

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**License**”) is made as of JUNE 4, 2019 (“**Effective Date**”), by and between the CITY OF HASTINGS, a Michigan municipal corporation, of 201 E. State Street, Hastings, Michigan 49058 (“**City**”), and PENNOCK HOSPITAL d/b/a SPECTRUM HEALTH PENNOCK HOSPITAL, a Michigan nonprofit corporation, of 100 Michigan Street NE, Grand Rapids, Michigan 49503, MC 067, Attention: Real Estate Operations (“**Licensee**”)

### RECITALS

WHEREAS, the City owns and operates a public park on property commonly known as Fish Hatchery Park located at 1011 West Green Street, Hastings, Michigan 49058 (“**Park Property**”) that includes the parking lot depicted on the attached Exhibit A (the “**Parking Lot**”).

WHEREAS, Licensee owns and operates a hospital on the real estate adjoining Fish Hatchery Park to the east (“**Licensee Property**”) and on which Licensee desires to expand its hospital facilities.

WHEREAS, expansion of the hospital facilities will necessitate Licensee securing additional employee parking at a location offsite from the Licensee Property and Licensee has identified the Parking Lot as a desirable location, provided certain improvements are made to the Park Property.

WHEREAS, the Parking Lot is closed during winter months and the City finds that the Parking Lot is not fully utilized during the weekday hours that Licensee requires additional employee parking and, therefore, to facilitate the expansion of the hospital facilities for the public benefit, without unduly prejudicing the City’s interest in the Park Property, the City is agreeable to granting Licensee a non-exclusive license to use a portion of the Parking Lot for employee parking, and for Licensee to construct certain improvements, as further described below, subject to the terms and conditions of this License.

WHEREAS, a portion of the Park Property is subject to a certain use restriction and related reversionary interest held by the State of Michigan (“**Restriction**”), as described in the deed recorded in Liber 369, Page 128, Barry County Records, including the portion of the Parking Lot most suitable for use by Licensee. Therefore, the parties desire to pursue the release of such Restriction as it relates to the restricted portion of the Parking Lot, with Licensee having the right to use certain parking spaces in the unrestricted portion of the Parking Lot until such time as the Restriction affecting the restricted portion of the Parking Lot has been released and the City is in a position to adjust the licensed portion of the Parking Lot, as further described below.

NOW, THEREFORE, the parties agree as follows:

1. **Grant.**

(a) The City grants to Licensee, subject to the terms and conditions of this License, a non-exclusive license to use approximately seventy-five (75) parking spaces

designated for such purpose in the Parking Lot (“**Licensed Parking Area**”) for parking by Licensee’s employees between 6:00 am – 5:00 pm Monday through Friday, together with a non-exclusive license to use the access road running from West Green Street to the Parking Lot (“**Access Road**”) and the Walking Paths (defined below) for Licensee’s employees to walk between the Licensed Parking Area and the Licensee Property (“**Licensed Use**”). As of the Effective Date, the Licensed Parking Area will be the area labeled and depicted on the attached Exhibit A as “Licensee Temporary Parking.” The City agrees to apply to the Michigan Department of Natural Resources for the release of the Restriction as it relates to the restricted portion of the Parking Lot, at Licensee’s expense. The parties acknowledge and agree that the City is unable to guarantee any particular outcome of the application and that the City is not obligated to accept any conditions or incur any costs associated with obtaining such release that are unacceptable to the City, in its sole discretion. The City will promptly notify Licensee once it is satisfied, in its sole discretion, that the Restriction has been released with respect to the affected portion of the Parking Lot (“**Parking Area Adjustment Notice**”). Following such notice from the City, the Licensed Parking Area will be the area labeled and depicted on the attached Exhibit A as “Licensee Final Parking Area.”

(b) Licensee accepts the License subject to the terms and conditions of this License and agrees that, except as otherwise set forth herein, it does not have, and shall not claim at any time, any interest or estate of any kind or extent whatsoever in, and it has no expectancy regarding, the Park Property whether by nature of the past, present or future occupancy, improvement, or use by the Licensee of the Park Property for the Licensed Use. Licensee acknowledges and agrees that the Licensed Use does not extend to, and that Licensee will not use, any portion of the Park Property that is subject to the Restriction, or any portion of the Park Property that is subject to any interest held by the State of Michigan after Licensee has received the Parking Area Adjustment Notice, if applicable. The Licensed Use and all other activities conducted by or on behalf of Licensee pursuant to this License will be conducted in compliance with all applicable state, federal, and municipal laws, ordinances, codes, rules and requirements of public authorities and regulations (collectively, “**Applicable Laws**”) and in a manner that does not unreasonably interfere with the public use and enjoyment of the Park Property. The Licensed Parking Area (as the same may be adjusted as specified herein), Access Road, Improvements, as applicable, and Upgrades (as defined below) may collectively be referred to as the “**Licensed Area**.”

