

MARIN HEALTHCARE DISTRICT

100B Drakes Landing Road, Suite 250, Greenbrae, CA 94904 Telephone: 415-464-2090 Fax: 415-464-2094
Website: www.marinhealthcare.org

SPECIAL MEETING AGENDA MARIN GENERAL HOSPITAL, CONFERENCE CENTER, WEST WING

Wednesday, April 30, 2014
7:00 pm

Board of Directors

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

Location:

Marin General Hospital, Conf. Center
250 Bon Air Rd, Greenbrae / West Wing
Greenbrae, CA 94904

Staff:

Lee Domanico, Chief Executive Officer
Renee' Toriumi, Executive Assistant to CEO
Louis Weiner, Executive Assistant to CAO
Donald Bouey, Legal Counsel

This is a Special Meeting of the Board of Directors of the Marin Healthcare District. By law, no items of business other than those on the agenda may be considered by the Board of Directors at the Special Closed Meeting. Members of the public will have an opportunity to address the Board regarding only those items listed on this agenda.

TAB

- | | | | | |
|----|---------|---|---------------------------|---|
| 1. | 7:00 pm | CALL TO ORDER | Bedard | |
| 2. | 7:00 pm | ANNOUNCEMENT - PURPOSE OF SPECIAL MEETING | Bedard | |
| | | ROLL CALL | Bedard | |
| | | A. PUBLIC COMMENT | Bedard | |
| 3. | 7:05 pm | MGH Lease Renewal | Bedard/Sparkman/
Bouey | |
| | | A. Review and approval of Lease Renewal for purposes of
submission to five public hearings | | 1 |
| | | B. First Public Hearing on MGH Lease Renewal Agreement | | |
| 4. | 7:35 pm | Review and approve Services Agreements | Bedard/Bouey | |
| | | A. Management Services Agreement | | 2 |
| | | B. Diagnostic Services Agreement | | 3 |
| 5. | 8:00 pm | ADJOURNMENT | Bedard | |

A copy of the agenda for the Special Meeting will be posted and distributed at least twenty-four (24) hours prior to the meeting.

Tab 1

HOSPITAL LEASE

**250 BON AIR ROAD
GREENBRAE, CALIFORNIA**

MARIN HEALTHCARE DISTRICT

**as
LESSOR,**

AND

MARIN GENERAL HOSPITAL

**as
LESSEE**

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HOSPITAL LEASE

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

Part I

DEFINITIONS

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

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

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

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

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

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

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

Part II

SUMMARY OF BASIC LEASE INFORMATION

The basic terms of this Lease are:

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

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

Part III

LEASE PROVISIONS

ARTICLE I

REAL PROPERTY AND PREMISES

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

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

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

ARTICLE II

LEASE TERM

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

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

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

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

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

ARTICLE III

BASE RENT

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

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

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

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

3.4 Financial Support for Lessor's Health Care Clinic.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

TAXES

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

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

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

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

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

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

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

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

ARTICLE V

USE

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

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

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

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

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

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

5.7 Health and Safety Code Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.12 Privacy.

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

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

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

ARTICLE VI

COMPLIANCE WITH LAWS AND INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

ARTICLE VII

HAZARDOUS MATERIAL

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII

UTILITIES AND SERVICES

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

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

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

ARTICLE IX

REPAIRS AND MAINTENANCE

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

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

ARTICLE X

ALTERATIONS AND ADDITIONS; CAPITAL EXPENDITURES

10.1 Alterations, Additions and Improvements.

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

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

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

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

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

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

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

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

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

On completion of any Alteration, Lessee shall:

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XI

COVENANT AGAINST LIENS

11.1 Covenant Against Liens.

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

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

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

ARTICLE XII

EXCULPATION, INDEMNIFICATION, AND INSURANCE

12.1 Exculpation.

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

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

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

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

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

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

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

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

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

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

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

12.2 Indemnification.

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

Premises;

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

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

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

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

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

Claims for:

- (b) Type of Injury or Loss. This indemnification extends to and includes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.5 Form of Policies and Additional Requirements.

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

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

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

(ii) Each insurance policy required hereunder shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

12.7 Disposition of Insurance Proceeds.

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

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

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

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

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

ARTICLE XIII

ACCEPTANCE OF PREMISES

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

ARTICLE XIV

DAMAGE AND DESTRUCTION

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

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

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

ARTICLE XV

CONDEMNATION

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

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

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

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

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

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

ARTICLE XVI

ASSIGNMENT AND SUBLEASING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XVII

SURRENDER OF PREMISES

17.1 Surrender of Premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) All debris and rubbish;

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

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

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

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

ARTICLE XVIII

ESTOPPEL, SUBORDINATIONS, EASEMENTS AND LENDER PROTECTIONS

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

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

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

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

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

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

- (a) Any acts, omissions, or defaults of Lessor that occurred before the sale or conveyance; or
- (b) The return of any security deposit except for deposits actually paid to the transferee.

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

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

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

18.6 Lessee Lender Protections.

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

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

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

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

ARTICLE XIX

DEFAULTS AND REMEDIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The balance to Lessee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XX

LESSOR'S RIGHT TO PERFORM LESSEE'S OBLIGATIONS

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

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

ARTICLE XXI

LATE PAYMENTS

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

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

ARTICLE XXII

NONWAIVER

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

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

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

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

ARTICLE XXIII

DISPUTE RESOLUTION

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

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

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

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

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

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

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

ARTICLE XXIV

ATTORNEY FEES AND COSTS

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

ARTICLE XXV

MISCELLANEOUS

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

25.2 Word Usage. Unless the context clearly requires otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice to Lessee must be addressed as follows:

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

Notice to Lessor must be addressed as follows:

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

Facsimile: (415) 464-2090

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

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

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

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

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

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

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

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

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

- (a) The individual is authorized to execute and deliver this Lease on behalf of Lessee in accordance with a duly adopted resolution of Lessee's board of directors and in accordance with Lessee's articles of incorporation or charter and bylaws;
- (b) This Lease is binding on Lessee in accordance with its terms;
- (c) Lessee is a duly organized and legally existing corporation in good standing in the State of California; and
- (d) The execution and delivery of this Lease by Lessee shall not result in any breach of or constitute a default under any Indenture, mortgage, deed of trust, lease loan, credit agreement, partnership agreement, or other contract or instrument to which Lessee is a party or by which Lessee may be bound.

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

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

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

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

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

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

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

LESSOR:

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

By: _____
Printed Name: _____
Title: _____

LESSEE:

MARIN GENERAL HOSPITAL,
a California nonprofit public benefit corporation

By: _____
Printed Name: _____
Title: _____

Exhibit A

Description of Property

Tab 2

MANAGEMENT SERVICES AND STAFFING AGREEMENT

This Management Services and Staffing Agreement (“**Agreement**”) is entered into as of the Effective Date, by and between Marin Healthcare District, a political subdivision of the State of California and a public district (“**MHD**”), and Marin General Hospital, a California nonprofit public benefit corporation (“**MGH**”). MHD and Hospital are sometimes referred to in this Agreement as a “**Party**” or collectively, as the “**Parties.**” Capitalized terms are defined in this Agreement.

Recitals

- A. MHD owns and operates a number of outpatient clinics, both within and outside of the MHD’s borders, that are exempt from licensure pursuant to Section 1206(b) of the California Health & Safety Code (the “**Clinics**”), and may own and operate one or more other businesses and facilities related to the performance of health care services (together with the Clinics, “**MHD’s Facilities**”).
- B. MHD owns a general acute care hospital located in Greenbrae, California (the “**Hospital**”), which it leases to and is operated by MGH, pursuant to a Lease that will expire November 30, 2015 (the “**Existing Hospital Lease**”). The Parties have agreed in principal on a new thirty-year lease for the Hospital (the “**New Hospital Lease**”) and are cooperating to obtain the required approvals therefor. The Existing Hospital Lease and the New Hospital Lease are collectively referred to herein as the “**Hospital Leases.**”
- C. MHD also is or may be a party to service provider relationships pursuant to which MHD is obligated to provide administrative, operational, management, or support services (including “under arrangements” agreements as described by Medicare regulations) to other providers, including MGH, and potentially other physicians and medical groups (“**Administrative Services Arrangements**”).
- D. MGH operates the Hospital and has the capacity to provide to MHD the administrative and management services and administrative and non-physician staffing required for the operation of MHD’s Facilities.
- E. MHD wishes to obtain such administrative and management services and administrative and non-physician staffing from MGH, and MGH wishes to provide same for MHD, upon the terms and conditions set forth in this Agreement.

In consideration of the foregoing recitals and the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

1. Definitions

- 1.1 “**Accounts**” shall mean checking accounts in the name of MHD for which two representatives of MHD and two representatives of MGH shall be signators.
- 1.2 “**Administrative Service Arrangements**” shall have the definition set forth in Recital C above.

