

MARIN HEALTHCARE DISTRICT

100B Drakes Landing Road, Suite 250, Greenbrae, CA 94904

Telephone: 415-464-2090 Fax: 415-464-2094

Website: www.marinhealthcare.org

Email: info@marinhealthcare.org

CLOSED SESSION (6:00 PM TO 7:00 PM)

REGULAR MEETING (7:00 TO 8:00 PM)

TUESDAY, JULY 8, 2014

AGENDA

Board of Directors

Chair: Larry Bedard, M.D.
Vice Chair: Ann Sparkman, J.D.
Secretary: Harris Simmonds, M.D.
Directors: James Clever, M.D.
Jennifer Rienks, Ph. D.

Location:

Marin General Hospital, Conference Ctr.
250 Bon Air Road
Greenbrae, CA 94904

Staff:

Lee Domanico, CEO
Renee' Toriumi, EA to the CEO
Colin Coffey, District Counsel

CLOSED SESSION

6:00 pm to 7:00 pm

1. Call to Order Bedard

2. Roll Call Bedard

3. Public Comment Bedard

Any member of the audience may make statements regarding any items NOT on the agenda. Statements are limited to a Maximum of three (3) minutes Please state and spell your name if you wish it to be recorded in the minutes.

4. Closed Session Bedard

A. Approval of Minutes from June 10, 2014 Closed Session

B. Discussion involving trade secrets pursuant to H&S Code Section 32106, concerning strategic planning for new programs, services and facilities. Community Health Grant.

Public discussion of this topic will follow at the open session.

5. Adjournment into Regular Meeting Open Session Bedard

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- | | | |
|---|--------------|-----|
| | | TAB |
| 1. Call to Order | Bedard | |
| 2. Roll Call | Bedard | |
| 3. Approval of Agenda (action) | Bedard | |
| 4. Approval of Consent Agenda | | |
| a. Minutes of the Regular Meeting of June 10, 2014 (action) | Bedard | 1 |
| 5. General Public Comment | Bedard | |
| <i>Any member of the audience may make statements regarding any items NOT on the agenda. Statements are limited to a maximum of three (3) minutes. Please state and spell your name if you wish it to be recorded in the minutes.</i> | | |
| 6. Report from Closed Session | Bedard | |
| 7. Marin General Hospital (MGH) Lease Renewal | | |
| Fourth Public Hearing on MGH Lease Renewal Agreement | Bedard/Bouey | 2 |
| Presentation by Donald Bouey, Bouey & Black Attorneys | Bedard/Bouey | 3 |
| 8. Review and approve Financial Advisor (H2C, LLC, led by Michael Hammond) to | Domanico | 4 |
| Serve as the Financial Advisor to Marin Healthcare District (MHD) and MGH for the | | |
| financing that will be required by both parties to complete our Hospital Replacement | | |
| Building and related projects (action) | | |
| 9. Marin General Hospital Replacement Project Video | Domanico | |
| 10. Review and approve the Environmental Impact Report (EIR) as may be needed to | Domanico | 5 |
| support approval of recommended amendments to the Hospital Replacement Building | | |
| Project Plan to include the Lobby addition, changes to the campus entry location, and | | |
| the relocation of the Halprin Garden, and any other minor changes requiring | | |
| clarification (action) | | |
| 11. Review and approve the amended Hospital Replacement Building Project Plan, | Domanico | 5 |
| estimated at \$534,864,000 (action) | | |
| 12. Review and approve the Schematic Design plan and grant approval to move forward | Domanico | 5 |
| with Design Development of the Hospital Replacement Building (action) | | |
| 13. Review and approve McCarthy Builders as Construction Manager for the Hospital | Domanico | 5 |
| Replacement Building Project (action) | | |
| 14. Review and approve the New Community Health Grant Policy, New Community | Sparkman | 6 |
| Health Grant Application and New Community Health Grant Report Form as | | |
| recommended by the MHD Finance and Audit Committee on June 24, 2014 (action) | | |
| 15. Committee Meeting Reports | | |
| a. MHD Finance & Audit Committee (June 24, 2014) | Sparkman | |
| b. MHD Lease & Building Committee (no meeting in June) | | |
| 16. Reports | | |
| a. District CEO's Report | Domanico | |
| b. Hospital CEO's Report | Domanico | |
| c. Chair's Report | Sparkman | |
| d. Board Members' Reports | All | |
| 17. Adjournment | | |

Tab 1



MARIN HEALTHCARE DISTRICT
250 Bon Air Road
Greenbrae, CA 94904

REGULAR MEETING MINUTES
Tuesday, June 10, 2014
Marin General Hospital, Conference Center

1. Call to Order

Vice Chair Sparkman (substituting for Chair Bedard) called the meeting to order at 07:00 pm.

2. Roll Call

BOARD MEMBERS PRESENT: Vice Chair Ann Sparkman, Secretary Harris Simmonds, MD, Director Jennifer Rienks and Director James Clever (arrived at 7:05 pm)

BOARD MEMBERS ABSENT: Chair Larry Bedard, MD was excused from the meeting. Vice Chair Ann Sparkman substituted as Chair of this meeting, held on June 10, 2014.

ALSO PRESENT: Lee Domanico, Chief Executive Officer, Colin Coffey, District Counsel, Donald Bouey, of Bouey and Black, and Renee' Toriumi, Executive Assistant to the CEO

3. Approval of Agenda

Director Simmonds moved to approve the agenda as presented. Director Rienks seconded. Vote: all ayes.

4. Approval of the Consent Agenda

Director Simmonds moved to approve the consent agenda. Director Rienks seconded. Vote: all ayes.

Director Simmonds moved to approve the minutes from the May 13, 2014 as presented. Director Clever seconded. Vote: all ayes.

No comments from the public.

5. General Public Comment

Chair Sparkman stated that any member of the audience may make statements regarding any items NOT on the agenda. Statements are limited to a maximum of three (3) minutes. The public was asked to please state and spell their name if they wished it to be recorded in the minutes.

Barb Ryan, CNA Representative (safety, computer changes, safety)
Kathy Giannini, RN Surgery Center (CPOE, medication lists, computer printing)
Bonnie Kaiser, RN, until 2 years ago (patient safety, communications)
Alicia Levin, RN Adult Acute Care/Bio Ethics Informatics (patient safety and care)
Ellen Gardner, RN Behavioral Health (staff concerns, uniforms)
Carolyn Cowden, CNA Representative (document from nurses submitted for review)
Douglas, Advocacy Chair for NAMI Marin (mental health services, community needs)

No additional comments from the public.



Director Rienks requested a listing of advertisements for the Public Forum sessions. CEO Domanico agreed to send that information to members of the board following the meeting.

6. MGH Lease Renewal

Third Public Hearing on MGH Lease Renewal Agreement

CEO Domanico was not in attendance for the public discussion of the Lease Renewal.

Mr. Donald Bouey, representing Bouey & Black Attorneys, provided a summary of the basic lease information citing compliance with Healthcare District laws requiring five public meetings. There were few changes made since the five public meetings last year. Complete draft copies of the lease were available in this meeting packet. A presentation was reviewed, which was also included in the meeting packet:

- Rent – rationale
- Rent – four components
- Triple Net Lease
- Permitted Use: as a non-profit, general acute care hospital and related ancillary uses
- New Improvements: MGH agrees to perform and pay for all District obligations to perform seismic requirements including construction of new Hospital wing, parking structures and related improvements
- Default/Remedies
- District approvals for improvements and capital expenditures
- Surrender of Hospital Premises, Assets and Operations at Expiration or Termination
- Amendment: the Parties may amend the Lease to the maximum extent permitted by law to address lender and bond issuer/holder concerns and other issues that may arise
- Dispute Resolution

It was noted that copies of the lease documents had been posted to the District website, including the summary and upcoming scheduled community meetings. The Public Forum #4 is scheduled for Thursday, July 8th and the Public Forum #5 will be held before the end of July. Formal approval the lease documents will be discussed at the regular meeting scheduled for August 12, 2014.

CEO Domanico returned to the meeting.

Public Comments - Margaret Jones (Aging population and transportation). Chair Sparkman asked Mr. Jon Friedenber, CAO, to review the suggestions made by Ms. Jones.

Director Rienks requested a summary of where the Community Forums have been advertised. CEO Domanico agreed to send the summary to board members following the meeting.

7. Resolution #2014-03 Calling for Election

Chair Sparkman reviewed the Resolution of the Governing Body of the Marin Healthcare District, included following Tab 4. Through this resolution it is proposed an election be held in its jurisdiction: requesting the Board of Supervisors to consolidate with any other election conducted on said date, and requesting election services by the Marin County Elections Department. It was



resolved that the number of regular term positions for 4 years are five (5). It was also noted that the payment for publication of a candidate's statement of qualification is the responsibility of the Candidate.

Director Simmonds moved to approve the Resolution Calling for Election, with the noted correction to the 4 year terms. Director Clever seconded. Vote: all ayes.

Mr. Colin Coffey confirmed that the request for this resolution was to combine the election with the County, which is done every two years. He did note that there needs to be a correction to Resolution No. 2014-003, that the number of regular term positions (4 year) is three (3), not the "Five (5)" as was incorrectly stated.

Once the document has been corrected, Ms. Toriumi was requested to get signatures from Vice Chair Ann Sparkman (acting Chair) and Secretary Harris Simmonds and process the resolution. General Counsel Colin Coffey stated that the signed resolution would be sent to the County within the month.

8. Formation of Ad Hoc Committee for Lot Line Adjustment

After a brief discussion for the need to form this Ad Hoc Committee, Director Rienks moved to approve the formation of the Ad Hoc Committee for Lot Line Adjustment discussions with the County. Members of this committee are Chair Larry Bedard and Director Jennifer Rienks, with Vice Chair Sparkman serving as an alternate. Director Clever seconded. Vote: all ayes.

No comments from the public.

9. Committee Meeting Reports

a. MHD Finance & Audit Committee (05/28/2014)

Chair Ann Sparkman reported more than \$3 million in operating account, includes reimbursement of \$101,000 from MGH for the Lease and GO Bond Negotiations. 1206b Clinics operations is improving. CEO Domanico reported that when clinic information is reported in the budget, ancillary service expenses are separately reported in the hospital budget. The robotic practice of Dr. Yu's budget is at slightly ahead of expectations, but the payer mix is not what was expected. The cardiology services (physician over budget with staff), but the ancillary services are slightly ahead of budget. The variances do not financially affect the District budget.

Community Health Grant Policy materials were reviewed by Ms. Jamie Maites, Director of Communications. After discussion, revisions will be made to the policy and will be discussed again at the next meeting, followed by recommendations for implementation to the full District Board. The topic of the aging population was addressed at the meeting. Ms. Margaret Jones was thanked for her input at that meeting.

The 2015 Budget was reviewed and the additional expense for the hiring of a Strategic Consultant was approved for \$60,000 in the 2015 Budget to review and advise the District on the Affordable Care Act (ACA) and trends that will affect the Hospital.

There were no public comments.

Director Rienks inquired how the trends for reimbursement for services and how the ACA has impacted the changes. CEO Domanico explained that the State's participation in ACA, hospitals



have received additional funding for Medi Cal and Medicare programs. There has been an increase in Medicare patients based on that payer mix change, with a slight decline of indigents. The overall decline in inpatient mix has caused a shift in payer mix, which has and will continue to affect the hospital as well as physician practice. Medicare reimbursement has increased for the uninsured.

Director Simmonds moved to approve the Marin Healthcare District FY 2015 Budget as presented and recommended by the MHD Finance & Audit Committee on May 29, 2014. Director Rienks seconded. Vote: all ayes.

There were no public comments.

b. MHD Lease & Building Committee (no meeting in May)

There were no public or board comments.

10. **Reports**

a. District CEO's Report

Legislation continues to move favorable through the committees without opposition.

CEO Domanico agreed to bring recommendations on different agencies relating to aging and health. The grant process will also be reviewed for approval.

Several actions will be reviewed at the Hospital Board meeting to be held on June 26th and subsequently recommended to the District Board at the next regularly scheduled meeting on July 8th. The District Board has ultimate approval to move forward hospital building projects and plans.

Director Rienks suggested that the video for the Hospital Replacement Project be included in the District website.

b. Hospital CEO's Report

CEO Domanico reported profitability through April, with discharges down and patient stay up. The Average Daily Census (ADC) was higher than expected with an increase in ER patients. The hospital receive the HealthGrades award for Quality Safety, which ranks us in the top 5% nationally for outcomes from HealthGrades, with two services ranked in the top 100 best hospitals.

Standardized apparel for staff was mandatory, effective June 1, 2014.

CEO Domanico offered examples (bedside reporting, rounding, department meetings, etc.) of how he and other Administrators communicate with staff on a daily basis. Improvement has been seen in communication between the patients and staff members.

600 employees attended the Employee Forums, with 99.9% positive ratings. Employees who attended received a MGH velour vest as a gift of appreciation. The attendance was double from last year. Employees unable to attend may go online, watch the video and also receive their gift.



Union contract expires at the end of this year.

The Information Technology computer system is on a 2-year review. Improvements have been seen in the speed and turnaround of support.

Vanetta Van Cleave, Controller and Ronald Sperling, Interim CFO were introduced. Vanetta started in May and Ron will start in June.

Director Rienks requested the HealthGrades report be published externally. Mr. Friedenber reported that he had made several attempts to request that the local news briefs include and promote our high scores. A copy of the news release will be sent to Board Members.

There were no public comments.

c. Chair's Report – No additional information to report.

d. Board Members' Reports

Director Rienks attended the ACHD Conference held in Pasadena, CA on May 28-30, 2014. The conference discussed District board organizational structures, succession plans and community involvement, which she thought was useful information in strengthening the MHD Board. Grant making information received at the conference will be shared with the MHD Finance and Audit Committee.

Director Simmonds reported that Director Bedard was recently married on May 29, 2014.

No comments from the public.

Director Clever moved to adjourn the meeting. Director Simmonds seconded. The meeting adjourned at 8:27 pm. The Board went into a Closed Session.

CLOSED SESSION

The closed session adjourned at 9:15 pm. General Counsel Colin Coffey will document the minutes.

Tab 2

HOSPITAL LEASE

**250 BON AIR ROAD
GREENBRAE, CALIFORNIA**

MARIN HEALTHCARE DISTRICT

**AS
LESSOR,**

AND

MARIN GENERAL HOSPITAL

**AS
LESSEE**

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HOSPITAL LEASE

This Lease (Lease) is made and entered into by and between the Lessor and Lessee named below, who agree as follows:

Part I

DEFINITIONS

1. **“Additional Rent”** means additional rent paid by Lessee to Lessor, as set forth in Section 3.2.
2. **“Additional Rent Triggers”** means the event in which Lessee achieves both of the following: (a) One Hundred Fifty (150) days of cash on hand, and (b) earnings before interest, depreciation and amortizations (“EBIDA”) that is in excess of the higher of (i) ten percent (10%) of Lessee’s Net Revenue (as determined under GAAP), or (ii) the then-current level of EBIDA as a percentage of Net Revenue required for Lessee to achieve a Moody’s Investor Service “A3”, or other rating services’ equivalent, category credit rating.
3. **“Adjustment Date”** means January 1, 2017 and each successive anniversary thereafter during the Lease Term.
4. **“Alterations”** means any alterations, additions, or improvements to the Premises.
5. **“ASB”** means an ambulatory services building built on the Premises as part of the New Improvements.
6. **“Authorized Individuals”** means those individuals with authority to settle a dispute on the Initiating Party’s or Responding Party’s behalf.
7. **“Base Rent”** means the amount Lessee shall pay to Lessor as fully set forth in Section 3.1.
8. **“Claims”** means any and all claims, losses, costs, damages (including consequential and punitive damages), expenses, liabilities, obligations, liens, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders or judgments), causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, deficiencies and penalties of any kind (including sums paid in settlement of claims, investigation and laboratory fees, consultant and expert fees and expenses, court costs, arbitration fees, attorney fees actually incurred and other expenses).
9. **“Clinic Deficit”** means one-twelfth (1/12th) of the estimated deficit, if any, set forth in the Annual Budget.

10. **"Clinics"** means those outpatients clinics owned and operated by Lessor, both within and outside of Lessee's borders, that are exempt from licensure pursuant to Section 1206(b) of the California Health & Safety Code.
11. **"County"** means the County of Marin.
12. **"County Easements"** means the County's easement rights over the access road to the Mental Health Building and related parking areas as described in Exhibit A.
13. **"EBIDA"** means earnings before interest, depreciation and amortizations.
14. **"Effective Date"** means the date on which the Lease is approved by the voters of Marin Healthcare District as required pursuant to California Health & Safety Code Section 32121(p).
15. **"Estoppel Certificate"** means a notarized written statement in a form reasonably requested by the other party or required by any lender of the requesting party stating that the Lease is unmodified and in full force and effect or in full force and effect as modified and state the modifications.
16. **"Environmental Laws"** means any Laws and Orders now in force or hereafter enacted, promulgated or issued that requires or relates to: (a) advising appropriate authorities, employees or the public of intended or actual releases of pollutants or hazardous substances or material, violation of discharge limits or other prohibition and the commencement of activities, such as resource extraction or construction, that could have significant impact on the environment; (b) preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the environment; (c) reducing the quantities, preventing the release or minimizing the hazardous characteristics of wastes that are generated; (d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the environment when used or disposed of; (e) protecting resources, species or ecological amenities; (f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potential harmful substances; or (g) cleaning up pollutants that have been released, preventing the threat of release or paying the costs of such clean up or prevention.
17. **"GAAP"** means generally accepted accounting principles.
18. **"Hazardous Materials"** means any hazardous or toxic substance, material, or waste at any concentration that is or becomes or is foreseeable that it will be regulated by the United States, the State of California, or any local government authority or entity having jurisdiction over the Premises and as fully set forth in Section 7.5 below.
19. **"Healthcare Law"** means 42 U.S.C. Section 1320a-7b(b) (commonly referred to as the Anti-Kickback Law), 42 U.S.C. Section 1395nn (commonly referred to as the Stark

Law), or any comparable federal or state Law governing kickbacks, bribes, rebates or patient referrals.

20. **"Holder"** means any ground lessor, master lessor, trustee or lender under any Indenture, beneficiary or mortgagee.
21. **"Holdover Rate"** means the rate at which Lessee shall pay Lessor for each day Lessee retains possession of the Premises or any part of them after expiration or termination of this Lease and which shall be the greater of (a) one hundred twenty-five percent (125%) of the fair market rental (as reasonably determined by Lessor) for the Premises, or (b) one hundred twenty-five percent (125%) of the Rent payable under this Lease for the last full month before the date of expiration or termination, prorated on a daily basis.
22. **"Hospital"** means the hospital and related facilities operated on the Property.
23. **"Hospital Assets"** means all engines, boilers, pumps, machinery, apparatus, fixtures, fittings, equipment, computer hardware and software, personal property and all other tangible assets of any kind placed in or about the Premises or that Lessee uses or operates in the course of Lessee's activities and business on, or in connection with, the Premises and the Hospital.
24. **"Hospital Operator"** means a third party appointed by Lessor to operate the Premises on behalf and as the agent of Lessee pursuant to a management contract.
25. **"Indenture"** means any indenture or master indenture, or any supplement thereto or similar instrument designed to substitute a new obligation under an indenture, or any loan agreement or financing agreement, or similar agreement, executed by Lessee, or assumed by or assigned to Lessee, during the term of this Lease, in connection with the incurrence by Lessee of any indebtedness secured by all or any portion of the following: (a) the Hospital's revenues; (b) the Hospital's accounts receivable, (c) a general pledge of the Lessee's assets, including, without limitation, the Hospital Assets, or (d) a pledge of Lessee's leasehold interest in the Premises, provided, however, that such indebtedness was permitted, or consented to by Lessor, as provided in this Lease.
26. **"Index"** means the Consumer Price Index for All Urban Consumers U.S. City Average, All Items (base years 1982-1984= 100).
27. **"Initiating Party"** means the party seeking to initiate the Meet and Confer procedures.
28. **"Law and Orders"** means all federal, state, county, municipal and other governmental agency or entity laws, statutes, ordinances and governmental and quasi-governmental rules, regulations, decrees, orders or requirements relating to, affecting, or governing the condition, use or occupancy of the Premises now in force or hereafter enacted, promulgated or issued. The term includes government measures regulating or enforcing public access, occupational, health, or safety standards for employers, employees, lessors, or lessees, and requirements of boards of fire underwriters and utilities companies.

29. **“Lease Commencement Date”** means the date stated in Part II, Section 5(b).
30. **“Lease Date”** means _____, 2014.
31. **“Lease Expiration Date”** means the date stated in Part II, Section 5(c), unless this Lease is sooner terminated as provided in this Lease.
32. **“Lease Term”** means the period stated in the Part II, Section 5(a).
33. **“Lease Year”** means each consecutive twelve-month (12-month) period during the Lease Term, subject to the conditions set forth in Section 2.2.
34. **“Lessee Parties”** means, singularly and collectively, Lessee and Lessee’s officers, directors, members, partners, agents, employees, and independent contractors as well as to all persons and entities claiming through any of these persons or entities.
35. **“Lessor Parties”** means, singularly and collectively, Lessor and Lessor’s officers, directors, members, agents, employees, independent contractors, advisers and lenders, as well as to all persons and entities claiming through any of these persons or entities.
36. **“Management Agreement”** means the administrative and staffing support for Lessor’s MHD Facilities provided by Lessee pursuant to that certain Management Services and Staffing Agreement, dated May 1, 2014.
37. **“Meet and Confer”** means the parties’ agreement to meet and confer on any issue that is the subject of a dispute under a specific term of this Agreement.
38. **“MHD Facilities”** means the Clinics and other business and facilities related to the performance of health care services which Lessor owns and operates.
39. **“MHB Parcel”** means that certain portion of the Property upon which the Mental Health Building sits.
40. **“New Improvements”** means improvements to the Premises during the Term of the Lease (new Hospital wing, parking structures, ASB and related new improvements, collectively), together with any other improvements and expenditures that may be required to the Premises, including but not limited to the Hospital, by the Seismic Requirements.
41. **“Permitted Use”** means Lessee’s use of the Premises solely for the purposes of operating and maintaining a nonprofit community general acute care hospital and related and ancillary healthcare facilities, activities and services.
42. **“Premises”** means all of the Property owned or co-owned by Lessor; provided however, that (a) with respect to the MHB Parcel, the Premises only includes Lessor’s partial

ownership interest therein, and (b) the Premises and Lessee's rights therein are subject to the County Easements and the County's rights thereunder.

43. **"Prior Lease"** means that certain Lease Agreement dated November 12, 1985 as most recently amended June 30, 2010 pursuant to a Second Amendment to Lease.
44. **"Property"** means the real property and all improvements thereon and thereto commonly known as Marin General Hospital, located at 250 Bon Air Road, Greenbrae, California, and further described and depicted in Exhibit A.
45. **"Responding Party"** means the party receiving notice pursuant to the Meet and Confer procedures as set forth in Section 23.2.
46. **"Subordination Agreement"** means a subordination agreement and any other instruments or documents necessary or appropriate to further evidence any subordination of this Lease as required by Section 18.3.
47. **"Seismic Requirements"** means seismic retrofit/replacement requirements with respect to the Hospital and the Premises under California State law.
48. **"Superior Interest"** means all existing and future ground leases, master leases of all or any substantial part of the Premises, trust deeds and mortgages or Indentures encumbering the Premises, any advances made thereunder, and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded.
49. **"Termination Date"** means the date of termination of this Lease at Lessor's election pursuant to Section 19.5(a).
50. **"Total Taking"** shall mean the taking of fee title to all of the Premises or to all of the improvements, or the entire leasehold estate of Lessee by the power of eminent domain by any public or quasi-public agency or entity.

