

**AMENDED AND RESTATED
LEASE AND HOSPITAL OPERATIONS AGREEMENT**

This Amended and Restated Lease and Hospital Operations Agreement (this "**Agreement**") is dated effective October ____, 2007 ("**Effective Date**"), and is by and between Eden Township Healthcare District, a California healthcare district ("**Landlord**") and Eden Medical Center, a California nonprofit public benefit corporation ("**Tenant**").

RECITALS

- A. Landlord is a California healthcare district, under the Local Health Care District Law, California Health & Safety Code Sections 32000 et seq.
- B. Landlord owns certain real property, personal property and improvements located in San Leandro, California, which includes the San Leandro Hospital at 13855 E. 14th Street (the "**Hospital**"), a licensed general acute care hospital.
- C. Landlord and Tenant entered into a Lease and Operations Agreement dated May 17, 2004 (the "**Original Agreement**").
- D. Tenant is a nonprofit corporation whose members are Landlord and Sutter Health, a California nonprofit public benefit corporation ("**Sutter**").
- E. Landlord and Tenant wish to amend and restate the Original Agreement as set forth in this Agreement. This Agreement shall replace and supersede the Original Agreement for all purposes from and after the Effective Date.
- F. Contemporaneously with execution of this Agreement, Landlord, Tenant and Sutter will enter into a Memorandum of Understanding dated effective October ____, 2007 ("**MOU**").

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I
BASIC PROVISIONS; DEFINITIONS**

This Article I summarizes the basic provisions and defines the basic terms of this Agreement between Landlord and Tenant. Other Articles, Sections and Paragraphs of this Agreement explain and define the basic provisions and are to be read together with these basic provisions.

1.1 Property. The Leased Property includes all the Real Property, Improvements and the Hospital, and is defined in Section 2.1.

1.2 Rent. As annual rent, Tenant shall expend not less than two percent (2%) of the Operating Expenses of the Leased Property each year of the Term on capital improvements to the Leased Property ("**Rent**").

1.3 Term. The term of this Agreement shall commence on the Commencement Date and shall expire on June 30, 2010 unless terminated earlier in accordance with the terms of this Agreement.

1.4 Definitions. For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section:

"**Action**" shall mean any action, order, writ, injunction, judgment or decree outstanding or any claim, suit, litigation, proceeding, labor dispute, arbitral action, governmental audit or investigation.

"**Additional Rent**" shall have the meaning given that term in Section 3.2.

"**Agreement**" shall have the meaning given that term in the first paragraph of this Agreement.

"**Appurtenances**" shall mean all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Real Property, including all easements appurtenant to and for the benefit of the Real Estate (a "**Dominant Parcel**") for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

"**Assignment**" shall have the meaning given that term in Section 12.1.

"**Award**" means all compensation, sums, or anything of value awarded, paid, or received on a total or partial Condemnation.

"**Best Efforts**" shall mean the efforts that a prudent person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible, provided, however, that a person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such person of this Agreement and the contemplated transactions or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

"**Breach**" shall mean any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other agreement, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

"**Claim**" shall mean any claim, writ, pleading or other legal claim seeking Damages, estoppel, an injunction or any other kind of legal relief.

"**Commencement Date**" shall mean July 1, 2004.

"**Condemnation**" shall mean (a) the exercise of any governmental power of eminent domain, whether by legal proceedings or otherwise, by a Condemner; and (b) a voluntary sale or transfer by Landlord to any Condemner, either under threat of condemnation or while legal proceedings for condemnation are pending.

"**Condemner**" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

"**Contract**" shall mean any agreement, contract, lease, service agreement, third-party payor agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding (a) under which Landlord has or may acquire any rights or benefits; (b) under which Landlord has or may become subject to any obligation or liability; or (c) by which Landlord or any of the assets owned or used by Landlord is or may become bound.

"**Damages**" shall have the meaning given that term in Section 15.2.

"**Date of Taking**" means the date the Condemner has the right to possession of the property being Condemned.

"**EMC**" shall mean the general acute care hospital currently operated by Tenant at 20103 Lake Chabot Road, Castro Valley, California and known as "Eden Medical Center".

"**Environmental Law**" shall mean any Legal Requirement that requires or relates to: (a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions 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 potentially 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.

"**Escrow Holder**" shall have the meaning given that term in Section 5.7.

"**Execution Date**" shall mean May 17, 2004, the date of execution of the Original Agreement.

"**Expiration Date**" shall have the meaning given that term in Section 4.1.

"**Governmental Authorization**" shall mean any consent, license, registration, permit, franchise, approval, authorization or orders of, or filings with, any Governmental Body, whether

federal, state or local, or any health care accreditation to be issued, issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" shall mean any: (a) nation, state, county, city, town, borough, village, district or other jurisdiction; (b) federal, state, local, or municipal government; (c) governmental or quasi-Governmental Body of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); (d) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (e) official of any of the foregoing.

"Hazardous Activity" shall mean the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about or from any of the Leased Property or any part thereof into the environment and any other act, business, operation or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm, to persons or property on or off the Leased Property.

"Hazardous Material" shall mean any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

"Hospital" shall have the meaning given that term in Recital B.

"Impacted Leased Property" shall have the meaning given that term in Section 11.2(a).

"Improvements" shall mean all buildings, structures, fixtures and improvements located on the Real Property or included in the Leased Property, including those under construction, the hospital building, the medical office building and all parking lots and parking structures.

"Landlord Indemnified Persons" shall have the meaning given that term in Section 15.3.

"Landlord" shall have the meaning given that term in the first paragraph of this Agreement.

"Leased Property" shall have the meaning given that term in Section 2.1.

"Legal Requirement" shall mean any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty.

"Operating Expenses" shall mean all expenses that Tenant expends relating to the operation of the Leased Property as set forth in the profit and loss statements of Tenant related to the Leased Property.

"Option Notice" shall have the meaning given that term in Section 5.3.

"Option Period" shall have the meaning given that term in Section 5.2.

"Option Property" shall have the meaning given that term in Section 5.1.

"Purchase Option" shall have the meaning given that term in Section 5.1.

"Purchase Price" shall have the meaning given that term in Section 5.4.

"Real Property" shall have the meaning given that term in Section 2.1(a) and shall include all Improvements and all Appurtenances thereto.

"Rent" shall have the meaning given that term in Section 1.3.

"Shortfall" shall have the meaning given that term in Section 11.2(a).

"Special Action" shall have the meaning given that term in Section 4.2.

"Surgery Center" shall have the meaning given that term in Section 4.14.

"Surgery Center Option" shall have the meaning given that term in Section 4.14.

"Sutter" shall have the meaning given that term in Recital D.

"Sutter Affiliate" shall mean a person or entity controlled by, controlling or under common control with Sutter which are any of a newly formed Sutter affiliate, the owner and operator of the New Sutter Facility (as defined in the MOU) or Tenant.

"Tangible Personal Property" shall mean all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than supplies) of every kind owned or leased by Landlord (wherever located and whether or not carried on Landlord's books), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

"Tax" shall mean any federal, state, local, foreign or other Tax, levy, impost, fee, assessment or other government charge, including income, estimated income, business, occupation, franchise, property, payroll, personal property, sales, transfer, use, employment, commercial rent, occupancy, franchise or withholding Taxes, and any premium, including interest, penalties and additions in connection therewith.

"Tenant" shall have the meaning given that term in the first paragraph of this Agreement.

"Tenant Indemnified Persons" shall have the meaning given that term in Section 15.2.

"**Tenant's Improvements**" shall mean any and all capital and other improvements, including seismic retrofitting, made by Tenant at Hospital.

"**Tenant's Trade Fixtures**" shall mean any property installed in or on the Leased Property by Tenant for purposes of trade, manufacture, ornament, or related use.

"**Term**" shall have the meaning given that term in Section 4.1.

ARTICLE II LEASED PROPERTY

2.1 Leased Property. Upon the terms and subject to the conditions set forth in this Agreement, Landlord leases, assigns and delivers to Tenant, and Tenant leases and receives from Landlord, all of the following leased property (the "**Leased Property**"):

- (a) All Real Property described in Exhibit 2.1(a) (the "**Real Property**");
- (b) All Improvements to the Real Property;
- (c) All Tangible Personal Property owned by Landlord and located in or on the Real Property or the Improvements;
- (d) All data and records related to the operations of the Hospital, including, without limitation, vendor and contractor lists, patient lists, patient records, policies and procedures manuals, service and warranty records, equipment logs, operating guides and manuals, and, subject to Legal Requirements, copies of all personnel records;
- (e) Any contract rights prepaid expenses and deposits owned by Landlord used in the operation of the Hospital;
- (f) Landlord's interest in profits and equity in the San Leandro Surgery Center, Ltd.; and
- (g) All other property, whether tangible or intangible, of every kind, character or description, owned by Landlord and used in the operation of the Hospital.

