



1026 Park Ave · PO Box 99  
Grand Lake, CO 80447  
970-627-3435  
www.townofgrandlake.com

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To: Mayor Kudron and the Grand Lake Board of Trustees  
From: John Crone, Town Manager  
Re: Middle Park Health Contract  
Date: June 12, 2023

### **Background**

The Town has received numerous benefits from its ownership of the Grand Lake Center. One of the most valuable benefits has been the ability to ensure that the Town continues to have access to the healthcare services offered by Middle Park Health at their clinic.

The Town has entered into contracts leasing space to Middle Park Health. Traditionally, the contracts covered three-year terms. Middle Park Health pays a de minimus fee (\$1/year), and the Town provides the space, electricity, and heat. The contract requires Middle Park Health to operate the clinic certain hours and days dependent upon the time of year.

This agreement has provided the coverage that the Town desired. Middle Park Health is interested in renewing the agreement for three years. If the Board wishes to change the terms, staff can begin negotiations. If the Board is content with the current agreement, staff recommends entering into another three-year lease.

### **Proposed Motion**

If the Board wishes to enter into the attached lease it should approve the following motion:

*I move to approve the attached lease for a three-year term with Kremmling Memorial Hospital District (Middle Park Health).*

## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, hereinafter called the "Agreement" is made and entered into as of the 12<sup>th</sup> day of June 2023, by and, between the **TOWN OF GRAND LAKE, COLORADO**, hereinafter the "Town", a Colorado statutory municipality and **KREMMLING MEMORIAL HOSPITAL DISTRICT**, a quasi-municipal corporation and Colorado Special District, doing business as Middle Park Health, hereinafter "Tenant."

### WITNESS ETH:

**WHEREAS**, the Town is the owner of certain real property and improvement thereon located at 301 Marina Dr., Grand Lake, CO, commonly known as the "Grand Lake Center"; and

**WHEREAS**, the Tenant desires to lease from the Town and the Town desires to lease to the Tenant a portion of the Grand Lake Center to permit Tenant to operate a medical/health clinic business.

**NOW THEREFORE**, in consideration of the mutual benefits and obligations and other consideration set forth herein, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

### ARTICLE 1 BUSINESS SPACE

1.1 Identification Of "Business Space". For the purposes of this Agreement, the term "Business Space" shall mean the area within the real property and/or improvements depicted on Exhibit A attached hereto and incorporated herein by reference:

Designated as "Sheriffs Office, Front Office, Storage, Business Center, and Health Room" in the southwesterly comer of the Grand Lake Center and consisting of approximately 1372 square feet. Tenant shall have exclusive right to use and right of possession of the Business Space.

Tenant shall also have the non-exclusive right to use the parking lots, exterior doorways and entrances, walkways and sidewalks, and interior common hallways, restrooms and other areas that are open to the general public as herein provided for.

1.2 Definition Of "Business Operations". For purposes of this Agreement, the term "Business Operations" shall mean the operation of a medical/health clinic and the offering of medical and health services to the public.

**ARTICLE2**  
**TENANT'S DUTIES WITH RESPECT TO THE BUSINESS SPACE**

- 2.1 In General. Subject to other limitations expressed in this Agreement, the Town grants to Tenant the right, duty, and obligation to exclusive lease and use of the Business Space in conjunction with Business Operations, and for no other purpose in such spaces.
- 2.2 Restriction On Items Offered For Sale. Tenant shall not offer Liquor, Tobacco products, or Cannabis products for sale.
- 2.3 Compliance With Applicable Laws And Directives. The Tenant agrees to comply fully with all applicable state and federal laws and regulations, local laws and regulations, and Town of Grand Lake municipal ordinances.

**ARTICLE3**  
**RIGHTS OF INGRESS AND EGRESS**

- 3.1 In General. The Tenant shall have the right of ingress and egress to and from the Business Space for Tenant's employees, contractors, agents, and invitees to the extent reasonably necessary in connection with the conduct of the Business Operations under this Agreement. Areas designated on Exhibit A as restricted areas by the Town will be excluded from this Lease. Access via keys or keycards will be provided to employees designated in writing by the Tenant, and Tenant assumes all responsibility and liability associated with actions of those individuals named as well as the actions of any individuals the Tenant provided keys or keycards to.
- 3.2 Closures. The Town may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway or any other way at, in, or near the real property, presently or hereafter used as such, so long as reasonable and safe means of ingress and egress remains available to Tenant. Town agrees to give Tenant prior written notice of such closures at least thirty (30) days in advance, except in the event of an emergency, in which case no notice shall be required.