Part II

SUMMARY OF BASIC LEASE INFORMATION

The basic terms of this Lease are:

1. **Lease Date:** The date set forth in Part I, Section 30; **Effective Date** is the date set forth in Part I, Section 14.
2. **Lessor:** Marin Healthcare District, a political subdivision of the State of California.
3. **Lessee:** Marin General Hospital, a California nonprofit public benefit corporation.

4. **Property:** Lessor owns the Property provided, however, that the County (i) co-owns with Lessor the MHB Parcel and (ii) has certain related easement rights over the access road to the Mental Health Building and related parking areas pursuant to the County Easements.
5. **Lease Term:**
 - a. **Duration (Section 2.1):** thirty (30) years.
 - b. **Lease Commencement Date (Section 2.1):** December 2, 2015.
 - c. **Lease Expiration Date (Section 2.1):** December 1, 2045, unless terminated earlier.
6. **Rent (Section 3.1):**
 - a. **Base Rent:** \$500,000 annually, plus an annual CPI increase. Initially monthly Base Rent of \$41,666.67.
 - b. **Other Rent:** Certain additional cash payments and administrative support services and/or payments as provided in Sections 3.2, 3.3 and 3.4, respectively.
7. **Lessee is responsible for the payment of all taxes and operating expenses.**
8. **Permitted Use (Section 5.1):** Lessee shall use the Premises solely for the purposes set forth in Part I, Section 41. Lessee shall operate the Premises for the benefit of the communities served by Lessor.
9. **Insurance:** see Sections 12.4, 12.5 and 12.6.
10. **Late charge and interest (Article XXI)**
 - a. **Late charge (Section 21.1):** Five percent (5%) of the amount due.
 - b. **Interest on delinquent Rent (Section 21.2):** Ten percent (10%) per year.
11. **Addresses for notices and payments:**
 - a. **Lessor's address for notices (Section 25.12):** 100B Drakes Landing Road, Suite 250, Greenbrae, CA 94904.
 - b. **Lessor's address for payments (Section 3.1):** 100B Drakes Landing Road, Suite 250, Greenbrae, CA 94904.
 - c. **Lessee's address (Section 25.12):** 250 Bon Air Road, Greenbrae, California 94904.
 - d. **Address of Lessee's lender (Section 25.12):** _____.

Part III

LEASE PROVISIONS

ARTICLE I

REAL PROPERTY AND PREMISES

- A. Prior to the Lease Date of this Lease, Lessee leased the Property from Lessor, subject to the rights of the County with respect to the MHB Parcel and the County Easements, pursuant to the Prior Lease and operated on the Property a Hospital.
- B. Lessor and Lessee now desire to enter into a new lease for the Premises (as defined herein) on the terms and conditions set forth in this Lease.
- C. Both Lessor and Lessee have determined that Lessor's agreement to lease the Premises to Lessee on the terms and conditions set forth in this Lease (i) will further joint planning with respect to, and the efficient delivery of, health care services within the geographic area served by Lessor, and will promote and further the best interests of Lessee, Lessor, and the communities and constituents served by them, and (ii) is appropriate and beneficial to both parties in light of their affiliation (Lessor being the sole corporate member of Lessee).
- D. Accordingly, Lessee and Lessor hereby agree as follows.

1.1 Lease of Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Premises, on all of the terms and conditions set forth in this Lease. Lessee further acknowledges and agrees that Lessee must share with the County use of the MHB Parcel and the building thereon, subject to whatever agreement(s) with respect thereto Lessor, Lessee and the County have previously entered into or may enter into from time to time.

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

ARTICLE II

LEASE TERM

2.1 Lease Term. The provisions of this Lease shall be effective as of the Effective Date. The Lease Term shall commence on the Lease Commencement Date and shall expire on the Lease Expiration Date unless this Lease is sooner terminated as provided in this Lease. As of the Lease Commencement Date, this Lease shall supersede the Prior Lease and govern the Lessee's leasing of the Premises from Lessor.

2.2 Lease Year. For purposes of this Lease, each Lease Year shall be as stated in Part I, Section 33, provided, however:

(a) The first Lease Year commences on the Lease Commencement Date and ends on the last day of the twelfth (12th) calendar month thereafter;

(b) The second (2nd) and each succeeding Lease Year commences on the first day of the next calendar month; and

(c) The last Lease Year ends on the Lease Expiration Date or earlier date of termination.

ARTICLE III

BASE RENT

3.1 "Base Rent"—No Setoff. Lessee shall pay to Lessor Base Rent in equal monthly installments as set forth in Summary of Basic Lease Information Section 6 in advance, on or before the first day of every calendar month during the Lease Term (commencing on the Lease Commencement Date), without any prior demand, abatement, setoff or deduction. Payment shall be made at Lessor's address as set forth in Summary of Basic Lease Information Section 11(b) or at any other place that Lessor may from time to time designate in writing. Payment must be in United States dollars, either in the form of a check (drawn on a bank located in the State of California) or via electronically transmitted funds.

Notwithstanding any other provision of this Article III, on each Adjustment Date, Base Rent shall be increased by one hundred percent (100%) of the percentage of increase, if any, shown by the Index, published by the United States Department of Labor, Bureau of Labor Statistics, for the month immediately preceding the Adjustment Date as compared with the Index for the same month in the immediately preceding calendar year (except with respect to the first adjustment which shall be compared with the Index for November 2015). Lessor shall calculate the amount of this increase in Base Rent after the United States Department of Labor publishes the statistics on which the amount of the increase will be based. Lessor shall give written notice of the amount of the increase, multiplied by the number of installments of rent due under this Lease since the Adjustment Date. Lessee shall pay this amount, together with the monthly rent next becoming due under this Lease, and shall thereafter pay the monthly rent due under this Lease at this increased rate, which shall constitute Base Rent. Lessor's failure to make the required calculations promptly shall not be considered a waiver of Lessor's rights to adjust the monthly Base Rent due, nor shall it affect Lessee's obligations to pay the increased Base Rent. If the Index is changed so that the base year differs from that in effect on the Lease Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Lease Term, the government index or computation with which it is replaced shall be used to obtain substantially the same result as if the Index had not been discontinued or revised. In no event will Base Rent decrease.

3.2 **Additional Rent.** Lessee shall pay Additional Rent to Lessor when Lessee achieves both of the Additional Rent Triggers. When Lessee achieves both of the Additional Rent Triggers, it shall pay Additional Rent in the amount of two percent (2%) of any amount of Lessee's EBIDA that is in excess of the second Additional Rent Trigger set forth in Part I, Section 2. Additional Rent, if any, is payable within ninety (90) days after the end of each calendar year. No Additional Rent shall be payable to the extent it would cause Lessee to violate any covenants or requirements of any loan or bond issuance by Lessee that has been approved by the Lessor.

3.3 **Administrative Support Obligations.** Lessee also shall provide Lessor for the duration of the Lease (a) such administrative and secretarial support services as Lessor may require to conduct its affairs, including without limitation bookkeeping, accounting, human resources, record keeping, and information technology support/services, and (b) such office space, furniture, computer hardware and software, and equipment the Lessor reasonably requires to house its staff and conduct its affairs, whether located on the Premises or elsewhere. Upon any Lessor request for any such services or support, Lessee shall, as reasonably directed by Lessor, (i) designate and/or make available to Lessor those Lessee employees and personnel and services as reasonably necessary to provide Lessor with the requested services on a timely basis and in a good, workmanlike and professional manner, or (ii) reimburse Lessor's direct expenditures for such administrative support. Lessor's Board, or one or more Lessor management or staff member(s) designated by Lessor's Board, shall have authority to determine on Lessor's behalf whether Lessee has provided the full scope and quality of the secretarial and administrative services and office space, furniture, computer hardware and software and support, and equipment that Lessee is required to provide to Lessor under this Section. Lessor's reasonable administrative and support needs under this Section, and the reasonableness of any Lessor requests for any additional support/ administrative needs, shall be determined based upon Lessor's operations and administrative/support needs as of the Effective Date, as contemplated here and under the Bylaws, which shall include, at the option of Lessor, the reasonable expense of an executive officer (as may be determined by an independent recruitment firm) as defined in the Bylaws. If Lessee should need to relocate Lessor's office, Lessee shall do so to space comparable to the space occupied by Lessor as of the Lease Commencement Date and reasonably close to the Hospital, and shall provide Lessor sixty (60) days advance notice of its intention to do so, advise Lessor as to its new location, and arrange and pay for Lessor's cost of relocation. If Lessor is dissatisfied with the services of any Lessee personnel, Lessor shall consult in good faith with Lessee to determine whether the performance of that employee can be brought to acceptable levels through counsel and assistance, or whether Lessee should assign a new replacement staff person. Lessee shall have final decision-making authority on staffing issues, and shall be responsible for employee reviews, evaluation and discipline and all decisions regarding termination of employment. In no event shall Lessee be required to provide in any year during the Lease Term, administrative support, space and supplies in excess of Five Hundred Nine Thousand Dollars (\$509,000), plus an annual increase calculated as provided in Section 3.1 above with the first Adjustment Date deemed to be January 1, 2013.

3.4 **Financial Support for Lessor's Health Care Clinic.**

(a) **Calculation and Payment of Clinic Deficits.** Lessor owns and operates the MHD's Facilities including its Clinics. The Clinics contract with physicians to provide needed

health care services. The Clinics also support and complement Lessee's reasonable physician recruitment efforts. Lessee provides administrative and staffing support for Lessor's MHD Facilities pursuant to the Management Agreement. During each Lease Year, Lessee shall pay all Clinic Deficits to Lessor in accordance with the following procedures:

(b) Payment of Estimated Clinic Deficits. Prior to each Lease Year, Lessee shall give Lessor the Annual Budget for the MHD Facilities as set forth in the Management Agreement. On or before the first day of each month during such next ensuing Lease Year, Lessee shall pay to Lessor in advance, in addition to Base Rent, the Clinic Deficit, if any, set forth in the Annual Budget. With the monthly payment of Clinic Deficit based on the estimate set forth in the Annual Budget, Lessee shall also pay the difference, if any, between the amount previously paid for such Lease Year and the actual Clinic Deficit for the Lease Year if it is greater than the estimated amount set forth in the Annual Budget or, in the alternative, if such amount previously paid by Lessee for such Lease Year through the month exceeds the actual Clinic Deficit as reported in the Management Report and Expense Report provided by Lessee to Lessor as required under the Management Agreement, Lessor shall credit such excess amount against the next monthly payment of Clinic Deficit due from Lessee. If at any time Lessor reasonably determines that Clinic Deficit for the current Lease Year will vary from the applicable Annual Report by more than five percent (5%), Lessor may, by notice to Lessee, revise the estimate for such Lease Year, and subsequent payments by Lessee for such Lease Year shall be based upon such revised estimate.

(c) Clinic Deficit Reconciliation and Adjustment. Within ninety (90) days after the close of each Lease Year, or as soon thereafter as practicable, Lessee shall deliver to Lessor a statement of the actual Clinic Deficit, if any, for such Lease Year, accompanied by a statement prepared by Lessee showing in reasonable detail the actual revenue and expenses of the MHD Facilities, and the amounts previously paid by Lessee for such Lease Year for Clinic Deficits. If Lessee's statement shows that Lessee owes an amount less than the payments previously made by Lessee for such Lease Year, Lessor shall credit the difference first against any sums then owed by Lessee to Lessor and then against the next payment or payments of Clinic Deficit due Lessor, except that if a credit amount is due Lessee after termination of this Lease, Lessor shall pay to Lessee any excess remaining after Lessor credits such amount against any sums owed by Lessee to Lessor. If Lessor's statement shows that Lessee owes an amount more than the payments previously made by Lessee for such calendar year, Lessee shall pay the difference to Lessor within thirty (30) days after delivery of the statement.

(d) Proration for Partial Year. If this Lease terminates other than on the last day of a Lease Year (other than due to Lessee's default), the amount of Clinic Deficit for such fractional Lease Year shall be prorated on a daily basis. Upon such termination, Lessor may, at its option, calculate the adjustment in Clinic Deficits prior to the time specified in subsection (c) above. Lessee's obligation to pay Clinic Deficits incurred during the Term of this Lease, as set forth in this Section 3.4, shall survive the expiration or termination of this Lease.

3.5 Proration. If any payment date (including the Lease Commencement Date) falls on a day other than the first day of that calendar month, or if any Base Rent payment is for a period shorter than one calendar month, the Base Rent for that fractional calendar month shall accrue on a daily basis for each day of that fractional month at a daily rate equal to 1/30 of the

total monthly Base Rent. All other payments or adjustments that are required to be made under the terms of this Lease and that require proration on a time basis shall be prorated on the same basis.

3.6 Application of Payments. All payments received by Lessor from Lessee shall be applied to the oldest payment obligation of any type owed by Lessee to Lessor hereunder. No designation by Lessee, either in a separate writing or on a check or money order, shall modify this clause or have any force or effect.

3.7 Certified Funds. If any noncash payment made by Lessee is not paid by the bank or other institution on which it is drawn more than once each calendar year, Lessor shall have the right, exercised by notice to Lessee, to require that Lessee make all future payments by certified funds or cashier's check.

3.8 Definition of Rent. Rent means all Base Rent, Additional Rent, Administrative Support Obligations, Clinic Deficit payments, Real Property Taxes and all other sums that are payable by Lessee under this Lease.

3.9 Net Nature of Lease. Lessor and Lessee agree that Rent payable under this Lease shall be absolutely net to Lessor and that, except as otherwise expressly provided for herein, there shall be no abatement or reduction of Rent.

ARTICLE IV

TAXES

4.1 Taxes and Assessments. Lessor and Lessee acknowledge and agree that Lessor is a governmental entity and Lessee is a nonprofit corporation and thus there should be no or few taxes levied against the Premises, Lessee's personal property, and other property related to the Premises. To the extent any tax expenses are levied, the provisions of this Article IV shall apply.

4.2 Definition of Real Property Taxes. Real Property Taxes means all federal, state, county or local government or municipal taxes, fees, charges, assessments or other impositions of every kind (whether general, special, ordinary or extraordinary) that are payable or incurred by Lessor (without regard to any different fiscal year used by any government or municipal authority) because of or in connection with the ownership, leasing, operation, management, maintenance, alteration, use, occupancy or possession of the Property or any part thereof (including any increase caused by a change in the tax rate or by a change in assessed valuation). These expenses include taxes, fees, levies, and charges such as real property taxes, general and special assessments, transit taxes, leasehold taxes, and taxes based on the receipt of rent (including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Lessee).

4.3 Real Property Taxes. In addition to all other sums payable by Lessee hereunder, Lessee shall pay, promptly when due and otherwise in the manner and at the times set forth in this Section 4.3, without abatement, deduction or offset, all Real Property Taxes levied and assessed against the Property during the Lease Term and shall timely submit all required reports, documents and notices. Lessor shall, promptly after its receipt thereof, provide Lessee with a

copy of each Real Property Tax bill received by Lessor. Lessee shall pay Real Property Taxes prior to the delinquency date therefor and shall furnish Lessor with satisfactory evidence of each payment thereof.

4.4 **Right to Contest Real Property Taxes.** Lessee may contest the legal validity or amount of any Real Property Taxes for which Lessee is responsible under this Lease and may institute such proceedings as Lessee considers necessary; provided, however, that the contest must be filed before the Real Property Tax at which it is directed becomes delinquent and that written notice of the contest is given to Lessor at least ten (10) days before the Real Property Tax becomes delinquent. If Lessee contests any such Real Property Taxes, Lessee may withhold or defer payment or pay under protest and such act shall not constitute a default under this Lease, provided that Lessee first (a) pays the Real Property Tax under protest before it becomes delinquent, (b) obtains and maintains a stay of all proceedings for enforcement and collection of the Real Property Tax by posting a bond or other security required by law for such a stay, or (c) furnishes and delivers to Lessor a surety bond issued by an insurance company qualified to do business in California and reasonably acceptable to Lessor in an amount at least 125% of the Real Property Taxes withheld or deferred and such bond shall hold Lessor and the Premises harmless from any damage arising out of the proceedings or contest and shall insure the full payment of such contested Real Property Taxes, including all penalties and interest, and is conditioned upon Lessee's payment of the Real Property Tax together with any fines, interest, penalties, costs and expenses that may have occurred or been imposed thereon within thirty (30) days after final determination of Lessee's contest. Lessor appoints Lessee as Lessor's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any Real Property Taxes, conditioned upon Lessee's preventing any liens from being levied on the Premises or Lessor (other than the statutory lien of Revenue and Taxation Code Section 2187).

4.5 **Personal Property Taxes.** Lessee shall pay before delinquency all taxes, assessments, license fees and other charges levied or assessed on or as a result of Lessee's personal property, alterations, improvements or fixtures. Lessee shall furnish Lessor with satisfactory evidence of these payments from time to time upon Lessor's request.

4.6 **Lessor's Right to Pay Taxes.** Notwithstanding Section 4.4, Lessor shall have the right to pay any taxes, and any associated penalties, interest and other charges, for which Lessee is responsible under this Lease, if Lessor reasonably believes that failure to pay same would create a material risk that all or part of the Premises would be taken or sold by the taxing authority. Lessee shall, on demand, immediately reimburse Lessor for the amount of taxes, and associated penalties, interest or other costs, paid by Lessor.

4.7 **Indemnification.** Lessee shall hold harmless, indemnify and defend Lessor and the Premises with respect to any Claims resulting from any Real Estate Taxes or other taxes and amounts required to be paid by Lessee hereunder and from all interest, penalties and other amounts imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments or other charges.

ARTICLE V

USE

5.1 **Permitted Use.** Lessee shall use the Premises solely for the Permitted Use as defined in Part II Basic Lease Information Section 8. Lessee shall not use or permit the Premises to be used for any other purpose without Lessor's prior written consent, which may be granted or withheld in Lessor's sole discretion.

5.2 **Use of Premises by Lessor.** Lessee shall permit Lessor to use Lessee's meeting or office facilities on the Premises for regular or special meetings of Lessor's Board of Directors or any committee or sub-committee thereof, or any other public meeting of Lessor, subject to reasonable advance scheduling/notification thereof by Lessor.

5.3 **Accreditation.** Lessee shall maintain any accreditation that is necessary for the operation of the Premises as a nonprofit general acute care hospital, including, without limitation accreditation with the Joint Commission.

5.4 **License.** Lessee shall maintain a valid license issued by the Department of Health Services of the State of California, and shall maintain any additional licenses, permits and other governmental approvals, necessary for the operation of the Premises as a nonprofit general acute care hospital.

5.5 **Payment Systems.** Lessee shall maintain its certification for participation in Medicare and Medi-Cal, including but not limited to maintaining compliance with all conditions of participation for Medicare, participation in and payment under private insurance programs having broad application and federal, state and local government programs providing for payment or reimbursement for medical services rendered.

5.6 **No Discrimination.** Lessee shall provide all medical services at the Premises without refusal, delay, or other discrimination, in whole or in part, directly or indirectly, because of a person's race ethnicity, religion, national origin, citizenship, age, sex, sexual orientation, preexisting medical condition, physical or mental handicap, marital status or ancestry, except to the extent that such circumstance is medically significant to the provision of appropriate care to the patient.

5.7 **Health and Safety Code Requirements.**

(a) Lessee shall conform to and abide by each and all of the provisions of California Health and Safety Code Section 32128, including without limitation the provisions regarding the self-governance of the medical staff regarding professional work/services performed in the Hospital.

(b) Lessor approves the initial and all current members of Lessee's Board of Directors, and shall approve all new and replacement board members of Lessee as provided for in Lessee's Bylaws.

(c) All assets transferred by Lessor to Lessee, and all assets accumulated by Lessee during the term of the Lease arising out of, or from, the operation of the Hospital, are to be transferred back to Lessor upon termination or expiration of the Lease.

(d) Lessee shall operate and maintain the Hospital and its assets for the benefit of the communities served by Lessor.

(e) Any funds received by Lessee from Lessor at the outset of the Lease or any time thereafter during the term of the Lease shall be used only to reduce Lessor indebtedness, to acquire needed equipment for the Hospital, to operate, maintain, and make needed capital improvements to the Hospital, to provide supplemental health care services or facilities for the communities served by Lessor, or to conduct other activities that would further a valid public purpose if undertaken directly by Lessor.

(f) The appraised fair market value, as determined by an independent consultant with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, of the assets transferred under the Lease is \$21,050,000 to \$23,680,000, and the fair market rent for such assets is \$2,000,000 to \$2,250,000 per year.

5.8 Tax-Exempt Status. During the Lease Term, Lessee shall maintain its exemption from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and from California franchise and income taxation under Section 23701(d) of the California Revenue and Taxation Code. Lessee shall maintain such corporate and tax-exempt status as is necessary to preserve the tax-exempt status of any Lessor or Lessee obligations that are tax-exempt, shall maintain Lessee's status as a nonprofit public benefit corporation, and shall conduct its activities on the Premises in a manner that will preserve the tax-exempt status of the interest payable on any Lessor or Lessee obligations that are tax-exempt.

5.9 Lessor's Right of Entry. Upon reasonable advance notice, or in an emergency without advance notice, Lessor and its authorized representatives shall have the right to enter the Premises at reasonable times to inspect the Premises, for any purpose relating to the maintenance, safety, or preservation of the Premises, to supply or perform any service to be provided by Lessor to Lessee under this Lease, to show the Premises to prospective purchasers and mortgagees or, during the last sixty (60) months of the Lease Term, to prospective Lessees or managers, and to post notices of non-responsibility or other notices required by law or which Lessor considers necessary for the protection of Lessor or the Premises. Lessor may also enter the Premises in order to alter, improve, repair or replace the Premises or any portion thereof, to

take possession due to any breach of this Lease and to perform any covenants of Lessee that Lessee fails to perform. Any non-emergency entry (a) shall be during regular business hours, (b) shall be subject to any security, health, safety and confidentiality requirements of Lessee or any governmental agency or insurance requirement relating to the Premises or imposed by law or applicable regulations, including but not limited to the Health Insurance Portability and Accounting Act, and (c) shall be on the condition that Lessor be accompanied by a Lessee representative. Notwithstanding the foregoing, Lessor and its authorized agents shall have the right to enter public areas of the Premises without prior notice to Lessee or accompaniment during such hours when the Premises are open to the public.

5.10 Additional Restrictions on Use. In addition to complying with other provisions of this Lease concerning the use of the Premises:

(a) Lessee shall not use or allow any person to use the Premises, do anything in, on or about the Premises, import to or keep anything at, or impact or do anything at, the Premises, that would violate any Laws and Orders, constitute waste or nuisance, impair the value of the Premises, or violate this Lease.

(b) Lessee shall comply with all recorded covenants, conditions and restrictions that now or later affect the Premises.