2.2 Assumed Contracts and Licenses. Upon the terms and subject to the conditions set forth in the Original Agreement, Landlord has assigned and delivered to Tenant, and Tenant has assumed and received from Landlord, certain Contracts described in the Original Agreement (the "**Assumed Contracts**") and all Governmental Authorizations, to the extent transferable to Tenant (together with the Assumed Contracts, referred to herein as the "**Assumed Property**").

2.3 As Is Condition. Tenant acknowledges receipt and delivery of possession of the Leased Property and confirms that Tenant has examined the Leased Property and otherwise has knowledge of the condition of the Leased Property prior to the execution and delivery of this Agreement and has found the same to be in good order and repair, and satisfactory for its purposes hereunder. Regardless, however, of any examination or inspection made by Tenant and whether or not any patent or latent defect or condition was revealed or discovered thereby,

Tenant is leasing the Leased Property "AS IS" in its present condition. Tenant waives any claim or action against Landlord in respect of the condition of the Leased Property including any defects or adverse conditions not discovered or otherwise known by Tenant as of the date hereof or as of the Commencement Date. Landlord makes no warranty or representation, express or implied, in respect of the Leased Property or any part 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 any Hazardous Material, it being agreed that all such risks, latent or patent, are to be borne solely by Tenant including all responsibility and liability for compliance with all Environmental Laws, including any necessary environmental remediation.

2.4 Funds Transfer. Pursuant to California Health & Safety Code Section 32121(p)(2)(A)(v) or any successor statute, if Landlord transfers any funds to Tenant related to the Leased Property during the Term, such funds shall be used only by Tenant to acquire needed equipment for the Hospital, to operate, maintain and make needed capital improvements to the Hospital and to provide supplemental health care services or facilities for the communities served by the Landlord, or to conduct other activities that would further a valid public purpose if undertaken directly by the Landlord.

2.5 Hospital Name. Tenant shall not change or alter the name of the Hospital from "San Leandro Hospital," without the prior written consent of Landlord.

2.6 Conditional Reversionary Interest. During the term of this Agreement, a portion of Parcel No. 77D-1429-3-5 listed in **Exhibit 2.1(a)** shall be subject to reversion to Landlord in the event that Landlord enters into an agreement with the City of San Leandro for the development of a Senior Center and associated parking facilities on a portion of said Parcel. Landlord shall provide notice at least sixty (60) days in advance of any such reversion, and shall assure that any such agreement with the City of San Leandro will preserve substantially similar parking facilities for Tenant's use of the Real Property as contemplated under this Agreement.

ARTICLE III RENT AND SECURITY DEPOSIT

3.1 Rent. Tenant shall pay the Rent specified in Section 1.2. Such Rent shall be expended by Tenant prior to each annual anniversary of the Commencement Date. If Tenant does not expend the Rent according to the terms of this Agreement by such date, then such Rent shall become immediately due and owing to Landlord, unless Landlord and Tenant mutually agree otherwise in a writing signed by both parties. There shall be no abatement under this Agreement, except as provided in Article XI (casualty).

3.2 Additional Rent. Tenant shall be fully liable for all direct and operating expenses associated with the Leased Property and the Assumed Property. Therefore, to the extent that Landlord is required to pay therefor, Tenant shall reimburse Landlord within ten (10) days of receiving an invoice therefor and such sum shall be considered "**Additional Rent.**" Direct and operating expenses for which Landlord shall be reimbursed shall include, but not be limited to: (a) the cost of supplying any utilities; (b) the cost of operating, managing, maintaining, and repairing the utility, mechanical, sanitary, storm drainage, elevator or other

systems, and the cost of supplies, tools, equipment and maintenance and service contracts in connection with those systems; (c) the cost of licenses, certificates, permits, and inspections; (d) the cost of contesting the validity or applicability of any government enactments that may affect the Leased Property or Assumed Property; (e) the costs of insurance carried by Landlord in an amount reasonably determined by Landlord for the Leased Property; (f) fees, charges, and other costs including management fees (or amounts in lieu of such fees), consulting fees, reasonable legal fees, and reasonable accounting fees of all persons engaged by Landlord or otherwise reasonably incurred by Landlord in connection with the operation, management, maintenance and repair of the Leased Property; (g) the cost of parking area maintenance, repair and restoration, including resurfacing, repainting, re-striping and cleaning; (h) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument relating to the sharing of costs by the Leased Property; and (i) the cost of capital improvements or other costs incurred in connection with the Leased Property amortized over their useful life according to generally accepted accounting principles.

ARTICLE IV TERM; TERMINATION; EVENTS OF DEFAULT; REMEDIES

4.1 Term. The term (the "**Term**") of this Agreement shall commence on the Commencement Date and shall continue until June 30, 2010 (the "**Expiration Date**"), unless earlier terminated as set forth in this Agreement.

4.2 Termination.

(a) If either party receives notice of any Special Action, either party shall have the right to terminate the Agreement. For the purposes of this Section, "**Special Action**" shall mean any legislation, regulation, rule or procedure passed, adopted or implemented or interpreted by any federal, state or local government or legislative body or any private agency; or any notice of a decision, finding, or action by any governmental or private agency, court or other third party which, in the opinion of counsel to either party, if or when implemented, would: (i) prevent Tenant from being able to access and use the Leased Property; (ii) prohibit or limit Tenant from billing for services at the Hospital located on the Leased Property; or (iii) subject Tenant or Landlord or any of their respective employees or agents, to civil or criminal prosecution on the basis of such party's participation in executing this Agreement or performing its obligations under this Agreement.

(b) After July 1, 2009, Tenant may terminate this Agreement without penalty upon ninety (90) days prior written notice to Landlord.

(c) Either party may terminate this Agreement upon the default of the other party, pursuant to this Article IV.

(d) This Agreement shall automatically terminate upon termination or expiration of the MOU.

4.3 Tenant's Default. Each of the following shall be considered an event of default under this Agreement and a material Breach of this Agreement:

(a) Tenant fails to expend or pay Rent within ten (10) business days of when due after written notice of the failure from Landlord to Tenant;

(b) Tenant fails to provide any instrument or assurance or estoppel certificates, if the failure continues for ten (10) business days after written notice of the failure from Landlord;

(c) Tenant's abandonment of the Leased Property and failure to pay Rent;

(d) Tenant fails to observe or perform any covenant or provision of this Agreement to be observed or performed by Tenant (including Tenant's representations and warranties), and such failure continues for a period of thirty (30) days after Landlord gives written notice to Tenant; or

(e) To the extent permitted by law: (i) a general assignment by Tenant for the benefit of creditors; (ii) the filing by or against Tenant any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding only) the proceeding is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant, unless possession is unconditionally restored to Tenant within thirty (30) days and the trusteeship or receivership is dissolved; (iv) any execution or other judicially authorized seizure of all or substantially all of the assets of Tenant located at the Leased Property, or of Tenant's interest in this Agreement, unless that seizure is discharged within thirty (30) days; or (v) the committing of waste on the Leased Property, and such waste continues for a period of ten (10) days after Landlord gives written notice to Tenant of same.

4.4 Landlord's Default. Landlord shall be considered in default and to have materially Breached this Agreement if Landlord fails to observe or perform any covenant or provision of this Agreement to be observed or performed by Landlord (including Landlord representations and warranties), and such failure continues for a period of thirty (30) days after Tenant gives written notice to Landlord.

4.5 Statutory Notice. When this Agreement requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by 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 Agreement) in the manner required by Section 16.6 (notices) shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedures Section 1162 or any similar or successor statute.

4.6 Landlord's Remedies. On the occurrence of an event of default by Tenant, Landlord 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 Landlord at law or in equity. These remedies are not exclusive but cumulative.

(a) **Termination of the Lease.** Landlord may terminate this Agreement and recover possession of the Leased Property. Tenant hereby waives any and all objections or grounds for objecting to Landlord's possession and operation of the Leased Property. Once Landlord has terminated this Agreement, Tenant shall immediately surrender the Leased

Property and Assumed Property to Landlord. Upon termination of this Agreement, Landlord may recover from Tenant all of the following:

(i) The parties mutually agreed upon estimation of 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 then-current prime rate plus two percent (2%) but in no case greater than the maximum amount of interest permitted by law;

(ii) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform obligations under this Agreement, including brokerage commissions, advertising expenses and public bidding process expenses, reasonable expenses of remodeling the Leased Property for a new tenant (for the same use), and any special concessions made to obtain a new tenant; and

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

(b) **Continuation of Lease.** Landlord shall have the remedy described in Civil Code Section 1951.4. If Landlord does not elect to terminate this Agreement on account of any event of default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Agreement, including the right to recover all Rent as it becomes due pursuant to the terms of Section 3.1.