- 1.3 **“Agreement”** shall mean the Management Services and Staffing Agreement as referenced above.
- 1.4 **“Annual Budget”** shall mean a proposed annual budget regarding projected expenditures for the MHD Facilities for the next calendar year.
- 1.5 **“CAO”** shall mean MHD’s Chief Administrative Officer.
- 1.6 **“Capital Budget”** shall mean an equipment budget outlining a program of capital expenditures.
- 1.7 **“Claims”** shall mean all claims, actions, causes of action, controversies, charges, obligations, damages, demands, expenses, costs, fines, penalties, fees, and/or liabilities, including, without limitation, from loss, damage, or injury to or death of persons or property in any manner.
- 1.8 **“Clinics”** shall have the definition set forth in Recital A above.
- 1.9 **“Clinic Committees”** shall include a Clinic Committee and Clinic Medical Committee established to provide input and guidance with regard to MHD Facilities services and to be responsible for overseeing the operations of the Clinic as described more fully in Section 3.2 (Clinic Operational Guidelines).
- 1.10 **“Commencement Date”** shall mean _____, 2014 the date on which this Agreement shall commence.
- 1.11 **“Existing Hospital Lease”** shall have the definition set forth in Recital B above.
- 1.12 **“Financial Institutions”** shall mean institutions maintaining the Accounts and mutually acceptable to the Parties.
- 1.13 **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996.
- 1.14 **“Hospital”** shall have the definition set forth in Recital B above.
- 1.15 **“Hospital Leases”** shall have the definition set forth in Recital B above.
- 1.16 **“Indemnity Notice”** shall mean prompt written notice by MHD of any claim or other assertion of liability by any third party that may give rise to MGH’s indemnity obligations pursuant to Section 8.4.
- 1.17 **“Management and Staffing Services”** shall mean the provision of all non-medical personnel and staffing, and management and administrative services, relating to or required for the operation of MHD’s Facilities, except as otherwise prohibited, limited or restricted by this Agreement or by law, and as more specifically described in Section 2 (MGH Responsibilities).

- 1.18 **“Management Report”** shall mean a report of the MHD Facilities’ activity for the previous month and shall include (1) gross billings for MHD Facilities in the preceding month, (2) total gross receipts for the MHD Facilities for the preceding month, and (3) additional internal reports as may be reasonably necessary and appropriate for MHD to evaluate the performance and productivity of the MHD Facilities.
- 1.19 **“MGH”** shall mean Marin General Hospital, a California nonprofit public benefit corporation.
- 1.20 **“MGH Employee Liabilities”** shall mean MGH’s responsibility for payment to Support Personnel of all compensation, including base salary and benefits, including as/if applicable, health, dental and life insurance. MGH shall also be solely responsible for all compensation federal and state withholding taxes, vacation pay, sick leave, benefits, social security, health insurance, worker’s compensation insurance, disability or unemployment insurance, employee benefits of any kind and other applicable taxes and contributions to government mandated employment related insurance and similar programs for or related to Support Personnel and any other employee or agent of MGH.
- 1.21 **“MHD”** shall mean the Marin Healthcare District, a political subdivision of the State of California and a public district.
- 1.22 **“MHD’s Facilities”** shall have the definition set forth in Recital A above.
- 1.23 **“MHD Indemnified Persons”** shall mean MHD’s directors, officers, employees, agents, counsel, and representatives.
- 1.24 **“New Hospital Lease”** shall have the definition set forth in Recital B above.
- 1.25 **“Operating Budget”** shall mean a budget setting forth an estimate of operating revenues and expenses.
- 1.26 **“Party” or “Parties”** shall refer to MHD and/or MGH as defined above.
- 1.27 **“Patient Charts”** shall mean patient medical records and billing records.
- 1.28 **“Payments”** shall mean all monies received by MHD, or by MGH on behalf of MHD, for services rendered at or through MHD Facilities.
- 1.29 **“Records”** shall mean all business records, papers, documents, ledgers, journals or reports related to the MHD Facilities.
- 1.30 **“Support Personnel”** shall mean such non-physician personnel and staffing as may be reasonably necessary to enable MHD to operate MHD’s Facilities, including without limitation, on request, nurse practitioners and physician assistants.

1.31 **“Third Party Claim”** means any claim or other assertion of liability by any third party that may give rise to MGH’s indemnity obligations.

2. MGH Responsibilities.

2.1 Engagement. MHD hereby engages MGH to serve, and MGH hereby agrees to serve, as the exclusive manager and administrator of the non-medical functions of MHD’s Facilities, and to provide all Management and Staffing Services, including, but not limited to, those described in this Section 2 (MGH Responsibilities).

2.2 Specific Services. Without limiting the generality of the foregoing, the Management and Staffing Services shall include and be provided subject to the following:

2.2.1 General Administrative Services. MGH shall supervise and staff the day-to-day non-medical business of the MHD Facilities, subject to the applicable policies of MHD. MGH shall consult with MHD on, and make recommendations to MHD concerning, all policy matters and other major decisions affecting the management, staffing, and day-to-day operations of the MHD Facilities.

2.2.2 Support for Administrative Services Arrangements. MGH shall provide, on behalf of MHD, such non-physician personnel and management services as shall be required for the performance of MHD’s obligations arising under MHD’s Administrative Service Agreements.

2.2.3 Non-Physician Personnel. MGH shall provide, on behalf of MHD, such non-physician personnel and staffing as may be reasonably necessary to enable MHD to operate MHD’s Facilities, including, without limitation, Support Personnel. Such personnel may be MGH employees or independent contractors.

2.2.4 Recruiting. Except as otherwise provided in this Agreement, MGH shall recruit, employ or otherwise retain, supervise (with respect to non-medical services) and manage the Support Personnel as are necessary for the proper and efficient operation of the MHD Facilities.

2.2.5 Specific Staff Support Services. MGH shall provide the services of its CMO to consult to the Medical Committee (described in Section 3.2 below), which shall oversee and implement professional patient care medical and quality assurance policies, procedures, and guidelines, as well as professional qualifications and professional services. MGH shall provide the expertise of its patient services, quality, safety, performance improvement, utilization review and risk management staff to support the Clinic Committees described in Section 3.2 below. MGH will provide the services of its business planning, physician development, facilities, and marketing

departments and personnel as MHD management deems needed. MGH shall provide whatever additional specialty staff expertise within its staff is needed to support MHD Facilities and its operations.

- 2.2.6 Employee Policies and Procedures. MGH's general employee practices and procedures, as well as the policies and procedures of MHD that are not inconsistent therewith, shall be applicable to Support Personnel.
- 2.2.7 Employees and Independent Contractors. All Support Personnel shall be employees or independent contractors of MGH. MGH shall be responsible for the payment of all MGH Employee Liabilities. MHD shall have no liability whatsoever under this Agreement or otherwise for any MGH Employee Liabilities. MGH shall indemnify, defend and hold harmless MHD against any claim, cause of action, loss, cost and expense arising in connection with or resulting from MGH Employee Liabilities. At MHD's request, MGH shall provide MHD with certificates or other evidence satisfactory to MHD that MGH has satisfied its obligations with respect to MGH Employee Liabilities.
- 2.2.8 Management of Personnel. MGH, in consultation with MHD and respecting MHD's preferences, shall hire, terminate and take appropriate disciplinary action against all Support Personnel in compliance with MGH's employment policies and in compliance with State & Federal laws. MGH will periodically survey MHD as to its satisfaction with Support Personnel, but in all circumstances shall hire, terminate and take appropriate disciplinary action against all such Support Personnel.
- 2.2.9 Recordkeeping, Bookkeeping and Accounting. MGH will coordinate with MHD finance personnel to assure all business recordkeeping, bookkeeping and accounting services necessary or appropriate to support the MHD Facilities, including, without limitation, maintenance, custody and supervision of all Records, and will maintain the Records pursuant to legally mandated recordkeeping requirements imposed by governmental agencies, such as the Internal Revenue Service and Occupational Safety & Health Administration and in accordance with best health care industry standards and practices. In addition, MGH will assist MHD to create and maintain Patient Charts. It is understood that the Records and Patient Charts are the sole property of MHD, and will be available for inspection by its representative at all times. Upon termination of this Agreement, the Records and Patient Charts will be delivered to MHD; provided that, at any time during the term of this Agreement or after its termination, pursuant to and in compliance with all applicable laws, MGH shall be entitled to obtain copies of the Records and Patient Charts as are necessary to carry out its duties and obligations under this Agreement.

- 2.2.10 Bank Accounts and Disbursements. MHD shall maintain the Accounts at one or more Financial Institutions, for which pursuant to bank instructions by MHD, two (2) representatives of MHD and two (2) representatives of MGH shall be signators. Except as otherwise expressly provided herein, the bank instructions shall specify that any withdrawal from the Account in excess of Twenty Five Thousand Dollars (\$25,000) shall require the signature of at least one (1) representative from MHD and one (1) representative from MGH, and for lesser amounts, one (1) signature shall be required. All Payments shall be deposited into the Accounts.
- 2.2.11 Billing Support. MGH shall provide billing and collection of charges made with respect to professional and ancillary services provided at or through the MHD Facilities.
- 2.3 Management and Financial Reports, Budget. MGH will provide management and financial reports as follows:
- 2.3.1 Management Report. On or before the fifteenth (15th) business day of each month, MGH will generate a Management Report of the MHD Facilities' activity for the previous month. MGH's CFO will present each such Management Report to MHD's Finance and Audit Committee at its regularly scheduled meetings; provided, however, that if for any reason MHD's Finance and Audit Committee does not convene during any given month, then MGH will provide a copy of such written Management Report to all of the MHD Board Members in lieu of presenting the Management Report to the Finance and Audit Committee. The Finance and Audit Committee Chair will present the report at the next MHD Board meeting. The MGH CFO or his/her designee will be available at such Board meetings to answer questions.
- 2.3.2 Expense Report. On or before the fifteenth (15th) business day of each month, MGH will provide the MHD Board of Directors with a report describing the MHD Facilities expenses for the preceding month.
- 2.3.3 Annual Budget. By the first business day of January of each calendar year, MGH shall prepare and submit to the MHD Board of Directors a proposed Annual Budget. Each Annual Budget shall include (i) a Capital Budget, (ii) an Operating Budget, and (iii) a projection of cash receipts and disbursements based upon the proposed Annual Budget.
- 2.4 Additional Services. MGH shall supply at its expense through its employees, agents or outside vendors as determined by MGH, all reasonable and necessary messenger, telephone, computer, medical records (excluding capital expenses for electronic medical records), personnel, engineering, advertising for additional non-physician support staff, duplication services, medical transcribing services and any other item

or service that may be reasonably required to operate and conduct the MHD Facilities.

