

**RESTRUCTURED RELATIONSHIP PRE-CLOSING AGREEMENT**

This Restructured Relationship Pre-Closing Agreement ("**Agreement**") is dated as of \_\_\_\_\_, 2005 (the "**Effective Date**"), and entered into by and between Peninsula Healthcare District, a political subdivision of the State of California (the "**District**"), and Mills-Peninsula Health Services, a California nonprofit public benefit corporation ("**MPHS**").

**Recitals**

The District is the owner of certain real property located in the County of San Mateo, City of Burlingame, State of California, commonly known as the Peninsula Medical Center site ("**Existing Hospital Site**"), and a general acute care hospital located on the Existing Hospital Site at 1783 El Camino Real, Burlingame, California 94010, commonly known as Peninsula Medical Center ("**Existing Hospital**").

In 1985, the District owned and operated Peninsula Hospital and Medical Center (known today as Peninsula Medical Center), and a predecessor of MPHS owned and operated Mills Hospital. Both hospitals were general acute care hospitals serving the residents of the District. The two parties sought to provide improved hospital services to residents of the District and greater efficiencies by merging the operations of the two hospitals (the "**1985 Transaction**").

To effect the 1985 Transaction, the District leased the Existing Hospital Site and the Existing Hospital to MPHS pursuant to an Amended and Restated Lease Agreement between the District and MPHS dated as of January 25, 1985 (the "**Existing Lease**"), under which MPHS leases and operates the Existing Hospital.

To further effect the 1985 Transaction, the District donated to a predecessor corporation related to MPHS (which later donated to MPHS) the District's interest in the following properties located in the City of Burlingame ("**City**"), California:

- (1) 1515 Trousdale Drive (donated land only),
- (2) 1791 El Camino Real (commonly known as the Blood Bank and Front Lawn) ("**Front Lawn**");
- (3) 1730 Marco Polo Way (including access easement) ("**Marco Polo**");
- (4) 1811 Trousdale Drive;
- (5) 1600 Trousdale Drive (donated land only subject to an assignment of ground lease, as landlord, and lease of premises, as tenant);

- (6) 1848-1850 El Camino Real;
  - (7) 1720 El Camino Real (donated 50% interest only) (the "**1720 Property**");
- and
- (8) Davis Drive driveway access (the "**Davis Drive Driveway**").

The Existing Lease from the District to MPHS of the Existing Hospital Site and the Existing Hospital will expire on January 31, 2015, at which time the Existing Hospital, the Front Lawn and Marco Polo parcels will revert to full fee ownership and control by the District.

In 1996, MPHS affiliated with Sutter Health, a California nonprofit public benefit corporation and sole corporate member of MPHS ("**Sutter Health**"). As a condition precedent to this affiliation, the District board of directors approved of the terms of the affiliation as it related to MPHS, including but not limited to MPHS' entry into Sutter Health's obligated group ("**Sutter Health Obligated Group**") for financing purposes. As a Sutter Health affiliate, MPHS is part of an integrated delivery system and subject to system-wide financial and other policies.

On June 20, 1997, the District filed legal action against MPHS in San Mateo County Superior Court (*Peninsula Health Care District v. Peninsula Health Services, et al.*) (the "**Litigation**") to void the District's approval of the Existing Lease, the donation of the District's properties, and related agreements alleging conflict of interest violations by certain members of the board of directors of the District in office at the time the District entered into the Existing Lease.

The State of California adopted strict seismic standards for acute care hospitals under Senate Bill 1953, which are codified in California Health and Safety Code Sections 130000 through 130070 et seq., and Section 18938 (the "**Seismic Standards**"). The Existing Hospital will need substantial modification to comply with the Seismic Standards. Under current law, if the Existing Hospital fails to achieve compliance with the Seismic Standards by January 1, 2013, the Existing Hospital must cease operations as a general acute care hospital on that date. Based on independent engineering studies, both the District and MPHS have concluded that compliance with the Seismic Standards is more efficiently and economically achieved by construction of a new facility rather than substantial reconstruction of the Existing Hospital.

The Litigation and the adoption of the Seismic Standards have prompted MPHS and the District to consider a new relationship (which is referred to herein generally as the "**Restructured Relationship**"). The Restructured Relationship contemplated between the District and MPHS centers on a long-term ground lease of District real property upon which MPHS would develop a new state-of-the-art medical center and related improvements.

The District has concluded that the merger of the Existing Hospital and Mills Hospital and the subsequent realignment of operations have been of substantial benefit to the healthcare needs of its community and the District desires to preserve this achievement. The District also believes that MPHS has been a successful and beneficial operator of the Existing Hospital and has embarked on several years of negotiations out of a desire to retain MPHS as the operator of a

new full service acute care hospital campus designed to meet the long-term healthcare needs of the community.

Since the 1985 Transaction, MPHS and its predecessors have expanded the scope and quality of the hospital services provided to the residents of the District, made significant capital updates and improvements to both the Existing Hospital and Mills Hospital, consolidated all general acute care services at the Existing Hospital and established Mills Hospital as a facility which provides rehabilitation and outpatient services, all while maintaining economic balance at a time when other hospitals owned or leased by healthcare districts were economically failing.

Both the District and MPHS have expended substantial time and resources independently studying the strategic and land use options available to the community for construction and operation of a new medical facility. The parties also have spent considerable time and effort negotiating the major terms and conditions of a proposed Restructured Relationship. As a result of such negotiations, the District and MPHS have approved and entered into the letter of intent and attached term sheet (collectively, the "**LOI**") dated December 15, 2004, a copy of which is attached hereto as **Exhibit A**. The LOI outlines the major terms and conditions of the proposed Restructured Relationship between the parties.

The proposed Restructured Relationship centers on MPHS' development, construction, and operation of a new general acute care hospital (the "**New Facility**"), and appurtenant parking facility and parking areas, a medical office building, helipad and other related improvements and landscaping (the "**Related Improvements**"). The New Facility and the Related Improvements may be collectively referred to herein as the "Improvements." MPHS would construct the Improvements upon roughly 21 acres of District-owned land, consisting of all of 1811 Trousdale Drive, 1515 Trousdale Drive, (as these parcels shall be modified by a lot line adjustment with the Magnolia Property (as defined in Section 3.02.A below)) and the Front Lawn, and a portion of the Existing Hospital Site (collectively, the "**New Facility Site**"), which MPHS would lease from the District. The District would retain ownership and control over the remaining portion of the Existing Hospital Site, the Marco Polo parcel and the Davis Drive Driveway after MPHS' completion of demolition of the Existing Hospital.

MPHS, with input from the District, has engaged in a land-planning and entitlement process consistent with the site plan (the "**Site Plan**") for the proposed Improvements, attached hereto as **Exhibit B**. MPHS has also caused the project architect, Anshen + Allen ("**AA**"), to produce a set of plans for the Improvements, sheets A0.01 through PS7, date-stamped September 10, 2004, which the City has approved in Condition No. 1 to the approved Conditional Use Permit (as defined in Section 3.01A). These plans may be amended from time to time (the "**AA Plans**"). As of the date of this Agreement, MPHS has applied for, is pursuing, or has obtained approvals by the City and other governmental agencies with jurisdiction over the project of various entitlements for the construction of the Improvements, including certification of a Final Environmental Impact Report ("**EIR**"), a copy of which is attached to the LOI, approval of the Conditional Use Permit, design review, and interim zoning actions, all by City of Burlingame Council Resolution 105-2004, adopted on November 15, 2004, and Ordinance number 1747, and has applied for a phased tentative parcel map as described in more detail in Section 3.01.A.5 of this Agreement (the "**Phased TM**"). The Phased TM provides for, as Phase 1, the merger of

1515 Trousdale Drive (as modified by the Magnolia Lot Line Adjustment) and the Front Lawn into a single parcel (the "**Merged Front Parcel**"), as shown on the Phase 1 Map attached as **Exhibit C** (the "**Phase 1 Map**"). Phase 2 will be the merger of the Merged Front Parcel, 1811 Trousdale Drive (as modified by the Magnolia Lot Line Adjustment) and the Existing Hospital Site into a single legal parcel (the "**Fully Merged Parcel**"), as shown on the Phase 2 Map attached as **Exhibit D** (the "**Phase 2 Map**"). Phase 3 will be the split of the Fully Merged Parcel into the approximately 21-acre New Facility Site (as shown on **Exhibit A**) and the 4.15 acre parcel that the District shall retain (the "**District's 4.15 Acre Parcel**"), as shown on the Phase 3 Map attached as **Exhibit E** (the "**Phase 3 Map**"). MPHS anticipates that it will obtain additional permits and approvals for the Improvements before the Closing (as defined in Section 4.01) (MPHS may not obtain some of the permits for certain of the Improvements, such as permits for the helipad from the Federal Aviation Administration, the Aeronautics Division of the California Department of Transportation, and for a permit for the new hospital building from the Office of Statewide Health Planning and Development until after Closing) and will begin construction of some of the Improvements before the Closing.

The proposed Restructured Relationship, as reflected in the LOI, would span a term of approximately 60 years, encompass many complicated issues, require MPHS to obtain financing of and to expend hundreds of millions of dollars to construct the Improvements, and require the parties to enter into multiple, complex written agreements to adequately document their relationship. MPHS also anticipates that it will begin construction of some of the Improvements prior to the Closing and the effectiveness of the Definitive Agreements (as described in Section 1.01). Accordingly, the parties desire to document an agreed-upon process pursuant to which the parties will seek appropriate governmental and third-party permits, approvals, or validations of, and finally enter into and be bound by the agreements that govern the Restructured Relationship, and to document and bind the parties with respect to certain matters that the parties desire to complete or that they agree must be accomplished before the parties become bound by the terms and conditions of the Restructured Relationship upon Closing.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

Agreements

**ARTICLE I**

**COMPLETION AND EXECUTION OF DEFINITIVE AGREEMENTS**

1.01. Identification of Definitive Agreements. The written agreements that will document and govern the Restructured Relationship (collectively, the "**Definitive Agreements**") shall include, without limitation, the following documents:

A. The Master Agreement, which shall become effective as of the Closing and shall generally describe and govern the parties' Restructured Relationship and coordinate the other Definitive Agreements.

B. The Construction Ground Lease, which shall become effective as of the Closing, shall substitute for and expand the Existing Lease, and shall govern MPHS' continuing

lease of the Existing Hospital and its lease of all of the Fully Merged Parcel, and the Marco Polo property and Davis Drive Driveway parcel (the "**Construction Ground Lease Premises**"), for the period between Closing and the date upon which MPHS begins to operate the New Facility (the "**Start Service Date**") under the Ground Lease.

C. The Ground Lease, which will supersede the Construction Ground Lease and shall become effective on the Start Service Date, shall have an initial term of fifty (50) years, and shall initially govern MPHS' lease of the Existing Hospital and the Construction Ground Lease Premises and thereafter govern MPHS' ground lease of the New Facility Site.

D. The Construction Agreement, which shall become effective as of the Closing and shall govern MPHS' construction of the Improvements, demolition of the Existing Hospital and preparation of the District's 4.15 Acre Parcel.

E. The Guaranty Agreement, which shall become effective as of the Closing and shall govern Sutter Health's guaranty of MPHS' obligations under the Construction Agreement to construct the Improvements, to demolish the Existing Hospital, and to prepare the District's 4.15 Acre Parcel.

F. Such other agreements or documents required to be delivered by the parties or are deemed necessary or advisable by legal counsel to the parties for Closing.

1.02. Document Execution Date. The date of execution of this Agreement and the Definitive Agreements ("**Document Execution**") shall be after satisfaction or written waiver of all of the conditions precedent therefore set forth in Section 1.03 (the "**Document Execution Date**").

1.03. Conditions Precedent to Execution of Definitive Agreements. The parties acknowledge and agree that each of the following conditions precedent have been fully satisfied or waived in writing by the other at or prior to the Document Execution Date:

A. Public Meetings. The District shall have held five (5) public meetings prior to the District's approval of the Definitive Agreements in accordance with California Health and Safety Code Section 32121(p).

B. Litigation. There shall be no effective injunction, writ, or preliminary restraining order or any order of any nature issued by a court or governmental agency of competent jurisdiction directing that any of the transactions provided for in this Agreement or in the Definitive Agreements not be consummated as provided in this Agreement or in the Definitive Agreements, and immediately prior to the Document Execution Date, no proceeding or lawsuit shall have been commenced, be pending or be threatened by any governmental or regulatory agency or any other person with respect to the transactions contemplated by this Agreement or in the Definitive Agreements, which either the District or MPHS, in good faith and with the advice of its counsel, believes makes it undesirable or inadvisable to execute any of the Definitive Agreements or to consummate the Restructured Relationship.

C. Legislation or Action. No action shall have been taken, and no law, rule, regulation, order, ordinance, judgment, preliminary or permanent injunction, or decree shall have been proposed, promulgated, enacted, entered, enforced, or deemed applicable to the transactions contemplated by this Agreement, by any federal, state, or local governmental authority, or by any court or other tribunal, which actually (or which any party, in good faith and with the advice of counsel, believes would): (a) prohibits, materially restricts, materially delays or makes unlawful (i) the consummation of the transactions contemplated by this Agreement or in the Definitive Agreements, or (ii) the satisfaction of any of the conditions to the entry into or the consummation of such transactions; (b) otherwise impairs or materially adversely affects the contemplated material economic or non-economic benefits to the parties of such transactions; (c) requires the divestiture by any party or any of their affiliates of all or any material portion of their businesses, assets, or properties or imposes any material limitation on the ability of any of them to conduct their businesses and own such assets and properties; (d) imposes any material limitation on the ability of any party to exercise effectively all rights of membership, ownership and control of their businesses and operations; or (e) otherwise materially and adversely affects such party.

D. Certified Copies of Resolutions. No later than two (2) business days before the Document Execution Date:

1. Each party shall have furnished the other party with copies of resolutions duly adopted by the board of directors of such party authorizing and approving by all legally necessary action (i) the project as described in the EIR and the Conditional Use Permit, (ii) the execution and delivery of this Agreement and the Definitive Agreements and, subject to the fulfillment, or the waiver by the appropriate party, of all of the conditions precedent therefor set forth in this Agreement or each Definitive Agreement, the Closing, the effectiveness of, and the binding of such party under, the Definitive Agreements upon Closing, and the post-Closing performance of such party under each of the Definitive Agreements, and (iii) all other necessary or proper action to enable such party to comply with this Agreement; provided, however, that all such approvals shall be expressly conditioned upon the fulfillment, or the waiver by the appropriate party, of all of the conditions precedent to Closing as set forth in Article IV.

2. The District shall have furnished MPHS with copies of resolutions duly adopted by its Board of Directors approving the EIR and adopting CEQA findings and statement of overriding considerations and performance of other actions with respect to the EIR as required of the District as a responsible agency under CEQA.

3. Each party shall have furnished the other party with copies of such other resolutions relative to such party and its affiliates as the other parties or their counsel may reasonably request.

4. MPHS shall have furnished the District with copies of resolutions duly adopted by the Board of Directors of Sutter Health authorizing and approving by all legally necessary action the execution and delivery and, subject to the fulfillment, or the waiver by the appropriate party, of all of the conditions precedent therefor set forth in this Agreement or the Guaranty Agreement, the Closing and the binding of Sutter Health upon Closing with respect to, and its post-Closing performance of, the Guaranty Agreement.

Each such resolution shall be certified by the Secretary or Assistant Secretary of such party or the affiliate adopting such resolution.

E. Representations, Warranties and Agreements. The representations and warranties of each of the parties set forth in **Schedule 1.03.E** shall be true and correct in all respects as to such party as of the Document Execution Date, except for representations and warranties specifically relating to a time or times other than the date of this Agreement, which shall be true and correct in all material respects at such time or times, and except for changes permitted by this Agreement, with the same force and effect as if made on and as of the Document Execution Date.