## 2. **Term.**

(a) The term of this License shall be ten (10) years, beginning on the Effective Date (the “**Term**”). Notwithstanding the foregoing, either party may terminate the License, for any or no reason, at any time, by providing not less than one (1) year prior written notice of termination to the other party. For the avoidance of doubt, the parties acknowledge and agree that notwithstanding the general nature of a license arrangement, this License shall only be terminable by the City as provided in this Section 2(a) and in Section 11 of this License.

(b) If this License is not sooner terminated, and provided that Licensee is in full compliance with the terms and conditions of this License at the expiration of the Term (or an applicable renewal term as the case may be), Licensee shall have the option to renew the

Term for up to nine (9) additional periods of ten (10) years each (each being referred to as a renewal term), by giving a written notice to the City of Licensee's election at least six (6) months prior to the expiration of the Term of this License (or the renewal term then in effect, as the case may be). As used in this License, the "Term" shall include the initial term of this License and any renewal term, if applicable, unless the context clearly requires otherwise. Any renewal term shall be on the same terms and conditions as this License.

3. **Improvements.** For and in consideration of the City granting this License, Licensee agrees to complete certain improvements and provide maintenance (as described in Section 4 below) to the Parking Lot, the Access Road and the Walking Paths (defined below) depicted on the attached Exhibit A. Pursuant to a schedule mutually agreed upon by the parties, Licensee, at Licensee's sole cost and expense, and in accordance with plans and specifications acceptable to and approved by the City, has or will complete the following: (a) mill and/or resurface the Parking Lot; (b) stripe the Parking Lot and Access Road; (c) construct a five (5) foot wide pedestrian walking path along the Access Road, from West Green Street to the Parking Lot ("**West Green Street Walking Path**"); (d) construct a six (6) foot wide pedestrian walking path from the Parking Lot to the Licensee Property and mutually agreeable associated lighting ("**Licensee Walking Path**"); (e) install an emergency call phone system and other security devices at the Parking Lot ("**Emergency Call System**"); and (f) upgrade all lighting servicing the Parking Lot, including installation of LED lighting. The foregoing improvements are collectively referred to herein as the "**Improvements**" and the West Green Street Walking Path and the Licensee Walking Path are collectively referred to herein as the "**Walking Paths.**" Within thirty (30) days of completion of such Improvements, Licensee will send the City an itemization of the final construction costs for the Improvements identified in items (a), (b), (c) and (f) above together with copies of paid invoices reflecting such costs. The Emergency Call System will not be deemed a fixture of the Park Property and will at all times be deemed the property of the Licensee. All other Improvements will be deemed fixtures of the Park Property that are the property of the City.

4. **Maintenance.**

(a) Licensee, at Licensee's sole cost and expense, will be responsible for operating and maintaining the Emergency Call System in good working order, condition and repair, including any necessary repairs or replacements. Licensee will also, at Licensee's sole cost and expense, routinely inspect and maintain the Licensed Parking Area and Licensee Walking Path (including associated lighting) in good order and repair and in a safe condition.

(b) Licensee acknowledges that, during the term of the License, the Access Road will remain open during winter months for the purpose of the Licensed Use and, thus, Licensee will be solely responsible for maintaining the Parking Lot, Access Drive, and Walking Paths in a safe condition. Licensee will provide snow plowing services and ice-management to the Parking Lot, Access Road and Walking Paths, as needed, in Licensee's reasonable discretion, at its cost and expense.