- 2.5 Management of MHD Facilities Expenses. MGH shall not authorize any expenditure for services, supplies or equipment other than those items that are specifically identified in the Operating Budget or Capital Budget, except as approved by MHD, including by delegated authority of its management in accordance with MHD Board policies.
- 2.6 Use of Subcontractors and Co-Management Arrangements. MGH may use subcontractors to provide any or all of the services it is obligated to provide hereunder. MGH shall coordinate and integrate into its general and specific management and administrative services and support obligations hereunder any other management or co-management services obtained by MHD or MGH for the benefit of MHD Facilities or its service lines.
- 2.7 MGH's Insurance. MGH shall, at its sole expense, obtain and maintain in full force during the term of this Agreement, the insurance coverages described on Exhibit 1.7 (MGH's Insurance), and shall, as to the General and Professional Liability and Directors and Officers policies, name MHD as an additional insured thereunder. If any insurance required by this Agreement is under a "claims-made" policy and is cancelled or terminated or the policy is changed, MGH shall purchase or otherwise ensure "tail" coverage for acts or occurrences occurring during the term of this Agreement, but as to which claims may be asserted after the cancellation, change or termination of the policy.

3. Responsibilities of MHD. MHD, in reliance upon MGH's provision of services and staff hereunder, shall be responsible for the following:

- 3.1 Operation of the MHD Facilities. The MHD Facilities shall provide professional medical services. MHD shall, at all times, with MGH's support as provided hereunder, oversee and operate the MHD Facilities in a manner consistent with current standards of medical practice and all applicable governmental regulations and shall require that all physicians and other licensed personnel providing medical services on MHD's behalf comply with same.
- 3.2 Clinic Operational Guidelines. On behalf of MHD, MGH shall ensure that the Clinic Committees are established to provide input and guidance with regard to MHD Facilities services and to be responsible for overseeing the operations of the Clinic. The Clinic Committee shall operate and implement the annual work and performance targets as established by the Clinic Committee. The MHD Facilities shall be operated and administered according to MHD's policies, procedures and guidelines developed by the Clinic Committees. The Clinic Medical Committee shall be charged with oversight of medical decision-making in the Clinic, as well as professional patient care medical and quality assurance policies, procedures, and

guidelines, as well as professional qualifications and professional services and review.

- 3.3 Qualifications of Physicians. At all times each physician engaged by MHD to provide services in the MHD Facilities shall be duly licensed to practice medicine without restriction in the State of California.
- 3.4 Physician Services. MHD shall engage physicians and provide oversight for the rendition of all medical services at the MHD Facilities, including without limitation, diagnosis or treatment of any condition; the prescribing, dispensing and/or administering of any medication, surgery, therapy and the preparation of all medical reports.
- 3.5 Supervision of Support Personnel. MHD shall supervise and assume responsibility for any service provided by Support Personnel that requires the supervision of a physician. MGH shall have no control or direction over the delivery or provision of medical services and all such medical services shall be provided under the professional direction and supervision of physicians performing services in the MHD Facilities.
- 3.6 Preparation of Patient Charts. MHD shall oversee the prompt and accurate preparation of Patient Charts by all physicians. Such records shall conform to community standards both as to form and content.
- 3.7 Billing for Physician Services, Charges. MHD shall utilize MGH or its designee for the billing of all professional and ancillary services provided at the MHD Facilities. MHD shall determine, in its sole and absolute discretion, all charges and fees for professional and ancillary services and shall provide MGH with a schedule of fees from time to time.
- 3.8 Controlled Substances. MHD, through its management secured hereunder, shall be responsible for the maintenance and custody of all controlled substances, and shall maintain such controlled substances in accordance with all requirements of state and federal law, as implemented by Clinic policies and procedures on controlled substances.
- 3.9 MHD's Insurance. MHD shall obtain and maintain in full force during the term of this Agreement, the insurance coverages described on Exhibit 2.9 (MHD's Insurance). If such insurance is under a "claims-made" policy and such policy is cancelled or terminated as to any physician or to MHD, MHD shall purchase or shall require physician to purchase "tail" coverage for MHD's or physician's acts or occurrences occurring during the term of this Agreement, as applicable, but as to which claims may be asserted after the cancellation, change or termination of the policy.

3.10 MHD's Approval. The Parties acknowledge and agree that any MHD approvals or direction needed for matters, transactions, or policies arising in connection with MHD Facilities, or under this Agreement, or other MHD actions or approvals needed in the course of services provided to MHD by MGH, must be obtained after review and approval by the following: (a) MHD's CAO, reviews for compliance and for recommendation to the CFO and CEO); (b) MHD's CFO (reviews for compliance and for recommendation to the CAO and CEO); (c) MHD's CEO (upon reviews and recommendations from the CAO and CFO); and (d) MHD's Board of Directors (where Board level approval is required, with recommendations from the CEO to the Board). The Parties acknowledge that notwithstanding the forgoing, medical professional and patient care policies, procedures, and reviews, are delegated by MHD to the Clinic Medical Committee.

4. Relationship of Parties.

4.1 Operation of the MHD Facilities. MHD shall be solely and exclusively in control of all aspects of the MHD Facilities and the provision of medical services therein.

4.1.1 In its management capacity, MGH shall not interfere with the exercise of professional judgment by the physicians providing medical services therein to MHD patients. MGH shall have no authority whatsoever with respect to such professional activities; provided, however, that MGH may provide MHD with periodic assessments regarding physicians' performance of non-medical MHD Facilities-related services, and shall conduct its clinical administrative management and operational duties hereunder.

4.1.2 MGH shall not provide or otherwise engage in services or activities that constitute the practice of medicine by either it or MHD as defined by the laws of the State of California. In order that the relationship created and implemented pursuant to this Agreement complies with the California prohibition against the corporate practice of medicine, certain decisions, as set forth in Exhibit 4.1.2, incorporated herein, are listed as requiring separate, joint, and overlapping decisions among the physicians and management in the operations of the MHD Facilities. If at any time there is any conflict between the provisions of this Agreement and Exhibit 4.1.2, then, subject to the requirements of applicable law, the provisions of this Agreement shall prevail.

4.1.3 Nothing herein is intended nor shall be construed to require either Party to refer patients to the other Party or any Party affiliate, or direct physicians to so direct patients.

4.2 Independent Contractor. MGH is an independent contractor with respect to its obligations under this Agreement. Nothing contained herein shall be construed as creating any other type of relationship between the Parties other than one of

independent contractors. The choice of personnel assigned by MGH in support of its management or staffing obligations hereunder is within the discretion of MGH.

The parties agree that MGH employees or agents provided for services to MHD hereunder are and shall remain employees or independent contractors of MGH, acting as MGH employees, and not as employees or officers of MHD. Other than the MHD CAO, CFO, and CEO (who may be employed by MGH while serving as officers of MHD), no individual employee or officer of MGH shall have any authority to make policy, contract for, or bind MHD in any manner. MHD shall not be held liable for any alleged violations of any federal, state or local laws regarding employees of MGH, including without limitation, wage and hour laws, and anti-discrimination laws. MGH agrees to indemnify, defend and hold harmless MHD should MGH employees allege any violation by MHD of any employment-related laws.

- 4.3 **Medical Records; Compliance.** All patient records, reports and information obtained or generated relating to the MHD Facilities shall at all times be the property of MHD.
 - 4.3.1 Notwithstanding the foregoing, so that MGH may perform its duties and obligations hereunder, MHD shall allow MGH full access to all patient records and other records and information related to the MHD Facilities.
 - 4.3.2 MGH shall comply with all applicable laws, including without limitation HIPAA, and its implementing guidance and regulations as they currently exist and as may be amended or adopted. MGH further agrees to make its internal books and records relative to the use and disclosure of Protected Health Information (as that term is defined in HIPAA) available to the Secretary of the United States Department of Health and Human Services to the extent required for determining compliance with HIPAA. The Business Associate Contract, attached hereto as Exhibit 4.3.2 (Business Associate Contract), is incorporated herein by this reference and made a part of this Agreement.
- 4.4 **Duty of Cooperation.** Each of the Parties shall cooperate fully with the other in connection with the performance of their respective obligations under this Agreement, and the Parties shall employ their best efforts to resolve any dispute that may arise under or in connection with this Agreement.
- 4.5 **Ownership of Licenses.** It is understood and agreed by the Parties that MHD will be the holder and owner of all licenses, accreditations, certifications, if any, and contracts for the provision of medical services, and MHD shall be the “provider” within the meaning of all agreements with third party payors.