F. Opinions of Counsel. Each party shall have furnished the other party with the opinion(s) of legal counsel to such party, dated as of the Document Execution Date, in form and substance satisfactory to the other party and its counsel, covering the matters described in **Schedule 1.03.F**.

1.04. Deliveries of Documents and Definitive Agreements. On or before the Document Execution Date, each party shall deliver to the other:

A. A copy of the articles of incorporation or charter documents and all amendments thereto and the complete, current bylaws of such party, certified to be a current, complete, true, and correct by the secretary or assistant secretary of such party.

B. The properly certified originals of each of the resolutions required of such party pursuant to Section 1.03.D of this Agreement;

C. The original certificate of the Chair of the board of directors, President or Vice President of such party regarding the accuracy of such party's representations and warranties required under Section 1.03.E of this Agreement;

D. The original certificate of the Chair of the board of directors, President or Vice President of such party regarding the satisfaction or proper waiver of the conditions precedent regarding execution of the Definitive Agreements contained in Section 1.03 of this Agreement;

E. Opinions of counsel of each party as set forth in Section 1.03.F; and

F. The following Definitive Agreements, provided, however, that the parties shall not be bound by any of the Definitive Agreements, and the effective or commencement dates of each Definitive Agreement shall not occur, until all of the conditions precedent to the effectiveness thereof contained in this Agreement and the particular Definitive Agreement have been satisfied or properly waived:

1. The Master Agreement, in the form approved for execution by the parties' respective Boards of Directors, duly executed by the parties;

2. The Construction Ground Lease, in the form approved for execution by the parties' respective Boards of Directors, duly executed by the parties;
3. The Ground Lease, in the form approved for execution by the parties' respective Boards of Directors, duly executed by the parties;
4. The Construction Agreement, in the form approved for execution by the parties' respective Boards of Directors, duly executed by the parties;
5. The Guaranty Agreement, in the form approved for execution by the parties' and Sutter Health's respective Boards of Directors, duly executed by Sutter Health; and
6. Such other agreements or documents required to be delivered by the parties hereunder or are deemed necessary or advisable by legal counsel to the parties.

## ARTICLE II PARTIES' OBLIGATIONS AFTER DOCUMENT EXECUTION

The parties shall have the respective obligations set forth in this Article II only after proper completion of the Document Execution as set forth in Article I above.

### 2.01. Election; Election Support and Costs.

A. The District's Obligation to Hold the Election. Upon MPHS' request, the District shall cause a vote (the "**Election**") to be taken of the voters of the District (the "**District Voters**") with respect to the Master Agreement (including Exhibits of the form of the other Definitive Agreements) and the Restructured Relationship in accordance with the terms and provisions of this Section 2.01. Promptly after MPHS' request for the District to cause the vote, the District shall commence, and thereafter shall diligently pursue, all steps necessary to place a measure (as further described in Section 2.01.B below) on the ballot (the "**Ballot Measure**") for submission to the District Voters. The Election shall be by mail-in ballot unless otherwise determined by the parties.

B. Scope of Ballot Measure; Voter Approval. The Ballot Measure shall seek the approval of the District Voters, within the legal parameters and financial limitations imposed on governmental entities, (which, when certified as final in accordance with Section 2.01.E below, shall be the "**Voter Approval**") of the District's entry into the Master Agreement (including Exhibits of the form of the other Definitive Agreements). The District, in consultation with MPHS and the County of San Mateo (the "**County**") shall determine the content and language of the Ballot Measure in accordance with the legal parameters and financial limitations imposed upon governmental entities.

C. The Parties' Obligation to Support the Ballot Measure. Both parties, at their own expense and within the limitations and parameters imposed by any law, regulation, rule, ordinance, ruling, or decree that governs the parties' respective political activities,

including, without limitation, those limits and parameters that apply to each party as a tax-exempt organization or public entity, shall reasonably support the Ballot Measure and use reasonable efforts to obtain Voter Approval. Nothing in this Agreement shall require any party hereto, or any officer, director, board member, employee, agent, consultant, or representative of such party, to conduct any activity, take any action, or make or publish any statement or information with respect to the Election, the Ballot Measure, or Voter Approval that subjects or could subject the party or any officer, director, board member, employee, agent, consultant, or representative of such party to any fine, charge, civil or criminal penalty, sanction, action, cause of action, damage, injunction, or proceeding under any law, regulation, rule, ordinance, ruling, or decree that governs the respective parties' political activities.

D. Election Costs. MPHS agrees to promptly reimburse the District for all County's Election-related costs that the County bills to the District. MPHS shall reimburse the District for any of the costs described in this Section 2.01.D within ten (10) days after MPHS receives a written invoice from the District therefor, which invoice shall include a reasonable detailing of the costs that the County incurred and billed to the District. If MPHS objects to any invoiced amount or any portion thereof, MPHS must notify the District of its objection in writing within the 10-day period following MPHS' receipt of the District's invoice. If MPHS timely objects in writing to the District, MPHS shall promptly pay the portion, if any, of the invoice to which MPHS does not object and, if the parties cannot resolve their dispute over the remaining portion of the invoice within ten (10) days after the date of MPHS' written objection thereto, the parties shall submit the dispute to the dispute resolution process set forth in Section 7.11 of this Agreement. Any amount for which MPHS must reimburse the District under this Section 2.01.D (including any reimbursement due to the District from MPHS after any dispute resolution) that MPHS does not remit to the District within the 10-day time limit therefor shall bear interest at seven percent (7%) per annum from the original due date (i.e., the date upon which the 10-day period expired) until paid. MPHS' obligation to reimburse the District for the County's election costs as set forth in this Section 2.01.D shall survive the Closing and the expiration or termination of this Agreement.

E. Final Voter Approval. Voter Approval shall have occurred and become final on the date that the Clerk of the County of San Mateo, California, officially certifies the results of the Election pursuant to which the majority of the District Voters voting in the Election vote to approve the Ballot Measure.

F. Dismissal of the Litigation. Promptly after final Voter Approval, the District shall dismiss the Litigation with prejudice, by filing an appropriate request for dismissal in the San Mateo Superior Court.

## 2.02. Validation Action.

A. Filing of Validation Action. Upon MPHS' request, the District shall file in the Superior Court for the County of San Mateo, and shall properly serve and publish a validation action (the "**Validation Action**") in accordance with Section 860 et seq., of the California Code of Civil Procedure and California Government Code Section 53511 (collectively, the "**Validation Statute**"). The Validation Action shall seek, pursuant to the

procedures and provisions of the Validation Statute, validation of the Definitive Agreements so that MPHS is assured that it is entitled to hold and operate the Improvements for the term of the Ground Lease so that MPHS may generate the revenues necessary to repay the principal and interest of any bonds issuance MPHS or Sutter Health participates in to fund the construction and equipping of the Improvements (the "**Bonds**"). The District shall join MPHS in the Validation Action as an interested party.

B. Prosecution of and Control Over Validation Action; Choice of Counsel.

The District shall diligently pursue the Validation Action with counsel of the District's choice, with the goal of obtaining a judgment that validates the Definitive Agreements so that MPHS is assured that it is entitled to hold and operate the Improvements for the term of the Ground Lease so that MPHS may generate the revenues necessary to repay the principal and interest of any Bonds against any potential challenge to the validity thereof. The District, in consultation with its counsel, shall have sole ultimate authority over all matters with respect to the Validation Action, including, without limitation, legal and other strategy, procedural matters, compromise or settlement of any issue, and the form and language of any judgment. Notwithstanding the foregoing, the District shall consult in good faith with MPHS and its counsel, and shall keep MPHS and its counsel reasonably informed regarding, all matters material to the Validation Action. MPHS may, at its own cost and expense and in its sole discretion, participate in the Validation Action on its own behalf.

C. Final Validation Action. The parties shall have successfully concluded the Validation Action (the "**Final Validation Action**") either when (i) the Superior Court of San Mateo County has issued and entered a judgment in the Validation Action that validates the transactions contemplated by this Agreement and the Definitive Agreements, or (ii) MPHS notifies the District in writing that MPHS will not, and MPHS requests that the District not, pursue further legal action or steps regarding the Validation Action. If the Final Validation Action is the notice from MPHS described in clause (ii) above, the District shall promptly dismiss the Validation Action and shall have no further obligation under this Agreement to pursue or prosecute the Validation Action.

2.03. Transfer Properties. The provisions of this Section 2.03 shall govern the parties' rights and obligations regarding the Transfer Properties.

A. Identification of the Transfer Properties. MPHS shall transfer to the District at Closing MPHS' ownership interest in each of the following properties (individually, a "**Transfer Property**" and collectively the "**Transfer Properties**"):

1. The Merged Front Parcel, consisting of 1515 Trousdale Drive (as modified by the Magnolia Lot Line Adjustment) and the Front Lawn (1791 El Camino Real), which is anticipated to be merged prior to Close of Escrow in accordance with Section 3.02.A.3 below;

2. Marco Polo;
3. 1811 Trousdale Drive (as modified by the Magnolia Lot Line Adjustment);
4. 1600 Trousdale Drive (subject to an assignment of ground lease, as landlord, and lease of premises, as tenant);
5. 1848-50 El Camino Real; and
6. Davis Drive Driveway.

The properties listed in 4 and 5 above are collectively referred to herein as the "**MOB Properties.**"

B. Opening of Escrow. By or before the date the Ballot Measure is submitted to the District voters, the parties shall open an escrow (the "**Transfer Properties Escrow**") with Old Republic Title Company, 601 Allerton Street, Redwood City, CA 94063 ("**Escrow Holder**"). The closing of the Transfer Properties Escrow shall occur concurrently with and as part of the Closing described in Section 4.01.

C. Title Issues; Review of Title.

1. Title; Title Policy. At Close of the Transfer Properties Escrow, as defined in Section 2.03.K below, MPHS shall convey fee title to the each of the Transfer Properties to the District by grant deed, subject only to the Permitted Exceptions defined in Section 2.03.C.3 below, and shall cause Escrow Holder to issue a District's Title Policy described in Section 2.03.C.4 below for each Transfer Property.

2. Preliminary Report; the District's Title Notice. Upon opening of the Transfer Properties Escrow, the District shall order from Escrow Holder a copy of a Preliminary Title Report for each of the Transfer Properties (each a "**Preliminary Report**") and legible copies of all documents referred to in each Preliminary Report (collectively for each Transfer Property, the "**Title Documents**"). The District shall have thirty (30) days after receiving the Preliminary Report and Title Documents for all of the Transfer Properties to give MPHS written notice of the District's objection to any item or exception set forth in the Preliminary Report for each Transfer Property (each such notice shall be the "**District's Title Objection Notice**" for such Transfer Property). The District's failure to timely give the District's Title Objection Notice for any Transfer Property, or its failure to object in the District's Title Objection Notice for any Transfer Property to any item or exception set forth in the Preliminary Report for such Transfer Property, shall be deemed to be the District's approval of such item(s) for such Transfer Property. The District shall have no right to object to or require that, as a condition to transfer, MPHS remove any title matters or exceptions contained in the Preliminary Report for a particular Transfer Property that existed at the time the District conveyed such Transfer Property to MPHS as part of the 1985 Transaction (unless MPHS, during its ownership of the Transfer Property, has caused or made, or has allowed or consented to, a material modification to such matter or exception), or that the District caused or previously consented to

(including but not limited to the Water Line (as defined in Section 3.02) relocation and easement as shown on the Site Plan); provided, however, MPHS shall, upon the District's written request to MPHS and at MPHS' own costs and expense, cooperate with District, both before and after Close of the Transfer Properties Escrow, to remove any such matters or exceptions. MPHS' cooperation obligation in the previous sentence shall survive Close of the Transfer Properties Escrow, the transfer of the Transfer Properties, and expiration of this Agreement. With respect to the MOB Properties only, the District shall have no right to object to or require that, as a condition to transfer, MPHS terminate any existing lease that MPHS entered into prior to the date of this Agreement in the ordinary course of business or remove any tenant, unless the tenant under such lease is in material default under the tenant's lease; provided, however, that, at all times after the Effective Date of this Agreement, MPHS shall not agree to or enter into any new lease or any discretionary renewal or extension of the term of any existing lease for any portion of the MOB Properties that extends the term of such lease beyond the Close of the Transfer Properties Escrow under this Agreement without the prior written consent and approval of the Chair of the District. Notwithstanding any of the above, MPHS shall be obligated to remove before Close of the Transfer Properties Escrow all monetary encumbrances on the Transfer Properties, including without limitation, deeds of trust, mortgages, financing statements, mechanics' liens, or other monetary obligations encumbering the Transfer Properties (other than the lien for ad valorem property taxes not yet delinquent), and the District shall have no obligation hereunder to object to such items in order to obligate MPHS to remove such items at or before Close of the Transfer Properties Escrow.

3. MPHS' Title Notice; Permitted Exceptions. If the District objects to one or more exceptions in the Preliminary Report for any Transfer Property in the District's Title Objection Notice for such Transfer Property, MPHS shall have (10) business days after MPHS' receipt of the District's Title Objection Notice for such Transfer Property to give the District written notice ("**MPHS' Title Notice**") of those title matters to which the District objected, if any, which, after commercially reasonable efforts to remove or have eliminated from title, MPHS is unwilling or unable to remove with respect to such Transfer Property. The failure of MPHS to give the MPHS' Title Notice within such period shall constitute MPHS' refusal to remove any items to which the District objected in the District's Title Objection Notice for such Transfer Property. MPHS shall have until Close of the Transfer Properties Escrow to remove all of those exceptions that MPHS agreed to remove. The District shall have ten (10) business days from receipt of MPHS' Title Notice with respect to any particular Transfer Property to notify MPHS in writing that either: (a) the District is willing to acquire such Transfer Property subject to those exceptions to which the District objected but MPHS refused to remove; or (b) the District is not willing to so acquire such Transfer Property. Failure of the District to give written notice of either of the foregoing options within such period shall be deemed to be the District's election to acquire the Transfer Property subject to the disapproved exceptions. If the District does not desire to accept transfer of one or more of the Transfer Properties (other than the MOB Properties) subject to the disapproved exceptions that MPHS declines to remove, the parties agree that the District shall nonetheless accept transfer of such Transfer Property subject to the exceptions and the parties shall, both before and after Closing, cooperate and work together in good faith to resolve, eliminate or mitigate, to the extent possible, such exceptions and the adverse impact thereof on the District's title to such Transfer Property. Those exceptions that the

District has approved, or has agreed to accept after objecting thereto, pursuant to this Section 2.03.C.3 are called the "**Permitted Exceptions.**"

4. The District's Title Policy. The Escrow Holder shall issue at Close of the Transfer Properties Escrow a title insurance policy to the District for each of the Transfer Properties (each of which is the "**District's Title Policy**" for such Transfer Property) that is a CLTA Owner's policy of title insurance, with liability in the amount as reasonably determined by the District, insuring title to the Transfer Property in the District, subject only to: (a) the Permitted Exceptions; and (b) the printed exceptions and exclusions common to CLTA policies for the type of property similar to the Transfer Property.

D. Feasibility Review. The District shall have one hundred forty (140) days after the Document Execution (the "**Feasibility Period**"), to perform its feasibility review of the Transfer Properties, and to determine, in the District's sole and absolute discretion, whether or not to proceed with the acquisition of each of the Transfer Properties.

1. Documents and Materials. Within ninety (90) days following the Document Execution, MPHS shall furnish the District with copies of all tests, surveys, maps, plans, records, permits, correspondence, reports, and other documents, materials, and information that are within MPHS' possession or control that relate or refer to any of the Transfer Properties and MPHS shall cause those individuals employed by MPHS most likely to have knowledge of the Condition of the Property (as defined in Section 2.03.E, below) to disclose to the District all matters concerning the Condition of the Property known to such individuals. With respect to the MOB Properties, in addition to the above, MPHS shall provide the District, and its counsel, accountants and other authorized representatives, with reasonable access during normal business hours and upon reasonable prior notice to all leases, books, accounts, records, contracts, and documents of or relating to the MOB Properties, the tenants therein, and MPHS' operation and management of the medical office buildings located thereon. MPHS shall furnish or cause to be furnished to the District and its representatives all data and information reasonably requested by the District concerning the businesses, finances, operation, and management of the properties of MPHS as it relates to the medical office buildings on the MOB Properties.

