

**TRANSFER AGREEMENT**

**by and among**

**MARIN GENERAL HOSPITAL,  
MARIN COMMUNITY HEALTH,  
MARIN HEALTHCARE DISTRICT**

**AND**

**SUTTER HEALTH**

**Dated: October 4, 2006**

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## TRANSFER AGREEMENT

THIS TRANSFER AGREEMENT ("**Agreement**") is made and entered into as of October 4, 2006 (the "**Execution Date**"), by and among Marin General Hospital, a California nonprofit public benefit corporation ("**MGHC**"), Marin Community Health, a California nonprofit public benefit corporation ("**MCH**"), Sutter Health, a California nonprofit public benefit corporation ("**Sutter**"), and Marin Healthcare District, a California local healthcare district ("**District**"). MGHC, MCH, Sutter and District are sometimes referred to in this Agreement as a "**Party**" and, collectively, as the "**Parties**."

### RECITALS

**A.** MGHC engages in the business of delivering general acute care hospital services and other clinical and ancillary healthcare services to the public through that certain licensed acute care general hospital located at 250 Bon Air, Greenbrae, California known as Marin General Hospital (the "**Hospital**").

**B.** MCH is currently the sole member of MGHC and Sutter is the sole member of MCH.

**C.** In November 1985, the District and MGHC entered into a lease agreement whereby the District leased certain real property, buildings, equipment and fixtures to MGHC and in August 1987 the lease was amended (collectively, the "**Lease**").

**D.** In June 2005, MGHC filed a complaint for declaratory relief against the District seeking declarations concerning the respective duties of MGHC and the District to comply with the Hospital Seismic Upgrade Act (as defined in the Complaint) and, further, alleging that the construction of seismic upgrades at the Hospital, if attempted or performed, would so disrupt and interfere with Hospital operations that it would frustrate the purpose of the Lease, entitling MGHC to terminate the Lease. The District cross-complained, seeking declaratory relief concerning the respective duties of the parties to comply with the Hospital Seismic Upgrade Act and, further, concerning the parties' rights and obligations upon Lease termination, and seeking damages arising out of MGHC's alleged breach of the Lease by failing to seek or obtain an extension of the interim compliance deadlines as prescribed by the Hospital Seismic Upgrade Act. The matter is presently set for trial to commence on November 29, 2006 (the "**Litigation**").

**E.** The Parties have conducted settlement discussions and entered into a Settlement Agreement and Mutual Release dated October, 2006 ("**Settlement**").

**F.** In order to give effect to the Settlement as detailed in the foregoing recital, the Parties will agree to a resignation by MCH as the sole member of MGHC as a means of transferring control of MGHC and the Hospital to the District, on the terms and subject to the conditions set forth in this Agreement.

**G.** In or about 1996, MGHC affiliated with Sutter and, since that time, Sutter has provided to MGHC a wide variety of support in the form of the System Services (as hereinafter defined), and after the transfer of control the District and MGHC will assume responsibility for acquiring or providing those services.

**H.** The District's general goals in entering the Settlement and this Agreement, in addition to resolving the Litigation, are to re-acquire control of the Hospital and MGHC, with the Hospital being a going concern at the time of transfer, and to itself operate the Hospital after the Transfer Date (as defined herein) as an ongoing, viable general acute care hospital capable of meeting the hospital and related healthcare services needs of the District's residents in the future.

**I.** The Sutter Parties general goals in entering the Settlement and this Agreement, in addition to resolving the Litigation, are to convey control of the Hospital and MGHC to the District without further liability or responsibility after the Transfer Date, except only for the indemnification obligations stated herein, and to provide a broad range of inpatient, outpatient and physician services in Marin County after the Transfer Date.

**J.** The District and the Sutter Parties intend to cooperate in good faith in accord with the terms of the Settlement and this Agreement to accomplish the Change of Control (as defined herein) and the activities associated with it, as provided herein and in the Settlement, subject to their mutual understanding that each of the District and the Sutter Parties will be have the rights to: (i) compete freely; (ii) solicit for employment the MGHC Employees; and (iii) solicit for hospital affiliation or privileges, or for participation in common medical business ventures, the physician members of the MGHC medical staff; in each case subject only to the expressly stated limitations thereon in this Agreement and in the Settlement.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

### 1. Defined Terms

For purposes of this Agreement, except as may otherwise be expressly stated herein, the following terms shall have the following meanings:

**“Accounts Payable”** shall mean all accounts, notes or other amounts payable recorded or otherwise accrued by MGHC as of the Transfer Time as accounts, notes or other amounts payable to any other Person (whether or not billed) including, without limiting the generality of the foregoing, any amount due from MGHC to any third party arising from or in connection with the operation of the Business, but excluding (i) any notes payable, except as otherwise allowed under this Agreement or the Settlement, and (ii) any payables resulting from or arising out of Intercompany Transactions.

**“Accounts Receivable”** shall mean all accounts, notes or other amounts receivable recorded or otherwise accrued by MGHC as of the Transfer Time, and including amounts due from Medicare and MediCal whether recorded or accrued, as accounts, notes or other amounts receivable from Payers, patients, physicians or any other Person (whether or not billed) including, without limiting the generality of the foregoing, any amount due to MGHC arising from or in connection with the operation of the Business, but excluding any receivables resulting from or arising out of Intercompany Transactions, except for amounts due for the care of patients, which might be due from Sutter or a Sutter Affiliate.

**“Action”** shall mean any legal action, claim, suit, writ, litigation, formal judicial or administrative proceeding, governmental inquiry or investigation (excepting any normal-course Medicare or Medi-Cal audit conducted by the intermediary) criminal prosecution, or unfair labor practice charge or complaint, including the settlement or payment thereof.

**“Adjusted Cash”** shall mean an amount calculated as of the Transfer Time equal to ten percent (10%) of Average Annual Gross Revenue, less the stated amount of the Qualified Accounts Receivable as of the Transfer Time and less the stated book value of the Inventory as of the Transfer Time.

**“Affiliate”** of a specified Person shall mean any corporation, partnership, sole proprietorship or other Person or entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the Person specified. The term **“control”** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or entity.

**“Average Annual Gross Revenue”** shall mean the average of the annual gross patient service revenue of MGHC for the three (3) full fiscal years immediately preceding the Transfer Date calculated on the basis of the annual financial statements of MGHC.

**“Billing Database”** shall mean in connection with Paragraph 4.12, all of the information stored in a computer system or manually in patient billing files which includes, but is not limited to: registration information, patient charges, insurance information, claims processing, accounts receivable transactions, payments, adjustments, remittance advices, and collection notes used to complete the patient revenue cycle.

**“Business Records”** shall mean all or any portion of the financial and other records and files of the Business, including, without limiting the generality of the foregoing, any and all records and lists maintained by MGHC pertaining to the Retained Assets, the MGHC Employees, the Benefits, the Business, the Facilities, Actions, customers, suppliers or personnel of MGHC, and all books, ledgers, files, reports, plans, drawings and operating records of every kind maintained by MGHC. Business Records do not include Patient Records and do not include any attorney-client privileged material.

**“Business”** shall mean the Hospital operation, the Cancer Center operation, the x-ray/mammography facility at 1240 South Eliseo and any existing “draw stations” as may exist from time-to-time.

**“Cancer Center”** shall mean the outpatient cancer treatment center located at 1350 South Eliseo Drive, Greenbrae, California.

**“Change of Control”** shall mean the replacement of MCH with the District as the sole member of MGHC.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder.

**“Collective Bargaining Agreements”** shall mean agreements with labor unions covering the terms and conditions of employment for MGHC Employees covered by such agreements.

**“Commercially Reasonable Efforts”** shall mean those acts or omissions taken or suffered by a prudent Person in the conduct and management of its or his business affairs.

**“Confidentiality Agreement”** shall mean the confidentiality agreement by and among the parties hereto that determines how confidential information is identified and the treatment and protection of such information both before and after the Transfer Date, attached as Exhibit A.

**“District Transition Managers”** shall mean employees or independent contractors of the District, or other designees, appointed, compensated and controlled by the District and who shall have certain limited rights with respect to the Business as provided in Paragraph 4.2(d).

**“Effective Date”** shall mean the date the Agreement becomes effective which shall be the date the court with jurisdiction over the Litigation enters a final judgment with respect to the Settlement.

**“Encumbrance”** shall mean any claim, lien, pledge, option, charge, easement, security interest, deed of trust, mortgage, right-of-way, encroachment, building or use restriction, conditional sales agreement, encumbrance or other right of third parties, whether voluntarily

incurred or arising by operation of law, and includes, without limitation, any agreement to give any of the foregoing in the future, and any contingent sale or other title retention agreement or lease in the nature thereof.

**“Environmental Laws”** shall mean laws which regulate or relate to the protection or clean-up of the environment, the use, storage, transportation, generation, processing, distribution, handling or disposal of, or emission, discharge or other release or threatened release of, hazardous substances or otherwise dangerous substances, wastes, pollution or materials, the preservation or protection of waterways, groundwater, drinking water, air, or other natural resources.

**“ERISA Affiliate”** shall mean any entity which is (or at any relevant time was) a member of a “controlled group of corporations,” under “common control” with or a member of an “affiliated service group” with MGHC as defined in Code Section 414.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**“Excluded Multi-Facility Contracts”** shall mean those Sutter system-wide arrangements for goods or services that cover more than one Sutter affiliate and may include goods and services for the Business.

**“Facility”** or **“Facilities”** shall mean the Hospital (at 250 Bon Air) and all on-site offices, improvements and administration buildings, and 1350 Eliseo Road, Greenbrae, California.

**“Hospital”** shall mean the hospital Facility at 250 Bon Air Road, Greenbrae, California.

**“Hospital Medical Staff”** shall mean the MGHC medical staff organization (including bylaws, processes and committees) and professional members of such organization as they exist on the Transfer Date.

**“Intercompany Transactions”** shall mean any transactions between MGHC and any Sutter Affiliate, whether or not any such transactions relate to the provision of goods and services, payment arrangements, intercompany charges or balances or the like.

**“Interim Funding Agreement”** shall mean that promise to advance funds and the related promissory note between the District and MCH related to funds advanced by MCH to the District prior to the Transfer Date, attached as Exhibit B.

**“Interim Funding Security Agreement”** shall mean the security agreement between MGHC and MCH to secure the repayment of the Interim Funding Agreement after the Transfer Date.

**“JCAHO”** shall mean the Joint Commission on Accreditation of Healthcare Organizations.

**“Joint Ventures”** shall mean business arrangements between MGHC and physicians or physicians groups for the joint ownership of certain medical equipment or clinical services which may be located at the Facilities or elsewhere.



**“Known”** or **“known to”** or **“within the knowledge”** or similar language with respect to MGHC shall mean the actual knowledge of the chief executive officer or the chief finance officer of MGHC at the relevant time the representation or information is given, and without independent investigation or review of the files of the Business. **“Known”** or **“known to”** or **“within the knowledge”** or similar language with respect to Sutter shall mean the actual knowledge of the senior director or manager actually providing, or directing the provision of, the relevant information at the relevant time, the representation or information is given and with reasonable review.

**“Labor Organization”** shall mean a labor organization that represents any MGHC Employees.

**“Laws”** shall mean all statutes, rules, regulations, ordinances, or codes, of federal, state or local governmental and regulatory authorities or any applicable accreditation agencies (including, but not limited to, JCAHO).

**“Liabilities”** shall mean any direct or indirect liability, indebtedness, obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any type, whether accrued, absolute, contingent, matured, unmatured or otherwise.

**“Liaison Administrator”** shall mean an employee or independent contractor of the District, appointed, compensated and controlled by the District and who shall have certain limited rights with respect to the Business as provided in Paragraph 4.2(c).

**“Managed Care Agreements”** shall mean a Payer Contract between a hospital provider of care and a non-governmental purchaser of healthcare that contracts on behalf of a group of persons for all or portions of such group’s medical care.

**“Marin Community Health Foundation”** or **“MCHF”** shall mean that nonprofit California public benefit corporation organized and operated to raise and distribute funds to MGHC and NCH.

**“MCH”** means Marin Community Health, a California nonprofit corporation that is currently the sole member of MGHC, or in the event of a System internal reorganization during the Transition Period, that Sutter Affiliate that is the member of MGHC as of the applicable time.

**“Membership Resignation Letter”** shall mean that resignation of membership in MGHC attached as Exhibit C given by MCH on the Transfer Date.

**“MGHC Employees”** shall mean those persons employed directly by MGHC on a full- or part-time basis, who are not the employees of any Sutter Affiliate.

**“NCH”** shall mean Novato Community Hospital, a Sutter Affiliate.

**“NCH Employees”** shall mean those persons employed directly by NCH on a full- or part-time basis.

**“Obligated Group”** shall mean the Sutter affiliated entities who have agreed under the Sutter Master Trust Indenture to consolidate and cross-guarantee their primary capital debt obligations.

**“Ordinary course of business”** or **“ordinary course”** or any similar phrase shall mean the ordinary course of operating a general acute care hospital of similar size and services as the Hospital, including events and changes that are typical in such environments.

**“OSHPD”** shall mean the California Office of Statewide Health Planning and Development.

**“Parking Garage Construction Project”** shall mean the project undertaken by the District or its agents to plan, prepare for and construct a parking garage on the Hospital site, as referred to in Section 7 of the Settlement.

**“Patient Records”** shall mean all or any portion of the medical, clinical and other records directly associated with the care and treatment of MGHC patients, and other written or electronic accounts of the medical history of MGHC’s patients maintained in connection with the Business (excluding, however, all billing, other financial and marketing information related thereto).

**“Payer Contract”** shall mean any agreement, contract or commitment between a Payer and a physician contracting group or hospital for the provision of healthcare services to any person or persons and for reimbursement for healthcare services rendered to such person or persons.

**“Payer”** shall mean Medicare, Medi-Cal, CHAMPUS and Medically Indigent Assistance programs, Blue Cross, Blue Shield, or any other third party payer including an insurance company or any health maintenance organization, preferred provider organization, or self-insured employer.

**“Person”** shall mean any individual, partnership, corporation, trust, unincorporated association, joint venture or any other entity of any kind whatsoever, whether for profit or not for profit, and any governmental agency.

**“Preparation Period”** shall mean the twelve (12) months immediately preceding the Transfer Date and shall commence with the earlier of July 1, 2009 or the date of the Notice of Early Transfer Date.

**“Qualified Accounts Receivable”** shall mean the amount stated for the Accounts Receivable for the Business on the books of MGHC, subject to the same billing and collection practices, policies and procedures (including, but not limited to bad debt, charity and administrative write-offs, but not including any “contractual adjustments”) as used by or for MGHC billing and accounting in the twelve (12) months preceding the Transfer Date, but counting only those Accounts Receivable aged one hundred and twenty (120) days or less as reflected in the applicable financial statement.

**“Replacement Coverage”** shall mean that policy or policies of insurance purchased and maintained by the District and/or MGHC covering MGHC for a minimum period of twenty-four (24) months after the Transfer Date for those risks and in those coverage amounts required under the Lease (as it exists on the Execution Date).

**“Seismic Upgrade”** shall mean those activities and obligations stated in Section 3 of the Settlement, except for those activities and obligations that Section 3 of the Settlement Agreement states are the responsibility of MGHC prior to the Transfer Date.

**“Sutter Affiliates”** shall mean Sutter, MCH and other organizations that qualify as an Affiliate of Sutter, other than MGHC, as of the Execution date.

**“Sutter Employees”** shall mean those employees of Sutter or any Sutter Affiliate who work full- or part-time at on or behalf of the Facilities.

**“Sutter Identifiers”** shall mean those names, symbols and rights described in Paragraph 2.6(g).

**“Sutter Insurance Contracts”** shall mean those Sutter contracts for insurance which cover the Business and one or more Sutter Affiliates in existence one hundred and eighty (180) days before the Transfer Date.

**“Sutter Master Trust Indenture”** shall mean that agreement dated as of August 1, 1985, as supplemented and amended, among Sutter and other members of the Obligated Group, and U.S. Bank, National Association, as trustee.

**“Sutter Pacific Heart Center”** or **“SPHC”** shall mean that cardiac care program developed by Sutter and operated jointly at the Facilities and at any Sutter Affiliate.

**“Sutter Parties”** shall mean Sutter and MCH, excluding MGHC.

**“Sutter Provided IS Contracts”** shall mean those Sutter information system contracts which cover the Business and one or more Sutter Affiliates in existence one hundred and eighty (180) days before the Transfer Date.

**“System Services”** shall mean those services Sutter provides to or arranges for MGHC and Sutter Affiliates as generally outlined in Exhibit D.

**“System”** shall mean organization and operations of Sutter, MGHC and the Sutter Affiliates as a coordinated healthcare delivery system.

**“Tail Coverage”** shall mean that policy or policies of insurance purchased and maintained by the District and/or MGHC covering the Sutter Parties for a period of thirty-six (36) months after the Transfer Date for those risks and in those coverage amounts required under the Lease as it existed on the day before the Transfer Date.

**“Transfer Date”** shall mean that date set by MGHC on or between January 1, 2009 and July 1, 2010, on which those events described in Paragraph 2.1, herein shall occur, subject to the notice provisions stated in Section 2 of the Settlement.

“**Transfer Release**” shall mean that release attached as Exhibit E given by the District in favor of the Sutter Parties and the Sutter Affiliates releasing them from all claims and obligations under the Lease, the Business and the Facilities, except as otherwise stated therein or in this Agreement or the Settlement.