(c) On an annual basis, within sixty (60) days of the anniversary of the Effective Date, the City and Licensee will perform a joint inspection of the Parking Lot, Access Road and Walking Paths as follows: (i) the City and Licensee will mutually agree upon any necessary maintenance and repairs, which Licensee will complete at Licensee's sole cost and

expense on a mutually agreeable schedule; and (ii) the City and Licensee will determine if any upgrades (for example, milling, resurfacing, replacements or other upgrades) need to be made (“Upgrades”). Any Upgrades identified and mutually agreed to by both parties in writing will be performed by Licensee, at its sole cost and expense, and will, thereafter, continue to be maintained, repaired, and replaced by Licensee with all other Improvements and Upgrades. Within thirty (30) days of completion of each Upgrade pertaining to the Improvements identified in Section 3(a)-(c) and (f), Licensee will send the City an itemization of construction costs for such Upgrade together with copies of paid invoices reflecting such costs. Except as otherwise provided in this License, all Upgrades will be deemed fixtures of the Park Property that are property of the City.

5. **Standard of Care.** All Improvements, Upgrades, maintenance activities, and other work of any kind that is conducted by or on behalf of Licensee, will be performed in a good and workmanlike manner. Licensee will conduct all work in accordance with all Applicable Laws, including obtaining all applicable permits and approvals necessary for such work. Licensee will not allow any liens to attach to the Park Property.

6. **Termination Reimbursement.** If the City terminates this License pursuant to Section 2(a) above prior to the expiration of the initial Term, then the City will reimburse Licensee for reasonable construction costs for the Improvements identified in Section 3(a)-(c) and (f) as follows: the costs will be amortized on a straight line basis over the initial term and the City will reimburse Licensee for the prorated portion of the costs allocable to the time period commencing on the effective date of the termination through the remainder of the initial term. Similarly, if the City terminates this License pursuant to Section 2(a) above, the reasonable construction costs of each Upgrade pertaining to the Improvements identified in Section 3(a)-(c) and (f) will be amortized on a straight line basis over the period of the initial Term or renewal term in which such Upgrade was performed and the City will reimburse Licensee for the prorated portion of the cost allocable to the period from the effective date of the termination through the remainder of such initial term or renewal term.

7. **Utilities.** The City, at the City’s sole cost and expense, will provide electricity to the light fixtures servicing the Parking Lot. Licensee, at Licensee’s sole cost and expense, will provide electricity to the light fixtures servicing the Licensee Walking Path.

8. **Assignment.** This License may not be assigned or otherwise transferred by Licensee without the City’s prior written consent, which consent may be withheld in the City’s sole discretion, except that Licensee may freely and without City’s consent assign this License to any entity controlled by, in control of, or under common control with Licensee, or in connection with any merger or consolidation of Licensee with any other entity, provided, however that any such entity is actively operating the hospital facilities on the Licensee Property and assumes all obligations of the Licensee under this License.

9. **Insurance and Indemnity.**

(a) Licensee shall maintain, at its expense, commercial general liability insurance with limits of not less than \$2,000,000.00 per occurrence insuring against bodily injury or death, and property damage and builder’s risk coverage pertaining to any construction activities. Such insurance shall name the City as an additional insured. Licensee shall also, at its

sole cost and expense, maintain workers' compensation insurance covering all of its employees to at least the statutory limits set forth under Michigan law. It is agreed that all such liability insurance maintained by Licensee or any subcontractor is primary and that any insurance maintained by the City or any other additional insured is excess and non-contributory. Prior to or on the Effective Date, and upon each policy renewal, Licensee shall deliver to the City evidence of the insurance coverage required under this License.

(b) Licensee agrees to defend, indemnify, and save harmless the City and its officers, directors, members, agents, and employees (hereafter collectively "**City Related Parties**"), from and against any and all liability or claim thereof (including, but not limited to, reasonable attorney fees and costs), whether for injury to persons, including death, or damage to property, which may be imposed upon, incurred by, or asserted against the City or the City Related Parties, to the extent: (i) arising in connection with or as a direct or indirect result of any activity by Licensee, its employees, agents, contractors, subcontractors, invitees and/or guests in, on or about the Licensed Area, including use of the Licensed Area; (ii) arising out of any default by Licensee under this License; or (iii) arising out of any negligent act or omission to act by Licensee, its employees, agents, contractors, subcontractors, invitees and/or guests.

10. **Surrender.** Upon the termination or expiration of this License, Licensee shall surrender the Licensed Area in good condition and repair (reasonable wear and tear and damage by acts of God excepted), with the exception of the Emergency Call System, which Licensee shall promptly remove. If requested by the City, Licensee shall also remove the Licensee Walking Path (and associated lighting). Upon removal of the Emergency Call System and Licensee Walking Path, if applicable, Licensee will restore the affected areas to the condition that existed prior to the installation of such improvements. Any continued use by Licensee shall not operate, except by signed written agreement, to extend or renew this License or to imply or create a new agreement.