**ARTICLE4**  
**UNDERTAKINGS OF TENANT**

- 4.1 Service. Tenant agrees:
- 4.1.1 The Tenant shall furnish and pay for all equipment, except as otherwise provided by the Town pursuant to Article 8, all goods, labor, transportation, supervision, and services necessary to conduct Business Operations in accordance with this Agreement.

4.2 Days and Hours Of Operation.

The days and hours of Operation for Business Operations are anticipated to be the following:

June 1 through October 31	8 a.m. to 5 p.m.*	four weekdays per week
November 1 through May 31	8 a.m. to 5. p.m.*	three weekdays per week

\*Hours of Operation are subject to change in Tenant's discretion.

4.3 Tenant Personnel. Tenant shall control the conduct and demeanor of its agents, independent contractors, employees, guests, and invitees. Upon objection from the Town concerning the conduct or demeanor of any such person, the Tenant shall immediately take all lawful steps to remove the cause of the objection.

4.4 Physical Interference. Tenant shall not do, nor permit to be done, anything which may interfere with the use or effectiveness or accessibility of the electrical system, lighting system, water system, drainage system, sewage system, fire protection system, sprinkler system, alarm system, and fire hydrants and hoses, if any, installed or located in the Business Space or elsewhere on Grand Lake Center. The Town shall be responsible for the maintenance and upkeep of all such systems.

4.5 Taxes. To the extent real property taxes are assessed on parts or all of the Grand Lake Center, Tenant agrees to pay its pro rata share of such real property taxes, if any, based on the square footage of the Business Space. Tenant agrees to pay all local, state and federal social security, unemployment insurance, workers' compensation insurance, sales, use, personal property and other taxes, assessments and payments-in-lieu which, during the term of this Agreement or any extension hereof, may become a lien or which may be levied or charged by the federal government, State, County, the Town or other tax-levying body upon or with respect to the Business Space, upon any taxable interest acquired by the Tenant in this Agreement, or any taxable possessory right which Tenant may have in or to the Business Space or facilities or the improvements thereon, by reason of Tenant's occupancy or use thereof, or otherwise, as well as all taxes on taxable property, real or personal, owned by Tenant or taxes on the Business Operations in or about the Business Space or elsewhere on Grand Lake Center. However, except as otherwise permitted by this Agreement, no charges, fees or taxes of any nature shall be imposed by the Town solely upon Tenant for exercising any right or privilege granted by the Town to Tenant in this Agreement with respect to the use of the Business Space. Nothing herein shall prevent Tenant from protesting, through due process, any taxes levied.

4.6 Licenses. Tenant agrees to obtain and pay for all licenses necessary in connection with the Business Operations, including but not limited to, a Town business /sales tax license.

**ARTICLES**  
**TERM**

- 5.1 **Term.** The parties agree that the initial term of this Agreement shall be for a period of three years and shall commence on June 1, 2023, and shall expire on May 31, 2026. No less than six months prior to the expiration of the initial three-year term, the parties shall enter into good faith negotiations to determine whether the term of the lease should be extended and on what terms and conditions. If the parties are unable to agree on terms and conditions to extend the lease beyond the initial three period, then the lease will terminate on the expiration of the initial three-year period and the Tenant must vacate the premises and remove its property from the Business Space as provided herein.
- 5.2 **Termination.** Upon termination of this Agreement, Tenant's accrued liability to the Town arising under this Agreement prior to such termination shall survive the termination, and the Town may re-enter, take possession of the Business Space and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.
- 5.3 **Holding Over.** In the event that the Town consents in writing to allow Tenant, or its successor in interest, if any, to remain beyond the term set forth herein, although no right to remain is given by this Article, it is the intention of the parties and it is hereby agreed that a right of use from month-to-month after expiration shall then arise subject to all provisions and conditions of this Agreement in connection with such right, except that the Town shall have the sole right to determine reasonable fees, not to exceed an increase of 10% of the Rental Fee provided for in Section 6.1 below for any holdover period. The lease may be terminated by either party during the hold over period upon 30 days written notice.

**ARTICLE 6**  
**RENT**

- 6.1 **Business Space Rental Fee.** For the privilege of conducting the Business Operations hereunder, and the exclusive use of the Business Space, the Tenant shall pay to the Town a fee in an amount equal to \$1.00 per year. Payment of Rental Fee is due and owed on the first day of each month. The reduced rental fee being charged by the Town to the Tenant reflects the promises of the Tenant to provide certain medical services for certain periods to the Grand Lake community, as set forth herein in Section 4.2.