5. Representations and Warranties.

- 5.1 MHD. MHD represents and warrants to MGH, as of the Execution Date and throughout the term of this Agreement and any renewal hereof, as follows:
- 5.1.1 Agreements. MHD, to its knowledge, is not bound by any agreement or arrangement that precludes it from entering into this Agreement.
 - 5.1.2 Convictions. Neither MHD nor, to MHD's knowledge, any physician has been convicted of any felony criminal offense related to health care, or is listed by a federal or state agency as debarred, excluded or otherwise ineligible for federal or state program participation.
 - 5.1.3 Disclosure. During the term of this Agreement, MHD shall have an affirmative obligation to make reasonable inquiries to ascertain the occurrence of any of the matters or events that would make the representations and warranties contained in Section 5.1 untrue, whether occurring at any time prior to, or during the term of, this Agreement, and to immediately disclose same to MGH in accordance with the notice provisions set forth in this Agreement. In the event that MGH's CEO, CFO or CAO becomes aware of any such matter or event, then MHD shall be deemed to have immediately disclosed the same to MGH.
 - 5.1.4 Additional Disclosures. MHD shall also report the following to MGH, in accordance with the notice provisions set forth below, within three (3) business days of MHD's knowledge of same: Any event that substantially interrupts, or may substantially interrupt, the MHD Facilities or which may adversely affect its operations. In the event that MGH's CEO, CFO or CAO becomes aware of any such event, then MHD shall be deemed to have immediately disclosed the same to MGH.
- 5.2 MGH. MGH represents and warrants to MHD, as of the Execution Date and throughout the term of this Agreement and any renewal hereof, as follows:
- 5.2.1 Agreements. MGH is not bound by any agreement or arrangement which precludes it from entering into this Agreement.
 - 5.2.2 Convictions. Neither MGH nor, to MGH's knowledge, any employee or agent of MGH has been convicted of any felony criminal offense related to healthcare, or is listed by a federal or state agency as debarred, excluded, or otherwise ineligible for federal or state program participation.
 - 5.2.3 Disclosure. During the term of this Agreement, MGH shall have an affirmative obligation to make reasonable inquiries to ascertain the occurrence of any of the matters or events that would make the representations and warranties contained in Section 5.2 untrue, whether occurring at any time prior to, or during the term of, this Agreement, and to

immediately disclose same to MGH in accordance with the notice provisions set forth below.

5.2.4 Additional Disclosures. MHD shall also report the following to MGH, in accordance with the notice provisions set forth below, within three (3) business days of MHD's knowledge of same:

5.2.4.1 The employment or termination of any Support Personnel.

5.2.4.2 Any event that substantially interrupts, or may substantially interrupt, the MHD Facilities or which may adversely affect its operations.

6. MGH Compensation. MGH and MHD have exercised care and diligence in determining their respective best estimates of the expenses, investment and reasonable rate of return of MGH in providing the Management and Staffing Services. In addition, the Parties have taken such matters into account when negotiating the terms and conditions of the New Hospital Lease. Based upon the foregoing factors, and in consideration of the terms and conditions of the Hospital Leases, the Parties have agreed that MGH shall perform the Management and Staffing Services under this Agreement at no cost to MHD in furtherance of its obligation to provide to MHD administrative and financial resources necessary to operate MDH Facilities pursuant to the Hospital Leases.

6.1 Changes to Compensation Methodology. In the event MGH or MHD reasonably concludes that the above arrangement is likely to be in violation of any applicable law, MGH and MHD shall use best efforts to develop an alternative arrangement that complies with law, which shall replace the current arrangement.

7. Term and Termination.

7.1 Term. This Agreement shall commence on the Commencement Date and remain in effect until the earlier of the following to occur: (i) MHD no longer operates any of MHD's Facilities; (ii) the applicable Hospital Lease is terminated for any reason; or (iii) MHD, in its sole discretion, terminates this Agreement by written notice to MGH.

7.2 Mutual Agreement. This Agreement may be terminated at any time upon mutual agreement of the Parties reduced to writing.

8. General Provisions.

8.1 Non Exclusive Services and Competition with MHD Facilities. The parties acknowledge and agree that the services provided hereunder by MGH are not exclusive to MHD and that MGH is affiliated with Prima Medical Foundation ("Prima") and potentially other physician service providers in some competition with MHD Facilities. The MHD, MGH, Prima, and other potential associated physician service providers (including potential "D" hospital based clinics), are all

supported by MGH to enhance physician development, to promote access to needed services, and assure high quality and continuity of care in Marin County and its environs, and to align providers to meet the needs of the Accountable Care Act. The variety and diversity of physician practice settings generally works to enhance the overall success of physician development (recruitment and retention) in Marin County. However, individual physicians and physician groups, and their advisors and MGH staff, may conclude that a setting other than the MHD Facilities is a better option, economically or for practice orientation and approach, or other factors leading to physicians (existing or potential MHD Facilities physicians) practicing with other providers. There is no guarantee, therefore, that MGH physician development activities will benefit MHD Facilities, especially if MHD Facilities incur sustained losses or economic disadvantages.

- 8.2 Rights Cumulative. The various rights and remedies herein provided for shall be cumulative and in addition to any other rights and remedies the Parties may be entitled to pursue under the law. The exercise of one or more of such rights or remedies shall not impair the rights of either Party to exercise any other right or remedy at law or in equity.
- 8.3 Assignment. Except as otherwise described herein, no Party shall, without the prior written consent of the other Party, assign any rights or delegate any duties arising out of this Agreement.
- 8.4 Indemnity.
- 8.4.1 MGH shall defend, indemnify and hold the MHD Indemnified Persons, free and harmless from and against any and all Claims arising out of, related to, or in connection with MGH's performance of or failure to adequately perform the Management and Staffing Services hereunder, regardless of the extent to which the negligent or intentional acts or omissions of MHD, or any of its directors, officers, employees, agents, counsel, and representatives, caused or contributed to the Claims. MGH's indemnity and defense obligations hereunder shall include, but not be limited to, any Claims arising out of or incident to any harassing, abusive or otherwise inappropriate behavior or conduct by Support Personnel or any other employee or contractor of MGH, including, without limitation, behavior or conduct that results in the assertion of claims (including derivative claims or other claims asserted against MGH) arising under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act and any analogous local, State or Federal law or statute, including without limitation, the California Fair Employment and Housing Act, the Employee Retirement Income Security Act, the Worker Adjustment and Retraining Notification Act, and any other claim based upon any act or omission of MHD or any physician and/or any other employee or contractor of MHD.

Notwithstanding any of the foregoing, MGH shall have no obligation hereunder to indemnify or defend MHD solely with respect to the proportion of any Claim that a court determines is directly attributable to specific direction from the MHD Board of Directors that unreasonably rejects the recommendations of MGH staff providing management services to MHD hereunder. The MHD Board of Directors shall be deemed to have reasonably rejected the recommendations of MGH staff providing management services to MHD if the MHD Board relied on the information, opinion, reports or statements of counsel, independent accountants or other persons as to matters which the Board believes to be within such person's or persons' professional or expert competence. The absence of the MHD Board's reliance on such persons shall not create any presumption that the MHD Board unreasonably rejected a recommendation of MGH staff. MGH's indemnity obligations hereunder shall include, but not be limited to, attorney's fees and expert, consultant and court costs.

The provisions of this Section 8.4.1 are intended to apply only to claims and liabilities that are not covered by or that exceed the policy limits of applicable insurance coverage in place for MHD or MGH, and as such, this Section does not apply if the effect of such provision would be to negate insurance coverage that would otherwise be available but for these contractual indemnity provisions. Nothing contained herein is intended or should be construed to (i) create any liability to or right of recovery or subrogation on the part of any insurance carrier or any other third party against either of the parties; or (ii) affect the allocation of responsibilities among insurance carriers or other persons who may have responsibility for satisfaction of all or any part of any claim made against either party. Notwithstanding the foregoing, MGH's indemnity obligations hereunder shall include the costs of any increases in the premiums, deductibles and/or self-insured retentions with respect to MHD's insurance that result from MHD's insurance covering Claims that would otherwise have fallen within MGH's indemnity obligations hereunder.

- 8.4.2 MHD agrees to give MGH a prompt written Indemnity Notice of any Third Party Claim that may give rise MGH's indemnity obligations pursuant to this Section 8.4. In the event MGH's CEO, CFO or CAO becomes aware of a Third Party Claim, then MHD shall be deemed to have immediately notified MGH of the Third Party Claim. Upon receipt of an Indemnity Notice, MGH shall within thirty (30) calendar days after receipt of the Indemnity Notice, in good faith, review the Third Party Claim and, if appropriate, MGH shall, at its sole cost and expense, challenge, appeal or defend against the matter described in the Indemnity Notice within the applicable time periods required by law and shall provide the indemnified party written notice of same.

- 8.4.2.1 (A) MGH shall not, without MHD's written consent, settle or compromise any Third Party Claim or consent to entry of any judgment that does not include as an unconditional term thereof the claimant or the plaintiff giving MHD a release from all liability in respect of such Third Party Claim, and (B) in the event that MGH undertakes defense of any Third Party Claim, MHD, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with MGH and its counsel or other representatives concerning such Third Party Claim and MGH and MHD and their respective counsel or other representatives shall cooperate with respect to such Third Party Claim.
- 8.4.2.2 Anything in this Section 8.4 to the contrary notwithstanding, MHD may at any time assume full control over the responsibility for any Third Party Claim, by written notice to MGH releasing MGH from any further indemnity obligation pursuant to this Agreement with respect to such Third Party Claim.
- 8.4.2.3 This Section 8.4 shall survive the expiration or sooner termination of this Agreement.
- 8.5 Construction of Agreement. This Agreement is subject to and shall be governed solely by the laws of the State of California. The Parties agree that the terms and provisions of this Agreement represent their mutual agreement and that they are not to be construed more liberally in favor of, or more strictly against, any Party hereto.
- 8.6 Waiver of Breach. Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of either the same or any different provision of this Agreement. No waiver shall be effective against either Party unless it is in writing, signed by that Party. No waiver of any breach of any term or covenant contained in this Agreement shall operate as a waiver of any subsequent breach thereof.
- 8.7 Force Majeure. Notwithstanding any other provisions contained herein, no Party shall be liable to another Party, and shall not be deemed to be in default hereunder, for the failure to perform or provide any of the supplies, services, personnel, or other obligations to be performed or provided pursuant to this Agreement if such failure is a result of a labor dispute, act of God, or any other event which is beyond the reasonable control of the Party.
- 8.8 Notice. Whenever, under the terms of this Agreement, written notice is required or permitted to be given by any Party to any other Party, such notice shall be deemed to have been sufficiently given if personally delivered or deposited in the United States Mail, in a properly stamped envelope, certified or registered mail, return receipt requested, addressed to the Party to whom it is to be given, at the address

hereinafter set forth. Either Party hereto may change its respective address by written notice in accordance with this paragraph. Such notice shall be deemed to have been received (i) when actually received, (ii) on the delivery date indicated on the return receipt, or (iii) within five (5) business days of being deposited with the United States Postal Service, whichever is earlier.