(c) **Tenant's Sublease.** If Landlord elects to terminate this Agreement on account of any default by Tenant, Landlord may choose to enter into a separate agreement with subtenant. If Landlord elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by Landlord of that election, have no further right to, or interest in, the Rent or other consideration receivable under that arrangement. Notwithstanding any other agreement between Landlord and Tenant, Landlord shall have the right to lease the Leased Property to tenants.

4.7 Landlord's Right to Cure Tenant's Defaults. Landlord, at any time after Tenant commits an act of default and any applicable cure period therefor as provided herein has expired, upon ten (10) days notice, or a shorter period in an emergency situation, may cure the act of default for the account and at the expense of Tenant. If Landlord at any time, by reason of an act of Tenant's default, is compelled to pay, or elects to pay, any sum of money or to do any act that will incur the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees in instituting, prosecuting or defending any actions or proceedings to enforce Landlord's rights under this Agreement, the sum or sums paid by Landlord (together with interest accruing at a rate of interest of the prime rate plus two percent (2%)), in addition to all other costs and damages and shall be due from Tenant to Landlord immediately upon receipt of written demand as additional Rent.

4.8 Right to Possession. Tenant's right to possession shall not be considered to have been terminated by Landlord's efforts to relet the Leased Property, by Landlord's acts of maintenance or preservation with respect to the Leased Property, or by appointment of a receiver

to protect Landlord's interests under this Agreement. This list is merely illustrative of acts that may be performed by Landlord without terminating Tenant's right to possession.

4.9 Tenant's Remedies. Tenant shall have all available remedies at law or equity on Landlord's default under this Agreement; provided, however, that before Tenant may vacate the Leased Property and cease operations of the Leased Property, the parties will submit the issue to dispute resolution pursuant to Section 15.3, unless the parties otherwise agree.

4.10 Transfer Upon Termination. Upon termination of this Agreement for any reason whatsoever, Tenant shall transfer all of the Leased Property, Assumed Property and any other property accumulated by Tenant arising out of or from the operation of the Leased Property back to Landlord, pursuant to California Health & Safety Code Section 32121(p)(2)(A)(iii) or any successor statute.

4.11 Surrender. Upon the expiration or earlier termination of this Agreement, or upon the exercise by Landlord of Landlord's right to reenter the Leased Property without terminating this Agreement following a default by Tenant, Tenant shall surrender the Leased Property in as good condition and repair as on the Commencement Date, except for ordinary wear and tear. Tenant shall have the right to remove from the Leased Property, and Landlord shall have the right to compel Tenant to remove exterior signs placed thereon or erected by Tenant, Tenant's Trade Fixtures placed on the Leased Property and/or other items of Tenant's personal property, as well as any or all non-structural improvements constructed thereon by Tenant. Tenant agrees to repair, at Tenant's cost, any damage or injury to the Leased Property resulting from the removal of any such items, including, without limitation, repairing the floor and patching and painting the walls where reasonably required by Landlord.

4.12 Return of Equipment. Upon termination or expiration of this Agreement, Tenant shall have no obligation to return any part of the Leased Property or operations of the Hospital to Landlord, except: (a) all Real Property; (b) all Improvements to the Real Property; and (c) all Tangible Personal Property of Landlord's that existed as of the Commencement Date and continues to exist as of the date of termination or expiration of this Agreement. Tenant shall retain all of its own personal property on or about the Leased property or located elsewhere, which shall include all assets and items that Tenant has not leased from Landlord or that Tenant or any affiliate of Tenant's acquired on its own account or with its own funds.

4.13 Hospital Operations after Termination. After termination or expiration of this Agreement, the Hospital shall cease to provide general acute care hospital services, except as otherwise may be agreed to by the parties.

4.14 Payment by Landlord on Termination. On the expiration or the earlier termination of this Agreement, Landlord shall pay to Sutter an amount (the "**Capital Expenditure Payment**") equal to all capital expenditures made by Tenant or Sutter for the benefit of the Hospital (including but not limited to any capital expenditures for conversion of any portion or all of the Hospital to acute rehabilitation) from the Commencement Date to the termination of the Lease. Notwithstanding the actual amount of such capital expenditures, the Capital Expenditure Payment shall not exceed Five Million Dollars (\$5,000,000). The Capital Expenditure Payments shall not include any amount representing rent payments under the Lease.

4.15 Option to Purchase Surgery Center. Upon the expiration or termination of this Agreement, so long as Tenant is not in default, Tenant shall have the option (the "**Surgery Center Option**") to purchase Landlord's interest in the profits and equity in the San Leandro Surgery Center, Ltd. (the "**Surgery Center**"), subject to such restrictions as are set forth in the Limited Partnership Agreement of the Surgery Center. Tenant must exercise the Option by written notice to Landlord within fifteen (15) days after the termination or expiration of this Agreement, after which date the Option shall expire. The purchase price of the interests in the Surgery Center shall be fair market value, as determined by an independent appraiser chosen by Landlord. The costs of such independent appraiser shall be paid half by Tenant and half by Landlord. The purchase price determined by the independent appraiser shall be binding upon Tenant and Landlord. Tenant shall pay in full the amount of the purchase price within ten (10) days after Tenant receives the independent appraiser's valuation.

ARTICLE V SUTTER'S OPTION TO PURCHASE LEASED PROPERTY

5.1 Grant of Option to Tenant. Landlord grants to Sutter or Sutter Affiliate (collectively referred to in this Article V as "**Sutter**") the option to purchase (the "**Purchase Option**") the Hospital and the property described as the Hospital Employee Parking Lot and designated APN 77D-1429-3-5 (collectively, the "**Option Property**") in accordance with the provisions of this Article V. The Hospital and the Medical Arts Office Building are situated on a single legal parcel designated as APN 77D-1429-19. The Option Property does not include the portion of that parcel containing the Medical Arts Office Building which will be retained by Landlord. After Sutter's exercise of the Purchase Option and prior to the close of escrow, Sutter and Landlord, at Sutter's cost, shall cooperatively create the land occupied by the Medical Arts Office Building as a separate legal parcel, by either a lot line adjustment or a parcel map in a configuration reasonably approved by Landlord and Sutter (in either case, the "**Land Subdivision**").

5.2 Option Period. Sutter shall have the right to exercise the Purchase Option between July 1, 2009 and June 30, 2010 (the "**Option Period**").

5.3 Method of Exercising Option. Sutter shall exercise the option by giving notice ("**Option Notice**") to Landlord within the Option Period. The Option Notice shall specify the date for close of escrow on Sutter's purchase, which date shall be at least 30 days, but not later than 90 days, after delivery of the Option Notice. Notwithstanding the foregoing, if necessary, the date for the close of escrow will be automatically extended until immediately after the recordation of the Land Subdivision.

5.4 Purchase Price. The purchase price for the Option Property shall be an amount equal to the net book value of the Hospital as of the Effective Date less an amount equal to (a) the total cash losses attributable to the Hospital, and (b) capital expenditures made by Tenant and/or Sutter for the Hospital since the Commencement Date that were not otherwise required as rental payments pursuant to Section 1.2 of the Lease (the "**Purchase Price**"). The parties acknowledge and agree that if the total of (a) and (b) above exceed the net book value of the Hospital as of the Effective Date, Sutter shall be deemed to have paid the Purchase Price in full

and no balance shall be due to effect the purchase under the Purchase Option. An example of the computation of the Purchase Price is attached for informational purposes only as Schedule 5.4.

5.5 Method of Payment. The Purchase Price, if any, shall be payable in cash in lawful money of the United States or immediately available funds to Landlord by Sutter at close of escrow (the date the grant deed is recorded) as provided in Section 5.7.

5.6 Title to Premises. Landlord shall deliver to Sutter or a Sutter Affiliate designated by Sutter an executed grant deed in recordable form and other appropriate conveyance documents conveying title to the Option Property. Title to the Option Property shall be conveyed by Landlord to Sutter free and clear of all liens, encumbrances, covenants, conditions, restrictions, easements and rights-of-way of record, leases or other tenancy agreements, and other matters of record, except current taxes, a lien not yet delinquent, those portions of current assessments not yet due and payable, anything of record or not of record that in any way affects title to the Option Property resulting from the acts or omissions of Tenant and other matters approved by Sutter. Following such purchase and until the Start Service Date (as defined in the MOU), Sutter agrees that it shall not cause the transfer of ownership of Hospital to an entity other than a Sutter Affiliate or the East Bay regional corporation described in Section 5.04 of the MOU without the District prior written consent.

