressed, including the following documents:

- a. The Subsidy Agreement;
- b. Resolution No. 09-326 of the Board of Commissioners of the District dated March 18, 2009 (the "Resolution");

c. Notice of Special Meeting of the Board of Commissioners of the District on March 18, 2009 (the "Notice");

d. Certification of J. Michael Edwards, Secretary of the Commission of the District, regarding the Resolution and the Notice dated March 18, 2009;

e. The Bylaws of the District adopted and approved by the Commission of the District by Resolution No. 07-307 dated April 16, 2008 (the "Bylaws"); and

f. Such other documents as we have deemed necessary or appropriate in order to give the opinions expressed herein.

II. Assumptions

In connection with the opinions expressed herein, we have assumed the following:

a. The authenticity of all documents submitted to us as originals and the authenticity and conformity to the originals of all documents submitted to us as drafts or copies;

b. That all signatures are genuine;

c. The legal capacity of all natural persons executing documents, certificates and records;

d. As to matters of fact material to our opinion, we have relied on the completeness and accuracy as of the date of this opinion letter of the information contained in such documents, certificates and records (other than the documents referred to in clause I(a) through I(e) above).

e. The due authorization, execution and delivery of the Subsidy Agreement by, and the enforceability of the Subsidy Agreement against, PeaceHealth;

f. PeaceHealth has complied with all legal requirements pertaining to its status as such status relates to its rights to enforce the Subsidy Agreement;

g. There has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence;

h. The conduct of the parties to the Subsidy Agreement has complied with requirements of good faith, fair dealing and conscionability;

i. The District will obtain all permits and governmental approvals required in the future, and take all actions similarly required, relevant to subsequent consummation of the transactions contemplated by the Subsidy Agreement or performance of the Subsidy Agreement; and

j. The District will not in the future take any action (including a decision not to act) that would constitute a breach or default under the Subsidy Agreement or take any discretionary action (including a decision not to act) permitted under the Subsidy Agreement that would result in a violation of law or constitute a breach or default under any Other Agreement or Court Order.

III. Opinions

Based upon and subject to the foregoing, we are of the opinion that:

1. The District is a duly organized and legally existing municipal corporation under the laws of the State of Washington.
2. The District has the power and authority to own and lease its properties and to enter into and perform its obligations under the Subsidy Agreement.
3. The execution and delivery by the District of and the performance of its agreements under the Subsidy Agreement would not violate the Bylaws of the District or constitute a material violation of any applicable provisions of the constitution, statutes or regulations of the State of Washington. As used in this paragraph 3, a "material" violation is one which would have a material adverse effect upon the operations or financial condition of the District, or upon the ability of the District to fulfill or comply with the provisions of the Subsidy Agreement.
4. The Subsidy Agreement has been duly authorized, executed and delivered by the District.
5. The Subsidy Agreement constitutes the valid and binding obligation of the District enforceable against the District in accordance with its terms.

IV. Qualifications and Exceptions

In addition to the qualifications, assumptions and other limitations set forth above, and without limiting the effect of such qualifications, assumptions and other limitations, our opinion is further qualified as follows:

- a. The enforceability of such documents may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, receivership, moratorium and other similar laws affecting the rights and remedies of creditors generally, by the application of judicial discretion, and by the effect of general principles of equity, including without limitation, concepts of materiality of the District's breach and the consequences to the party seeking enforcement, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, whether applied by a court of law of equity.
- b. Sections 1.2.5 and Section 1.2.6 of the Subsidy Agreement may be unenforceable against the District if determined to be against public policy.

c. Pursuant to RCW 4.84.330, any provision in the Subsidy Agreement requiring a party to pay the attorneys' fees and costs of another party in actions to enforce the provisions thereof will be construed to entitle the prevailing party in any action to be awarded its costs and reasonable attorneys' fees.

d. The courts of the State of Washington will consider extrinsic evidence of circumstances surrounding the making of the Subsidy Agreement to ascertain the intent of the parties in using the language employed in the Subsidy Agreement, regardless of whether or not the language used in the Subsidy Agreement is plain and unambiguous on its face, and may incorporate additional or supplementary terms into the Subsidy Agreement.

V. Miscellaneous

This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein. This opinion is issued as of the date hereof, and we undertake no obligation to advise any person of changes in any matters set forth herein and hereby disclaim any obligation to do so.