**ARTICLE7**  
**UTILITIES, MAINTENANCE AND JANITORIAL DUTIES**

- 7.1 Utilities. The Town shall pay all charges for water, storm water, sewer, gas, trash collection, and electric services to the Business Space, except as provided in Article 17 below. Tenant shall be responsible for its own telephone and IT systems.
- 7.2 Maintenance And Repair. The Tenant shall maintain and repair the Business Space, except for any structural elements within the Business Space such as but not limited to, any load bearing partitions and HVAC systems; and any common boiler, furnace, hot water heaters, water and sewer service lines, and the like which are used in common with the occupants of other portions of Grand Lake Center or the Town, all of which shall be the responsibility of the Town. The Town shall not in any way be liable to the Tenant for failure to make repairs as herein specifically required of it unless the Tenant has previously notified the Town in writing of a need for such repairs, and the Town has failed to commence and complete said repairs within a reasonable period of time following receipt of the Tenant's written notification.
- 7.2.1 The Tenant shall neither hold nor attempt to hold the Town liable for any injury or damage, either approximate or remote, occasioned through or caused by defective electrical wiring or the breaking or stoppage of plumbing or sewage within the Business Space, whether said breakage or stoppage results from freezing or otherwise.
- 7.3 Cleaning and Janitorial. The Tenant shall keep the Business Space, its fixtures, and all areas used in good sanitary condition as required by the ordinances, resolutions, statutes and health, sanitary and police regulations of the Town of Grand Lake and State of Colorado and policies of the Town. Tenant shall have additional cleaning and janitorial obligations as set forth in Article 17, below.
- 7.3.1. The Tenant is responsible for the ongoing cleanliness of the Business Space in order to provide a clean and orderly appearance for the public.
- 7.4 Maintenance, Cleaning, and Repair of Common Areas. The Town shall be responsible for the maintenance, upkeep, and cleaning of the common areas within the Grand Lake Center, including the hallways, sidewalks, parking lots, restrooms, exterior windows, doors, and walls, and other areas that are open to the general public, including snow plowing the sidewalks and parking lots.
- 7.5 Signage. Tenant shall be entitled to interior and exterior signage which is consistent with the Grand Lake sign code and is approved by the Town in advance, which approval shall not be unreasonably withheld.

**ARTICLE 8**  
**ACCEPTANCE OF PREMISES AND TRADE FIXTURES**

- 8.1 Acceptance. On the date of commencement of the Tenant's occupancy of the Business Space, Tenant shall acknowledge that it accepts the Business Space as well as any Town equipment and fixtures "AS IS", without any express or implied warranty of any kind, including but not limited to warranty of habitability or warranty of fitness for a particular purpose.
- 8.3 Installation of Equipment and Trade Fixtures. No equipment, trade fixtures, signs or other personal property used by Tenant in its business, whether or not attached to the Town Property or any improvements thereon, shall be installed without the prior written approval of the Town. The Town consents to the installation of an X-ray machine, together with the lead-lined ceiling and walls required for the proper and safe operation thereof, all at Tenant's expense.
- 8.4 Removal Of Equipment And Trade Fixtures. Tenant shall have the right at any time during the term of this Agreement or upon termination and within thirty (30) days thereafter, to remove all personal property such as trade fixtures, equipment and other personal property, but subject to any valid lien the Town may have thereon for unpaid portions of the Business Space Rental Fee pursuant to Article 6 or any other amounts due from Tenant to the Town pursuant to the provisions of this Agreement, Town ordinances, or otherwise. Any damage to the property of the Town caused by the removal of any fixtures or equipment of Tenant shall be repaired by Tenant at its own cost. Except as otherwise provided for herein, any property not so removed by Tenant upon termination as provided in this Section may, at the election of the Town, become a part of the realty on which it is located and title thereto shall vest in the Town, if the Town so chooses. If the Town elects not to take title or possession of any personal property such as trade fixtures, equipment or other personal property left in the Business Space after termination, Tenant shall remove such personal property, trade fixtures, and equipment within thirty (30) days of receiving written notification from the Town. Tenant shall be fully liable for any damages to the Business Space or other parts of the Grand Lake Center that occurs during such removal process, if caused by the Tenant or its agents.
- 8.5 Title To Improvements. No improvements shall be made to the Business Space without the prior written approval of the Town. Upon installation or erection of Improvements, such Improvements shall, at the election of the Town, become a part of the realty upon which they are erected and title thereto shall vest in the Town, unless the parties agree otherwise in writing and in advance of such installation. Upon vesting, the Improvements become part of the Business Space and are subject to the terms applicable to the Business Space within this Agreement. If the Town elects not to take title or possession of any improvements made to the Business Space, Tenant shall remove such improvements within ten days of receiving written notification from the Town. Tenant shall be fully liable for any damages to the Business Space or other parts of the Grand Lake Center that occurs during such removal process, if caused by Tenant or its agents. The Town consents to the

installation of the furniture, fixtures, and other equipment listed on Exhibit B, which, even if installed on or attached to the realty, shall remain the personal property of the Tenant.