5.7 Escrow. The sale shall be consummated through an escrow with _____ ("**Escrow Holder**"), to be opened within five (5) days after the Option Notice has been given to Landlord. The parties shall execute all documents required by Escrow Holder as long as they are consistent with the provisions of this Article 5. Escrow shall close on the date specified in the Option Notice unless extended until immediately after the recordation of the Land Subdivision. Escrow shall be deemed to be closed pursuant to this section on the date the grant deed is recorded.

5.8 Title Insurance. At the close of escrow, Escrow Holder must be prepared to issue a CLTA Standard Coverage Policy of Title Insurance in an amount designated by Sutter reflecting the value of the Hospital insuring title to the Option Property vested in Sutter subject only to the matters set forth in Section 5.5.

5.9 Proration of Costs and Income. Rent, taxes, and other items of income and expenses shall be prorated as of the close of escrow.

5.10 Closing Costs. Landlord shall pay county and city transfer taxes, the cost of the title policy referred to in Section 5.8 and one half the charges of escrow. Sutter shall pay one half the charges of escrow. All other closing costs shall be paid in accordance with the custom in Alameda County as determined by Escrow Holder.

5.11 Assignability of Option. Sutter may assign its interest, or any portion of its interest, in the Purchase Option without Landlord's consent.

5.12 Termination of Lease; Cooperation. On close of escrow this Lease shall terminate. Landlord shall support the transfer of the facility license and provider number, as appropriate, and reasonably cooperate in the transition to reduce disruption of operations and reimbursement.

**ARTICLE VI
USE OF PREMISES; HAZARDOUS MATERIALS**

6.1 Permissible Uses.

(a) The Leased Property shall be used exclusively by Tenant or any affiliates of Tenant and Tenant's employees, agents and contractors for the purpose of operation of a general acute care hospital and related healthcare activities, including acute rehabilitation.

(b) Pursuant to California Health & Safety Code Section 32121(p)(2)(A)(iv) or any successor statute, Tenant shall operate and maintain the Hospital and related facilities and Landlord's assets for the benefit of the communities served by Landlord.

(c) During the first thirty-six (36) months of this Agreement, the parties have agreed that: (i) Tenant may provide at EMC acute inpatient medical and surgical services inpatient surgery, critical care, and trauma and basic emergency services; (ii) Tenant shall maintain Hospital's license to operate a general acute care hospital and shall maintain and provide at Hospital medical services, surgical services, basic emergency services, and physician-on-duty services; and (iii) Tenant may further provide at Hospital acute and outpatient psychiatric services, partial psychiatric hospitalization, ECT, acute rehabilitation, physical, occupation and speech therapy, outpatient surgery, gastro-intestinal laboratory, laser optics, upper extremity clinic, and cardiac rehabilitation program. For the remainder of the Term, Tenant shall determine which healthcare services shall be provided by EMC and which by Hospital. Such determinations shall be made in accordance with the needs of the communities served by EMC and Landlord, with the intended benefit of improving access, care, quality of services and cost-efficiencies.

(d) Tenant shall provide all medical services at Hospital 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, preexisting medical condition, physical or mental handicap, or marital status or ancestry, except to the extent that such circumstance is medically significant to the provision of appropriate care to the patient

6.2 Compliance with Laws. Tenant shall not use the Leased Property or do anything in or about the Leased Property which will conflict with any law, statute, ordinance, order or governmental rule or regulation. Tenant and Landlord shall comply with all laws, statutes, ordinances and governmental rules, regulations, orders or requirements, relating to, or affecting the condition, use or occupancy of the Leased Property, excluding structural changes not related to or affected by Tenant's Improvements or acts.

6.3 Entry by Landlord. Landlord reserves and shall at all reasonable times have the right to enter the Leased Property, upon twenty-four (24) hours prior notice, to inspect the Leased Property, to supply any service to be provided by Landlord to Tenant under this Agreement, to show the Leased Property to prospective purchasers or, during the last twelve (12) months of the lease Term only, prospective lessees, and to post notices of non-responsibility. Landlord may also enter the Leased Property in order to alter, improve or repair the Leased Property or any portion thereof.

6.4 Environmental Compliance. Tenant shall refrain from using or allowing the use of Hazardous Materials on, about, under or on the Leased Property, except as part of its business operation conducted therein in the ordinary course in accordance with Environmental Laws, prudent industry practice and the standards of this Agreement. In the event of a release in, about, under or on the Leased Property, or any portion thereof, of any Hazardous Materials, Tenant shall immediately take such remedial actions as may be necessary to clean up the same in accordance with the requirements of Environmental Laws. Tenant shall use, handle and store any Hazardous Materials hereunder in accordance with the applicable requirements of Environmental Laws. Each party shall promptly notify the other party of any such release of Hazardous Materials of which it gains knowledge or receives notice, and of any violation of Environmental Laws of which it receives notice from any governmental agency having jurisdiction. Tenant shall repair and clean up any environmentally hazardous condition which results from Tenant's occupation or use of the Leased Property or any personal property, equipment or fixtures located on the Leased Property. Tenant shall comply with all statutes, laws, ordinances, and governmental rules, regulations or requirements regarding such environmental hazard repair or cleanup. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all claims, actions, suits, proceedings, loss, liabilities, damages, deficiencies, fines, penalties, costs or expense (including sums paid in settlement of claims, reasonable attorneys' fees, consultants' fees, investigation and laboratory fees, court costs and litigation expenses), which arise out of or in connection with Tenant's Breach of this Section.

ARTICLE VII MAINTENANCE AND ALTERATIONS

7.1 Landlord's Repair Obligations. Landlord shall have no obligations whatsoever to repair and/or maintain the Leased Property. Notwithstanding the foregoing or any other term in this Agreement to the contrary, Landlord shall repair any damage or injury to the Leased Property caused by the negligent acts or omissions of Landlord or Landlord's agents.

7.2 Tenant's Repair Obligations. Tenant, at Tenant's sole expense, shall maintain (including making necessary repairs and replacement) the Leased Property in as good order, condition and repair including, without limitation, the following: interior surfaces of walls and ceilings; exterior walls and roof; floors; wall and floor coverings; interior and exterior windows and plate glass; window coverings; doors; locks on closing devices; window casements and frames; plumbing, HVAC and electrical systems (including emergency generator system); exterior entrances; and all switches, fixtures and equipment in the Leased Property. Tenant shall, at Tenant's sole expense, immediately replace all broken or damaged glass with like-kind glass. Tenant shall at all times during the Term maintain (including making repairs and replacements) the parking areas within the Leased Property in good condition including, without limitation, sweeping, removal of litter and debris and re-striping when necessary. In addition, Tenant shall repair (including making of required replacements) any damage or injury to other parts of the Leased Property caused by the acts or omissions of Tenant or Tenant's agents.

7.3 Capital Improvements. At any time after the Closing, Tenant shall, at Tenant's sole expense, make such capital improvements as are determined by Tenant to be necessary for the proper operation of the Leased Property as set forth in Section 6.1, including conversion of a

portion or all of the Leased Property to acute rehabilitation services (Uses). Tenant shall have no obligation to make any repairs or capital improvements to the Leased Property related to seismic retrofitting and compliance; provided, however, that Tenant fully complies with Section 4.13 (Continued Operations).

7.4 Signage. Tenant shall be permitted to place such signage on the Leased Property as Tenant determines is legally permissible, so long as such signage does not interfere with the existing signage of any other tenants.

ARTICLE VIII SERVICES, INSURANCE AND UTILITIES

8.1 Payment of Utilities and Services. Tenant shall promptly pay all charges for heat, water, gas, electricity, telephone, sewage, air conditioning, ventilating, refuse and any other utilities, services and materials used or consumed at the Leased Property.

8.2 Interruption of Utility Services. Landlord shall not be liable to Tenant in damages or otherwise (a) if any utility becomes unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility unless due to Landlord's gross negligence or willful misconduct; or (b) for any disruption in any utility services caused by the making of any repairs or improvements or by any other cause unless due to Landlord's gross negligence or willful misconduct, and such interruption (subject to such exemption) shall not constitute a termination of this Agreement or an eviction of Tenant, and/or give Tenant the right to reduce or abate Rent or other sums payable hereunder.