2. Right to Enter; Indemnification. The District, its agents, representatives, consultants, contractors, and subcontractors, and any governmental or quasi-governmental personnel and agencies as the District may choose to contact, shall have the right to enter any of the Transfer Properties at any time to make any and all inspections and tests as the District may, in its sole and absolute discretion, deem necessary or desirable. The District agrees to indemnify and defend MPHS and hold it and the Transfer Properties free and harmless from any costs or liability relating to personal injury, physical property damage or mechanics' liens, and attorneys' fees related thereto, incurred by reason of such investigations, and, if the Transfer Properties Escrow does not close for any reason, to repair any damage caused to the Transfer Properties by reason of any entry or investigation thereof. The District's indemnity obligations set forth in this Section 2.03.D.2 shall survive the Close of the Transfer Properties Escrow, the transfer of the Transfer Properties, the Closing and the expiration or termination of this Agreement.

3. Approval or Disapproval of Feasibility. The District shall approve or disapprove of the feasibility of each Transfer Property by delivering to MPHS written notice of its approval or disapproval at or before 5:00 p.m. on the day the Feasibility Period expires. If, with respect to any Transfer Property, the District fails to timely provide MPHS with written notice of approval or disapproval of feasibility, the District shall be deemed to have approved the transfer to the District of such Transfer Property. If the District does not desire to accept transfer of one or more of the Transfer Properties (other than the MOB Properties) subject to the disapproved feasibility, the parties agree that the District shall nonetheless accept transfer of such Transfer Properties subject to such disapproved feasibility and the parties shall, both before and after the Closing, cooperate and work together in good faith to resolve, eliminate, or mitigate, to the extent possible, such disapproved feasibility and the adverse impact thereof. If the District does not desire to accept transfer of one or more of the MOB Properties subject to the disapproved feasibility, the parties agree that MPHS shall retain such MOB Properties free and clear of any District rights. The District shall quitclaim any of its interest in such MOB Properties to MPHS at Closing.

E. "As-Is" Transfer. The District and its representatives may make such inspections of the Transfer Properties and matters related thereto as the District and its representatives desire or deem necessary, and the District shall accept the Transfer Properties upon the basis of its review. The District acknowledges and agrees that, except as otherwise expressly provided herein, the Transfer Properties are to be conveyed to and accepted by the District in an "as is" condition with all faults (and the District understands and acknowledges that it is anticipated that MPHS will have demolished before Closing all improvements existing as of the date of this Agreement on 1515 Trousdale Drive, the Front Lawn and 1811 Trousdale Drive). Except as otherwise expressly provided herein, MPHS does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Transfer Properties or related matters; in particular, but without limitation, except as set forth herein or in the Definitive Agreements, MPHS makes no representations or warranties with respect to the quality, use, condition, title, occupation, value, or management of the Transfer Properties; ability of the District to develop the Transfer Properties or its suitability for the development desired by the District; availability of utilities or other infrastructure improvements on or to the Transfer Properties; grading and drainage; soils conditions; compliance with applicable statutes, laws, codes, ordinances, regulations, or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health, handicapped persons, or environmental matters; compliance with covenants, conditions, and restrictions (whether or not of record), other local, municipal, regional, state, or federal requirements, or other statutes, laws, codes, ordinances, regulations, or requirements (collectively, the "**Condition of the Property**"). The District acknowledges that, except as otherwise expressly set forth herein, it is entering into this Agreement and shall acquire the Transfer Properties on the basis of its own investigation of the physical and environmental conditions of the Transfer Properties, including the subsurface conditions, and the District assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

F. Release. Except with respect to those matters for which MPHS is obligated to indemnify the District pursuant to Section 2.03.G.2 below, the District, for itself, its successors, and assigns, hereby waives, releases, remises, acquits, and forever discharges MPHS,

MPHS' employees, agents, or any other person acting on behalf of MPHS, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines, or compensation whatsoever, direct or indirect, which the District now has or which the District may have in the future on account of or in any way arising out of or in connection with the Condition of the Property as of the date of transfer to the District, including, without limitation, any environmental claims or any federal, state, or local law, ordinance, rule, or regulation applicable thereto. This release specifically excludes any matter arising out of or related to MPHS' actions or omissions on or with respect to the Transfer Properties after Close of the Transfer Properties Escrow or under the Definitive Agreements and with respect to any Pre-Closing Development Activities. With respect to and without limiting the release set forth above, the District hereby specifically waives the provisions of Section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The District understands and acknowledges the significance and consequence of this specific waiver of Section 1542 and hereby accepts and assumes the risk of possible differences from the facts now believed by it to be true and agrees that the above release shall be and remain effective notwithstanding such differences in facts. The District further hereby expressly assumes full responsibility for any injuries, damages, or losses that may occur as a result of the release set forth above.

G. Indemnity.

1. By the District. From and after the date of transfer of the Transfer Properties to the District, the District shall, to the maximum extent permitted by law, indemnify, defend, and save and hold harmless MPHS and any corporation which directly or indirectly controls or is controlled by or is under common control with MPHS, its and their employees, directors, agents, officers, successors, and assigns, from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, fines, punitive damages, losses, costs, liabilities, and expenses, including attorney's fees and fees and costs of experts and consultants (collectively, "**Claims**"), that arise out of or are connected with the Condition of the Property (including, without limitation, any environmental claims) and either (a) arise out of facts and circumstances that occurred or existed on or before the date of the District's conveyance of the Transfer Properties to MPHS' predecessor in interest in the 1985 Transaction, or (b) arise out of facts and circumstances that occur after the Close of the Transfer Properties Escrow, but only to the extent caused, directly or indirectly, by the activities or omissions of the District or its employees, consultants, contractors, officers, invitees, affiliates, agents, or representatives, in, on or about the Transfer Properties.

2. By MPHS. From and after the date of transfer of the Transfer Properties to the District, MPHS shall, to the maximum extent permitted by law, indemnify, defend, and save and hold harmless the District and any corporation which directly or indirectly controls or is controlled by or is under common control with the District, its and their employees, directors, agents, officers, successors, and assigns, from and against any and all Claims, that arise out of or are connected with the Condition of the Property (including, without limitation, any environmental claims) and arise out of facts and circumstances that occurred or existed during the period between the date of the District's conveyance of the Transfer Properties to MPHS' predecessor in interest in the 1985 Transaction and the Close of Escrow, including, without limitation, any facts or circumstances that arise out of or relate to any Pre-Closing Development Activities.

3. Survival. The respective indemnity obligations of the parties set forth in this Section 2.03.G shall survive the Close of the Transfer Properties Escrow, the transfer of the Transfer Properties, the Closing, and the expiration or termination of this Agreement.

H. Lease Assignment and Assumption Agreement for MOB Properties. At the Close of the Transfer Properties Escrow, with respect to the MOB Properties only, MPHS shall assign to the District, and the District shall accept assignment and assume, all of MPHS' right, title, and interest in all leases in place as of the Close of the Transfer Properties Escrow with respect to the MOB Properties, all in accordance with the Lease Assignment and Assumption Agreement substantially in the form attached hereto as **Exhibit F**. Notwithstanding the foregoing, the District shall have no obligation to accept assignment or assume any lease to which the District properly objected under Section 2.03.C.2 above due to a material default by the tenant.

I. Pre-Closing Construction of Improvements on Certain Transfer Properties. The parties acknowledge and agree that, with respect to 1811 Trousdale Drive and the Merged Front Parcel only, at the Close of the Transfer Properties Escrow, MPHS shall transfer to the District, and the District shall accept, fee title to the land only. MPHS shall retain title to and ownership of, and the District shall accept transfer of fee title to the land subject to, MPHS' ownership of and title to any Improvements that MPHS properly constructs on 1811 Trousdale Drive and the Merged Front Parcel in accordance with Section 3.02 of this Agreement prior to the Close of the Transfer Properties Escrow. MPHS shall transfer the Transfer Properties to the District free of any mechanics' or materialmens' liens, including any that arise out of or relate to any of the Pre-Closing Development Activities (as defined in Section 3.02).

J. Recording of Final Map for the Fully Merged Parcel. The Escrow Holder, as part of the Close of the Transfer Properties Escrow, shall record, immediately after the Escrow Holder records of all of the grants deeds that transfer all of the Transfer Properties to the District, the Phase 2 Parcel Map that merges the Merged Front Parcel, 1811 Trousdale Drive, and the Existing Hospital Site into the Fully Merged Parcel, all as set forth in Section 3.01.A.8(b) of this Agreement.

K. Close of the Transfer Properties Escrow. At and as part of the Closing), the parties shall close the Transfer Properties Escrow (the "**Close of the Transfer Properties**

**Escrow**") for and shall complete MPHS' transfer to the District of all of MPHS' right, title, and interest in and to the Transfer Properties, in accordance with this Section 2.03.K.

1. Conditions to Close of the Transfer Properties Escrow for the District's Benefit. Notwithstanding any provision herein to the contrary, the Close of the Transfer Properties Escrow, and the parties obligations with respect to transfer of each of the Transfer Properties, shall be subject to the satisfaction of, prior to the Closing Date, with respect to each Transfer Property, with the District retaining the right to waive, in writing, in whole or in part, the following conditions at or prior to the time prescribed herein for approval or disapproval by the District:

(a) At the Close of the Transfer Properties Escrow, the Escrow Holder shall issue and deliver to the District the District's Title Policy for the Transfer Property, together with the endorsements referred to herein insuring the District's fee simple title to the Transfer Property in the amount set forth for such Transfer Property as set forth in Section 2.03.C.4, subject only to the Permitted Exceptions, or the Escrow Holder shall have irrevocably committed in writing to issue such policy;

(b) MPHS shall have performed, observed, and complied with all material covenants, agreements, and conditions required by this Agreement with respect to the Transfer Properties and, if applicable, with respect to the MOB Properties, the Lease Assignment and Assumption Agreement, to be performed, observed, and complied with on its part in sufficient time to permit the Close of the Transfer Properties Escrow;

(c) All material representations and warranties of MPHS with respect to such Transfer Property shall be true and correct as of the date of this Agreement and as of Close of the Transfer Properties Escrow;

(d) There shall have occurred no other material adverse change affecting the physical condition of the Transfer Property since the end of the Feasibility Period;

2. Effect of Conditions to Close of the Transfer Properties Escrow. Each of the foregoing conditions is for the District's sole benefit. If any of the conditions precedent set forth above are not satisfied or waived in writing by the District at or prior to the times prescribed therein, then the District shall have the option, exercisable by written notice to MPHS at or prior to the Close of the Transfer Properties Escrow, of declining to proceed with the Close of the Transfer Properties Escrow. If the District desires not to proceed with the Close of the Transfer Properties Escrow, then the parties agree to cooperate and work together in good faith to resolve, satisfy, or mitigate, to the extent possible, the conditions precedent which are not satisfied or waived by the District. Further, if the District does not desire to acquire one or more of the MOB Properties, the parties agree that MPHS shall retain such MOB Properties free and clear of any District rights. The District shall quitclaim any of its interest in such MOB Properties to MPHS at Closing.

3. MPHS' Deliveries to the Transfer Properties Escrow.

(a) At or before the Close of the Transfer Properties Escrow, MPHS shall execute and deliver to the Escrow Holder the following documents with respect to each of the Transfer Properties:

(1) A grant deed or deeds ("**Deed**"), free of all mortgages, deeds of trust, financing statements, liens and other encumbrances and subject only to the Permitted Exceptions;

(2) An appropriate mechanic's lien affidavit;

(3) An affidavit of exclusive possession of the Transfer Property being conveyed;

(4) A non-foreign affidavit in a form reasonably acceptable to the District;

(5) If the Transfer Property is one of the MOB Properties, fully executed assignment(s) from MPHS to the District of all leases to be assigned to the District with respect to such MOB Property, and fully executed consents or acknowledgements from the tenants, if any, required with respect thereto, all in accordance with the Lease Assignment and Assumption Agreement;

(6) Appropriate assignments or bills of sale transferring to the District all other personal property or property rights contemplated by this Agreement or reasonably requested by the District in forms reasonably acceptable to the District, free and clear of all liens, claims or encumbrances;

(7) Evidence of landlord's consent to assign the ground lease and premises lease regarding 1600 Trousdale Drive;

(8) Appropriate evidence of MPHS' formation, existence and authority to sell and convey the Transfer Property; and

(9) Such other documents that the Escrow Holder may reasonably require in connection with issuance of the District's Title Policy to the District and to deliver good and marketable title to the Transfer Property from MPHS to the District as provided in this Section 2.03.

(b) In addition, MPHS shall deliver to the Escrow Holder at or before the Close of the Transfer Properties Escrow the fully executed original Phase 2 Parcel Map, in recordable form, that merges the Merged Front Parcel, 1811 Trousdale Drive, and the Existing Hospital Site into the Fully Merged Parcel.

4. The District's Deliveries to the Transfer Properties Escrow. At or before the Close of the Transfer Properties Escrow, the District shall deliver to the Escrow

Holder appropriate evidence of the District's formation, existence, and authority to acquire and accept transfer of the Transfer Property.

5. Closing Statements. At or before the Close of the Transfer Properties Escrow, the District and MPHS shall each execute counterpart closing statements in a customary form, and such other documents that are reasonably necessary to consummate the Close of the Transfer Properties Escrow.

6. Costs. At or before the Close of the Transfer Properties Escrow, each party shall pay one-half of all closing costs, including but not limited to title insurance, escrow fees, and recordation costs, in a form of funds reasonably acceptable to Escrow Holder.

2.04. MPHS' Purchase of the District's Interest in the 1720 Property. The provisions of this Section 2.04 shall govern the parties' rights and obligations regarding MPHS' purchase of the District's interest in the 1720 Property.

A. Purchase Price. MPHS shall pay the District a purchase price of Six Million Six Hundred Fifty Thousand Dollars (\$6,650,000) (the "**1720 Purchase Price**"), payable in full in cash at Close of the 1720 Property Escrow, for the District's interest in the 1720 Property.

B. Quitclaim Deed. At the Close of the 1720 Property Escrow, the District shall convey and quitclaim to MPHS by a quitclaim deed all of the District's right, title, and interest in the 1720 Property.

C. 1720 Property Escrow. By or before the date the Ballot Measure is submitted to the District voters, the parties shall open an escrow (the "**1720 Property Escrow**") with the Escrow Holder. The closing of the 1720 Property Escrow shall occur as part of the Closing described in Section 4.01.

D. "As-Is" Transfer. MPHS acknowledges and agrees that it or its predecessor in interest has had access to and possession and control of, and has managed and operated, the 1720 Property at all times since the District transferred the 1720 Property to MPHS' predecessor in interest as part of the 1985 Transaction, and is fully and adequately informed with respect to the 1720 Property, the Condition of the 1720 Property (as defined below) and the condition of title thereto. MPHS acknowledges and agrees that the District's interest in the 1720 Property is to be conveyed to and accepted by MPHS in an "as is" condition with all faults. The District does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the 1720 Property or related matters; in particular, but without limitation, the District makes no representations or warranties with respect to the quality, use, condition, title, occupation, value, or management of the 1720 Property; the ability of MPHS to develop the 1720 Property or its suitability for any development or use desired or planned by MPHS; the availability of utilities or other infrastructure improvements on or to the 1720 Property; grading and drainage; soils conditions; compliance with applicable statutes, laws, codes, ordinances, regulations, or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health, handicapped persons, or environmental matters; compliance with

covenants, conditions, and restrictions (whether or not of record), other local, municipal, regional, state, or federal requirements, or other statutes, laws, codes, ordinances, regulations, or requirements (collectively, the "**Condition of the 1720 Property**"). MPHS acknowledges that it is entering into this Agreement and shall acquire the District's interest in the 1720 Property on the basis of its own knowledge and investigation of the physical and environmental conditions of the 1720 Property, including the subsurface conditions, and MPHS assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

E. Release. MPHS, for itself, its successors, and assigns, hereby waives, releases, remises, acquits, and forever discharges the District and the District's employees, directors, agents, and any other person acting on behalf of the District, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines, or compensation whatsoever, direct or indirect, which MPHS now has or which MPHS may have in the future on account of or in any way arising out of or in connection with the 1720 Property and the Condition of the 1720 Property, including, without limitation, any environmental claims or any federal, state, or local law, ordinance, rule, or regulation applicable thereto. With respect to and without limiting the release set forth above, MPHS hereby specifically waives the provisions of Section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

MPHS understands and acknowledges the significance and consequence of this specific waiver of Section 1542 and hereby accepts and assumes the risk of possible differences from the facts now believed by it to be true and agrees that the above release shall be and remain effective notwithstanding such differences in facts. MPHS further hereby expressly assumes full responsibility for any injuries, damages, or losses that may occur as a result of the release set forth above.