5.11 Lessee's Waiver. Lessor may enter the Premises pursuant to Section 5.10 without the abatement of Rent, and Lessor may take any steps necessary to accomplish the stated purpose of Lessor's right of entry pursuant to Section 5.10. Any such entry into the Premises by Lessor shall not be considered a forcible or unlawful entry into, or a detainer of, the Premises or an actual or constructive eviction of Lessee from any portion of the Premises. Lessee waives any claims for damages caused by Lessor's entry, including, but not limited to, damage claims for:

(a) Injuries to any person, or loss, injury or damage to or destruction of property;

(b) Inconvenience to or interference with Lessee's business;

(c) Lost profits or other economic losses or consequential or resulting damage of any kind; and

(d) Loss of occupancy or quiet enjoyment of the Premises.

5.12 Privacy.

(a) Patient Information. Lessee shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Lessee and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. Part 160, et seq.) the Confidentiality of Alcohol and Drug Abuse Patient Records Act (42 C.F.R. Part 2), as amended from time to time, and California's Confidentiality of Medical Information Act set forth at California Health & Safety Code § 56 *et seq.*

(b) **Notification of Disclosures.** Lessee will notify Lessee's Privacy Officer of the unauthorized access, use, or disclosure of any personally identifiable information, or protected health information known or suspected by Lessee within two business days of learning of the same in order to ensure that the reporting of such unauthorized access, use or disclosure of this information is reported within five days of detection to the California Department of Public Health (CDPH) and as appropriate, to the Office of Civil Rights (OCR) and/or Department of Health and Human Services (HHS). Lessee's Privacy Officer will oversee the required notification to CDPH.

(c) **Costs Associated with Disclosure.** Lessee agrees that if it fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth herein and, as a result, personally identifiable information or protected health information is unlawfully accessed, used or disclosed, that Lessee shall pay all costs associated with any notification to affected individuals required by law or deemed appropriate, and that Lessee also shall pay for any and all fines and/or administrative penalties imposed for such unauthorized, access, use or disclosure of personally identifiable information or protected health information or for delayed reporting.

ARTICLE VI

COMPLIANCE WITH LAWS AND INSURANCE REQUIREMENTS

6.1 **Compliance with Laws.** Lessee, at Lessee's cost, shall comply with all Laws and Orders applicable to the use, condition and occupancy of the Premises and improvements and Hospital Assets, regardless of the cost thereof, at what point in time during the Term compliance is required, and whether such compliance was foreseen or unforeseen. Lessee shall not use the Premises or Hospital Assets, do anything in, on or about the Premises, or import to or keep anything at the Premises, that conflicts with or violates any Laws and Orders. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, Lessee, at Lessee's cost, shall procure and maintain it throughout the Lease Term. Lessee also shall hold harmless, indemnify and defend District from any Claims resulting from Lessee's failure to comply with and perform the requirements of this Section.

6.2 **Repairs, Replacements, Alterations, and Improvements.** Lessee, at Lessee's sole expense, shall continuously and without exception repair, maintain and improve the Premises, including Lessee improvements, Alterations, fixtures, furnishings, and Hospital Assets in an order and condition in compliance with all Laws and Orders, whether now or hereafter made, issued or enacted. Lessee, at Lessee's sole expense, shall promptly make all repairs, replacements, Alterations, or improvements needed to comply with all Laws and Orders. Lessee may contest, in Lessee's sole discretion, by appropriate legal proceedings brought in good faith and diligently prosecuted in the name of Lessee, or in the names of Lessee and Lessor when appropriate or required, the validity or applicability to the Premises and/or the Hospital Assets of any Laws and Orders; provided, however, that any such contest or proceeding, though maintained in the names of Lessee and Lessor, shall be without cost to Lessor, and Lessee shall protect and indemnify the Premises, the Hospital Assets, and Lessor from Lessee's failure to

observe or comply during the contest with the contested law, ordinance, statute, order, or regulation.

6.3 Collateral Estoppel. The judgment of any court of competent jurisdiction, or the admission of Lessee in any judicial or administrative action or proceeding that Lessee has violated any Laws and Orders shall be conclusive, between Lessor and Lessee, of that fact, whether or not Lessor is a party to that action or proceeding.

6.4 Compliance with Insurance Requirements. Lessee shall not use the Premises, do anything in, on or about the Premises, or import to or keep anything at the Premises that would impair the cost of insurance maintained by Lessor with respect to the Premises or which would result in cancellation of any such insurance.

6.5 Notices. Lessee shall immediately furnish Lessor with a copy of any notices Lessee receives from any governmental agency or entity relating to the Premises or the operation of the Hospital therein.

6.6 Indemnification. Lessee shall hold harmless, indemnify and defend Lessor from any Claims resulting from Lessee's failure to comply with and perform the requirements of this Article VI.

ARTICLE VII

HAZARDOUS MATERIAL

7.1 Use of Hazardous Material. Lessee shall not cause or permit any Hazardous Material, as defined in Section 7.5, to be generated, brought onto, used, stored, or disposed of on, under or about the Premises by Lessee or its agents, employees, contractors, sublessees or invitees, except for medical waste and other materials used as part of Lessee's business operations conducted in the ordinary course and in strict accordance with all Environmental Laws (as defined below), prudent industry practice and the standards of this Lease. Lessee shall comply at all times during the Lease Term with all Environmental Laws.

7.2 Notice of Release or Investigation. If, during the Lease Term (including any extensions), Lessee receives any notice concerning or otherwise becomes aware of (a) any actual or threatened release of any Hazardous Material on, under, or about the Premises, (b) any inquiry, investigation, proceeding, or claim by any government agency or other person regarding the presence of Hazardous Material on, under, or about the Premises, or (c) any violation of any Environmental Law, Lessee shall give Lessor written notice of the release or investigation within five (5) days after learning of it and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, or other writings received by Lessee that concern the release or investigation.

7.3 Indemnification. Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, and hold harmless Lessor and Lessor's directors, officers, employees, partners, affiliates, agents, successors, and assigns from and against and with respect to all Claims arising out of or resulting from or in connection with the existence or release of any Hazardous Material in, under or about the Premises or the Building,

any environmentally hazardous condition resulting from Lessee's occupation or use of the Premises or any personal property, equipment or fixtures located on the Premises, or the violation of any Environmental Law. This indemnification applies whether or not the concentrations of any Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any governmental agency has issued a cleanup order. This indemnification shall survive the expiration or termination of this Lease.

7.4 Remediation Obligations. If the presence of any Hazardous Material brought onto the Premises results in contamination of the Premises, or if any environmentally hazardous condition results from Lessee's occupation or use of the Premises or any personal property, equipment or fixtures located on the Premises, Lessee shall immediately take all necessary actions to remove or remediate and clean up such Hazardous Materials or environmentally hazardous condition, at Lessee's sole expense, to return the Premises to the condition that existed before the introduction of such Hazardous Material or environmentally hazardous condition and in accord with all Environmental Laws. Lessee shall first obtain Lessor's approval of the proposed removal or remedial action. This provision does not limit the indemnification obligation set forth in Section 7.3.

7.5 Definition of Hazardous Material. As used in this Article VII, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material, or waste at any concentration that is or becomes or is foreseeable that it will be regulated by the United States, the State of California, or any local government authority or entity having jurisdiction over the Premises. Hazardous Material includes:

(a) Any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC Sections 9601-9675);

(b) "Hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC Sections 6901-6992k);

(c) "Hazardous Material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and including without limitation petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material and urea formaldehyde;

(d) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable Laws and Orders (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);

(e) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 USC Sections 2011-2297g-4; and

(f) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

ARTICLE VIII

UTILITIES AND SERVICES

8.1 **Utilities.** Lessee, at its sole cost and expense, shall be solely responsible for arranging and timely paying for all utilities, materials and services used or needed for the Premises and the operation of the Hospital and other facilities thereon, including without limitation water, HVAC, gas, electricity, telephone, sewage, ventilating, refuse (including handling and disposal of medical waste) and any other utilities, materials or services furnished directly to or used by Lessee on or about the Premises during the Term. Lessee shall pay directly for all such utilities, materials and services to the utility or other provider of same, and shall hold harmless, indemnify and defend Lessor against all Claims relating to the same. Lessor has no obligation to provide to Lessee or to the Premises any utilities, materials or services whatsoever, nor to pay for any utilities, materials or services supplied to Lessee or the Premises. Lessor shall not be liable to Lessee for any interruption, disruption or any unavailability of any utility, materials or services, or for any loss of or injury to property or for inquiry to or interference with Lessee's business, including without limitation loss of profits resulting from, in connection with or incidental to, any such interruption, disruption or unavailability of any utility, materials or services. No interruption, disruption or unavailability shall be deemed an eviction or entitle Lessee to terminate this Lease or abate Rent.

8.2 **Government Approvals.** If Lessee installs any telecommunications equipment, Lessee shall do so at its sole cost and expense, and Lessee shall obtain, at its sole cost and expense, any and all permits, authorizations, and certificates, including, without limitation, zoning variances or changes, as may be required with respect to such telecommunications equipment from all governmental agencies. Lessor agrees to reasonably cooperate with Lessee to obtain same if required by applicable governmental agencies; provided, however, that Lessor shall not be obligated to incur any costs or accept the imposition of any zoning change or use restrictions affecting the Property.

8.3 **Indemnity.** Lessee shall repair any damage caused by Lessee's installation, maintenance, operation, alteration, repair or replacement or removal of telecommunications equipment, and shall indemnify, protect, defend and hold Lessor harmless from all Claims. Lessor shall not be liable for any damage to or interference with Lessee's business or any loss of income from Lessee's business, or for loss of or damage to Lessee's telecommunications equipment caused by or resulting from any damage to or interference with, or operation of Lessee's telecommunications equipment, including, without limitation, damage or interference caused by or resulting from the installation, maintenance, operation, alteration, repair, replacement or removal of other telecommunications equipment in, on, under or about the Premises, and Lessee waives all Claims against Lessor for the same.

ARTICLE IX

REPAIRS AND MAINTENANCE

9.1 **Lessee's Repair and Maintenance Obligations.** Lessee shall, at Lessee's sole cost and expense and in accordance with the terms of this Lease, at all times during the Lease Term

keep and maintain the Premises, including all Lessee improvements, Alterations, fixtures and appurtenances (including, without limitation, landscaping and parking areas) now or hereafter on the Premises and keep, maintain and operate the Premises and the Hospital Assets in good and safe condition, repair and working order and shall from time to time make or cause to be made all necessary and appropriate repairs, renewals, replacements, upgrades, remodels, and improvements to the Hospital Assets such that all of the Hospital Assets are in a condition to be used and operated for the purposes, and in accordance with the standards for such use and operation, set forth in this Lease. Lessor shall not have any responsibility during the Lease Term to maintain, repair, alter, improve or reconstruct the Premises or any portion thereof or any of the Hospital Assets. If Lessee fails to make such repairs, Lessor may, but need not, make the repairs and replacements. On receipt of an invoice from Lessor, Lessee shall pay Lessor Lessor's out-of-pocket costs incurred in connection with such repairs and replacements plus five percent (5%) of such amount to reimburse Lessor for all overhead, general conditions, fees, and other costs and expenses arising from Lessor's involvement with such repairs and replacements. Lessee expressly recognizes that, because of the length of the Term of this Lease, it may be necessary for Lessee to perform substantial maintenance, repair, rehabilitation or reconstruction of, and additions to, the improvements, Alterations and Hospital Assets to ensure they are kept in the condition required by, and that Lessee complies with the terms of, this Lease. In this regard, Lessee waives and releases (i) all defenses to its maintenance obligations under this Lease, (ii) the right to require Landlord to make repairs and (iii) its rights, including its right to make repairs at Lessor's expense, under California Civil Code Sections 1941-1942 or any similar law, statute, or ordinance now or hereafter in effect.

ARTICLE X

ALTERATIONS AND ADDITIONS; CAPITAL EXPENDITURES

10.1 Alterations, Additions and Improvements.

(a) Except as set forth in this Section 10.1, and subject to Section 9.1, Lessee may make any Alterations, provided that they are consistent with the limitations on use contained in this Lease. Notwithstanding the foregoing, Lessee shall not, without Lessor's prior written consent, which Lessor shall not unreasonably withhold, condition, or delay, make any alterations or improvements to the Premises or the Hospital Assets (a) the financing and/or payments for which, in whatever form, including, without limitation, pursuant to any capital lease, loan or acquisition financing agreement, service agreement, or license agreement, extend beyond the expiration of this Lease in an amount that equals or exceeds twenty percent (20%) of the total acquisition, leasing, licensing, and/or service agreement costs for such Alteration or (b) that have a useful life (as determined in accordance with GAAP) that extends beyond the expiration of this Lease. It shall be reasonable for Lessor to withhold its consent for any Alterations to the Premises that would result in a debt, obligation, encumbrance, lien, etc., that (i) would constitute an Indenture as provided for hereunder or (ii) Lessor could not assume or accept upon expiration or earlier termination of this Lease without violating any law, regulation, ordinance, or ruling applicable to Lessor, Lessee, the Premises, or the assets, rights and interests to be conveyed to Lessor at Lease termination or expiration pursuant to Article XVII of this Lease, or to condition such consent on structuring any capital expenditure for such Alterations and any financing thereof, in such a manner so that Lessor could assume or accept same pursuant

to Article XVII of this Lease without violating any such law, regulation, ordinance, or ruling. Commencing on the earliest to occur of (1) the date Lessor executes with a third party a new lease for the Premises to be effective upon expiration or termination of this Lease, or (2) the date that is five (5) years prior to the expiration of the Lease Term without Lessee and Lessor having entered into an extension of this Lease or a new lease for the Premises, Lessor may withhold, condition, or delay any consent under this Section in Lessor's sole and absolute discretion. If Lessee is required to obtain Lessor's consent hereunder, Lessee shall request such consent by written notice to Lessor, which must be accompanied by detailed and complete plans and specifications for the proposed work.

(b) **Costs of Review.** Lessee shall reimburse Lessor for the reasonable fees and costs of any architects, engineers, or other consultants retained by Lessor to review the proposed Alterations.

10.2 Compliance of Alterations With Laws and Insurance Requirements. Lessee shall cause all Alterations to comply with the following:

- (a) **Applicable Laws and Orders;**
- (b) **Applicable requirements of a fire-rating bureau; or**
- (c) **Applicable requirements of Lessee's and Lessor's hazard insurance and other carriers.**

Lessee shall also comply with those requirements in the course of constructing the Alterations. Before beginning construction of any Alteration, Lessee shall, at Lessee's sole cost and expense, obtain a valid building permit and any other permits required by any government entity having jurisdiction over the Premises. Lessee shall provide copies of those permits to Lessor before the work begins. Lessee shall, at Lessee's sole cost and expense, comply with any and all requirements pertaining to the Premises of any insurance company necessary for the maintenance of the insurance required under this Lease. No consent by Lessor to any proposed work shall constitute a waiver of Lessee's obligations under this Section 10.2.

10.3 Manner of Construction. Lessee shall build Alterations entirely within the Premises. All work relating to any Alterations shall be done in a good and workmanlike manner under the supervision of a competent architect or licensed structural engineer, using new materials equivalent in quality to those used in the construction of the initial improvements to the Premises. All work shall be diligently prosecuted to completion. Lessee shall ensure that all work is performed in a manner intended to minimize any disruption of Hospital operations or obstruction of access to or through the Hospital or its common areas. The parties acknowledge that the construction of the New Improvements may result in significant disruption of Hospital operations and obstruction of access to and through the Hospital, and agree to cooperate and use commercially reasonable efforts to minimize such disruption and obstruction. Lessee shall use commercially reasonable efforts to ensure that such work is not interrupted by labor stoppages. Within twenty (20) days after completion of any Alterations, Lessee shall deliver to Lessor a reproducible copy of the drawings of Alterations as built. If this Lease terminates before completion of any Alteration by Lessee, on Lessor's request Lessee shall assign its right under

any construction, design or material supply contract required for completion of the work to Landlord or its designee.

10.4 **Payment for Alterations.** Lessee shall promptly pay all charges and costs incurred in connection with any Alteration, as and when required by the terms of any agreements with contractors, designers, or suppliers; provided, however, that Lessee may contest any such charges and costs in good faith as Lessee reasonably considers necessary. Lessee shall hold harmless, indemnify and defend Lessor and the Premises with respect to any Claims resulting from any such contest or amounts to be paid to any such contractors, designers or suppliers. At least fifteen (15) days before beginning construction of any Alteration, Lessee shall give Lessor written notice of the expected commencement date of that construction to permit Lessor to post and record a notice of nonresponsibility.

On completion of any Alteration, Lessee shall:

(a) Cause a timely notice of completion to be recorded in the office of the recorder of Marin County, in accordance with California Code Sections 8182, 8184, 9204, and 9208 or any successor statute;

(b) Deliver to Lessor evidence of full payment and executed unconditional final waivers of all liens for labor, services, or materials, all in recordable form; and

(c) Reimburse the Lessor for all of its direct out-of-pocket expenses incurred in connection with that work.

10.5 **Construction Insurance.** Before construction begins, Lessee shall deliver to Lessor reasonable evidence that damage to, or destruction of, the Alterations during construction will be covered either by the policies that Lessee is required to carry under Article XII or by a policy of builder's all-risk insurance in an amount approved by Lessor, which approval shall not be unreasonably withheld, delayed or conditioned. If Lessor requires Lessee to provide builder's all-risk insurance for the proposed Alterations, Lessee shall provide a copy of the policy, any endorsements, and an original certificate of insurance that complies with Section 12.6. Lessee shall cause each contractor and subcontractor to maintain all workers' compensation insurance required by law and liability insurance (including property damage) in amounts reasonably required by Lessor. Lessee shall provide evidence of that insurance to Lessor before construction begins.

10.6 **Ownership of Alterations.** All Alterations that may be installed or placed in or about the Premises from time to time shall be and become the property of Lessor on termination of the Lease.

10.7 **Capital Expenditures.** Throughout the Lease Term, Lessee shall not, without Lessor's prior written consent, which Lessor shall not unreasonably withhold, condition, or delay, make any capital expenditure (as determined pursuant to GAAP) and including any capital expenditures required by Sections 9.1, 10.1, 10.7 and 14.1, but excluding any expenditures required by Articles VI above which shall continue to be governed by Article VI) for any improvement, restoration, addition, replacement, or any other enhancement to the Premises, any improvements thereon, or for any Hospital Assets that (A) will have a useful life (as determined

in accordance with GAAP) that extends beyond the expiration of this Lease, or (B) the financing and/or payments for which, in whatever form, including, without limitation, pursuant to any capital lease, loan or acquisition financing agreement or indenture, service agreement, or license agreement, extend beyond the expiration of this Lease in an amount that equals or exceeds twenty percent (20%) of the total acquisition, leasing, licensing, and/or service agreement costs for such improvement, restoration, addition, replacement, or any other enhancement to the Premises, any improvements thereon, or for any Hospital Assets. It shall be reasonable for Lessor to withhold its consent for any capital expenditure that would result in a debt, obligation, encumbrance, lien, etc., that (i) would constitute an Indenture as provided for hereunder or (ii) Lessor could not assume or accept upon expiration or earlier termination of this Lease without violating any law, regulation, ordinance, or ruling applicable to Lessor, Lessee, the Premises, or the assets, rights and interests to be conveyed to Lessor, Lessee, the Premises, or the assets, rights and interests to be conveyed to Lessor at Lease termination or expiration pursuant to Article XVII of this Lease, or to condition such consent on structuring the capital expenditure, and any financing thereof, in such a manner so that Lessor could assume or accept same pursuant to Article XVII of this Lease with violating any such law, regulation, ordinance, or ruling. Commencing on the earliest to occur of (1) the date Lessor executes with a third party a new lease for the Premises to be effective upon expiration or termination of this Lease, or (2) the date that is five (5) years prior to the expiration of the Lease Term without Lessee and Lessor having entered into an extension of this Lease or a new lease for the Premises, Lessee may withhold, condition, or delay any consent under this Section in Lessor's sole and absolute discretion.

10.8 New Improvements. As is required to meet the requirements of any financing for the New Improvements obtained by either Lessor or Lessee, ownership of the New Improvements during the Term of this Lease may vest in either Lessor or Lessee, or in a combination of Lessor or Lessee, or be transferred from Lessee to Lessor, either for, or without, payment of consideration. Notwithstanding any provision of the Prior Lease to the contrary, title to all of the New Improvements constructed and funded by Lessee prior to the Lease Commencement Date of this Lease shall remain with Lessee and shall not vest in Lessor as of the expiration or termination of the Prior Lease. During the Term of this Lease, the parties shall cooperate in good faith to structure and/or transfer the ownership of any of the New Improvements in order to meet the requirements of any financing for the New Improvements. Notwithstanding the forgoing, any portion of the New Improvements, the ownership of which vests in Lessor during the Term of this Lease, shall immediately upon such vesting become part of the Premises leased to Lessee hereunder, and any portion of the New Improvements, the ownership of which is vested in Lessee as of the date of termination or expiration of this Lease, shall become the property of Lessor as of such date, without any obligation on the part of Lessor to reimburse or compensate Lessee for such New Improvements or the costs thereof. Notwithstanding any other provision of this Section 10.8, Lessor agrees that if Lessee constructs the new parking structure on the Premises that is part of the New Improvements and Lessee finances such construction and development with Lessee's own funds or funds borrowed by Lessee, then Lessor, upon Lessee's written request therefor, which Lessee may give to Lessor at any time after completion of the parking structure, shall acquire title to the new parking structure from Lessee by paying Lessee from Lessor's GO Bond proceeds the full construction/development costs therefor, and the parties shall cooperate in good faith to accomplish same in accordance with the legal requirements regarding the use and application of Lessor's GO Bond funds. Lessee understands and acknowledges that (a) Lessor, as the owner of the Property, is

obligated to comply with all Seismic Requirements with respect to the Hospital and the Premises and that the New Improvements are intended to satisfy Lessor's obligations with respect to such requirements, and (b) the deadline for Lessor's compliance therewith falls within the Lease Term.

Lessee acknowledges and agrees that Lessor has requested and Lessee has agreed that Lessee will perform, at its own cost and expense (other than any General Obligation Bond funding provided by Lessor), all tasks/work required for the New Improvements, including without limitation, designing the New Improvements, planning, applying for, processing and obtaining all necessary and appropriate approvals, entitlements and permits for the New Improvements, seeking and obtaining financing/funding for the New Improvements (except that Lessor will seek to issue General Obligation Bonds to help finance the New Improvements), and implementing, and constructing the New Improvements. The parties agree that they shall tailor Lessee's obligations and the scope of Lessee's tasks/work hereunder to meet the requirements of any financing obtained by either party for the New Improvements. Lessor, throughout the term of the Lease, shall take all reasonably necessary and appropriate action to cooperate with and assist Lessee to plan, apply for, process and obtain all necessary and appropriate approvals, entitlements and permits for, seek and obtain financing/funding for, implement, and construct, the New Improvements. Lessor's duties hereunder shall include, to the extent necessary and appropriate, the execution and delivery of all applications, plans, drawings, submittals, financial statements and information, and other documents or information, and Lessor's reasonable consent to the granting or establishment of any temporary or permanent easements, licenses or other rights over the Premises, all as is necessary to further and/or support the installation of the New Improvements.

Lessee shall reimburse Lessor, as Rent due under this Lease, upon Lessor's invoicing of same to Lessee, all costs, expenses, fees, and charges Lessor incurs with respect to the New Improvements, and with respect to Lessor's efforts to seek and obtain financing/funding therefore, including the funding of efforts to educate the public about, and pay the election costs of, any ballot measures related to public funding of such project, the extension or renewal of this Lease, or similar matters.