“**Transfer Time**” shall mean 11:59 p.m. on the Transfer Date.

“**Transition Period**” shall mean that period of time from the Effective Date until the Transfer Date.

## 2. Transfer

### 2.1 Transfer Date

The Transfer Date shall not occur later than July 1, 2010, and not before January 1, 2009. MGHC may set a date earlier than July 1, 2010, by giving twelve (12) months advance notice to the other Parties (“**Notice of Early Transfer Date**”), provided that such Notice of Early Transfer Date shall not be given before January 1, 2008.

### 2.2 Transfer of Control

(a) Transfer Date Actions. Subject to the completion of the Closing and subject to the other conditions precedent to the transfer as expressly provided in this Agreement and the Settlement, on the Transfer Date: (i) MCH shall resign as the sole member of MGHC effective as of the Transfer Time; (ii) the District shall assume formal control over MGHC effective as of the Transfer Time; (iii) the District shall release the Sutter Parties from all claims and obligations under the Lease, all of the contracts retained pursuant to Paragraph 4.15, and all other claims and obligations related to the Business and the Facilities, subject only to such exceptions as expressly provided in this Agreement, the Settlement, or in the Transfer Release; (iv) the District shall provide evidence that the Replacement Coverage and the Tail Coverage (in the case of the Tail Coverage, to the extent not obtained from Sutter sources) will be effective as of the Transfer Time and have a term of not less than twelve (12) months with not less than six (6) months paid up, subject to the obligation that the District shall pay the next six (6) months premium within sixty (60) days after the Transfer Date (and subject further to the enforcement of this subparagraph (iv) as provided in Paragraph 12.15(e)); (v) the District shall enter into the promissory note attached to the Interim Funding Agreement and MGHC shall enter into the Interim Funding Security Agreement, both in favor of MCH; and (vi) Sutter shall have released MGHC from any security interest under the Sutter Master Trust Indenture in accord with Paragraph 4.5 hereof.

(b) District Control. Effective as of the Transfer Time, the District shall be entitled (as between the Parties) to take any actions to which it is legally empowered to exercise control over MGHC, the Hospital, the Business and the Facilities, subject only to such exceptions as expressly provided in this Agreement.

(c) Disaffiliation with Sutter. After the resignation of membership by MCH, MGHC shall no longer be a part of the System. The Sutter Parties shall thereafter have no obligation to provide any of the System Services, except as expressly provided in this

Agreement, and the Sutter Parties shall have no obligation, duty or liability with respect to MGHC or to the Business or the Facilities, except as expressly provided in this Agreement.

### 2.3 Employees

MGHC Employees who are employees of MGHC at the Transfer Time shall not have their employment terminated solely by reason of the Change of Control. After the Transfer Time, MGHC, under the District's control, shall have the obligation to pay wages and provide benefits to those MGHC employees who remain employed by MGHC, as more fully set forth in Exhibits 4.9(a), 4.9(b), and 4.9(c). On and after the Transfer Date, the Sutter Employees shall no longer be located at the Facilities, nor provide services for or to the Business, except as expressly provided in this Agreement.

### 2.4 MGHC Medical Staff

On the Transfer Date, the Hospital Medical Staff shall remain the medical staff of the Hospital without alteration solely by reason of the Change of Control.

### 2.5 MGHC Retained Assets

Upon the terms and subject to the conditions set forth in this Agreement, on and after the Transfer Date, MGHC shall retain all of MGHC's right, title and interest in and to the assets and rights owned by MGHC (the "**Retained Assets**") including the following (but excluding all Excluded Assets as defined in Paragraph 2.6):

(a) Facilities. All of MGHC's rights to the Facilities in effect on the Transfer Date, including rights under the Lease;

(b) Contractual Rights. Subject to Paragraph 4.15, all of MGHC's rights under all contracts and Facility operating leases entered into by MGHC and in effect on the Transfer Date, including without limitation all rebates or refunds paid after the Transfer Date, even if they relate to operations of MGHC prior to the Transfer Date;

(c) Fixtures and Equipment. All of the furniture, fixtures, furnishings, machinery, automobiles, trucks, spare parts, equipment, leasehold improvements and other tangible personal property owned by MGHC as of the Transfer Date wherever located and including all warranty rights with respect thereto ("**Fixtures and Equipment**");

(d) Inventory. Subject to Paragraph 4.23, all inventories of supplies, drugs, food, janitorial and office supplies, maintenance and shop supplies, and other disposables which exist as of the Transfer Date and are owned or have been paid for by or billed to MGHC, including, without limitation, any items that are located at the Facilities on such date, provided that such description shall not include any Sutter agreement or arrangement by which such items are ordered, purchased, supplied, or stored for use by MGHC before MGHC takes title thereto ("**Inventory**");

(e) Accounts Receivable. All of the Accounts Receivable;

(f) Cash. Cash in an amount equal to the Adjusted Cash; provided, however, that on the Transfer Date the Sutter Parties will arrange that the amount of cash in the MGHC bank account(s) will be five million dollars (\$5,000,000), with the actual amount to be reconciled by a payment, if any, between MGHC and MCH or Sutter within thirty (30) days after the Transfer Date in accord with the cash reconciliation procedure set forth in Paragraph 3.1;

(g) Permits. All accreditations, registrations, licenses, permits and other governmental consents or approvals necessary to or intended for the operation of the Business as conducted by MGHC, including specifically the Hospital and Cancer Center licenses, and Medicare and Medi-Cal certifications, billing-numbers and provider numbers, all of which shall be in the name of MGHC (the “**Permits**”);

(h) Prepays and Refunds. All advance payments, prepayments, prepaid expenses, deposits which are existing as of the Transfer Date, and any refunds due from third parties including from any Payers (including Medicare, Medi-Cal or managed care plans), to the extent such refund is due from underpayment from such third party before the Transfer Date (the “**Prepays**”);

(i) Warranties and Claims. All unexpired warranties which MGHC has received from third parties with respect to the Retained Assets and all claims, choses in action, rights of recovery, rights of set off, rights to refunds and similar rights pertaining to the Retained Assets;

(j) MGHC Information Systems and Software. All information systems referred to in Paragraph 4.13(a) and all rights of MGHC in or to software applications, on-line content and tools loaded on such information system hardware that is owned solely by MGHC, including at off site locations or held or operated by third parties, including Sutter, and used only in connection with the Business, and any and all MGHC rights under any contracts with respect to the ownership and use thereof;

(k) Business Records. The MGHC Business Records;

(l) Patient Records. The MGHC Patient Records;

(m) Goodwill. Any and all goodwill of MGHC with respect to the Business and the Retained Assets;

(n) MGHC and District Names. The names “Marin General Hospital” and “Marin Healthcare District” and the symbols, logos and world-wide web address and trademarks; trade names, service marks, and copyrights related thereto, together with promotional material, stationery, supplies and other items bearing such names, logos or symbols, all as specifically associated with MGHC or the District as those entities exist independent of Sutter and the Sutter Affiliates;

(o) Other Personal Property. Those of MGHC’s operating manuals, policy or procedure manuals, marketing materials, data, studies or analyses that are or were used exclusively in the operation of the Business.

## 2.6 Excluded Assets

Nothing in this Agreement, the Settlement or the Lease is intended to give MGHC or the District any rights with respect to the assets of Sutter Affiliates, regardless of whether such assets were used in the support of MGHC or the Business prior to the Transfer Date. On the Transfer Date, MGHC shall not have any interest in nor any right to retain or use the following assets (the “**Excluded Assets**”):

(a) Excess Working Capital. Except for the Accounts Receivable, Inventory, Adjusted Cash and the Prepaids, all assets constituting working capital of MGHC immediately preceding the Transfer Time, whether cash, cash equivalents, marketable securities or other current assets, and including any receivables resulting from or arising out of Intercompany Transactions, except for receivables from Intercompany Transactions that are receivables for patient care;

(b) Personal Property. All personal property of Sutter Affiliates and MGHC and Sutter employees, except as to those manuals, to the extent licensed, under the License Agreement for Policy and Procedure Manuals as set forth in Exhibit 2.6(b).

(c) System IT. Computer software, programs, hardware, data processing equipment, data processing system manuals and licensed software materials which is (i) proprietary to Sutter or the Sutter Affiliates; (ii) used in connection with the operation of one or more of Sutter’s or Sutter Affiliates’ hospitals or clinics other than the Hospital; or (iii) as described in Paragraph 4.13(b);

(d) Sutter Materials. Any of MGHC’s or Sutter’s marketing materials, data, studies or analyses, including those related to SPHC, except those that are or were used exclusively in the operation of the Business;

(e) Employer Reversions. Any asset which is to revert to the employer upon the termination of any benefit arrangement referred to in Exhibit 4.9(a), upon its termination to the extent such termination is made necessary by the terms of this Agreement including assets representing a surplus or overfunding of any such benefit arrangement, in each case consistent with the terms of Exhibit 4.9(a);

(f) Excluded Contracts. Any Systemwide Managed Care Agreements (as defined in Paragraph 4.7) existing on or before the Transfer Date, and Excluded Multi-Facility Contracts, including the Sutter Provided IS Contracts and Sutter Insurance Contracts;

(g) Names. The names “Sutter Health”, “Sutter”, “Marin Community Health”, “Sutter Pacific Medical Center,” and “Marin Community Health Foundation” and the other names, symbols, logos and world-wide web addresses associated with Sutter and Sutter Affiliates and not used exclusively at the Hospital, and trademarks, trade names, service marks, and copyrights related thereto, together with any promotional material, stationery, supplies or other items bearing such names, logos or symbols (the “**Sutter Identifiers**”); and

(h) Vendor Assets. Assets owned by vendors of services or goods to the Hospital.

## 2.7 Retained Liabilities

Upon the terms and subject to the conditions set forth in this Agreement, and specifically subject to the Sutter Parties' indemnification obligation under Section 10 of this Agreement, on and after the Transfer Date, MGHC shall retain all of MGHC's liabilities that exist as of the Transfer Time and are associated with Hospital operations, the Retained Assets, the Lease and the assets subject to the Lease, the MGHC Employees, the Hospital Medical Staff, the Seismic Upgrade, and the Parking Garage Construction Project (the "**Retained Liabilities**"), including, without limiting the generality of the foregoing, the following (but excluding all Excluded Liabilities as defined in Paragraph 2.8):

(a) Hospital Operations. All liabilities associated with Actions arising from the medical and clinical operation of the Business after the Transfer Date and otherwise as provided in Exhibit 4.19 (b);

(b) Retained Assets. All liabilities associated with the Retained Assets, including related contractual liabilities, the Inventory, the Fixtures and Equipment, and the Permits, including Actions related thereto (except as provided in Exhibit 4.19(b)) and including any repayment due to a Payer (including Medicare, Medi-Cal or a managed care plan) to the extent such repayment obligation arises from overpayments from such third party prior to the Transfer Date, regardless of the availability of insurance;

(c) Lease. All liabilities associated with the Lease, the assets conveyed by the Lease, or the performance of any terms of the Lease, regardless of the availability of insurance;

(d) MGHC Employees. All compensation, payroll and employee benefit liabilities, including PTO and sick leave accruals, owed to MGHC Employees who remain MGHC Employees on the Transfer Date, and including workers compensation liability, all as more fully set forth in Exhibits 4.9(a), 4.9(b), and 4.9(c);

(e) Hospital Medical Staff. All liabilities to Hospital Medical Staff, including peer review and privilege issues, except as provided in Exhibit 4.19(b);

(f) Parking Garage Construction Project. All liabilities associated with the Parking Garage Construction Project, including Actions related thereto;

(g) Accounts Payable. Except for any and all amounts included in Accounts Payable that, on the Transfer Date, are dated more than forty-five (45) days prior to the Transfer Date, all liabilities for, or associated with, the Accounts Payable;

(h) MGHC Leases and Loans. All liabilities for all debt including debt on loans or capital leases referenced in Section 5 of the Settlement, but excluding the debt referenced in Paragraph 2.8 (d);

(i) Obligations to Sutter under this Agreement. Any amounts due to the Sutter Parties pursuant to the terms of this Agreement;



(j) Seismic Upgrade and Compliance. All liabilities associated with the Seismic Upgrade; and

(k) District Managers. All liabilities associated with the employment, appointment, retention, termination or activities of the Liaison Administrator and the District Transfer Managers, whether or not known to or authorized by the District.

## **2.8 Excluded Liabilities**

Upon the terms and subject to the conditions set forth in this Agreement, on and after the Transfer Date MGHC and the District shall not be liable for any of the following liabilities (the “**Excluded Liabilities**”):

(a) All liabilities directly associated with the Excluded Assets;

(b) All liabilities associated with Actions arising from the medical and clinical operations of the Business that are assumed by Sutter pursuant to Exhibit 4.19(b) or that are subject to the indemnity provisions set out at Paragraph 10.1, but not including in this category any of the Retained Liabilities as expressly enumerated in Paragraph 2.7 (b) - (h) or liabilities subject to but exceeding the Indemnity Cap (as defined hereinafter);

(c) All liabilities for which the Sutter parties are obligated to indemnify MGHC and/or the District as set forth in Paragraph 10 of this Agreement;

(d) Any liability for payment of Obligated Group debt, and any other long term debt of MGHC (except as allowed under this Agreement and the Settlement) regardless of whether any portion of such debt was borrowed or incurred for the benefit of MGHC;

(e) Any and all amounts included in Accounts Payable that, on the Transfer Date, are dated more than forty-five (45) days prior to the Transfer Date or that arise from Intercompany Transactions;

(f) All liabilities associated with the benefits and employment of the Sutter Employees.

(g) The Pre-2004 WC Liability; and

(h) All liabilities constituting material sanctions or penalties imposed by a government entity for unlawful acts or omissions occurring prior to the Transfer Date. “Material” sanctions or penalties shall be those cumulating from any one incident in a sum greater than \$20,000.

## **2.9 Transfer as a Going Business**

Except as otherwise provided in this Agreement and in the Settlement (including specifically the provisions therein related to competition and solicitation), it is the intent of the Parties that MGHC shall, on the Transfer Date, have and be operating a going business as

provided below in this Paragraph. Nothing in this Paragraph 2.9 shall be deemed to be a condition of Closing, except only (a), (b) and (c) of this Paragraph.

(a) Licensed Acute Care Hospital. The Hospital shall be licensed on the Transfer Date by the California Department of Health Services as a general acute care hospital (as defined and Calif. Health & Safety Code Section 1250(a)), with MGHC as the license holder.

(b) Accredited. The Hospital shall be accredited on the Transfer Date by the Joint Commission on the Accreditation of Healthcare Organizations (or a comparable, successor agency).

(c) Medicare and Medi-Cal Participation. On the Transfer Date, the Hospital shall be qualified to participate in, and shall be participating in, the federal Medicare program and the California Medi-Cal program.

(d) Retained Assets. The Retained Assets shall be present at the Facilities and/or under the control of MGHC on the Transfer Date, except as otherwise expressly provided herein.

(e) Operating Standard. Management in accordance with ordinary prudent community hospital business and operating standards, consistent with (i) management practices that would be employed if there were no approaching Change-of-Control, and (ii) consistent with the Hospital being operated as part of a system of hospitals is referred to as the “**Operating Standard.**” During the Transition Period, MGHC executive management shall not willfully and purposefully fail to comply with the Operating Standard in a manner that materially and negatively impacts the business and the operations of the Hospital, taken as a whole. Notwithstanding the foregoing, any actions or omissions otherwise permitted pursuant to the terms of this Agreement or the Settlement shall not be deemed to be in violation of the Operating Standard. Enforcement of this Paragraph 2.9(e) shall be as provided in Paragraph 12.15 (f).

## 2.10 District Property

All of the property owned by the District on the Transfer Date subject to the terms of the Lease shall remain the property of the District.

## 2.11 Disclaimer of Warranties

Except as expressly set forth in this Agreement or the Settlement, the Sutter Parties make no representation or warranty about the Business or the Facilities. The Business, the Facilities and the Retained Assets are retained by MGHC and accepted for control by the District AS IS, WHERE IS, AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS, WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. All of the tangible property of the Business and Facilities is further subject to normal wear and tear. Notwithstanding any other provision hereof or of the Settlement or Lease, after the Transfer Date the Sutter Parties shall have no obligation and no liability to the District or MGHC for, or related

to, the condition, repair or maintenance of the Facilities, excepting only loss or damage affirmatively caused (beyond normal wear and tear) by the act of MGHC or the Sutter Parties before the Transfer Date.

### **2.12 Transfer Costs and Recording**

The District shall fund or pay for the fees and costs of recording or filing all applicable conveyancing, or recording instruments, and all costs of applying for any new Permits, modifications of Permits, or obtaining the transfer of any existing Permits as may be required. MGHC shall cooperate with the District to accomplish the foregoing.

## **3. Post Closing Adjustments**

### **3.1 Adjusted Cash**

(a) Adjusted Cash Schedule. Sutter and the District shall use Commercially Reasonable Efforts to prepare and agree upon, as soon as practicable after the Closing, but in no event later than ten (10) days after the Transfer Date, a schedule (the “**Cash Schedule**”) which shall calculate the Adjusted Cash and include a calculation of: (i) the Average Annual Gross Revenue; (ii) the book value of the Inventory as reflected in the unaudited monthly financial statement of MGHC for the most recent prior month for which such financial statement is complete; and (iii) the book value of the Qualified Accounts Receivable as reflected in the unaudited monthly financial statement of MGHC for the most recent prior month for which such financial statement is complete.