F. Indemnity. From and after the date of transfer of the District's interest in the 1720 Property to MPHS, MPHS shall, to the maximum extent permitted by law, indemnify, defend, and save and hold harmless the District and any corporation which directly or indirectly controls or is controlled by or is under common control with the District and its and their employees, directors, agents, officers, successors, and assigns, from and against any and all Claims, that arise out of or are connected with the 1720 Property or the Condition of the 1720 Property (including, without limitation, any environmental claims), except to the extent that such Claims arise out of the activities or omissions of the District or its employees, consultants, contractors, officers, invitees, affiliates, agents, or representatives, in, on or about the 1720 Property. MPHS' indemnity obligations set forth in this Section 2.04.F shall survive the Close of the 1720 Property Escrow, the transfer of the District's interest in the 1720 Property to MPHS, the Closing, and the expiration of this Agreement.

G. MPHS' Title Policy. The Escrow Holder shall issue at Close of the 1720 Property Escrow a title insurance policy to MPHS for the 1720 Property ("**MPHS' Title Policy**") that is a CLTA Owner's policy of title insurance, with liability in the amount of the 1720 Purchase Price, insuring title to the 1720 Property in MPHS, subject to all printed exceptions that the Escrow Holder identifies in the MPHS Title Policy.

H. Close of the 1720 Property Escrow. At and as part of the Closing (as defined in Section 4.01 below), the parties shall close the 1720 Property Escrow (the "**Close of the 1720 Property Escrow**") for and shall complete the District's transfer to MPHS of all of the District's right, title, and interest in and to the 1720 Property.

1. Conditions to Close of the 1720 Property Escrow.

Notwithstanding any provision herein to the contrary, Close of the 1720 Property Escrow, and the parties obligations with respect to the sale of the District's interest in the 1720 Property, shall be subject to the satisfaction of, prior to the Closing Date, with respect to the District's interest in the 1720 Property, with MPHS retaining the right to waive, in writing, in whole or in part, the following conditions at or prior to the time prescribed herein for approval or disapproval by MPHS:

(a) At Close of the 1720 Property Escrow, the Escrow Holder shall issue and deliver to MPHS the MPHS Title Policy for the 1720 Property, together with the endorsements referred to herein insuring MPHS' fee simple title to the 1720 Property in the amount of the 1720 Purchase Price, or the Escrow Holder shall have irrevocably committed in writing to issue such policy;

(b) The District shall have performed, observed, and complied with all covenants, agreements, and conditions required by this Agreement with respect to the District's interest in the 1720 Property to be performed, observed, and complied with on its part in sufficient time to permit the Close of the 1720 Property Escrow;

(c) All representations and warranties of the District with respect to the District's interest in the 1720 Property shall be true and correct as of the date of this Agreement and as of Close of the 1720 Property Escrow.

2. Effect of Conditions to Close of the 1720 Property Escrow. Each of the foregoing conditions is for MPHS' sole benefit. If any of the conditions precedent set forth above are not satisfied or waived in writing by MPHS at or prior to the times prescribed therein, then MPHS shall have the option, exercisable by written notice to the District at or prior to Close of the 1720 Property Escrow, of declining to proceed with Close of the 1720 Property Escrow. If MPHS desires not to proceed with Close of the 1720 Property Escrow, then the parties agree to proceed with the Close of the 1720 Property Escrow and negotiate in good faith to address MPHS' satisfaction or waiver of the conditions.

3. The District's Deliveries to the 1720 Property Escrow. At or before the Close of the 1720 Property Escrow, the District shall execute and deliver to the Escrow Holder the following documents with respect to the 1720 Property:

(a) A quitclaim deed, free of all mortgages, deeds of trust, financing statements, liens and other encumbrances and subject only to the Permitted Exceptions;

(b) A non-foreign affidavit in a form reasonably acceptable to MPHS;

(c) Appropriate evidence of the District's formation, existence and authority to sell and convey the District's interest in the 1720 Property; and

(d) Such other documents that the Escrow Holder may reasonably require in connection with issuance of the MPHS Title Policy to MPHS and to deliver good and marketable title to the District's interest in the 1720 Property from the District to MPHS as provided in this Section 2.04.

4. MPHS' Deliveries to the 1720 Property Escrow. At or before the Close of the 1720 Property Escrow, MPHS shall deliver to the Escrow Holder the 1720 Purchase Price, in a form of funds acceptable to Escrow Agent. MPHS shall also provide the Escrow Holder with appropriate evidence of MPHS formation, existence, and authority to acquire and accept transfer of the District's interest in the 1720 Property.

5. Closing Statements. At or before the Close of the 1720 Property Escrow, the District and MPHS shall each execute counterpart closing statements in a customary form, and such other documents that are reasonably necessary to consummate the Close of the 1720 Property Escrow.

I. Costs. At or before the Close of the 1720 Property Escrow, each party shall pay one-half of all closing costs, including but not limited to title insurance, escrow fees, and recordation costs, in a form of funds reasonably acceptable to Escrow Holder.

### ARTICLE III

#### PARTIES' OBLIGATIONS THROUGHOUT AGREEMENT TERM

3.01. Regulatory Approvals. The provisions of this Section 3.01 shall govern the parties' rights and obligations with respect to the Regulatory Approvals (as defined below).

A. Definition and Scope of Regulatory Approvals. MPHS (or in some instances, MPHS on behalf of the District) has obtained, has applied for, or will apply for and obtain final approval (which may occur either before or after Closing) of all of the permits, certifications, and approvals required for and with respect to implementing the Site Plan and constructing the Improvements (the "**Regulatory Approvals**"), which shall include, without limitation, the following:

1. The City's approval of the Magnolia Lot Line Adjustment, as defined and described in Section 3.02.A.1;

2. The City's approval and certification of the EIR for the New Facility and the Improvements, which the City completed on November 15, 2004, as set forth in Recital N;

3. The City's preliminary/conceptual approval of the Phased TM, which the City granted on October 27, 2004, and November 15, 2004, and the District's consent thereto as owner of the Existing Hospital Site;

4. The City's approval of re-zoning of 1515 Trousdale Drive and the Front Lawn to C-1 zoning, which the City approved via Ordinance 1747 on November 15, 2004;

5. The City's approval of a zoning text change to the City's C-1 zoning designation to allow for MOB use under such zoning designation, which the City approved via Ordinance 1747 on November 15, 2004;

6. The City's approval of MPHS' Conditional Use Permit and Design Review for the New Facility and the Improvements, which the City approved via Resolution 105-2004, on November 15, 2004 (the "Conditional Use Permit"). The Conditional Use Permit provides for size and dimensions of the New Facility as generally described in the EIR and in the AA Plans, including, without limitation, space for up to 313 beds;

7. The City's approval, conditioned on the District taking fee title to the entire Fully Merged Parcel, of re-zoning portions of the Fully Merged Parcel so that the entire Fully Merged Parcel is zoned "Unclassified";

8. The City's final approval of the Phased TM. The Phased TM generally will provide for the merger and re-parceling of 1811 Trousdale Drive, 1515 Trousdale Drive, the Front Lawn, and the Existing Hospital Site, with final or parcel maps recorded, in the following sequenced phases:

(a) Phase 1, which shall be the creation of the Merged Front Parcel, and which MPHS plans to complete prior to or promptly after Voter Approval as shown on the Phase 1 Map;

(b) Phase 2, which shall be the creation of the Fully Merged Parcel under District fee ownership as shown on the Phase 2 Map, which the parties intend to record as part of the Close of the Transfer Properties Escrow; and

(c) Phase 3, which shall split the Fully Merged Parcel into the approximately 21-acre New Facility Site and the District's 4.15 Acre Parcel that the District shall retain (and which shall constitute a portion of the "**District Controlled Land**" under the Definitive Agreements) and which shall not be a part of the New Facility Site as shown on the Phase 3 Map. The parties intend to record the Phase 3 Map after MPHS has demolished the Existing Hospital and performed its other obligations under the Definitive Agreements regarding the District Controlled Land;

9. Extensions of the Phased TM beyond the original expiration date as necessary to provide that the life of the Phased TM shall continue until recording of the Phase 3 Map;

10. All other permits and approvals required from the City or from other governmental agencies for construction of the Improvements, including, without limitation, permits or approvals from CalTrans, Federal Aviation Administration, San Francisco Public Utilities Commission and the City and County of San Francisco Board of Supervisors, Regional Water Quality Control Board (including an NPDES permit), Bay Area Air Quality Management District, San Mateo Transit District, San Mateo Airport Land Use Commission, San Mateo City/County Association of Governments (Congestion Management Agency), and the Office of Statewide Health Planning and Development.

The parties acknowledge and agree that the Conditional Use Permit anticipates certain landscaping and other neighborhood changes to the Site Plan or AA Plans, and these changes shall be deemed by the parties to be foreseeable as opposed to material or require Secondary Approval as provided under Section 3.01.C. MPHS shall keep the District reasonably informed of these changes or any other changes to the Site Plan or AA Plans.

B. MPHS' Obligations Regarding Regulatory Approvals.

1. MPHS' Costs. Throughout the term of this Agreement, MPHS, at its own cost and expense, shall diligently pursue final approval of all of the Regulatory Approvals appropriate to obtain during the term of this Agreement. MPHS shall keep the District informed of the status and progress of MPHS' pursuit of final approval of the Regulatory Approvals and any material changes or modifications of any of the Regulatory Approvals or the AA Plans.

2. Final Approval of Regulatory Approvals. As used in this Agreement "final approval" of any Regulatory Approval shall mean that (a) MPHS has obtained all necessary final administrative approvals for the Regulatory Approval from the applicable governmental body or agency with jurisdiction, (b) all deadlines for any third party to file or pursue any administrative or court challenge with respect to the Regulatory Approval have passed, and (c) all administrative and court challenges or appeals with respect to the Regulatory Approval, if any, filed or pursued by any third party have been resolved, settled, or completed through non-appealable judgment and any revision, reprocessing and re-approval of any Regulatory Approval made necessary by any such challenge shall be complete and (i) all deadlines for any third party to file or pursue any administrative or court challenge with respect to the re-approved Regulatory Approval have passed and (ii) all administrative and court challenges or appeals with respect to the re-approved Regulatory Approval, if any, filed or pursued by any third party have been resolved, settled, or completed through non-appealable judgment.

3. Indemnity. MPHS shall, to the maximum extent permitted by law, indemnify, defend, and save and hold harmless the District and any corporation which directly or indirectly controls or is controlled by or is under common control with the District, its and their

employees, directors, agents, officers, successors, and assigns, from and against any and all Claims, that arise out of or are connected with the Regulatory Approvals, except to the extent caused, directly or indirectly, by the activities or omissions of the District or its employees, consultants, contractors, officers, invitees, affiliates, agents, or representatives.

4. Survival of Obligations. MPHS' indemnity obligations regarding the Regulatory Approvals as set forth in Section 3.01.B.3 shall survive the Closing and the expiration or termination of this Agreement.

C. District and MPHS Secondary Approvals. If the City or any other governmental agency exclusive of the District with jurisdiction over any of the Regulatory Approvals requires, or if MPHS requests, any material change to the EIR, the Regulatory Approvals, the Improvements, or the Definitive Agreements, and any such change would result in either (i) Improvements that are materially different than provided for in the EIR or the Conditional Use Permit, or (ii) a "**Material Reduction**" (as defined below), then each of the parties shall not be bound by any such change(s) until the District's Board of Directors has approved such change(s) (the "**Secondary Approval**"). The District may not unreasonably withhold or condition its Secondary Approval of any change requested by MPHS, and neither party may unreasonably withhold or condition its Secondary Approval of any change required by any governmental agency. The parties intend that the Improvements, especially the New Facility, be sized in a manner consistent with projected needs and uses within the community and good business practices. The parties intend that a Material Reduction be permitted if regulatory changes, market conditions or community health care need warrant such changes, or such changes are necessary to obtain required regulatory permits or approvals. Any changes to the EIR, the Regulatory Approvals, the Improvements, or the Definitive Agreements that do not result in either (a) a New Facility or other Improvements that are materially different than provided for in the EIR or the Conditional Use Permit, or (b) a Material Reduction, shall not require either party's Secondary Approval. If either party's Board of Directors fails to approve or disapprove any change that requires such party's Secondary Approval hereunder within sixty (60) days after such party's Board of Directors is presented with the change, such party's Board of Directors shall be deemed to have provided Secondary Approval of such change. However, in no event shall a reduction that exceeds fifty percent (50%) in the number of beds of the New Facility be permitted without the District's express Secondary Approval.

1. Material Reduction. As used in this Agreement, "**Material Reduction**" is any reduction in the size of the New Facility that reduces the total square footage of the New Facility or the number of beds therein by an amount greater than fifteen percent (15%).

2. No Secondary Approval. If either party does not provide its Secondary Approval and such approval was not unreasonably withheld or conditioned, then this Agreement shall terminate without default or breach by either party upon notice by one party to the other of its decision to terminate this Agreement and, upon such termination, neither party shall have any obligations to the other hereunder (except for those obligations of the parties that survive termination of this Agreement). Should this Agreement be terminated under this Section 3.01.C, then MPHS shall have no obligation to construct, or liability for not constructing, the

Improvements. In addition, the parties agree the District shall pay MPHS for Pre-Closing Development Activities in accordance with Section 3.05.B.

D. District's Secondary Consent to Replacement Project. Subject to the conditions therefor set forth in Section 3.01.D.1 below, MPHS shall have the right to propose a Replacement Project (as defined below). If MPHS proposes a Replacement Project, then the District shall not be bound to substitute such Replacement Project in lieu of the Improvements until the District's Board of Directors has consented to such Replacement Project ("**Secondary Consent**"). Such Secondary Consent shall be within the sole discretion of the District. The parties intend that any Replacement Project be sized in a manner consistent with projected needs and uses within the community and good business practices. If the District's Board of Directors fail to approve or disapprove any change that requires Secondary Consent hereunder within sixty (60) days after the District's Board of Directors is presented with the change, the District's Board of Directors shall be deemed to have provided Secondary Consent of such change.

1. Replacement Project. As used in this Agreement, "**Replacement Project**" is a replacement project that may be proposed by MPHS that significantly changes the design of the New Facility so that the Replacement Project is, in effect, a different project than the New Facility. The parties agree that MPHS may propose a Replacement Project if either of the following occur:

(a) The total project costs to construct and equip the Improvements and conduct demolition and site preparation in accordance with the EIR and the Conditional Use Permit is projected to exceed four hundred eighty-eight million dollars (\$488,000,000); or

(b) It is not financially feasible for MPHS to pay for the total project construction of the Improvements and conduct demolition and site preparation in accordance with the EIR and the Conditional Use Permit. For purposes of this Section 3.01.D.1(b), financial feasibility of the project shall be determined in accordance with MPHS' and Sutter Health's policies and guidelines for financing the construction of hospitals and related improvements.