- 8.6 Conformance with Applicable Laws. All improvements and all trade fixtures, equipment or other personal property installed by Tenant shall be subject to and conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of all governmental agencies which have jurisdiction over such matters.

## **ARTICLE 9 DAMAGE BY TENANT**

The Tenant shall be liable for and shall repair, replace or cause to be repaired or replaced within thirty (30) days after occurrence, any damage to Town Property, including the Business Space, or to the Town's property, equipment and fixtures caused by Tenant, Tenant's agents, employees, independent contractors working at Tenant's direction, or anyone else acting under Tenant's direction and control, ordinary wear and tear excepted. All repairs or replacements shall be made promptly and when necessary and shall be in a quality and of a class at least equal to the original. If the damage for which Tenant is liable is to the Business Space, Tenant shall continue to be liable for the Business Rental Fee and all other charges provided for in this Agreement, even if the Business Space has been rendered untenable or unusable.

Tenant shall deposit with the Town a security deposit in the amount of \$\_-0-\_. At the end of the lease, the security deposit will be returned to the Tenant after deductions for unpaid Rent, Utilities, and damage to the Business Space, other than ordinary wear and tear, or damage to the Grand Lake Center. The Tenant shall not use the deposit at any time for payment of Rent, but instead, should Tenant fail to pay amounts due upon termination or breach of the Agreement, the Town may at its option use the security deposit to satisfy any portion of the amounts owed. However, the use of the security deposit shall not limit the ability of the Town to recover any damages in excess of the security deposit amount.

## **ARTICLE 10 TOTAL OR PARTIAL DESTRUCTION**

- 10.1 Business Space Or Other Major Component Rendered Untenable. In case, during the term of this Agreement, the Business Space, or other related part of the Grand Lake Center, shall be destroyed or shall be so damaged by fire, flood, or other casualty so as to be rendered untenable or unusable as determined by either party:

10.1.1 Then, in such event, at the option of either party, the term hereby created shall cease, and this Agreement shall become null and void from the date of such determination, and Tenant shall immediately surrender the Business Space and his/her/its interest therein to the Town; provided, however, that the Town or Tenant shall exercise such option to so terminate this Agreement by notice, in writing, delivered to the other party within thirty (30) days after the determination of untenability or non-usability.

- 10.1.2 In the event neither party elects to exercise its option in 10.1.1 and terminate this Agreement, this Agreement shall continue in full force and effect; and the Town shall repair the Business Space, excluding improvements or equipment, signs, trade fixtures, or other personal property installed by Tenant, with all reasonable speed, placing the same in as good condition as it was at the time of the damage or destruction.
- 10.2 Business Space Only Untenantable. In the event of destruction rendering only the Business Space untenable or non-usable through no fault of the Town or the Town's agents or employees, the Town shall endeavor, but not be obligated, to make substitute premises available for Tenant's use, at no additional cost.
- 10.3 Components Tenantable. If the Business Space shall be only injured by fire, flood, or the elements to such extent so as not to render the same untenable and unfit for use and occupancy, the Town shall repair the same with all reasonable speed at its own expense.
- 10.4 Removal Of Personal Property. In any event, upon the occurrence of damage or destruction, Tenant shall remove all rubbish or debris, merchandise, furniture, furnishings, equipment and other items of its personal property from within the Business Space within thirty (30) days after receipt of written request by the Town. The Town shall be responsible for the removal of rubbish and debris as the result of the damage or destruction of any portion of the Grand Lake Center other than the Business Space.
- 10.5 Exception For Damage Caused By Tenant. In the event of damage caused by Tenant, as more specifically addressed in Article 9 of this Agreement, the provisions of Article 9 shall govern in any conflict between Article 9 and Article 10.
- 10.6 No Claim By Tenant. No compensation or claim shall be made by or allowed to Tenant by reason of any inconvenience or annoyance arising from the necessity of repairing portion of the Business Space or the Grand Lake Center, however the necessity may occur.