8.3 Possible Rationing. Tenant acknowledges that the Leased Property may become subject to the rationing of utility services or restrictions on use by utility providers and/or governmental agencies. Notwithstanding any such rationing or restrictions on use of any such utility services, Tenant acknowledges and agrees that its tenancy and occupancy hereunder shall be subject to such rationing restrictions as are now or which may be imposed upon Landlord, Tenant or the Leased Property, and Tenant shall in no event be excused or relieved from any covenant or obligation to be kept or performed by Tenant by reason of any such rationing or restrictions. Tenant shall comply with any restrictions reasonably imposed by Landlord or any empowered authority that directly arise from any such rationing.

8.4 Back-up Generator. Tenant shall supply, maintain and replace, the back-up generator necessary to operate the Hospital.

8.5 Tenant's Insurance. Tenant shall obtain and maintain in effect at all times during the Term those insurance coverages set forth in Exhibit 8.5. In addition, the parties shall comply with all other terms of Exhibit 8.5.

ARTICLE IX TAXES

9.1 Nonprofit Corporation. Landlord recognizes that Tenant is a nonprofit corporation and that there should be no or few Taxes levied against the Leased Property,

Tenant's Trade Fixtures and other property related to the Leased Property. However, if any Tax is levied, the provisions of this Article shall apply.

9.2 Personal Property Taxes. Tenant shall pay before delinquency all Taxes, assessments, license fees and other charges that are levied and assessed on or as a result of Tenant's personal property, alterations, Tenant's Improvements and/or Tenant's Trade Fixtures. Tenant shall furnish Landlord with satisfactory evidence of these payments from time to time upon request from Landlord.

9.3 Real Property Taxes. In addition to all other sums payable under this Agreement, Tenant shall pay, promptly when due and otherwise in the manner and at the times set forth in this section, Real Property Taxes levied and assessed against the Leased Property during the Term. During each tax fiscal year, Landlord shall notify Tenant of the total Real Property Taxes, and with such notification Landlord shall provide Tenant with a copy of the current Tax bill (if any). Tenant shall pay the Real Property Taxes semiannually, no later than each delinquency date provided that Landlord has provided the notification of such Taxes as set forth above at least ten (10) working days prior to such due date, and concurrently therewith furnish Landlord with a copy of Tenant's checks used in such payment. Tenant's liability to pay the Real Property Taxes shall be prorated on the basis of a three hundred sixty five (365) day year to account for any fractional portion of a tax fiscal year included in the Term at its commencement or expiration.

9.4 Transfer Taxes on Lease. If any Governmental Body levies, assesses and/or imposes on Landlord a transfer Tax as a result of this Agreement, Tenant shall, at Landlord's election, in its sole discretion, either pay such Tax directly to the Governmental Body or pay the amount of such Tax to Landlord, in which latter event Landlord shall pay such Tax directly to the Governmental Body.

ARTICLE X ESTOPPEL CERTIFICATE; SUBORDINATION

10.1 Estoppel Certificates. Either party shall, from time to time, within ten (10) business days after receipt of a request from the other party or any lender of the other party, execute, acknowledge and deliver to the other party or such lender either a statement in writing or a three party agreement among the requesting party, the responding party and such lender, in reasonable and customary form, (a) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect) and the date to which Rent and other sums are paid in advance, if any; (b) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the other party under this Agreement, or specifying such defaults if any are claimed; and (c) specifying any further information and agreeing to such notice provisions and other matters reasonably requested by the requesting party or such lender. Any such statement may be conclusively relied upon by a prospective purchaser or lender of the Leased Property. A party's failure to deliver such statement within ten (10) business days will constitute a default under this Agreement.

10.2 Subordination and Attornment. Subject to and on the condition that the mortgagee, deed of trust beneficiary, trustee or ground lessor consents to honor and refrain from disturbing Tenant's tenancy in the absence of a Breach or default (which, if curable hereunder, is not cured within the applicable period therefore) (a "covenant of nondisturbance"), this Agreement is and shall be subject and subordinate to all ground or underlying leases which may hereafter be executed affecting the Leased Property and to the lien and provisions of any mortgages or deeds of trust hereafter placed against the Leased Property or against Landlord's interest or estate in the Leased Property or on or against any ground or underlying lease, and any renewals, modifications, consolidations and extensions of such lease, without the necessity of the execution and delivery of any further instruments on the part of Tenant to effect such subordination. If any mortgagee, deed of trust, beneficiary, trustee or ground lessor elects to have this Agreement prior to the lien of such mortgagee's, beneficiary's, trustee's or ground lessor's mortgage or deed of trust or ground lease, and gives notice of such election to Tenant, this Agreement shall be deemed prior to the lien of such mortgage or deed of trust or ground lease, whether this Agreement is dated prior or subsequent to the date of such mortgage, deed of trust, or ground lease, or the date of the recording thereof. Tenant shall execute and deliver, within ten (10) days of request from Landlord, such further instruments evidencing the subordination of this Agreement to any ground or underlying lease, and to any mortgage or deed of trust, provided such instrument shall provide that as long as Tenant is not in default of this Agreement, Tenant's possession of the Leased Property shall not be affected by any foreclosure proceedings or ground lease termination. In the event any proceedings are brought for default under any ground or underlying lease or in the event of foreclosure or the exercise of the power of sale under any mortgage or deed of trust against the Leased Property, Tenant shall, upon request of any person or party succeeding to the interest of Landlord as a result of such proceedings, attorn to such successor in interest and recognize such successor in interest as Landlord under this Agreement on the condition that such successor-in-interest enters into a covenant of nondisturbance.

ARTICLE XI DAMAGE OR DESTRUCTION; CONDEMNATION

11.1 Handling of Insurance Proceeds. All proceeds from any policy of insurance required by this Agreement shall be paid to Tenant, and made available for reconstruction, repair or replacement, as the case may be, of any damage to or destruction of all or any portion of the Leased Property to which such proceeds relate, and shall be paid out by Tenant from time to time subject to the provisions hereof for the cost of such reconstruction, repair or replacement. Any unused portion shall be retained by Tenant upon completion of such repair and restoration to be credited against Tenant's obligations for Rent next coming due under this Agreement, or at Tenant's option, used to make additional capital improvements to the Leased Property. If neither Landlord nor Tenant is required or elects to repair and restore, then all such insurance proceeds shall be paid to Landlord. All salvage resulting from any risk covered by insurance shall belong to Landlord, except that any salvage relating to Tenant's personal property or Tenant's Trade Fixtures shall be the property of Tenant.

11.2 Reconstruction in the Event of Damage or Destruction Covered by Insurance.

(a) **Total or Substantially Total Destruction.** If during the Term a portion of the Leased Property is totally or substantially destroyed by a risk covered by the insurance described in this Agreement so that the Leased Property thereby is rendered unsuitable for its primary intended use under this Agreement (taking into account all relevant factors, including but not limited to the number of useable beds, the amount of square footage reasonably available for use by Tenant and the type and amount of gross revenues lost) (the "**Impacted Leased Property**"), Tenant shall at its option either (i) restore the Impacted Leased Property to substantially the same condition as existed immediately before the damage or destruction pursuant to the terms and conditions herein, (ii) offer to purchase the Leased Property at the then fair market value therefore, subject to Landlord's consent, or (iii) terminate the Lease with respect to the Leased Property effective upon Landlord's receipt of the insurance proceeds and any Shortfall and in such event Landlord shall be entitled to retain or collect for its own benefit the insurance proceeds; provided that, in the event the amount of the insurance proceeds received by Landlord is less than the amounts which would be payable in the aggregate under the insurance policies specified in Section 8.5 (Tenant's Insurance), such termination shall not be effective until Tenant pays Landlord the amount of such shortfall ("**Shortfall**") in cash.

(b) **Restoration.** If Tenant restores the Impacted Leased Property, the insurance proceeds shall be paid out by Landlord to Tenant or its designee from time to time as reasonably requested by Tenant to pay for the reasonable costs of such restoration and any excess proceeds remaining after such restoration shall be retained by Tenant.