11. **Default.** If Licensee fails to comply with any term, provision, covenant, or condition of this License, and such failure continues for thirty (30) days after written notice from the City to Licensee, the City may terminate this License by written notice to Licensee; provided, however, that if such failure cannot reasonably be cured within thirty (30) days, Licensee shall not be in default if Licensee promptly begins and diligently proceeds to cure such defect. The City will also have the right, but not an obligation, to cure any default by Licensee and invoice Licensee for all costs associated with curing such default. The City will also have the right to reimbursement of reasonable attorney fees incurred to enforce the terms of this License, in the event that the City is the prevailing party in such action.

12. **Notices.** Whenever this License requires any notice of any kind, it shall be in writing and delivered personally or by registered or certified mail, postage prepaid, addressed to the parties at the following addresses:

City: City of Hastings  
Attn: City Manager  
201 E. State Street  
Hastings, MI 49058

Licensee:  
Spectrum Health Pennock  
Attn: Real Estate Management  
100 Michigan Street, NE, MC 067  
Grand Rapids, MI 49503

Either party may change its address and/or contact person by like notice to the other party. Notice shall be effective upon receipt or three (3) days after mailing, whichever is earlier.

13. **Transfer of Ownership of Park Property.** The City acknowledges and agrees that, in the event the City voluntarily transfers its ownership of the portion of the Park Property where the Licensed Area is located, prior to closing on such transfer, the City will (i) ensure that the License is not terminated less than one (1) year from providing notice to Licensee (subject, however, to the City's rights under Section 11) and (ii) will honor and/or cause to be honored, the provisions of the termination reimbursement set forth in Section 6 by either closing on the transfer of such property following the one (1) year notice period or making such transfer subject to the terms of this License and causing the transferee of the Park Property to assume the City's obligations hereunder.

14 **Miscellaneous.**

- (a) The Recitals are incorporated herein and made a part of this License.
- (b) This License shall bind and benefit the parties and their respective successors and permitted assigns.
- (c) This License shall be governed by and interpreted according to the laws of the State of Michigan, without giving effect to principles of conflicts of laws.
- (d) The relationship of the City and the Licensee under this License shall in no way be construed to create a joint venture or partnership, or to constitute either party as an agent or employee of the other for any purpose.
- (e) This License contains the entire understanding of the City and Licensee with respect to the subject matter of this License and supersedes any and all prior and contemporaneous understandings of the parties (written or oral) with respect to the subject matter of this License. No amendment to this License or any provision of this License shall be effective unless the same is in writing and signed by the parties.
- (f) If any term, covenant or condition of this License or its application to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.
- (g) A waiver by either party of a particular breach or default by the other party shall not be deemed to be a waiver of the same or any other subsequent breach or default.

(h) This License may be executed in one or more counterparts, and by different parties to this License on separate counterparts, each of which shall be deemed as original, but all of which together constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this License or any notice delivered pursuant to this License, shall be deemed to have the same legal effect as original signatures on this License.

(i) This License may not be recorded.

IN WITNESS WHEREOF, the parties have signed this License on the day first written above.

THE CITY OF HASTINGS

Dated: 6/3/19, 2019

By: David J. Tossava

Printed: DAVID J. TOSSAVA

Its: MAYOR

Dated: 6/4/19, 2019

By: June M Saurman

Printed: June M Saurman

Its: City Clerk

City

PENNOCK HOSPITAL d/b/a SPECTRUM HEALTH PENNOCK HOSPITAL, a Michigan nonprofit corporation