(b) Cash Reconciliation Procedure. In the event the Adjusted Cash, as determined in accordance with Paragraph 3.1(a), is greater than five million dollars (\$5,000,000), Sutter or MCH shall pay such additional amount to MGHC, by wire transfer of immediately available funds, within five (5) business days of the finalization of the Cash Schedule. In the event the Adjusted Cash, as determined in accordance with Paragraph 3.1 (a), is less than five million dollars (\$5,000,000) no additional payment or adjustment shall be made.

### **3.2 Payroll**

The payroll adjustment, and payment to the District, shall be as provided in Exhibit 4.9(c).

### **3.3 Accounts Receivable Payment**

(a) Post Transfer Collection by Sutter. For forty-five (45) days after the Transfer Date (the “**Collection Period**”), Sutter shall be solely entitled to control and oversee (as agent for MGHC), at its own cost and expense, the collection of the Accounts Receivable using substantially the same processes and staff as in place prior to the Transfer Date (which may include some MGHC Employees). Sutter will ensure such collections are deposited to an MGHC bank account designated by MGHC or the District.

(b) Reconciliation and Minimum Payment. During the Collection Period Sutter shall track and record the Accounts Receivable collections and remissions as provided in Paragraph 3.3(a), and within thirty (30) days after the Collection Period shall provide

to MGHC, with a copy to the District: (a) a full accounting of such collections and remissions; and (b) if the aggregate amount collected for MGHC pursuant to Paragraph 3.3(a) is less than twenty million dollars (\$20,000,000), a wire transfer to the account referenced in Paragraph 3.3(a) for the difference between the aggregate total of such collections and twenty million dollars (\$20,000,000); provided, however, that Sutter's obligations to make such payment shall be subject to MGHC's and the District's, and their agents', full cooperation and non-interference in such collection process.

(c) Responsibility for Collections after Collection Period. Except only as provided in Paragraph 3.3(d), MGHC and the District shall be solely responsible for collections of Accounts Receivable after the Collection Period as well as for any and all MGHC accounts receivable that arise for services provided after the Transfer Date, and the Sutter Parties shall have no responsibility to collect or account for or make any reports about such MGHC accounts receivable or Accounts Receivable except as expressly provided herein. Additionally, amounts paid to any Sutter Affiliate for such MGHC accounts receivable (excluding the Accounts Receivable referred to in Paragraph 3.3(a)) shall be remitted to MGHC or the District by wire transfer to the account referenced in Paragraph 3.3(a) after it becomes apparent to Sutter that the funds are MGHC accounts receivable, and not Accounts Receivable. Such remittances shall be made on a monthly basis for a period of twelve (12) months after the Collection Period. Any amounts determined to have been paid to Sutter in error after 12 months shall be transferred to MGHC as soon as practicable.

(d) Managed Care Collections Process. Within sixty (60) days after the beginning of the Preparation Period, Sutter and the District, through designated representatives (which may include counsel), will meet to discuss and begin a process to engage a professional collection agent with knowledge and experience in managed care collections (the "**Collection Agent**"). The District shall engage a Collection Agent subject to Sutter's consent, which consent shall not be unreasonably withheld. Sutter agrees that the firm of Triage Consulting shall be an acceptable Collection Agent. The Collection Agent shall be retained pursuant to a contract with provisions about process and data confidentiality that are negotiated by and acceptable to both Sutter and the District (on behalf of MGHC after the Transfer Date), and with economic payment provisions that are negotiated by and acceptable to the District, which may replicate those provisions then in force between Triage Consulting and MGHC (before the Transfer Date). The District acknowledges that it or MGHC (after the Transfer Date) shall have sole responsibility to compensate the Collection Agent, and Sutter shall have no approval right with respect to such payment provisions. The Collection Agent shall be retained not later than one hundred and eighty (180) days before the Transfer Date. The Collection Agent shall have the following limited role, which role is in addition to the provisions of Paragraph 3.3(c), above, and such role shall be set out in the Collection Agent's written agreement: (i) for purposes of familiarity with the process, the Collection Agent shall be entitled to monitor (but not to manage, direct or interfere with) the general collection processes related to the Accounts Receivable of MGHC, and specifically that collection activity related to MGHC receivables from the Systemwide Managed Care Agreements (as defined in Paragraph 4.7) beginning one hundred and twenty (120) days before the Transfer Date and continuing until the end of the Collection Period, and MGHC and Sutter shall reasonably cooperate with that process; and (ii) as a limited exception to Paragraph 3.3(c), the Collection Agent shall, as an agent of Sutter and MGHC (after the Transfer Date), collect the Accounts Receivable attributable to the Systemwide Managed

Care Agreements after the Collection Period for a period of one hundred and eighty (180) days, and the District, MHGC and Sutter shall reasonably cooperate with that process (collectively, the "MC Collection Process"). Subject to the same provisions contained in this Paragraph 3.3(d), the District or MGHC (after the Transfer Date) may extend the MC Collection Process until it is reasonably satisfied that further efforts are not warranted. Patients admitted prior to the Transfer Date whose payment is subject to the Systemwide Managed Care Agreements and whose care extends beyond the Transfer Date will have a Sutter or MGHC TIN number and the payment for the episode of care that spans the Transfer Date will be subject to the Systemwide Managed Care Agreements, and such payment is included in the MC Collection Process. To the extent that Triage Consulting is the Collection Agent, it shall be entitled to continue to use the Sutter information and data it then maintains with respect to the terms and conditions of the Systemwide Managed Care Agreements, subject to the confidentiality provisions stated below. In addition, whether or not the Collection Agent is Triage Consulting, on an "as-needed" basis during the Collection Period and during the MC Collection Process, the Collection Agent, and only the Collection Agent, shall be entitled to review the relevant Systemwide Managed Care Agreements on fifteen (15) days prior notice to Sutter, stating the reasons therefore, and with the permission of Sutter, which shall not be unreasonably withheld, shall be entitled to copy portions of such Systemwide Managed Care Agreement subject to the Confidentiality Agreement and subject to an additional written confidentiality pledge that will provide that the Collection Agent shall not provide any of the terms or pricing in such Systemwide Managed Care Agreements to the District or to any third party and that any reports to the District or its agents regarding collection activity related to the Systemwide Managed Care Agreements shall only be stated in terms of the amount owing and the amount collected and the general actions taken, planned or recommended with respect to collection. The District acknowledges that the Systemwide Managed Care Agreements are highly confidential and that it shall not be entitled to review them or know their terms, unless to the extent that such contracts or terms otherwise become generally available to the public through independent means. The District further acknowledges that on the Transfer Date, specific data that discloses the terms of the Systemwide Managed Care Agreements will be an Excluded Asset and such information or data then in the possession or use of MGHC will be removed. All collections after the Transfer Date, except for any part which the Collection Agent is authorized to retain as part of its fee, related to Accounts Receivable from the Systemwide Managed Care Agreements shall be the property of MGHC and shall be a Retained Asset. With respect to payer denials of payment that occur in the MC Collection Process, the District, on the recommendation of the Collection Agent or on its own initiative after conferring with the Collection Agent, may elect to proceed to the "meet and confer process" with the payer, and with Sutter participation in such meeting. If the District is not satisfied with the result of the meet and confer process, an assessment of the probability of success of arbitration and the costs thereof will be performed by the law firm that now represents Sutter (and others) in such matters, which assessment shall be made available to the District and Sutter pursuant to the attorney-client privilege. If on receipt of such report, the District wishes to proceed to arbitration, subject to Sutter's consent which shall not be unreasonably withheld, such arbitration shall be pursued for the benefit of the District, but shall be controlled by Sutter and its counsel, who shall act in good faith to arbitrate the collection of the denied claims. The District shall be responsible for the reasonable fees and costs of arbitration, and such fees and costs shall be deemed reasonable if consistent with the assessment of the costs of arbitration previously prepared by the law firm handling the matter. Any proceeds from such arbitration shall be the property of the District and any amounts determined as due to the payer as a result of such

arbitration shall be the obligation of the District. With respect to the MC Collection Process, any arbitration pursued as described in this Paragraph shall be independent of the allocations set out in Exhibit 4.19(b), except to the extent that any such arbitration constitutes or overlaps with System Litigation (as defined in Paragraph 4.19(c)) in which case Exhibit 4.19(b) and Paragraph 4.19(c) shall control.

### **3.4 Dispute Regarding Adjustments**

If Sutter and District are unable to agree with respect to the adjustments contained in this Paragraph 3 within seventy-five (75) days after the Transfer Date, or with respect to the allocation of funds for MCHF under Section 8 of the Settlement, the dispute shall be resolved by the independent certified public accountants of the District, on the one hand, and the independent certified public accountants of Sutter, on the other hand. If such accountants cannot resolve the disagreement within sixty (60) days of such submission, or such later date as the parties may mutually agree upon, such disagreement shall be mutually submitted by the Parties to one of the so-called "big four" accounting firms (other than the Parties' respective independent certified public accountants or any other accounting firm which either Party engaged in the twelve (12) month period prior to the Transfer Date) to be selected by the mutual agreement of such Parties' independent certified public accountants, whose determination shall be final and binding and shall be rendered within thirty (30) days of the date on which the matter is submitted to such firm. Any such selected accounting firm shall determine the issues in dispute after following such procedures, consistent with the language of this Agreement, as it deems appropriate to the circumstances and with reference to the amounts at issue. No particular procedures are intended to be imposed upon such accounting firm, it being the desire of the Parties that any such dispute shall be resolved as expeditiously and inexpensively as reasonably practicable.

## **4. Transition Period Obligations of the Parties**

### **4.1 The Lease and the 1999 Settlement Agreement**

During the Transition Period, the Lease and that certain Settlement Agreement and Mutual Release by and between the District, MGHC and MCH, dated September 20, 1999 (the "1999 Settlement Agreement") shall both remain in effect, except as modified by this Agreement and the Settlement. MGHC shall remain the lessee under the Lease during the Transition Period. This Agreement and the Settlement shall not be interpreted to create any relationship of agency between MGHC (pre-Transfer) or the Sutter Parties on behalf of the District, and the District shall not be a third party beneficiary of any arrangement, agreement or contract referred to herein, unless and only to the extent expressly stated herein or in the Settlement.

### **4.2 District's Right to Prepare for Management**

(a) **General Preparation.** The Parties acknowledge the District's need to take reasonable actions during the Transition Period, and in particular during the Preparation Period, to prepare to assume control of MGHC and/or the operation of the Business. During the Transition Period, MGHC and the Sutter Parties will provide the District with access to such information and records regarding MGHC and/or the Business, as expressly set out in this Agreement in order to allow the District to adequately prepare for the Change of Control and to

enforce the District's rights and the Sutter Parties' obligations under this Agreement and the Settlement. During the Preparation Period, MGHC and the Sutter Parties will cooperate to provide the District with: (a) reasonable rights of entry to the Facilities and; (b) reasonable access to MGHC Employees in each case at times or according to a process established among them.

(b) Site Administrator. During the Preparation Period, Sutter, MCH and MGHC shall assure that the Hospital "Site Administrator" (the individual appointed to administer the Hospital pursuant to California Code of Regulations Section 70701(a)(2)) shall be an individual duly qualified and competent to act in such capacity and who shall devote his or her full time exclusively to the operation of the Business, excepting normal vacation, educational conferences, and System coordination duties. During such period of time the Sutter Parties shall not require the Site Administrator to perform duties related to any other business of the Sutter Parties during normal business hours or during other times when the Site Administrator is needed to perform duties for MGHC. The District shall have no authority or control over the Site Administrator prior to the Transfer Time.

(c) Liaison Administrator. The District shall be entitled to appoint a Liaison Administrator at any time after commencement of the Preparation Period. During the Preparation Period, MGHC shall provide the Liaison Administrator with reasonable access to the Facilities, the Business Records and the Site Administrator, and as provided in Paragraph 4.2(f) and (g) to the MGHC Employees, the Hospital Medical Staff and MGHC vendors and Payers in order to assist in transition planning and in preparation for the Liaison Administrator to assume the duties of the Site Administrator with respect to the Business after the Transfer Date. The Liaison Administrator shall be given access to the Site Administrator's calendar as relates to the Business and shall be entitled to attend MGHC meetings and conferences with the Site Administrator to the extent legally permissible (in compliance with patient and MGHC Employee privacy laws, policies and requirements and other applicable legal requirements), but the Liaison Administrator shall not in any manner unreasonably or materially interfere with the work, duties or decisions of the Site Administrator. The Liaison Administrator shall not have any authority over the Business, the Facilities, the Business Records, or the MGHC Employees until after the Transfer Time, and except as expressly provided herein, the Liaison Administrator shall not conduct any independent meetings with the MGHC Employees, the organized Hospital Medical Staff or any MGHC vendors or Payers. The District shall specifically instruct the Liaison Administrator of these restrictions and assure compliance with them. In addition, the District will indemnify and hold harmless MGHC against any liability or Action that occurs as a result of the actions and activities of the Liaison Administrator prior to the Transfer Date. MGHC shall have no obligation to provide the Liaison Administrator any insurance coverage or Benefits, office furnishings, office supplies or secretarial support; however, MGHC shall provide the Liaison Administrator with access to and use of office facilities located in temporary office buildings on MGHC property. Any office furnishings provided in such office facilities by MGHC, if provided, shall be at the sole and absolute discretion of MGHC. Such temporary office buildings may be shared with other parties or relocated from time to time as determined by MGHC, in its sole and absolute discretion, for operation of the Business.

(d) District Transition Managers. The District shall be entitled to appoint certain District Transition Managers at any time during the ninety (90) days immediately

preceding the Transfer Date. The District may appoint a District Transition Manager for or corresponding to each of the following: (i) each MGHC management and director position where it is reasonably expected that the MGHC manager or director will resign at or about the Transfer Date (whether based on indications from existing MGHC managers as set out in Paragraph 4.8(c) or otherwise); and (ii) each Sutter Employee with a position at the Facilities. MGHC and the Sutter Affiliates shall provide the Transition Managers with reasonable access to the Facilities, the Business Records, and the corresponding manager, director or employee in order to assist in transition planning and in preparation for the District Transition Managers to assume the duties of their counterparts with respect to the Business after the Transfer Date. The District Transition Managers shall be given general information about their counterparts' calendars as relates to the Business and shall be entitled to attend meetings and conferences with them to the extent legally permissible (in compliance with patient and MGHC Employee privacy laws, policies and requirements, and other applicable legal requirements), but the District Transition Managers shall not in any manner unreasonably or materially interfere with the work, duties or decisions of their counterparts. The District Transition Managers shall not have any authority over the Business, the Facilities or the MGHC Employees until after the Transfer Time. The District shall specifically instruct the District Transition Managers of these restrictions and assure compliance with them. In addition, the District will indemnify and hold harmless MGHC against any liability or Action that occurs as a result of the actions and activities of the District Transition Managers prior to the Transfer Date. MGHC shall have no obligation to provide the District Transition Managers any insurance coverage or Benefits, office furnishings, office supplies or secretarial support; however, MGHC shall provide the District Transition Managers with access to and use of office facilities located in temporary office buildings on MGHC property. Any office furnishings provided in such office facilities by MGHC, if provided, shall be at the sole and absolute discretion of MGHC. Such temporary office buildings may be shared with other parties or relocated from time to time as determined by MGHC, in its sole and absolute discretion, for operation of the Business.

(e) No Representation. Statements and comments made by the Site Administrator, the counterparts to the District Transition Managers or other MGHC staff in this process shall not be deemed to be representations of the Sutter Parties.

(f) Employee and Medical Staff Access. Upon reasonable notice to the Site Administrator, the Liaison Administrator may conduct independent meetings with the MGHC Employees or Hospital Medical Staff at the Liaison Administrator's office or at an off-site location and conducted in a manner so as not to interfere with the work or professional obligations of such persons at the Hospital. Such meetings shall expressly be described by the Liaison Administrator as voluntary and it shall be communicated that MGHC Employees will not be eligible for MGHC pay or benefits in connection with such meetings; and they shall be held at the District's expense. The District shall specifically instruct the Liaison Administrator of these restrictions and assure compliance with them. The notice requirement in this subparagraph (f) shall not apply to meetings or conversations with individual members of the MGHC medical staff or those initiated by any MGHC Employee.

(g) Vendor and Payer Access. During the Preparation Period the District may meet with MGHC's vendors regarding specific MGHC arrangements or contracts to discuss or negotiate post-transition date arrangements; provided, however, that the District shall



not interfere with any existing arrangements or contracts related to MGHC prior to the Transfer Date or with any arrangements or contracts where a Sutter Affiliate is the counterparty, unless otherwise expressly approved by MGHC or Sutter, as applicable. During the Transition Period, unless otherwise specifically permitted by this Agreement or unless otherwise expressly approved by MGHC, which approval shall not be unreasonably withheld, the District shall not conduct direct discussions or negotiations with MGHC vendors regarding specific MGHC arrangements or contracts with those vendors; provided, however, that this restriction shall not restrict the District from undertaking general pricing and availability inquiries that are not focused primarily or solely on MGHC vendors. The District shall not undertake discussions or negotiations with health plans that are counterparties to the Systemwide Managed Care Agreements except as expressly provided in Paragraph 4.7. Except as provided in Paragraph 4.7, after January 1, 2008 the District may conduct preliminary discussions and information gathering from any other MGHC Payers. During the Preparation Period, the District may meet and negotiate with such Payers for arrangements or contracts that will take effect only after the Transfer Date; provided, however, that the District shall not interfere with any existing Payer arrangements or contracts related to MGHC prior to the Transfer Date or with any arrangements or contracts where a Sutter Affiliate is the counterparty, unless otherwise expressly approved by MGHC or Sutter, as applicable, which approval shall not be unreasonably withheld. The District shall notify MGHC promptly after the scheduling of any such meeting during the Preparation Period.