## **ARTICLE 11 INDEMNIFICATION AND INSURANCE**

- 11.1 The Town's Liability. The Town shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and reasonable expenses of legal services, claimed or recovered by any person whomsoever or whatsoever as a result of any operations, works, acts, sales, or omissions performed within the Business Space by Tenant, its agents, employees, guests, invitees, or contractors.
- 11.2 Indemnification. Tenant covenants that it will indemnify and hold the Town harmless from all claims, demands, judgments, costs and expenses, claimed or recovered (whether justly, unjustly, falsely, fraudulently or frivolously) by any person by reason of injury to or death of any individual person or persons, or by reason of damage to, destruction or loss of use

of any property, directly or indirectly arising out of, resulting from, or occurring in connection with any operations, works, acts, or omissions or negligence of Tenant.

The Town covenants that it will indemnify and hold the Tenant harmless from all claims, demands, judgments, costs and expenses, claimed or recovered (whether justly, unjustly, falsely, fraudulently or frivolously) by any person by reason of injury to or death of any individual person or persons, or by reason of damage to, destruction or loss of use of any property, directly or indirectly arising out of, resulting from, or occurring in connection with any operations, works, acts, or omissions or negligence of Town.

As used in this Section 11.2, the terms "the Tenant" and "Town" include their respective directors, officers, agents, employees, guests, invitees, and contractors of the Town.

- 11.3 Tenant Insurance. Without limiting any of the Tenant's obligations hereunder, the Tenant shall provide and maintain comprehensive liability insurance coverage of the Business Operations in an amount no less than \$1,000,000. The Town shall maintain insurance on the real property hereby leased.
- 11.4 Precaution Against Injury. The Tenant shall take all necessary precautions in performing the Business Operations hereunder to prevent injury to persons and property.
- 11.5 No Waiver Of Immunity. Nothing herein shall be construed as a waiver by the Town or the Tenant of any of the immunities, privileges and defenses available to them under the Colorado Governmental Immunity Act, as may be amended from time to time, or arising under common law.

## **ARTICLE 12 NO INTEREST IN REAL PROPERTY**

Tenant agrees that this Agreement constitutes merely a lease of the Business Space for a limited purpose and does not create or convey to Tenant any other interest in real property.

## **ARTICLE 13 NO ASSIGNMENT/SUBLET**

The Tenant shall not assign this Agreement, and shall not sublet or otherwise allow any person to take possession of all or any portion of the Business Space. Any transfer by operation of law of Tenant's interest created hereby, other than by merger or consolidation, must be approved in advance, in writing, by the Town.

## **ARTICLE 14 RIGHT OF THE TOWN TO ENTER, INSPECT, AND MAKE REPAIRS**

- 14.1 In General. Subject to the provisions of Article 17, the Town and its authorized officers, employees, agents, contractors and other representatives shall have, upon reasonable notice under the circumstances, the right (at such times as may be reasonable under the

circumstances, subject to HIPAA, and with as little interruption to Tenant's operation as is reasonably practicable) to enter upon any part of the Business Space for the following purposes:

14.1.1 To inspect such premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Tenant has complied with and is complying with the terms and conditions of this Agreement with respect to such premises;

14.1.2 To perform or cause to be performed maintenance and make repairs and replacements; and

14.1.3 To make structural additions and alterations.

14.2 Obstruction By The Town. All entries made for the purposes enumerated above shall, except as otherwise provided in Article 10, Total or Partial Destruction, be without abatement of the Business Space Rental Fee or damage for any inconvenience. However, in the event any entry by the Town in the Business Space for the purpose of making repairs or alterations as provided for in Section 14.1.2 above (other than repairs necessitated as a result of damage by Tenant under Article 9) constitutes a substantial obstruction to and impairment of Tenant's right of use of such Business Space, then Tenant shall be entitled to a fair and just abatement of the Business Space Rental Fee for the Business Space during the period required by the Town to make such repairs. The Town shall use its best efforts to make substitute space within the Grand Lake Center available for Tenant's use, at no additional cost, during any obstruction to and impairment of Tenant's right of use of the Business Space.

14.3 Obstruction By Tenant. In the event that any personal property of Tenant shall obstruct the access of the Town, its officers, employees, agents or contractors, or a utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, Tenant shall move such property, as directed by the Town or said utility company, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Tenant shall fail to so move such property within thirty (30) days after direction from the Town or said utility company to do so, the Town or the utility company may move it without liability for damage sustained in moving.

14.4 No Eviction Or Abatement. Exercise of any or all of the foregoing rights in this Article, by the Town, or others under right of the Town, shall not be, nor be construed to be, an eviction of Tenant, nor be made the grounds for any abatement of the Business Rent nor any claim or demand for damages against the Town, consequential or otherwise, except as otherwise herein provided.