(c) **Partial Destruction.** If during the Term, the Tenant's Improvements or Tenant's Trade Fixtures are partially destroyed due to a risk covered by the insurance described in Section 8.5 (Tenant's Insurance) but the Impacted Leased Property are not thereby rendered unsuitable for their primary intended use (taking into account all relevant factors, including but not limited to the number of useable beds, the amount of square footage reasonably available for use by Tenant and the amount of gross revenues lost), Tenant shall restore the Impacted Leased Property to substantially the same condition as existed immediately before the damage or destruction. Such damage or destruction shall not terminate this Agreement; provided, however, that if Tenant cannot, with reasonable diligence and within a reasonable time, obtain all government approvals, including building permits, licenses, conditional use permits and any certificates of need, necessary to perform all required repair and restoration work and to operate the Impacted Leased Property in substantially the same manner and for the primary intended use, Tenant shall either (a) offer to purchase the Leased Property for the then fair market value thereof, or (b) continue to operate under the Lease which shall remain in full force and effect and Landlord shall be entitled to retain the insurance proceeds, less the amount needed to restore the Leased Property so that the portion of the Leased Property unaffected by the casualty can be used as a complete architectural unit. If Tenant shall make such offer and Landlord does not accept the same within forty-five (45) days of Landlord's receipt of such offer, Tenant may either (x) withdraw such offer, in which case this Agreement shall remain in full force and effect and Tenant shall proceed to restore the Impacted Leased Property as soon as reasonably practicable to substantially the same condition as existed immediately before such damage or destruction, or (y) terminate this Agreement after recovery by Landlord of all insurance proceeds and the

payment by Tenant of any Shortfall in cash. If Tenant so restores the Impacted Leased Property, insurance proceeds shall be paid out by Landlord from time to time as reasonably requested by Tenant to pay for the reasonable costs of such restoration, and any excess proceeds remaining after such restoration shall be retained by Tenant.

11.3 Determination of Fair Market Value. The fair market value of the Leased Property shall be determined by an independent appraiser chosen by the mutual agreement of the parties. If the parties cannot agree on the independent appraiser, each party shall choose one appraiser and each appraiser shall choose a third appraiser. The third appraiser shall conduct the fair market appraisal and such appraisal shall be binding on the parties. The costs of all appraisers and the appraisal shall be borne equally by the parties.

11.4 Payment of Costs of Restoration in Excess of Insurance Proceeds. If Tenant elects to repair or restore any damage or destruction to the Leased Property and the cost of any such repair or restoration exceeds the amount of proceeds received by Landlord from the insurance required under Section 8.5 (Tenant's Insurance), Tenant shall contribute any and all excess amounts necessary to repair or restore the Leased Property, and such amount shall be credited toward the rent obligations in that year.

11.5 Reconstruction in the Event of Damage or Destruction Not Covered by Insurance. If during the Term the Leased Property are totally destroyed or materially damaged (a) from a risk not covered by insurance described in Section 8.5 (Tenant's Insurance) but that would have been covered if Tenant carried the insurance customarily maintained by, and generally available to, the operators of reputable facilities which are used for the primary intended use in the region in which the Leased Property are located, (b) from a risk for which insurance coverage is voided due to any act or omission by Tenant, or (c) as result of an earthquake, whether or not such damage or destruction renders the Impacted Leased Property unsuitable for their primary intended use (taking into account all relevant factors, including but not limited to the number of useable beds, the amount of square footage reasonably available for use by Tenant and the amount of gross revenues lost), Tenant shall restore the Impacted Leased Property to substantially the same condition as existed immediately before such damage or destruction and not terminate this Agreement. Otherwise, if the Leased Property are totally destroyed or materially damaged by a risk not covered by insurance such that the Leased Property shall be unusable for their primary intended use, this Agreement shall terminate within ninety (90) days of such destruction or damage; provided that Tenant may elect to restore the Impacted Leased Property, in which event this Agreement shall continue in full force and effect. If such damage or destruction does not render the Impacted Leased Property unusable for its primary intended use, Tenant shall also restore the Leased Property to substantially the same condition as existed immediately before the damage or destruction.

11.6 Payment of Proceeds on Tenant's Trade Fixtures and Tenant's Improvements. Notwithstanding any provision herein, all insurance proceeds payable by reason of any loss or damage to any of Tenant's Trade Fixtures or Tenant's Improvements shall be paid to Tenant and Tenant shall hold such insurance in trust to pay the cost of repairing or replacing damaged Tenant's Trade Fixtures or Tenant's Improvements; provided, however, that if the damaged Tenant's Trade Fixtures or Tenant's Improvements were no longer necessary to

Tenant's operations prior to their destruction, Tenant shall not be obligated to repair or replace them.

11.7 Damage Near End of Term. Notwithstanding any provisions of this section to the contrary, if damage to or destruction of the Leased Property occurs during the last twelve (12) months of the Term, if Tenant has not elected or has no right to extend such Term, and if such damage or destruction cannot be fully repaired and restored within six (6) months immediately following the date of loss, then Tenant shall have the right to terminate this Agreement by giving written notice thereof to Landlord within thirty (30) days after the date of such damage or destruction. In this event, Landlord shall collect any insurance proceeds to which it is entitled, and Tenant shall assign Tenant's rights in any additional insurance proceeds. In the event that the Leased Property are totally destroyed or damaged (a) from a risk not covered by insurance described in Section 8.5 (Tenant's Insurance) but that would have been covered if Tenant carried the insurance customarily maintained by and generally available to the operators of reputable facilities which are used for the primary intended use in the region in which the Leased Property are located or (b) from a risk for which insurance coverage is voided due to any act or omission by Tenant, then Tenant shall pay to Landlord a sum equal to the amount reasonably necessary to repair such damage or destruction.

11.8 Inapplicability of Civil Code Sections. The provisions of California Civil Code Sections 1932(2) and 1933(4), and any successor statutes, are inapplicable with respect to any destruction of the Leased Property, such sections providing that a lease terminates upon the destruction of the Leased Property unless otherwise agreed between the parties to the contrary.

11.9 Condemnation.

(a) **Effect on Agreement.** If there is a Condemnation of all the Leased Property, or part of the Leased Property so that the remaining part of the Leased Property is rendered unsuitable for Tenant's continued use of the Leased Property, either party shall have the election to terminate this Agreement upon the Date of Taking. The election to terminate this Agreement as provided herein shall be exercised, if at all, within sixty (60) days after the Condemnation; otherwise, this Agreement shall remain in full force and effect.

(b) **Award; Distribution.** The award shall belong to and be paid to Landlord; however, Tenant shall receive from the award a sum attributable to the then unamortized cost of Tenant's Trade Fixtures and Tenant's Improvements which have become part of the realty and which Tenant has a right to remove as provided in this Agreement but elects not to remove, if a separate award is made for Tenant's Trade Fixtures and Tenant's Improvements. In addition, Tenant shall have the right to seek from the Condemner an independent award for the value of the loss of Tenant's business at the Leased Property (including, without limitation, relocation assistance) provided such award for loss of Tenant's business does not diminish the award that Landlord is entitled to receive under this section. The parties agree that under no circumstances shall Tenant be entitled to any award based upon so-called bonus value in this Agreement, either directly and/or indirectly as an element of goodwill, and Tenant assigns to Landlord any right Tenant has to such bonus value. The phrase "bonus value" refers to the excess, if any, of the fair rental value of the Leased Property over the actual Rent and other sums payable by Tenant under this Agreement. Landlord agrees to utilize so much of the remainder of the award as may be

necessary to restore the remaining Leased Property and render them usable by Tenant in the event of a partial Condemnation.

(c) **Inapplicability of Code Section.** The provisions of California Code of Civil Procedure Section 1265.130, and any successor statute, are inapplicable, which section allows either party to petition the Superior Court to terminate this Agreement in the event of condemnation.

11.10 Earthquake Damage. Any provision of this Lease to the contrary notwithstanding, the provisions of this Section 11.10 shall govern in all cases where the Hospital is damaged in any way by or because of an earthquake ("**Earthquake Damage**"). In the event that Earthquake Damage causes damage to a material portion of the Leased Property and/or Hospital or otherwise causes a material, adverse condition in the financial condition or prospects of the Hospital, then Tenant at its option may: (i) rebuild and restore the Hospital and Leased Property at its own expense; (ii) purchase the Leased Property and Hospital for its then fair market value; or (iii) terminate the Lease upon payment to the Landlord of (x) all insurance proceeds received as a result of the Earthquake Damage and (y) Three Million Five Hundred Thousand Dollars (\$3,500,000) if the Earthquake Damage occurs in the first (1st) year of the Lease term, Two Million Five Hundred Thousand Dollars (\$2,500,000) if the Earthquake Damage occurs in the second (2nd) year of the Lease term, and One Million Five Hundred Thousand Dollars (\$1,500,000) if the Earthquake Damage occurs in the third (3rd) or any subsequent year of the Lease term.

ARTICLE XII ASSIGNMENT AND SUBLETTING

12.1 Definition of Assignment. The use of the words "assignment," "assign," "assigned," "sublease," "subletting" or "sublet" and any derivations thereof in this Article shall include, without limitation (a) the pledging, mortgaging or encumbering of Tenant's interest in this Agreement or the Leased Property or any part thereof; (b) the total or partial occupation of all or any part of the Leased Property by any person, firm, partnership or corporation or any groups of persons, firms, partnerships or corporations, or any combination thereof, other than Tenant or an affiliate of Tenant; (c) an assignment or transfer by operation of law; and (d) a transfer by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription, of any part or all of the equity ownership of Tenant, so as to result in any change in the present effective voting control of Tenant (i.e., greater than 50%) by the party or parties holding such voting control on the Execution Date.

