



**COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION**

MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box.
There is no additional administrative fee for this service.

Name of Respondent Eden Township Healthcare District			Name of Representative (if known) Craig Cannizzo, Esq.		
Address 20410 Lake Chabot Road, Suite 1A			Name of Firm (if applicable) Hooper, Lundy & Bookman, Inc.		
			Representative's Address 575 Market Street, Suite 2300		
City Castro Valley	State CA	Zip Code 94546-	City San Francisco	State CA	Zip Code 94105-
Phone No. 510.538.2031		Fax No.	Phone No. 415.875.8500		Fax No. 415.875.8519
Email Address:			Email Address: ccannizo@health-law.com		

The named claimant, a party to an arbitration agreement dated March 21, 2008, which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

THE NATURE OF THE DISPUTE
Sutter Health seeks specific performance of a purchase and sale agreement that arose when Sutter Health exercised a written option contained in a lease to purchase real property and an acute inpatient hospital and parking lot thereon. Respondent has refused to transfer the property and close escrow. Sutter also seeks damages due to the delay in closing escrow.

Dollar Amount of Claim \$5,000,000.00	Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input checked="" type="checkbox"/> Other Performance
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Amount Enclosed \$ 1,000.00 In accordance with Fee Schedule: Flexible Fee Schedule Standard Fee Schedule

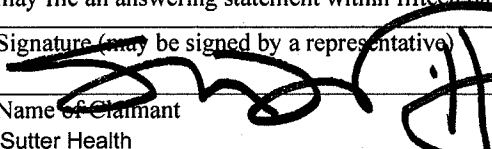
PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE:
Experience in health care delivery systems.

Hearing locale Alameda County (check one) Requested by Claimant Locale provision included in the contract

Estimated time needed for hearings overall: _____ hours or <u>3.00</u> days	Type of Business: Claimant <u>Health care delivery system.</u> Respondent <u>Health care district</u>
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Is this a dispute between a business and a consumer? Yes No Does this dispute arise out of an employment relationship? Yes No
If this dispute arises out of an employment relationship, what was/is the employee's annual wage range? Note: This question is required by California law. Less than \$100,000 \$100,000 - \$250,000 Over \$250,000

You are hereby notified that copies of our arbitration agreement and this demand are being filed with the American Arbitration Association's Case Management Center, located in (check one) Atlanta, GA Dallas, TX East Providence, RI
 Fresno, CA International Centre, NY, with a request that it commence administration of the arbitration. Under the rules, you may file an answering statement within fifteen days after notice from the AAA.

Signature (may be signed by a representative)  Date: <u>10/26/2009</u>			Name of Representative Stephen L. Goff, Esq.		
Name of Claimant Sutter Health			Name of Firm (if applicable) McDonough Holland & Allen PC		
Address (to be used in connection with this case) 2200 River Plaza Drive			Representative's Address 500 Capitol Mall, 18th Floor		
City Sacramento	State CA	Zip Code 95833-	City Sacramento	State CA	Zip Code 95814-
Phone No. 916-286-6780		Fax No. 916-286-6781	Phone No. 916.444.3900		Fax No. 916.444.8989
Email Address:			Email Address: sgoff@mhalaw.com		

To begin proceedings, please send two copies of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to the AAA. Send the original Demand to the Respondent.

Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879

AMENDED AND RESTATED
LEASE AND HOSPITAL OPERATIONS AGREEMENT

This Amended and Restated Lease and Hospital Operations Agreement (this "Agreement") is dated effective March 21, 2008 ("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 March 21, 2008 ("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.

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

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

"LANDLORD"

Eden Township Healthcare District

Signature: _____

Print Name: Francisco RICO, M.D.

Title: Chair

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

"TENANT"

Eden Medical Center

Signature: _____

Print Name: Kent William Myers

Title: Chair

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

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"

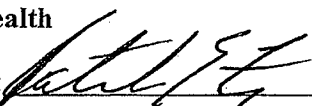
Eden Medical Center

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: Patrick E. Fry
Title: President and Chief Executive Officer

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

1 CASE TITLE: *Sutter Health v. Eden Township Healthcare District*

2 COURT/CASE NO: TBD

3 **PROOF OF SERVICE**

4 I am employed in the County of Sacramento; my business address is 500 Capitol Mall,
5 18th Floor, Sacramento, California 95814. I am over the age of 18 years and not a party to the
6 foregoing action.

7 On October 26, 2009, I served the following documents:

8 **DEMAND FOR ARBITRATION**

9 **by mail** by enclosing the documents in a sealed envelope or package addressed to the
10 persons at the addresses below, placing the envelope for collection and mailing, following
11 our ordinary business practices. I am readily familiar with this business's practice for
12 collecting and processing correspondence for mailing. On the same day that
13 correspondence is placed for collection and mailing, it is deposited in the ordinary course
14 of business with the United States Postal Service, in a sealed envelope with postage fully
15 prepaid.

16 **by overnight delivery** on the following party(ies) in said action, in accordance with Code
17 of Civil Procedure § 1013(c), by placing a true copy thereof enclosed in a sealed envelope,
18 with delivery fees paid or provided for, and delivering that envelope to an overnight
19 express service carrier as defined in Code of Civil Procedure § 1013(c).

20 Eden Township Healthcare District
21 20410 Lake Chabot Road, Suite 1A
22 Castro Valley, CA 94546

23 **By e-mail or electronic transmission.** Based on a court order or an agreement of the
24 parties to accept service by e-mail or electronic transmission, I caused the documents to
25 be sent to the persons at the e-mail addresses listed below. I did not receive, within a
26 reasonable time after the transmission, any electronic message or other indication that the
27 transmission was unsuccessful.

28 Craig Cannizzo
Hooper, Lundy & Bookman, Inc.
575 Market Street, Suite 2300
San Francisco, CA 94015
email: ccannizzo@health-law.com

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on October 26, 2009, at Sacramento, California.

EJ Kipping