#### **4.3 Maintenance of Hospital Services**

During the Transition Period MGHC shall maintain and make available to patients the licensed general acute care inpatient, ancillary and outpatient services listed on Exhibit 4.3, the “Services.” This Paragraph excludes SPHC.

(a) Service Variations. The Parties recognize that due to changes in medical practice and technology, obsolescence of old equipment, retirement or relocation of existing physicians, as well as other factors in the ordinary course of business, certain changes will occur from time to time in the Services, and such changes are not prohibited by this Paragraph 4.3. MGHC shall promptly notify the District in writing of the occurrence of any event that will, or is likely to, result in a material Service variation, either prior to or at the Transfer Date.

(b) Unintended Service Variations. Service variations that occur as a result of the acts of third parties outside of MGHC’s or the Sutter Parties’ control (such as physicians, payors, licensing agencies, labor unions, insurers, contractors, vendors or government), or as a result of external factors outside of MGHC’s or the Sutter Parties’ control (such as natural disasters, building or equipment failure, or loss of market demand), shall not be prohibited by this Paragraph 4.3. MGHC shall promptly notify the District in writing of the occurrence of any act of third parties or external factor that will, or is likely to, result in a material Service variation, either prior to or at the Transfer Date.

(c) Termination of Material Services. Notwithstanding the foregoing, MGHC shall be entitled to terminate a material Service that would otherwise not be permitted under this Paragraph provided that it shall follow the procedure set out in Section 19.1 of the Lease; provided, further, that MGHC shall not invoke the procedure set out in such Section 19.1

of the Lease during the twelve (12) months immediately preceding the Transfer Date. MGHC and the Sutter Parties covenant that, as of the Execution Date, MGHC has no plans to terminate any existing material Service at the Facilities.

(d) Permitted Acts. No activity that is expressly contemplated or permitted by this Agreement or the Settlement shall constitute a breach or violation of this Paragraph 4.3. Except as expressly provided in the Lease (as modified by the Settlement) and except as expressly provided in this Agreement, this Agreement and the Settlement shall not (and shall not be interpreted to) restrict MGHC and the Sutter Parties from operating the Business, managing and compensating MGHC staff, managing medical staff functions, transferring funds, entering or terminating contractual relationships, repaying or incurring debt, or doing or omitting any other act consistent with Laws and the MGHC Permits.

#### **4.4 Transition Advances to the District**

Pursuant to the terms of Section 4 of the Settlement, MCH shall make certain transition advances to the District during the Transition Period (the “**Interim Funding**”). Such Interim Funding shall constitute a debt from the District to MCH in accord with the Interim Funding Agreement (Exhibit B) to be executed concurrently herewith. On the earlier of the Closing or within five business days following a termination or cancellation of this Agreement or the Settlement, the District shall execute and deliver a promissory note in the form attached to the Interim Funding Agreement to MCH to reflect its obligation to repay a portion of the Interim Funding, which note shall be secured by the Interim Funding Security Agreement given by MGHC to MCH as of the Transfer Date.

#### **4.5 Obligated Group**

MGHC is currently a participant in the Obligated Group pursuant to the terms of the Sutter Master Trust Indenture. However, MGHC has repaid all of its obligations under the Sutter Master Trust Indenture and currently does not have any debt outstanding thereunder. During the Transition Period, no new Obligated Group debt shall be borrowed by MGHC, nor permitted by Sutter to be issued on its behalf under the Sutter Master Trust Indenture. During the Transition Period, Sutter and MGHC shall take those steps required under the Sutter Master Trust Indenture for MGHC to withdraw as a “Member” (as defined in the Sutter Master Trust Indenture) of the Obligated Group, and to thus relieve MGHC after the date of its withdrawal of any obligations thereunder, including any obligation to jointly and severally secure outstanding debt thereunder. Any security interest in MGHC Retained Assets shall be removed by Sutter prior to the Transfer Date.

#### **4.6 Non-Interference with Post-Transaction Planning and Preparation**

Unless directly and expressly stated to the contrary in this Agreement, after the Transfer Date the Parties shall enjoy unrestrained freedom to compete in healthcare delivery and related services, regardless of the type of service or its location. Except as directly and expressly stated to the contrary in this Agreement, during the Transition Period, no Party shall interfere directly or indirectly with the future plans or preparations of any other Party for the delivery or provision of healthcare or related services. Without limiting the foregoing sentence, during the Transition Period and except as otherwise provided herein or in the Settlement, MGHC and the

Sutter Parties shall take no action or position on, or make any statement with respect to, the District's efforts to issue and sell bonds or to propose and implement any other financing or funding mechanism for the Hospital.

#### 4.7 Managed Care Agreements

(a) MGHC Managed Care Agreements. MGHC currently has certain individual Managed Care Agreements that were negotiated by MGHC and are in MGHC's name (the "**Local Managed Care Agreements**"). MGHC also participates in the Managed Care Agreements with certain large Payers that Sutter negotiates on a System-wide basis that were negotiated and entered into by Sutter on behalf of MGHC (the "**Systemwide Managed Care Agreements**"). Sutter currently administers the Systemwide Managed Care Agreements, and it shall continue to do so during the Transition Period, including negotiating or renegotiating and entering into such agreements on behalf of MGHC, as it does for Sutter Affiliates. Notwithstanding the above, neither MGHC nor Sutter represent to the District that the counterparties to the Systemwide Managed Care Agreements will be willing in the future (before or after the Transfer Date) to negotiate or maintain an agreement with MGHC.

(b) Transition. The Local Managed Care Agreements shall be maintained by MGHC to the extent commercially feasible, with the intent that such agreements shall remain in place at the Transfer Date and thereafter. The Systemwide Managed Care Agreements shall terminate as of the Transfer Date. Within thirty (30) days of the beginning of the Preparation Period, Sutter shall provide the District with a then-current list of the Systemwide Managed Care Agreements, a description of the general scope of services provided pursuant to each, along with general patient volume and utilization statistics for each and, along with current contact information for each Payer that is a party to any Systemwide Managed Care Agreement ("**Systemwide Payer**"). Sutter shall notify each Systemwide Payer that the District may contact them, and that the District will be responsible for negotiating new contracts with them for MGHC to become effective after the Transfer Date. The District shall be entitled to negotiate with the Systemwide Payers during the Preparation Period, but only for MGHC contracts that will become effective after the Transfer Date. Sutter will not interfere with this process and shall not contractually prohibit nor actively discourage any Systemwide Payer from doing business with the District or MGHC; provided however, that nothing in this Agreement or the Settlement shall be interpreted in any manner to prohibit or restrict Sutter from negotiating with Systemwide Payers and entering into Managed Care Agreements involving Sutter Affiliates in Marin County or elsewhere.

(c) District Administration and Replacement Obligation. After the Transfer Date, it shall be the sole responsibility of MGHC and the District to arrange any Managed Care Agreements for the operation of the Business, and to administer MGHC Managed Care Agreements.

#### 4.8 Employees

(a) General Intent. It is the intent of the Parties that the MGHC Employees shall not be terminated by reason of the Change of Control, and on the Transfer Date the MGHC Employees shall remain the employees of MGHC unless any such employees notify

MGHC of their intention to resign on the Transfer Date. The Sutter Employees will remain employed by Sutter and shall after the Transfer Date no longer provide services to MGHC.

(b) No Restrictions on Solicitation. Notwithstanding Paragraph 4.8(a), but subject to 4.8 (c), the Parties may solicit for employment the MGHC Employees without restriction.

(c) Employee Notice and Hiring.

(i) MGHC Management. MGHC Management shall initiate a policy beginning no later than eleven (11) months prior to the Transfer Date under which any of its managers who intend to resign on or before the Transfer Date shall give nine (9) months notice to MGHC. MGHC shall provide the District with prompt written notice regarding the job titles of the positions that will be vacant as a result of such resignations, or because of retirement or other reasons (including, without limitation, by reason of resignation of any managers that do not adhere to the above-described policy). For a period of one hundred and eighty (180) days after the Transfer Date, the Sutter Parties will not hire any former MGHC Employees covered by this policy who have not complied therewith. When announcing the above-described resignation notice policy, MGHC shall notify all MGHC Employees covered by this policy of the post-Transfer Date hiring restriction set forth in this Section 4.8(c).

(ii) MGHC Technicians and Allied Health Professionals. MGHC shall initiate a policy beginning no later than one hundred and twenty (120) days prior to the Transfer Date under which any of its technicians and licensed allied health professionals (other than registered nurses and licensed vocational nurses) who intend to resign on or before the Transfer Date shall give ninety (90) days notice to MGHC. MGHC shall provide the District with prompt written notice regarding the job titles of the positions that will be vacant as a result of such resignations, or because of retirement or other reasons (including, without limitation, by reason of resignation of any technicians and allied health professionals that do not adhere to the above-described policy). For a period of one hundred and eighty (180) days after the Transfer Date, the Sutter Parties will not hire any former MGHC Employees covered by this policy who have complied not therewith. When announcing the above-described resignation notice policy, MGHC shall notify all MGHC Employees covered by this policy of the post-Transfer Date hiring restriction set forth in this Section 4.8(c).

(d) MGHC Collective Bargaining Agreements. The MGHC Collective Bargaining Agreements are listed on Exhibit 4.8(d), as they exist as of the Execution Date. Such agreements were negotiated and entered into by MGHC (as an affiliate of Sutter Health and as a separate employer under the federal labor law), and each is an agreement between MGHC and a Labor Organization covering the terms and conditions of employment of the MGHC Employees represented by that Labor Organization (the “**Union Party**”) and not related to the employees at any Sutter Affiliate.

(i) Collective Bargaining Detail. MGHC currently administers the MGHC Collective Bargaining Agreements, and it shall continue to do so during the Transition Period, including negotiating and entering such agreements which may extend beyond the Transfer Date. If, during the Transition Period, MGHC negotiates any Collective Bargaining Agreement to replace or succeed any of the agreements listed on Exhibit 4.8(d), Sutter shall

provide the District with a copy of such agreement (the “**Collective Bargaining Detail**”). The Collective Bargaining Detail shall be available to the District’s consultants and counsel subject to the Confidentiality Agreement; provided, however, that the information shall not be available to the District board (excepting summary reports by District consultants to the board which do not reveal detail or pricing of any such agreement).

(ii) District Contact with Labor Organizations. The District and its agents shall not contact any Labor Organization regarding matters relating to the Collective Bargaining Agreements or the terms and conditions of MGHC employees represented by such Labor Organizations during the Transition Period; except, during the Preparation Period, it may contact Union Parties who represent employees covered by Collective Bargaining Agreements that are due to expire within six (6) months after the Transfer Date.

(iii) District Impact Collective Bargaining Agreements. A “**District Impact Collective Bargaining Agreement**” shall be defined as any of the following: (a) a MGHC Collective Bargaining Agreement is due to expire and, under the normal cycle of such agreement, if extended for its usual term, the agreement’s term would cause it to be in effect for more than six (6) months after the Transfer Date; (b) or if either MGHC/Sutter or a Union Party seeks to modify an existing Collective Bargaining Agreement prior to the expiration of its current term and the Collective Bargaining Agreement has a current term which will be in effect for more than six (6) months after the Transfer Date; or (c) if MGHC, Sutter or a Union Party seeks to extend an existing Collective Bargaining Agreement for an additional period that will result in it being in effect for more than six (6) months following the Transfer Date.

(iv) Participation in Negotiating Activities. During the Transition Period, MGHC or Sutter shall notify the District of the pendency of any District Impact Collective Bargaining Agreement negotiations and identify the contract and the scheduled negotiating dates, times and locations. MGHC shall permit the Liaison Administrator (or another qualified District representative with knowledge and skill in collective bargaining negotiations) (the “**District Representative**”) to attend and observe the negotiations of any District Impact Collective Bargaining Agreement (to the extent permitted by Law and by the Union Party) and to attend MGHC’s preparation, coordination and evaluation activities (collectively referred to as the “**Negotiating Activities**”). If at any time the Union Party and MGHC agree that the Agreement shall terminate no later than six (6) months after the Transfer Date, the agreement shall cease to be a District Impact Collective Bargaining Agreement and the District’s rights to further participation and approval shall cease; provided that, MGHC shall not enter into any Collective Bargaining Agreement that is binding on MGHC for more than six (6) months after the Transfer Date without providing the District with the participation and approval rights set out in this Paragraph 4.8(d). Information acquired through the Negotiating Activities shall be subject to the Confidentiality Agreement. The District Representative shall not in any manner disrupt the Negotiating Activities, nor shall the District Representative purport to represent MGHC or Sutter in such negotiations, nor speak on their behalf and shall inform the Union Party that he/she is attending the Negotiating Activities as an observer and as a representative of the District. The District Representative shall be entitled to report back to the District regarding the Negotiating Activities, provided that the District shall insure that such report and related District decision-making occur in a manner such that the subject of the negotiations, negotiating positions or negotiating objectives are not made public by or through

the District and are protected from disclosure under the provisions of the Brown Act and the Public Records Act.

(v) Approval Rights. The District, through the District Representative, may communicate to the MGHC negotiating team as to whether the District approves or disapproves of the terms of the proposed District Impact Collective Bargaining Agreement that would apply after the Transfer Date, but must do so within the time frame provided for such negotiations by MGHC and the Union Party. If the District consents to the post-Transfer Date terms of the proposed District Impact Collective Bargaining Agreement, MGHC shall accept such proposed District Impact Collective Bargaining Agreement, and, if the District does not consent to such post-Transfer Date terms, MGHC shall not accept the proposed District Impact Collective Bargaining Agreement. In each case, the District shall support the decision made and shall not have nor make any complaint or claim against MGHC or Sutter with respect to the consequences of such decision. As a condition to the participation and approval rights conferred above, the District agrees that it will exercise its rights in good faith and that it will comply promptly with information requests made by a Union Party as required by Law, and meet other requirements of Law, as applicable.

(vi) Status of Agreements. The MGHC Collective Bargaining Agreements shall be a Retained Asset and a Retained Liability. After the Transfer Date, it shall be the sole responsibility of MGHC and the District to administer existing MGHC Collective Bargaining Agreements and to negotiate any new, replacement or extended Collective Bargaining Agreements for the operation of the Business.

#### **4.9 Benefits, Workers' Compensation and Payroll**

(a) Benefits. The benefits of the MGHC Employees and their transition shall be as provided in Exhibit 4.9(a).

(b) Workers' Compensation. The workers' compensation program for the MGHC Employees and its transition shall be as provided in Exhibit 4.9(b).

(c) Payroll. The payroll program for MGHC and its transition shall be as provided in Exhibit 4.9(c).

#### **4.10 Medical Staff**

It is the general intent of the Parties that the Medical Staff of the Hospital shall be retained intact on the Transfer Date. Notwithstanding the above, prior to the Transfer Date, physicians shall be free to choose their location and type of practice and, prior to the Transfer Date, there shall be no restrictions as among the Parties with respect to the solicitation or recruitment of physicians, nor with respect to entering any contractual or business relationships with physicians. However, prior to the Transfer Date, no Party shall place unreasonable restrictions on the practice of local physicians unrelated to valid and cognizable business or clinical considerations. Throughout the Transition Period, MGHC shall within seven (7) days notify the District in writing whenever MGHC learns (whether such knowledge is obtained by formal or informal notice, including indications of intent) that any physician or physician group, under contract with MGHC or Sutter Parties to provide services to MGHC, may

terminate such contract or services and such contract or services termination shall be or is planned to be effective either prior to or within sixty (60) days after the Transfer Date, whether due to actions of third parties or of the Sutter Parties. Sixty (60) days after the Execution Date, on June 30, 2007, and each six (6) months thereafter during the Transition Period, MGHC shall provide the District a then-current list of the active MGH medical staff by categories of all clinical specialties.

#### **4.11 Accounting Systems**

(a) MGHC Stand-Alone Accounting Systems. Any accounting systems used solely for the Business, whether or not located at the Facilities, and conducted exclusively by MGHC or its third party contractors or agents (other than any of the Sutter Affiliates) shall not be required to be altered by reason of this Agreement.

(b) Sutter Provided Accounting Systems. Any accounting systems used in or for the Business which are purchased or provided by or through the Sutter Parties (except as provided in (d) below) may be terminated by the Sutter Parties effective as of the Transfer Time. Sutter shall provide the District with a summary of any such accounting systems not later than one hundred and eighty (180) days prior to the Transfer Date.

(c) District Replacement Obligation. It shall be the sole responsibility of the District to arrange and pay for any replacement of the Sutter provided accounting systems for the operation of the Business.

