

CONSTRUCTION GROUND LEASE AGREEMENT

by and between

PENINSULA HEALTHCARE DISTRICT,

a political subdivision of the

State of California

and

MILLS-PENINSULA HEALTH SERVICES,

a California nonprofit public benefit corporation

CONSTRUCTION GROUND LEASE

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I LEASE OF PREMISES AND TERM OF LEASE	2
1.01. Agreement to Lease.....	2
1.02. Term of Lease.....	2
1.03. Condition to Effectiveness of this Lease.....	2
ARTICLE II RENT.....	2
2.01. Annual Rent.....	2
2.02. Time and Place for Payment of Rent.....	3
2.03. Partnership or Joint Venture.....	3
ARTICLE III USE OF PREMISES	3
3.01. Permitted Use	3
3.02. Compliance with Laws.....	4
3.03. Prohibited Uses	4
3.04. Deed Restriction.....	4
3.05. Additional Covenants and Provisions with Respect to the Existing Hospital.....	4
A. Community Hospital and Related Health Care Institution.....	4
B. Accreditation	4
C. License.....	4
D. No Discrimination	5
E. Health and Safety Code Requirements.....	5
F. Termination of Obligations to Replace, Repair or Rebuild.....	5
ARTICLE IV TAXES AND UTILITIES.....	5
4.01. MPHS to Pay Taxes	5
4.02. Contest of Tax	5
4.03. Tax Hold-Harmless Clause	6
4.04. Utilities	6
4.05. Payment by Landlord	6
ARTICLE V CONSTRUCTION OF IMPROVEMENTS; OWNERSHIP OF IMPROVEMENTS.....	6
5.01. Duty to Construct Improvements	6
5.02. Alterations to Existing Hospital	6
5.03. Ownership of Improvements.....	7
5.04. Contributions to MPHS.....	7
ARTICLE VI Termination of Lease.....	7
6.01. Failure to Obtain Regulatory Approvals	7
6.02. Termination of Master Agreement and Construction Agreement.....	7
ARTICLE VII MAINTENANCE, STRUCTURAL IMPROVEMENTS, REPAIRS AND RESTORATION	8
7.01. Maintenance by MPHS.	8
A. Basic Maintenance.....	8
B. No Obligation to Repair or Replace Existing Hospital	8
C. Repair or Replacement of New Facility	8
D. Termination of Replacement Obligation	9

7.02. Requirements of Governmental Agencies.....9
7.03. Application of Insurance Proceeds.....9
7.04. Maintenance of Roads9

ARTICLE VIII INDEMNITY AND INSURANCE10
8.01. Indemnity by MPHS.....10
8.02. Indemnity by District10
8.03. Survival of Indemnities10
8.04. Insurance10
8.05. Self-Insurance.....12

ARTICLE IX CONDEMNATION13
9.01. Total Condemnation.....13
9.02. Partial Taking of Parking Areas13
9.03. Partial Taking of Improvements.....13
9.04. Termination for Partial Taking.....14
9.05. Condemnation Award14
9.06. Rent Abatement for Partial Taking14
9.07. Voluntary Conveyance in Lieu of Eminent Domain.....14
9.08. No Condemnation by District14

ARTICLE X ASSIGNMENT AND SUBLEASING.....15
10.01. No Assignment Without District's Consent15
10.02. MPHS' Right to Sublease.15
 A. Medical Office Building and Parking Structure.....15
 B. Existing Hospital16
10.03. Authorized Transfers.....16
10.04. District's Purchase Right.16
 A. Purchase Right.....16
 B. Fair Market Value.....16
 C. Close of Escrow; Payment.....16
10.05. No Assignment by District.....17

ARTICLE XI DEFAULT AND REMEDIES17
11.01. Breach and Default by MPHS17
11.02. Remedies for MPHS Default.....17
11.03. District's Right to Cure.....17
11.04. Breach and Default by District.....18
11.05. Remedies for District's Event of Default.....18
11.06. Exclusive Remedies18
11.07. Waiver of Breach18
11.08. Surrender of Premises18

ARTICLE XII REPRESENTATIONS AND WARRANTIES19
12.01. District's Representations and Warranties.....19
12.02. MPHS' Representations and Warranties19
12.03. Discovery of Inaccuracy.....20