- 8.9 Entirety. This Agreement and the Hospital Leases as referenced herein contain the sole and entire agreement between the Parties and shall supersede all prior agreements between the Parties as of the Commencement Date hereof. The Parties acknowledge and agree that none of them has made any representations with respect to the subject matter of this Agreement, or any representation inducing the execution and delivery hereof except such representations as are specifically set forth herein, and each of the Parties hereto acknowledges that it has relied on its, his, or her own judgment in entering into the same.
- 8.10 Amendments. This Agreement may not be amended except upon the mutual written consent of the Parties. The Parties agree to negotiate in good faith regarding amendments hereto that either Party, upon the advice of legal counsel, determines are necessary to comply with any applicable state or Federal requirements.
- 8.11 Parties in Interest. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties hereto.
- 8.12 No Third Party Rights. The Parties acknowledge and agree that none of the provisions contained herein are intended by the Parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement.
- 8.13 Exhibits. All exhibits referred to herein are hereby incorporated herewith. In the event of a conflict between a provision of this Agreement and an Exhibit, the Exhibit shall control with respect to the subject matter of the Exhibit.
- 8.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.
- 8.15 Severability. In the event any provision of this Agreement is rendered invalid or unenforceable by the enactment of any applicable statute or ordinance or by any regulation duly promulgated by officers of the United States, or of the State of California, acting in accordance with law, or is declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect.

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MANAGEMENT SERVICES AND STAFFING AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

“MHD”

“MGH”

Marin Healthcare District

Marin General Hospital

By: _____
Harris “Hank” Simmons, M.D.
Secretary, Board of Directors

By: _____
Mara Perez, Ph.D.
Secretary, Board of Directors

EXHIBIT 1.7

LIST OF MGH INSURANCE

1. General and Professional Liability – with an aggregate coverage limit of at least \$20,000,000 and deductible/self-insured retention not to exceed \$500,000
2. Directors and Officers Liability - with an aggregate coverage limit of at least \$10,000,000 and deductible/self-insured retention not to exceed \$250,000
3. Employer’s Practices Liability – with an aggregate coverage limit of at least \$3,000,000 and deductible/self-insured retention not to exceed \$250,000
4. Workers’ Compensation in compliance with applicable laws/regulations

EXHIBIT 2.9

LIST OF MHD INSURANCE

1. General and Professional Liability - an aggregate coverage limit of at least \$20,000,000 and deductible/self-insured retention not to exceed \$100,000
2. Directors and Officers Liability – with an aggregate coverage limit of at least \$5,000,000 and deductible/self-insured retention not to exceed \$200,000
3. Real Property Insurance – with an aggregate coverage limit of at least \$100,000,000 and deductible/self-insured retention not to exceed \$100,000

EXHIBIT 4.1.2
 CLINIC DECISION CHART
 DECISION-MAKING GUIDANCE

This Agreement contains provisions conferring decision-making authority on the Parties. In order that the relationship created and implemented pursuant to this Agreement complies with the California prohibition against the corporate practice of medicine, certain decisions are listed as requiring, the Parties have adopted the following principles:

Exclusive Decision-Making Authority: The Party with “Exclusive Decision-Making Authority” has no obligation to consult with the other, even on an informal basis.

Consultative Decision-Making Authority: The Party with “Consultative Authority” is encouraged to informally seek input from the other; nevertheless such Party retains final decision-making authority.

Shared Decision-Making Authority: The Party with “Shared Decision-Making Authority” over a particular decision retains the power to make the final decision, however such Party shall seek a recommendation from the other through a formal process.

Joint Approval: A decision requiring “Joint Approval” requires both Parties to agree upon formal consultation.

The following table sets forth guidance to interpreting the Parties’ respective decision-making authority in the context of this Agreement.

Practicing Physicians Make Ultimate Decision			Neither Party May Solely Make Ultimate Decision	Lay Entity Makes Ultimate Decision		
No Duty to Consult	Informal Advice	Formal Recommendation	Formal Consultation and Agreement	Formal Recommendation	Informal Advice	No duty to Consult
↓	↓	↓	↓	↓	↓	↓
Exclusive	Consultative	Shared	Joint	Shared	Consultative	Exclusive
<ul style="list-style-type: none"> • Setting purely medical practice policies • What conditions can be referred to another physician specialist 	<ul style="list-style-type: none"> • Practice parameters • Making treatment decisions that involve bioethical issues 	<ul style="list-style-type: none"> • Establishing bioethics policies • To whom a physician can refer • *Credentialing-establishing the standards • *Credentialing- 	<ul style="list-style-type: none"> • How many hours a physician should work • Non-clinical decisions concerning medical records • Level and scope of malpractice 	<ul style="list-style-type: none"> • Approving annual budget • Contractual relationships with third-party payors • Types of technology which should be employed 	<ul style="list-style-type: none"> • Coding and billing procedures • Controlling administrative data 	<ul style="list-style-type: none"> • Compensation for allied health and lay staff • Selecting purely administrative staff that do

Practicing Physicians Make Ultimate Decision

**Neither Party
May Solely
Make Ultimate
Decision**

Lay Entity Makes Ultimate Decision

No Duty to Consult	Informal Advice	Formal Recommendation	Formal Consultation and Agreement	Formal Recommendation	Informal Advice	No duty to Consult
<p style="text-align: center;">↓</p> <p style="text-align: center;">Exclusive</p> <ul style="list-style-type: none"> • What diagnostic tests are appropriate for a particular condition • What gets included in a particular patient’s medical records • Whether a particular patient visit requires a particular billing code • Communication of a purely clinical nature with patient • Determination as to whether an emergency medical condition exists 	<p style="text-align: center;">↓</p> <p style="text-align: center;">Consultative</p> <p>Credentiaing for specific procedure: establishing general standards and as applied to individuals</p> <ul style="list-style-type: none"> • Handling impaired physicians • Which CME courses should be taken • Terminating physicians from practice arrangements on discretionary grounds, i.e., quality of care and business concerns, failure to comply with UR procedures, “without cause” 	<p style="text-align: center;">↓</p> <p style="text-align: center;">Shared</p> <p>acting on an individual application</p> <ul style="list-style-type: none"> • *Developing a UR & QA plan • Implementing a UR & QA plan • Enforcing the UR & QA plan (except termination) • Developing drug formularies • Selecting key administrative-medical officers • *How many patients a physician should see • Controlling medical data 	<p style="text-align: center;">↓</p> <p style="text-align: center;">Joint</p> <p>coverage</p> <ul style="list-style-type: none"> • *Whether and when to utilize limited license practitioners • Selecting independent LLPs and “physician extenders” • Settling cases for all parties named • Marketing • Establishing grievance policies 	<p style="text-align: center;">↓</p> <p style="text-align: center;">Shared</p> <ul style="list-style-type: none"> • Selecting key administrative positions • Purchasing, replacing and repairing equipment • *How much patients should pay 	<p style="text-align: center;">↓</p> <p style="text-align: center;">Consultative</p>	<p style="text-align: center;">↓</p> <p style="text-align: center;">Exclusive</p> <p>not hold key positions</p>

***Note:** In these “shared” decisions, approval of the recommendations must not be withheld absent convincing justification transmitted in writing.

EXHIBIT 4.3.2

FORM OF BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is made as of the date last written below ("**Effective Date**") by and between MARIN HEALTHCARE DISTRICT, a political subdivisions of the State of California and a public district ("**CE**"), and MARIN GENERAL HOSPITAL CORPORATION, a California nonprofit public benefit corporation doing business as Marin General Hospital ("**BA**").

RECITALS

- A. CE is a "covered entity" under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("**HIPAA**") and must enter into "business associate" contracts with contractors that create, receive, maintain, or transmit Protected Health information ("**PHI**") on behalf of CE.
- B. Pursuant to the terms of one or more agreements between the parties, whether oral or in writing (collectively, the "**Contract**"), BA provides certain services to CE, some of which may involve disclosure of PHI by CE to BA.
- C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the **HITECH Act**"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "**HIPAA Regulations**") and other applicable laws, including without limitation state laws governing the privacy and security of health information (HIPAA, the HITECH Act, and the HIPAA Regulations, may collectively be referred to as "**Health Information Laws**"), as amended from time to time.
- D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

AGREEMENT

1. Definitions.

Capitalized terms not defined in this BAA shall have the meanings assigned to them under HIPAA, the HITECH Act, or the HIPAA Regulations, as applicable.