12.2 Landlord's Consent. Subject to the provisions of this Article, Tenant shall not assign this Agreement or sublet all or any portion of the Leased Property without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or denied provided the requirements of this Article are satisfied in full. If consent to any assignment or subletting is given by Landlord, such consent shall not relieve Tenant or any guarantor of this Agreement from any obligation or liability under this Agreement, nor shall such consent constitute a waiver of the provisions of this Article with respect to any future assignment or subletting. Landlord and Tenant agree, by way of example and without limitation, that it shall

be reasonable for Landlord to withhold its consent if any one or more of the following situations exist or may exist:

(a) In Landlord's reasonable business judgment, the proposed assignee or subtenant lacks sufficient business experience to operate a successful business at the Leased Property;

(b) In Landlord's reasonable business judgment, the present net worth of the proposed assignee or subtenant is less than Tenant's present net worth;

(c) The proposed assignment or subletting would Breach any covenant of Landlord in any other lease, financing agreement, or other agreement relating to the Leased Property;

(d) The assignee or subtenant would have a right to further sublet without Landlord's prior consent or compliance with all terms of this Article;

(e) The assignee or subtenant would not operate the Leased Property as provided in Section 6.1 (Uses); or

(f) The assignee or subtenant requires any material change or changes to the provisions of this Agreement.

12.3 Procedures. Should Tenant desire to enter into an assignment of this Agreement or to sublease all or part of the Leased Property, Tenant shall give notice thereof to Landlord by requesting in writing Landlord's consent to such transaction at least thirty (30) days before the proposed effective date of any such transaction and shall provide Landlord with each of the following:

(a) The full particulars of the proposed transaction, including its nature, effective date, terms and conditions, and copies of any offers, draft agreements, subleases, letters of commitment or intent, and other documents pertaining to such proposed transaction;

(b) A description of the identity, net worth and previous business experience of the proposed assignee or subtenant, including, without limitation, copies of the latest income, balance sheet and change of financial position statements (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the proposed assignee or subtenant;

(c) Any further information relevant to the transaction that Landlord shall have reasonably requested within fifteen (15) days following receipt of Tenant's request for consent; and

(d) Within ten (10) days after receipt of Tenant's request for consent and the materials required by this Section 12.3, Landlord shall have the election to: (i) consent to the assignment or subletting; or (ii) refuse to consent to the assignment or subletting as allowed herein and stating the reasons therefore.

12.4 Documentation and Expenses. Any assignment or sublease to which Landlord has consented or for which consent is not required shall be evidenced by an instrument made in such written form as is reasonably satisfactory to Landlord and executed by Tenant and the assignee or subtenant. By such instrument, in the event of an assignment, the assignee shall assume for the direct benefit of Landlord the terms, covenants and conditions of this Agreement that are the obligations of Tenant. Notwithstanding any permitted assignment or subletting, Tenant and any guarantors shall remain fully liable for the performance of the Tenant's obligations under this Agreement. Tenant shall, on demand of Landlord, pay to Landlord the amount of One Thousand Dollars (\$1,000) (increased by two percent 2% each year) to reimburse the reasonable outside legal fees incurred by Landlord in obtaining advice and preparing documentation in connection with any proposed assignment or subletting, whether or not Landlord's consent is given.

12.5 Assignment by Landlord. Landlord may freely assign this Agreement. In the event of a sale of the Leased Property or assignment of this Agreement by Landlord, Landlord shall be released from any liability thereafter accruing under this Agreement. Tenant shall, upon the written request of any person or party succeeding to the interest of Landlord, attorn to such successor in interest and recognize such successor in interest as Landlord under this Agreement, provided that such successor assumes Landlord's obligations under this Agreement and agrees to respect Tenant's rights to occupancy and nondisturbance in the absence of a Breach or default by Tenant (which, if subject to a cure period, is not cured within the applicable period therefore) and agrees to abide by all of the terms of this Agreement as successor Landlord.

**ARTICLE XIII
INTENTIONALLY DELETED**

**ARTICLE XIV
INTENTIONALLY DELETED**

**ARTICLE XV
INDEMNIFICATION; DISPUTE RESOLUTION**

15.1 Indemnification By Landlord. Landlord shall indemnify, defend and hold harmless Tenant, and its officers, directors, employees and other agents (collectively, the "**Tenant Indemnified Persons**"), and will reimburse Tenant Indemnified Persons for any loss, liability, Claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a third-party claim (collectively, "**Damages**"), arising from or in connection with:

(a) Any Breach of any covenant or obligation of Landlord in this Agreement or in any other certificate, document, writing or instrument delivered by Tenant related to this Agreement; or

(b) Any liability arising out of or relating to Landlord's failure to comply with the terms of this Agreement, and any Damages arising from the negligent operations, acts or omissions of Landlord or its employees, agents, and contractors.

15.2 Indemnification By Tenant. Tenant shall indemnify, defend and hold harmless Landlord, and its officers, directors, employees and other agents (collectively, the "**Landlord Indemnified Persons**"), and will reimburse Landlord Indemnified Persons for any Damages arising from or in connection with:

(a) Any Breach of any covenant or obligation of Tenant in this Agreement or in any other certificate, document, writing or instrument delivered by Tenant related to this Agreement;

(b) Any liability arising out of or relating to Tenant's failure to comply with the terms of this Agreement, and any Damages arising from the grossly negligent operations, acts or omissions of Tenant or its employees, agents, and contractors;

(c) Any liability arising out of the operations of the Leased Property on or after the Commencement Date;

(d) Any liability related to the Assumed Liabilities;

(e) Any liabilities related to the Employees; or

(f) Any liabilities related to Tenant's or Sutter's obligations under the Wrap Around Agreement.

15.3 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 the dispute, the parties shall comply with the following procedures:

(a) **Meet and Confer.** The parties agree to meet and confer on any issue that is the subject of a dispute under a specific term of this Agreement ("**Meet and Confer**"), as a condition precedent to the mediation and arbitration provisions of Sections 15.3(b) and (c). Any ambiguity or uncertainty as to whether a dispute is subject to the procedures set forth in this Section 15.3 shall be resolved in favor of the application of these provisions. The party seeking to initiate the Meet and Confer procedures ("**Initiating Party**") shall give written notice to the other party, describing in general terms the nature of the dispute, the Initiating Party's position and a summary of the evidence and arguments supporting its position and identifying one or more individuals with authority to settle the dispute on such party's behalf. (The individuals so designated by a party shall be known as the "**Authorized Individuals**"). The party receiving such notice (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 15.3(b) and shall give

the other party written notice that the matter is being submitted to mediation. All deadlines specified in this Section may be extended by mutual agreement.

(b) 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 American Arbitration Association, 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 California 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 Alameda County, California.

(c) Arbitration. If the parties cannot resolve a dispute after exhaustion of the Section 15.3(a) and 15.3(b) procedures as set forth above, the parties shall submit such dispute to binding arbitration in accordance with the then prevailing rules of the American Arbitration Association and judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction in Alameda County, California. The arbitrator shall be knowledgeable in and familiar with healthcare delivery systems, 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, 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 Alameda County, California.

15.4 Provisional Remedies; Survival. Notwithstanding the provisions of Section 15.3, each party shall have the right to seek provisional remedies from a court of competent jurisdiction in California, in accordance with Code of Civil Procedure Section 1281.8. The provisions of this Section 15.4 shall survive the termination of this Agreement.

ARTICLE XVI GENERAL PROVISIONS

16.1 Binding Effect. The term "Landlord" shall mean only the owner at the time in question of the fee title of the Leased Property. The obligations contained in this Agreement to be performed by Landlord shall be binding on Landlord and Landlord's successors and assigns only during their respective periods of ownership. The term "Tenant" shall mean Tenant and any

successor or assignee of Tenant's. The obligations contained in this Agreement to be performed by Tenant shall be binding on Tenant and Tenant's successors and assigns.

16.2 Survival. All representations, warranties, covenants and obligations in this Agreement and any other certificate or document delivered pursuant to this Agreement shall survive the Closing.

16.3 Expenses. Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the related agreements, including all fees and expenses of its counselors and advisors.

16.4 Exhibits. The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated into this Agreement 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.