(d) Certain Accounting System Transition Cooperation. Not less than one hundred and eighty (180) days before the Transfer Date, the District and MGHC shall meet to plan the process for accounting system conversion and the transfer of accounting data on or about the Transfer Date. Sutter shall reasonably cooperate in such planning and transition. The Parties acknowledge that some data may need to be shared or duplicated, and the Parties shall take reasonable and necessary precautions to preserve patient information confidentiality, as well as the confidentiality of certain financial information. Consistent with the other terms of this Agreement, MGHC after the Transfer Date shall be entitled to that data necessary for the ordinary operation of the Business.

#### **4.12 Billing Database and Collections**

(a) Description. Within thirty (30) days of the commencement of the Preparation Period, MGHC shall provide the District with a complete description of its Billing Database and collections process and systems, including the information system, technical and staffing support needed to maintain each.

(b) Database Conversion. The District, with the reasonable cooperation of MGHC and the Sutter Parties as necessary, shall effect any needed conversion, modification or transfer of the Billing Database for use by MGHC on a stand-alone basis after the Transfer Date, subject to Paragraph 3.3(a), applicable legal requirements, and to the terms of then-existing contracts regarding the Billing Database. Such conversion shall be conducted so as not to impede or impair the collection process described in Paragraph 3.3(a). All third party costs thereof shall be paid by the District.

(c) Collections Conversion. In addition to the provisions of Paragraph 3.3(d), it shall be the sole responsibility of the District to arrange and pay for a third party vendor to provide collections services for the Business to phase-in after the Transfer Date and to assume full responsibility for all collections of MGHC accounts receivable, and for the Accounts Receivable after the Collection Period. Such arrangements shall not conflict with Paragraph 3.3(a) and the third party vendor shall be instructed not to interfere with the collection process described therein. To the extent that any new collection procedure is to be phased-in during the Collection Period, the Sutter Parties shall cooperate in good faith provided that: (a) the District and MGHC give Sutter at least sixty (60) days advance notice; and (b) the Parties reach a mutually acceptable agreement to modify Paragraph 3.3 of this Agreement, as necessary.

#### 4.13 Information Systems

(a) MGHC Stand-Alone IS. Any information system hardware, software applications and related licenses, and MGHC-specific data used solely for the Business and located at the Facilities which are owned directly by MGHC or the District shall retain their existing ownership and shall not be required to be altered by reason of this Agreement.

(b) Sutter Provided IS. Sutter Provided IS contracts, information system hardware, software applications and related licenses and Sutter Affiliate or system data used in or for the Business which are purchased or provided by or through the Sutter Parties (except as provided in (d) below) may be terminated by the Sutter Parties effective as of the Transfer Time.

(c) District Replacement Obligation. It shall be the sole responsibility of the District to arrange and pay for any replacement information systems, including contracts, hardware software applications and licenses, for the operation of the Business after the Transfer Date.

#### (d) Certain IS Transition Cooperation.

(i) Baseline IS Information. Within sixty (60) days after the Effective Date, Sutter shall provide to the District an updated list of the current information systems that are used in the Business, indicating: (A) brand name, vendor, and function for hardware and software, along with identification of applicable licenses and the named licensee of each; (B) the location and ownership of hardware components related to MGHC functions; (C) the identification of existing support, maintenance, training and update contracts, and whether such contract is held by MGHC or Sutter; and (D) a general description of the data on each system, and whether such data is segregated so that MGHC data is separate from other Sutter Affiliate data (collectively, the "**Baseline IS Information**"). Sutter shall update the Baseline IS Information by June 30, 2007, January 1, 2008, and within thirty (30) days after the beginning of the Preparation Period, and shall promptly notify the District of any material changes thereafter.

(ii) Point Contacts. Within sixty (60) days after the Effective Date, the District and Sutter shall each designate a point person for information system transition issues (the "**IS Point Contacts**") and notify the other in writing of the name and contact information of such person. The IS Point Contacts shall be authorized to act on behalf of their respective organizations with respect to IS transition issues. Either IS Point Contact may



designate additional persons to participate in meetings or phone conferences, or to otherwise assist in the process; provided that the IS Point Contacts shall at all times be the primary point of interaction, and shall direct the coordination process. Either the District or Sutter may designate a different person to be their IS Point Contact at any time by written notice to the other party and the other IS Point Contact; however, both parties will strive for stability in this position.

(iii) Preparation of IS Transition Plan. During the Transition Period, the District shall create an overall plan for transition of the information systems so that the Business will be capable of operating independent of Sutter IT hardware, software, licenses, related IS contracts, and data as of the Transfer Date subject to management of post Transfer Date collections as provided in Paragraph 3.3. For coordination purposes, a draft IS transition plan shall be provided to Sutter not later than September 30, 2007. The District and Sutter shall make reasonable good faith efforts to mutually agree, through the IS Point Contacts, to a substantially complete IS transition plan by April 30, 2008. However, if the IS Point Contacts conclude that they have significant differences as to the proposed plan by December 31, 2007, they shall notify the respective Transition Managers not later than January 15, 2008, and the Transition Managers shall promptly attempt to resolve the issues in conflict.

(iv) Sutter and MGHC Cooperation. Sutter and MGHC acknowledge the necessity of cooperating with the District with respect to the IS transition plan and its implementation without charge to the District and, after the Transfer Date, to MGHC. The District acknowledges the necessity of bringing its systems on line at its expense with regard to third party costs or services purchased from Sutter/MGHC prior to, or from Sutter after, the Transfer Date, without materially disrupting MGHC operations or the Sutter information system's functionality. Sutter and MGHC shall actively cooperate with the District to provide information related to the Baseline IS Information and the functioning of the information systems that support the Business. Sutter and MGHC will make reasonable efforts to provide such information promptly after reasonable requests by the District IS Point Contact and will act reasonably to assure that the information provided is accurate and complete. During the Transition Period, Sutter and MGHC shall also reasonably assist in reviewing and commenting on the IS transition plan prepared by or for the District, to the extent requested by the District IS Point Contact, and in providing access to the Facilities on reasonable request by the District IS Point Contact; provided, however that it shall not be Sutter's or MGHC's obligation to draft such plan or to provide personnel or other resources to draft such plan. The District IS Point Contact shall be responsible to provide adequate and reasonable notice of information requests, as well as of activities that will consume the time of Sutter personnel or MGHC Employees, and such schedules and meetings shall be subject to the approval of the Sutter IS Point Contact, which approval shall not be unreasonably withheld, subject to the limitations described in Paragraph 4.13(d)(vii) below.

(v) Confidentiality of Information. Information deemed confidential by MGHC or Sutter may be subject to reasonable restrictions. Certain information provided by Sutter or MGHC may be provided subject to the Confidentiality Agreement, and the District's agents shall not have access to the data of Sutter or Sutter Affiliates, excepting only the data of MGHC. The IS Point Contacts shall consider and coordinate as to access, handling and use of data that may be subject to privacy requirements stated in Law, and shall consult with counsel as necessary to assure compliance.

(vi) Implementation. During the Preparation Period, Sutter and MGHC shall permit the District to begin its implementation of the IS transition plan, which may include operating systems in parallel and other testing procedures, the installation of hardware, software, vendor connections and related training programs that may involve MGHC Employees. The implementation processes shall be coordinated by and through the IS Point Contacts, and include the Site Administrator and Liaison Administrator. To the extent feasible, the District shall conduct the implementation activities so as to minimize disruption to the operations of the Business and avoid disruption or confusion of MGHC Employees. The District IS Point Contact shall be responsible to provide adequate and reasonable notice of implementation activities that will consume the time of Sutter personnel or MGHC Employees, or will occur at the Facilities or may impact the functionality of the Sutter or MGHC information systems. Such activities, in conjunction with the mutually agreed upon IS transition plan, shall be subject to the approval of the Sutter IS Point Contact, which approval shall not be unreasonably withheld, subject to the limitations described in Paragraph 4.13(d)(vii) below. Sutter and MGHC acknowledge that certain District-implemented systems may have to “go live” at points in time before the Transfer Date, and shall reasonably cooperate in that process.

(vii) Limited Availability of Off-Site Employees. In addition to the requirements to provide reasonable notice for information requests or implementation or other IS-related activities at the Facilities, the District acknowledges that certain activities may require the assistance or expertise of Sutter employees who are not located at the Facilities and who perform system-wide information technology services for Sutter and Sutter Affiliates. The District will make reasonable efforts to provide sixty-ninety (60-90) days’ prior written notice to the MGHC IS Point Contact of such activities. Sutter will make reasonable efforts to make such off-site employees available upon sixty-ninety (60-90) days’ advance notice (or, to the extent less notice is provided and such employees are available, on less notice); provided, however, that the Sutter Parties and MGHC shall not be liable to the District in the event that Sutter is unable to provide such off-site employees on the requested dates. The IS Point Contacts will work together to find mutually agreeable dates for activities requiring Sutter off-site employees and to schedule activities well in advance. Notwithstanding the foregoing, within the one hundred and eighty (180) days preceding the Transfer Date, Sutter will make reasonable efforts to make off-site employees available upon ten (10) days advance notice.

#### 4.14 Insurance

(a) Sutter Provided Insurance. Except as provided in Exhibit 4.19(b), Sutter Insurance Contracts and any insurance on the Business or Facilities purchased or provided by or through the Sutter Parties (including SISCO coverage) and covering MGHC, the Business or the Facilities, or the MGHC board of directors, shall be terminated by the Sutter Parties effective as of the Transfer Time. Sutter shall provide the District with a summary of such policies and coverage (including SISCO coverage) not later than thirty (30) days after the commencement of the Preparation Period.

(b) District Replacement Obligation. Except as provided in Exhibit 4.19(b), it shall be the sole responsibility of the District to arrange and pay for any replacement insurance coverage for the Business or Facilities for the period after the Transfer Date. During the Preparation Period, MGHC and the Sutter Parties shall, upon the District’s written request therefore, promptly provide to the District reasonable levels of information within Sutter’s

control that is reasonably required for the District to negotiate for and obtain insurance that the District expects to, or is required to, purchase. All such information shall be complete and accurate to the best of Sutter's knowledge, but portions related to existing claims, Actions or other risk management matters may be subject to the Confidentiality Agreement or other protection, as reasonably needed, and privileged information may be summarized, restricted or excluded.

(c) District Coverage for Sutter Parties. Not less than one hundred and twenty (120) days prior to the Transfer Date, the District and Sutter shall meet to discuss and plan for the District to provide the Required Coverage and the Tail Coverage (taking into account Exhibit 4.19(b)), and not less than fifteen (15) days prior to the Transfer Date the District shall provide Sutter with a copy or comprehensive summary of such policies and a letter from the District's selected carrier or carriers indicating that such coverage will become effective to cover MGHC in the case of the Replacement Coverage and to cover the Sutter Parties in the case of the Tail Coverage as of the Transfer Time.

(d) Failure to Maintain Tail Coverage. If the District and/or MGHC fail to maintain the Tail Coverage after the Transfer Date: (i) Sutter shall be entitled to purchase comparable coverage itself and recover the costs thereof from the District and/or MGHC as a joint and several obligation to Sutter; and (ii) the District and/or MGHC shall jointly and severally indemnify the Sutter Parties and hold the Sutter Parties harmless from any liability that would have been covered by such Tail Coverage, including any costs of defense and any deductible or retainer amounts.

#### 4.15 Interim MGHC Contracts

(a) Contracts List. Attached as Exhibit 4.15 hereto is a list of all MGHC contracts, correct within 30 days of the Execution Date. Part 1 of the attached list contains Excluded Multi-Facility Contracts in which MGHC is eligible to participate as a Sutter Affiliate. Part 2 contains contracts to which MGHC is a party as a single entity and not as a result of its Affiliate status with Sutter. MGHC shall provide the District a comparable, then-current list (the "**Contracts List**") within thirty (30) days after the commencement of the Preparation Period. The Sutter Parties make no representation or warranty regarding the Contracts List, except that (i) the Sutter Parties believe that it is and will be generally accurate and complete, and (ii) it is the same list used by MGHC for MGHC internal purposes. The District hereby acknowledges that, given the size of the Sutter System and the complexity of its operations, the Contracts List may, and likely will, have some errors and/or omissions. The Sutter Parties agree to notify the District upon their discovery of any errors or omissions regarding the MGHC contracts.

(b) Early Termination Option. Except as provided in subparagraph (c) below, MGHC shall adopt a policy within one hundred and eighty (180) days of the Execution Date that, to the extent practically feasible, all of its contracts, when and to the extent renegotiated during the Transition Period, will contain a ninety to one hundred and eighty (90-180) day "no-cause, no-penalty" termination provision. During the Transition Period MGHC will make Commercially Reasonable Efforts to negotiate contracts with third parties containing such termination provisions; provided, however that the District understands that MGHC may not be able to renegotiate such termination provisions for all of the MGHC contracts, and the

District shall hold MGHC and the Sutter Parties harmless for any contracts for which MGHC is unable to renegotiate such termination provisions.

(c) Excepted Contracts. MGHC or the Sutter Parties shall not be required to negotiate such termination provisions for the following contracts:

(i) Excluded Multi-Facility Contracts, including Sutter Insurance Contracts and Sutter Provided IS Contracts;

(ii) Payer Contracts, including Managed Care Agreements;

(iii) Collective Bargaining Agreements;

(iv) Joint Ventures;

(v) the Zurich Policy for workers compensation referred to in Exhibit 4.9(b); and

(vi) the ADP payroll tax agreement referred to in Exhibit 4.9(c).

(d) Termination Notices. Following the delivery to the District by MGHC of the Contracts List, the District shall review such list and determine which contracts it wishes to terminate on the Transfer Date. Not less than one hundred and ninety (190) days prior to the Transfer Date, the District shall provide notice to Sutter and MGHC a list of all agreements from the Contracts List to be terminated, and MGHC shall provide notice to the applicable third parties of such termination within the relevant notification period so that the agreements to be terminated will be terminated as of the Transfer Date. MGHC (after the Transfer Date) shall accept full responsibility from the Transfer Date forward for all MGHC contracts not terminated on the Transfer Date, which the District shall be deemed to have elected for MGHC to retain. The Sutter Parties make no representation or warranty with respect to such agreements.

(e) Terminations by Third Parties Before the Transfer Date. If MGHC or Sutter receives a termination notice from an unrelated third party relating to a MGHC contract of any kind (excepting MGHC Managed Care Agreements which are covered in Paragraph 4.7(c)) during the Transition Period seeking to exercise a contract right to terminate a contract prior to its term or if such third party does not renew an existing contract, MGHC or Sutter shall take such steps as it deems appropriate and commercially reasonable in the circumstances and shall act in a manner consistent with the requirements of Paragraph 2.9; provided, however, that the District acknowledges that MGHC and Sutter can not force or compel third parties to do business with them, or with the District after the Transfer Date, and the independent acts of third parties, including physicians, shall not give rise to any claim or cause of action by the District or MGHC (after the Transfer Date) against any of the Sutter Parties. During the Preparation Period, MGHC shall promptly notify the District in writing of any early termination notice it receives from a third party to any MGHC contract with an annual payment exceeding \$20,000.

(f) Approval of New, Extended, or Renewed Contracts. Except where prohibited by applicable Laws, during the period that is one hundred and ninety (190) days

before the Transfer Date, the District shall have the right to approve, which approval shall not be unreasonably withheld, the execution by or on behalf of MGHC of any new MGHC contracts, including the extension or renewal of any then-existing MGHC contracts, if such contracts have a value in excess of one hundred thousand dollars (\$100,000) a year or have a term of more than one (1) year; provided, however, that this Paragraph 4.15(f) shall not apply to the contracts listed in Paragraph 4.15(c) and that any such contracts approved by the District shall not be subject to Paragraph 4.15(d).

(g) Approval of Certain Employment Contracts. Except where prohibited by applicable Laws, during the Preparation Period, the District shall have the right to approve, which approval shall not be unreasonably withheld, the execution by or on behalf of MGHC of any new MGHC written contract for the employment of any individual employee of MGHC, other than a Sutter Employee, including the extension or renewal of any then-existing MGHC contracts, if such contract provides for compensation, other than fringe benefits, in excess of one hundred thousand dollars (\$100,000) a year and has a term of more than one (1) year; provided, however, that this Paragraph 4.15(g) shall not apply to the contracts listed in Paragraph 4.15(c) and that any such contracts approved by the District shall not be subject to Paragraph 4.15(d). For the purposes of this Paragraph 4.15 (g), the term "contract" does not include an employment agreement that may be terminated by either party "at will," an independent contractor agreement, an agreement with a consultant not employed as an employee of MGHC, or an agreement with a physician employed by MGHC to perform services as a medical director or similar services.

#### **4.16 Facility Signage; MGHC Marketing Material**

(a) Identification and List. Beginning not less than one hundred and twenty (120) days prior to the Transfer Date, MGHC shall begin a process of identifying those items of Facility signage and MGHC business forms, letterhead, notices, posters, brochures, and other marketing and identification materials that contain the Sutter Identifiers. A complete list of such signage and items shall be provided by MGHC to the District and Sutter not less than ninety (90) days prior to the Transfer Date.

(b) MGHC Conversion Process. Promptly on completion of the list referred to above, MGHC shall take steps to remove Facility signage containing the Sutter Identifiers within the period of fifteen (15) days before and forty-five (45) days after the Transfer Date and to modify or cease using all business forms, letterhead, notices, posters, brochures, and other marketing and identification materials that contain the Sutter Identifiers as of the Transfer Date.