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Discovery** has the meaning described at 42 U.S.C. Section 17932(c) and 45 C.F.R. Section 164.410.
- h. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- i. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- j. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- k. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- l. **Protected Health Information** or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. *[If the business associate creates, receives, maintains or transmits electronic PHI on behalf of the CE, the following language should be included]:* Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- m. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
- n. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- o. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

- p. **Subcontractor** means a person to whom BA delegates a function, activity, or service, other than in the capacity of a member of the workforce of BA.
- q. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. Obligations of Business Associate

- a. **In General.** BA shall comply with the provisions of HIPAA, the HITECH Act, and the HIPAA Regulations that directly apply to BA. Except as expressly provided in this BAA, BA shall not permit the unauthorized or unlawful access to, nor use or disclose, PHI, other than as permitted or required by the Contract, this BAA, or as required by law. To the extent BA carries out one or more of CE's obligation(s) under the Privacy Rule, BA shall comply with the requirements of the Privacy Rule that apply to CE in the performance of such obligations.
- b. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract, this BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Section 164.504(e)(2) and 164.504(e)(4)(i).
- c. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].
- d. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and BAA, or as required by law. Notwithstanding any provision of this BAA: (i) except with CE's prior written consent, BA shall not use or disclose Protected Information for Fundraising (as described at 45 C.F.R. 164,514(f)) or Marketing purposes; (ii) BA shall not disclose Protected Information to a health plan for Payment or Health Care Operations purposes if the patient has requested this special restriction and has paid CE out of pocket in full for the health care item or service to which the Protected Information solely

relates; and (iii) BA shall not engage in the Sale of PHI (as described at 45 C.F.R. 164.502(a)(5)) with respect to Protected Information, except with CE's prior written consent, provided that this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract. BA shall not use or disclose Protected Information for fundraising or marketing purposes.

- e. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- f. **Business Associate's Subcontractors and Agents.** BA shall ensure that any Subcontractors or agents that create, receive, maintain, or transmit Protected Information on behalf of BA agree *in writing* to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required under paragraph 2e above with respect to Electronic Protected Health Information [45 C.F.R Section 154.504(e)(2)(ii)(D); 45 C.F.R Section 164.308(b)]. BA shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (45 C.F.R Sections 164.5300 and 164.530(e)(1)). Such written arrangement shall include, without limitation the duty to notify BA of the Discovery of any suspected or actual access, use, or disclosure of Protected Information not permitted by the Contract, this BAA, or applicable Health Information Laws without unreasonable delay and in no event later than *two (2) business days* after Discovery.
- g. **Access to Protected Information.** If the BA maintains a Designated Record Set on behalf of CE, BA shall make Protected Information maintained by BA or its agents or Subcontractors in Designated Record Sets available to CE for inspection and copying within *five (5) days* of a request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2) (ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.
- h. **Amendment of PHI.** If the BA maintains a Designated Record Set on behalf of CE, within *ten (10) days* of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and Subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or Subcontractors, BA must notify CE in writing within *five (5) days* of the request and of any approval or denial of

amendment of Protected Information maintained by BA or its agents or Subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i. **Accounting of Disclosures.** Promptly upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and Subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and Subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or Subcontractors, BA shall within *five (5) days* of the request forward it to CE in writing.
- j. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "**Secretary**") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** BA, its agents and Subcontractors, shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** Except as otherwise agreed in writing by the parties: (i) BA has no ownership rights with respect to the Protected Information; and (ii) BA shall have no right to compile or distribute any statistical analysis or report utilizing such Protected Information, any aggregate information derived from such Protected Information, or any other Protected Information obtained from CE.
- m. **Business Associate's Insurance.** BA shall obtain insurance for itself and all its employees, agents, and independent contractors in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate if Commercial General Liability insurance and Two Million Dollars (\$2,000,000) per occurrence

and Four Million Dollars (\$4,000,000) annual aggregate of Errors and Omissions insurance. The Errors and Omissions insurance shall cover, among other things, Breaches. BA shall provide CE with certificates of insurance or other written evidence of the insurance policy or policies required herein prior to execution of this BAA (or shortly thereafter as is practicable) and as of each annual renewal of such insurance policies during the period of such coverage. Further, in the event of any modification, termination, expiration, non-renewal or cancellation of any such insurance policies, BA shall give written notice thereof to CE not more than ten (10) days following BA's receipt of such notification.

n. Reporting Improper Access, Use or Disclosure.

1. **Initial Report; Corrective Actions.** BA shall provide an initial telephone report to CE's Privacy Officer within *twenty-four (24)* hours of any suspected or actual Breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or BAA; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, or any actual or suspected use or disclosure of data in violation of the Contracts, the BAA or applicable Health Information Laws. BA shall take (i) prompt corrective action to cure any deficiencies that led to such unauthorized access, use, or disclosure; and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]. CE shall make the determination whether notification to the patient is necessary.
2. **Reporting Breaches of Unsecured PHI.** Without limiting Section 1, following the Discovery of any actual or suspected Breach of Unsecured PHI, BA also shall notify CE's Privacy Officer *in writing* of such Breach without unreasonable delay and in no case later than *three (3) business days* after Discovery. The notice shall include, to the extent possible, (i) a brief description of what happened, including the date of the breach and the date of the Discovery of the Breach, (ii) the identification of each individual whose Unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, (iii) a description of the types of Unsecured PHI that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, etc.); (iv) any steps individuals should take to protect themselves from potential harm resulting from the Breach; (v) a brief description of what BA is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further breaches; and (vi) contact procedures for individuals to ask questions learn additional information, which shall include a toll free telephone number, an e-mail address, website, or postal address, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information

becomes available. BA also shall provide written updates to CE regarding the information specified above promptly as new information becomes available.

3. **Cost of Notification.** BA shall pay the actual, reasonable costs of CE to provide the notifications required under this Section that relate to Breaches, to the extent: (i) such PHI is in BA's possession, custody, or under BA's control at the time of the Breach and (ii) such Breach does not arise out of or in connection with CE's failure to comply with applicable Health Information Laws, including, without Limitation, CE's failure to implement appropriate Administrative, Technical, and Physical Safeguards with respect to any Protected Information which BA and CE exercise shared possession, custody or control.
- o. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a Subcontractor or agent that constitutes a material breach or violation of the Subcontractor or agent's obligations under the Contract, this BAA or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contract with the Subcontractor or agent if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a Subcontractor or agent that BA believes constitutes a material breach or violation of the Subcontractor or agent's obligations under the Contract, BAA or other arrangement within *twenty-four hours (24)* of Discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- p. **Mitigation.** BA shall mitigate, to the extent practicable and at BA's expense, any harmful effect that is known to BA of access, use, or disclosure of Protected Information not authorized by the Contract, this BAA, or applicable Health information Laws.
- q. **Audits, Inspection and Enforcement.** Within *ten (10) days* of a request by CE, BA and its agents and Subcontractors shall allow CE or its agents or Subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether BA has complied with this BAA or maintains adequate security safeguards; provided, however, that (i) BA and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of BA to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by BA. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems, books, records, agreements, policies and procedures does not relieve BA of its responsibility to comply with this BAA, nor does CE's (i) failure to detect or (ii) detection, but failure to notify BA or require BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract or BAA. BA shall notify CE within *five (5) days* of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal government entity.

3. Termination

- a. Material Breach.** A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for *immediate* termination of the Contract, any provision in the Contract or separate written agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

4. Indemnification.

To the extent permitted by law, BA shall indemnify, defend, and hold harmless CE from any and all liability, claim, penalty, lawsuit, injury, loss, expense or damage (including, without limitation, any federal or State administrative penalties and/or costs of enforcement actions arising out of or related to any breach of privacy requirements), resulting from or relating to the acts or omissions of BA in connection with the representations, duties, and obligations of BA under this BAA. Any limitation of liability contained in the Contract shall not apply to the indemnification requirement of this provision. This Section shall survive the termination of this BAA.

5. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

6. Litigation or Administrative Proceedings

BA shall notify CE within *forty-eight (48) hours* of any litigation or administrative proceedings commenced against BA or its agents or Subcontractors. In addition, BA shall make itself and any Subcontractors, employees and agents assisting BA in the performance of its obligations under the Contract or BAA, available to CE, at no cost to CE, to testify as a witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, agents or employees based upon a claimed violation of HIPAA, the HITECH Act, the HIPAA regulations, or other state or federal laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.**7. No Third-Party Beneficiaries**

Nothing express or implied in the Contract or this BAA is intended to confer, nor shall anything herein confer upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8.

Notices

All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, or deposited with the overnight courier addressed as follows:

If to CE:Marin Healthcare District
100 Drakes Landing Rd #250
Greenbrae, CA 94904
Attn.: Privacy Officer
Telephone: _____
Fax: _____

If to BA: Marin General Hospital
250 Bon Air Road
Greenbrae CA 94904
Attention: Privacy Officer
Telephone: _____
Fax: _____

Or to other such persons or places as either party may from time to time designate by written notice to the other in accordance with this Section.

9. Interpretation

The provisions of this BAA shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations, and other state and federal laws related to security and privacy. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is

consistent with HIPAA, the HITECH Act, the HIPAA regulations, and other state and federal laws related to security and privacy. Except as specifically required to implement this BAA, or to the extent inconsistent with this BAA, all other terms of the Contract shall remain in effect.

10. Entire Agreement of the Parties

This BAA supersedes any and all prior and contemporaneous business associate agreements or addenda between the parties and constitutes the final and entire agreement between the parties with respect to the subject matter hereof. No representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

11. Regulatory References.

A reference in this BAA to a section of regulations means the section as in effect or as amended, and for which compliance is required.

12. Identity Theft Program Compliance.

If CE is required to comply with the “Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003,” as promulgated and enforced by the Federal Trade Commission [16 C.F.R. Part 6781] (“Red Flag Rule”), then to the extent BA is performing an activity in connection with one or more “covered accounts” (as defined in the Red Flags Rule) pursuant to the Contract, BA shall establish and comply with its own reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identifying theft, which shall be consistent with and no less stringent than those required under the Red Flag Rule or the policies and procedures of CE’s Red Flag Program. BA shall provide its services pursuant to the Contract in accordance with such policies and procedures. BA shall report any detected “red flags” (as defined in the Red Flags Rule) to CE and shall, in cooperation with CE, take appropriate steps to prevent or mitigate identity theft.