It is anticipated by the parties that if MPHS proposes a Replacement Project, the project size and projected scope of services will most likely be reduced to propose a Replacement Project that is financially feasible for MPHS to pay for, takes into account market conditions, reflects community health care needs and complies with regulatory requirements.

2. District Provides Secondary Consent. If the District provides its Secondary Consent to the Replacement Project, the parties shall then diligently and in good faith negotiate, and, if the negotiations are successful, enter into amended Definitive Agreements for such Replacement Project. The amended Definitive Agreements shall provide that the construction of the Replacement Project shall be at no cost to the District and in substantial conformity and compliance with any amended or new EIR and Conditional Use Permit to be obtained by MPHS, unless otherwise agreed to by the parties. If the parties are unable to agree to such amended Definitive Agreements, then this Agreement shall terminate without default or

breach by either party upon notice by one party to the other of its decision to terminate this Agreement, and, upon such termination, neither party shall have any obligations to the other hereunder (except for those obligations of the parties that survive termination of this Agreement). Should this Agreement be terminated under this Section 3.01.D, then MPHS shall have no obligation to construct, or liability for not constructing, the Improvements or the Replacement Project. In addition, the parties agree the District shall pay MPHS for Pre-Closing Development Activities in accordance with Section 3.05.B.

3. No District Secondary Consent. If the District does not provide its Secondary Consent to the Replacement Project, then this Agreement shall terminate without default or breach by either party (except for those obligations of the parties that survive termination of this Agreement) upon notice by one party to the other of its decision to terminate this Agreement. Should this Agreement be terminated under this Section 3.01.D, then MPHS shall have no obligation to construct, or liability for not constructing, the Improvements or the Replacement Project. In addition, the parties agree the District shall pay MPHS for Pre-Closing Development Activities in accordance with Section 3.05.B.

3.02. Pre-Closing Implementation of Phased TM and Construction of Certain Improvements. MPHS anticipates that MPHS will obtain final approval of the Phased TM and the relocation of the San Francisco Water District's water line (the "**Water Line**") and that it shall perform and satisfy certain of the conditions of approval of, and implement portions of, the Regulatory Approvals (including, without limitation, the Phased TM and the Conditional Use Permit), as are necessary to allow MPHS to start before Closing some of its development activities, including beginning construction of some of the Improvements. In particular, MPHS anticipates that it will perform those matters required under the Regulatory Approvals that will allow it to start before Closing those items listed in Sections 3.02.A.1-7 below, including commencement of building the parking facility and relocation of the Water Line. To be able to obtain a building permit for and start construction of the parking facility and the relocation of the Water Line, MPHS must perform, and needs the District to perform, certain tasks, as outlined in more detail in Section 3.02.A.1-6 below (collectively, the "**Pre-Closing Development Activities**"), and needs the District to generally cooperate with MPHS' efforts. The provisions of this Section 3.02 shall govern the parties' pre-Closing rights, obligations, and activities with respect to the Pre-Closing Development Activities.

A. Scope of Pre-Closing Development Activities. The Pre-Closing Development Activities shall include, without limitation, all of the items described in Sections 3.02.A.1-7 below, and other activities reasonably related thereto, including without limitation related landscaping, tree removal, grading and site preparation, and off-site roadway improvements. The District agrees that it shall use commercially reasonable and diligent efforts and shall cooperate in good faith with MPHS' pursuit of any additional required Regulatory Approvals for, and MPHS' performance of, the Pre-Closing Development Activities, which cooperation may include signing applications as owner of the Existing Hospital Site, providing necessary written consents, and timely granting reasonably required easements (as described below). The District hereby consents to MPHS performing all of the Pre-Closing Development Activities before Closing and agrees that MPHS shall have the right under this Agreement, but not the obligation, to perform each of the Pre-Closing Development Activities.

1. Magnolia Property Lot Line Adjustment and Related Matters. The Site Plan, EIR, Conditional Use Permit, and pending application for the Phased TM obligate or anticipate that MPHS shall exchange a portion of the 1811 Trousdale Drive property for a portion of the property at 1609 Trousdale Drive that is owned by a third party (the "**Magnolia Property**") and that MPHS shall construct certain new parking facilities on and for the Magnolia Property, all as reflected on the "Phase 2 Map" document attached hereto as **Exhibit D**. MPHS and the owner of the Magnolia Property shall accomplish the property exchange via a property exchange agreement and lot line adjustment (the "**Magnolia Lot Line Adjustment**"), pursuant to which MPHS shall transfer a portion of 1811 Trousdale Drive property to the owner of the Magnolia Property, in exchange for the owner of the Magnolia Property transferring a portion of that property to MPHS (to be added to the 1515 Trousdale Drive property). To complete this exchange, MPHS must first demolish the building on 1811 Trousdale Drive (to avoid encroachment of the building on the newly-configured Magnolia Property) and construct certain replacement parking facilities on the West side of the Magnolia Property.

2. Construction of Access Driveway to Future Emergency Room and Existing Hospital Site. MPHS intends to demolish the existing office building on the 1811 Trousdale Drive property and construct a new driveway access to the future emergency room and interim access to the Existing Hospital Site across the 1811 Trousdale Drive property and a portion of the Existing Hospital Site, as reflected in **Exhibit D**. In addition, MPHS must record an access easement, signed by MPHS and the District, between the portion of 1811 Trousdale Drive over which the emergency room access driveway is constructed and the Existing Hospital Site, in a form that meets the requirements and specifications therefor set by the City and which shall expire by merger upon Close of the Transfer Properties Escrow for MPHS' transfer of fee title to 1811 Trousdale Drive to the District. The easement must be recorded and the access driveway completed before MPHS closes the existing main driveway from El Camino Real.

3. Merger of 1515 Trousdale Drive and Front Lawn Parcels into a Single Legal Parcel. In order to commence construction of the parking facility, MPHS must combine the 1515 Trousdale Drive and Front Lawn parcels into a single legal parcel (the "**Merged Front Parcel**"), by recording the Phase 1 Map in the Official Records of the San Mateo County Recorder's Office.

4. Construction Access Easement Across the Existing Hospital Site. In order to commence construction of the parking facility, MPHS must provide proof of access to the City's satisfaction or obtain from the District an access easement across the District's Existing Hospital Site for purposes of construction access to the construction site for the parking facility. The construction access easement shall meet the requirements and specifications therefor set by the City, and shall expire by merger upon Close of the Transfer Properties Escrow for MPHS' transfer of fee title to the Merged Front Parcel to the District and commencement of the Construction Lease.

5. District Consent to Development Under the 1994 Declaration of Restrictions. MPHS must obtain the District's written consent to development of the Merged Front Parcel under that certain Declaration of Restrictions, dated February 3, 1994, and recorded in the Official Records of the County of San Mateo on February 22, 1994, as document

number 94031500, which the District covenants to provide to MPHS promptly upon MPHS' request.

6. Demolition of the Existing Buildings and Improvements on the Merged Front Parcel. MPHS intends to demolish all of the existing buildings and improvements on the Merged Front Parcel upon which MPHS will construct the parking facility.

7. Commencement of Construction of Parking Facility and Relocation of Water Line. At any time after MPHS obtains the required permits or authorizations therefor, MPHS may commence construction of the parking facility or relocation of the Water Line. In connection with commencement of such construction, MPHS shall close the entrance to the Merged Front Parcel and the Existing Hospital Site from El Camino Real and shall commence construction of the access driveway across 1515 Trousdale Drive property as modified by the Lot Line Adjustment.

B. Schedule for Pre-Closing Development Activities. The parties anticipate that MPHS shall commence and pursue the Pre-Closing Development Activities after the Effective Date. MPHS shall provide the District with a schedule of Pre-Closing Development Activities after the Effective Date. The parties understand and acknowledge that such schedule does not establish or mandate deadlines for any of the anticipated Pre-Closing Development Activities and does not require that MPHS commence or complete any of the Pre-Closing Development Activities in accordance with such schedule or at all before Closing.

C. General Provisions Governing Pre-Closing Development Activities.

1. Costs/Compliance with Regulatory Approvals. MPHS shall perform all of the Pre-Closing Development Activities at its own cost and expense and in compliance with the Regulatory Approvals and all applicable laws and regulations.

2. Indemnity. MPHS shall, to the maximum extent permitted by law, indemnify, defend, and save and hold harmless the District and any corporation which directly or indirectly controls or is controlled by or is under common control with the District, its and their employees, directors, agents, officers, successors, and assigns, from and against any and all Claims, that arise out of or are connected with the Pre-Closing Development Activities (including, without limitation, any mechanics' or materialmen's liens), except to the extent caused, directly or indirectly, by the activities or omissions of the District or its employees, consultants, contractors, officers, invitees, affiliates, agents, or representatives. MPHS' indemnity obligations as set forth in this Section 3.02.C.2 shall survive the Closing and the expiration or termination of this Agreement.

### 3.03. Financing.

A. For Improvements. Pursuant to the Definitive Agreements, MPHS shall have the obligation to pay for the permitting, entitlement, development, and construction of the Improvements at no cost to the District. MPHS acknowledges and agrees that the District shall have no obligation to arrange for or obtain, or assist MPHS to arrange for or obtain, any

financing or any other financing related to the permitting, entitlement, development, or construction of the Improvements. The District agrees to reasonably cooperate with MPHS and Sutter Health to implement such financing upon reasonable request by MPHS, and MPHS shall pay the District its reasonable costs to do so.

B. Financing Related to the Existing Hospital. At all times during the term of this Agreement, MPHS shall be responsible for any debt related to, or financing of, any construction with respect to, or improvement to, the Existing Hospital, in accordance with the Existing Lease.

3.04. District Representation on MPHS' Hospital Building Committee. During the term of this Agreement, two (2) members of the District Board shall serve on MPHS' Hospital Building Committee. MPHS shall, during the term hereof, provide quarterly status reports to the District on the project, in the form that MPHS has used to report to the District about the project prior to the execution of this Agreement.

3.05. Existing Lease. Except as set forth in this Section 3.05 and prior to the Closing, the parties' execution of this Agreement and their respective performance of the obligations or exercise or enforcement of their rights under this Agreement, shall not amend, alter, or modify the Existing Lease. Except as set forth in this Section 3.05, the Existing Lease (unless otherwise amended by the parties thereto prior to the Closing in accordance with terms and conditions in the Existing Lease for amendment thereof) shall at all times prior to Closing remain in full force and effect in accordance with the terms and conditions therein as of the date of this Agreement.

A. Amendment of Rent Provisions Upon Commencement of Construction of the Parking Facility. The parties hereby agree that, if MPHS commences construction of the parking facility before the Closing, then, starting upon such date (the "**Rent Amendment Date**"), the provisions of Sections 4.1, 4.2, and 4.3 of the Existing Lease regarding the rent payable to the District for the Existing Hospital Site and MPHS' payment thereof (including the provisions of Section 4.2 regarding capital expenditures in lieu of cash rental payments) shall be superseded by Sections 3.05.A.1-3 below, which shall govern the rent payable and the rental payment requirements for the Existing Hospital Site after the Rent Amendment Date and for the applicable period going forward from such date as described below. For purposes of this Section 3.05.A, MPHS shall be deemed to have commenced construction of the parking facility on the first day of the month that MPHS begins excavation for construction of the parking facility. MPHS shall promptly notify the District in writing of its beginning excavation for construction of the parking facility. The provisions of this Section 3.05.A shall govern the parties from the Rent Amendment Date until the earlier to occur of: (i) Closing, in which case the Existing Lease shall be amended by Construction Ground Lease and rental payments after the Closing Date shall be governed thereby, or (ii) the termination of this Agreement prior to the Closing, in which case the provisions of this Section 3.05.A (except for the post-termination transition provisions of Section 3.05.A.3(b) below) shall have no further force nor effect and the rent and rental payment provisions set forth in Sections 4.1, 4.2, and 4.3 of the Existing Lease shall govern the parties' rights and obligations with respect thereto from the date of termination of this Agreement.

1. Monthly Rent. Beginning on the Rent Amendment Date, MPHS shall pay to the District monthly rent of one hundred twenty five thousand dollars (\$125,000) per month ("**Initial Rent**"), payable in cash in advance on the first day of each calendar month. Rent for partial calendar months (i.e., for the month in which the Rent Amendment Date occurs and for the month, if any, in which this Agreement is terminated prior to Closing), shall be prorated for such partial month. MPHS shall make all rental payments to the District at its principal office in Burlingame, California, or to any individual or entity to which the District directs that MPHS shall make the payments. If the District does not receive from MPHS any installment of monthly rent within ten (10) days after the due date therefor, MPHS shall pay to the District a late charge equal to five percent (5%) of the overdue amount. The parties agree that the late charge represents a fair and reasonable estimate of the costs of the District will incur because of the late payment. The District's acceptance of the late charge shall not constitute a waiver of MPHS' default for the overdue amount, nor shall it prevent the District from exercising other rights and remedies granted under this Agreement. Any rent amount due to the District, if not paid within ten (10) days following the due date therefor, shall bear interest from the date due until paid at the rate of eight percent (8%) per year. Interest shall not be payable on late charges that MPHS incurs, nor on any amounts on which MPHS pays late charges to the extent this interest would cause the total interest to be in excess of that legally permitted. Payment of interest shall not excuse or cure any default by MPHS.

2. Adjustment for Inflation. If the provisions of this Section 3.05.A still govern the rent payable under the Existing Lease on the date that is three (3) years after the Rent Amendment Date, then the rent shall be adjusted for inflation by using 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**"). For purposes of determining the Index adjustment at the three-year anniversary of the Rent Amendment Date, the Index that is current as of the Rent Amendment Date shall serve as the base index (the "**Base Index**"). The monthly rent shall be adjusted on the third anniversary of the Rent Amendment Date (and every third anniversary thereof thereafter) to be equal to 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 most-recently published Index as of the month of the third anniversary of the Rent Amendment Date. Thereafter, on each third anniversary of the Rent Amendment Date, the monthly rent shall be further adjusted to be equal to 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 most-recently published Index as of the month of the such multiple of the third anniversary of the Rent Amendment Date.

If at any relevant time the Index is no longer published, but the Department of Labor, Bureau of Labor Statistics then publishes 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 Section 3.05.A.2. 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 monthly rent or making other adjustments or calculations under this Section 3.05.A.2 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 the 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 this Section 3.05.A.2 refers.

3. Coordination With Existing Lease Rent Provisions.

(a) Each year of the Existing Lease for which rent is due thereunder runs from February 1 of one calendar year through January 31 of the next calendar year (an "**Existing Lease Year**"). For the Existing Lease Year in which the Rent Amendment Date occurs, the amount of rent payable under the Existing Lease (in whatever form allowed under the Existing Lease) shall be prorated for such Existing Lease Year as of the Rent Amendment Date and shall be payable by MPHS as set forth in this Section 3.05.A.3(a). If, as of the Rent Amendment Date, MPHS has not yet paid (in whatever form allowed under the Existing Lease) the full amount of such prorated rent under the Existing Lease for such Existing Lease Year, MPHS shall either (a) pay such amount in cash to the District within thirty (30) days after the Rent Amendment Date, or (b) make "capital expenditures" (as defined in Section 4.2 of the Existing Lease) in the amount of the deficiency within thirty (30) days after the Rent Amendment Date. If MPHS has paid more than the full amount of the prorated rent under the Existing Lease in the form of "capital expenditures", MPHS shall not receive nor be entitled to any credit against the cash rent payable to the District under Section 3.05.A.1 above for the amount of capital expenditures in excess of the prorated rent amount.

(b) If this Agreement is terminated for any reason prior to the Closing, the cash rent due from MPHS to the District under Section 3.05.A.1 above shall be prorated for the month in which such termination occurs. In addition, upon such termination, MPHS shall have the obligation to make rental payments as set forth in Sections 4.1 through 4.3 of the Existing Lease (in any form allowed thereunder) for the prorated remainder of the Existing Lease Year in which this Agreement is terminated (and in full for each Existing Lease Year thereafter).