ARTICLE XI

COVENANT AGAINST LIENS

11.1 Covenant Against Liens.

(a) Except as expressly approved by Lessor in writing, Lessee shall not be the cause or object of any liens or allow such liens to exist, attach to, be placed on, or encumber Lessor's interest in the Premises, by operation of law or otherwise. Lessee shall not suffer or permit any lien of mechanics, material suppliers, or others to be placed against the Premises with respect to work or services performed or claimed to have been performed for Lessee or materials furnished or claimed to have been furnished to Lessee or the Premises. Lessor has the right at all times to post and keep posted on the Premises any notice that it considers necessary for protection from such liens.

If any such lien attaches or Lessee receives notice of any such lien, Lessee shall cause the lien to be immediately released and removed of record. Despite any other provision of this Lease, if the lien is not released and removed within ten (10) business days after Lessor delivers notice of the lien to Lessee, Lessor may immediately take all action necessary to release and remove the lien, without any duty to investigate the validity of it. All expenses (including reasonable attorney fees) incurred by Lessor in connection with the lien shall be considered additional Rent under this Lease and be immediately due and payable by Lessee. Any failure by Lessee to comply with this Section shall constitute a material breach of this Lease.

(b) Notwithstanding subsection (a) above, in connection with the New Improvements provided for in Section 10.8, Lessee may in good faith and at Lessee's own expense contest the validity of any lien, provided Lessee has furnished the bond required in California Civil Code Section 3143 (or any comparable statute hereafter enacted for providing a bond freeing the Premises from the effect of such a lien claim). Lessee shall defend and indemnify Lessor against all Claims arising out of work performed on the Premises by or on behalf of Lessee, together with reasonable attorneys' fees and all costs and expenses incurred by Lessor in negotiating, settling, defending or otherwise protecting against such Claims in the event of the breach by Lessee of the duty to defend or indemnify Lessor. If Lessee does not cause to be recorded the bond described in California Civil Code Section 3143 or otherwise protect the Premises under any alternative or successor statute, or a final judgment has been rendered against Lessee by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's or subcontractor's lien claim and Lessee fails to stay the execution of the judgment by lawful means or to pay the judgment, Lessor shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Lessee shall reimburse Lessor for all sums paid by Lessor under this Section, together with all Lessors' reasonable attorneys' fees and costs, plus interest on those sums, fees and costs at the rate of 10% per year from the date of Lessor's payment thereof until the date of Lessee's reimbursement thereof.

ARTICLE XII

EXCULPATION, INDEMNIFICATION, AND INSURANCE

12.1 Exculpation.

(a) Exculpation. To the fullest extent permitted by law, Lessee, on its behalf and on behalf of all Lessee Parties, waives all claims (in law, equity, or otherwise) against Lessor

Parties arising out of, knowingly and voluntarily assumes the risk of, and agrees that Lessor Parties shall not be liable to Lessee Parties for any of the following:

(i) Injury to or death of any person; or

(ii) Loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause. Lessor Parties shall not be liable under this clause regardless of whether the liability results from any active or passive act, error, omission, or negligence of any of the Lessor Parties; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed on any of the Lessor Parties.

This exculpation clause shall not apply to claims against Lessor Parties to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage, or destruction was proximately caused by Lessor Parties' fraud, willful injury to person or property, or violation of law.

(b) **Survival of Exculpation.** The clauses of this Section 12.1 shall survive the expiration or earlier termination of this Lease until all claims within the scope of this Section 12.1 are fully, finally and absolutely barred by the applicable statutes of limitations.

(c) **Lessee's Acknowledgment of Fairness.** Lessee acknowledges that this Section 12.1 was negotiated with Lessor, that the consideration for it is fair and adequate, and that Lessee had a fair opportunity to negotiate, accept, reject, modify or alter it.

(d) **No Exculpation for Nondelegable Duties.** This exculpation clause may not be interpreted or construed as an attempt by Lessor to be relieved of liability arising out of a nondelegable duty on the part of Lessor.

(e) **Waiver of Civil Code Section 1542.** With respect to the exculpation provided in this Article XII, Lessee waives the benefits of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

(f) **Lessee's Rights.** Nothing within this Section 12.1 restricts Lessee's right to enforce any rights it may have hereunder or in any other agreement with Lessor.

12.2 Indemnification.

(a) **Lessee's Indemnification of Lessor Parties.** To the fullest extent permitted by law, Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend and hold harmless Lessor Parties from and against all Claims, as defined in subsection (b), from any cause, arising out of or relating (directly or indirectly) to the Premises, this Lease, or the tenancy created under this Lease, including, but not limited to:

(i) The use or occupancy, or manner of use or occupancy, or condition of the Premises;

(ii) Any act, error, omission, or negligence of Lessee Parties or of any invitee, guest, or licensee of Lessee in, on, or about the Premises;

(iii) Lessee's conducting of its business, wherever conducted;

(iv) Any Alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Lessee Parties in, at, or about the Premises, including the actual, alleged or asserted violation of or failure to comply with any applicable Laws and Orders in existence on the Lease Commencement Date or enacted, promulgated, or issued after the date of this Lease; and

(v) Any breach or default in the performance of any obligation on Lessee's part to be performed under this Lease, including obligations which survive expiration or earlier termination of this Lease under the terms of this Lease.

(b) Type of Injury or Loss. This indemnification extends to and includes Claims for:

(i) Injury to any persons (including death at any time resulting from that injury);

(ii) Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and

(iii) All economic losses and consequential or resulting damage of any kind.

(c) Active or Passive Negligence; Strict Liability. Except as provided in this subsection (d), the indemnification in subsection (a) shall apply regardless of the active or passive negligence of Lessor Parties and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on Lessor Parties. The indemnification in subsection (a) shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one Lessor Party was proximately caused by the willful misconduct of that Lessor Party. In that event, however, this indemnification shall remain valid for all other Lessor Parties.

(d) Indemnification Independent of Insurance Obligations. The indemnification provided in this Article XII may not be construed or interpreted as in any way restricting, limiting, or modifying Lessee's insurance or other obligations under this Lease and is independent of Lessee's insurance and other obligations. Lessee's compliance with the insurance requirements and other obligations under this Lease shall not in any way restrict, limit or modify Lessee's indemnification obligations under this Lease.

(e) Attorney Fees. The prevailing party shall be entitled to recover its actual attorney fees and court costs incurred in enforcing the indemnification clauses set forth in this Section 12.2.

(f) **Survival of Indemnification.** All of the provisions of this Section 12.2 shall survive the expiration or earlier termination of this Lease until all claims against Lessor Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

(g) **Duty to Defend.** Lessee's duty to defend Lessor Parties is separate and independent of Lessee's duty to indemnify Lessor Parties. The duty to defend includes claims for which Lessor Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of Lessee Parties have been determined. The duty to defend applies immediately, regardless of whether Lessor Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the parties that Lessor Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee's duty to defend Lessor Parties at any stage of any claim or suit within the scope of this Section 12.2.

(h) **Indemnification Procedures.** If an event occurs for which Lessor asserts Lessee must indemnify it, Lessor shall notify Lessee promptly of such event and, if the event involves the claim of a third party, Lessee shall have sole control over, and shall assume all expenses with respect to, the defense, settlement, adjustment or compromise of such claim; provided, however, that (a) Lessor may, if reasonably necessary to protect its interests, employ counsel of its own to assist in the handling of the claim, and (b) Lessee shall obtain the prior written approval of Lessor, before entering into any settlement, adjustment, or compromise of such claim of ceasing to defend such claim, if pursuant thereto or as a result thereof there would be imposed injunctive or other similar relief against Lessor.

12.3 Compliance With Insurer Requirements. Lessee shall, at Lessee's sole expense, comply with all requirements, guidelines, rules, orders, and similar mandates and directives pertaining to the use of the Premises and Hospital Assets, whether imposed by Lessee's insurers, Lessor's insurers, or both. If Lessee's business operations, conduct, or use of the Premises or the Hospital Assets cause any increase in the premium for any insurance policies carried by Lessor, Lessee shall, within ten (10) business days after receipt of written notice from Lessor, reimburse Lessor for the increase. Lessee shall, at Lessee's sole expense, comply with all rules, orders, regulations, or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and of any similar body.

12.4 Lessee's Insurance. Lessee shall, at Lessee's sole cost and expense, during the term of this Lease, procure and maintain at all times in force and in effect the following insurances:

(a) **All Risk Insurance.** Insurance against loss or damage by fire, lightning, vandalism, malicious mischief, sprinkler leakage, earthquake, and all other risks covered by the broadest available all risk insurance agreement then in use in the State of California, including without limitation earthquake, covering the Premises in an amount equal to the "full replacement value" of the Premises and naming Lessor as a named insured. Earthquake insurance shall only be required, however, if it is required by any lender of either Lessor or Lessee, or to the extent that it is reasonably available and commercially feasible. The "full replacement value" of the Premises shall be determined from time to time at the request of Lessee or any lender of Lessor

or Lessee (but not less frequently than once in every twenty-four (24) months) or Lessor (but not more frequently than once in every twelve (12) months). As used in this Agreement, the term "full replacement value" is the cost of replacing all improvements included in the Premises with improvements of substantially identical kind, quality and capacity without deduction for depreciation. Such cost of replacement shall also include demolition and any increased cost of construction occasioned by the enforcement of any state or municipal law or ordinance regulating the construction or repair of buildings or the demolition of any portion of a building which has not suffered damage.

(b) **Lessee's Personal Property Insurance.** Lessee shall procure and maintain property insurance coverage for all Hospital Assets including but not limited to office furniture, trade fixtures, equipment, merchandise, and all other items of Lessee's property in, on, at, or about the Premises, including property installed by, for, or at the expense of Lessee. Lessee's personal property insurance must include an agreed-amount endorsement for no less than one hundred percent (100%) of the full replacement cost (new without deduction for depreciation) of the covered items and property, and the amounts of coverage must meet any coinsurance requirements of the policy or policies. It is the parties' intent that Lessee shall structure its property insurance program so that no coinsurance penalty shall be imposed and there shall be no valuation shortfalls or disputes with any insurer or with Lessor.

(c) **Machinery Insurance.** Boiler and machinery insurance providing coverage on pressure vessels, auxiliary piping, pumps and compressors, refrigeration systems, HVAC systems, transformers and miscellaneous electrical apparatus constituting part of the Premises in reasonable and customary amounts and naming Lessor as loss payee.

(d) **General Liability.** Comprehensive general liability insurance, including automobile liability, written on an "occurrence" policy form, in reasonable and customary amounts for death, injury, damage to property, and personal and advertising injury, arising out of or relating (directly or indirectly) to Lessee's business operations, conduct, assumed liabilities, and use and occupancy of the Premises. Such policy shall also insure performance by Lessee of the indemnity provisions of Section 12.2 hereof. Lessee's liability coverage shall include all the coverages typically provided by the Broad Form Comprehensive General Liability Endorsement, including broad form property damage coverage (which shall include coverage for completed operations). Lessee's liability coverage shall further include premises-operations coverage, products-completed operations coverage, owners and contractors protective coverage (when reasonably required by Lessor), and the broadest available form of contractual liability coverage. It is the parties' intent that Lessee's contractual liability coverage provide coverage to the maximum extent possible of Lessee's indemnification obligations under this Lease.

(e) **Professional Liability.** Professional liability and malpractice insurance, in reasonable and customary amounts.

(f) **Worker's Compensation Insurance.** All employees' compensation insurance on Lessee's employees required by worker's compensation laws and regulations of the State of California, provided that Lessee shall be permitted to enter into reasonable plans of self-insurance.

(g) **Officers and Directors Insurance.** Directors and Officers insurance covering and indemnifying all officers and directors of Lessee and Lessor and their affiliated entities, and the medical staff of the Hospital, against any liability incurred by any such officers or directors arising out of or related to their status as an officer or director.

(h) **Fiduciary Liability Insurance.** Fiduciary liability insurance covering all of Lessee's fiduciary responsibilities.

(i) **Employment Practices Insurance.** Employment practices insurance covering all of Lessee's employment policies and practices.

(j) **Crime Insurance.** Insurance against crimes committed by Lessee or on the Premises.

(k) **Pollution/Hazardous Materials/Underground Storage Tank Insurance.** Insurance against environmental hazards on the Premises.

(l) **Network Security and Privacy Liability Insurance.** Lessee shall maintain cyber liability, network liability, data breach or similar privacy liability insurance covering actual or alleged acts, errors or omissions committed by Lessee, its employees, contractors or agents with a limit of \$2,000,000 per wrongful act/claim and \$2,000,000 in the aggregate. The policy shall expressly provide, but not be limited to, coverage for the following perils: (i) unauthorized use/access of a computer system or database; (ii) defense of any regulatory action involving a breach of privacy or similar rights; (iii) failure to protect from disclosure information that is deemed confidential by law or agreement (including both personal and commercial information); and (iv) notification and remedial action costs in the event of an actual or perceived computer security or privacy breach, whether or not required by statute. Such insurance shall extend to cover damages arising out of erroneous acts, errors or omissions of any individual when acting under Lessee's supervision, direction, or control.

(m) **Business Income and Extra Expense Coverage.** Lessee shall further procure and maintain business income (business interruption) insurance and extra expense coverage with coverage amounts that shall reimburse Lessee for all direct or indirect loss of income and charges and costs incurred arising out of all perils insured against by Lessee's property insurance coverage, including prevention of, or denial of use of or access to, all or part of the Premises, as a result of those perils. The business income and extra expense coverage shall provide coverage for no less than twelve (12) months of the loss of income, charges, and costs contemplated under the Lease and shall be carried in amounts necessary to avoid any coinsurance penalty that could apply. The business income and extra expense coverage shall be issued by the insurer that issues Lessee's other first party coverage.

(n) **Other Insurance; Review of Insurance.** Such other insurance as is customarily procured and maintained in connection with the ownership and operation of hospitals of similar size and character located in the State of California, and such other insurance as is required by any lender or any loan or public or private financing agreement or document to which Lessee or Lessor is a party, for as long as such requirement or agreement/document is in effect. Once every three (3) years during the Lease Term and any renewal term, Lessor shall

have the right to engage an insurance consultant to review the insurance coverages maintained by Lessee. If, in the opinion of that consultant, any aspect of Lessee's general liability, property, or other insurance program is inadequate to protect the interests of Lessor or Lessor's lenders, as contemplated in this Article XII, Lessee shall, at Lessee's sole expense, comply promptly with the consultant's recommendations.

12.5 Form of Policies and Additional Requirements.

(a) **Insurance Independent of Exculpation and Indemnification.** The insurance requirements set forth in Sections 12.3-12.4 are independent of Lessee's exculpation, indemnification, and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Lessee's exculpation, indemnification, and other obligations or to limit Lessee's liability under this Lease.

(b) **Provisions Applicable to All Insurance Required of Lessee.** The following provisions shall apply with respect to each insurance coverage required under this Lease:

(i) Except with respect to Workers' Compensation Insurance, Lessor and any lender of Lessor shall be included as an additional insured in a form acceptable to Lessor under the coverages specified in this Lease. The coverage afforded to Lessor and any lender of Lessor must be at least as broad as that afforded to Lessee and may not contain any terms, conditions, exclusions, or limitations applicable to Lessor or any lender of Lessor that do not apply to Lessee. Each policy obtained and maintained by Lessee hereunder shall provide that such policy is primary and any other insurance maintained by any additional insureds is strictly excess and secondary and non-contributing with such insurance.

(ii) Each insurance policy required hereunder shall:

(1) Except as otherwise approved in writing by Lessor, be issued by insurance carriers licensed and approved to do business in California, having a general policyholders rating of not less than an "A" and financial rating of not less than 7 in the most current Best's Insurance Report;

(2) Contain a provision that the policy shall not be subject to cancellation or nonrenewal without at least thirty (30) days prior written notice to Lessor by registered mail; provided, Lessee must provide not less than thirty (30) days prior written notice to Lessor of any material alteration of the foregoing policies; and

(3) Contain severability of interest and cross liability clauses.

(iii) As evidence of specified insurance coverage, Lessee shall deliver to Lessor prior to the Lease Commencement Date certificates issued by Lessee's insurance carrier(s) acceptable to Lessor and executed by an authorized agent of the carriers showing such policies in force for the specified period and evidencing compliance with these insurance requirements. Lessee shall deliver complete copies of the insurance policies required hereunder, along with any endorsement to them, to Lessor within five (5) business days of Lessor's written request for the same. Lessor has the right to review certified policies as reasonably necessary.

Evidence of any renewal insurance shall be delivered to Lessor not less than thirty (30) days prior to the expiration date on the term of the policy. Each policy and certificate shall be subject to reasonable approval by Lessor. The "endeavor to" and "failure to mail such notice shall impose no obligation or liability of any kind upon the Company" language and any similar language shall be stricken from the certificate.

(iv) Nothing contained in this Article XII shall be construed as limiting the type, quality or quantity of insurance Lessee should maintain or the extent of Lessee's responsibility for payment of damages hereunder.

(v) If Lessee fails to obtain and deliver to Lessor evidence of the insurance required to be maintained by Lessee under this Lease or, once acquired, should any policy expire or be cancelled before the expiration of this Lease or such later period as Lessee is required to carry such insurance as set forth herein, and Lessee fails immediately to procure other insurance as specified, Lessor shall have the right, but no obligation, to procure such insurance or any portion thereof and to charge Lessee one hundred ten percent (110%) of the cost to Lessor of procuring such insurance and such amount shall be due and payable to Lessor within the earlier of (i) ten (10) days of a request therefor by Lessor or (ii) the next date upon which any installment of Rent is due and payable hereunder.

(vi) Lessee shall not permit any third party to commence any work on or relating to the Premises until such parties have complied with any insurance standards that Lessee customarily requires of its third party contractors and consultants. Lessee shall include Lessor and the other Lessor Parties in any indemnity provisions with such parties for defense and indemnification to the same extent Lessee is defended and indemnified.

(vii) All such policies shall have deductibles/self-insured retentions reasonably acceptable to Lessor and in any event not exceeding amounts customarily provided for hospitals similar to the Hospital within the State of California.

(c) **Concurrency of Primary, Excess, and Umbrella Policies.** Lessee's liability insurance coverage may be provided by a combination of primary, excess, and umbrella policies, but those policies must be absolutely concurrent in all respects regarding the coverage afforded by the policies. The coverage of any excess or umbrella policy must be at least as broad as the coverage of the primary policy.

(d) **"Per Location" Endorsement.** Lessee shall, at Lessee's sole expense, procure a "per location" endorsement or equivalent reasonably acceptable to Lessor so that the general aggregate and other limits apply separately and specifically to the Premises.

(e) **Survival of Insurance Requirements.** Upon expiration or early termination of this Lease and in conjunction with the parties' obligations under Article XVII of this Lease, Lessee and Lessor shall cooperate to maintain in full force and effect the liability insurance coverages required under this Lease and shall maintain Lessor Parties and any lender specified by Lessor as additional insureds, as required by this Section, for a period of no less than two (2) years after expiration or earlier termination of this Lease.

12.6 Lessor's Insurance. At all times during the Term of this Lease, Lessee shall cooperate with and assist Lessor to obtain and maintain any insurance that Lessor, in its sole discretion, determines to obtain and maintain upon terms, including without limitation premiums, rates, and deductibles, most favorable to Lessor.

12.7 Disposition of Insurance Proceeds.

(a) Except as provided otherwise in subsection (b) below, and subject to the requirements of Lessee's lenders under any Indenture and the terms of any financing and loan agreements to which Lessee is a party, any and all fire or other insurance proceeds that become payable at any time during the Lease Term because of damage to or destruction of any improvements on the Premises or the Hospital Assets shall be paid to Lessee and applied by Lessee toward the cost of repairing and restoring the damaged or destroyed improvements or Hospital Assets as required hereunder.

(b) Commencing on the earliest to occur of (1) the date Lessor executes with a third party a new lease for the Premises to be effective upon expiration or termination of this Lease, or (2) the date that is five (5) years prior to the expiration of the Lease Term without Lessee and Lessor having entered into an extension of this Lease or a new lease for the Premises, the following provisions shall apply:

(i) Lessee shall not, without Lessor's prior written consent, which Lessor may, subject to the requirements of Subsection (ii) below, withhold, condition, or delay in its sole and absolute discretion, use, expend, or apply any fire or other insurance proceeds that became payable at any time after this subsection becomes applicable because of damage to or destruction of any improvements on the Premises or the Hospital Assets for any Improvement, restoration, addition, replacement, or any other enhancements to the Premises, any improvements thereon, or for any Hospital Assets and, subject to the requirements of subsection (ii) below, Lessor may direct Lessee as to the expenditure, retention, reserving, application, or other disposition or use of such proceeds.

(ii) Lessor's right to direct the expenditure, retention, reserving, application, or other disposition or use of any insurance proceeds or payments under this subsection (b) shall be subject and subordinate to any and all requirements imposed on the expenditure, retention, reserving, application, or other disposition or use of any insurance proceeds or payments contained in any financing or loan agreement to which Lessee is a party, including, without limitation, any capital lease, loan or acquisition financing agreement or indenture, service agreement, or license agreement.

12.8 Waiver of Subrogation. Lessor and Lessee agree to cause the insurance companies issuing their respective property (first party) insurance to waive any subrogation rights that those companies may have against Lessee or Lessor, respectively, as long as the insurance is not invalidated by the waiver. If the waivers of subrogation are contained in their respective insurance policies, Lessor and Lessee waive any right that either may have against the other on account of any loss or damage to their respective property to the extent that the loss or damage is insured under their respective insurance policies.

ARTICLE XIII

ACCEPTANCE OF PREMISES

13.1 **Lessee In Prior Possession/As-Is/No Obligation of Lessor to Prepare Premises.** Lessee acknowledges that it has occupied and used the Premises and the Hospital for over twenty seven (27) years and, prior to its execution of this Lease, it has thoroughly inspected and examined, and is extremely familiar with, the condition of the Premises, and has found it in good condition and repair and satisfactory for its purposes hereunder. Regardless of any examination or inspection by Lessee, Lessee is leasing the Premises "AS-IS" in its present condition. Lessee waives any Claims with respect to the condition of the Premises, including with respect to any adverse condition not discovered or otherwise unknown by Lessee as of the Effective Date of this Lease. Lessor makes no warranty or representation, express or implied, with respect to the Premises or any part or portion thereof, either as to its fitness for use, design or condition for any particular use or purpose or otherwise, or as to the nature or quality of the material or workmanship therein, or the existence of Hazardous Materials (as defined in Section 7.6), it being agreed that all such risks, latent or patent are to be borne solely by Lessee, including all responsibility and liability for compliance with all Environmental Laws (as defined in Section 7.5) including any necessary environmental remediation.