ARTICLE XIII SALE OF PREMISES20
13.01. Sale of Premises20
13.02. Right of First Offer.....20
13.03. Right of First Refusal to Purchase Premises21
13.04. Closing Process; Costs22
 A. Method of Payment22
 B. Title to Premises.....22
 C. Escrow22

D. Title Insurance22
 E. Proration of Costs and Income22
 F. Closing Costs.....22
 G. As-Is22
 13.05. MPHS' Option to Purchase.....22
 13.06. District's Purchase of Improvements.....23
 13.07. Purchase Subject to Deed Restriction and Lease23

ARTICLE XIV OTHER PROVISIONS23
 14.01. Quiet Enjoyment23
 14.02. Estoppel Certificates23
 14.03. Recitals and Headings24
 14.04. Entire Agreement24
 14.05. Force Majeure24
 14.06. Dispute Resolution24
 14.07. Notices.....24
 14.08. Good Faith.....26
 14.09. Governing Law and Forum Selection26
 14.10. Binding26
 14.11. Severability.....26
 14.12. Cost of Transaction26
 14.13. Confidentiality.....26
 14.14. Construction27
 14.15. Easements, Restrictions.....27
 14.16. Non-Material Amendments.....27
 14.17. Time is of Essence.....27
 14.18. Cooperation27
 14.19. Memorandum of Lease for Recording27
 14.20. Third Persons.....27
 14.21. Counterparts28
 14.22. Exhibits.....28

EXHIBITS:

Exhibit A-1 Existing Lease Premises
 Exhibit A-2 Description of Construction Ground Lease Premises
 Exhibit A-3 Diagram of Construction Ground Lease Premises
 Exhibit B Existing Lease
 Exhibit C Lease Term Commencement Memorandum
 Exhibit D Memorandum of Lease

INDEX OF DEFINED TERMS

	<u>Page</u>
Adjustment Date	3
Annual Rent	2
Appraiser Criteria.....	20
Authorized Entity.....	12
Base Index.....	3
Basic Sublease Conditions.....	15
Confidential Information	26
Construction Agreement	2
Deed Restriction.....	4
Determination Date.....	16
Dispute Resolution Procedures	24
District.....	1
District Event of Default.....	18
District's Appraisal.....	20
District's Appraiser	20
District's Purchase Right.....	16
Effective Date	2
Escrow Holder	22
Execution Date.....	1
Existing Hospital.....	1
Existing Lease.....	1
Existing Lease Premises	1
Fair Market Value	20
Final Fair Market Value.....	20
Improvements	1
Index	3
Initial Rent	2
Lease	1
Lease Term.....	2
Master Agreement.....	1
Memorandum of Lease	27
MPHS.....	1
MPHS' Appraisal	20
MPHS' Appraiser	20
MPHS Event of Default.....	17
MPHS Notice of Termination.....	7
MPHS Termination Date	7

New Facility..... 1
Offer Notice 20
Parking Structure Construction Start Date..... 3
Pre-Closing Agreement..... 1
Premises 1
Purchase Price..... 16
Real Property 1
Related-Party Transfer..... 16
Restructured Relationship..... 1
Third Appraiser..... 20
Total Taking..... 13

CONSTRUCTION GROUND LEASE

This Construction Ground Lease (this "**Lease**") is dated for reference purposes only as of _____, 2005 (the "**Execution Date**"), and is entered into by and between Peninsula Healthcare District, a political subdivision of the State of California ("**District**"), and Mills-Peninsula Health Services, a California nonprofit public benefit corporation ("**MPHS**").

Recitals

A. District is or will be the owner of certain real property located in the City of Burlingame, County of San Mateo, State of California, which is the site of the existing hospital grounds (the "**Existing Lease Premises**") described and depicted on the site diagram attached as **Exhibit A-1**. The real property comprising the premises under this Lease at the Effective Date, as defined below, is described and depicted on **Exhibit A-2** and **Exhibit A-3** (the "**Real Property**"). The "**Premises**" under this Lease shall consist of the Real Property and the existing acute care hospital building and related improvements located on a portion of the Real Property as described in the Existing Lease (as defined below) (the "**Existing Hospital**").

B. Prior to the Effective Date, District leased the Existing Hospital Site, as defined in the Master Agreement, and the Existing Hospital to MPHS pursuant to an Amended and Restated Lease Agreement between District and MPHS dated as of January 25, 1985 (the "**Existing Lease**"), a copy of which is attached as **Exhibit B**, and MPHS operated the Existing Hospital under the Existing Lease. This Lease replaces and supersedes the Existing Lease.