B. Pre-Closing Development Activities. If this Agreement terminates for any reason other than termination upon Closing, then the District shall pay MPHS the net book value of the Pre-Closing Development Activities made by MPHS at termination or expiration of the Existing Lease. Such net book value shall be determined in accordance with generally accepted accounting principles and the depreciable life guidelines set forth by the American Hospital Association. The District's obligations regarding Pre-Closing Development Activities as set forth in this Section 3.05.B shall survive the Closing and the expiration or termination of this Agreement.

C. Early Termination of Pre-Closing Agreement. If this Agreement terminates in accordance with either of Sections 3.01.C or 3.01.D, then

1. AA Plans and Regulatory Approvals. The District may purchase the AA Plans and the right to assume Regulatory Approvals that MPHS has developed concerning the Improvements from MPHS at MPHS' cost.

2. Seismic Compliance by 2013. If Seismic Standards require that a replacement facility be built by 2013 and the District plans to construct its own new facility, then MPHS shall transfer to the District the Front Lawn, 1811 Trousdale Drive and 1515 Trousdale Drive (as those properties may be modified by a lot line adjustment with the Magnolia Property) to the District at no cost to the District upon the District's request for the District to pursue its own facility development, but in no event shall such transfer occur before the termination date of this Agreement. In addition, MPHS shall transfer to the District on the termination date 1720 El Camino Real and the District shall pay MPHS at transfer an amount equal to fifty percent (50%) of the then-fair market value for this property. MPHS shall also transfer the following properties to the District at no cost to the District on the termination date: 1600 Trousdale Drive, 1848-50 El Camino Real and the Davis Drive Driveway. However, the parties agree that upon any property transfer(s), the parties shall execute a mutual general release and that, without an executed mutual general release, MPHS shall have no obligation to transfer any of the properties to the District. The District's construction of its new facility shall not unreasonably interfere with MPHS' operation of the Existing Facility. MPHS shall continue operating the Existing Hospital pursuant to the terms of the Existing Lease until such time as the District's new facility is operational ("**District's Start Service Date**"). The Existing Lease shall be amended to terminate any obligation by MPHS to make extraordinary repairs or to rebuild the Existing Hospital, and MPHS' obligation to maintain the Existing Hospital shall be modified to take into account the remaining term of the Existing Lease and the expectation that the New Facility will replace the Existing Hospital. MPHS' obligation to maintain the Existing Hospital shall be limited to those repairs necessary to provide patient care and maintain the Existing Hospital in operating condition. The District shall have the option of allowing MPHS to operate this new facility under the terms of the Existing Lease until the end of the Existing Lease, or terminating the Existing Lease. The District shall give MPHS prior written notice six (6) months before the District's Start Service Date of its desire for MPHS to operate the District's new facility. If the parties agree that MPHS will operate the District's new facility, the parties shall negotiate in good faith to enter into whatever written agreement is necessary and appropriate to govern such relationship by no less than ninety (90) days before the District's Start Service Date. If the District does not provide the notice of its intent for MPHS to operate the District's new facility, or if the parties do not have a written agreement for such operation in the time periods set forth in this Section, or if the District elects to terminate the Existing Lease, then MPHS shall have no right to operate the District's new facility or the Existing Hospital and, unless that parties agree otherwise, the District shall be liable to MPHS for all damages that MPHS is entitled to recover from the District for such termination under the Existing Lease and applicable law.

3. Seismic Compliance After Expiration of the Existing Lease. If deadline for building a replacement facility under the Seismic Standards falls after expiration of the Existing Lease, then the Existing Lease shall govern the parties' relationship until the Existing Lease expires or terminates. The Existing Lease shall be amended to terminate any obligation by MPHS to make extraordinary repairs or to rebuild the Existing Hospital, and MPHS' obligation to maintain the Existing Hospital shall be modified to take into account the remaining term of the Existing Lease and the expectation that the New Facility will replace the Existing Hospital. MPHS' obligation to maintain the Existing Hospital shall be limited to those repairs necessary to provide patient care and maintain the Existing Hospital in operating

condition. In addition, if the District plans to construct its own new facility to meet such deadline, then MPHS shall transfer to the District at no cost to the District the Front Lawn, 1811 Trousdale Drive and 1515 Trousdale Drive (as those properties may be modified by a lot line adjustment with the Magnolia Property) upon the District's written request to MPHS for the District to pursue its own facility development, but in no event shall such transfer occur before the earlier of five (5) years prior to the date required by Seismic Standards or the termination date of this Agreement. In addition, MPHS shall transfer to the District on the termination date 1720 El Camino Real and the District shall pay MPHS at transfer an amount equal to fifty percent (50%) of the then-fair market value for this property. MPHS shall also transfer the following properties to the District at no cost to the District on the termination date: 1600 Trousdale Drive, 1848-50 El Camino Real and the Davis Drive Driveway. However, the parties agree that upon any property transfer(s), the parties shall execute a mutual general release and that, without an executed mutual general release, MPHS shall have no obligation to transfer any of the properties to the District. The District's construction of its new facility shall not unreasonably interfere with MPHS' operation of the Existing Facility.

4. The parties' obligations set forth in Section 3.05.C shall survive the Closing and the expiration or termination of this Agreement.

#### ARTICLE IV CLOSING

4.01. Closing; Closing Date. The closing ("**Closing**") shall be as soon as practicable after all of the conditions precedent therefor set forth in Section 4.02 have been satisfied or waived by the party or parties for whose benefit the condition exists (the "**Closing Date**"), but shall not be later than December 31, 2007, unless otherwise agreed to by the parties. The Closing (except for the Close of the Transfer Properties Escrow and the Close of the 1720 Property Escrow) shall take place at the offices of McDonough Holland & Allen PC, 555 Capitol Mall, 9th Floor, Sacramento, CA 95814, or at such other place as the parties may agree. The Closing shall include the Close of the Transfer Properties Escrow and the Close of the 1720 Property Escrow in accordance with Sections 2.03 and 2.04. The Closing of all transactions contemplated by the Agreement shall be effective as of 12:01 a.m. on the day after the Closing Date.

4.02. Conditions Precedent to Parties' Obligations to Close. The Definitive Agreements shall become effective and shall bind the parties thereto, the parties shall assume the respective rights and obligations under the Definitive Agreements, and the parties shall close the Transfer Property Escrow and the 1720 Property Escrow, only upon the satisfactory fulfillment of each of the following conditions precedent unless (but only to the extent) waived in writing by such party at or prior to the Closing Date to the extent permitted by applicable law:

A. Voter Approval. The Clerk of the County of San Mateo, California shall have certified the results of an election in which Voter Approval shall have been obtained in accordance with Section 2.01 of this Agreement.

B. Pending Litigation Dismissed. The Litigation shall have been dismissed with prejudice.

C. Final Validation Action. Final Validation Action shall have occurred, in accordance with Section 2.02.D of this Agreement.

D. Secondary Approvals or Secondary Consents. Any Secondary Approvals or Secondary Consents, if required, shall have been duly authorized and approved by the parties in accordance with Section 3.01.C and 3.01.D of this Agreement.

E. Amended Definitive Agreements. If the District's Secondary Consent is required, any amended Definitive Agreements on which the parties have agreed shall have been executed by the parties in accordance with Section 3.01.D.2.

F. Certified Copies of Resolutions. If any Secondary Approvals, Secondary Consents, or amended Definitive Agreements are required, no later than two (2) business days before the Closing Date, each party shall have furnished the other party with copies of the following resolutions. Each such resolution shall be certified by the Secretary or Assistant Secretary of such party or the affiliate adopting such resolution.

1. Resolutions duly adopted by the board of directors of such party approving those matters (and only those matters) requiring Secondary Approvals in accordance with Section 3.01.C, Secondary Consents in accordance with Section 3.01.D of this Agreement, and amended Definitive Agreements in accordance with Section 3.01.D.

2. Such other resolutions of such party or its affiliates with respect to any Secondary Approval as the other parties or their counsel may reasonably request.

G. Litigation. On the Closing Date there shall be no effective injunction, writ or preliminary restraining order or any order of any nature issued by a court or governmental agency of competent jurisdiction directing that any of the transactions provided for in this Agreement or the Definitive Agreements not be consummated as provided in this Agreement or the Definitive Agreements, and immediately prior to the Closing Date, no proceeding or lawsuit shall have been commenced, be pending or be threatened by any governmental or regulatory agency or any other person with respect to the transactions contemplated by this Agreement or the Definitive Agreements, which any party, in good faith, and with the advice of its counsel, believes makes it undesirable or inadvisable to consummate the Restructured Relationship.

H. Legislation. No action shall have been taken, and no law, rule, regulation, order, ordinance, judgment, preliminary or permanent injunction, or decree shall have been proposed, promulgated, enacted, entered, enforced, or deemed applicable to the transactions contemplated by this Agreement, by any federal, state, or local governmental authority, or by any court or other tribunal, which actually (or which any party, in good faith and with the advice of counsel, believes would): (a) prohibits, materially restricts, materially delays or makes unlawful (i) the consummation of the transactions contemplated by this Agreement or in the Definitive Agreements, or (ii) the satisfaction of any of the conditions to the entry into or the consummation

of such transactions; (b) otherwise impairs or materially adversely affects the contemplated material economic or non-economic benefits to the parties of such transactions; (c) requires the divestiture by any party or any of their affiliates of all or any material portion of their businesses, assets, or properties or imposes any material limitation on the ability of any of them to conduct their businesses and own such assets and properties; (d) imposes any material limitation on the ability of any party to exercise effectively all rights of membership, ownership and control of their businesses and operations; or (e) otherwise materially and adversely affects such party.

I. Representations, Warranties and Agreements. The representations and warranties of the parties set forth in Schedule 1.03.E shall be true and correct in all respects as to such party as of the Closing Date, except for representations and warranties specifically relating to a time or times other than the date of this Agreement, which shall be true and correct in all material respects at such time or times, and except for changes permitted by this Agreement, with the same force and effect as if made on and as of the Closing Date, and the other parties shall comply in all respects with all agreements and covenants required by this Agreement to be performed by it at or prior to the Closing Date. All of the representations and warranties of the parties set forth in the Definitive Agreements (except for the Ground Lease) that such Definitive Agreements require to be true and correct as of the Effective Date thereof shall be true and correct in all respects as to such party as of the Closing Date.

J. Opinions of Counsel. At the Closing, each party shall have furnished the other party with the opinion(s) of legal counsel to such party, dated the Closing, in form and substance satisfactory to the other party and its counsel, covering the matters described in Section 1.04.F.

K. Transfer Properties Escrow and 1720 Property Escrow are Ready to Close. All of the conditions to the Close of the Transfer Properties Escrow and the 1720 Property Escrow, as set forth in Sections 2.03.J and 2.04.H, shall have been duly satisfied or properly waived and both the Transfer Properties Escrow and the 1720 Property Escrow shall be in a condition to close simultaneously with the Closing of the remaining matters under this Agreement.

L. Phase 2 Map for Merger of the Fully Merged Parcel is Ready for Recordation. The Phase 2 Map, that will merge the Merged Front Parcel, 1811 Trousdale Drive, and the Existing Hospital Site into the Fully Merged Parcel, shall be fully executed by all required parties and governmental agencies and shall be ready for recording in the Official Records of the County of San Mateo.

4.03. Deliveries at Closing. At Closing, the parties shall deliver to each other at the place of the Closing:

A. Evidence of final Voter Approval duly certified by an authorized representative of the County of San Mateo as required under Section 2.01.E of this Agreement;

B. File-endorsed dismissal with prejudice of the Litigation duly certified by the clerk of the court;

C. Evidence of Final Validation Action, which shall be either a judgment duly issued and entered in Validation Action and duly file-endorsed and certified by the clerk of the court of the Superior Court of San Mateo County, or a written notice from MPHS that MPHS will not pursue further legal action regarding the Validation Action;

D. Certified resolutions of each party as set forth in Section 4.02.E;

E. Executed amended Definitive Agreements, if required;

F. Certificate of the Chair of the board of directors, President or Vice President of each party regarding the accuracy of the representations and warranties contained in Schedule 1.03.E of this Agreement;

G. Certificate of the Chair of the board of directors, President or Vice President of each party regarding satisfaction of the conditions precedent contained in Section 4.02 of this Agreement;

H. Opinions of counsel to each party as set forth in Section 4.02.I;

I. The parties shall have made to the Escrow Holder all deliveries to the Transfer Properties Escrow and the 1720 Property Escrow required of the parties pursuant to Sections 2.03.J and 2.04.H;

J. The Phase 2 Map for the Fully Merged Parcel, duly executed by all required parties and governmental agencies and in final, recordable form; and

K. All other documents required to be delivered by the parties hereunder or deemed necessary or advisable by legal counsel to the parties.

4.04. Effect of Closing. Upon completion of Closing, each of the following shall have occurred:

A. Transfer of the Real Property. The parties shall have closed both the Transfer Properties Escrow and the 1720 Property Escrow. The District shall own fee title to the Transfer Properties (provided, however, that MPHS shall retain ownership of the any of the Improvements MPHS installed or constructed on the Merged Front Parcel, 1811 Trousdale Drive, and the Existing Hospital Site as part of its Pre-Closing Development Activities) and MPHS shall own 100% fee title to the 1720 Property. The parties shall have completed assignment of all leases for the MOB Properties from MPHS to the District in accordance with the Lease Assignment and Assumption Agreement.

B. Phase 2 Map. The Fully Merged Parcel shall have been created by recording of the Phase 2 Map as part of the Close of the Transfer Properties Escrow, unless to occur later as determined by the City.

C. Unclassified Zoning for the Entire Fully Merged Parcel. In accordance with the City's conditional approval thereof as part of the Regulatory Approvals, the entire Fully Merged Parcel shall be re-zoned as "Unclassified" under the District's fee title thereto.

D. Definitive Agreements Effective and Binding on the Parties. Except for the Ground Lease, which shall not become effective and shall not bind the parties until the Start Service Date, each of the other Definitive Agreements shall have become effective as of the Closing and shall bind each of the parties thereto in accordance with the terms and conditions thereof.

## ARTICLE V TERM AND TERMINATION OF AGREEMENT

5.01. Term. The term of this Agreement shall commence on the Effective Date and shall expire immediately after the Closing (the "**Expiration Date**") or on December 31, 2007, whichever is earlier, unless sooner terminated in accordance with the terms of this Agreement.

5.02. Termination by Any Party. This Agreement may be terminated and the Restructured Relationship may be abandoned by action of the Board of Directors of either party, if:

A. The parties do not obtain Final Voter Approval or Final Validation Action of the Restructured Relationship;

B. This Agreement is terminated in accordance with Section 3.01.C if the District does not provide its Secondary Approval, Section 3.01.D if the District does not provide its Secondary Consent, or Section 3.01.D if the parties cannot agree upon amended Definitive Agreements; or

C. The parties mutually agree to abandon the Restructured Relationship.

5.03. Termination by the District. The District may terminate this Agreement for any material breach of this Agreement by MPHS (as defined in Section 6.01).

5.04. Termination by MPHS. MPHS may terminate this Agreement for any material breach of this Agreement by the District (as defined in Section 6.03).

5.05. Simultaneous Termination. Any termination of this Agreement prior to Closing shall also terminate the Lease Assignment and Assumption Agreement, and shall terminate the effect of Section 3.05.A (exclusive of Section 3.05.A.3(b)) with respect to rent payable under the Existing Lease. The Existing Lease shall remain in full force and effect as modified by the provisions of Sections 3.05.A.3(b), 3.05.B and 3.05.C.

5.06. Exercise of Termination Right. Any party that has the right to terminate this Agreement shall exercise such termination right by giving the other party written notice of termination in accordance with the notice provisions set forth in Section 7.05 of this Agreement.