ARTICLE XIV

DAMAGE AND DESTRUCTION

14.1 **Restoration of Premises.** If during the Term of this Lease, including any renewal hereof, the Premises are partially or totally damaged or destroyed, whether or not from a risk covered by insurance, Lessee shall, at Lessee's own cost and expense, promptly and expeditiously (a) notify Lessor in writing of such damage or destruction, and (b) make the repairs necessary to restore the Premises to a condition for occupancy or use comparable to the condition thereof before such damage or destruction. Such destruction shall not terminate this Lease. If the cost of such repairs exceeds a commercially feasible amount, Lessee may nevertheless repair, restore and replace the Premises, or Lessee may, by notice to Lessor, elect instead to promptly and expeditiously demolish and reconstruct the improvements which were damaged or destroyed so as to produce reconstructed Premises and Hospital Assets that are substantially similar to the Premises and Hospital Assets prior to the destruction. The work of repair and restoration shall be commenced by Lessee as soon as reasonably practicable after the damage or destruction occurs and shall be completed as soon as reasonable practicable thereafter. In all other respects, the work of repair and restoration shall be done in accordance with the requirements of all applicable Laws and Orders then in effect. Lessee's obligation for restoration described in this Section 14.1 shall exist whether or not funds are available from insurance proceeds. All repairs and restoration by Lessee shall be deemed a part of the Premises and belong solely to Lessor, and Lessee shall not have any right to reimbursement or referral therefor upon termination or expiration of this Lease.

14.2 **No Abatement of Rent; Insurance Proceeds.** In no event shall Lessee be entitled to any compensation or damages on account of any annoyance or inconvenience on making repairs or on account of any destruction described in Section 14.1 above. Lessee shall not be entitled to any abatement

or reduction of Rent while such repairs are being made and, unless this Lease is terminated, Lessee shall continue to pay the monthly Rent payable pursuant to Section 3.1, the Additional Rent, if any, payable pursuant to Section 3.2, the Administrative Support Obligations payable pursuant to Section 3.3, and all other Rent payable hereunder; provided, however, there shall be credited against such Rent any insurance proceeds payable to or received by Lessor by reason of any business interruption insurance, procured and maintained by Lessee. If the Premises are to be repaired in accordance with this Lease, Lessee hereby waives the provisions contained in California Civil Code Sections 1932(2) and 1933(4) or any laws replacing or modifying such provisions. Lessor shall not be liable to Lessee or any other person or entity for any direct, indirect, or consequential damage (including but not limited to lost profits of Lessee or loss of or interference with Lessee's business), whether or not caused by the negligence of Lessor or Lessor's employees, contractors, licensees, or invitees, due to, arising out of, or as a result of any damage or destruction. Lessee agrees to maintain business interruption insurance in amounts and with coverage no less than that required by subsection 12.5(m) to provide coverage regarding such matters.

ARTICLE XV

CONDEMNATION

15.1 Total Condemnation. If, during the Lease Term, a Total Taking occurs, this Lease shall terminate as of 12:01 A.M. on whichever of the following occurs first: (i) the date legal title becomes vested in the agency or entity exercising the power of eminent domain, or (ii) the date actual possession is taken by the agency or entity exercising the power of eminent domain. Thereafter, both Lessor and Lessee shall be released from all obligations under this Lease, except those that accrued prior to such date or that survive under this Agreement by their terms.

15.2 Partial Taking of Improvements. If at any time during the Lease term a taking occurs that is less than a Total Taking and affects the useable portion of the improvements on the Premises, all compensation and damages payable for that taking shall be made available to and used, to the extent reasonably needed, by Lessee to repair any portion of the remaining useable portion of the improvements damaged by the taking and to replace the useable portion of the improvements taken with other new useable space on the portion of the Premises not taken, provided that replacement is then permitted by existing law. Plans and specifications for the replacement space must be compatible, in terms of architecture and quality of construction, with the improvements not taken. Notwithstanding anything to the contrary in this Section, if the useable portion of the improvements taken by eminent domain results in Lessee being unable to operate a nonprofit community general acute care hospital on the Premises after repair and replacement as required hereunder, either Lessor or Lessee may terminate this Lease in the manner prescribed by Section 15.3.

15.3 Termination for Partial Taking. Either Lessor or Lessee may terminate this Lease for the reason stated in Section 15.2 of this Lease, by serving written notice of termination on the other within one hundred eighty (180) days after Lessee has received from Lessor or from the condemning authority written notice of an intended taking that sets forth the extent and scope of the intended taking and Lessor and Lessee have determined that Lessee will be unable to operate an acute care hospital on the Premises after repair and replacement as provided in Section 15.2.

If either party elects to terminate this Lease, the effective date of termination shall be the later of (i) the date of termination specified in the notice of election to terminate or (ii) the date of the condemning authority takes physical possession of the portion of the Premises taken by eminent domain. On termination of this Lease under this Section, both Lessor and Lessee shall be released from all obligations to the other under this Lease, except those that accrued prior to such date or that survive under this Agreement by their terms.

15.4 **Condemnation Award.** Except as set forth in Section 15.2, any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be paid to Lessor.

15.5 **Rent.** If title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency of entity during the Lease Term and Lessee does not or cannot under Section 15.2 terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain as of 12:01 A.M. on whichever of the following first occurs: the date title is taken, or the date actual physical possession of the portion taken by eminent domain is taken, by the agency or entity exercising the eminent domain power; provided, however, that Rent shall not be reduced or abated.

ARTICLE XVI

ASSIGNMENT AND SUBLEASING

16.1 **Assignment; Subletting.** The parties acknowledge that (a) Lessor originally created Lessee to lease the Premises and operate the Hospital, (b) Lessor is the sole corporate member of Lessee, (c) Rent payable by Lessee hereunder is less than fair market rent, and (d) the residents of Lessor have approved this Lease and are required under applicable law to approve any other similar lease. Based upon the above and the unique relationship between Lessor and Lessee, Lessee shall not assign, sublet or transfer its interest in this Lease or the Premises or any part or portion thereof, in whole or in part, without Lessor's prior written consent, which consent may be withheld in Lessor's sole and absolute discretion. Lessee acknowledges that the limitations on assignment and subletting contained in this Article XVI are expressly authorized by California Civil Code Section 1995.010 et seq., and are fully enforceable. Lessee waives its rights under California Civil Code Section 1995.310.

16.2 **Restricted Transfers.** If Lessee enters into or permits or attempts to enter into or permit an assignment or sublease in contravention of this Article XVI, Lessor may, at its sole option, do any or all of the following: (a) void the assignment or sublease and continue the Lease in effect; (b) declare Lessee in material and incurable default under Section 19.1 notwithstanding any cure period specified in Section 19.2; or (c) ratify the assignment or sublease; provided, however, that before Lessor may invoke or implement any of the remedies listed in this Section 16.2 with respect to any sublease described in the first paragraph of Section 16.3 below for failure of Lessee to meet the requirements to Section 16.3 with respect to same, Lessor shall give Lessee written notice of Lessee's failure to meet such requirements and Lessee shall have ninety (90) after the date of such notice to cure such failure.

16.3 **Ambulatory Services Building.** Notwithstanding Section 16.1, if an ASB is

constructed on the Premises as part of the New Improvements or as otherwise permitted hereunder, Lessee shall be permitted to enter into subleases for office or clinic space in the ASB to physicians, physician partnerships, physician professional corporations, ancillary services providers and other related businesses that are permitted uses under this Lease without obtaining the prior written consent of Lessor, provided that each such sublease meets all of the requirements set forth in subsections (a) through (f) below. In addition, Lessee, without obtaining the prior written consent of Lessor, may sublease the use of space, equipment and/or staff within the Premises (other than in the ASB) to physicians, physician partnerships, physician professional corporations on a "block lease" basis as allowed under Healthcare Law, or any successor law, provided that such "block lease" subleases comply with all of the requirements of subsections (a)-(f) below and that, at any given time, the aggregate use of the space in the Premises (other than the ASB) subject to such "block lease" subleases does not exceed ten percent (10%) of the square footage of the licensed acute care hospital space on the Premises (other than the ASB) for forty (40) hours per week.

(a) The sublease is consistent with the mission, vision, strategy and goals of Lessee as non-profit acute care hospital, the sublease is subordinate to the Lease, and the sublessee shall abide and be bound by all of the applicable terms of the Lease;

(b) Except as may otherwise be permitted by applicable law and provided that any exception shall not cause Lessee to not comply with subsection (c) below, the sublease shall include commercially reasonable terms including fair market rent; and

(c) The sublease would not, and would not be reasonably expected to, result in or present a material risk of any one or more of the following:

(i) revocation or threat of revocation of any license, certification or accreditation granted with respect to Lessee;

(ii) revocation or threat of revocation of the federal, state or local tax-exempt status of Lessee or its tax-exempt financial obligations;

(iii) prohibit or restrict the ability of Lessee or Lessor to issue tax-exempt bonds, certificates of participation or other tax-exempt financial obligations, or cause the tax-exempt status of payments made thereunder to terminate;

(iv) with respect to Lessee, violation by Lessee of, or threat of prosecution of Lessee under Healthcare Law if any subtenant referred patients to Lessee or any Lessee affiliate or Lessee referred patients to any subtenant or subtenant affiliate;

(v) with respect to Lessee, violation by Lessee of, or threat of prosecution of Lessee under, any Law or Order applicable to Lessee;

(vi) prohibit Lessee or any Lessee affiliate from submitting claims or materially reducing the reimbursement received by Lessee or any affiliate for services provided to patients referred by any subtenant or any subtenant affiliate; or

(vii) subject Lessee or any Lessee affiliate, or any of their respective

officers, directors, employees or agents, to civil action or criminal prosecution by any governmental authority or other person or the imposition of any sanction (including any excise tax penalty under Internal Revenue Code Section 4958), on the basis of their approval of or participation in the sublease or performing their respective obligations under the sublease

Lessee must obtain the prior written consent of the Lessor to any proposed sublease of space in the ASB that would not meet all of the above requirements, which consent shall not be unreasonably withheld.

16.4 **Restrictions on Marketing the Space.** Except with respect to subleases of the ASB or of the other Premises that meet the requirements of Section 16.3 above, Lessee may not promote, advertise or market any of the Premises without the prior written approval of Lessor.

ARTICLE XVII

SURRENDER OF PREMISES

17.1 Surrender of Premises.

(a) **Lessee's Transfer of the Premises to Lessor Upon Termination of Lease.** Upon expiration or earlier termination of this Lease, Lessee shall surrender the Premises and all improvements to Lessor, all of which shall be in good condition and useable, normal wear and tear excepted, free and clear of all third party rights, interests, encumbrances, liens, mortgages, deeds of trust, and any other security or other interests imposed thereon or to which they are subject, except for such as have been granted by Lessor or approved by Lessor in writing. No act of Lessor or its authorized representatives shall constitute Lessor's acceptance of a surrender or abandonment of the Premises by Lessee unless that intent is specifically acknowledged in a writing signed by both parties.

(b) **Lessee's Transfer of All Business Assets to Lessor Upon Termination of Lease.** Subject to the terms and conditions of this Section 17.1, upon expiration or earlier termination of this Lease, Lessee shall surrender, transfer, convey, assign and deliver to Lessor everything necessary and appropriate for the uninterrupted operation of the Premises, the Hospital thereon, and all Hospital-affiliated business operations whether on or off the Premises. Lessee's obligations under this Section 17.1 shall include the surrender, transfer, conveyance, assignment, and delivery to Lessor of all of the following:

(i) all Hospital Assets and all other real and personal property, whether tangible or intangible, of Lessee that relate to, are connected with, or are used in Lessee's operation of the Hospital on the Premises and all Hospital-affiliated business operations whether on or off the Premises, including without limitation (A) all inventories, equipment, furniture, fixtures, machinery, vehicles, office furnishings, and leasehold improvements, all in good and useable condition, normal wear and tear excepted; and (B) all cash, accounts receivable, and other non-cash short-term assets, including without limitation all advance payments, prepayments, prepaid expenses, deposits and the like;

(ii) subject to Lessor's written approval, all agreements and contracts with respect to operation of the Hospital and all Hospital-affiliated business operations whether on or

off the Premises, including without limitation real and personal property leases and subleases, provider/managed care agreements, and all warranties relating to any of the personal property;

(iii) all licenses, approvals, permits, provider numbers, certificates of need, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals with respect to the operation of the Hospital and all Hospital-affiliated business operations whether on or off the Premises; and

(iv) all documents, records, operating manuals, files and computer hardware and software with respect to the operation of the Hospital and all Hospital-affiliated business operations whether on or off the Premises, including, without limitation, all patient records and medical records with respect to the operation of the Hospital, payroll and human resource records, equipment records, construction plans and specifications, and medical and administrative libraries.

(c) **Meet and Confer Regarding Agreement to Implement Transfer Obligations.** Beginning on the earlier to occur of one party's delivery to the other of a written termination notice or the date that is five (5) years before the expiration of the Term of the Lease without the parties having entered into a new lease for the Premises, the parties shall meet and confer and negotiate in good faith and with diligence to enter into an agreement setting forth the specific terms and conditions for implementing the matters described in this Section 17.1, all other matters related to Lessee's surrender of the Premises and transition of operation of the Hospital and all Hospital-affiliated business operations whether on or off the Premises to Lessor or Lessor's designee, and everything necessary and appropriate for the uninterrupted operation of the Premises, the Hospital thereon, and all affiliated business operations, including those described in this Section 17.1. Any such agreement shall include the following:

(i) Except if doing so would cause Lessor to violate any law, regulation, ordinance, or ruling applicable to Lessor, Lessee, the Premises or any of the other assets, rights and interests required to be conveyed, assigned, delivered or transferred to Lessor upon Lease termination or expiration in accordance with this Section 17.1, Lessor shall assume all debts and obligations of Lessee with respect to the Premises, the operation of the Hospital and all Hospital-affiliated business operations whether on or off the Premises, and any assets, rights, and interests of Lessee conveyed, assigned, delivered, or transferred to Lessor upon Lease termination or expiration, except for any debts and obligations that required the approval or consent of Lessor as provided in this Lease or the Lessee's Bylaws which approval or consent was not sought by Lessee or was properly withheld by Lessor. If Lessor's assumption of any of Lessee's debts and obligations would cause Lessor to violate any applicable law, regulation, ordinance, or ruling, then Lessor and Lessee shall cooperate in good faith and shall use commercially reasonable efforts to attempt to re-structure or re-finance or otherwise alter or modify the debt or obligation so that Lessor can assume same without violating any applicable law, regulation, ordinance, or ruling.

(ii) Except if doing so would cause Lessor to violate any law, regulation, ordinance, or ruling applicable to Lessor, Lessee, the Premises or any other asset, right, or interest to be conveyed, assigned, or transferred to Lessor upon Lease termination or expiration in accordance with this Section 17.1, Lessor shall accept the conveyance, delivery, transfer, and

assignment of all of Lessee's assets, rights, and interests conveyed, assigned, delivered, or transferred to Lessor upon Lease termination or expiration subject to all third-party rights, interests, encumbrances, liens, mortgages, deeds of trust, and any other security or other interests imposed thereon or to which they are subject, except for any third-party rights, interests, encumbrances, liens, mortgages, deeds of trust, and any other security or other interests that required the approval or consent of Lessor as provided in this Lease or the Lessee's Bylaws, which approval or consent was not sought by Lessee or was properly withheld by Lessor. If Lessor's acceptance of the conveyance, delivery, transfer and assignment of any of Lessee's assets, rights, and interests subject to third-party rights, interests, encumbrances, etc., would cause Lessor to violate any applicable law, regulation, ordinance, or ruling, then Lessor and Lessee shall cooperate in good faith and shall use commercially reasonable efforts to attempt to re-structure said rights, interests, or encumbrances so that Lessor can accept same without violating any applicable law, regulation, ordinance, or ruling.

(iii) If, despite the parties' efforts pursuant to subsections (i) and (ii) above, Lessor is unable to assume one or more of Lessee's debts and obligations or to accept any conveyance, delivery, transfer and assignment of one or more of Lessee's assets, rights, and interests without violating any applicable law, regulation, ordinance, or ruling, then Lessor may refuse to assume such of Lessee's debts and obligations and assets, and Lessee shall not be obligated to assign to Lessor such Hospital Assets or other assets as are encumbered by such of Lessee's debts and obligations, and Lessee shall retain all right, title and interest, and all obligations and duties, with respect to the same.

(iv) Lessee shall provide Lessor and its agents and representatives reasonable access to the Premises and to all of Lessee's books and records regarding the Premises and Lessee's operation of the Hospital for the purpose of Lessor showing same to any prospective new Lessee/operator of the Hospital. All such access shall be subject to appropriate confidentiality agreements/measures.

(d) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the Lease, the leasehold estate created hereby, or any interest in this Lease or in the leasehold estate being held, directly or indirectly, by or for the account of any person or entity that owns the fee estate in the Premises or any interest therein, and no such merger shall occur unless and until all persons or entities at that time having an interest in the fee estate in the Premises, and all persons or entities (including any lender of Lessee) having an interest in this Lease, the Premises, or the leasehold estate created by this Lease, jointly execute and duly record a written instrument consenting to and effecting such a merger.

(e) Effective as of the date of termination of the Lease, Lessor shall have the unilateral right to remove and appoint some or all of the members of Lessee's Board of Directors as provided in Lessee's Bylaws.

17.2 Non-Competition by Lessee. In consideration of Lessor's performance of its obligations under the Lease, for a period of five (5) years after expiration or earlier termination of this Lease, Lessee shall not, without Lessor's prior written consent, which Lessor may withhold, condition, or delay in its sole discretion, either directly or indirectly, carry on or

engage in, either as an owner, part-owner, manager, operator, or other participant, a business or operation that in any fashion or manner provides health care services within a 25-mile radius of the geographic boundaries of the Marin Healthcare District.

17.3 Holding Over. Lessee shall pay Lessor for each day Lessee retains possession of the Premises or any part of them after expiration or termination of this Lease at the Holdover Rate, and Lessee shall also pay to Lessor all damages reasonably sustained by Lessor by reason of Lessee's retention of the Premises. Whether with or without Lessor's prior written consent, such holding over shall not constitute renewal of this Lease notwithstanding acceptance by Lessor of any sums due hereunder after such expiration or termination; and instead, a tenancy at sufferance at the Holdover Rate shall be deemed to have been created. In any event, no provision of this Section 17.3 shall be deemed to waive Lessor's right of reentry or any other right under this Lease or at law.

17.4 Removal of Lessee Property by Lessee. On expiration or termination, Lessee shall, without expense to Lessor, remove or cause to be removed from the Premises:

(a) All debris and rubbish;

(b) Except as otherwise provided by subsection 17.1(b), any items of furniture, equipment, freestanding cabinet work, and other articles of personal property installed or placed by Lessee at its expense in the Premises without Lessor's written approval and any similar articles of any other persons claiming under Lessee that Lessor, in Lessor's sole discretion, requires to be removed; and

(c) Any Alterations that Lessee is required to remove under this Lease.

Lessee shall, at Lessee's sole expense, repair all damage or injury that may occur to the Premises or the Hospital caused by Lessee's removal of those items.

17.5 Transition Committee. Five (5) years prior to the expiration of the Lease, representatives of Lessor and Lessee shall form a committee consisting of four members (or such other number as the Lessor and Lessee shall agree) consisting of two members designated by Lessor and two members designated by Lessee, for the purpose of meeting regularly to discuss entering into a new lease or planning for the transition of Hospital Assets and operations to Lessor or its designee, as the parties shall agree, or if they do not agree, as Lessor shall determine. The parties shall cooperate with and provide each other with all reasonable requested information and resources in connection with such activities.

ARTICLE XVIII

ESTOPPEL, SUBORDINATIONS, EASEMENTS AND LENDER PROTECTIONS

18.1 Estoppel Certificate. Each party shall, within ten (10) days after receipt of a written request from the other party, execute, acknowledge and deliver to the other party an Estoppel Certificate. The certificate shall contain any other information reasonably requested by

Lessor or any existing or prospective lender, mortgagee, or purchaser of either party. Such ten (10) day period shall not be extended for any negotiations of the form of Estoppel Certificate. If a party fails to deliver such Estoppel Certificate within such ten (10) days after request, then the requesting party may conclusively presume and rely upon the fact (a) that the terms and provisions of this Lease have not been changed except as otherwise represented by the requesting party; (b) that this Lease has not been canceled or terminated except as otherwise represented by the requesting party; (c) that not more than one installment of Rent has been paid in advance; (d) that neither party is in default under this Lease; and (e) that the other facts set forth in the Estoppel Certificate provided to the non-requesting party are true and correct. If a party fails to timely deliver an Estoppel Certificate, such party irrevocably appoints the requesting party as its attorney-in-fact to execute and deliver the Estoppel Certificate to any third party. Except for the disclosures allowed under the preceding sentence, Lessor shall protect such information from disclosure to any third party to the maximum extent allowed under applicable law, including under the California Public Records Act; provided, however, that if such protection involves participation in any litigation or other proceeding, it shall be at Lessee's cost.

18.2 Additional Requested Documents or Instruments. Within ten (10) days after a written request by Lessor, Lessee shall execute and deliver whatever other documents or instruments may be reasonably required for sale or financing purposes, including (if requested by Lessor) a current financial statement and financial statements for the three (3) years preceding the current financial statement year. Those statements shall be prepared in accordance with generally accepted accounting principles and shall be audited by an independent certified public accountant. Lessor's disclosure of such information shall be limited to its advisors, prospective purchasers and lenders who shall be subject to customary confidentiality restrictions.

18.3 Priority/Subordination. Lessor represents and warrants that Lessee, while paying the Rent and performing its other covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from Lessor, subject to the terms and provisions of this Lease and any Indenture. Lessor shall not be liable for any interference or disturbance by third persons, nor shall Lessee be released from any of the obligations of this Lease because of such interference or disturbance. This Lease, which for the purposes of this Section 18.3 includes any future amendment to this Lease, shall be subordinate to a Superior Interest. Notwithstanding any such subordination, Lessee's right to quiet possession of the Premises during the Term shall not be disturbed if Lessee pays the Rent and performs all of Lessee's other obligations under this Lease as and when required and is not otherwise in default. If any Holder elects to have this Lease prior to its Superior Interest and gives written notice thereof to Lessee, this Lease shall be deemed prior to such Superior Interest whether this Lease is dated prior or subsequent to the date of said Superior Interest or the date of recording thereof. This subordination is self-operative, and no further instrument of subordination shall be required to make it effective. Notwithstanding the foregoing self-executing subordination and non-disturbance, Lessee shall, within ten (10) days after receipt of written request, execute, acknowledge and deliver to Lessor and its current and prospective Holders, a Subordination Agreement in a form reasonably requested by Lessor or any current or prospective Holder, provided that such document provides that so long as a default under this Lease has not occurred with respect to Lessee, such Holder shall grant Lessee non-disturbance and recognize Lessee's rights under this Lease in a manner that does not take away any of Lessee's rights or adds to any of Lessee's obligations under this Lease. Such ten (10) day

period shall not be extended for any negotiations of the form of such Subordination Agreement. Lessee irrevocably appoints Lessor as Lessee's agent to execute and deliver in the name of Lessee any such instrument(s) if Lessee fails to do so. This authorization shall in no way relieve Lessee of the obligation to execute such instrument(s) of subordination or superiority. Lessee's failure to execute and deliver such instrument(s) in the required time shall constitute a material breach under this Lease.

18.4 **Attornment.** Lessee covenants and agrees to attorn to the transferee of Lessor's interest in the Property by foreclosure, deed in lieu of foreclosure, exercise of any remedy provided in any encumbrance or underlying lease, or operation of law (without any deductions or setoffs), if requested to do so by the transferee, and to recognize the transferee as the Lessor under this Lease. The transferee shall not be liable for:

(a) Any acts, omissions, or defaults of Lessor that occurred before the sale or conveyance; or

(b) The return of any security deposit except for deposits actually paid to the transferee.