13. Counterparts.

This BAA may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this BAA as of the Effective Date.

COVERED ENTITY
MARIN HEALTHCARE DISTRICT

BUSINESS ASSOCIATE
MARIN GENERAL HOSPITAL

By: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

Tab 3

OUTPATIENT DIAGNOSTIC SERVICES AGREEMENT

This Outpatient Diagnostic Services Agreement (“**Agreement**”) is entered into with an effective date of January 1, 2012 (the “**Effective Date**”), by and between Marin Healthcare District, a political subdivision of the State of California and a public district (“**MHD**”), and Marin General Hospital, a California nonprofit public benefit corporation (“**MGH**”). MHD and MGH are sometimes referred to in this Agreement as a “**Party**” or collectively, as the “**Parties.**”

Recitals

A. MHD is a health care district organized pursuant to the California Local Health Care District Law, and owns and operates clinics providing primary and specialty care, including without limitation cardiovascular clinics presently located at 2 Bon Air Road, Suite 200, Larkspur, California, and 165 Rowland Way, Suite 103, Novato, California and 1100 South Eliseo Drive, Greenbrae, California (the “**Cardiovascular Clinics**”).

B. MGH owns and operates a general acute care hospital located in Greenbrae, California (the “**Hospital**”), which includes without limitation an inpatient and outpatient cardiology service.

C. MGH wishes to engage MHD to provide certain outpatient diagnostic cardiovascular and other services to patients of the Hospital under arrangements that satisfy the requirements specified in 42 C.F.R. § 410.28 and all other applicable laws and regulations so as to permit MGH to bill and collect from patients, commercial payors and governmental payors, including without limitation the Medicare Program, on MGH’s own account the charges for such services.

D. Accordingly, the Parties hereby agree as follows.

Agreement

1. Definitions

- (a) “**Addendum**” shall mean the Employee Leasing Addendum.
- (b) “**Administrator**” shall mean an administrator to supervise and direct the operation of the Diagnostic Center.
- (c) “**Agreement**” shall mean this Outpatient Diagnostic Services Agreement as referenced above.
- (d) “**CAO**” shall mean MHD’s Chief Administrative Officer.
- (e) “**Cardiovascular Clinics**” shall have the definition set forth in Recital A above.

(f) **“Claims”** shall mean all claims, actions, causes of action, controversies, charges, obligations, damages, demands, expenses, costs, fines, penalties, fees, and/or liabilities, including, without limitation, loss, damage, or injury to or death of persons or property in any manner.

(g) **“Diagnostic Center”** shall mean the premises operated by MHD in which Outpatient Diagnostic Services are provided.

(h) **“Diagnostic Center Patients”** shall mean all individuals receiving Outpatient Diagnostic Services.

(i) **“Effective Date”** shall mean January 1, 2012.

(j) **“Hospital”** shall have the definition set forth in Recital B above.

(k) **“MGH”** shall mean Marin General Hospital, a California nonprofit public benefit corporation.

(l) **“MHD”** shall mean the Marin Healthcare District, a political subdivision of the State of California and a public district.

(m) **“MHD Indemnified Person”** shall mean MHD’s directors, officers, employees, agents, counsel, and representatives.

(n) **“Outpatient Diagnostic Services”** shall mean (i) non-carotid ultrasound; (ii) carotid ultrasound; (iii) electrocardiograms; (iv) computer-assisted tomography (cardiac and non-cardiac); (v) echocardiograms; (vi) stress echocardiograms; (vii) stress (treadmill, bicycle, pharmacologic) testing; (viii) nuclear medicine studies; (ix) holter monitor; and (x) vascular studies. The parties may modify this list of Outpatient Diagnostic Services from time to time as mutually agreed upon.

(o) **“Party” or “Parties”** shall refer to MHD and/or MGH as defined above.

2. Outpatient Diagnostic Services. MHD shall provide Outpatient Diagnostic Services to patients of the Hospital at locations approved in advance by MGH.

3. Compensation. As compensation for the performance of Outpatient Diagnostic Services hereunder, MGH shall pay to MHD monthly compensation equal to all of MHD’s actual expenses incurred in the performance of Outpatient Diagnostic Services; provided, however, such compensation shall be offset by any amounts owed by MHD to MGH for the leasing of MGH employees in accordance with the Employee Leasing Addendum attached hereto. Such compensation shall be payable one month in arrears (by no later than the end of the succeeding month), to be determined via a reconciliation of the expenses and employee leasing costs as set forth above. In consideration of such compensation from MGH, MHD hereby assigns to MGH any and all rights to bill, collect and receive compensation on account of the Outpatient Diagnostic Services and shall not bill or seek to collect any compensation from any party other than MGH on account of the Outpatient Diagnostic Services. MHD shall remit to MGH any sums received from parties other than MGH on account of the Outpatient Diagnostic Services.

4. Operating Covenants. In the performance of the Outpatient Diagnostic Services, MGH and MHD shall comply with all of the following:

(a) Operation of Diagnostic Center. MHD shall operate the Diagnostic Center and shall enter into such leases or other legal arrangements as are required to arrange for the occupancy and use of such premises by the Diagnostic Center. MHD shall provide or arrange for the availability and use of all equipment, furniture and supplies required for the performance of the Outpatient Diagnostic Services. Except as may be otherwise agreed in writing by MHD and MGH, MHD shall provide all staffing required for the operation of the Diagnostic Center, including without limitation the services of an Administrator. MHD may provide for staffing or other services through subcontractors of staff or services.

(b) Physician Supervision. All Outpatient Diagnostic Services shall be performed with the appropriate level of physician supervision required for payment for those services pursuant to the Medicare Program.

(c) Registration of Patients. All Diagnostic Center Patients shall be registered at the Diagnostic Center as patients of the Hospital prior to receiving such services.

(d) Notices and Forms. All Diagnostic Center Patients shall receive the same notices and sign the same forms as are used for other patients receiving outpatient services in the Hospital's outpatient departments.

(e) Ordering Physicians. MHD shall provide Outpatient Diagnostic Services only subject to and in accordance with orders given by a physician who is on the Medical Staff of the Hospital and that are within the scope of privileges of that ordering physician.

(f) Professional Responsibility. The Hospital shall have professional responsibility for all Outpatient Diagnostic Services performed at the Diagnostic Center, and shall subject all those services to monitoring under the programs by which the Hospital monitors the quality of care provided in the Hospital's outpatient departments.

(g) Periodic Visits. Appropriate Hospital personnel shall make periodic visits to the Diagnostic Services Center and review with the Administrator and other appropriate Diagnostic Center personnel the Diagnostic Center's compliance with the Hospital's quality standards.

(h) Medical Records. Medical records of Outpatient Diagnostic Services performed at the Diagnostic Center shall be created and maintained in a manner that is consistent with the Hospital's policies and procedures, as well as applicable standards of the Joint Commission, and copies of those medical records shall be transmitted to the Hospital within the same time frames that apply to the records of services provided in the Hospital's outpatient departments.

(i) Incident Reports. MHD shall provide to the Hospital incident reports in a timely manner in accordance with the Hospital's standards for incident reports applicable to the Hospital's inpatient departments.

(j) Utilization and Other Review. MHD shall perform utilization review and other relevant review of the Outpatient Diagnostic Services on the same terms that apply to services provided in the Hospital's outpatient departments.

(k) Advice by Clinical Leaders and Medical Staff. Hospital clinical leaders and officers of the Hospital's Medical Staff shall have the opportunity to provide advice to MHD regarding the performance of Outpatient Diagnostic Services.

(l) Monitoring of Performance. Appropriate officers of the Hospital designated by MGH from time to time shall monitor the performance of Outpatient Diagnostic Services for compliance with the terms and conditions of this Agreement, and all other applicable standards.

(m) MHD Accommodation of Certain MGH Operations on Site. MHD shall accommodate the access and presence of certain MGH lab technicians and other personnel coming on site at the Cardiovascular Clinics from time to time to perform mobile point of care testing on MGH patients present at the Cardiovascular Clinics and shall cooperate with MGH to register both Cardiovascular Clinic sites as MGH laboratory license locations under applicable regulations.

(n) MHD's Approval. The Parties acknowledge and agree that any MHD approvals or direction for any matter hereunder or other MHD actions or approvals needed in the course of any services provided to MHD by MGH hereunder, including, without limitation, pursuant to the Employee Leasing Addendum, must be obtained after review and approval by the following: (a) MHD's CAO (reviews for compliance and for recommendation to the CFO and CEO); (b) MHD's CFO (reviews for compliance and for recommendation to the CAO and CEO); (c) MHD's CEO (upon reviews and recommendations from the CAO and CFO); and (d) MHD's Board of Directors (where Board level approval is required, upon the recommendation of the CEO).

(o) Accreditation. MHD will pursue industry accreditations or other appropriate recognitions for the Outpatient Diagnostic Services, unless the parties determined that such should be sought on behalf of or by MGH.

5. Term of Agreement/Effect of Termination. This Agreement shall be effective as of the Effective Date and shall remain in force and effect until terminated pursuant to this Section 5 (Term of Agreement/Effect of Termination). This Agreement shall terminate immediately upon the effectiveness of any order, law, rule or regulation that provides that, or has an effect such that, MHD may not lawfully provide the Outpatient Diagnostic Services or MGH may not bill and collect for such services in accordance with 42 C.F.R. § 410.28 or any applicable successor law, rule or regulation. Notwithstanding any of the foregoing, either MHD or MGH may terminate this Agreement immediately upon the other party's material breach of or default under this Agreement which is not cured within thirty (30) days following written notice of that breach or default (and termination of this Agreement shall be MGH's sole remedy for any breach of this Agreement by MHD). Either party may terminate this Agreement without cause after 120 days written notice to the other. This Agreement shall terminate immediately upon the effectiveness of any written agreement of MGH and MHD to effect such a termination.