5.07. Upon Termination. Termination of this Agreement prior to Closing for any reason shall not terminate or modify the Existing Lease (except that it shall terminate the effect of Section 3.05.A, exclusive of Section 3.05.A.3(b), with respect to rent payable under the Existing Lease and be modified by the terms of Sections 3.05.B and 3.05.C), and, except for a breach of Section 3.05.A after the Rent Amendment Date, the breach by any party of this Agreement shall not constitute a breach by that party of the Existing Lease (unless the acts or omissions of the breaching party that cause the breach of this Agreement also constitute a breach by such party pursuant to the terms and conditions of the Existing Lease). The parties agree that, upon termination of this Agreement for any reason other than expiration on the Closing Date, the Existing Lease shall thereafter govern the relationship between the parties, except that Sections 3.05.A.3(b), 3.05B and 3.05.C of this Agreement shall govern the issues addressed therein, and except for the survival of specified provisions of this Agreement as expressly stated herein.

## ARTICLE VI DEFAULT AND REMEDIES

6.01. Default by MPHS. Each of the following shall constitute a material default by MPHS. If any such default shall continue for thirty (30) days after written notice thereof from the District to MPHS, then such default shall constitute a material breach by MPHS under this Agreement, unless MPHS cannot cure such default within such thirty (30)-day period, in which case, MPHS shall not be considered in material breach provided that MPHS acts promptly to commence its cure of the default and thereafter diligently continues to pursue the cure of the default.

A. MPHS fails to timely and adequately perform any obligation, promise, covenant, or agreement that MPHS makes or is required to perform under this Agreement;

B. MPHS is in material default or breach of the Existing Lease, as determined in accordance with the terms and conditions thereof;

C. There is a declared payment default under the Master Indenture for the Sutter Health Obligated Group that causes immediate acceleration of all debt under the Sutter Health Obligated Group;

D. MPHS files for dissolution;

E. MPHS is insolvent;

F. The Sutter Health Obligated Group is insolvent; or

G. The appointment of a receiver to take possession of MPHS' operations on the Premises for any reason, including, without limitation, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, when not released within sixty (60) days;

H. The voluntary filing by MPHS or the involuntary filing against MPHS of a petition, other court action, or suit under any law for the purpose of (1) adjudicating MPHS a bankrupt, (2) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within sixty (60) days after the filing or other initial event, then MPHS shall not be in default under this Section.

6.02. The District's Remedies for MPHS' Breach. Upon any breach of this Agreement by MPHS, as determined under Section 6.01, the District shall have the right to terminate this Agreement in accordance with Section 5.03. Except for the remedies available to the District in accordance with California law for those provisions expressly stated to survive the Closing, the expiration or termination of this Agreement, the District expressly waives any other remedies otherwise available to it at law or in equity.

6.03. Default by District. Each of the following shall constitute a material default by the District. If any such default shall continue for thirty (30) days after written notice thereof from MPHS to the District, then such default shall constitute a material breach by the District under this Agreement, unless the District cannot cure such default within such thirty (30) day period, in which case, the District shall not be considered in material breach provided that the District acts promptly to commence its cure of the default and thereafter diligently continues to pursue the cure of the default.

A. The District fails to timely and adequately perform any obligation, promise, covenant, or agreement that the District makes or is required to perform under this Agreement;

B. The District is in material default or breach of the Existing Lease, as determined in accordance with the terms and conditions thereof;

C. The District files for dissolution except upon any merger or consolidation of the District with another public entity;

D. The District is insolvent; or

E. The voluntary filing by the District of a petition, other court action, or suit under any law for the purpose of (1) adjudicating the District a bankrupt, (2) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within sixty (60) days after the filing or other initial event, then the District shall not be in default under this Section.

6.04. MPHS' Remedies for the District's Breach. Upon any breach of this Agreement by the District, as determined under Section 6.03, MPHS shall have the right to terminate this Agreement in accordance with Section 5.04. Except for the remedies available to MPHS in

accordance with California law for those provisions expressly stated to survive the Closing, the expiration or termination of this Agreement, MPHS expressly waives any other remedies otherwise available to it at law or in equity.

6.05. Force Majeure. The provisions regarding the parties' default and breach, and the cure of any default, shall be subject to the Force Majeure provisions of Section 7.14.

6.06. Exclusive Remedies. The remedies provided to the parties in this Article VI shall be exclusive of any and all other remedies now or hereafter allowed by law or in equity.

6.07. Waiver of Breach. The waiver by a party of any breach by the other party of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by such party of either the same or a different provision of this Agreement.

## ARTICLE VII MISCELLANEOUS

7.01. Recitals and Headings. The Recitals are incorporated herein by this reference. Each party represents and warrants to the other that it has no knowledge or notice of any facts or circumstances indicating that any of the Recitals is false, incomplete or misleading. The subject headings of the sections of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

7.02. Entire Agreement. This Agreement, the Lease Assignment and Assumption Agreement, and the Exhibits to both constitute the entire agreement between the parties pertaining to their subject matter and supersede all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the party to be charged. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

7.03. Third Persons. Except as expressly stated herein with regard to Sutter Health, nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any third persons to any party to this Agreement, nor shall any provisions give any third parties any rights of subrogation or action against or with respect to any party to this Agreement.

7.04. Representations to Survive. Except as otherwise provided herein, or as superseded by the representations, warranties, covenants and agreements of the parties contained in the Definitive Agreements, all representations, warranties, covenants and agreements of the parties contained in this Agreement, or in any instrument, certificate, exhibit, schedule or other writing provided for in it, shall survive the Closing Date and shall be deemed to be material and have been relied upon by the parties.

7.05. Notices. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by telegraphic, facsimile or other electronic means, by overnight air courier, or by mail, and shall be deemed to have been duly given and to have become effective (a) upon receipt if delivered in person or by telegraphic, facsimile or other electronic means calculated to arrive on any business day prior to 6:00 p.m. local time at the address of the addressee, or on the next succeeding business day if delivered on a non-business day or after 6:00 p.m. local time, (b) one (1) business day after having been delivered to an air courier for overnight delivery, or (c) three (3) business days after having been deposited in the mails as certified or registered mail, return receipt requested, all fees prepaid, directed to the party or its designated assignees at the addresses listed below (or at such other address as shall be given in writing by a party).

IF TO DISTRICT:

PENINSULA HEALTHCARE DISTRICT  
Attn: Chair of the Board  
1783 El Camino Real, 1st Floor  
Burlingame, CA 94010  
FAX: (650) 696-5336

***With a copy to:***

Colin Coffey, Esq.  
Archer Norris  
2033 North Main Street, Suite 800  
Walnut Creek, CA 94596  
FAX: (510) 273-8832

IF TO MPHS:

MILLS-PENINSULA HEALTH SERVICES  
Attn: President and Chief Executive Officer  
1783 El Camino Real  
Burlingame, CA 94010  
FAX: (650) 696-5279

***With a copy to:***

Gary F. Loveridge  
Senior Vice President & General Counsel  
Sutter Health  
2200 River Plaza Drive, 3rd Floor West  
Sacramento, CA 95833  
FAX: (916) 286-6781

***With a copy to:***

Cathy Deubel Salenko  
McDonough Holland & Allen PC  
555 Capitol Mall, 9th Floor  
Sacramento, CA 95814  
FAX: (916) 444-8334

Any party may change its address for purposes of this Section by giving the other parties written notice of the new address in the manner set forth above.

7.06. Counterparts. This Agreement may be executed in one or more counterparts, and when so executed each counterpart shall be deemed to be an original; said counterparts together shall constitute one and the same instrument.

7.07. Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto. No party may assign or transfer any rights under this Agreement. Each party shall be responsible hereunder only for its own obligations and shall not be deemed to guarantee or otherwise have responsibility for the representations, acts or omissions of the other party. Notwithstanding any assignment or delegation of rights or duties under this Agreement, no such assignment or delegation shall relieve the party of any obligation or liability under this Agreement.

7.08. Good Faith. Each of the parties agrees that it shall use its best efforts in good faith to cause all the conditions precedent to its respective obligations to be satisfied and to consummate the transactions contemplated by this Agreement. The parties agree to act at all times in good faith, to deal fairly with the other party, and not to take any action which will deprive the other party of the benefits of this Agreement.

7.09. Governing Law and Forum Selection. This Agreement shall be construed in accordance with and governed by the laws of the State of California. The Superior Court for the County of San Mateo, California shall have exclusive jurisdiction over any judicial proceedings relating to any dispute arising out of the interpretation, performance or breach of this Agreement.

7.10. Severability. Should any provision of this Agreement, or part thereof, be determined to be invalid for any reason, it shall be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be enforceable in accordance with its terms.

7.11. Dispute Resolution. The parties shall follow the procedures set forth in Schedule 7.11 with regard to resolving disputes under this Agreement. The respective obligations of the parties set forth in this Section 7.11 shall survive the Closing and the expiration or termination of this Agreement.

7.12. Cost of Transaction. Except as expressly provided in this Agreement, whether or not the transactions contemplated hereby shall be consummated, the parties agree that each party

shall pay the fees, expenses and disbursements of their own agents, representatives, accountants and counsel incurred in connection with the subject matter hereof and any amendments hereto.

7.13. Confidentiality. The parties agree that any information submitted to or compiled by a party which involves this Agreement, the Site Plan, the Definitive Agreements, the Restructured Relationship, or the Regulatory Approvals, or the budgetary information, personnel records, patient records, marketing plans, financial statements, trade secrets, research concepts, or methods or products or proprietary information belonging to or provided by the other party (the "**Confidential Information**") shall be confidential, except to the extent the other party consents to its disclosure or disclosure is required by law. Each of the parties agree that both prior and subsequent to the Closing, it will maintain the confidentiality of all such Confidential Information delivered to it by the other party or the other party's agents or representatives and will only disclose such Confidential Information to its duly authorized officers, members, directors, representatives, counsel, consultants, and agents. Each of the parties further agree that if this Agreement is terminated prior to closing for any reason, it will return all such Confidential Information and all copies thereof in its possession to the other party to this Agreement. Nothing in this Section 7.13 shall prohibit a party from using or disclosing such Confidential Information as, in the reasonable opinion of the counsel for a party, is (i) required by law or governmental regulations, (ii) reasonably required in order for the party to perform any of its obligations or to enforce or exercise any of its rights under this Agreement, (iii) as is reasonably required in order to obtain Final Validation Action, Voter Approval, final approval of any of the Regulatory Approvals, or Financing, (iv) in any litigation or arbitration between the parties, or (v) as is otherwise necessary or appropriate. The respective obligations of the parties set forth in this Section 7.13 shall survive the Closing and the expiration or termination of this Agreement.

7.14. Force Majeure. If the performance of any act required by this Agreement to be performed by either District or MPHS, including without limitation the implementation of a cure of any default, is prevented or delayed by reason of any act of God, any act of the other party, fire, earthquake, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, inability to secure required approvals, permits and the like, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.

7.15. Construction. No provision of this Agreement shall be construed against or interpreted to the disadvantage of either District or MPHS by any court, arbitrator, or other governmental or judicial authority by reason of such party's having or being deemed to have structured, written, drafted, or dictated such provisions.

7.16. Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of the District and MPHS, errors are made in this Agreement in the identification or characterization of any title exception, in a legal description or the reference to or within any Exhibit or Schedule with respect to a legal description, in the boundaries of any parcel in any map or drawing which is an Exhibit or Schedule, or in the typing of this Agreement or any of its Exhibits or Schedules, the District and MPHS by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

7.17. Non-Material Amendments. The District shall designate a representative who shall have the authority, on behalf of the District, to consent to any non-material amendments or other modifications to this Agreement, after consultation with the District Board, where necessary or appropriate. For purposes of hereof, "non-material amendment" shall mean any amendment that does not materially increase the costs or liabilities of the District, does not materially alter the pre-closing processes, development and uses contemplated by this Agreement, or does not decrease or modify the time periods provided for or the rights for review or approval by the District, including, without limitation, any rights for review and approval of changes in development, use, programs or services in connection with the development of the New Facility or Improvements. Material amendments to this Agreement that would materially alter the rights or obligations of the parties or the principal benefits as provided in this Section shall require the approval of the District Board by resolution.

7.18. Time is of Essence. Time is expressly declared to be of the essence of this Agreement.

7.19. Cooperation. The parties shall fully cooperate as reasonable and necessary to enable effective performance of this Agreement. In furtherance of this objective, each party agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

7.20. Schedules and Exhibits. All schedules and exhibits to which reference is made in this Agreement are incorporated in the Agreement by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the parties. Reference to "this Agreement" includes matters incorporated by reference.

DATED: \_\_\_\_\_, 2005.

DISTRICT:

PENINSULA HEALTHCARE DISTRICT,  
a political subdivision of the State of California

MPHS:

MILLS-PENINSULA HEALTH SERVICES,  
a California nonprofit public benefit  
corporation

By: \_\_\_\_\_  
Donald E. Newman, M.D.  
Chair

By: \_\_\_\_\_  
Robert W. Merwin,  
Chief Executive Officer

**Draft Dated: 7/6/05**

**EXHIBIT "A"**  
**LETTER OF INTENT**

**Draft Dated: 7/6/05**

**EXHIBIT "B"**

**SITE PLAN FOR PROPOSED IMPROVEMENTS**

**Draft Dated: 7/6/05**

**EXHIBIT "C"**

**PHASE 1 MAP**

**Draft Dated: 7/6/05**

**EXHIBIT "D"**

**PHASE 2 MAP**

**Draft Dated: 7/6/05**

**EXHIBIT "E"**

**PHASE 3 MAP**

**Draft Dated: 7/6/05**

**EXHIBIT "F"**

**LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT**

**SCHEDULE 1.03.E**

**REPRESENTATIONS AND WARRANTIES**

The representations and warranties set forth in Schedule 1.03.E with respect to each party are made by such party for the purpose of inducing the other parties to enter into this Agreement and to consummate the transactions contemplated herein.

As used in this Schedule, "to the best knowledge" of a party means the actual knowledge of the party, its officers, directors and senior management, after due inquiry of employees and agents of such party who would be reasonably expected to know such information.

District Representations and Warranties. The District makes the following representations and warranties:

A. Existence and Capacity. The District is a California Local Health Care District, duly organized and existing under the laws of the State of California and has the full legal right, power and authority to own, lease or dispose of its properties and to carry on its business as now being conducted.

B. Authorization. The District has the requisite power to execute and deliver this Agreement, the other Definitive Agreements and all related agreements and to consummate the transactions and perform its obligations contemplated by this Agreement, the other Definitive Agreements and all related agreements. The execution, delivery and performance of this Agreement, the other Definitive Agreements and all related agreements by the District and the consummation of the transactions contemplated therein have been duly authorized by all necessary action. This Agreement, the other Definitive Agreements and all related agreements are each a legally valid and binding agreement of the District, enforceable against the District in accordance with their respective terms (except as may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally or by the application of equitable principles). No other proceeding on the part of the District is necessary to authorize this Agreement, the other Definitive Agreements and all related agreements and the consummation of the transactions contemplated therein and by this Agreement.

C. Noncontravention. The execution and delivery of this Agreement, the other Definitive Agreements and all related agreements by the District and the consummation of the transactions contemplated therein and by this Agreement do not and will not: (a) violate or conflict with any provision of the charter documents or bylaws of the District; or (b) conflict with, violate or result in a breach of any law, ordinance, regulation, decree, or order of any court or governmental entity applicable to the District.

D. Consents. Other than as provided in this Agreement, the other Definitive Agreements or any related agreements, no authorization, consent, order, or approval of, or filing or qualification with, any court, regulatory authority, or other governmental body is necessary for the consummation by the District of the transactions contemplated by this Agreement, the other Definitive Agreements or any related agreement.

E. Investigation or Litigation. Except as set forth in **Schedule 1.03.E-1** attached hereto and incorporated herein, there is no action, suit, or proceeding pending or, to the best of the District's knowledge, threatened by, against or affecting the District or the Restructured Relationship, at law or in equity, or before any federal, state, municipal, or other governmental court, department, commission, board, bureau, agency, or instrumentality.