(c) District Replacement Obligation. It shall be the sole responsibility of the District to arrange and pay for any replacements or modifications of such signage and business forms, letterhead, notices, posters, brochures, and other marketing and identification materials containing the Sutter Identifiers to the extent such activities are undertaken before the Transfer Date.

(d) Restrictions on Public Use. Within forty-five (45) days after the Transfer Date, MGHC and the District shall cease to use, distribute or display any Sutter Identifier on any Facility signage or any business forms, letterhead, or marketing or educational

materials used in the Business which may be viewed or used by the public, employees, medical staff, payors, vendors or government. In addition, after the Transfer Date, MGHC and the District shall not hold themselves out to any third party as being a part of, or associated with, the System, and MGHC and the District shall hold harmless and indemnify the Sutter Parties from any claims, costs, losses or Actions resulting thereof.

#### **4.17 Reasonable Cooperation; No Sutter Guaranty**

(a) Reasonable Cooperation. During the Transition Period, on advance request of the District, MGHC and the Sutter Parties will reasonably cooperate to facilitate the transfer contemplated by this Agreement in accord with its terms, provided that: (a) the District shall be solely responsible for its preparation and ability to control, own, manage and operate all aspects of the Business after the Transfer Date, except as expressly provided to the contrary in this Agreement; (b) the Sutter Parties and MGHC shall not be obligated to pay for or incur direct or indirect costs associated with such activities, except as expressly provided to the contrary in this Agreement; and (c) the Sutter Parties and MGHC shall not have or accept any responsibility for the state of preparation of the District for the Change of Control or for the ownership, management or operation of the Business, except as expressly provided to the contrary in this Agreement.

(b) Financing and Transition Preparation. MGHC's and Sutter's obligations shall include providing the District with reasonable access on thirty (30) days advance request in writing to specified MGHC Business Records, utilization data, and financial information and data as is reasonably necessary to prepare for transition and finance post-Change of Control assets or equipment for MGHC. The access provided shall be to a designated District financial consultant and shall be subject to the Confidentiality Agreement. In addition, on the request of the District, MGHC shall review and comment on the pre-Transition Date assumptions of a District business or financing plan for new facilities or services as set forth in any offering statement or prospectus for any bond issue or general financing to be made by the District with respect to its post-Transfer operation or control of MGHC. The District shall assume full responsibility to third parties who may rely on such information provided in connection with such District financing, and shall provide MGHC and the Sutter Parties with a specific indemnification and hold harmless agreement with respect to such financing and related disclosures. The District shall include clear language in any such disclosure document that MGHC (pre-Transfer) and the Sutter Parties are not responsible for the information disclosed nor the repayment of the associated debt. With respect to a District planned general obligation bond issue or a District planned equipment financing, MGHC shall provide reasonable access (on reasonable notice) to the Facilities (for inspection purposes) and relevant MGHC management personnel (for interview/meeting purposes) to representatives of rating agencies, institutional investors, or equipment leasing companies and District consultants preparing a financial feasibility plan.

(c) No Implied Warranties. The obligations of MGHC and the Sutter Parties for Transition Period activities as provided in this Agreement are limited to their express statement, and there shall be no implied warranties, duties, covenants, representation or obligations except the common law implied obligation of good faith and fair dealing.

(d) No Guaranty. The Sutter Parties do not in any manner guaranty or warrant to the District or to MGHC the success of any aspect of their post-Transfer Date operations. The District expressly assumes all risk of performance after the Transfer Date.

(e) Provision of Information. The District has performed its own, independent assessment of the past, present and future performance of the Business, retained and consulted its own experts, and expressly disclaims any reliance on any statements or representations, express or implied, by the Sutter Parties, MGHC, its or their officers, directors, managers, employees, agents, attorneys, or any other person speaking or purporting to speak on behalf of such entities, except for those contained in this Agreement, the exhibits hereto (as updated), and the Settlement. Sutter represents that the information provided by it in the exhibits to this Agreement are accurate (which shall mean that the content is generally consistent with the information which Sutter or the System, itself, maintained for its own use on the same subjects and the same times) and are complete (which shall be judged solely by the description of the information, including any limitations (such as "summary," "outline," "list," etc.), as provided in this Agreement and/or the related exhibit). Sutter may be liable to the District, but not to any third party, only for direct damages in the event any Sutter-provided information in such exhibits is proven to be inaccurate or incomplete, as defined. The District shall not rely on the economic or clinical performance of the Business during any period prior to the Transfer Date as an indication of its future performance under District control. The obligation of the Sutter Parties with respect to providing information and access as to the Business, Business Records, and Facilities as provided in this Agreement shall be limited to providing raw information and actual access as expressly provided herein and, except as expressly provided, shall not constitute any implied, separate or affirmative duty of independent investigation, or consultation on the part of Sutter Parties.

(f) District Election. The obligation of cooperation herein shall not require MGHC or the Sutter Parties, during the Transition Period, to make any commitment, statement of support, or statement with respect to the District's capability to operate the Business and the Facilities, or to support any candidate, candidates or platform related to any District election.

#### **4.18 District Negotiated Contracts**

Prior to the Transfer Date, the District and its Representatives shall not hold themselves out to third parties as being authorized to bind, obligate or represent MGH or MGHC or any Sutter Affiliate, in any manner; provided, however, except as otherwise prohibited in the Agreement or the Settlement, prior to the Transfer Date, the District and its Representatives may conduct discussions and negotiations and enter into business relationships and agreements with third parties regarding goods and services for the Business, provided that any such business relationships and agreements are effective after the Transfer Date.

Except as expressly agreed by Sutter in writing, no contract or obligation negotiated or entered by the District during the Transition Period with respect to the Business or the facilities shall take effect or be binding on MGHC, nor impact its operations, nor require any payment or performance from MGHC prior to the Transfer Date. The District shall indemnify and hold the Sutter Parties and MGHC harmless from any costs or liabilities of any kind arising from violation of this prohibition.

#### 4.19 Litigation and Certain Liabilities

(a) Litigation Notice. During the Transition Period, on thirty (30) days advance request by the District, but not on more than four (4) occasions, Sutter shall provide summaries of claim activity for MGHC by numbers and types of claims, and limited actuarial or reserve information, all for purposes of aiding the District in shopping for and pricing post transfer coverage, and solely for that purpose. Ninety (90) days prior to the Transfer Date, MGHC and Sutter shall provide the District with a list of all pending litigation for MGHC that has then been served, where MGHC is a named party (as a plaintiff or defendant) including: (i) general information about the parties and the status of the matter; (ii) whether the matter is or is expected to be insured by a third party, commercial carrier, and if so, the name of the relevant carrier(s), or whether it is insured in a formal System insurance program; and (iii) which Categories and Classes of litigation the claim falls into, based on the definitions in Exhibit 4.19(b). Except for that information which may otherwise be public, the District shall maintain all such claims and litigation information in strict confidence subject to the Confidentiality Agreement. Certain information therein may be released or made available to the District subject to additional conditions necessary to protect legal privileges related to the defense or anticipated defense of the matter, or subject to court order.

(b) Allocation of Litigation. The allocation or responsibility for claims, litigation and Actions related to MGHC, the Business and the Facilities, and the assumption of liabilities or benefits associated therewith, shall be provided in Exhibit 4.19(b).

(c) System Litigation Management. Litigation or Actions that involve both MGHC and one or more other Sutter Affiliates (the “**System Litigation**”) shall be controlled by Sutter before and after the Transfer Date as provided in Exhibit 4.19(b). It shall be the obligation of the District and MGHC to: (i) maintain the confidentiality of all information received from or through Sutter regarding such litigation (except for that which is publicly available information); and (ii) cooperate fully in the prosecution or defense of such litigation with respect to issues which may involve MGHC or the Business, including making MGHC Employees who were involved in the matter available for deposition or testimony.

(d) Indemnified Litigation Management. The Indemnified Litigation, as defined in Exhibit 4.19(b), shall be managed as provided in Paragraph 10.4.

(e) Post Transfer Date Litigation. Except as expressly allocated to a Party in this Agreement, including Exhibit 4.19(b), or the Settlement, claims, litigation or Actions filed against MGHC and based on acts or omissions after the Transfer Date, shall be the sole obligation and liability of MGHC or the District, and not or any of the Sutter Parties.

(f) Applicability of Allocations. The allocations of liability or responsibility for claims, litigation and Actions in this Paragraph 4.19 shall have application to Paragraphs 2.5, 2.6, 2.7 and 2.8 of this Agreement, whether or not mentioned there.



#### **4.20 MGHC's Plans for Parking Garage and Other Facilities Improvements**

Within thirty (30) days after the Execution Date, MGHC and the Sutter Parties shall provide the District with: (i) a summary of all of MGHC's and the Sutter Parties' existing plans, drawings, and specifications for a new parking garage at the Hospital premises, a new wing for the Hospital, and any other major capital improvements involving significant design and construction to the Hospital or the Hospital property (250 Bon Air) that are in MGHC's or the Sutter Parties' possession or control (the "**Hospital Improvement Plans**"); and (ii) executed copies of the letter attached as Exhibit 4.20. To the extent the District confirms to Sutter that such Hospital Improvement Plans are assignable and to the extent they are not to be used by MGHC during the Transition Period for the projects referred to in Section 5 of the Settlement Agreement or otherwise, MGHC and the Sutter Parties hereby assign to the District the right to use for the District's own purposes all of the Hospital Improvement Plans.

#### **4.21 Cancer Center Lease**

(a) Lease. MGHC and the Sutter Parties shall provide to the District a complete copy of the current lease for the entire building at 1350 Eliseo Drive, Greenbrae, California, by and between Sutter and MGHC, dated January 21, 1994 (the "**Cancer Center Lease**"). The District acknowledges that, as of the date hereof, the Cancer Center Lease, by its current terms, is coterminous with the Lease and that any termination of the Lease shall automatically terminate the Cancer Center Lease. However, MGHC and Sutter shall amend the Cancer Center Lease within one hundred eighty (180) days after the Execution Date to provide that the lease's term shall end at midnight on December 1, 2015, without provision for renewal or extension. MGHC covenants that it shall use Commercially Reasonable Efforts to maintain the Cancer Center Lease in full force and effect throughout such lease's term, as amended.

(b) Subleases. Attached as Exhibit 4.21 is a listing of all subleases under the Cancer Center Lease that are active as of the Execution Date. A copy of each then-current sublease under the Cancer Center Lease shall be provided to the District by MGHC and the Sutter Parties within the first thirty (30) days of the Preparation Period.

#### **4.22 Information re Certain Matters**

(a) Environmental Laws. During the Transition Period, MGHC management shall use Commercially Reasonable Efforts to operate the Facilities in material compliance with applicable Environmental Laws. Within sixty (60) days after commencement of the Preparation Period, MGHC shall provide the District with a list of all matters which, to the knowledge of MGHC Site Administrator, constitute violations of the Environmental Law, notices from any government agency related to the Facilities and alleging or stating that they are in violation of the Environmental Laws, (other than such conditions that have been remedied by MGHC). To the extent not otherwise public, the District shall maintain the information subject to the Confidentiality Agreement.

(b) Asset Ownership. MGHC owns, or has a valid leasehold interest in, all of assets on the MGHC Primary Capital/Depreciable Asset List set forth in Exhibit 4.22(b)(1), which shall be a list of capital assets owned or long term leased by MGHC which are

not conveyed under the Lease, and which have a book basis exceeding one hundred and fifty thousand dollars (\$150,000). MGHC and the Sutter Parties shall update the Primary Capital/Depreciable Asset List sixty (60) days after the commencement of the Preparation Period. Upon thirty (30) days' prior written notice to MGHC, the District shall be permitted to inspect the assets on the list pursuant to a process to be determined by the Site Administrator and the Liaison Administrator.

(c) Reimbursement Disputes. Ninety (90) days before the Transfer Date, MGHC shall provide the District with a listing of all material disputes with respect to cost reports, payments or reimbursements due or paid to MGHC or the Hospital under the Medicare and Medicaid programs. Such list shall be subject to the Confidentiality Agreement.

(d) Claims Activity. Information on claims activity shall be provided as described in Paragraph 4.19(a).

(e) Medical Staff Roster and Disputes. Ninety (90) days after commencement of the Preparation Period, MGHC shall provide the District with a list of pending and threatened disputes with Hospital medical staff applicants and medical staff members. The District acknowledges that certain legal privileges and standards of confidentiality apply to medical staff proceedings and records and the information provided shall be subject to those restrictions. In all cases, the District shall maintain such information subject to the Confidentiality Agreement, and the information therein shall not be released in any public meeting or otherwise made available directly or indirectly to the public.

(f) Union Activity. Ninety (90) days after the commencement of the Preparation Period, MGHC shall provide the District with a list of any unresolved alleged unfair labor practices, claims and disputes filed or noticed by any Labor Organization and related to MGHC, present union organizing activity among any of MGHC's Employees, and threats of strike or work stoppages by any Labor Organization, MGHC Employee, or group of Employees, in each case, actually known to Sutter or the Site Administrator.

(g) Facilities. In addition to access consistent with parking garage planning and construction referred to in Section 7 of the Settlement Agreement, during the Transition Period at reasonable times (with the total not to exceed 4 occasions) the District's architects and engineers (and/or related consultants) may inspect the Facilities on forty-five (45) days advance notice to MGHC, with mutual agreement as to specific dates and times and locations. The District acknowledges that it has received copies of reports, documents and other materials related to the structural condition of the Facilities in connection with discovery in the Litigation. MGHC and the Sutter Parties represent that other than the materials disclosed to the District in discovery in the Litigation, MGHC's Chief Executive is not aware of any other written reports that relate materially to the structural condition of the Facilities. During the Transition Period, MGHC shall promptly provide copies to the District of all correspondence and other documents regarding the Facilities that MGHC receives from and sends to OSHPD.

(h) Notice from Government Entities. Within ten (10) days prior to the Execution Date, MGHC and Sutter shall have provided to the District copies of any written notices from any governmental entity of any alleged violation of applicable law or regulation, or of any related investigation, naming MGHC or the Hospital; provided that such matter is: (i)

currently pending and unresolved; (ii) is material, in that the outcome could likely have a material adverse effect on the financial condition or operations of MGHC or the Business; (iii) is not included in System Litigation, as defined in Exhibit 4.19(b); and (iv) is out of the ordinary course of business (i.e., excludes annual licensing inspection reports, fire marshal reviews, reimbursement audits, but includes any such reports/reviews/audits if they include extraordinary claims not of a type or severity usually found in such reports/reviews/audits, and includes matters such as alleged federal false claims actions, CMS decertification, or other similarly serious and unusual allegations). All material provided to the District pursuant to this section shall be subject to the Confidentiality Agreement, and certain information may be released or made available to the District subject to additional conditions necessary to protect legal privileges related to the defense or anticipated defense of the matter, or subject to court order.

#### 4.23 Inventory

(a) Inventory, as defined in Paragraph 2.5(d), includes inventories located in all departments of the Hospital and all other MGHC inventories that are not specifically located in or dedicated to a particular department. As recorded and delineated by MGHC for the purposes of financial statements, Inventory includes (i) all inventories from the pharmacy, the catheter laboratory, the imaging/radiology department, and the surgery department, and (ii) all inventories of dietary/food supplies, preprinted forms and the general stores (which includes all other inventories, both medical and non-medical, for both clinical and non-clinical departments of the Hospital).

(b) Ordering, Purchasing, and Delivery of Inventory. For a significant portion of MGHC's Inventory needs, currently Sutter and MGHC cooperatively manage Inventory, including the ordering, purchasing, storage, and delivery of Inventory, as part of a centralized System service. In addition to this system, MGHC orders Inventory directly from select third party vendors ("**Supply Vendors**") under established business relationships with Sutter, with varying delivery methods.

(c) On-Hand Inventory. In most cases, a very minimal amount of Inventory is stored or maintained at the Facilities, as the centralized System service makes use of a form of rapid distribution which is intended to minimize Inventory, with supplies arriving approximately twice daily from a Sutter distribution center. In addition, orders from Supply Vendors are usually delivered directly to MGHC within forty-eight (48) hours of use by MGHC. The District acknowledges that no significant amount of clinical supplies or pharmaceuticals are stored at the Facilities and that it shall be the District's responsibility to assure appropriate and necessary replacement for such Inventory on and immediately after the Transfer Date.

(d) Future Changes to Inventory System. The District acknowledges that the system in place for Inventory, as described in subparagraph (b) above, is a pilot program and may or may not be the system used by MGHC during the entire Transition Period. If such pilot program is not used by MGHC prior to the Transfer Date, a different system whereby MGHC receives Inventory directly from Supply Vendors or from a different centralized Sutter supply system or some combination thereof may be in place, and such different system may involve delivery to a rented MGHC storage facility or facilities. MGHC and Sutter Parties covenant that they, as applicable, shall use Commercially Reasonable Efforts to continue the lease on any such rented facility or facilities for use by MGHC for a reasonable period after the

Transfer Date. In such case, Inventory shall also include the contents of such rented facility or facilities on the Transfer Date.

(e) Supply Information. In order to facilitate the transition from the applicable Inventory system in place just before the Transfer Date to the system that shall be used by the District on and immediately after the Transfer Date, MGHC shall provide to the District and the Liaison Administrator, starting no later than ninety (90) days after commencement of the Preparation Period and ending on the Transfer Date, monthly Inventory information related to items ordered for Inventory and the quantity of each thereof during the ninety (90) days prior to the Transfer Date (the “**Inventory Information**”); provided, however, that the Inventory Information shall not include any information related to cost, markup, or applicable price lists, agreements, or relationships. The form of the Inventory Information shall be, in good faith, mutually agreed upon by the parties.