6. Indemnification.

(a) Indemnification by MGH. MGH shall defend, indemnify and hold the MHD Indemnified Persons free and harmless from and against any and all Claims arising out of, related to, or in connection with this Agreement and/or the services provided hereunder, including, without limitation, any Claim or matter arising out of the Employee Leasing Addendum, regardless of the extent to which the negligent or intentional acts or omissions of MHD, or any of its directors, officers, employees, agents, counsel, and representatives, caused or contributed to the Claims. MGH's indemnity obligations hereunder shall include attorney's fees and expert, consultant and court costs.

(b) Notwithstanding any of the foregoing, MGH shall have no obligation hereunder to indemnify or defend MHD solely with respect to the proportion of any Claim that a court determines is directly attributable to specific direction from the MHD Board of Directors that unreasonably rejects the recommendations of MGH staff providing management services to the MHD hereunder. The MHD Board of Directors shall be deemed to have reasonably rejected the recommendations of MGH staff providing management services to the MHD if the Board relied on the information, opinion, reports or statements of counsel, independent accountants or other persons as to matters which the Board believes to be within such person(s)' professional or expert competence. The absence of the Board's reliance on such persons shall not create any presumption that the Board unreasonably rejected a recommendation of MGH staff. MGH's indemnity obligations hereunder shall include but, not be limited to, attorney's fees and expert, consultant and court costs.

(c) Claims and Liabilities in Excess of Insurance. The terms and conditions of Section 6(a) (Indemnification by MGH) shall apply only to claims and liabilities that are not covered by or that exceed the policy limits of applicable insurance coverage. This Section 6 (Indemnification) shall not apply if and to the extent that the effect of such provision would be to negate insurance coverage that would otherwise be available but for these contractual indemnity provisions. Nothing contained in this Section 6 (Indemnification) is intended or should be construed to: (i) create any liability to or right of recovery or subrogation on the part of any insurance carrier or any other third party against either of the parties; or (ii) affect the allocation of responsibilities among insurance carriers or other persons who may have responsibility for satisfaction of all or any part of any claim made against either party. Notwithstanding the foregoing, MGH's indemnity obligations hereunder shall include the costs of any increases in the premiums, deductibles and/or self-insured retentions with respect to MHD's insurance that result from MHD's insurance covering Claims that would otherwise have fallen within MGH's indemnity obligations hereunder.

(d) Defense. Except as otherwise required by the terms of an applicable insurance policy under which defense is provided, the selection of legal counsel to defend any claim or legal action against MHD or MGH (or any person or party for whom either or both are required to provide a defense), shall be determined by written agreement of MHD and MGH. If the parties are unable to reach timely agreement, then the responsible insurance carrier(s) shall be authorized to make such selection. If there is no insurer's duty to defend, and the parties are unable to reach agreement, then MHD's Board of Directors shall select such counsel.

(e) Settlement. Except as otherwise provided in the applicable insurance policy(ies), prejudgment settlement proposals involving both MGH and MHD and relating to services under this Agreement shall require the written agreement of both MGH and MHD. Notwithstanding the foregoing, either party may unilaterally accept that portion of the proposal which relates to its liability in circumstances where the refusal to accept such proposal presents, in such party's reasonable business judgment, a material risk that it will be exposed to liability in excess of applicable insurance coverage, and it has retained independent counsel to review the claim and settlement offer and advise it regarding the issues and risks relating thereto.

7. Miscellaneous.

(a) Notices. Any notices required or desired to be sent pursuant to this Agreement shall be made in writing and addressed to the party and address provided to the other party for purposes of notice.

(b) Applicable Law/Attorney's Fees. This Agreement is governed by California law. If any action is commenced to enforce or interpret any term or condition of this Agreement, in addition to costs and any other relief, the prevailing party shall be entitled to reasonable attorney's fees. Jurisdiction and venue in the event of any legal action shall be in Marin County, California.

(c) Entire Agreement. Except as expressly provided herein, this Agreement contains the entire agreement of the parties hereto with respect to the matters contained herein.

(d) Assignment. No Party to this Agreement may assign this Agreement or such Party's rights and obligations hereunder without the prior written consent of the other Parties, which consent the other Parties may withhold or condition in their sole discretion, and any assignment without such written consent shall be void and ineffective.

(e) Time of Essence. Time is of the essence for this Agreement.

(f) Recitals. All of the Recitals are incorporated into this Agreement and constitute a part hereof.

(g) Representation by Counsel. MGH and MHD agree that, in connection with this Agreement and the matters contemplated hereby, each has either been represented by legal counsel of that party's own choice and/or has elected not to be represented by separate legal counsel in such matter.

(h) Counterparts. This Agreement may be executed in counterparts and by facsimile signatures, which will be effective as if original signatures. Each person signing this Agreement on behalf of a Party represents and warrants that he or she has the necessary authority to bind such Party and that this Agreement is binding on and enforceable against such Party.

[LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

MARIN HEALTHCARE DISTRICT

MARIN GENERAL HOSPITAL

By: _____
Harris "Hank" Simmonds, M.D.
Secretary, Board of Directors

By: _____
Mara Perez, Ph.D.
Secretary, Board of Directors

EMPLOYEE LEASING ADDENDUM

TO OUTPATIENT DIAGNOSTIC SERVICES AGREEMENT

This Addendum, when executed by the Parties, shall be incorporated into and become part of that certain Outpatient Diagnostic Services Agreement, effective as of January 1, 2012, by and between MHD and MGH. Unless defined in this Addendum, all capitalized terms shall have the meaning set forth in the body of the Agreement.

1. Leasing of Employees. MGH hereby agrees to provide to MHD all necessary personnel in order to fully staff the positions listed on the attached Exhibit A for MHD's Cardiovascular Clinic services. Such personnel shall perform on MHD's behalf all of the job requirements of such positions during the Cardiovascular Clinic operating hours. MHD shall outline the job requirements of the positions to be filled and to keep MGH informed of subsequent personnel needs or changes.

2. Leasing Fee. As compensation for MGH's providing of such personnel, MHD shall offset against the compensation owed by MGH to MHD under Section 3 of this Agreement all of the following costs incurred by MGH with respect to the personnel supplied to MHD hereunder: (a) wages and salary; (b) payroll taxes; (c) fringe benefits, including all reasonable fringe benefits which are or may become standard for MGH personnel (such as health insurance, disability insurance, life insurance, retirement plans, seminar and related travel expenses and professional dues); (d) if applicable, all expenses associated with relocating personnel to the Marin County, California area (including, but not limited to, the cost of house hunting trips, transporting household belongings, transportation, and temporary lodging for the personnel and their families, and reimbursement related to the sale of a residence and the replacement thereof normally afforded MGH personnel; and (e) all interim living expenses, including lodging, food, transportation and other out-of-pocket expenses for interim personnel.

3. Supervision of Personnel. MHD retains the right to exercise direction and control over all personnel in the performance of their services for MHD. Such control includes the right to reassign or request MGH to terminate or provide additional personnel. MGH and MHD shall agree on an established schedule for holidays, vacations and sick leave policies for the personnel. MHD shall be responsible for maintaining written records of hours worked by all salaried and hourly personnel, including regular and overtime hours.

4. Payroll Taxes. MGH acknowledges that it is responsible for payment of all payroll taxes for its employees and agrees to furnish proof of such payments to MHD upon written request.

5. Employee Review. MGH shall periodically, but not less than annually, review and evaluate the performance of all personnel leased to MHD. Moreover, MHD shall provide to MGH its own review and evaluation of the performance of all personnel.

6. Conduct of MHD and MGH. MHD and MGH covenant and agree to obey all federal, state and local statutes regarding treatment of employees in a business situation. While the parties hereto recognize and affirm that the employees leased to MHD are the employees of

MGH, each of MHD and MGH covenants and agrees not to conduct itself in any manner such as to make either of them liable for, or subject to any racial or sexual discrimination charges, wage and hour violations or any such other offenses for which it may be liable for damages or fines, or subject to criminal prosecution, without such party's knowledge or consent.

IN WITNESS WHEREOF, the Parties have executed this Addendum effective as of the date first set forth above.

MARIN HEALTHCARE DISTRICT

MARIN GENERAL HOSPITAL

By: _____
Harris "Hank" Simmonds, M.D.
Secretary, Board of Directors

By: _____
Mara Perez, Ph.D.
Secretary, Board of Directors

EXHIBIT A TO EMPLOYEE LEASING ADDENDUM

Ultrasound Technician (SVC)
Ultrasound Technician (SVC)
Physician Assistant Clinical Supv (VS)
Coord Cardiac Rehabilitation
Treadmill/Stress Technician
CT Technologist (CAM)
Cardiac Sonographer
Exercise Leader/Fitness Coach
Exercise Physiologist
Treadmill/Stress Technician
CT Technologist (CAM)
Nuclear Cardiovascular Technician (CAM)
Nuclear Cardiovascular Technician (CAM)
Outpatient Services Specialist (CAM)
Cardiac Sonographer
Treadmill/Stress Technician
Cardiac Sonographer
Cardiac Sonographer
Customer Service Representative (Admitting)
Admitting Representative
Customer Service Representative (Admitting) Grand
Coordinator Outpatient Registration