18.5 **Easements, Restrictions.** Lessee and Lessor acknowledge and agree that the Premises are subject to any and all easements, licenses and rights of way in place as of the Effective Date of this Lease.

(a) **County Easements.** Lessee and Lessor acknowledge and agree that the Premises are subject to the County Easements shown on Exhibit A to this Lease. Lessee also acknowledges that, pursuant to the terms of the County Easements, Lessor and the County may agree to relocate the County Easements as is necessary or appropriate in light of the New Improvements on the Premises. Lessor and Lessee shall consult in good faith with respect to the relocation of any of the County Easements, but Lessor shall have the final authority to agree with the County with respect to such relocation.

(b) **Easements Related to New Improvements.** Lessee acknowledges and agrees that Lessor may have to grant or create new or additional temporary or permanent easements, licenses, or rights of way, or to relocate, either temporarily or permanently, existing easements, licenses, or rights of way, in connection with the development and construction of the New Improvements or any other future improvements or Alterations. Lessor and Lessee shall consult in good faith with respect to the location, relocation and scope of any new or additional temporary or permanent easements, licenses, or rights of way, or the relocation of existing easements, licenses, or rights of way, but Lessor shall have the final authority to grant or create same; provided, however, that Lessor shall provide its reasonable consent to such of the foregoing as are necessary to further and/or support the installation of the New Improvements.

18.6 **Lessee Lender Protections.**

(a) **No Amendment Without Lender Approval.** If a Lessor or Lessee lender written consent is required under an Indenture to any amendment to this Lease, Lessor and Lessee shall not amend or modify this Lease without the prior written consent of such lender(s).

(b) Use of Insurance/Condemnation Proceeds. Notwithstanding any other provisions of this Lease, any condemnation award related to any collateral pledged to any lender of Lessee or Lessor shall be applied as required under any Indenture to which Lessee or Lessor is a party, and any insurance proceeds shall be applied as required under any Indenture and any financing and loan agreements to which Lessee or Lessor is a party.

(c) No Effect on Lender's Liens/Collateral. Lessor shall have no interest in any financing or loan proceeds provided to Lessee by any lender of Lessee and Lessor expressly acknowledges and agrees that any such proceeds are not for the Lessor's benefit. No default under or termination of this Lease, nor the leasing or subleasing of the Premises as may be allowed under the remedies provisions of this Lease, shall render invalid or otherwise adversely effect the lien of any lender of Lessee in Lessee's assets.

18.7 Notice of Default; Right to Cure. Lessee agrees to give written notice of any default by Lessor to the Holder of any Superior Interest, provided that such Holder has notified Lessee of its desire to receive notices of default or breach. Each such notice shall specify in detail the alleged breach or default. Lessee agrees that, before it exercises any rights or remedies under the Lease, the lienholder shall have the right, but not the obligation, to cure the default within the same time, if any, given to Lessor to cure the default, plus an additional thirty (30) days. Lessee agrees that this cure period shall be extended by the time necessary for the lienholder to begin foreclosure proceedings and to obtain possession of the Property or Premises, as applicable.

ARTICLE XIX

DEFAULTS AND REMEDIES

19.1 Events of Default. Each of the following events shall be a default by Lessee and a breach of this Agreement:

(a) Abandonment or surrender of the Premises or of the leasehold estate, or failure or refusal to pay when due any installment of Rent or other sum required by this Lease to be paid by Lessee, or failure to perform any other covenant or condition of this Lease, including, without limitation, the covenant regarding assignment of this Lease or subletting of the Premises, or the failure to comply with any other agreement entered into between Lessor and Lessee, now or in the future.

(b) The subjection of any right or interest of Lessee to attachment, execution, or other levy, or to seizure under legal process, if not released within thirty (30) days.

(c) The appointment of a receiver to take possession of the Premises, improvements or Hospital Assets, or of Lessee's interest in the leasehold estate or of Lessee's operations on the Premise for any reason.

(d) An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of (i) adjudicating Lessee a bankrupt, (ii) extending time for payment, adjustment or satisfaction of Lessee's liability, or (iii) reorganization, dissolution, or arrangement on account of or to prevent

bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within thirty (30) days after the assignment, filing, or other initial event.

19.2 Notice and Right to Cure. As a condition to pursuing any remedy for alleged breach or default of Lessee, Lessor shall give written notice of default to Lessee and to any trustee or lender under or pursuant to any Indenture (as defined in Section 19.8 of this Lease), provided that such trustee or lender has notified Lessor of its desire to receive notices of default or breach. Each such notice shall specify in detail the alleged breach or default.

19.3 Lessee's Right to Cure. If the alleged default is nonpayment of Rent, taxes, or other sums to be paid by Lessee as provided herein, Lessee shall have fifteen (15) days after notice is given to cure the default. For the cure of any other default, Lessee shall promptly and diligently after notice commence curing the default and shall have a reasonable period of time, in light of the circumstances, to complete the cure. Any trustee or lender entitled to receive a notice of default pursuant to Section 19.2 of this Lease shall be entitled, directly or through a third party appointed by said trustee or lender, to cure any event of default or breach by Lessee hereunder, and Lessor shall accept such performance and cure as if done by Lessee, provided that such cure is completed within the applicable time period specified in this Section 19.3. With respect to any such default or breach that can be cured by the payment of money, any trustee or lender shall have an additional thirty (30) days beyond any notice and cure period applicable to Lessee. With respect to any such default or breach that cannot be cured by the payment of money, any trustee or lender shall have sixty (60) days after such trustee or lender obtains possession of the property that is the subject of such default or breach to cure same, provided that such lender or trustee uses commercially reasonable and diligent efforts to obtain possession of such property.

19.4 Replacement of Statutory Notice Requirements. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Section 25.12 shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

19.5 Lessor's Remedies on Lessee's Default. On the occurrence of a default by Lessee, Lessor shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to Lessor at law or in equity. These remedies are not exclusive but are instead cumulative.

(a) Termination. Lessor may, at its election, terminate this Lease by giving Lessee written notice of Lessor's election to terminate. Said notice shall specify the Termination Date, which date shall not be less than six (6) months after the date of Lessor's written notice unless otherwise approved in writing by Lessee's lenders under any Indentures.. Upon the Termination Date, all of Lessee's rights in and to the Premises and improvements shall terminate. By no later than the Termination Date, Lessee shall have surrendered and vacated the Premises, and performed all of Lessee's termination-related obligations set forth in this Lease, including without limitation those set forth in Article XVII. Termination under this subsection

shall not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee. Lessor may exercise its right hereunder of Lease termination only if, prior to the Termination Date, Lessor shall have complied with any requirements under any Indenture with respect to the security for any of Lessee's obligations under such Indenture and Lessor has assumed Lessee's obligations under such Indenture and accepted Lessee's assets subject to the security interests granted under such Indenture, as provided in Article XVII. Lessor's obligations in the preceding sentence may include, without limitation, pledging in writing all of the revenues from the operation of the Premises as security for the payment of all of Lessee's obligations under any Indenture if and only to the extent that Lessee was required to grant such a pledge under such Indenture. If required by and only to the extent required by any Indenture, Lessor covenants and agrees not to create a security interest in, or to pledge, the revenues received from the operation of the Premises to the repayment of indebtedness or otherwise, unless all indebtedness issued under any Indenture shall be secured on a prior or parity basis. If required by any Indenture, after termination of the Lease and until the earlier of the Lease Expiration Date or final payment of all of Lessee's obligations under any Indenture, Lessor shall operate the Hospital as a revenue-producing nonprofit community health care facility. Except as limited by applicable law, nothing herein shall limit the amounts Lessor may recover from Lessee hereunder.

(b) **Entry/Re-Letting.** Lessor may at Lessor's election enter the Premises, and, without terminating this Lease, at any time and from time to time re-let the Premises and improvements or any part of them for the account and in the name of Lessee or otherwise. Lessor may at Lessor's election eject all persons or eject some and not others or eject none. Lessor shall apply all rents from re-letting as provided in subsection (c) below. Any re-letting may be done for the remainder of the Term or for a shorter period. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name, and shall be entitled to all rents from the use, operation, or occupancy of the Premises and improvements. Lessee shall nevertheless pay to Lessor on the due dates specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the rent Lessor receives from any re-letting. No act by or on behalf of Lessor under this provision shall constitute the termination of this Lease unless Lessor gives Lessee notice of termination.

(c) **Right to Rent.** Lessor shall be entitled at Lessor's election to each installment of Rent or to any combination of installments for any period before termination, plus interest thereon at the maximum rate permitted by applicable law. Rents received from re-letting or attorned sub-rents shall be applied, when received, as follows:

(i) To Lessor to the extent that such rents and subrents for the period covered do not exceed the amount due from and charges to Lessee for the same period, and

(ii) The balance to Lessee.

The foregoing notwithstanding, the order of application of all rents collected by Lessor from re-letting shall be subordinate to the payment of debt service with respect to any obligations issued by or on behalf of Lessee under any Indenture. Any re-letting of the Premises pursuant to this Section 19.5(d) shall be (i) to sublessees whose operation of the Premises would not adversely affect the exclusion from gross income for federal income tax purposes of the

interest payable on any obligations issued by or on behalf of Lessee under any Indenture, and (ii) for rents equal to the lesser of fair market value rents or amounts sufficient to satisfy Lessee's debt service obligations relative to any Indenture.

(d) Damages. Lessor shall be entitled at Lessor's election to damages in the following sums:

(i) The worth at the time of the award of any unpaid Rent that had been earned at the time of the termination, to be computed by allowing interest at the rate set forth in Section 21.2 but in no case greater than the maximum amount of interest permitted by law;

(ii) The worth at the time of the award of the amount by which the unpaid Rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid Rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate set forth in Section 21.2 but in no case greater than the maximum amount of interest permitted by law;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of the award exceeds the amount of unpaid Rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform obligations under this Lease, including, without limitation, brokerage commissions and advertising expenses, expenses of remodeling the Premises for a new tenant (whether for the same or a different use), and any special concessions made to obtain a new tenant; and

(v) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law.

(e) Assignment of Sub-Rents. Lessee assigns to Lessor all sub-rents and other sums falling due from the tenants, licensees and concessionaires (referred to as "subtenants") during any period in which Lessor has the right under this Lease, whether exercised or not, to enter the Premises because of Lessee's default, and Lessee shall not have any right to such sums during that period. This assignment is subject and subordinate to any and all assignments of the same sub-rents and other sums made to a mortgagee or lender under any Indenture before the default in question. Lessor may, at Lessor's election, enter the Premises and improvements, with or without process of law, without terminating this Lease, and either collect those sums or bring action for the recovery of the sums directly from such obligors, or both. Lessor shall receive and collect all sub-rents and apply them in the following order of priority:

(i) Payment of reasonable expenses (including attorneys' fees and broker's commissions) paid or incurred by Lessor in recovering possession, placing the Premises and improvements in good condition, and preparing or altering the Premises or improvements for re-letting;

- (ii) Reasonable expenses of securing new lessees;
- (iii) Rent and other amounts currently due Lessor by Lessee;
- (iv) Fulfillment of Lessee's covenants at the end of the Term;
- (v) Future installments of Rent and other amounts due Lessor by Lessee.

Lessee shall, nevertheless, pay to Lessor on the due dates specified in this Lease, the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the sums assigned and actually collected under this provision. Lessor may proceed to collect either the assigned sums or Lessee's balances or both, or any installment of them, either before or after expiration of the Term, but the applicable statute of limitations shall not begin to run on Lessee's payments until the due date of the final installment to which Lessor is entitled, nor shall it begin to run on the payments of the unassigned sums until the due date of the final installment due from the respective obligors. The foregoing notwithstanding, if required by the terms of an Indenture the order of application of all rents collected by Lessor from re-letting shall be subordinate to the payment of debt service with respect to any indebtedness of Lessee relative to any Indenture.

(f) **Appointment of Hospital Operator.** Lessor may at its election, without terminating the Lease, appoint a Hospital Operator. Notwithstanding any other provision of this Lease, Lessor shall not, however, appoint any person or entity whose appointment would adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on any obligations issued by or on behalf of Lessee under any Indenture. Lessor may execute any such management contract in Lessee's name. The Hospital Operator shall operate the Premises and the Hospital in compliance with the terms and conditions of this Lease and any Indenture. The management contract may continue for the duration of the term of this Lease or such lesser or greater term as Lessor and the Hospital Operator shall agree. If the management contract terminates prior to the termination of this Lease, Lessor may renew the management contract, appoint a new Hospital Operator, or exercise any other remedy Lessor was entitled to exercise when the initial Hospital Operator was appointed. The third party appointed as the Hospital Operator may be any person or entity Lessor determines, in its sole discretion, will best be able to operate the Premises as an acute care hospital for the benefit of the communities served by Lessor. The Hospital Operator may be a corporation or other entity on which some or all of Lessor's directors serve as officers or directors. Lessor's exercise of its remedy under this Section 19.5(g) shall not in any way relieve Lessee of any of its obligations under this Lease and Lessee shall pay to Lessor when due all sums required of Lessee hereunder, plus Lessor's expenses of exercising its remedy under this Section 19.5(g). Upon exercise of the foregoing remedy, Lessor may eject Lessee and all other persons on the Premises or eject some and not others or eject none. Lessee shall execute such documents and perform such other acts as Lessor shall deem reasonably necessary to permit the Hospital Operator to operate the Hospital hereunder and to confer upon Lessor all of the rights, remedies and benefits contemplated by this provision. The Hospital Operator shall be entitled to operate the Hospital and use and encumber the Hospital Assets as if it were Lessee hereunder, subject to any restrictions contained herein and in any management contract or Indenture. The Hospital Operator shall collect all revenues from the operation of the Hospital and apply them to Lessee's obligations as follows: first, to the

payment of debt service with respect to any indebtedness of Lessee related to an Indenture as required by the terms of the Indenture; second, to the expenses of operating the Hospital; third, to the payment of Lessor's expenses in exercising its remedies under this Lease; fourth, to the payment of Rent on the dates such Rent becomes due and payable hereunder and payment of any other sums owing from Lessee to Lessor; and fifth, the remainder, if any, to Lessee. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease.

19.6 **Acceptance of Rent Without Waiving Rights.** Under Article XXII, Lessor may accept Lessee's payments without waiving any rights under this Lease, including rights under a previously served notice of default. If Lessor accepts payments after serving a notice of default, Lessor may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default.

19.7 **Lessee's Remedies on Lessor's Default.** Lessee waives any right to terminate this Lease and to vacate the Premises on Lessor's default under this Lease. Lessee's sole remedy on Lessor's default is an action for damages or injunctive or declaratory relief.

19.8 **Indenture.** Lessee shall not incur any indebtedness in connection with any Indenture or otherwise enter into any Indenture from the Lease Date through the term of this Lease, without Lessor's prior written consent. At any time prior to the date that is five (5) years before the expiration date of the Lease, Lessor shall not unreasonably withhold, condition or delay such consent. Commencing on the date that is five (5) years prior to the expiration of this Lease, Lessor may withhold, delay or condition its consent in its sole discretion.

19.9 **No Waiver of Remedies.** The election of one remedy for any one item shall not foreclose an election of any other remedy for another item, or for the same item at a later time.

ARTICLE XX

LESSOR'S RIGHT TO PERFORM LESSEE'S OBLIGATIONS

20.1 **Lessor's Right to Perform Lessee's Obligations.** All obligations to be performed by Lessee under this Lease shall be performed by Lessee at Lessee's expense and without any reduction of Rent. If Lessee's failure to perform an obligation continues for fifteen (15) business days after notice to Lessee, Lessor may perform the obligation on Lessee's behalf, without waiving Lessor's rights for Lessee's failure to perform any obligations under this Lease and without releasing Lessee from such obligations. If Lessee's failure to perform an obligation under Section 10.8 above requires a longer period of time to cure or perform, Lessee shall have a reasonable period of time, in light of the circumstances, to complete the cure or perform such obligation provided Lessee promptly and diligently commences such cure or performance.

20.2 **Reimbursement by Lessee.** Within fifteen (15) days after receiving a statement from Lessor, Lessee shall pay to Lessor the amount of expense reasonably incurred by Lessor in performing Lessee's obligation as determined by Lessor.

ARTICLE XXI

LATE PAYMENTS

21.1 **Late Charges.** If any Rent payment is not received by Lessor or Lessor's designee within five (5) days after that Rent is due, Lessee shall pay to Lessor a late charge of two hundred fifty dollars (\$250) as liquidated damages, in lieu of actual damages (other than interest under Section 21.2 and attorney fees and costs under Section 24.1). Lessee shall pay this amount for each calendar month in which all or any part of any Rent payment remains delinquent for more than five (5) days after the due date. The parties agree that this late charge represents a reasonable estimate of the expenses that Lessor will incur because of any late payment of Rent (other than interest and attorney fees and costs). Lessor's acceptance of any liquidated damages shall not constitute a waiver of Lessee's default with respect to the overdue amount or prevent Lessor from exercising any of the rights and remedies available to Lessor under this Lease. Lessee shall pay the late charge as additional Rent with the next installment of Rent.

21.2 **Interest.** If any Rent payment is not received by Lessor or Lessor's designee within five (5) days after that Rent is due, Lessee shall pay to Lessor interest on the past-due amount, from the date due until paid, at the rate of ten percent (10%) per year. Despite any other provision of this Lease, the total liability for interest payments shall not exceed the limits, if any, imposed by the usury laws of the State of California. Any interest paid in excess of those limits shall be refunded to Lessee by application of the amount of excess interest paid against any sums outstanding in any order that Lessor requires. If the amount of excess interest paid exceeds the sums outstanding, the portion exceeding those sums shall be refunded in cash to Lessee by Lessor. To ascertain whether any interest payable exceeds the limits imposed, any nonprincipal payment (including late charges) shall be considered to the extent permitted by law to be an expense or a fee, premium, or penalty rather than interest.

ARTICLE XXII

NONWAIVER

22.1 **Nonwaiver.** No waiver of any provision of this Lease shall be implied by any failure of Lessor to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver by Lessor of any provision of this Lease must be in writing. Such written waiver shall affect only the provision specified and only for the time and in the manner stated in the writing.

22.2 **Acceptance and Application of Payment; Not Accord and Satisfaction.** No receipt by Lessor of a lesser payment than the Rent required under this Lease shall be considered to be other than on account of the earliest amount due, and no endorsement or statement on any check or letter accompanying a payment or check shall be considered an accord and satisfaction. Lessor may accept checks or payments without prejudice to Lessor's right to recover all amounts due and pursue all other remedies provided for in this Lease.

Lessor's receipt of monies from Lessee after giving notice to Lessee terminating this Lease shall in no way reinstate, continue, or extend the Lease Term or affect the Termination

Notice given by Lessor before the receipt of those monies. After serving notice terminating this Lease, filing an action, or obtaining final judgment for possession of the Premises, Lessor may receive and collect any Rent due, and the payment of that Rent shall not waive or affect such prior notice, action, or judgment.

ARTICLE XXIII

DISPUTE RESOLUTION

23.1 **Dispute Resolution.** The parties shall use their best good faith efforts to resolve disputes quickly and in an informal, professional and business-like manner. If the parties are unable to resolve quickly any dispute, the parties shall comply with the following procedures:

23.2 **Meet and Confer.** The parties agree Meet and Confer, as a condition precedent to the mediation and arbitration provisions of Sections 23.3 and 23.4. Any ambiguity or uncertainty as to whether a dispute is subject to the procedures set forth in this Article XXIII shall be resolved in favor of the application of these provisions. The Initiating Party of the Meet and Confer procedures shall give written notice to the other party, describing in general terms the nature of the dispute, the Initiating Party's position and summary of the evidence and arguments supporting its position and identifying one or more Authorized Individuals.

The Responding Party shall have ten (10) business days within which to respond. The response shall be in writing, shall include the Responding Party's position, a summary of the evidence and arguments supporting its position and shall also identify one or more Authorized Individuals with authority to settle the dispute on such party's behalf. The Authorized Individuals for the parties shall meet at a mutually acceptable time and place within thirty (30) days of the Initiating Party's notice and thereafter as often as they deem reasonably necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days of the Initiating Party's notice, or if the Responding Party fails to timely provide its written response or will not meet within thirty (30) days, the parties shall submit the dispute to mediation in accordance with Section 23.3 and shall give the other party written notice that the matter is being submitted to mediation. All deadlines specified in this Meet and Confer provision may be extended by mutual agreement.

23.3 **Mediation.** Within ten (10) business days of the notice of submission to mediation, the parties shall agree upon a mediator. If the parties are unable to agree, a mediator shall be appointed by the JAMS, San Francisco office. In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation, such time to be no later than thirty (30) days after selection of the mediator. At the mediation, each party shall be represented by persons with authority to negotiate a resolution of the dispute and may be represented by counsel. The mediator shall determine the format for the meetings. The mediation session shall be private. The fees and expenses of the mediator shall be borne equally by the parties. The entire mediation process shall be confidential and the privileges and protection of Evidence Code Sections 1115 through 1128 shall apply. Prior to commencement of mediation, if requested by either party or mediator, the parties and the mediator shall execute a written confidentiality agreement. If, as the result of mediation, a voluntary settlement is reached and the parties agree that such settlement shall be reduced to

writing, the mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and have the same force and effect as, an arbitration award and judgment may be entered upon it in accordance with applicable law in any court in Marin County, California.

23.4 Arbitration. If the parties cannot resolve a dispute after exhaustion of the Meet and Confer and the mediation procedures as set forth above, they shall submit it to binding arbitration in accordance with the then prevailing rules of JAMS and judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction in Marin County, California. The arbitrator shall be knowledgeable in and familiar with health care delivery systems and managed care, shall have jurisdiction to resolve disputes only in accordance with the provisions and limitations of this Agreement, shall follow California and federal substantive rules of law to the extent applicable and not inconsistent with this Agreement, shall require the testimony be transcribed at the request of any party, and shall render a decision in writing accompanied by finding of facts and a statement of reasons for the decision. The decision of the arbitrator shall be final and non-appealable. The place of arbitration shall be Marin County, California, or such other location as the parties shall agree.

23.5 Provisional Remedies; Survival. Notwithstanding the provisions of Section 23.4, each party shall have the right to seek provisional remedies from a court of competent jurisdiction in Marin County, California, in accordance with Code of Civil Procedure Section 1281.8. The provisions of this Section 23 shall survive the termination of this Agreement.

ARTICLE XXIV

ATTORNEY FEES AND COSTS

24.1 Attorney Fees and Costs. If either party undertakes litigation or arbitration against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to recover from the other party attorney fees, expert witness fees, arbitration costs, court costs and other costs incurred as a result of such claim or contest. The prevailing party shall be determined under California Civil Code Section 1717(b)(1) or any successor statute.

ARTICLE XXV

MISCELLANEOUS

25.1 Captions. The captions of articles and sections and the table of contents of this Lease are for convenience only and have no effect on the interpretation of the provisions of this Lease.