#### 4.24 SPHC

(a) Description. SPHC is a cooperative program jointly operated by MGHC and one or more Sutter Affiliates; SPHC is not a separate legal entity. SPHC is mainly used as a product line marketing tool and physician coordination mechanism. SPHC has no separate physical assets, employees, accounts receivables, or facilities. All operations under SPHC take place at the Facilities or at other Sutter Affiliates. All billing and support services are provided directly by and in the name of MGHC and one or more Sutter Affiliates, depending on where services are rendered. The only assets of SPHC are its goodwill and intellectual property, which are Excluded Assets.

(b) Continuation of SPHC. There shall be no obligation for MGHC or any Sutter Affiliate to continue SPHC or to renew, extend, or maintain any agreement that implicates SPHC. Without any advance notice to the District, SPHC may be conducted through any Sutter Affiliate and may be terminated (in whole or in part) at any time, upon the sole and absolute discretion of Sutter.

(c) SPHC Physical Assets. All MGHC equipment, resources, and other assets used by or for the benefit of SPHC shall remain the property of MGHC on and immediately after the Transfer Date. No assets of MGHC will be transferred to SPHC prior to, on, or immediately after the Transfer Date.

#### 4.25 Moore Foundation Grant

The Gordon and Betty Moore Foundation (the “**Moore Foundation**”) is a foundation dedicated to investing in partnerships to achieve positive results for the San Francisco Bay Area in the environmental, conservation and science arenas. The Moore Foundation has awarded or may award Sutter a grant (the “**Grant Award**”) for the “**Transforming Nursing Practice**” project at various Sutter Affiliates. The Moore Foundation has conditioned or may condition the Grant Award on the participation of MGHC and the commitment of Sutter, MGHC and the District to use their Commercially Reasonable Efforts, before and after the Transfer Date, to support the project. To the extent required by the Moore Foundation under the Grant Award, Sutter, MGHC and the District shall work together to enter into an agreement following the Execution Date to implement the Moore Foundation’s conditions to the Grant Award.

## **5. Representations and Warranties of MGHC**

MGHC hereby represents and warrants that the following are, as of the Execution Date, and will be, as of the Closing Date, true and correct:

### **5.1 Organization of MGHC**

MGHC is a corporation duly organized and validly existing under the laws of, is authorized to exercise its corporate powers, rights and privileges in, and is in good standing in, the State of California. MGHC has full corporate power to carry on its business as presently conducted by it and is an organization described in Section 501(c) (3) of the Code. The copies of the articles of incorporation and bylaws of MGHC, and all amendments thereto, and MGHC's letter confirming its tax exemption from the IRS attached, to be provided at the relevant dates, are accurate and complete.

### **5.2 Authority**

MGHC has all requisite corporate power and authority, and has taken all corporate action necessary, to execute and deliver this Agreement and the Settlement, to consummate the transactions contemplated by this Agreement and the Settlement and to perform its obligations under this Agreement and the Settlement. The execution and delivery of this Agreement and the Settlement by MGHC and the consummation by MGHC of the transactions contemplated by this Agreement and the Settlement have been duly authorized and approved by all necessary corporate action on the part of MGHC. This Agreement and the Settlement have been duly executed and delivered by MGHC and are legal, valid and binding obligations of MGHC enforceable against it in accordance with their terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and except that the remedy of specific performance and injunctive and other forms of equitable relief may not be available.

### **5.3 No Conflict or Violation**

Neither the execution, delivery or performance of this Agreement and the Settlement nor the consummation of the transactions contemplated by this Agreement and the Settlement, nor compliance by MGHC with any of the provisions of this Agreement and the Settlement, will (a) violate or conflict with any provision of the articles of incorporation or bylaws of MGHC, (b) violate, conflict with, or result in or constitute a default under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, any of the terms, conditions or provisions of any material agreement to which MGHC is bound, or (c) violate any Law or court order.

### **5.4 Third Party Rights**

No consent or approval of any other Person or party is required to be obtained on behalf of MGHC in connection with the execution and delivery of this Agreement or the Settlement or the consummation and fulfillment by MGHC of the transactions contemplated hereby, or the performance by MGHC of its obligations hereunder, except where the failure to

obtain such consent, approval, authorization, order or exception would not have a material adverse effect, or except as have been obtained.

### **5.5 Governmental Consents**

No consent, approval, authorization or order of, and no exemption by or filing with, any court or governmental agency is required on behalf of MGHC in connection with the execution and delivery of this Agreement or the Settlement or the consummation and fulfillment by MGHC of the transactions contemplated hereby, or the performance by MGHC of its obligations hereunder, except where the failure to obtain such consent, approval, authorization, order or exception would not have a material adverse effect.

## **6. Representations and Warranties of the Sutter Parties**

The Sutter Parties hereby represent and warrant to the District that the following are, as of the Execution Date, and will be, as of the Closing Date, true and correct:

### **6.1 Organization of the Sutter Parties**

The Sutter Parties are corporations duly organized and validly existing under the laws of, are authorized to exercise their corporate powers, rights and privileges in, and are in good standing in, the State of California. The Sutter Parties have full corporate power to carry on their business as presently conducted. The copies of the articles of incorporation and bylaws of the Sutter Parties, and all amendments thereto, to be provided at the relevant dates, are accurate and complete.

### **6.2 Authority**

The Sutter Parties have all requisite corporate power and authority, and have taken all corporate action necessary, to execute and deliver this Agreement and the Settlement, to consummate the transactions contemplated by this Agreement and to perform their obligations under this Agreement and the Settlement. The execution and delivery of this Agreement and the Settlement by the Sutter Parties and the consummation by the Sutter Parties of the transactions contemplated by this Agreement and the Settlement have been duly authorized and approved by all necessary corporate action on the part of the Sutter Parties. This Agreement and the Settlement have been duly executed and delivered by the Sutter Parties and are legal, valid and binding obligations of the Sutter Parties enforceable against them in accordance with their terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and except that the remedy of specific performance and injunctive and other forms of equitable relief may not be available.

### **6.3 No Conflict or Violation**

Neither the execution, delivery or performance of this Agreement and the Settlement nor the consummation of the transactions contemplated by this Agreement and the Settlement, nor compliance by the Sutter Parties with any of the provisions of this Agreement

and the Settlement, will (a) violate or conflict with any provision of the articles of incorporation or bylaws of the Sutter Parties, or (b) violate any Law or court order.

#### **6.4 Third Party Rights**

No consent or approval of any other Person or party is required to be obtained on behalf of the Sutter Parties in connection with the execution and delivery of this Agreement or the Settlement, or the consummation and fulfillment by the Sutter Parties of the transaction contemplated hereby, or the performance by the Sutter Parties of its obligations hereunder, except where the failure to obtain such consent, approval, authorization, order or exception would not have a material adverse effect, or except as have been obtained.

#### **6.5 Governmental Consents**

No consent, approval, authorization or order of, and no exemption by or filing with, any court or governmental agency is required on behalf of the Sutter Parties in connection with the execution and delivery of this Agreement and the Settlement or the consummation and fulfillment by the Sutter Parties of the transactions contemplated hereby, or the performance by the Sutter Parties of its obligations hereunder, except where the failure to obtain such consent, approval, authorization, order or exception would not have a material adverse effect.

### **7. Representations and Warranties of the District**

The District hereby represents and warrants to the Sutter Parties that the following are, as of the Execution Date, and will be, as of the Closing Date, true and correct:

#### **7.1 Organization of the District**

The District is a duly organized California local healthcare hospital district validly existing under the laws of and is authorized to exercise its powers, rights and privileges in the State of California. The District has full statutory power to carry on its activities as presently conducted. The copies of the District organizational documents and bylaws, and all amendments thereto, to be provided at the relevant dates, are accurate and complete.

#### **7.2 Authority**

The District has all requisite power and authority, and has taken all action necessary, to execute and deliver this Agreement and the Settlement, to consummate the transactions contemplated by this Agreement and the Settlement, and to perform their obligations under this Agreement and the Settlement. The execution and delivery of this Agreement and the Settlement by the District and the consummation by the District of the transactions contemplated by this Agreement and the Settlement have been duly authorized and approved by all necessary action on the part of the District. This Agreement and the Settlement have been duly executed and delivered by the District and are legal, valid and binding obligations of the District enforceable against it in accordance with their terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and except that the remedy of specific performance and injunctive and other forms of equitable relief may not be available.

### **7.3 No Conflict or Violation**

Neither the execution, delivery or performance of this Agreement and the Settlement nor the consummation of the transactions contemplated by this Agreement and the Settlement, nor compliance by the District with any of the provisions of this Agreement and the Settlement, will (a) violate or conflict with any provision of the charter documents or bylaws of the District, or (b) violate any Law or court order.

### **7.4 Third Party Rights**

No consent or approval of any other Person or party is required to be obtained on behalf of the District in connection with the execution and delivery of this Agreement or the Settlement, or the consummation and fulfillment by the District of the transactions contemplated hereby, or the performance by the District of its obligations hereunder, except where the failure to obtain such consent, approval, authorization, order or exception would not have a material adverse effect, or except as have been obtained.

### **7.5 Governmental Consents**

No consent, approval, authorization or order of, and no exemption by or filing with, any court or governmental agency is required on behalf of the District in connection with the execution and delivery of this Agreement and the Settlement or the consummation and fulfillment by the District of the transactions contemplated hereby, or the performance by the District of its obligations hereunder, except where the failure to obtain such consent, approval, authorization, order or exception would not have a material adverse effect.

## **8. Execution and Closing**

### **8.1 Execution**

The Execution shall take place on the Execution Date commencing at nine (9) a.m. in the offices of Paul, Hastings, Janofsky & Walker, 55 Second Street, 24th Floor, San Francisco, California. The term “**Execution**” as used in this Agreement shall take place on such date as the Parties mutually agree and shall mean the meeting of the Parties at which the documents and instruments referred to in this Paragraph are delivered among the Parties or delivery thereof is waived by the applicable Party.

(a) All Parties. All Parties shall, at the Execution, execute and deliver to every other Party thereto, this Agreement, the Settlement, and the Confidentiality Agreement. All parties also shall deliver to every other Party, in the case of MGHC and the Sutter Parties, copies of their respective articles of incorporation and bylaws and all amendments thereto, and in the case of the District, copies of all of its organizational documents and bylaws, and all amendments thereto.

(b) MGHC Deliveries. MGHC shall, at the Execution, deliver (and execute as applicable) the following to the applicable Party:

(i) To the District:



- (1) the IRS exemption letter;
- (2) the Collective Bargaining Agreements list;
- (3) the MGHC contracts list; and
- (4) the Primary Capital/Depreciable Asset List.

(c) District Deliveries. The District shall, at the Execution, execute and deliver the Interim Funding Agreement to MCH.

(d) MCH Deliveries. MCH shall, at Execution, execute and deliver the Interim Funding Agreement to the District.

## 8.2 Pre-Closing

A pre-closing of the transactions contemplated hereunder may be held at a time and place mutually agreeable to counsel to the Parties on the day preceding the Closing Date.

## 8.3 Closing

The Closing shall take place on the Transfer Date commencing at nine (9) a.m. in the offices of Paul, Hastings, Janofsky & Walker, 55 Second Street, 24th Floor, San Francisco, California. The Closing shall be effective for all purposes as of the Transfer Time. The term “**Closing**” as used in this Agreement shall mean the meeting of the Parties at which the documents and instruments referred to in this Paragraph are delivered among the Parties as applicable, and the other actions required to be taken hereunder shall have been taken.

(a) All Parties. All Parties shall, at the Closing, deliver to every other Party copies of their articles of incorporation or other charter documents and bylaws, current as of the Closing.

(b) MGHC Deliveries. MGHC shall, at the Closing, execute (as applicable) and deliver to the applicable Party:

(i) To the District:

- (1) MGHC license of the California Department of Health Services;
- (2) Evidence of accreditation of MGHC by the Joint Commission on the Accreditation of Healthcare Organizations;
- (3) Evidence of qualification to participate in the federal Medicare program and the California Medi-Cal program;
- (4) the IRS Exemption Letter;

- Agreements of MGHC; and
- (5) Copies of non-terminated Managed Care
- (ii) To MCH: the Interim Funding Security Agreement.
- (c) District Deliveries. The District shall, at the Closing, execute (as applicable) and deliver to the applicable Party:
    - (i) To MCH:
      - (1) a promissory note in the form attached to the Interim Funding Agreement executed in favor of MCH or MCH's designee;
      - (2) the Transfer Release in the form attached as Exhibit E; and
      - (3) Proof of Replacement Coverage and Tail Coverage.
    - (ii) To Sutter:
      - (1) the Transfer Release in the form attached as Exhibit E; and
      - (2) Proof of Replacement Coverage and Tail Coverage (or, to the extent Tail Coverage is purchased from Sutter, the reimbursement payment stated in Exhibit 4.19(b), Category I, Section B).
- (d) MCH Deliveries. MCH shall, at the Closing, execute (as applicable) and deliver to all Parties the Membership Resignation Letter of MCH in the form attached as Exhibit C.

#### **8.4 Conditions of Closing**

There are no conditions of Closing except as stated in Paragraph 2.9(a), (b) and (c). If any Party fails to provide or perform any prerequisite to Closing or in connection with Closing, the remedy of specific performance shall be available to any other Party.

#### **9. Additional Covenants**

The following provisions shall apply, and the following actions shall be taken subsequent to the Closing:

##### **9.1 Further Documentation or Action**

From time to time, at the request of any Party, whether on or after the Closing, without further consideration, either Party, at its expense and within a reasonable amount of time after request hereunder is made, shall execute and deliver such further instruments and take such other action as may be reasonably required to give effect to the terms of the Agreement and the Settlement.

## 9.2 Preservation of and Access to Records

MGHC shall retain the Business Records, Patient Records and the MGHC corporate records at MGHC's cost, until the expiration of five (5) years from the Transfer Date with respect to Business Records and the MGHC corporate records, and the longer of five (5) years from the Transfer Date or the applicable statute of limitations period with respect to Patient Records (the "**Document Retention Period**"). After the Transfer Date, MGHC shall grant, and the Sutter Parties shall have, access to copies of such records (including any Patient Records) (and to MGHC Employees where their participation is relevant) as reasonably needed for any lawful purpose, including for the prosecution of any MGHC-related litigation for which the Sutter Parties have the obligation or right to prosecute under this Agreement or for any other obligations of the Sutter Parties under this Agreement or the Settlement (except with respect to disputes between the Parties); provided, however, that the Sutter Parties shall not have access to any such copies of records or personnel, the disclosure of which would be prohibited by any Law, accreditation standards, or agreement (express or implied) of confidentiality; provided further, however, that any such copies of records delivered to or made available to the Sutter Parties and its representatives will be treated as strictly confidential by the Sutter Parties and its representatives, will not be directly or indirectly divulged, disclosed or communicated to any other Person other than the Sutter Parties and their representatives who are reasonably required to have access to such information (unless the Sutter Parties are compelled to disclose the same by judicial or administrative process), will be returned to MGHC when the Sutter Parties' use has terminated and will not be used by the Sutter Parties or their representatives to the detriment of MGHC. MGHC shall instruct the appropriate employees of the Business to cooperate in providing access to such records to the Sutter Parties and its authorized representatives as contemplated herein. Access to such records shall be during normal business hours, with reasonable prior written notice to MGHC of the time when such access shall be needed. The Sutter Parties employees, representatives and agents shall conduct themselves in such a manner so that MGHC's normal business activities shall not be unduly or unnecessarily disrupted. The Sutter Parties' access to copies of records and personnel shall be at the Sutter Parties' own cost and expense and the Sutter Parties shall promptly reimburse MGHC for reasonable costs (excluding storage costs) MGHC incurs to provide the Sutter Parties with access to or delivery of copies of such records.

## 9.3 Excluded Assets and Receivables

(a) General Rule. Any asset (including all remittances and all mail and other communications) that is a Retained Asset and that is or comes into the possession, custody or control of the Sutter Parties following the Closing shall forthwith be transferred, assigned or conveyed by the Sutter Parties to MGHC, and until such transfer, assignment and conveyance, the Sutter Parties shall not have any right, title or interest in such asset but instead shall hold such asset, in trust for the benefit of MGHC. Any asset (including all remittances and mail and other communications) that is an Excluded Asset and that is or comes into the possession, custody or control of MGHC or the District (including its or their successors in interest or assigns) following the Closing shall forthwith be transferred, assigned and conveyed by MGHC or the District to the relevant Sutter Affiliate(s) and until such transfer, assignment and conveyance, MGHC and the District shall not have any right, title or interest in such asset, but instead shall hold such asset in trust for the benefit of the relevant Sutter Affiliate(s).

(b) Other Receivables from Government or Managed Care Programs.

All periodic payments which are received by the Sutter Parties after the Closing Date which, pursuant to the remittance advice which accompanies such payment or otherwise, are attributable to MGHC and that constitute MGHC's accounts receivable, shall be paid in the manner described in Paragraph 3.3.