MPHS Representations and Warranties. MPHS makes the following representations and warranties:

A. Existence and Capacity. MPHS is a nonprofit public benefit corporation, duly organized and existing and in good standing under the laws of the State of California and has the full legal right, power and authority to own, lease or dispose of its properties and to carry on its business as now being conducted.

B. Authorization. MPHS has the corporate power to execute and deliver this Agreement, the other Definitive Agreements and all related agreements and to consummate the transactions and perform its obligations contemplated by this Agreement, the other Definitive Agreements and all related agreements. The execution, delivery and performance of this Agreement, the other Definitive Agreements and all related agreements by MPHS and the consummation of the transactions contemplated therein have been duly authorized by all necessary corporate action. This Agreement, the other Definitive Agreements and all related agreements are each a legally valid and binding agreement of MPHS, enforceable against MPHS in accordance with their respective terms (except as may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally or by the application of equitable principles). No other proceeding on the part of MPHS or any of its affiliates is necessary to authorize this Agreement, the other Definitive Agreements and all related agreements and the consummation of the transactions contemplated therein and by this Agreement.

C. Noncontravention. The execution and delivery of this Agreement, the other Definitive Agreements and all related agreements by MPHS and the consummation of the transactions contemplated therein and by this Agreement do not and will not: (a) violate or conflict with any provision of the articles of incorporation or bylaws of MPHS; or (b) conflict with, violate or result in a breach of any law, ordinance, regulation, decree, or order of any court or governmental entity applicable to MPHS.

D. Consents. Other than as provided in this Agreement, the other Definitive Agreements or any related agreements, no authorization, consent, order, or approval of, or filing or qualification with, any court, regulatory authority, or other governmental body is necessary for the consummation by MPHS of the transactions contemplated by this Agreement, the other Definitive Agreements or any related agreement.

E. Investigation or Litigation. Except as set forth in **Schedule 1.03.E-2** attached hereto and incorporated herein, there is no action, suit, or proceeding pending or, to the best of MPHS' knowledge, threatened by, against or affecting MPHS or the Restructured Relationship, at law or in equity, or before any federal, state, municipal, or other governmental court, department, commission, board, bureau, agency, or instrumentality.

**SCHEDULE 1.03.E-1**

**DISTRICT'S INVESTIGATION OR LITIGATION**

**SCHEDULE 1.03.E-2**

**MPHS INVESTIGATION OR LITIGATION**

**SCHEDULE 1.03.F**

**OPINIONS OF COUNSELS**

A. Opinions of Counsel to the District

Counsel to the District shall opine on those matters set forth in Schedule 1.03.E, paragraph 1.

B. Opinions of Counsel to MPHS and Sutter Health

Counsel to MPHS and Sutter Health shall opine on those matters set forth in Schedule 1.03.E, paragraph 2 with regard to MPHS, and those matters set forth in Schedule 1.03.E, paragraph 2.B with regard to the Guaranty Agreement.

SCHEDULE 7.11

DISPUTE RESOLUTION AND BINDING ARBITRATION PROCESS

1. Overall Scope. The provisions for mediation and binding arbitration set forth in this Schedule shall apply to all disputes between the parties under this Agreement. The parties may mutually agree to resolve certain disputes under this Agreement by binding arbitration in accordance with the JAMS Streamlined Arbitration Rules. The parties acknowledge and agree that some disputes, especially some of those during the construction process, may be more efficiently and economically resolved through streamlined arbitration as provided in this paragraph 1.

2. Identifying Disputes. Each party shall use its best efforts to promptly identify and consolidate all related disputes. Unrelated disputes shall not be consolidated except by mutual agreement of the parties. If the parties are unable to agree regarding what constitutes a related or unrelated dispute, either party may file an application with JAMS seeking resolution of that issue.

3. Meet and Confer. The parties agree to meet and confer within thirty (30) days of written request by either party in an effort to settle any dispute arising under this Agreement. At each meet and confer meeting, each party shall be represented by persons with authority to settle the dispute. Meet and Confer discussions and negotiations shall be treated as compromise and settlement negotiations and shall not be admitted in evidence in any dispute resolution proceeding between the parties.

4. Mediation. At any time prior to the arbitration hearing and upon mutual agreement, the parties may submit the dispute to mediation to be conducted by a mutually agreed to mediator (the "**Mediator**") in accordance with the following provisions:

4.1. Choosing Mediator. The Mediator shall be selected as soon as reasonably possible but in no event later than thirty (30) days following the parties' agreement to mediate. The parties agree that mediation is most likely to be productive, if they use an experienced Mediator agreeable to both parties. The parties prefer, if possible, that the mediator be knowledgeable in and familiar with health care delivery systems and managed care, who is an attorney with at least fifteen (15) years of experience including at least five (5) in health care. The parties shall, therefore, use their best efforts to agree on a Mediator as soon as practical after they agree to mediate. If they are unable to agree upon a Mediator during the thirty (30) day period, the matter shall be submitted to JAMS for selection of a JAMS panel mediator. The parties shall each advance one-half of the Mediator's fee.

4.2. Mediation Procedures. The mediation shall commence as soon as possible after the Mediator is identified. The mediation of each dispute shall be completed in no more than one full day, unless the Mediator finds that more time is needed and if the parties are willing to continue. The entire mediation shall proceed and continue until the earlier of: thirty (30) days after commencement; such time as the dispute is resolved; or, the Mediator determines, or the parties agree, that mediation should not continue.

4.3. Mediated Settlement. If as a result of mediation, a voluntary settlement is reached, the parties agree that such settlement will be reduced to writing and signed by both parties. If not performed according to its terms, this signed agreement may be enforced pursuant to California Code of Civil Procedure Section 664.6.

4.4. Attorney's Fees and Costs. The parties shall be responsible for their own attorney's fees and costs incurred in preparing for and attending the mediation. The parties shall share equally the costs of the mediation and, if so requested, shall each advance one-half of the mediation fee.

4.5. Mediation Venue. The mediation shall be conducted in San Mateo County, California, or so such other venue as the parties mutually agree.

4.6. Mediation Confidentiality. The entire mediation process shall be confidential and the privileges and protections of Chapter 2, Division 9 of the Evidence Code shall apply.

5. Agreement to Arbitrate. If they cannot resolve their disputes through the meet and confer process or mediation (if applicable), the parties shall submit the dispute(s) to binding arbitration in lieu of litigation in any court; provided, however that either party may seek provisional remedies in a court of competent jurisdiction. The parties shall consolidate all disputes concerning the same issue in a single arbitration. The construction, validity and performance of all arbitrations conducted pursuant to this Agreement and in accordance with the provisions of this Schedule (the "**Arbitration Rules**") shall be governed by the law of the State of California.

6. Initiate Arbitration. Either party may initiate arbitration by serving on the other party an arbitration demand setting forth separately a brief statement of each dispute and, if applicable, an approximation of the amount of money believed to be at issue and how that amount was calculated ("**Arbitration Notice**"). If the dispute is one which a party reasonably believes is eligible for bifurcation as described in Section 8.4, that party may so indicate.

7. Administration of Arbitration. The binding arbitration shall be administered by JAMS in accordance with the JAMS rules applicable to commercial arbitrations, except that these Arbitration Rules shall control in instances where they conflict with the JAMS rules.

8. Arbitration Rules and Process.

8.1. Joinder of Interested parties. The parties agree that any and all proper parties may be joined in the arbitration, but the parties agree to proceed with arbitration of all disputes between them even if other parties refuse to participate. The parties specifically waive any objection to arbitration based on the refusal of any other party to be joined.

8.2. Choosing Arbitrator. The parties prefer that the arbitrator ("**Arbitrator**") be knowledgeable in and familiar with health care delivery systems and managed care, who is preferably also a retired judge of the California (Superior Court or above) or United States court sitting in California. If no such retired judge is available, the Arbitrator may be an attorney with at least fifteen (15) years of experience including at least five (5) years in health care.

Alternatively, the parties may prefer that the Arbitrator have other expertise that may be more appropriate in a given dispute. If the parties are unable to agree on the Arbitrator within thirty (30) days of the date JAMS accepts the arbitration, the Arbitrator shall be selected by JAMS from a list of four potential arbitrators submitted by the parties, two from each party. The parties shall each advance one-half of the Arbitrator's fee in order to initiate the arbitration, although they shall ultimately bear responsibility for such fee as determined by the Arbitrator.

8.3. Classifying Disputes. Prior to the Pre-Hearing Conference (defined below), the parties shall in good faith attempt to agree on how to define and value each dispute. The Arbitrator shall have sole and final discretion in interpreting this Agreement, including this Schedule, and to determine what constitutes a separate dispute or an unrelated dispute and the timing and manner of the arbitration of each of dispute, including bifurcation of issues or damages.

8.4. Early Pre-Hearing Conference. The parties acknowledge and agree that it is their intent to limit the time, operational disruption and expense involved in resolving these disputes so that they may cooperatively contribute to the operation of the New Facility and the ongoing Restructured Relationship as well as to control health care costs. Therefore, as soon as possible after the Arbitrator is chosen, s/he shall schedule an early pre-hearing conference (the "**Pre-Hearing Conference**") to determine whether the arbitration should be conducted in a bifurcated manner so that legal issues of contract interpretation or liability can be determined before the parties are required to present proof regarding the actual damages or amounts owed by one party to the other. At the Pre-Hearing Conference, the Arbitrator shall also address procedural matters, confidentiality issues (see Section 13.8.5, below), arrange for the timing of exchange of discovery information and in general attempt to focus the issues and streamline the proceedings to the extent possible. In making all such decisions, the Arbitrator should be guided by, and endeavor to support, the parties' agreement and goal to engage in as streamlined an approach to arbitration as is possible given the nature and extent of the dispute(s).

8.5. Confidentiality of Discovery Material.

8.5.1. Intent. The parties recognize and agree that theirs is an ongoing business relationship and that this fact creates unusually sensitive issues with respect to the exchange of information related to their dispute. The parties agree that it is not their intent to use the discovery process described in this Schedule to obtain the other party's highly confidential and proprietary business information, except to the extent that such information is material to the presentation of a party's case or defense.

8.5.2. Protective Orders. The parties agree, therefore, to enter into such protective orders as are, or may become, necessary to assure that neither party obtains access to proprietary business information that, in the judgment of the disclosing party, would adversely affect the disclosing party's legitimate business interests. Where appropriate, those protective orders shall include creating a category of discovery documents "for attorney's eyes only," which may only be disclosed to counsel who agrees not to participate in, or provide any information to those involved in, the business negotiations or transactions between the parties.

8.5.3. Use Only For Arbitration. All discovery information including information for attorney's eyes only, shall be used solely and exclusively for arbitration of the disputes. At the conclusion of the arbitration, each party shall return or destroy all documents obtained from the other party during the course of the arbitration, and shall provide to the other party an authorized representative's attestation indicating that all such information has been returned or destroyed.

8.5.4. Filing Material Under Seal. The parties agree that discovery documents are likely to contain competitively sensitive price, operational, and other confidential information and trade secrets in which the producing party has a genuine and cognizable interest, and that if a competitor obtains access to this information, it could give the competitor unfair advantage in contract and price negotiations and possibly permit price-fixing and artificially inflated prices for health care services, all of which could cause serious harm to the disclosing party and would be contrary to public interest. Therefore, the parties agree to fully cooperate with each other in ensuring that discovery materials which are subject to protective orders and any information taken or derived therefrom (all of which is collectively referred to as "Protected Materials") are and remain sealed by a court and/or arbitrator. Such cooperation shall include but not be limited to, joining in any motion or application for an order that the Court/Arbitrator accept and seal such documents and/or information. All Protected Materials (including transcripts of depositions, exhibits, briefs, and memoranda), which are filed with a court or submitted to an arbitrator shall be filed in sealed envelopes or other appropriately sealed containers with a label that includes all of the following: the nature of the contents, the identity of the party filing the materials, the words: "HIGHLY CONFIDENTIAL. TO BE FILED UNDER SEAL ONLY." (These words shall also be included on the first page of all Protected Material.)

8.6. Discovery. The parties shall be allowed the following limited discovery: For each separate arbitration that both parties agree involves less than \$500,000, each party shall be entitled to receive only directly relevant documents and take two fact witness depositions. If an arbitration involves more than \$500,000, the parties shall exchange only directly relevant documents and be allowed to take four fact witness depositions. Fact witness depositions shall be conducted in one day, absent extraordinary circumstances. In any case, each party shall be entitled to take the depositions of all of the opposing party's experts. Any further discovery shall only be allowed by order of the Arbitrator upon a showing of good cause. All disputes concerning the scope of allowable discovery shall be resolved in the sole discretion of the arbitrator. All discovery shall be completed sixty (60) days prior to the arbitration hearing.

8.7. Voluntary Disclosure of Information. Thirty (30) days prior to the scheduled first day of the arbitration, each party shall serve upon the other party the documents it intends to rely upon and/or present at arbitration and a reasonably detailed statement of the expected testimony of witnesses, including expert witnesses (but not adverse witnesses). Within ten (10) days of the receipt of such documents from the other side, the receiving party may provide additional documents and/or additional statements of the expected testimony of witnesses, including experts. This schedule may be modified by the parties or the arbitrator as necessary to allow for an expeditious and orderly process.

8.8. Arbitration Hearing. It is the parties' goal that any arbitration involving less than \$500,000 in controversy will be completed in three full days; provided, however, that the Arbitrator shall have discretion to extend this time if necessary for a fair hearing of the dispute. An arbitration involving \$500,000 or more shall be conducted within such time as the Arbitrator allows, but it is the intention of the parties that the hearing be as streamlined as possible. The Arbitrator may require, and the parties shall provide, briefing of legal issues or presentation of additional evidence. Copies of documents may be admitted in evidence as originals, absent a showing by an objecting party that the copy is unlike the original in some substantive way.

8.9. Arbitrator's Final Decision. The Arbitrator shall have the power to grant all legal and equitable remedies, including but not limited to, injunction, specific performance, reformation, cancellation, accounting and compensatory damages; provided, however, that the Arbitrator shall not be empowered to award punitive damages, penalties, forfeitures or attorney's fees. The Arbitrator shall issue a written reasoned decision setting forth the parties' contentions, findings of fact and conclusions of law applying California and applicable federal law (the "**Decision**") within thirty (30) days of the conclusion of the arbitration of each dispute, or, if all disputes are arbitrated on consecutive days, within thirty (30) days of the last day of arbitration. For disputes of \$500,000 or more, the Arbitrator shall issue a tentative Decision within such thirty (30) day period and the parties may each file a response to the tentative Decision within ten (10) days of the date it is issued. In addition, at the request of either party, the Arbitrator shall conduct a hearing on the tentative Decision, which shall be held within thirty (30) days of the date of the tentative Decision or the earliest possible date thereafter that is mutually agreed to by the parties and the Arbitrator. The Arbitrator shall then have twenty (20) additional days to issue the final Decision. The Arbitrator's final Decision shall be conclusive and binding, and it may be confirmed thereafter as a judgment by the Superior Court of the State of California, subject only to challenge on the grounds set forth in California Code of Civil Procedure Section 1281 et. seq.

8.10. Venue. The arbitration shall be conducted in San Mateo County, California, unless a different location is agreed to by the parties. Any party may be represented by counsel or other authorized representative.

8.11. Service. All notices and documents less than 50 pages in length may be served by facsimile. Service is deemed complete upon receipt.

9. Waiver of Rights. By agreeing to binding arbitration as set forth in this Schedule 7.11, the parties acknowledge that they are waiving certain substantial rights and protections which otherwise may be available if a dispute between them were determined by litigation in a court, including without limitation the right to seek or obtain the items referenced in Section 8.9 above, the right to a jury trial, and certain rights of appeal.

**RESTRUCTURED RELATIONSHIP PRE-CLOSING 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**

**RESTRUCTURED RELATIONSHIP PRE-CLOSING AGREEMENT**

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