C. District and MPHS are parties to the Master Agreement of even date herewith ("**Master Agreement**") and a Restructured Relationship Pre-Closing Agreement of even date herewith (the "**Pre-Closing Agreement**"), pursuant to which District and MPHS entered into a restructured relationship (which is referred to herein generally as the "**Restructured Relationship**") for MPHS to develop, construct and operate a new general acute care hospital and other related improvements on a portion of the Premises under the terms described in the Master Agreement, lease the Premises from District, and establish certain rights and obligations with respect to the Restructured Relationship of the parties and the operation of the new general acute care hospital.

D. District intends to lease the Premises (together with all easements, rights, and appurtenances in connection therewith) to MPHS for the purpose of operating a new general acute care hospital (the "**New Facility**"), appurtenant parking facility and parking areas, helipad and other related improvements (the New Facility, appurtenant parking facility and parking areas, helipad and other related improvements to be constructed by MPHS are collectively referred to in this Lease as the "**Improvements**") in accordance with the agreement of the parties as set forth in a Ground Lease as described in the Master Agreement.

E. District and MPHS are entering into this Lease pursuant to which MPHS leases the Premises from District for the purpose of continuing to lease and operate the Existing

Hospital and constructing the Improvements through the "Start Service Date" as defined in the Master Agreement. Pursuant to the Master Agreement, this Lease will expire on the Start Service Date, and the Ground Lease shall commence. During the term of this Lease MPHS will be constructing the Improvements.

F. District and MPHS are also parties to the Construction Agreement of even date herewith (the "**Construction Agreement**") to establish certain rights and obligations with respect to the construction of the Improvements, the demolition of the Existing Hospital and the preparation of the District's 4.15 Acre Parcel (as defined in the Master Agreement).

G. NOW, THEREFORE, District and MPHS, in consideration of the various obligations set forth in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE I LEASE OF PREMISES AND TERM OF LEASE

1.01. Agreement to Lease. For and in consideration of the rents to be paid and covenants to be performed by MPHS under this Lease, District agrees to lease the Premises to MPHS, and MPHS agrees to lease the Premises from District, on and subject to the terms and conditions set forth in this Lease. Except as expressly otherwise provided in this Lease, the Premises includes the Real Property and the Existing Hospital plus any appurtenances and easements described in **Exhibit A-2** and shown on **Exhibit A-3** of this Lease, exclusive of any Improvements located on the Premises, notwithstanding that any Improvements may or shall be construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the Improvements is in District or in MPHS.

1.02. Term of Lease. The term of this Lease (the "**Lease Term**") shall be for a period commencing on the date all conditions precedent set forth in Section 1.03 are fulfilled (the "**Effective Date**"), and continuing until the earlier to occur of: (a) the "Start Service Date" as defined in the Master Agreement; or (b) January 31, 2015, unless terminated earlier or extended as provided in this Lease. District and MPHS shall complete and execute a lease term commencement memorandum in the form of **Exhibit C** attached hereto upon commencement of this Lease. District and MPHS shall further complete and execute a memorandum in the form of **Exhibit D** attached hereto once the Effective Date has been determined.

1.03. Condition to Effectiveness of this Lease. This Lease shall not be effective until the following basic condition precedent has been satisfied:

- A. The "Closing" under the Pre-Closing Agreement shall have occurred.

ARTICLE II RENT

2.01. Annual Rent. During the Lease Term, MPHS shall pay District an annual rent (the "**Annual Rent**") in an amount equal to one million five hundred thousand dollars (\$1,500,000) (the "**Initial Rent**") as adjusted for inflation as set forth below. The Annual Rent shall be adjusted for inflation every three (3) years, beginning on the third anniversary of the

earlier to occur of: (a) the date MPHS begins construction of the parking structure under the Pre-Closing Agreement (the "**Parking Structure Construction Start Date**"); or (b) the Effective Date of this Lease, (each an "**Adjustment Date**") by the Consumer Price Index, Unadjusted, for All Urban Consumers (all items) as periodically published by the Department of Labor, Bureau of Labor Statistics (1982-84=100 Base) for the San Francisco - Oakland - San Jose area (the "**Index**"). Except as expressly provided in this Section 2.01, no rent will owe from MPHS to District. The Index published in November, 2005 shall serve as the base index (the "**Base Index**"). The Annual Rent as of each Adjustment Date shall be the amount obtained by multiplying the Initial Rent by a fraction, the denominator of which is the Base Index, and the numerator of which is the Index as published for the month of November next preceding the Adjustment Date.