**ARTICLE 15**  
**DEFAULT, RIGHTS OF TERMINATION**

15.1 Default By Tenant. Time of payment and performance is of the essence in this Agreement. Tenant shall be in default under this Agreement upon the occurrence of any one or more of the following events:

15.1.1 Tenant's failure to pay rent by the due date. Tenant's failure to pay any other fee or other charge when due to the Town and within five (5) working days after notice from the Town of such non-payment.

15.1.2 Tenant's assignment of any right hereunder, or attempt to sublet the Business space, in violation of Article 13.

15.1.3 Tenant's failure to perform, keep or observe any of the terms, covenants or conditions of this Agreement and to cure or remedy such failure within five (5) working days after notice from the Town of such failure.

15.1.4 The filing by Tenant of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy against Tenant, the taking of possession of all or substantially all of Tenant's assets pursuant to proceedings brought under the provisions of any federal reorganization act or the appointment of a receiver of all or substantially all of Tenant's assets and the failure of Tenant to secure the return of such assets and/or the dismissal of such proceeding within (90) days after the filing.

15.1.6 The abandonment for a period of ten (10) days by Tenant of the conduct of the Business Operations during the term of this Agreement without notice to the Town.

15.1.7 The assignment by Tenant of its assets for the benefit of creditors.

15.1.8 The death or disability of the Tenant or a principal of the Tenant, to the extent such death or disability interferes with the ongoing conduct of the Business Operations.

15.1.9 Any other breach of this Agreement.

15.2 The Town's Remedies On Default.

15.2.1 In the event of a default by Tenant which is uncured after ten (10) days written notice thereof from the Town (except as provided for in Section 15.1.1. above), the Town may terminate this Agreement by notice in writing to Tenant. In the alternative, the Town may elect to keep the Agreement in force and work with Tenant to cure the default. If this Agreement is terminated, Tenant's liability to the Town for damages and fees, including

but not limited to the Monthly Rental Fee, shall survive the termination, and the Town may re-enter, take possession of the Business Space, and remove any persons or property by legal action with the use of reasonable force and without liability for damages.

15.2.2 Following re-entry or abandonment, the Town may make arrangements for use of the Business Space by others, and in that connection may make any suitable alterations or refurbish the Business Space, but the Town shall not be required to make such arrangement for any use or purpose.

15.3 Default By Town. Time and performance are of the essence in this Agreement. Town shall be in default under this Agreement upon the Town's failure to perform, keep or observe any of the terms, covenants or conditions of this Agreement and to cure or remedy such failure within ten (10) days after notice from the Tenant of such failure.

15.4 The Tenant's Remedies On Default.

15.4.1 In the event of an uncured default by Town, the Tenant may terminate this Agreement by notice in writing to Town. In the alternative, the Tenant may elect to keep the Agreement in force and work with Town to cure the default. If this Agreement is terminated, Town's liability to the Tenant for damages shall survive the termination.

## **ARTICLE 16 MISCELLANEOUS PROVISIONS**

16.1 Cumulative Rights. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other or of any other remedy available to the Town, or Tenant, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

16.2 Non-Waiver. The failure by either party to exercise any right or rights accruing to it by virtue of the breach of any covenant, condition, or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall such other party be relieved thereby from its obligations under the terms hereof.

16.3 Non-liability Of Individuals. No director, officer, agent, or employee of either party hereto shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of its or their execution or attempted execution of the same.

- 16.4 Limitation On Use. Tenant shall not use, or permit the use of the Business Space, or any part thereof, for any purpose or use other than those authorized by this Agreement. Neither shall Tenant permit nor suffer any disorderly noise or nuisance whatsoever about the Business Space or the Grand Lake Center.
- 16.5 Governing Law. This Agreement shall be performable and enforceable in the Town of Grand Lake, Colorado, and shall be construed in accordance with the laws of the State of Colorado.
- 16.6 Benefits. This Agreement is made for the sole and exclusive benefit of the Town and the Tenant and is not made for the benefit of any third party.
- 16.7 Construction. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- 16.8 Successors and Assigns. All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns. This provision does not render the Agreement assignable, as assignment is governed by Article 13.
- 16.9 Headings. The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
- 16.10 Entire Agreement. This Agreement, which is the entire agreement between the parties hereto, supersedes all prior agreements, understandings, warranties or promises between the parties hereto, whether written, spoken or implied from the conduct of the parties hereto.
- 16.11 Severability. In the event any covenant, condition or provision of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any of the other covenants, conditions or provisions of this Agreement, provided that the invalidity of any such covenant, condition or provision does not materially prejudice either the Town or Tenant in his or its respective rights and obligations under the valid covenants, conditions or provisions of this Agreement.
- 16.12 Surrender Of Possession. Upon the expiration of this Agreement or its earlier termination as herein provided, Tenant shall remove all of its property from the Business Space and all other Town property and surrender entire possession of its rights to the Town and its improvements in accordance with Article 9 above, unless this Agreement is renewed or replaced.
- 16.14 The Town Representative. The Town designates Town Manager or his/her designee, as its representative who shall make, within the scope of his authority, all necessary and proper