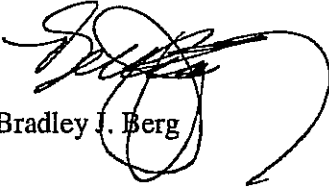
The law covered by the opinions expressed herein is limited to the law of the State of Washington and we express no opinion with respect the laws of any other jurisdiction.

This opinion is for the sole benefit of the parties to whom this letter is addressed and may not be relied upon by any other person other than such parties. The opinions expressed herein are as of the date hereof and we make no undertaking to amend or supplement such opinions if facts come to our attention or changes in the current law of the jurisdictions mentioned herein occur which could affect such opinions. This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

No attorney-client relationship has existed or exists between our firm and the addressees of this opinion other than the District by virtue of this opinion.

Respectfully submitted,

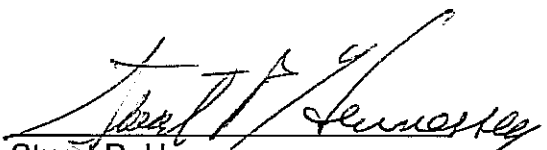
FOSTER PEPPER PLLC


Bradley J. Berg

Attachment 2B

Opinions of Counsel for PeaceHealth

1. PeaceHealth is a nonprofit corporation duly incorporated and validly existing under Washington law.
2. PeaceHealth has the power and authority to own and lease its properties and to enter into, and to perform its obligations under, the Agreement and the lease from PeaceHealth, which is Attachment 1 to the Agreement (the "Lease").
3. The execution, delivery and performance by PeaceHealth of the transactions contemplated by the Agreement do not violate PeaceHealth's Articles of Incorporation, Bylaws nor applicable Washington state statutes, administrative code provisions or the Washington state constitution.
4. PeaceHealth has authorized, by all necessary corporate action on the part of PeaceHealth, the execution, delivery and performance by PeaceHealth of the transactions contemplated by, the Agreement and the Lease.
5. The Agreement and the Lease are valid and binding obligations of PeaceHealth enforceable against PeaceHealth in accordance with their terms.


Stuart P. Hennessey
Senior Vice President for Legal Affairs
PeaceHealth

May 6, 2009
Date



Attachment 3A

**PUBLIC HOSPITAL DISTRICT NO. 1
SAN JUAN COUNTY, WASHINGTON**

RESOLUTION NO. 09-326

A RESOLUTION of the Commission of Public Hospital District No. 1, San Juan County, Washington, approving and authorizing the execution and delivery of the Subsidy Agreement for a Combined Clinic and Hospital Facility and related documents and authorizing future actions.

BE IT RESOLVED BY THE COMMISSION OF PUBLIC HOSPITAL DISTRICT NO. 1, SAN JUAN COUNTY, WASHINGTON, as follows:

Section 1. Recitals. The Commission (the "Commission") of Public Hospital District No. 1, San Juan County, Washington (the "District"), hereby makes the following findings and determinations:

- (a) The District, doing business as Inter Island Medical Center and San Juan Island Emergency Medical Services, is a public hospital district and a municipal corporation duly organized and existing under the laws of the State of Washington (the "State").
- (b) The District presently owns and operates Inter Island Medical Center ("IIMC") and the San Juan County Public Hospital District No. 1 emergency medical services facility located in Friday Harbor.
- (c) RCW 70.44.003 authorizes the District to provide hospital and other health care services for the residents of the District and other persons.
- (d) RCW 70.44.060(2) authorizes the District to provide hospital and other health care services for residents of the District by contract or in any other manner the Commissioners may deem expedient or necessary under the existing conditions.
- (e) RCW 70.44.240 authorizes the District to contract or join with any other nonprofit hospital to operate or provide any hospital or other health care facilities or hospital services or other health care services to be used by the residents of the Districts or other persons.
- (f) RCW 70.44.060(10) authorizes the District to make all contracts useful or necessary to carry out the provisions of the public hospital district chapter of the Revised Code of Washington, Chapter 70.44 RCW.
- (f) The District has concluded that the size and design of the IIMC is inadequate to meet future needs and that the real estate on which it is located is not large enough for construction of a new, larger medical facility to accommodate the current and future needs of residents of, and visitors to, the District who would benefit from the provision of an expanded range of health care services, including limited inpatient care.