**10. Indemnification**

**10.1 Indemnification Obligation**

The Sutter Parties shall defend, indemnify and hold harmless the District and its officers, directors, representatives, managers, agents, members, subsidiaries, affiliates, employees (each an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") from and against, and pay or reimburse the Indemnified Parties for Indemnified Litigation as defined in Exhibit 4.19(b);

**10.2 "Ordinary Course" Liabilities**

(a) Ordinary Course Liabilities. The obligation of the Sutter Parties to indemnify pursuant to Paragraph 10.1 shall be limited by the Indemnity Cap (defined below) when, in addition to the other requirements of Paragraph 10.1, the liability results from an Action that is based on events that are in the ordinary course of business.

(b) Indemnification Cap. The indemnification obligations set out in Paragraph 10.2(a) shall not exceed two million dollars (\$2,000,000) (the "**Indemnification Cap**").

(c) Presumption. Unless specifically identified in the underlying Action or in writing by the Indemnified Party, claims shall be presumed to be based on events in the ordinary course of business.

**10.3 Limitations**

(a) Threshold Amount. The Sutter Parties shall not be obligated to pay any amounts on any indemnification hereunder until the aggregate claims for which the Indemnified Parties are entitled to indemnification exceed fifteen thousand dollars (\$15,000) (the "**Threshold Amount**"), provided however that once the Threshold Amount is reached the claims making up that amount shall be payable.

(b) Termination Date. On the date that is two (2) years following the Transfer Date (the "**Indemnification Termination Date**"), the Sutter Parties shall have no further indemnification obligations whatsoever under this Agreement, except to the extent that an Indemnified Party has provided notice of an Action as set forth below prior to the Indemnification Termination Date.

**10.4 Claim Procedure**

If at any time on or prior to the Indemnification Termination Date, an Indemnified Party receives notice of the commencement by any third party of an Action (a "**Third-Party**

**Claim**”), with respect to which Paragraph 10.1 is applicable or may be applicable, the Indemnified Party shall promptly notify the Sutter Parties in writing (the “**Claim Notice**”) of the Third-Party Claim, stating in reasonably sufficient detail the events or circumstances which are the basis for and amount (to the extent determined) of such Third-Party Claim; provided that the failure to provide such notice shall not relieve or otherwise affect the obligation of the Sutter Parties to provide indemnification hereunder, except to the extent that such failure materially prejudices the Sutter Parties ability to settle or defend such claim. The Sutter Parties shall have thirty (30) days after receipt of the Claim Notice (unless the claim or action requires a response before the expiration of such thirty-day period, in which case the Sutter Parties shall have until the date that is ten (10) days before the required response date) to admit or deny responsibility for such claim as further described below.

(a) Defense of Third-Party Claims. Except with respect to any Special Claim (as defined below) the Sutter Parties may, at their option, acknowledge responsibility for any Third-Party Claim and state their intent to undertake, conduct and control, through counsel of their own choosing, and at their expense, the settlement or defense of any such Third-Party Claim. The Indemnified Party shall cooperate in good faith with the Sutter Parties and such counsel in connection therewith. So long as the Sutter Parties have taken responsibility for the defense of the Third-Party Claim, the Indemnified Party shall not pay or settle such claim without the Sutter Parties’ consent. “**Special Claim**” shall mean any Third-Party Claim involving possible criminal liability, an action for injunctive relief, or an action by any governmental authority. If the Sutter Parties do not notify the Indemnified Party within thirty (30) days after receipt of the Claim Notice (or before the date that is ten (10) days before the required response date, if the claim or action requires a response before the expiration of such thirty (30) day period) that they acknowledge responsibility for the Third-Party Claim and elect to undertake the defense of the Third-Party Claim described therein, or if the Third-Party Claim involves a Special Claim, the Indemnified Party shall have the right to contest, settle or compromise, through counsel of its own choosing, the Third-Party Claim in the exercise of its reasonable discretion at the expense of the Sutter Parties (within the limits or indemnification herein); provided that the Indemnified Party shall notify the Sutter Parties of any compromise or settlement of any such Third-Party Claim.

(b) Objection Notice. If the Sutter Parties in good faith object to a Claim Notice on the basis that the underlying Third Party claim does not meet the criterion for indemnification stated in Paragraph 10.1, or if there is a dispute as to whether the claim is based on events in the ordinary course of business, the Sutter Parties shall give written notice of such objection (an “**Objection Notice**”) to the Indemnified Party within such thirty (30) day period (or before the date that is ten (10) days before the required response date, if the Third-Party Claim requires a response before the expiration of such thirty (30) day period), and shall state the basis for such objection. If no objection to the Indemnified Party’s claim is made by the Sutter Parties within such period, it shall be presumed that the Sutter Parties are responsible for indemnifying the claim pursuant to the terms of this Agreement; provided, however, that the failure of the Sutter Parties to respond within such period shall not prevent the Sutter Parties from delivering an Objection Notice at a later date to the extent that the Indemnified Party is not materially prejudiced by the delay.

(c) Dispute Resolution. If the Sutter Parties provide an Objection Notice to the Indemnified Party, the Sutter Parties and the Indemnified Party shall attempt in good faith to resolve the dispute. If the Sutter Parties and the Indemnified Party are unable to fully resolve a disputed claim within thirty (30) days after the date of delivery of the Objection Notice, the Sutter Parties and the Indemnified Parties shall resolve the dispute in accordance with the Dispute Resolution procedures described in Paragraph 12.15(d) of this Agreement.

## 10.5 Indemnification Payments

Indemnity payments shall be made via wire transfer of immediately available funds to such bank and accounts as are designated by the recipient(s) of such indemnity payments.

## 11. Termination

11.1 Termination. This Agreement shall not be terminated and is not terminable except only as provided in this Paragraph 11.1.

(a) Upon Mutual Consent. The Parties may, at or prior to the time set for Closing, terminate this Agreement by mutual written consent. Any such mutual termination shall be effective only if in writing, dated and signed by all the Parties, and it shall, at a minimum, make specific provisions for: (a) the Seismic Upgrade; (b) the Parking Garage Construction Project; (c) the Marin Community Health Foundation and its assets; and (d) any commitment previously entered by the Parties pursuant to Paragraph 4.6 of this Agreement.

(b) Settlement Overturned. This Agreement may also terminate as provided in Section 14 of the Settlement Agreement.

(c) No Other Termination Allowed. Except as set forth in this Paragraph 11, the Parties hereby agree that no Party shall have the right to terminate this Agreement, the Lease, or the Settlement.

## 11.2 Effect of Termination

If there has been a termination under this Paragraph, then this Agreement shall be deemed terminated, and except as provided by the Parties in their mutual consent to terminate: (a) all further obligations of the Parties hereunder shall terminate except (i) any outstanding obligations under the Interim Funding Agreements and (ii) those obligations set forth in Paragraphs 12.2, 12.7, and 12.15 shall survive; (b) such termination shall be without liability to the Parties; except that such termination shall be without prejudice to the rights and remedies which any Party seeking to terminate this Agreement may have if a default shall be made by the other Party in the observance or in the due and timely performance by such Party of any of the material covenants' herein contained. Notwithstanding the foregoing to the contrary, if any Party shall have made such default, then the other Party need not terminate this Agreement, but may seek remedies pursuant to Paragraph 12.15.

## **12. General Provisions**

### **12.1 Notices**

Any notices, requests, demands, waivers, consents or other communications hereunder shall be provided according to Section 24 (Notices) of the Settlement. Such section of the Settlement is incorporated herein by this reference.

#### **If to MGHC, addressed to:**

Marin General Hospital  
250 Bon Air Drive  
Greenbrae, California, 94904  
Attn. Chief Executive Officer

#### **If to Sutter or the Sutter Parties, addressed to:**

Sutter Health  
345 California Street, Suite 2000  
San Francisco, California 94104  
Attn. Ron Marshall  
Attn. William Aseltyne

#### **If to the District, addressed to:**

Marin Healthcare District  
1100 So. Eliseo Drive, Suite 4  
Greenbrae, California 94904

### **12.2 Attorneys' Fees**

In any litigation or other proceeding relating to this Agreement, or any transactions contemplated herein, the prevailing Party shall be entitled to recover its costs and reasonable attorneys' fees (including a reasonable estimate of the allocable costs of in-house legal counsel in the event in house counsel participate in the conduct of the subject litigation or proceedings.)

### **12.3 Remedies Not Exclusive**

Except as otherwise expressly set forth in this Agreement, no remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by a Party shall not, except as otherwise expressly provided for herein, constitute a waiver of the right to pursue other available remedies.

#### **12.4 Counterparts**

This Agreement may be executed 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.

#### **12.5 Captions and Paragraph Headings**

Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

#### **12.6 Entirety of Agreement; Amendments**

This Agreement (including the Schedules and Exhibits hereto) and other documents and instruments attached or specifically provided for in this Agreement together with the Settlement contain the entire understanding between the parties concerning the subject matter of this Agreement and, except as expressly provided for herein, supersede all prior understandings and agreements, whether oral or written, between them with respect to the subject matter hereof and thereof. There are no representations, warranties, agreements, arrangements or understandings, oral or written, among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may be amended or modified only by an agreement in writing, dated and signed by all of the Parties.

#### **12.7 Expenses and Prorations**

Each Party shall bear and pay its own costs and expenses relating to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in this Agreement, except as otherwise specifically set forth in this Agreement.

#### **12.8 Construction**

(a) Drafting. This Agreement and any documents or instruments delivered pursuant hereto, shall be construed without regard to the identity of the Person who drafted the various provisions. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

(b) Specific and General. In interpreting this Agreement and its attachments, or where interpreting related provisions in this Agreement and the Settlement, specific provisions shall control over general provisions.

#### **12.9 Waiver**

The failure of any Party to insist, in any one or more instances on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition, but the obligations of the Parties with respect thereto shall continue in full force and effect. No waiver of any provision or condition of this Agreement by any Party shall



be valid unless in writing and signed by such Party. A waiver by one Party of the performance of any covenant, condition, representation or warranty of any other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

#### **12.10 Severability**

The provisions of this Agreement are severable, and if any one or more provisions may be determined to be judicially unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provisions, to the extent enforceable, shall nevertheless be binding upon and enforceable against the Parties.

#### **12.11 Consents Not Unreasonably Withheld**

Wherever the consent or approval of any Party is required under this Agreement, such consent or approval shall not be unreasonably withheld, delayed or conditioned, unless such consent or approval is expressly stated to be at the sole and absolute discretion of such Party.

#### **12.12 Time Is of the Essence**

Time is hereby expressly made of the essence with respect to each and every term and provision of this Agreement. The Parties acknowledge that each will be relying upon the timely performance by the other of the obligations hereunder and thereunder as a material inducement to each Party's execution of this Agreement. Notwithstanding the foregoing, in the event that any action or performance shall be due hereunder on a Saturday, Sunday or any legal holiday for banks in the jurisdiction in which such action or performance is due or where the Party required to provide the same is located, the time for such performance shall automatically be extended until the end of the next business day.

#### **12.13 Governing Law**

This Agreement shall be construed and enforced in accordance with the internal Laws of the State of California.

#### **12.14 Third Party Beneficiaries**

The terms and provisions of this Agreement and the Settlement are intended solely for the benefit of the Parties, and it is not the intention of the Parties to confer, and this Agreement and the Settlement shall not confer, any third-party beneficiary rights upon any other Person.

#### **12.15 Rights and Remedies in the Event of Default or Dispute**

In the event that any Party to this Agreement defaults in the performance of its obligations hereunder, the following rights, remedies, and procedures shall apply.

(a) Specific Performance. In the case of a default of any obligation arising under Paragraphs 8 and 9.2 of this Agreement (the "Specific Performance Provisions"), the Party alleging default shall provide notice to the allegedly defaulting Party, which Party shall have forty-eight (48) hours to cure said default. If the default is not cured within forty-eight (48) hours from the notice of default, the following procedures shall apply: (i) the Parties hereby consent to the jurisdiction of the Marin County Superior Court and to venue in that court for resolution of the claim of default; (ii) the Parties hereby acknowledge and agree that time is of the essence in resolving such claim of default, that default under the Specific Performance Provisions will cause the non-defaulting Parties irreparable harm, that an award of damages would not adequately redress that harm, and that any non-defaulting Party shall be entitled to mandatory injunctive relief commanding any defaulting Party specifically to perform its obligations under the Specific Performance Provisions; (iii) the Parties consent to a hearing on shortened time on any such application for injunctive relief, and to an order obtained by ex parte application setting the date and time for such hearing; and (iv) the prevailing Party in such proceeding shall be entitled to its attorneys' fees, costs, and other expenses of litigation incurred in connection with such proceeding.

(b) Arbitration. In the case of a default of any obligation arising under Paragraphs 2.5, 2.6, 2.7, 2.8, 2.9, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.19, 4.22, 4.23, and 4.24 of this Agreement, the party alleging default shall provide notice to each other Party, which Parties shall have thirty (30) days to cure said default. If the default is not cured within 30 days, the Party alleging default may demand binding arbitration by notice to all other Parties as provided in this Agreement, and the Parties shall arbitrate the allegation of default before a neutral arbitrator, with the costs of the arbitrator borne equally by the Parties to the dispute. The venue for such arbitration shall be JAMS, San Francisco, California. The Parties specifically relinquish any right to have such claims of default adjudicated by a court or jury, and their sole remedy shall be the arbitration described in this Paragraph. The prevailing party in such arbitration shall, in the arbitrator's discretion, be entitled to its reasonable attorneys' fees, costs, and other expenses of arbitration.

(c) Obligations Enforceable as Part of Judgment. The rights and obligations of Paragraph 2.2(a) of this Agreement shall be deemed to be a part of the judgment entered pursuant to the Settlement, and shall be enforceable by the court as an obligation of that judgment.

(d) Exceptions. The provisions of subparagraphs (a), (b) and (c) above shall not apply to any other allegations of breach, default or any other dispute arising out of or in connection with this Agreement. All disputes arising out of or relating to any other term or condition, including but not limited to indemnification under this Agreement or the Release Agreement (and notwithstanding that the underlying obligation may be subject to arbitration) shall be resolved in a court having jurisdiction over the parties and the subject matter of the dispute; and the provisions of subparagraphs (a), (b) and (c) above shall not apply to Section 3 of this Agreement (which is subject to the resolution provisions in Paragraph 3.4).

(e) Remedy Regarding Paragraphs 2.2(a)(iv) and 4.14(b), (c) and (d). If evidence of insurance coverage for the second six (6) months is not provided within sixty (60) days of the Transfer Date as required by Paragraphs 2.2(a)(iv) and 4.14(b), (c) and (d), Sutter shall have the remedy described in subparagraph (c) above and shall also have the right to itself

pay for the second six (6) months of coverage and offset the cost thereof from any and all accounts receivable amounts collected by Sutter after the Collection Period.

(f) Remedy Regarding Paragraph 2.9(e). Notwithstanding any other provision of the Agreement, the District expressly agrees that any action or proceeding related to any claim arising out of or related to Paragraph 2.9(e) must be filed within one hundred and eighty (180) days after the Transfer Date, and the District expressly agrees that any such action or proceeding not commenced within the one hundred and eighty (180) day time limit shall be barred. The District further agrees that it shall not be entitled to maintain or recover on any  
- claim arising out of or relating to Paragraph 2.9(e) if, during the Preparation Period, the District, including any of its Board members, employees, Liaison Administrator, District Transaction Managers, counsel or consultants, has knowledge of an act, omission, event, or condition that constitutes a violation of the Operating Standard specified in Paragraph 2.9(e) and the District does not notify MGHC and Sutter in writing within thirty (30) days of obtaining such knowledge or, if following such notice, MGHC and Sutter cure such violation within thirty (30) days.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement on the date first above written.

**MARIN HEALTHCARE DISTRICT**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: October 4, 2006

**MARIN GENERAL HOSPITAL**

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

Name: David L. Bradley

Title: Chief Executive Officer

Marin General Hospital Corporation

Date: October 4, 2006

**MARIN COMMUNITY HEALTH**

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

Name: David L. Bradley

Title: Chief Executive Officer

Marin Community Health

Date: October 4, 2006

**SUTTER HEALTH**

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

Name: Pat Fry

Title: President and Chief Executive Officer

Date: October 4, 2006

## EXHIBITS

Exhibit A	Confidentiality Agreement	Attached, Tab A
Exhibit B	Interim Funding Agreement (Includes Appendix A, Security Agreement and Appendix B Promissory Note)	Attached, Tab B
Exhibit C	Membership Resignation Letter	Attached, Tab C
Exhibit D	Sutter Health Support Services	Attached, Tab D
Exhibit E	Release Agreement	Attached, Tab E
Exhibit 2.6(c)	License Agreement for Policy and Procedure Manuals	Attached, Tab F
Exhibit 4.3	Services	Attached, Tab G
Exhibit 4.8(d)	Collective Bargaining Agreements	Attached, Tab H
Exhibit 4.9(a)	Employee Benefits Transition	Attached, Tab I
Exhibit 4.9(b)	Workers Compensation Transition	Attached, Tab J
Exhibit 4.9(c)	Payroll Transition	Attached, Tab K
Exhibit 4.15	MGHC Contracts	Attached, Tab L
Exhibit 4.19(b)	Litigation Management Outline	Attached, Tab M
Exhibit 4.20	Letter to Consultants Re Improvements	Attached, Tab N
Exhibit 4.21	Sublease Agreements for 1350 South Eliseo Drive	Attached, Tab O
Exhibit 4.22(b)(1)	Primary Capital/Depreciable Assets	Attached, Tab P