If at any relevant time the Index is no longer published, but the Department of Labor, Bureau of Labor Statistics does then publish a new or substitute index that serves essentially the same purposes, then such new or substitute index shall be deemed the Index to which references are made in this Lease. If at any relevant time the Index is no longer published, and the Department of Labor, Bureau of Labor Statistics does not then publish a new or substitute index, then District and MPHS shall select a substitute index or other method of adjusting the Annual Rent or making other adjustments or calculations under this Lease that require reference to the Index that will, as closely as reasonably possible, reflect the changing purchasing power of United States Dollars as does the Index; and District and MPHS agree to make the required adjustments and calculations in accordance with such substitute index or other method, which shall then be deemed to be the Index to which references are made in this Lease.

2.02. Time and Place for Payment of Rent. If the Parking Structure Construction Start Date has occurred prior to the Effective Date, then on the Effective Date, MPHS shall pay in a lump sum the portion of the Annual Rent owed until the anniversary of the Parking Structure Construction Start Date first occurring after the Effective Date. Otherwise, on the Effective Date, MPHS shall pay the first year's Annual Rent. Thereafter, MPHS shall pay the Annual Rent in full on the anniversary of the earlier to occur of: (a) the Parking Structure Construction Start Date; or (b) the Effective Date of this Lease each year during the Lease Term. All payments shall be made to District at 1783 El Camino Real, Burlingame, California, 94010 or any other place or places that District may designate by written notice to MPHS.

2.03. Partnership or Joint Venture. Nothing in this Lease shall be construed to render District in any way or for any purpose a partner, joint venturer, or associate in any relationship with MPHS other than that of District and MPHS, nor shall this Lease be construed to authorize either to act as agent for the other.

ARTICLE III USE OF PREMISES

3.01. Permitted Use. MPHS shall use the Existing Hospital for the purpose of maintaining and operating a general acute care hospital and performing such other healthcare-related services in accordance with the Master Agreement. MPHS may also use the Premises to perform any of the permitted or required activities under the Construction Agreement.

3.02. Compliance with Laws. MPHS, at MPHS' cost, shall materially comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the Premises or Improvements, relating to any use and occupancy of the Premises by MPHS, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, MPHS shall procure and maintain it throughout the Lease Term. Such compliance shall be at MPHS' own cost and expense.

3.03. Prohibited Uses. MPHS shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity or in violation of the Master Agreement or the Construction Agreement. Furthermore, MPHS shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises.

3.04. Deed Restriction. District may record at any time after the Commencement Date a deed restriction (the "**Deed Restriction**") that the Premises shall be used solely for health care and health care related purposes operated on a nonprofit basis, and in the operation of an acute care general hospital, the operator of the hospital must offer hospital services sufficient to maintain licensure as a general acute care hospital, as defined under applicable law and regulations (including without limitation, 22 California Code of Regulations Sections 70000, et seq., and any successor statute or regulations thereto), and reproductive services customarily provided at comparable community hospitals.

3.05. Additional Covenants and Provisions with Respect to the Existing Hospital.

A. Community Hospital and Related Health Care Institution. The Existing Lease Premises and the Existing Hospital are leased to MPHS for public purposes of District and for the benefit of the communities served by District. MPHS shall, consistent with the public purposes stated above maintain and operate the Premises for the benefit of the communities served by District and maintain the Existing Hospital as a nonprofit, community hospital and related health care institution.

B. Accreditation. MPHS shall use its best efforts to maintain any accreditation which may be necessary for MPHS to continue to operate the Existing Hospital as a health care institution, including without limitation, its accreditation with the Joint Commission on Accreditation of Healthcare Organizations.

C. License. MPHS shall use its best efforts to continuously maintain a valid license issued by the Department of Health Services of the State of California for the operation of the Existing Hospital as a health care institution. MPHS shall use its best efforts to maintain continuously any additional licenses, permits and other governmental approvals necessary for MPHS to continue to operate the Existing Hospital as a health care institution.