25.2 Word Usage. Unless the context clearly requires otherwise:

(a) The plural and singular numbers shall each be considered to include the other;

- (b) The masculine, feminine, and neuter genders shall each be considered to include the others;
- (c) "Shall," "will," "must," "agrees," and "covenants" are each mandatory;
- (d) "May" is permissive;
- (e) "Or" is not exclusive; and
- (f) "Includes" and "including" are not limiting.

25.3 **Counting Days.** Days shall be counted by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or legal holiday as described in California Government Code Section 6700-6701, it shall be excluded. Any act required by this Lease to be performed by a certain day shall be timely performed if completed before 5 p.m. local time on that date. If the day for performance of any obligation under this Lease is a Saturday, Sunday, or legal holiday, the time for performance of that obligation shall be extended to 5 p.m. local time on the first following date that is not a Saturday, Sunday, or legal holiday. Unless otherwise expressly provided in this Lease, all periods of time referenced in this Lease shall include all calendar days. For purposes of this Lease, the term "business day" shall mean any calendar day other than a Saturday, Sunday, or legal holiday as described in California Government Code Section 6700-6701.

25.4 **Entire Agreement.** This Lease and all exhibits, addenda, schedules, and agreements referred to in this Lease, and all amendments thereof, constitute the final, complete, and exclusive statement of the terms of the agreement between Lessor and Lessee pertaining to Lessee's lease of the Premises and supersede all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Lease by, and neither party is relying on, any understanding, agreement, representation, or warranty outside those expressly set forth in this Lease.

25.5 **Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Lease and are incorporated herein wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

25.6 **Amendments.** No amendment or modification of this Lease, and no approvals, consents or waivers by Lessor or Lessee under this Lease, shall be valid and binding unless in writing and executed by the party to be bound thereby. The parties shall have the maximum authority allowed under California Health and Safety Code Section 32121(p) to amend this Lease without any additional approval of the voters of Lessor, which authority shall include, without limitation:

- (a) Subject to the approval of any lender or bond issuer with respect thereto, any amendment needed to meet the requirements of any Indenture entered into by Lessee and approved by Lessor;

(b) Any amendment that corrects technical, typographical or other minor errors in this Lease;

(c) Any amendment required by any lender of Lessor; provided that such amendment does not increase any of Lessee's costs or expenses hereunder or does not materially or adversely modify Lessee's rights and obligations hereunder; and

(d) Any amendment that does not materially increase the costs or liabilities of, or reduce the payments or benefits to, Lessor, or modifies the uses of the Premises, or decreases or modifies the time periods provided for, or the rights of review or approval of, Lessor.

25.7 **Invalidity.** If any one or more of the provisions of the Lease shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Lease shall not in any way be affected or impaired thereby. To the extent permitted by applicable law, each party to this Lease waives any provision of law that renders any provision of this Lease invalid, illegal or unenforceable in any respect. If any provision of this Lease shall be held invalid, illegal or unenforceable, the parties shall use all reasonable efforts to substitute a valid, legal and enforceable provision that implements the purposes and intent of this Lease.

25.8 **Binding Effect.** Subject to Article XVI and Sections 25.17-25.18, this Lease shall bind and benefit the parties to this Lease and their legal representatives and successors in interest.

25.9 **Independent Covenants.** This Lease shall be construed as though the covenants between Lessor and Lessee are independent and not dependent. Lessee expressly waives the benefit of any statute to the contrary and agrees that if Lessor fails to perform its obligations under this Lease, Lessee shall not be entitled:

(a) To make any repairs or perform any acts at Lessor's expense; or

(b) To any setoff of the Rent or other amounts owing under this Lease against Lessor.

The foregoing, however, shall in no way impair Lessee's right to bring a separate action against Lessor for any violation by Lessor of the provisions of this Lease if notice is first given to Lessor and any lender of whose address Lessee has been notified, and an opportunity is granted to Lessor and that lender to correct those violations as provided in Section 18.7.

25.10 **Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California.

25.11 **Merger.** The voluntary or other surrender of this Lease by Lessee and acceptance by Lessor, the mutual cancellation of this Lease, or the termination of this Lease as a result of a default by Lessee, will not effect a merger and will, at Lessor's sole option on delivery of written notice to Lessee and any sublessees actually known to Lessor within ninety (90) days after such surrender or cancellation, terminate all existing subleases or subtenancies or operate as an assignment to Lessor of any or all subleases or subtenancies.

25.12 Notices. All notices or other communication provided for under this Lease shall be in writing, shall be effective upon receipt or refusal to accept delivery, and shall be (a) delivered personally, (b) sent by registered or certified mail, return receipt requested, postage prepaid, or by private overnight courier service, addressed to the person to receive such notice or communication at the following address, or (c) sent by facsimile transmission to the phone number listed below with a copy of such notice concurrently sent by the method set forth in the preceding clause (b). The address of any party for purposes of notices shall be the address set forth below; provided that any party may change its address by giving notice to the other parties hereto in accordance herewith.

Notice to Lessee must be addressed as follows:

Marin General Hospital
Attn.: Board Chair
250 Bon Air
Greenbrae, CA 94904
Facsimile: (415) 925-7933

Notice to Lessor must be addressed as follows:

Marin Healthcare District
Attn.: Board Chair
100B Drakes Landing Road, Suite 250
Greenbrae, CA 94904

Facsimile: (415) 464-2090

If Lessee is notified of the identity and address of Lessor's lender or ground or underlying Lessor, Lessee shall give to that lender or ground or underlying Lessor written notice of any default by Lessor under the terms of this Lease.

25.13 Force Majeure. If Lessor or Lessee cannot perform any of its obligations under this Lease, other than Lessee's obligation to pay Rent, due to events beyond its control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond Lessee's and Lessor's control include acts of God, war, civil commotion, terrorism, labor disputes, strikes, earthquakes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction, and weather conditions, but do not include financial inability to perform.

25.14 Time of the Essence. Time is of the essence of this Lease and each of its provisions.

25.15 Recording; Memorandum of Lease. Except as provided in this Section 25.16, neither this Lease nor any memorandum, affidavit, or other writing relating to this Lease may be recorded by Lessee or anyone acting through, under, or on behalf of Lessee. Recordation in violation of this provision constitutes an act of default by Lessee. On request by Lessor or any lender or ground Lessor, Lessee shall execute a short form of Lease for recordation, containing

(among other customary provisions) the names of the parties and a description of the Premises and the Lease Term. Lessee shall execute, acknowledge before a notary public, and deliver that form to Lessor within ten (10) days after the request.

25.16 **Liability of Lessor.** Except as otherwise provided in this Lease or applicable law, for any breach of this Lease the liability of Lessor (including all persons and entities that comprise Lessor, and any successor Lessor) and any recourse by Lessee against Lessor shall be limited to the interest of Lessor and Lessor's successors in interest in and to the Building and Property. On behalf of itself and all persons claiming by, through, or under Lessee, Lessee expressly waives and releases Lessor from any personal liability for breach of this Lease.

25.17 **Transfer of Lessor's Interest.** Lessor has the right to transfer all or part of its interest in the Property and in this Lease. On such a transfer, Lessor shall automatically be released from all liability accruing under this Lease, and Lessee shall look solely to that transferee for the performance of Lessor's obligations under this Lease after the date of transfer. Lessor may assign its interest in this Lease to a mortgage lender as additional security. This assignment shall not release Lessor from its obligations under this Lease, and Lessee shall continue to look to Lessor for the performance of its obligations under this Lease.

25.18 **Submission of Lease.** Submission of this document for examination or signature by the parties does not constitute an option or offer to lease the Premises on the terms in this document or a reservation of the Premises in favor of Lessee. This document is not effective as a lease or otherwise until executed and delivered by both Lessor and Lessee.

25.19 **Legal Authority.** Each individual executing this Lease on behalf of Lessee represents and warrants that:

(a) The individual is authorized to execute and deliver this Lease on behalf of Lessee in accordance with a duly adopted resolution of Lessee's board of directors and in accordance with Lessee's articles of incorporation or charter and bylaws;

(b) This Lease is binding on Lessee in accordance with its terms;

(c) Lessee is a duly organized and legally existing corporation in good standing in the State of California; and

(d) The execution and delivery of this Lease by Lessee shall not result in any breach of or constitute a default under any Indenture, mortgage, deed of trust, lease loan, credit agreement, partnership agreement, or other contract or instrument to which Lessee is a party or by which Lessee may be bound.

Lessee shall, prior to the date of this Lease, deliver to Lessor a copy of a resolution of Lessee's board of directors authorizing or ratifying the execution and delivery of this Lease. That resolution must be duly certified by the secretary or assistant secretary of Lessee.

25.20 **Brokers.** Lessor and Lessee each represents to the other that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is entitled to a commission or finder's

fee in connection with this Lease. Each party shall indemnify, protect, defend, and hold harmless the other party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any leasing commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than Brokers. The terms of this Section 25.20 shall survive the expiration or earlier termination of the Lease Term. Despite anything contained in this Lease to the contrary, Lessor and Lessee agree and acknowledge that neither this Section 25.20 nor any other provision in this Lease may be enforced by any third party.

25.21 Transportation Management. Lessee shall fully comply with all current or future compulsory programs imposed by any public authority, intended to manage parking, transportation, or traffic in and around the Property. In connection with this compliance, Lessee shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Lessor, any government transportation management organization, or other transportation-related committees or entities.

25.22 Counterparts. This Lease may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25.23 No Delegation of Powers. By this Lease and any amendments hereto, Lessor does not delegate or grant any authority or powers of Lessor as a public agency or otherwise to Lessee to exercise any of Lessor's rights or authority, and Lessor retains all those powers and authorities granted to Lessor by the State by reason of its status as a political subdivision of the State of California.

[The rest of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Lease as of the Lease Date.

LESSOR:

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

By: _____
Printed Name: _____
Title: _____

LESSEE:

MARIN GENERAL HOSPITAL,
a California nonprofit public benefit corporation

By: _____
Printed Name: _____
Title: _____

Exhibit A

Description of Property

Tab 3

Marin Healthcare District (“District”) – Marin General Hospital (“MGH”)

New Hospital Lease
Summary of Material Terms

- Premises: All of the Hospital and surrounding real property and improvements, subject to Marin County's co-ownership right regarding the Mental Health Building parcel
- Term: 30 years, commencing December 2, 2015 (upon expiration of existing lease on December 1, 2015); expires December 1, 2045

- Rent – rationale:
 - Provide District sufficient rent to permit it to fulfill its obligations including oversight of the Hospital and its operations
 - Permit MGH to achieve a strong financial condition as soon as possible
 - Retain most profit at MGH for the development of additional services
 - Once MGH is in strong financial position, a portion of profit is paid to the District to fund other healthcare related programs

- Rent: four components
 - Base cash rent of \$500,000 per year plus an annual CPI increase
 - MGH provides District administrative and secretarial support services, office space, furniture, computer hardware and software and equipment as required for District to conduct its affairs. Subject to an annual ceiling of \$509,000, plus an annual CPI increase
 - MGH pays District clinic/facilities deficits

– **Additional Contingent Rent - paid only if MGH:**

- **Has 150 days cash on hand**
- **Has earnings before interest, depreciation and amortizations (“EBIDA”) that is in excess of the higher of (a) 10% of MGH’s Net Revenue or (b) the then current level of EBIDA as a percentage of Net Revenue required for MGH to achieve an “A” category credit rating**
- **Once achieved, MGH pays District 2% of any amount of Hospital EBIDA that is in excess of the applicable formula above**
- **No additional rent is payable if it would cause MGH to violate any covenants or requirements of any loan or bond issuance that has been approved by the District**

- Triple Net Lease: Lease Agreement is based upon a standard commercial triple net lease form with MGH responsible for paying all taxes, insurance, maintenance and utilities; MGH indemnifies District for all matters arising from or related to MGH's use and occupancy of the Premises and Hospital operations
- Permitted Use: as a non-profit, general acute care hospital and related ancillary uses

- New Improvements: MGH agrees to perform and pay for all District obligations to perform seismic requirements, including construction of new Hospital wing, parking structures and related improvements
 - Planning, applying for and processing approvals, entitlements and permits
 - Seeking and obtaining financing /funding (except for General Obligation Bonds to be sought by the District)
 - Implementing and constructing

- Default/Remedies: standard commercial lease default provisions, modified to provide protections likely to be required by lenders and bond issuers
 - Termination over 6 months or longer to permit transition of Hospital assets/operations to District or its designee
 - District's satisfaction of District approved lender/bond holder and other requirements
 - District's assumption of MGH obligations under such approved loans/bonds and other agreements

- District must approve improvements and capital expenditures that have useful lives extending beyond the term of the Lease or 20% of the total cost of which extends beyond the Lease term
 - Until the last 5 years of the Lease term, District cannot unreasonably withhold, condition or delay its consent
 - Reasonable to withhold if the improvement or capital expenditure would result in an indenture requiring District approval, or District could not accept the related lien upon expiration or termination without violating any law
 - During last 5 years
 - District may withhold, condition or delay its consent in its discretion
 - District and MGH form committee to discuss new lease or transition of Hospital assets and operations to District or its designee

- Surrender of Hospital Premises, Assets and Operations at Expiration or Termination
 - MGH surrenders, assigns and transfers all Hospital assets and all affiliated business operations and everything necessary to continue the uninterrupted operation of the Hospital
 - District assumes related debts, obligations and liens
 - District will be entitled to remove and appoint members of the MGHC Board of Directors

- **Amendment:** the Parties may amend the Lease to the maximum extent permitted by law to address lender and bond issuer/holder concerns and other issues that may arise
- **Dispute Resolution:** the Parties agree to utilize mediation and arbitration to resolve disputes in order to attempt to contain costs and minimize disruption to Hospital operations

Tab 4



To: Joint Project Oversight Committee
From: Lee Domanico
Re: Financial Advisor Selection
Date: June 20, 2014

Management is pleased to recommend selection of H2C, LLC, led by Michael Hammond, to serve as the Financial Advisor to Marin Healthcare District and Marin General Hospital for the financing that will be required by both parties to complete our Hospital Replacement Building and related projects. In our opinion, H2C brings exceptional expertise and is also the lowest cost of the three proposals.

The fees involved will depend on the final structure of the financing(s), but we expect the cost to run between \$600,000 and \$800,000, which is well below the other proposals which ranged from \$1.0 million to \$1.2 million. The specifics are presented below:

- a. A fee of \$100,000 for the Strategic Capital Plan, payable upon delivery of the Strategic Capital Plan report.
- b. Completion Fees for financial advisory services as follows:
 - i. For general obligation bond issues:
 1. If the general obligation bonds are issued as one \$394 million issue, a fee of \$1.00 per \$1,000 bond payable upon closing of the issue.
 2. If the general obligation bonds are issued as two issues totaling \$394 million, a fee of \$1.25 per \$1,000 bond for each issue, payable upon closing of each issue.
 3. If the general obligation bonds are issued as more than two issues, a fee of \$1.50 per \$1,000 bond for each issue, payable upon closing of each issue.
 - ii. For revenue bond issues:
 1. \$1.50 per \$1,000 bond for each public underwritten revenue bond issue, payable upon closing of each issue.
 2. \$2.00 per \$1,000 bond for each direct purchase, bank loan or limited public offering issue, payable upon closing of each issue.

The complete agreement is attached and we look forward to engaging Michael Hammond and his team.

Tab 5

Marin Healthcare District Board

Marin General Hospital

July 08, 2014



Agenda

- *HRB Schematic Design Update*
 - *Exterior*
 - *Plan Revisions*
 - *Imagery*
 - *Interiors*
 - *Cost*
 - *Schedule*
- *HRB Design Development*

HRB Exterior

HRB Perspective View From South West

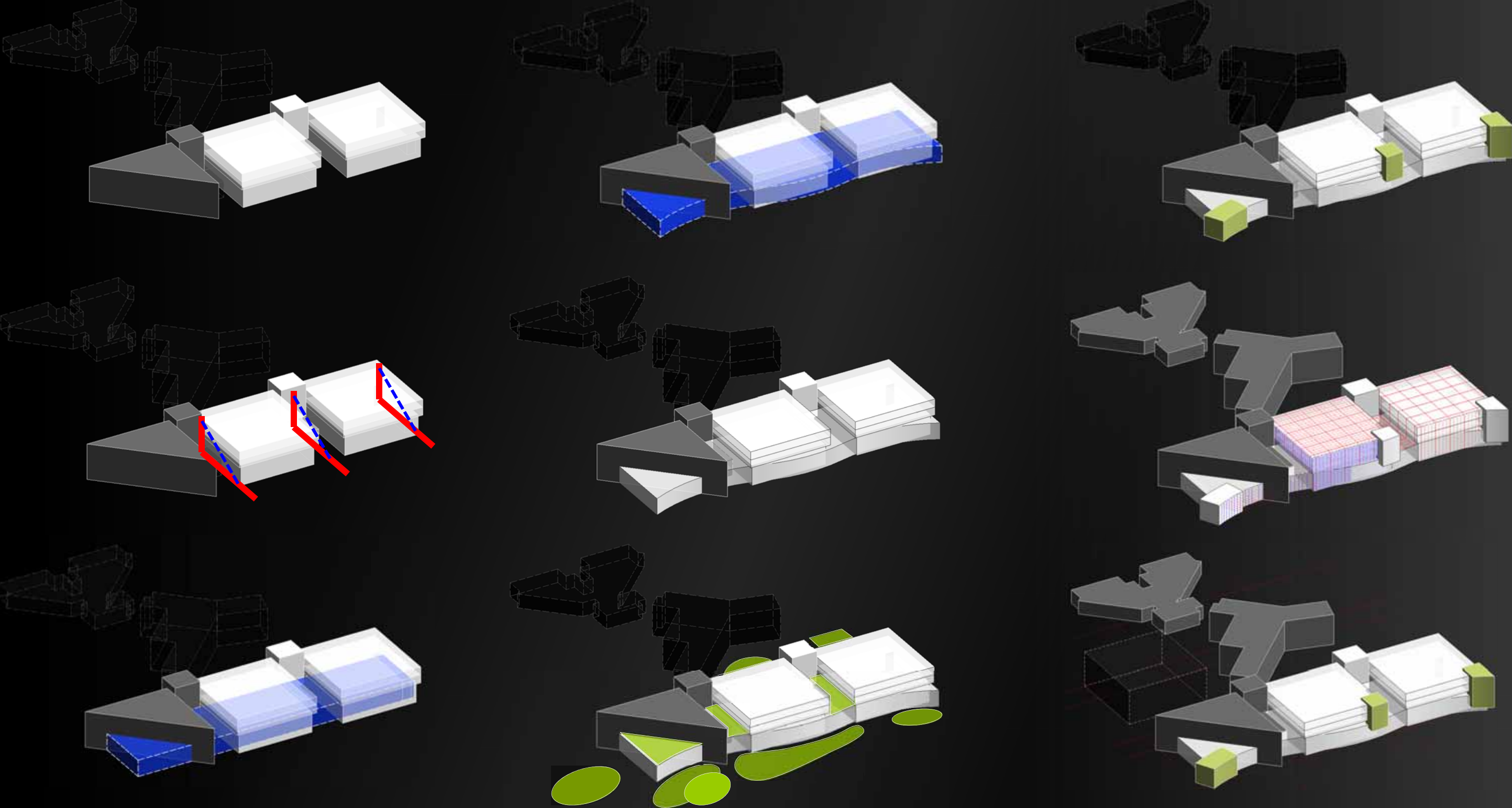


HRB Design Concepts – Building For The Future



- *Patient-focused healing environment*
- *Safe and innovative*
- *Flexible to meet changing needs*
- *Eco-friendly*
- *Designed for workplace efficiency*
- *A landmark in Marin*