Dated: June 4, 2019

By: Angela Bitmar

Printed: ANGELA BITMAR

Its: PRESIDENT

Licensee

**EXHIBIT A**

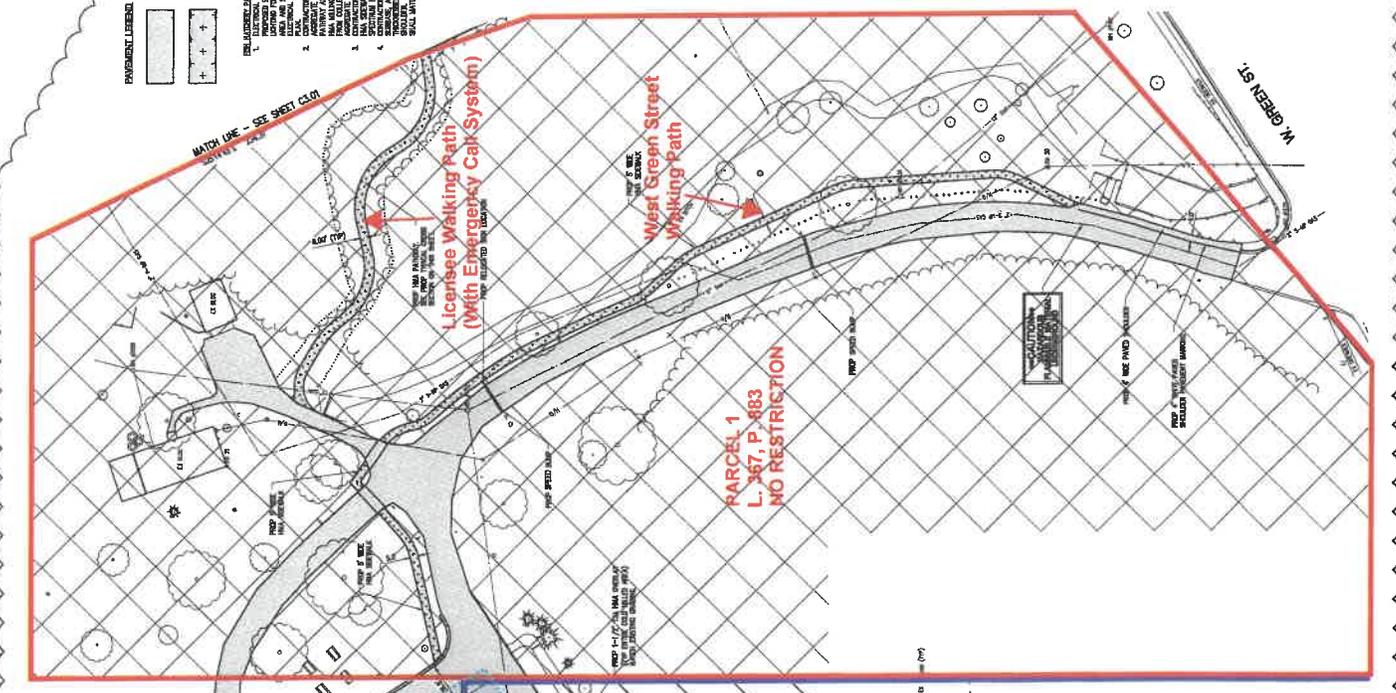
See attached.



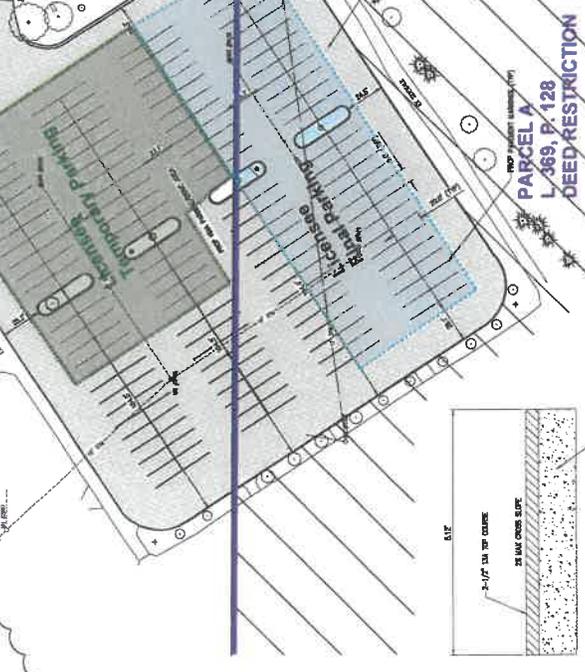
**PAVEMENT LEGEND**

[Symbol]	PROPOSED 1/2" ASPHALT OVERLAY
[Symbol]	PROPOSED 1/4" ASPHALT OVERLAY

- THE FOLLOWING ARE ASSUMPTIONS MADE:**
1. ALL UTILITIES SHOWN ARE AS SHOWN ON RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.
  2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
  3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
  4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.



**PARCEL 2**  
L. 367, P. 883  
NO RESTRICTION



**PARCEL A**  
L. 369, P. 128  
DEED RESTRICTION