(g) The District has further concluded that the IIMC is not financially sustainable as currently configured, that the operational losses of the IIMC are exceeding the amount of tax revenue available to the District to cover those losses and that these losses are projected to increase annually.

(h) The District has concluded that if a larger clinic were combined with a critical access hospital ("combined clinic/hospital facility") and operated by a larger healthcare system with experience with combined clinic/hospital facilities in rural and underserved areas that could bring economies of scale to the purchasing, information technology and support service functions, the combined clinic/hospital facility would achieve long-term financial sustainability.

(i) The District has determined that PeaceHealth has expertise in constructing, licensing, securing regulatory approvals for, staffing and operating combined critical access hospitals and hospital based physician clinics in settings similar to San Juan Island.

(j) PeaceHealth is organized for the charitable purpose of promoting health, owns and operates hospitals and medical clinics in the Pacific Northwest, including St. Joseph Hospital and the PeaceHealth Medical Group-Whatcom Region located in Bellingham, Washington and provides medical care to a significant percentage of residents of the District through its hospital and physician clinics in Bellingham.

(k) The District desires to enable a long-term, financially sustainable healthcare solution for its residents while expanding the range of health care services by providing a subsidy to PeaceHealth in exchange for its agreement to purchase real estate, construct, license, secure regulatory approvals for, staff and operate a new combined clinic/hospital facility that would be located on a larger site and provide hospital and health care services for the benefit of District residents and other persons.

(l) The District further desires to co-locate a new emergency medical services facility with the combined clinic/hospital facility in an adjacent structure, which would be built by PeaceHealth and which the District would subsequently purchase, along with the underlying land and infrastructure improvements, at fair market value.

(m) PeaceHealth believes it can further its charitable purpose of providing health care services to District residents and visitors by purchasing real estate, constructing, licensing, securing regulatory approvals for, staffing and operating the combined clinic/hospital facility, as well as constructing a co-located facility suitable for purchase by the District and use for the District's emergency medical services, subject to the conditions of: (1) receiving at least ten million dollars of initial philanthropic assistance from the San Juan Hospital Committee; (2) receiving a long-term subsidy from the District; and (3) selling to the District at fair market value the portion of its real estate, and the infrastructure improvements thereto, on which it has built a new facility suitable for the District's emergency medical services and enough land for the future construction of an adjacent helipad.

(n) The District and PeaceHealth have set forth their mutual understandings regarding the development, construction, licensing, staffing and operation of the combined clinic/hospital

facility and the new emergency medical services facility in the Subsidy Agreement for a Combined Clinic and Hospital Facility attached hereto as Attachment A (the "Agreement").

Section 2. Approval of Agreement and Authorization of Execution and Delivery. The Commission hereby approves the Agreement and authorizes and directs the Chairperson and Secretary of the Commission to execute and deliver the Agreement to PeaceHealth on behalf of the District.

Section 3. Execution and Delivery of Additional Documents. The Chairperson and the Secretary are hereby directed, and granted the discretionary authority, to execute and deliver any and all other certificates, documents, agreements and instruments that are necessary or appropriate in their discretion to give effect to this resolution and to consummate the transactions contemplated herein.

Section 4. Authorization of Future Acts. The Board further authorizes and directs the Chairperson and Secretary, and all other proper officers, agents, attorneys and employees of the District to carry out, or cause to be carried out, all obligations of the District under the Agreement; and to perform or cause to be performed such other acts as they shall consider necessary or advisable in order to give effect to this resolution and the transactions contemplated herein.

Section 5. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED and APPROVED by the Commission of Public Hospital District No. 1, San Juan County, Washington, at an open public meeting thereof held this 18th day of March, 2009, the following Commissioners being present and voting in favor of the resolution.