decisions with reference to this Agreement. All requests for contract interpretations, amendments, and other clarifications or instructions shall be directed to the Town Representative. The representative may be changed by written notification to the Tenant.

- 16.15 Notices. Notices permitted or required to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery or upon deposit in the United States Mail, certified, return receipt requested, postage fully prepaid, addressed as follows or to such other address as the parties may designate from time to time by notice given in accordance with this Section:

To Tenant:     Kremmling Memorial Hospital District  
                  Attn: CEO  
                  P.O. Box 399  
                  Kremmling, CO 80459

Copy to:       Georgia Noriyuki  
                  Noriyuki & Parker, P.C.  
                  P.O. Box 949  
                  Granby, CO 80446

To the Town:    Town of Grand Lake  
                  Attention: Town Manager  
                  PO Box 99  
                  Grand Lake, CO 80447

Copy To:       Scott Krob, Town Attorney  
                  Krob Law Office, LLC  
                  8400 E. Prentice Ave., Penthouse  
                  Greenwood Village, CO 80111

- 16.16 Paragraph Headings. Paragraph headings contained herein are for convenience and reference, and are not intended to define or limit the scope of any provisions of this Agreement.
- 16.17 Force Majeure. Neither the Town nor the Tenant shall be deemed in violation of this Agreement if prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God or nature, act of public enemy, acts of superior governmental authority, weather conditions, rights, rebellion, sabotage or any other circumstances that are not within its control.
- 16.18 No Limitation On General Powers. Nothing in this Agreement shall be construed as in any way limiting the general powers of the parties to fully exercise their governmental functions or their obligations under any bond, covenants, or federal, state or local laws rules or regulations.

- 16.19 No Relationship. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of employer and employee, principal and agent or a partnership or a joint venture between the parties hereto. The Town shall not be responsible for any debts or obligations whatsoever of Tenant.
- 16.21 Survival. To the extent necessary to carry out all of the terms and provisions hereof, the aid terms, obligations, and rights set forth herein required shall survive and shall not be affected by the expiration or termination of this agreement.

## **ARTICLE 17 ADDITIONAL PROVISIONS**

17.1 Effect of this Article. The parties agree that the following additional provisions apply to their relationship and this Agreement. To the extent there is any conflict between the provisions of this Article 17 and other provisions of the Agreement, the provisions of Article 17 shall control.

17.2 Improvement to interior of Business Space. The parties recognize and agree that use of the Business Space for a medical/health clinic will necessitate substantial alterations to the interior of the Business Space and the installation of certain fixtures and equipment. All costs of altering the interior of the Business Space, as well as all costs of obtaining and installing fixtures and equipment shall be borne solely by Tenant. Any alteration or improvement of any of the electrical, mechanical, or other systems of the Grand Lake Center requested by the Tenant shall be done at the sole expense of Tenant. No modifications of the Business Space or the Grand Lake Center shall be made without the advance written consent of the Town.

17.3 Disposal of medical waste and trash from Business Space. Tenant shall be solely responsible for all costs associated with removal of trash, refuse, used materials and other items of any type used in or generated by the Business Space in a manner that fully complies with all applicable laws, rules and regulations.

17.4 Protection and confidentiality of medical records. It shall be the sole responsibility of Tenant to take all steps necessary to ensure the confidentiality and security of patient and other medical records and to comply with all applicable laws, rules and regulations relating to such records, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). To the extent protection of such records necessitates implementation of security measures associated with the Business Space, the Tenant shall bear all expenses associated with such measures.