HRB Massing & Design Concepts



Aerial View From North West



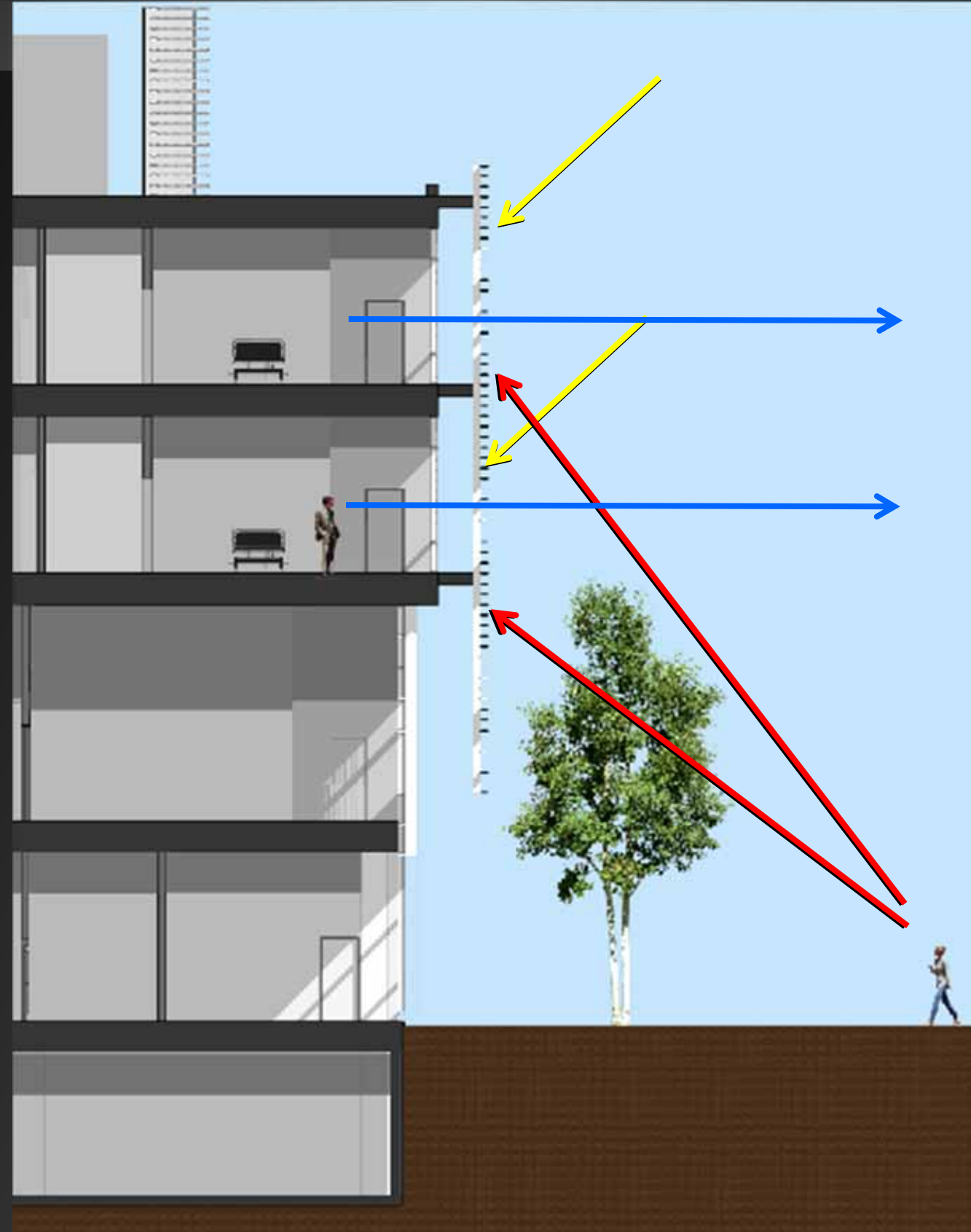
Perspective View From North West



Main Entrance Drop Off /



Exterior Wall / Screening



Sunshade

Views

Privacy

Aerial View From South West



Perspective View From South West



Aerial View From South East



Interactive Garden



Roof Gardens

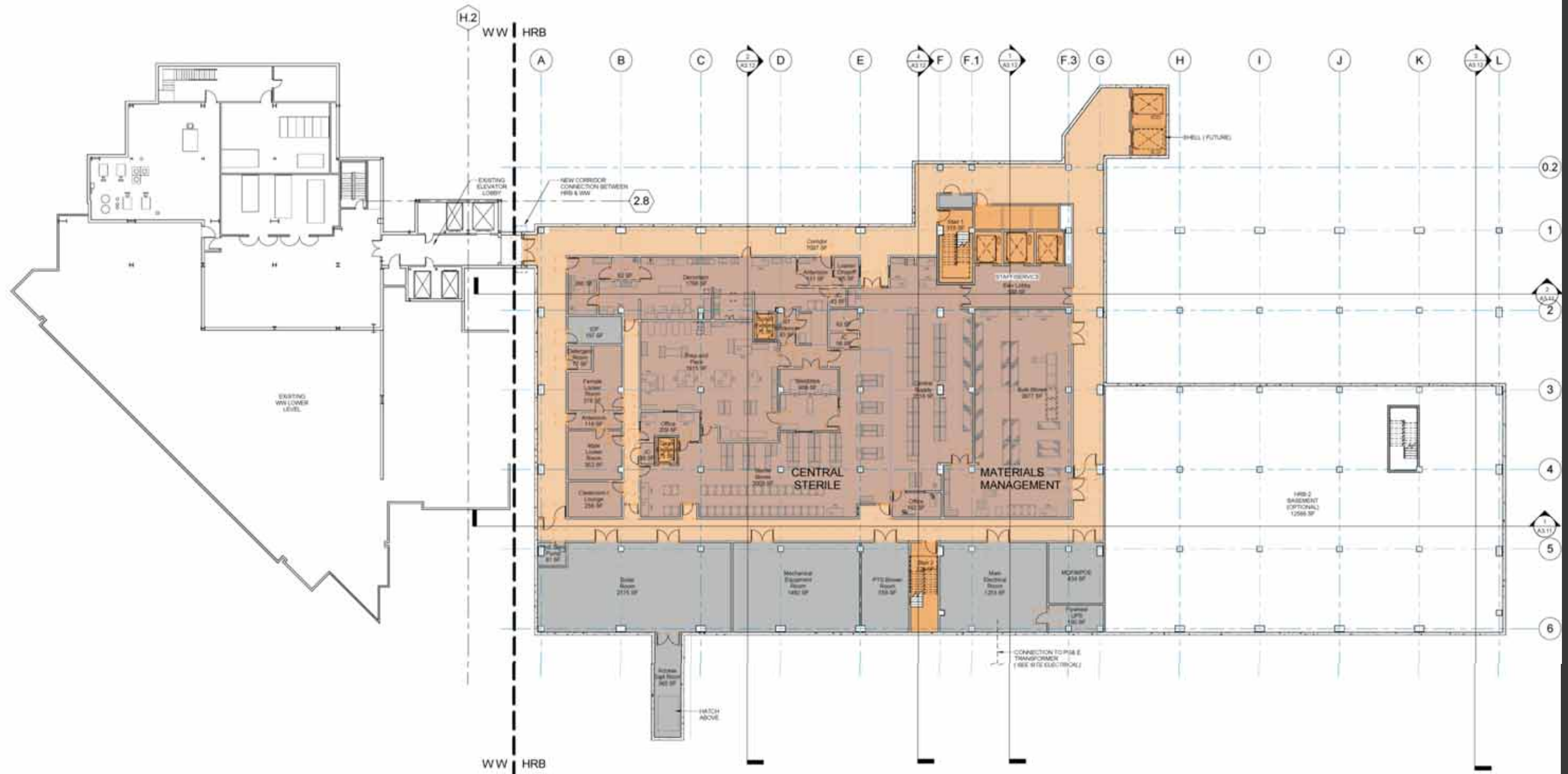


Perspective View From South West



Revised HRB Schematic Design Plans

Lower Level Floor Plan



Ground Floor Plan



First Floor Plan



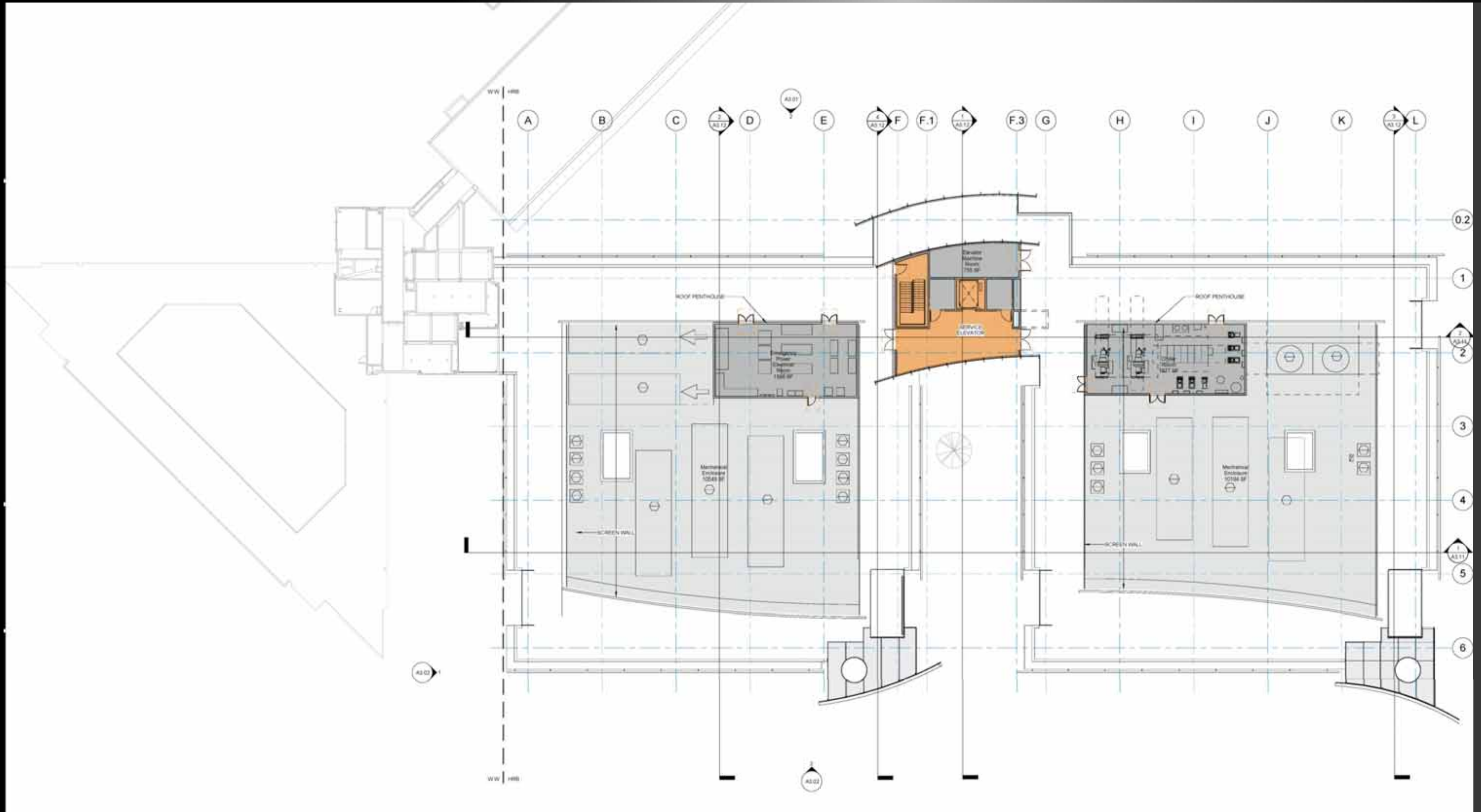
Second Floor Plan



Fourth Floor Plan



Roof Plan



Interior Imagery

Main Finish Palette - A



Public Corridor / Imaging Waiting Room



West Wing Main Waiting / Living Room



West Wing Main Lobby



Elevator Lobby



Solarium + Living Room (Interior View)

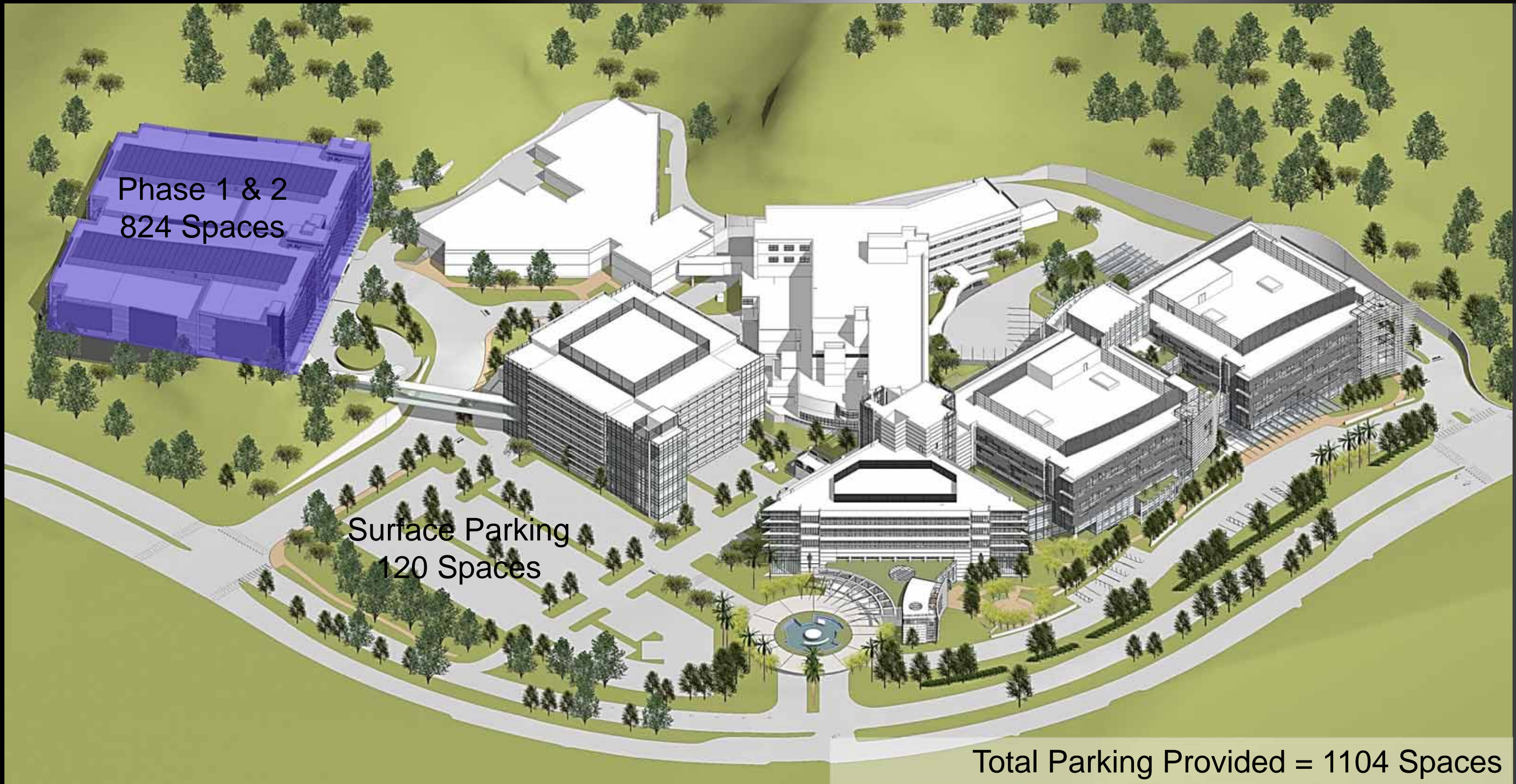


Solarium + Living Room (Exterior View)

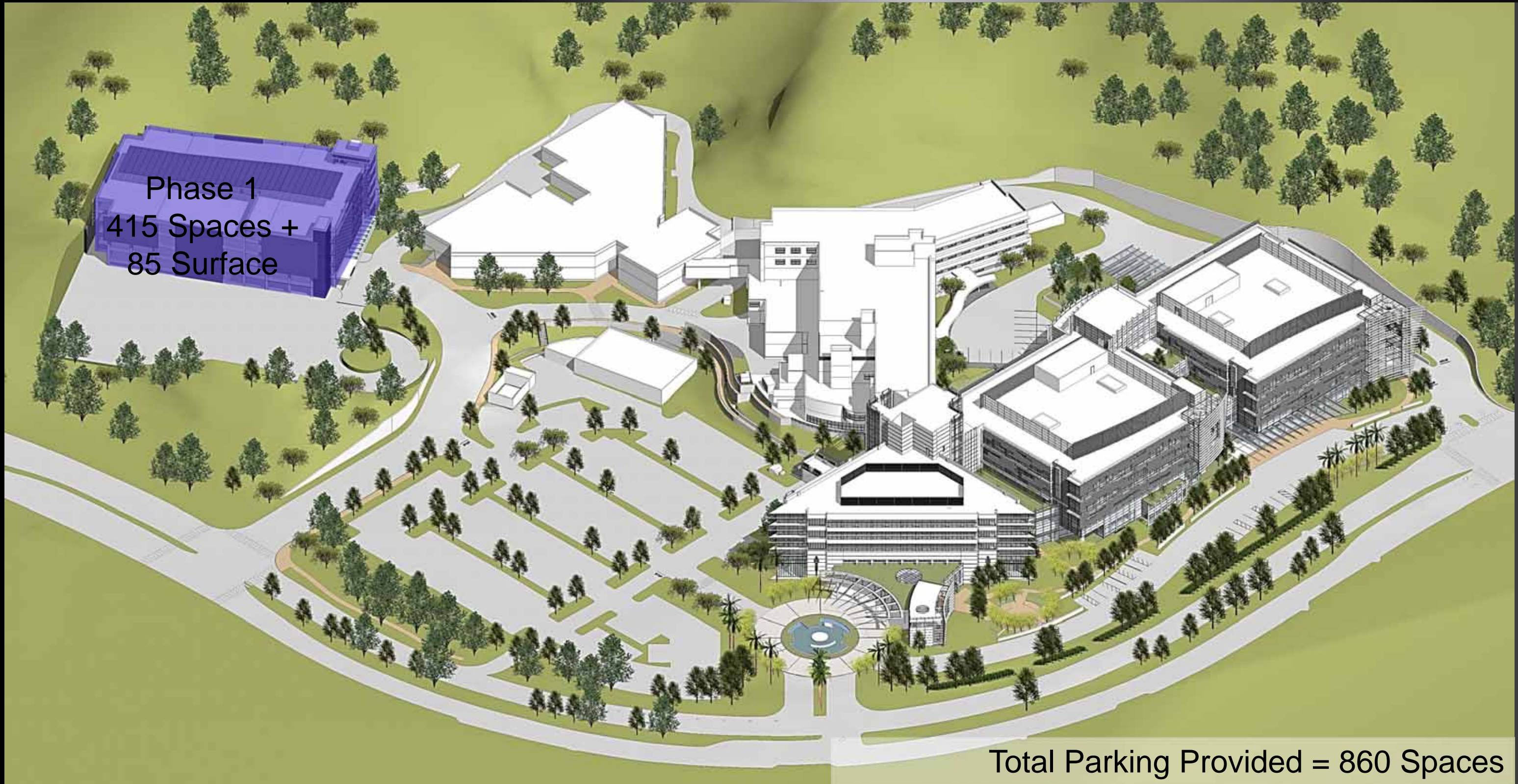


Hillside Parking Structure Status

Hillside Parking Structure & Future State Development



Proposed Hillside Parking – Phase I



Hillside Parking Structure – Phase 1



Phase 1 Schematic Design Budget Updated

Project Preliminary Cost Estimate January 2014

Phase I Projects	Prelim Est. Jan 2014
• <i>Hospital Replacement Building *</i>	\$413,562,000
• <i>West Wing Make Ready</i>	\$19,175,000
• <i>Parking Garage – Bon Air</i>	\$217,000
• <i>Parking Garage - Hillside</i>	\$25,962,000
• <i>Site work</i>	\$39,247,000
• <i>West Wing – Ground Renovation</i>	\$26,146,000
• <i>West Wing – Pharmacy Allowance</i>	\$5,000,000
• <i>West Wing ICU Allowance</i>	\$5,000,000
	<hr/> <hr/>
Total Project Cost	\$534,309,000

*Note: Includes \$271M Construction + related Project Soft Cost (Fees, Equipment, Contingency, Etc.)

Project Cost Estimate June 2014

Phase I Projects

SD Est. June 2014

• <i>Hospital Replacement Building</i>	\$427,736,000
• <i>West Wing Make Ready</i>	\$4,656,000
• <i>Parking Garage – Bon Air</i>	\$217,000
• <i>Parking Garage - Hillside</i>	\$25,962,000
• <i>Site work</i>	\$32,992,000
• <i>West Wing – Ground Renovation + Lobby Addition</i>	\$34,259,000
• <i>West Wing – Surgery Support</i>	\$7,821,000
• <i>West Wing level 2 – ICU to Med/Surg</i>	\$1,221,000
	<hr/>
Total Project Cost Phase I	\$534,864,000

Possible Market Conditions – Additional 1% of Construction \$8,735,000

Phase II Projects

• West Wing – Pharmacy Allowance	\$5,379,000
• West Wing – Surgery OR Renovation	\$4,564,000
Total Project Cost Phase II	\$9,943,000

Schedule

Project Schedule – June 2014

	Design Start	Construction Start	Construction Completion
Parking Garage – Hillside Phase 1 - Dependent on Land Swap	March 2014	December 2014	December 2015
West Wing Make-Ready	March 2014	September 2015	January 2016
Hospital Replacement Project	March 2014	March 2016	June 2019
West Wing Addition + Ground Floor Remodel	January 2018	July 2019	June 2021

Board Action

Board Actions

- *EIR / Schematic Revisions*
- *HRB Project Plan / Budget*
- *Approve SD / Authorization Proceed With Design Development*
- *Approve McCarthy Builders As Construction Manager*

Tab 6



Creating a healthier Marin together.

Community Health Grant Policy

POLICY

The purposes of Marin Healthcare District include the promotion of actions to provide healthcare services in the community. The District is not a grants agency, but may make selected grants for qualifying health care programs as funds are available for such purposes.

The Marin Healthcare District may from time to time make grants to health care programs which promote the purpose of the District to enhance the provision of adequate health services to residents of the District.

Any grants made by the District are discretionary. All grant approvals shall be one-time only, preferably with a one-year term, and shall not create priority consideration for grantees as to any future grant funds. Decisions shall be subject to availability of District funds.

PROCESS

Each year, the Marin Healthcare District Board invites a limited number of proposals (typically one to three) from targeted organizations for its funding of Community Health Grants. Grant requests must meet the eligibility and restrictions outlined below. All eligible grant requests will be reviewed by the Board for consideration. The Board may choose to solicit input from Marin County leaders (Larry Meredith, Tom Peters, etc.) and key stakeholders as appropriate. Grantees will be required to report on their progress twice; once at mid-year and again at the end of the year.

ELIGIBILITY AND RESTRICTIONS

Marin Healthcare District provides financial support to local nonprofit and public health and human service organizations that serve vulnerable communities in Marin for health related programs or issues. Only nonprofit, tax-exempt organizations and public agencies are eligible.

Community Benefit Grant Criteria:

1. The project/organization should address an identified need.
2. The project/organization must be directly related to mental health or aging in place.
3. The project/organization must be established in the community; financial support is not available for start-ups.
4. No capital (bricks and mortar) projects.
5. The project/organization must benefit the residents of Marin County

Community Benefit Grants are generally NOT awarded for:

- Arts programs
- Cultural events
- Schools
- Formal athletic programs, such as sports teams or leagues
- Fundraising activities
- Annual fund drives
- Building or capital campaigns
- Individuals
- Religious organizations (religious purposes or exclusive benefit of their members)
- Political campaigns



Creating a healthier Marin together.

Community Health Grant Report

6 Month 12 Month

ORGANIZATION INFORMATION

Name: _____

Website: _____

PROJECT CONTACT

Name: _____

Phone: _____ Fax: _____

Email: _____

Relationship/Position to Organization: _____

PROJECT INFORMATION

Project Title: _____

Start Date: _____ End Date: _____

Project Status: _____

Budget Update (including MHD funds): _____

Number of people reached/served to date: _____

Objective/Goals (From Application)	Status
1	1
2	2
3	3
4	4
5	5

SUBMISSIONS/QUESTIONS

Please contact Jamie Maites to submit your completed application or for any questions.

P: 415-925-7424 | F: 415-461-1226 | jamiemaites@marinhealthcare.org



Creating a healthier Marin together.

Community Health Grant Application

Thank you for your interest in the Marin Healthcare District Community Health Grant Program. Through our Community Health Grants we work to improve the health of our community by addressing issues and concerns that affect overall health. Please review our Community Health Grant Policy for eligibility and requirements. A completed application must be submitted for it to be considered. The total budget must also be attached and submitted along with the application.

APPLICANT INFORMATION

Name: _____

Phone: _____ Fax: _____

Email: _____

Relationship/Position to Organization: _____

ORGANIZATION INFORMATION

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Website: _____

Tax Status: _____ Tax ID#: _____

Brief Organization Description (including mission, goals and communities served):

APPLICATION/PROJECT REQUEST INFORMATION

Project Title: _____

Start Date: _____ End Date: _____

Summary: _____

Objectives/Goals (please be as specific and measurable as possible):

1. _____

2. _____

3. _____

4. _____

5. _____

Project Budget (total budget must be submitted with application): _____

Amount of funding you are requesting from Marin Healthcare District (MHD): _____

What line items would MHD funding go towards and in what time frame would it be used:

Other sources of funding (including already secured and pending): _____

Community Health Grant Application

Populations served (please select all that apply):

Insurance	Gender	Age Group	Ethnicity
<input type="checkbox"/> Insured	<input type="checkbox"/> Male	<input type="checkbox"/> <18	<input type="checkbox"/> African American
<input type="checkbox"/> Uninsured	<input type="checkbox"/> Female	<input type="checkbox"/> 18-40	<input type="checkbox"/> Asian
<input type="checkbox"/> Payer Mix	<input type="checkbox"/> Both	<input type="checkbox"/> 40-65	<input type="checkbox"/> Caucasian
		<input type="checkbox"/> 65+	<input type="checkbox"/> Hispanic or Latino
			<input type="checkbox"/> Other: _____
Vulnerable			
<input type="checkbox"/> Homeless			
<input type="checkbox"/> Mentally Ill			
<input type="checkbox"/> Low Income			
<input type="checkbox"/> Primary Language Not English			

Comment [MJ1]: Need to ask full Board if this should be included or removed.

Number of people expected to reach/serve: _____

Other partners involved in the project: _____

EVALUATION

How will each objective/goal be measured? _____

How will outcomes be measured? _____

SUBMISSIONS/QUESTIONS

Please contact Jamie Maites to submit your completed application or for any questions.
P: 415-925-7424 | F: 415-461-1226 | jamiemaites@marinhealthcare.org