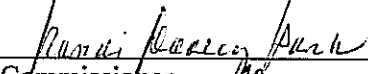
**PUBLIC HOSPITAL DISTRICT NO. 1
SAN JUAN COUNTY, WASHINGTON**



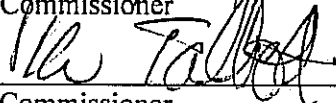
Chairperson and Commissioner



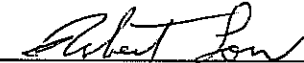
Secretary and Commissioner



Commissioner



Commissioner



Commissioner

CERTIFICATION

J. M. Edwards M.D.
I, _____, Secretary of the Commission of Public Hospital District No. 1, San Juan County, Washington (the "District"), hereby certify as follows:

1. The foregoing Resolution No 09-326 (the "Resolution") is a full, true and correct copy of the Resolution duly adopted at an open public meeting of the Commission of the District ("the Commission") held at the regular meeting place thereof on March 18, 2009, as that Resolution appears on the minute book of the District; and the Resolution is now in full force and effect; and
2. A quorum of the members of the Commission was present throughout the meeting and a sufficient number of members of the Commission present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of March 2009

**PUBLIC HOSPITAL DISTRICT NO.1
SAN JUAN COUNTY, WASHINGTON**

J. M. Edwards M.D.
3/18/2009
Secretary of the Commission

XXB *TJB* *ADJ*

CERTIFICATION

J. M. Edwards M.D.
I, _____, Secretary of the Commission of Public Hospital District No. 1, San Juan County, Washington (the "District"), hereby certify as follows:

1. The foregoing Resolution No 09-326 (the "Resolution") is a full, true and correct copy of the Resolution duly adopted at an open public meeting of the Commission of the District ("the Commission") held at the regular meeting place thereof on March 18, 2009, as that Resolution appears on the minute book of the District; and the Resolution is now in full force and effect; and
2. A quorum of the members of the Commission was present throughout the meeting and a sufficient number of members of the Commission present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of March 2009

**PUBLIC HOSPITAL DISTRICT NO.1
SAN JUAN COUNTY, WASHINGTON**

J. M. Edwards, M.D.
3/18/2009
Secretary of the Commission

Attachment 3B

WHEREAS, representatives from San Juan Island requested assistance from PeaceHealth in meeting the healthcare needs of residents within their public hospital district; and

WHEREAS, PeaceHealth entered into a Letter of Intent with the San Juan Island Public Hospital District No. 1 (the "District") pursuant to which it negotiated a Subsidy Agreement for a Combined Clinic/Hospital Facility (the "Subsidy Agreement") providing that PeaceHealth will construct, equip, staff and operate a combined clinic/hospital facility on San Juan Island in exchange for an annual subsidy from the District's tax revenue; and

WHEREAS, the PeaceHealth Whatcom Region conducted an ethical discernment concerning the terms of the Subsidy Agreement, concluding that they were consistent with, and furthered, PeaceHealth's mission and values; and

WHEREAS, management has prepared and presented to the Whatcom Region governing board and to this board of directors a business plan demonstrating the financial feasibility of the arrangement set forth in the Subsidy Agreement; and

WHEREAS, this board of directors deems the terms of the Subsidy Agreement to be reasonable and prudent, finds the business plan acceptable and concurs in the findings of the ethical discernment;


~~NOW, THEREFORE, BE IT RESOLVED~~ that the PeaceHealth board of directors approves the business plan for San Juan Island and authorizes the President to execute an agreement with the District that substantially conforms to the Subsidy Agreement as presented;

FURTHER RESOLVED, that the President is authorized to sign such additional documents as reasonably necessary to consummate the transaction in accordance with the business plan.



CERTIFICATION

I, Stuart P. Hennessey, am the duly elected Assistant Secretary of PeaceHealth and in that capacity certify as follows:

1. The resolution set forth above is a full, true and correct version of the Resolution duly adopted at a regular meeting of the PeaceHealth Board of Directors held in Bellevue, Washington on March 13, 2009; and
2. A quorum of the PeaceHealth Board of Directors was present throughout the meeting and a majority of the board members voted affirmatively in favor of the resolution, so that it was adopted in conformance with all requirements set forth in the board bylaws; and
3. The Resolution is now in full force and effect.


Stuart P. Hennessey
Assistant Secretary for PeaceHealth

Date

MEMORANDUM

TO: J. Michael Edwards, M.D., Lenore Bayuk, and Alan Yordy
FROM: Stuart Hennessey *SH*
RE: Execution of the Subsidy Agreement and Initialing of Exhibit
DATE: 5-12-09

I apologize to each of you for the inconvenience of asking you to provide additional signatures/initials. When the documents returned we realized that two places had not been flagged by us and, thus, had not been signed or initialed by you.

Please sign and date the first flagged document as of May 6, 2009. In addition, please initial the attachment where flagged. _____

Many thanks.