Notwithstanding anything contained herein, all medical and other records or documents prepared by or for Tenant in connection with the care and services it renders to its patients shall be and remain the property of Tenant under all circumstances and shall be treated as confidential pursuant to applicable federal and state law. The Town acknowledges that it does not require access to Protected Health Information to perform its responsibilities and duties hereunder or for any and all other purpose. In the event such access to Protected Health Information by the Town

were to become necessary, the Town agrees to first execute a Business Associate Agreement as defined in HIPAA and any other documents required to maintain Tenant's HIPAA compliance. The parties acknowledge and agree that the Town and the Tenant are subject to the provisions of the Colorado Open Records Act ("CORA"), Title 24, Article 72, Part 2, C.R.S.

17.5 Use of other areas of the Grand Lake Center. Tenant shall be entitled to use the following other areas within the Grand Lake Center on the terms and conditions indicated:

17.5.1 Common Area . Tenant, its employees, contractors, patients, and invitees shall be entitled to use the common areas within the Grand Lake Center, including the hallways, sidewalks, parking lots, restrooms, and other areas that are open to the general public without charge.

17.5.2 Use of other area within Grand Lake Center. Except as specifically provided in Section 17.5.1, Tenant, its employees and patients shall not be entitled to use or occupy any other portions of the Grand Lake Center solely based on their relationship or affiliation with the Tenant.

17.6 Fee for increased electrical service. The parties recognize that some of the Tenant's uses of the Business Space will require a level of electrical service substantially in excess of that used by other tenants of the Grand Lake Center. Accordingly, Tenant agrees to (1) arrange and pay to have the Business Space's electrical use separately metered, in which case the Tenant will pay the electrical bills associated with the Business Space, or (2) if the Business Space cannot reasonably be separately metered for electrical service, in the Tenant's sole discretion, then the parties will engage in good faith negotiations to determine the additional amounts the Tenant will pay for the electricity used in or related to the Business Space. If no agreement can be reached, this Lease shall terminate.

17.7 Increased water or sewer demand. To the extent that as a result of (1) the Tenant's use of the Business Space as a medical/health clinic or (2) any alterations to the Business Space or the Grand Lake Center made to accommodate Tenant's use or occupancy of the Business Space, the provider of water or sewer service to the Grand Lake Center concludes that additional water or sewer tap fees must be paid or that alterations to the water or sewer system infrastructure to or within the Grand Lake Center must be made, the Tenant shall be solely responsible for all costs and expenses assessed by the water or sewer service provider. In the event that the Tenant pays for additional water or sewer taps for the Business Space, upon vacating the Business Space, Tenant shall be entitled to any reimbursement, repayment, or other return of the cost of the additional water or sewer taps, if any.

17.8 Annual report from Tenant. In consideration for the Town providing the Business Space to the Tenant for a nominal rental fee and to enable the parties to review this Agreement at the end of the initial three-year term, the Tenant agrees to provide the Town with an annual report on or before June 1 of each calendar year showing the use of the Business Space by the Tenant. Such report shall include but is not limited to operational and statistical information such as the number of patients seen, days and hours of operation, zip codes and other location information of patients, and similar information which is provided by Tenant to other landlords. Such annual

report shall not include any Protected Health Information as defined by HIPAA, or any other identifying information about patients.

17.9 Town's inspection of the Business Space. The right of the Town to enter and inspect the Business Space as provided in Article 14 shall be exercised in a manner that does not interfere with the ability of the Tenant to maintain confidentiality of patient/client materials, does not violate HIPAA, and that does not adversely affect the equipment and improvements placed within the Business Space by the Tenant.

17.10 Securing of medicines, drugs, and medical instruments, medical supplies or materials. Tenant shall undertake all reasonably necessary precautions and security measures, at Tenant's sole expense, to ensure that all medicines, drugs, medical instruments, medical supplies or other materials that relate in any manner to the use of the Business Space for purposes of operating the Medical Clinic are fully and completely contained in a safe and secure manner at all times.

17.11 Annual Appropriation. The Tenant does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of Tenant within the meaning of Article XI, Section 6, or Article X, Section 20, of the Colorado Constitution. Notwithstanding anything herein to the contrary, the renewal of this Agreement and the performance of obligations of the Tenant hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriation by the Tenant's Board in its discretion.

**TOWN:**

**TOWN OF GRAND LAKE**

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

\_\_\_\_\_  
Name and Title

**TENANT:**

**KREMMLING MEMORIAL HOSPITAL DISTRICT,  
a quasi-municipal corporation and Colorado Special District,  
d/b/a Middle Park Heath**

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

\_\_\_\_\_  
Name and Title

**EXHIBIT B**  
**Tenant's Personal Property, Furniture, Fixtures, and Equipment**

All furniture, fixtures, equipment, including x-ray equipment, and supplies, necessary to operate a medical clinic.