16.5 Force Majeure. If the performance of any act required by this Agreement to be performed by any party, including without limitation the implementation of a cure of any default, is prevented or delayed by reason of any act of God, any act of the other parties, war, civil strife, fire, explosion, earthquake, flood, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, inability to secure required approvals, permits and the like (including OSHPD, lead agency, Alameda County and other local agencies approvals), or any other cause (except financial inability) that is not the fault of the party required to perform the act or is beyond that party's reasonable control ("**Force Majeure**"), the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. Should a party, due to the occurrence of a *Force Majeure*, fail to perform this Agreement in part or in full, such party shall, in light of the effect of the *Force Majeure*, be exempted from some or all of its responsibilities hereunder, except where applicable law provides otherwise.

Should a party be unable to perform or delayed in performance of this Agreement as a result of *Force Majeure*, it shall inform the other parties, as soon as reasonably possible following the occurrence of such *Force Majeure*, of the situation and the reason(s) for the nonperformance. The party unable to perform shall take appropriate means to minimize or remove the effects of *Force Majeure* and attempt to resume performance of the obligations delayed or prevented by the event of *Force Majeure*. After the event of *Force Majeure* is removed, the parties agree to resume performance of this Agreement with their best efforts or to negotiate toward an amended or new agreement if performance of this Agreement has been made legally impossible.

16.6 Notices. All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). In each case, notice shall be delivered or sent to the parties at the addresses set forth on the signature page of this Agreement. Any letter sent to these

addresses in the manner set out above will be deemed to have been received by the addressee within five (5) days of postmark.

16.7 Invalidity. If any one or more of the provisions contained in this Agreement or in any other instrument referred to in this Agreement, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

16.8 Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

16.9 Choice of Law. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the internal laws of the State of California, without regard to the principles of conflicts of laws.

16.10 Venue. The only proper venue for any disputes or claims related to or arising out of this Agreement shall be Alameda County, California.

16.11 Cumulative Remedies. All rights and remedies of either party are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

16.12 No Third-Party Beneficiary Rights. The parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the parties.

16.13 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) The singular number includes the plural number and vice versa;
- (b) Reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; reference to any gender includes each other gender;
- (c) Reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (d) Reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from

time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(e) "Hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(f) "Including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(g) "Or" is used in the inclusive sense of "and/or"; with respect to the determination of any period of time; and

(h) "From" means "from and including" and "to" means "to but excluding"; and references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

16.14 Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

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

SIGNATURES ON FOLLOWING PAGE

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

"LANDLORD"

Eden Township Healthcare District

Signature: _____

Print Name: _____

Title: _____

Address: 20103 Lake Chabot Road
Castro Valley, California 94546
Attn.: Chairman of the Board

"TENANT"

Eden Medical Center

Signature: _____

Print Name: _____

Title: _____

Address: 20103 Lake Chabot Road
Castro Valley, California 94546
Attn.: Chief Executive Officer

Consented and agreed to by:

Sutter Health

Signature: _____

Print Name: _____

Title: _____

Address: Sutter Health
2200 River Plaza Drive
Sacramento, California 95833
Attn.: General Counsel

Exhibit 2.1(a)
REAL PROPERTY

Parcel Number	Address	Property Description
77D-1429-19	13855 E. 14th St. San Leandro, CA 94578	Hospital and Medical Arts Office Building
77D-1429-3-5	13909 E. 14th St. San Leandro, CA 94578	Hospital Employee Parking Lot

Schedule 5.4

**EXAMPLE OF COMPUTATION OF
PURCHASE PRICE**

San Leandro Hospital

\$ in Thousands	Jun-Dec 2004	2005	2006	June YTD 2007	Total
Net Cash Flow					
Capital Spending	(\$983)	(\$1,657)	(\$3,417)	(\$723)	(\$6,780)
Operating Expense	\$39,303	\$86,136	\$78,907	\$40,473	\$244,819
Capital Expenditures/Rent	\$786	\$1,723	\$1,578	\$809	\$4,896
Net Income	\$1,596	(\$1,408)	(\$5,975)	(\$3,993)	(\$9,780)
Depreciation & Amortization	\$24	\$235	\$567	\$502	\$1,328
Annual Cash Losses (Over)/Under Capital Expenditures/Rent	\$1,620	(\$1,173)	(\$5,408)	(\$3,491)	(\$8,452)
Total Purchase Price Credit	(\$197)	\$66	(\$1,839)	\$87	(\$1,884)
	\$1,423	(\$1,107)	(\$7,247)	(\$3,405)	(\$10,336)
District Net Book Value of SLH					
Gross Property, Plant & Equipment	\$33,896	\$33,896	\$33,430	\$33,430	
Accumulated Depreciation	(\$1,077)	(\$3,231)	(\$5,386)	(\$6,463)	
Sale of Land	\$0	(\$466)	\$0	\$0	
Net Book Value of SLH	\$32,819	\$30,199	\$28,044	\$26,967	
Purchase Price Computation					
Net Book Value of SLH				\$26,967	
Less Total Purchase Price Credit				(\$10,336)	
Purchase Price				<u>\$16,632</u>	

Exhibit 8.5

INSURANCE

1. Coverage. Tenant shall during the entire term hereof, at its sole cost and expense, obtain, maintain and keep in full force and effect for the protection of Tenant, Landlord and any mortgagees of Landlord as their interest may appear, the following insurance:

(a) Property Insurance, protecting against risk of direct physical damage or loss including fire, extended coverage, vandalism and malicious mischief (but excluding earthquake) upon the property of every description and kind either owned by Tenant, part of the Leased Property, any of the Improvements, or installed by or on behalf of Tenant, including, without limitation, furniture fittings, installations, fixtures, equipment, any generators and any other property, in an amount not less than 100% of the full replacement cost thereof;

(b) Commercial General Liability Insurance coverage to include personal injury, bodily injury, broad form property damage, operations hazard, owner's protective coverage, contractual liability, products and completed operations liability in limits not less than Two Million (\$2,000,000), inclusive; and

(c) Professional Liability Insurance in the amounts not less than One Million Dollars (\$1,000,000) for any one claim and Three Million Dollars (\$3,000,000) in the aggregate.

2. Certificates. All policies shall be taken out with third party insurers and with an insurer which is rated in "**Best's Insurance Guide**" of A, AA or better. Tenant agrees that certificates of insurance on the Insurer's standard form will be delivered to Landlord as soon as practicable after placing of the required insurance, but in no event later than 10 days after Tenant takes possession of all or any part of the Leased Property. All policies shall contain an undertaking by the insurers to notify Landlord and the mortgagees of Landlord in writing not less than 30 days prior to any material change, reduction in coverage, cancellation or other termination thereof. Should Tenant fail to deliver such certificates in a timely manner, Landlord may obtain insurance coverage required of Tenant under this Agreement and Tenant shall promptly, on demand, reimburse Landlord for the cost thereof as additional Rent.

3. Landlord's Insurance. Landlord may, but shall not be obliged to, take out and carry any other form or forms of insurance as it or the mortgagee of Landlord may reasonably determine advisable. Notwithstanding any contribution by Tenant to the cost of insurance premiums as provided herein, Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord. Landlord will not carry insurance of any kind on Tenant's furniture or furnishings, or on any fixtures, equipment, improvements or appurtenances of Tenant under this Agreement; and Landlord shall not be obligated to repair any damaged thereto or replace the same.

4. Subrogation. Any policy or policies of fire, extended coverage or similar casualty insurance, which either party obtains in connection with the Leased Property, shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or

loss. Landlord and Tenant waive any rights of recovery against the other for injury or loss due to hazard covered by insurance containing such a waiver of subrogation clause or endorsement to the extent of the injury or loss covered thereby.

5. Self-Insurance. Notwithstanding anything to the contrary in this Exhibit, Tenant may self-insure, with Landlord's prior written consent, for general liability, all risk property and/or business interruption insurance coverage specified in Section 1 of this Exhibit, if Tenant delivers to Landlord audited annual financial statements, reasonably satisfactory to Landlord, and such other financial statements reasonably requested by Landlord from time to time, evidencing that Tenant has a sufficient net worth as measured by its retained earnings to continue such self-insurance. If Tenant is permitted to and self-insures any risk which would have been covered by the insurance required to be carried by Tenant pursuant to this Exhibit, or if Tenant fails to carry any insurance required to be carried by Tenant pursuant to this Exhibit, then any loss or damage to Tenant, Tenant's property, Tenant's installations, Tenant's leasehold interest, Tenant's business, the Leased Property or any additions or improvements thereto or contents thereof which would have been covered by the all risk property/business interruption insurance otherwise required to be carried hereunder shall be deemed covered by and recoverable by Tenant or Landlord, as the case may be, under valid and collectible policies of insurance.